

(1988) 04 BOM CK 0039

In the Bombay High Court

Case No : Criminal Appeal No's. 133 and 177 of 1983 and Criminal Application No. 61 of 1988

Sukhdeo Mundhe and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 386
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (1988) 2 BomCR 507

Hon'ble Judges : S.G. Deo, J;P.V. Nirgudkar, J

Bench : Division Bench

Advocate : S.A Deshmukh, in Cri. A. 133 and Cri. app. 61, for the Appellant; Vilas B. Patil, Assistant Public Prosecutor and G.D. Deshpande in Cri. A. 177, for the Respondent

Judgement

S.G. Deo, J.—The short question involved in these two criminal appeals, one by the eight appellants-accused in Sessions Case No. 62 of 1982 decided by the learned Additional Sessions Judge, Parbhani, convicting them of the offence under sections 147, 452, 323 and 302 all read with section 149, I.P. Code and sentencing them to life imprisonment and other terms, the sentences running concurrently, and the twelve respondents accused in Criminal Appeal No. 177 of 1983 filed by the State against their acquittal in the aforesaid sessions trial is : whether all or any of the aforesaid twenty original accused were members of an unlawful assembly and had taken an active part in the riot that took place on the fateful day i.e. Friday, the 4th June, 1982, by fatally assaulting the four deceased namely Hari, Govinda, Limba and Narayan and voluntarily causing injuries to the six P.Ws., namely, P.W. 2 Sopan, P.W.6. Kondabai, P.W. 7 Bapu, P.W., Phulchand, P.W. 21 Kundlik and P.W. 22 Vithal.

2. An orgy of violence was unleashed by a riotous mob of about 40 persons belonging to majority Wanjari community and residents of Anterweli, a small

village situated on Latur-Gangakhed Road, about 23 kilometres away from the Taluka place Gangakhed in Parbhani District. The unfortunate victims of the assault i.e. the three brothers deceased Hari, Govinda, and Limba and their nephew (sister's son) Narayan belonging to minority Buddha community had, along with their family members and friends, returned to their village Anterweli, only about three days back before the incident which took place on Friday, the 4th June, 1982, only to meet with their destiny at the hands of the riotous mob of Wanjari people who had not taken kind to their residence in village on the ground that they had brought notoriety to them and to the village Anterweli by leading a life of dacoits. The members of their family, were also involved in the village service as Gawki work which they had also given up some time before. The deceased and their family members as well as the family of their associated had left Anterweli in view of the pressure brought on them by the villagers to leave the village about 1 1/2 years back before the day of the incident. They had shifted to village Mankhed, taluka Ahmedpur, district Latur, and had started earning their living by cultivating lands taken on lease. It appears that the landlords were not desirous of continuing the lease with them after a period of 1 1/2 years. It also appears that the marriage of the relation of the deceased was to take place a few days before the day of the incident. Besides, there was a few financial commitments made by the deceased Govinda to the accused No. 8 Gyanik (present appellant No. 4). It appears that one Banu son of Rama Jayebhaye was being taken to the Police Station, Gangakhed for having abused one Sopan Mukadam of Anterweli under the influence of liquor. At that time, the deceased Govinda son of Tuljiram was present and had negotiated with accused No. 8 Gyanik (who appears to have taken a leading part in the riot), accused No. 39 Udhav, Accused No. 7 of Shivaji, Accused No. 5 Prabhu and Accused No. 29 Arun, to let Babu free assuring them that Babu would pay them Rs. 1500/-, perhaps as a compensation and in case Babu did not pay that amount, the deceased Govinda would pay the same to the accused No. 8 Gyanik. This amount of Rs. 1500/-, which the deceased Govinda had promised to pay to the accused No. 8 Gyanik, had remained unpaid till the day of the incident, since Babu had not paid that same to accused No. 8 Gyanik. It is against this background of the inimical relations between the deceased and their friends and family members on the one hand and the appellants accused in Cri. Appeal No. 133 of 1983 and the respondents-accused in Cri. Appeal No. 177 of 1983 on the others that the family members of the deceased and their associates return to Anterweli, but not before negotiating with accused No. 8 Gyanik (present appellant No. 4) who had taken the leading part, at the house of one Sitaram Patil at Shelmoha, which is about two kilometres away from Anterweli. In that compromise, the party of the deceased agreed that they would not enter the village Anterweli and would stay for three days only in Budhwada, which is at the extreme South of village Anterweli. Similarly, party of the assailants led by accused No. 8 Gyanik had assured the deceased and their party that the villagers of Anterweli would not also enter Budhwada for a period of three days. These negotiations seem to have taken place on 1st of June, 1982. On the next day, there was marriage of one

Maina d/o Chokhoba Ghobale, a relation of the deceased and the cousin of P.W. 15 Manik. The marriage function passed peacefully without any quarrel.

3. It appears that the villagers had not taken kindly to the resuming of their residence by the deceased and their associates at village Anterweli. There were three Juvenile offenders in the riot. One of them appears to have been dead. Two other Juvenile offenders were facing trial before the Juvenile Court. The trial of the original juvenile accused No. 4 Charnu was separated by the learned Additional Sessions Judge. It is this Charnu who appears to have set the ball of bickering rolling. On Thursday, the 3rd June, 1982, while P.W. 15 Manik, the brother of the three deceased Govinda, Hari and Limba, had gone to his land at village Anterweli in the morning, an enquiry was made by the Juvenile offender Charnu about the duration of their stay at Anterweli. Sensing trouble, P.W. 15 Manik returned to his house and cautioned his brothers Govinda, Hari and Limba. It appears that the amount of Rs. 1500/- was not paid to accused No. 8 Gyanik till that time and even on the day of the incident. The morning of the fateful day i.e. 4th June, 1982 started with a small incident at 7 a.m. It appears that a prize money of Rs. 20/-, which was received by accused No. 21 Laxman son of Dnyanoba Jayebhaye in Kabaddi game, had been retained by P.W. 8 Phulchand. Accused No. 21 Laxman went to the house of the deceased and P.W. Manik to demand the amount. Since P.W. 8 Phulchand was not having that amount, P.W. 15 Manik paid Rs. 20/- on behalf of P.W. 8 Phulchand to accused No. 21 Laxman and satisfied the debt to avoid further precipitation.

4. Later in the morning at about 9 a.m. About 25 accused persons, all named in F.I.R. (Exhibit 114), came to the house of P.W. 15 Manik, raising slogans and hurling abuses on the inmate of the house of Manik. They were armed with axes and sticks. However, all those persons were made to return to the village by accused no. 8 Gyanik (appellants No. 4) who had in fact brought them to the house of P.W. 15 Manik. What happened at that time is not clear on record. But the fact remains that the family of the deceased and their associates, who were in the house of Manik at that time, had become cautious. P.W. 15 Manik made his son Vishnu to sit on the terrace of his house to keep a vigil on the villagers. The deceased Limba, Govinda, Hari and Narayan and his associates P.W. 2 Sopan and his family members remained inside in their house with P.W. 15 Manik the brother of the deceased till about 2 p.m. When a riotous mob came again in front of the house of Manik armed with deadly weapons like axes and sticks, evidently to teach a lesson to the four deceased and six injured P.Ws, in view of their insistence on residing in the village Anterweli and despite the fact that they were instructed to leave the village in view of their deeds of dacoity.

5. The riotous mob was sighted by Vishnu who was keeping a vigil from the terrace and had given a signal to his father P.W. 15 Manik. Manik saw the mob of forty persons armed with deadly weapons at the door of his house and asked his brothers Hari, Govinda and Limba, the deceased and also the deceased Narayan, who was his paternal aunt's son, to save their lives. At this juncture, the

deceased and other persons started running towards the hill-side known as KUMBHARMATICHA MAL situated within about 2 to 3 furlongs to the North of Manik's house. The wives of the deceased also followed their husbands to KUMBHARMATICHA MAL sensing fear to the lives of their husbands. The riotous mob followed them and a brutal attack was made on the three deceased Hari, Govinda and Limba by means of axes and sticks and stones in the hilly-track known as KUMBHARMATICHA MAL as a result of which Hari, Govinda and Limba instantaneously kicked their buckets. Before that assault, deceased Narayan who had in the meantime escaped and had taken refuge in the house of one Rama son of Dudhaji. The chasing assailants enquired about him, learnt about the place where he had taken refuge, entered the house of Rama Dudhaji, dragged him out of the house and took him to the place known as platform of Mariai, giving slogans of victory. Narayan was mercilessly hacked to death by the members of the unlawful assembly, Narayan died almost instantaneously. Such was the venomous and dastardly attack that one of the legs of the deceased Narayan was severed and was taken away by some members of the unlawful assembly and was later on recovered from the back side of Manik's house during the course of investigation. The dead bodies of deceased Hari, Govinda and Limba were lying near a line (Pal) of stones on the KUMBHARMATICHA MAL. The deceased Limba while dying was asking for water. The evidence shows that accused No. 22 Arun passed urine in the mouth of Limba.

6. Members of the unlawful assembly had made their way back to the village after assaulting Hari, Govinda, Limba and Narayan. While they were near the Nim tree in front of the house of P.W. 15 Manik, they assaulted P.W. 2 Sopan, P.W.6 Kondabai, P.W.7 Babu, P.W. 8 Phulchand and P.W. 15 Manik and inflicted simple injuries on them.

7. At least two persons, P.W. 15 Manik and P.W.1 Ramesh had taken to their heels during the course of that brutal and dastardly attack on the deceased. P.W. 15 Manik reached Dharamapuri and from there he went to the house of his sister Dhropadabai w/o Dnyanoba at Ambajogai and informed her about the fatal assault on his three brothers. From Ambajogai he went to Parali and from there to Gangakhed Police Station where he came to know that police had already left in a van for Anterweli. He thereafter came to Parbhani, took his cousin Ambadas son of Hariba Gulve with him and went to the bungalow of Dy. S.P. Parbhani, from where he was taken in a van to Anterweli. He reached Anterweli on Saturday, the 5th June, 1982 at about 9 a.m.

8. P.W. 1 Ramesh had also run to Ambajogai, from there to Parali and had returned to village Anterweli and was present at the cremation of the deceased Hari, Govinda, Limba and Narayan at about 5 p.m. on 5th June, 1982.

9. One Limbajirao is the Police Patil of village Anterweli. For reason best known to the prosecution, he has neither been examined as a prosecution witness nor the written report about the quarrel that took place between Harijans and Wanjaris of Anterweli, made by him at about 4.30 p.m. on the 4th June, 1982 at

the Police Station, Gangakhed, is brought on record. P.S.I. P.W. 23 Kavle had registered Crime No. 56 of 1982 of Police Station, Gangakhed, and had also alerted his superior officers at Parbhani and had also sent Police Patil and some police staff to the village Anterweli to maintain peace.

10. It is on record that Police Patil Limbajirao sent his report to Gangakhed Police Station on the basis of which P.S.I. Kavle (P.W. 23) registered the Crime No. 56 of 1982. It is worthy to note that the said report was in writing and on that report, the crime has been registered. It is however, not less significant to note that Limbajirao has not been cited as a witness and when asked in the cross-examination, it has been stated by P.S.I. P.W. 23 Kavle that Crime Nos. 56 of 1982 and 57 of 1982 are about different and distinct instances. What is more is that and with what more we are concerned is that his evidence discloses that he has recommended A-final in that connection to the Judicial Magistrate, First Class, Gangakhed, after getting the necessary A-final certificate from Dy. S.P.P.W. 24 Shri Kedari. This evidence of P.S.I.P.W. 23 Kavle cannot be easily brushed aside and indeed cannot be so easily ignored. P.S.I. Kavle's testimony, that two instances are different and that A-final has been recommended, had not been challenged or pursued further in the cross-examination and what is more and striking to note is that the defence has made no attempt to call for the original report filed by Police Patil in the lower Court. That aspect we are unable to forget while appreciated the arguments of Shri Deshmukh that report of the Police Patil has not been placed on record by the prosecution. We have considered this argument very carefully and anxiously, but we cannot appreciate the strength and weight behind this argument for the reasons set forth above.

11. Dy. S.P.P.W. 24 Shri Kedari had received the information above the ghastly incident at Anterweli and left Parbhani for Gangakhed Police Station from where took P.S.I. 23 Kavle and reached Anterweli on the night between 4th and 5th June, 1982 i.e. at about 10.45 a.m on 5th June, 1982. The Police Officers saw the dead bodies of Hari, Govinda, Limba and Narayan at Anterweli. They also found as many as six persons, namely, P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 7 Bapu, P.W. 8 Phulchand, P.W. 21 Kundlik and P.W. 22 Vithal, the complaints, had received injuries. The entire village was found vacant by both the Police Officers when they had started making enquiry with the injured persons. The six injured persons who were brought to Gangakhed Police Station, were got medically examined and it was thereafter that P.S.I. P.W. 23 Kavle recorded the complaint (Exh.114) of P.W. 22 Vithal and registered the present Crime No. 57 of 1982 of Police Station, Gangakhed, and went back to Anterweli to further investigate the matter.

12. The autopsy was arranged at Anterweli itself. It was conducted by P.W.3 Dr. Ramgopal Biyani and P.W. 4 Dr. Uttam Ramrao Gujarati. It is necessary to refer in detail to the injuries found on the dead bodies and also to the injuries found on the person of six P.Ws. to show that a brutal, dastardly and concerted attack was made on the three deceased Hari, Govinda and Limba and a similar attack was

made on the deceased Narayan at the platform of the Goddess Mariai near the house of P.W. 15 Manik, some distance away from Manik's house.

13. P.W.3 Dr. Ramgopal Biyani found the following 15 external injuries on the person of deceased Govinda, on completion of post mortem examination at 2.15 p.m., vide post-mortem examination report (Exhibit 37) :

"(1) Incised wound 3 cms x 1/2 cm. x 1/4 cm. over mid of right eyebrow, oblique, spindle shape, blood stains present over right side of face, neck and Banian;

(2) Incised wounds 5 cms. x 1 cm. x 1/4 cm. over left side of forehead, oblique, extending from inner and of eye-brow outer table of frontal bone was seen through wounds, blood stains were present over the left side of face, neck and Banian;

(3) Incised wound 2 cms x 1/4 cm. x 1/10 cm. over right cheek prominence, blood stains, were seen around the cheek;

(4) Incised wound 3 cms. x 1/2 cm x 1/4 cm. over right occipital bone extending from occipital parietal joint and 3 cms. from mid line. Blood stained were seen around wound and back of the neck in hair;

(5) Incised wound 5 cms. x 1 cm x 1/4 cm. over left parietal bone, horizontal, extending from mid-line and 6 cms. behind parieto frontal joint, hair were stained with blood;

(6) Incised wound 7 cms. x 1 cm x 1/4 Cm. over left parietal prominence, horizontal, extending from mid-line, hair were stained with blood;

(7) Incised wound 3 cms. x 1 cm x 1/4 Cm. over left leg, horizontal, 5 cms. below from upper end, inner and front side leg was stained with blood and soiled with mud;

(8) Incised wound 2 1/2 cms. x 1/2 cm x 1/4 cm. on upper end of left leg; inner and front side horizontal;

(9) Incised wound 5 cms. x 11/2 cm x 1 cm. over lower end of right thigh, front and outer side, horizontal, surrounded part was stained with blood and mud;

(10) Incised wound 16 cms. x 10 cms. over right side of the knee joint extending from mid-line going inward, backward, cutting whole inner, back and outer side. Only remained in tact with skin over front and outer side. All superficial and deep tissues, popliteal vessels, nerves, tendons and muscles were cut transversely, lower end of femur inner side and upper end of tibia were cut, firm clotted effused blood mass with mud present in the wound; both the legs, underwear were stained with blood, backside over thigh at lower end showed incised wound marks, separated by piece of free skin in between, horizontally;

(11) A wheel mark 5 cms x 1 cm. x 1 cm. in left infra scapular region extending from lower end of scapula, horizontal outer side, red in colour, sub-cutaneous

tissues showed effused blood;

(12) A wheel mark 7 cms. x 1 Cm. over left back side at lumber, first vertebrae, extending from mid-line, red in colour, horizontal, sub-cutaneous tissues showed effused blood;

(13) Abrasion 2 cms. x 1 cm. over back of left ear over mastoid tuber-clex, red in colour;

(14) Multiple small abrasions with contusions present over right palm, red in colour, sub-cutaneous tissues showed effused blood;

(15) Contusion with abrasion 8 cms. x 5 Cms over left thigh, upper 1/3rd, outer and front side, red in colour, sub cutaneous tissues showed effused blood."

All injuries were ante-mortem and were caused within 24 hours. Injuries No. 1 to 10

were caused by sharp cutting edged substance like an axe and injuries Nos. 11 to 15 were caused by hard and blunt objects like sticks and stone. The most significant injury which was received by the deceased Govinda was injury No. 29 which was both grievous in nature and dangerous to life. It was because of this injury that professed hemorrhage resulting in shock resulted in his death as right popliteal vessels had been severely wounded in the assault.

14. Dr. Biyani (P.W 3) also completed post-mortem examination on the dead body of deceased Limba by 3.45 p.m. and found as many as nine external injuries vide his post-mortem examination report (Exhibit 38) as follows :-

"(1) Incised wound 3 cms. x 1 cm x 1/4 cm. over right palm, thumb side, vertical, clotted effused blood was present the wound, blood stains were seen over palm, edges were clean-cut even gapping and retracted, wound was spindle shaped;

(2) Bruise 5 cms x 3 cms. over left knee inner and upper side red in colour; sub cutaneous tissues showed effused blood on section;

(3) Lacerated wound 5 cms. x 1 cm. x 1/4 cm. over right parietal bone, oblique, extending from mid-line, 2 cms. in front of occipito parietal joint, clotted effused blood was present in the wound. Edges were retracted; hair, right side of the neck and face were stained with blood;

(4) Incised wound 6 cms. x 1/2 cm x 1/4 cm. over left parietal bone, vertical, extending from prominence, going forward, clotted effused blood was present in the wound, edges were clean cut, even and gapping and retracted; hair, left side of leg, collar of the shirt were stained with blood, wound was spindle shaped;

(5) Incised wound 15 cms. x 10 cms. Extending from front side of right knee joint, from mid-line, whole right side, back and inner side, only remained intact with skin over front and inner side; Whole skin superficial and deep layers, muscles, tendons, vessels and nerves cut transversely, vessels I mean popliteal.

Lower end of femur bone inner side and upper side of tibia bone were also cut. Clotted effused from blood mass was present in the wound and surrounding tissues. Mud was also present in the clotted blood and also in surrounding tissues. Whole lower both extremities were stained with blood with underwear and surrounded ground soil, more near right knee. Edges were clean-cut, even gapping and retracted;

(6) Bruise 5 1/2 cms. x 2 cms. over mid of forehead, horizontal, 2 cms. below parieto frontal joint red in colour, sub cutaneous tissues showed effused blood;

(7) Abrasion 2 cms. x 1 cm. over left elbow joint, back and inner side, red in colour, sub cutaneous tissues showed effused blood;

(8) Contusion with abrasion 10 x 1 cms. over left leg, inner and front side, upper 1/3 red in colour, sub-cutaneous tissues shows effused blood in section

(9) Contusion with abrasion 5 cms. x 2 cms. over left buttock outer upper part red in colour, subcutaneous tissues showed effused blood in section."

Injuries No. 1, 4 and 5 were due to the assault with an axe, while injuries No. 2, 3 and 6 to 9 were caused by sticks. Inquiry No. 5 was dangerous to life and grievous in nature. The injury No. 8 was on the right knee joint measuring 15 cms. x 10 cms. and was inflicted with such a force and venom that the leg was severed but it had remained intact with the skin. The lower end of femur bone and upper end of tibia were also cut. The skin, deep layers, muscles, tendons, vessels and nerves were all cut transversely. These injuries found on the person of dead body of Limba were sufficient in the ordinary course of nature to cause death of Limba.

15. Similar was the state of dead body of deceased Hari, on which autopsy was conducted on 5th June, 1982 at about 1 p.m. by P.W. 4 Dr. Uttam Gujarati. The following 17 external injuries, including nine incised wounds, were found on the dead body of Hari, vide post-mortem examination report (Exhibit 47) :

"(1) Incised wound 3 cms. x 1 cm. x 1/2 cm. over middle of scalp 5 cms. right to the mid-line horizontal, clean, cut, gapping, even edged.

(2) Incised wound 3 cms. x 1 cm. x 1 cm. oblique over middle of scalp 2 cms. left to the injury No. 8 clean cut, gapping.

(3) Incised wound 2 cms. x 1 cm. x 1/2 cm. over left side of scalp 3 cms. left to middle line, oblique in direction.

(4) Incised wound 3 cms. x 1 cm. x 1/2 cm. over left side of chin, clean cut, gapping and spindle shaped, oblique in direction.

(5) Incised wound 10 cms. x 6 cms. x 5 cms. horizontal in direction over anterior (front) part of right elbow joint at the level of crease cutting the skin, face, muscle, tendons, blood vessels in the cubital fossa and lower end of humerus transversely. The wound was clean cut, even, edges, spindle shaped, gapping

and clotted blood was present in the wound.

(6) Abrasion 1 cm. x 1 cm. over lower part of right fore-arm, 2 Cms. above the wrist joint.

(7) Incised wound 1 cm. x 1 cm. x 1/4 cm. over terminal phalanx of the right index finger.

(8) Abrasion 1 cm. x 1 cm. over outer aspect of upper part of left upper arm irregular in shape.

(9) Abrasion 1 cm. x 1 cm. over outer aspect of left elbow joint, irregular shape.

(10) Contusion 2 cms. x 3 cms. inner aspect of middle of left upper arm.

(11) Contusion 2 cms. x 3 cms. over left side of chest.

(12) Abrasion 3 cms. x 2 cms. over right side of chest in the line of armpit, irregular shape.

(13) Incised wound 12 cms. x 3 cms. x 3 cms. horizontal in direction over front part of lower 3rd of right leg 5 cms. above the ankle joint, cutting skin, fascia of tibia, transversely. Wound was clean cut, spindle shaped, gapping. Clotted blood was present in the wound and surrounding points.

(14) Incised wound 6 cms. x 1 cm. x 1 cm. oblique in direction, over medial part of upper third of right leg, clean cut, gapping and spindle shaped, clotted blood was present in the wound. Left leg was extended beyond normal extension of 180 excess above 90, so that the leg lying transversely and foot was near right lower extremity, leg was strengthened and injuries seen.

(15) Incised wound 15 cms. x 6 cms. x 6 cms. horizontal in direction, over back side of the left knee joint, cutting the skin, fascia, blood vessels, muscles and tendons in the popliteal fossa and lower end of the femur. Wound was clean cut even edged clotted blood was present in the wound and surrounding part of leg and soil.

(16) Lacerated wound 3 cms. x 1 cm. x 1/2 cm. horizontal in direction over anterior part of left knee joint.

(17) Contusion 6 cms. x 3 cms. over left side of neck below ear."

Hari died within 24 hours, on receiving injuries, of shock due to hemorrhage due to cutting of blood vessels in the right cubital fossa and left popliteal fossa.

16. The dead body of Narayan also tells a similar story of assault. The post-mortem examination of the dead body of Narayan was completed on that very day i.e., 5th June, 1982 at about 3.15 p.m. by P.W. 4 Dr. Uttam Gujarati. Seven external injuries, including five incised wounds were found on the dead body of Narayan vide post-mortem examination report (Exh. 48) which are as follows :

"(1) Incised wound 10 cms. x 4 cms, horizontal in directing over medial part of

right upper arm in the middle cutting the skin, fascia, muscles, blood vessels and shaft of right humerus transversely, wound was clean cut, gapping, clotted blood was present in the wound and surrounding part.

(2) Contusion 10 cms. x 6 cms. over middle of left upper arm on outer aspect.

(3) Incised wound 10 cms. x 14 cms. x 6 cms. on back side 3 cms. above the right knee joint, cutting lower end of femur, blood vessels and muscles.

(4) Incised wound 12 cms. x 6 cms. x 5 cms. x 2 cms. below the right knee joint on backside, cutting the muscles, blood vessels and upper end of tibia, fibula transversely with skin and fascia, which separated totally the lower part of leg, from the rest of lower extremity, the separate lower part of leg was absent.

(5) Lacerated injury was seen on front side of thigh, oblique margins started above from the inguinal region encircling the left side of thigh, outer aspect of right thigh below upto knee joint due to the absence of skin the muscle tissue and fat were exposed.

(6) Incised wound 15 cms. x 6 cms. x 6 cms, horizontal in direction over the back side of the left knee joint (popliteal fossa) cutting the skin, fascia, blood vessels, muscles and the lower end of the femur transversely, the wound was clean cut, even edged, gapping, clotted blood was seen in the tissue and surrounding part.

(7) Incised wound 8 cms. x 1 cm. x 1cm. oblique in direction over middle part of the scalp 3 cms. left to the mid-line. wound was clean cut, gapping outer table of skull bone was seen through the wound. Clotted blood was present in the wound."

Injuries Nos. 1, 3, 4, 6 and 7 were incised wounds and were caused with sharp cutting object like an axe. Injuries No. 2 and 5 were caused due to hard and blunt object like sticks. Injuries No. 1 and 5 were grievous in nature and injuries No. 3, 4 and 6 were dangerous to life and they were caused within 24 hours.

17. It is also necessary to refer to the injuries sustained by six P.Ws. namely, P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 7 Bapu, P.W. 8 Phulchand, P.W. 21 Kundik and P.W. 22 Vithal (the complainant) as that appears to be the major factor apart from the oral evidence of the prosecution witness to infer about the presence on the one hand and participation or otherwise in the riot of the appellants-accused in the Criminal Appeal No. 133 of 1983 and the respondents-accused in Criminal Appeal no. 177 of 1983.

18. Statement of P.W. 3 Dr. Biyani and the contents of injury certificate (Exh. 39) disclose the following injuries found on the person of P. W. 2 Sopan, when he was examined on 5th June, 1982 at about 7:30 a.m. :

"(1) Abrasion 2 cms. x 1 cms. over right parietal bone 2 cms. behind parietal frontal joint and 1/2 cm. from mid line bluish red in colour.

(2) Lacerated wound 1 cm. x 1/10 cm. half centimetre above outer end of right

eye-brow, clotted bluish red colour was present with the wound, blood stains were present over right-side of face and shirt:

(3) lacerated wound $1/2 \times 1/10 \times 1/10$ cm. behind blood was present over wound surrounded part and neck were stained with blood."

All these injuries were simple in nature caused with hard and blunt object like a stick.

19. Statement of P.W. 3 Dr. Biyani and the contents of injury certificate (Exh. 40) disclose the following injuries found on the person of P.W. 7 Bapu, when he was examined on 5th June, 1982 at about 8.15 a.m. :

"(1) Bapu complained of pain over right knee joint outer-side left elbow joint and lower back, but no visible injury was seen.

(2) Bruise 7 cms. x 3 cms. over right intrascapular region, 3 cms. from mid-line bluish red in colour.

(3) Abrasion 3 cms. x $1\frac{1}{2}$ cm. over back of left shoulder joint. superior surface, bluish red colour.

(4) Incised wound 8 cms. x $1/4$ cm. over right parietal bone, oblique, extending from mid-line going backward and outwards behind 2 cms. of parieto frontal joint. Edges were clean cut, even gaping, wound was spindle shaped, hair, face and clothes were stained with blood, bluish, red clotted blood was present over wound."

The injuries No. 2 and 3 were caused with hard and blunt object like a stick and injury No. 4 was caused with sharp cutting edged substance, like an axe.

20. Statement of P.W. 3 Dr. Biyani and the contents of injury certificate (Exh. 41) disclose the following injuries found on the person of P.W. 8 Phulchand, when he was examined on 5th June, 1982 at about 8.45 a.m. :

"(1) Wheel mark 4 cms. and $1/2$ cm. over right forearm, upper end, front and outer side, oblique, bluish red in colour.

(2) Abrasion 2 cms. x 1 cm. over left knee joint inner side upper border, bluish-red in colour.

(3) Complaints of pains over right knee joint backside over left elbow joint, front and outer side and back of the neck with no visible injury.

(4) lacerated wound $1/4$ cm. x $1/10$ cm. over lower lip right and outer side. $1/2$ Cm. from mid-line, clothed bluish-red colour blood was present over wound, surrounded part was stained with blood."

The injuries No. 1, 2 and 4 were simple in nature and were caused with hard and blunt object like a stick.

21. Statement of P.W. 3 Dr. Biyani and the contents of the injury certificate (Exh.

42) disclose the following injury found on the person of P.W. 6 Kondabai, when she was examined on 5th June, 1982 at about a.m. :

"Lacerated wound 2 cms. x 1/2 cm. x 1/10 cm. over right side of upper lip 3/4 Cm. from mid-line, wound is opened inside, in front of canine tooth, lip is swollen and bluish and red to inner side trauma to gum over canine tooth present as clotted blood present. Canine tooth is slightly moving, gum is swollen, wound is covered with clotted blood bluish red in colour surrounded part is swollen."

The above injury was simple in nature and was caused with hard and blunt object like a stick.

22. Statement of P.W. 3 Dr. Biyani and the contents of injury certificate (Exh. 43) disclose the following injuries found on the person of P.W. 21 Kundlik, who was examined on 5th June, 1982 at about 10 a.m. :

"(1) Complaint of pain over lower back of mid-line over mid of left thigh and right upper arm, middle 1/3rd outer side with no visible injury.

(2) Lacerated wound 1 1/4 cm. x 1/4 cm. x 1/10 cm. over forehead in mid-line, horizontal below 2 cms, of parieto frontal joint, clotted bluish red blood was present over wound. Face, hair and clothes were stained with blood."

The above injury No. 2 was simple in nature and was caused with hard and blunt object like a stick.

23. Statement of Dr. Biyani (P.W. 3) and the contents of injury certificate (Exh. 44) disclose the following injuries found on the person of P.W. 22 Vithal, the complainant when he was examined on 5th June, 1982 at about 10.15 a.m. :

"(1) Bruise 7 cms. x 2 cms. over left side of the back extending from lower end of the scapula going upwards and outwards, bluish-red in colour.

(2) Bruise 5 cms. x 3 cms. on right supra scapular region, inner side, bluish-red in colour.

(3) bruise 3 cms. x 2 cms. over left leg, 5 cms. from upper end, bluish-red outer side.

(4) Contused lacerated wound 6 cms. 1/2 cm. x 1/4 cm. over inter parietal joint, horizontal, 3 cms. in front of parieto occipital joint, clotted bluish-red blood was present over wound. Hair, shirt left side, backside of the neck were stained with blood."

All the above injuries were simple in nature and were caused with hard and blunt object like stick.

24. The other part of the evidence consisted of seizure of blood stained clothes from the deceased, the injured and the appellants-accused and the respondents-accused and recovery and discovery of the weapons like axes, sticks etc., by the appellants-accused. The defence of the appellants-accused and the respondents-

accused was one of denial and false implication on account of enmity. No defence evidence was tendered. Almost all the panchas turned hostile to the prosecution with the result that the learned Additional Sessions Judge has had to rely on the ocular testimony of twelve prosecution witnesses, the medical evidence of the injuries sustained by the four deceased Hari, Govinda, Limba and Narayan and the six P.Ws., and the circumstances and probabilities of the case. While doing so, the learned Additional Sessions Judge found it extremely difficult to reconcile the evidence of the twelve eye-witnesses with their statements recorded during investigation u/s 161 as well as u/s 164 of the Code of Criminal Procedure, with the result that in this appeal a criticism was levelled against the learned Additional Sessions Judge that he had applied double standards, while relying on the prosecution witnesses in respect of the eight appellants-accused on the one hand and rejecting the same evidence on the basis of omissions as regards the overt acts of assault by such of the appellants-accused and the respondents-accused on the other.

25. We have heard Shri S.A. Deshmukh in this appeal at length for the eight appellants-accused and have meticulously considered the criticism levelled against the learned Additional Sessions Judge in appreciating the evidence. So far as the First Information Report (Exh. 114) is concerned, his contention was that the prosecution case has become doubtful, as the F.I.R. (Exh. 114) was not recorded on the spot even though the Investigating Officer had ample time to interrogate the complainant P.W. 22 Vithal as well as the other injured persons to gather the first-hand information of the crime on the spot. Instead, he first took them to Gangakhed in a truck, got them medically examined for the injuries which were simple in nature and then recorded the information five hours after the arrival of the police at the scene of the offence. As it was a case of riot, there was therefore ample opportunity to the complainant to falsely implicate the assailants later when his substantive evidence was recorded in Court, a year after the incident. In fact, the F.I.R. (Exh. 114), has been assailed for different reasons by both the sides. the learned Additional Public Prosecutor for the State, Shri Patil, assailed it on the ground that the investigation started in a casual and perfunctory manner and continued to be so throughout and for that reason, no importance should be attached to the statements of the prosecution witnesses made by them under sections 161 and 164 of the Cri. P.C., which statements are not substantive evidence at all. On the other hand, the learned Counsel for the eight appellants-accused Shri Deshmukh and the learned Counsel for the twelve respondents-accused shri Deshpande contended vehemently that if the prosecution was perfunctory, the benefit of the same should go to the accused under the settled criminal law and not to the prosecution.

26. A perusal of the judgment of the learned Additional Sessions Judge would at once show that he has acquitted as many as 32 accused mainly on the ground that their evidence suffered from the omissions on material facts, which led to the inference of false implication of the acquitted accused. At the same time, the learned Additional Sessions Judge found that in view of the homicidal deaths of

the four deceased. Hari, Govinda, Limba and Narayan and injuries sustained by the six witnesses, whose presence on the scene of the offence was natural, the prosecution case should not be dismissed on the ground that there were omissions about the overt acts and participation of the accused in the statements made by the witnesses before police and the learned Executive magistrate. This sort of appreciation, it was contended by the learned Counsel for the defence, was not warranted and it should have been, in the fitness of things, according to him, that all the appellants should have been acquitted who have now challenged their conviction under sections 147, 452, 323 and 302 all read with section 149 of the Indian Penal Code.

27. We have given anxious consideration to this case and the reasons given by the learned Additional Sessions Judge in arriving at the guilt or innocence of the accused in question. The role of a Judge in conducting a criminal trial of this magnitude is not that of a passive spectator or even that of an Umpire. He has to conduct and channelise the prosecution as well as the defence with the sole object of arriving at the truth. The judicial process is always for avoiding miscarriage of justice and at the same time in meeting justice and giving redress to the aggrieved party. While doing so, a Judge has, of necessity, to scrutinize even the credentials of the investigation and to find out the extent to which the evidence collected during investigation can be used to test the veracity of the witnesses. It would be travesty of justice to say that if the witness is contradicted with the statements and omissions made by him during police investigation, he should be disbelieved as a matter of course. When the circumstances and the probabilities of the case do show that what the witness states in Court is the truth, he should be believed despite omissions in the police statement. The evidence in Court alone can be treated as a substantive evidence of the witness. It becomes at times necessary to dwell into the motives of the investigation and to treat the evidence of the witnesses collected during investigation valueless.

28. In the case of Abdul Gani and Others Vs. State of Madhya Pradesh, , the Supreme court has dilated on the duty of Court as regards appreciation of evidence in criminal cases, as under :

"Though the prosecution witnesses have not told the whole truth and though it is not possible to get an absolutely true picture of the events from their evidence, where it is not possible to say that the prosecution case is a complete fabrication and where it appears that certain murders have resulted from a riot in which some at least of the several accused have taken part, the Court should make an effort to disengage the truth from the falsehood and to sift the grain from the chaff. It is an error to take an easy course of holding the evidence discrepant and the whole case untrue.

Of course, the story given by the eye-witnesses has to be carefully scrutinized and unless it can be said with reasonable certainty that a certain person took part in the riot, the benefit of doubt has to be given to him."

29. It will be our endeavour to scrutinize the substantive evidence given by the eye-witnesses in this case carefully and to find out as to which of the appellants-accused in Cri. Appeal No. 133 of 1983 and the respondents-accused in Cr. Appeal No. 177 of 1983 have undoubtedly taken active part in the riot in question.

30. While doing so, we make it abundantly clear here that we are completely in agreement with the criticism levelled on the quality of the investigation by both learned Additional Public Prosecutor who did not mince words while characterizing the investigation as perfunctory; by the learned Counsel for the accused and also by the learned trial Judge. We find that there was absolutely no justification for not getting the F.I.R (Exh. 114) recorded on the spot from P.W. 22 Vithal, since he had sustained only simple injuries. It was not necessary to take him to Gangakhed, and to get him medically examined first, before the F.I.R. was recorded. The evidence of the prosecution witnesses could also be collected on the spot immediately. Even the F.I.R (Exh. 114) shows the perfunctory nature of the investigation. It was not a written complaint. It was recorded from the oral narration of P.W. 22 Vithal. P.W. 23 P.S.I. Kavle under the supervision of Dy. S.P. P.W. 24 Kedari. It was all the more necessary for the two Police Officers to have minutely questioned P.W. 22 Vithal. The complainant about the names of the assailants who had taken part in the riot which started at 2 p.m., instead of remaining content with the names of the persons who had gone to the house of P.W. 15 Manik at 9 a.m. on that day, and who had returned without precipitating any quarrel. Not only that, it was the duty of the two Police Officers to have questioned P.W. 22 Vithal about the bleeding Lacerated and bruises injuries stained by him on his body and to have asked him as to who had inflicted them , in what manner, and with what weapon. The casual manner of investigation commenced of the very inception.

31. The reluctance on the part of the investigating agency to take proper steps is further revealed by the fact that even though the Police Patil had lodged a written report at Gangakhed Police Station at 4.15 p.m. i.e., two hours after the incident of riot had started, no attempt has been made to bring that police report before the Court, may, an attempt appears to have been made to see that it is suppressed. All the panch witnesses have turned hostile. They all belong to Wanjari community. No independent witnesses, in the right sense of the term i.e., the witnesses from other community, were got associated in the investigation. This primary care was not taken during this investigation. Even a goonda or murderer is entitled for protection of law. An impression is created in the mind, by the perfunctory investigation, that possibly the police machinery was happy over the elimination of known dacoits. Exhibit 172, a certified copy of the judgment in Sessions Trial No. 24 of 1970 decided in the Court of the learned Additional Sessions Judge Akola and Exhibit 174, a certified copy of the charge-sheet in Cri. Case No. 108 of 1981 in the Court of the Judicial Magistrate, First Class, Gangakhed, show that deceased Hari and the complainant P.W. 22 Vithal were convicted by the learned Additional Sessions Judge, Akola, for the offences

of dacoity etc., punishable under sections 395 and 457 of the Indian Penal Code and were sentenced to three years R.I. and a fine. Exhibit 173 throws light on the enmity between the parties. P.W. 15 had filed a complaint against accused Vithal son of Gangaram, accused No. 14 Kondiba Nivrutti, accused No. 16 Kishan Nivrutti and accused No. 22 Arun Sopan Dhaiphale in which all those persons were acquitted. The charge against them was of arson punishable under sections 436 and 323 both read with sections 34 of the I.P.C. Similarly, the leading figure in the present trial i.e. original accused No. 8 Gyanik (appellant No. 4) had filed a complaint in Crime No. 96 of 1980 at police station, Gangakhed, for the offence of dacoity at his house a year before the present incident. The complaint was against deceased Hari, Limba and Narayan and one Pandit. A number of accused in this case are shown as prosecution witnesses. There was, therefore evidently bad blood between the deceased and their associates on the one hand and the accused on the other.

32. The deceased Hari, Govinda, Limba and Narayan had earned notoriety as dacoits. The brother of deceased Hari, Govinda and Limba i.e., one Rukhmya is still undergoing sentence in a dacoity case. Did the police therefore think that the murders of the dacoits Hari, Govinda Limba and Narayan was good riddance ? Were they sympathising with the assailants ? Were they dragging their feet for the aforesaid reasons for investigation the present crime ? These doubts do arise in our mind. We do not see any reason for withholding the evidence of the Police Patil, Gangakhed, or even that of Sitaram Patil, before whom negotiations had taken place between the two sides at Shelmoha and we fail to understand as to why independent witnesses from other community were not got associated with the investigation. The investigation, to our mind, was not only perfunctory but was dishonest.

33. The next question, therefore, is whether such a perfunctory and dishonest investigation, in the circumstances of the case, makes the twenty accused entitled for acquittal on that ground alone. In our judgment, that should not be the case. Despite the investigation made by the police party, a test for truth had to be worked out. The very fact that four instantaneous brutal deaths had occurred, six P.Ws, were injured in a riot that took place at Anterwell at about 2 p.m., by itself is sufficient to find out as who were the real assailants, by basing our conclusions only on the substantive evidence given in the Court, as supported by the medical evidence and the circumstances and probabilities of the case. That would be the guideline of our endeavour to find out complicity or otherwise of the twenty accused.

34. We may draw considerable support to this view from the observations of the Supreme Court in the famous case of Baladin and Others Vs. State of Uttar Pradesh, . The observations are :---

"Ordinarily accused persons are entitled to challenge the testimony of witnesses examined in Court with reference to the statements said to have been made by them before the Investigating Police Officer. Statements made by prosecution

witnesses before the investigating Police Officer being the earlier statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in Court, with particular reference to those statements which happen to be at variance with their earlier statements : but the statements made during police investigation are not substantive evidence.

Hence the record made by a Police Investigating Officer has to be considered by the Court only with a view to weighing the evidence actually adduced in Court. If the police record becomes suspect or unreliable on the ground that it was deliberately perfunctory or dishonest, it loses much of its value and the Court in judging the case of a particular accused has to weigh the evidence given against him in Court keeping in view the fact that the earlier statements of witnesses as recorded by the police is tainted record and has not as great a value as it otherwise would have in weighing all the material on the record as against each individual accused."

We, therefore, treat the police investigation about the statements of the witnesses under sections 161 and 164 of the Cri. P.C. as a tainted record and would rely only on the evidence of eye-witnesses given before the learned Additional Sessions Judge, who had the added advantage of observing the demeanour of the witnesses giving the ocular testimony and appreciating them in the light of the medical evidence and the circumstances and probabilities of the case.

35. The prosecution and the defence have both referred to the celebrated Masalti's case reported in Masalti Vs. State of U.P., . In para 15, the following observations made by the Supreme Court, in that case are pertinent

"(15) x x x x x x x x x Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to Kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task ; but criminal Courts have to do their best in dealing with such cases and it is their duty to shift the evidence carefully and decide which part of it is true and which is not."

These observations will apply with equal force to the facts in the instant ,case which is also a case of unlawful assembly in which a large number of persons,

armed with axes and sticks, had taken part in fatally and brutally assaulting the four deceased. Certainly, the appreciation of evidence in such a case was a difficult task, which was find, has been performed in the right direction by the learned Additional Sessions Judge so far as the appellants-accused in Cri. Appeal No. 133 of 1983 are concerned. That however cannot be said in respect of the respondent-accused in Cri. Appeal No. 177 of 1983, to which a reference would be made at the appropriate time.

36. The law does not insist on plurality of evidence. The evidence given by even a single witness which is credible enough becomes the foundation of a conviction. However, when a large number of accused are involved in such a riot case, and four persons kicked their buckets as a result of murderous assault made by the members" of that unlawful assembly, it is difficult to come to a conclusion, particularly when the ocular testimony which otherwise cannot be doubted, has to be appreciated. On such occasions it sometimes becomes useful to adopt a mechanical test. The Supreme Court has said that although a test may be described as mechanical, it cannot be treated as irrational or unreasonable. It is no doubt true that it is the quality of evidence that matters, "but where consistent evidence has been given and the evidence cannot be rejected so lightly, it is useful to adopt the test and that the conviction "Could be sustained only if it is supported by two or more witnesses who give a consistent account of the incidence. It has been our endeavour to adopt this mechanical test whenever it is useful and whenever we find that two or more witnesses have given a story which is broadly in conformity with the general pattern of assault.

37. Another point that needs our attention is the approach of the learned Additional Session Judge in acquitting the appellants-accused and the respondents-accused u/s 148 read with section 149 of the Indian Penal Code. The learned Additional Sessions Judge thought that he could not come to the conclusion that all the appellants were armed with axes. Having carefully gone through that evidence of the eye-witnesses and the injuries received by the four deceased and P.W. 22 Vithal, the complainant, we have come to a definite conclusion that all the eight appellants must have carried axes and had made use of the same with vengeance on the four deceased. It is no doubt true as reported in Hazara Singh's, case 1971 S.C.C (Cri.) 237 that a person cannot be found guilty u/s 148, unless he has actually a dangerous weapon in his hands. Section 149 of the Indian Penal Code aims at making rioters constructively guilty of rioting, but not constructively guilty of merely holding a weapon. However, as we have already observed, we are unable to accept the conclusion reached by the learned Additional Sessions Judge that none of the eight appellants were armed with axes, despite the ocular testimony showing that they were in fact armed with axes and were responsible for the murderous assault on the four deceased. We now, therefore, proceed with the aforesaid observation to find out the guilt or otherwise firstly in the case of the appellants-accused in Cri. Appeal No. 133 of 1983 and later on in the case of the respondents-accused in Cri. Appeal No. 177 of 1983.

38. Appellant No. 1 Sukhdeo (original accused No. 1): A consistent testimony has been given by P.W. 1 Ramesh, P.W. 2 Sopan, P.W. 15 Manik, P.W. 16 Kalavati, P.W. 17 Mahananda, P.W. 18 Bainabai, P.W. 20 Padmin, P.W. 21 Kundlik and P.W. 22 Vithal, the complainant, to the effect that appellant No. 1 Sukhdeo was a member of the unlawful assembly and had an axe with him. It is only P.W. 6 Kondabai and P.W. 7 Bapu who referred to the weapon as handle of an axe. This discrepancy is so trivial that it can be accounted by the fact that the angle of vision of the witness vice-a-vis the appellant Sukhdeo, coupled with their power of observation in the confused and tense situation can lead them to believe that it was an axe and not merely the handle of an axe. The axe blade may have escaped their notice on account of tension in mind. The discrepancy was not such as to discard the testimony of all the P.Ws, to the effect that the appellant Sukhdeo was undoubtedly a member of the unlawful assembly in question and had taken part in it holding an axe in his hand. P.W. 2 Sopan, P.W. 20 Padmin and P.W. 21 Kundlik also state that the appellant Sukhdeo was armed with a stick, lands-accused Shri Deshmukh that the testimony was contradictory inasmuch as, a person cannot wield two weapons in his hand at the same time. Similarly, it was contended that it was improbable as the ocular testimony shows, that the appellant Sukhdeo could have assaulted Hari with an axe and P.W. 7 Bapu and P.W. 2 Sopan with the handle of an axe and stick simultaneously. It was urged that these discrepancies were important and show an attempt on the part the prosecution witness to falsely implicate him. We, however, do not subscribe to this view. The Attack many not have been simultaneous, though at times the impression that one got was like that. Since the visited Hari, Limba and Govinda were attacked on the Mal at the same time by axes, sticks and stones, suffice it to say that impression that the attack was simultaneous was not unlikely. However, the same person wielded axe and used it one more than one victim, there must by the rioters in a melee in which it was impossible to give a photographic account as to who wielded weapons on whom was it used, at what time and on which part of the body. What has to be gathered in such a situation is that the rioters attack the victims, that they were armed with weapons aid victims were injured. The medical evidence already referred to, supports the testimony of all the P.Ws. so far as appellant No 1 Sukhdeo is concerned and there cannot be any doubt in our mind about the complicity of appellant No. 1 in the riot and the crime.

39. So far as the assault on the deceased Hari by appellant No. 1 Sukhdeo is concerned, P.W. 1 Ramesh, P.W. 16 Kalavati P.W. 18 Bainabhai, P.W. 21 Kundlik and P.W. Vithal have pledged other oaths. We have already observed that the presence of the aforesaid witnesses at the time of the assault cannot be disputed. Beside, we do not subscribe to the view that the ladies may not have left the house of P.W. 15 Manik and rushed behind their husbands. It was natural on the part of the ladies, wives of the deceased, to have followed the assailants when they chased deceased to the Mal. The Hindu culture supports the contention of the ladies that they had seen the assault on their husbands. The

testimony was but natural. No Hindu lady would stay in the house when the husband was chased but assailants with deadly weapons with an unmistakable intention of hacking him to death. As regards the omissions brought about by the witnesses, with reference to their evidence in the investigation, we need only say that the said omissions are valueless and need not to be looked into at all for the reasons already stated. As regards the time between the event and the actual giving of the Court, it need only be observed that an indelible impression of what happened in the riot must have been created in the mind of the witnesses, as it was a question of life and death their near ones. No one can forget such an incident during one's lifetime. It cannot, therefore, be accepted that since more than a year had passed from the incident and their deposition in the Court, the testimony of the witnesses was likely to suffer from lapse of memory. These observations apply to the cases of other appellants-accused also. It may also be observed that six P.Ws., by being injured in the riot, get complete credence to their testimony. We, therefore, hold, concurring with the learned Additional Sessions Judge, that appellant No. 1 Sukhdeo was a member of the unlawful assembly, had actively participated in the assault on Hari, Govinda, Limba and Narayan and was holding an axe in his hand which was a deadly weapon and is, therefore liable to be convicted and sentenced. So far as the offence u/s 148 of the I.P.C. is concerned, we may only state that we differ with the learned Additional Sessions Judge, in the fact that it cannot be said that the appellant was holding an axe. All that we have to say in this connection is that we record a finding that the appellant No. 1 Sukhdeo was holding an axe, but we are unable to convict him and sentence him as such u/s 148. I.P.C. for the simple reason that the State has not filed any appeal against the acquittal of the appellant No. 1 Sukhdeo u/s 148, I.P.C. This observation also applies in respect of the other appellants in Cri. Appeal No 133 of 1983. The appeal of the appellant No. 1 Sukhdeo, therefore, fails and is hereby dismissed.

40. Appellant No. 2 Vinayak (Original accused No. 3) : The evidence as regards the presence of the appellant No. 2 Vinayak is of P.W. 1 Ramesh and other witnesses P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 8 Phulchand, P.W. 15 Manik, P.W. 16 Kalavati, P.W. 17 Mahananda, P.W. 18 Bainabhai and P.W. 21 Kundlik. The overt act alleged against appellant Vinayak is that of assault on the three deceased persons referred to by P.W. 8 Phulchand and P.W. 6 Kondabai. The injury received by P.W. 6 Kondabai at the hands of this appellant Vinayak is supported by medical evidence. The testimony of Kondabai finds corroboration from the mouth of P.W. 2 Sopan. The overwhelming evidence against this appellant Vinayak, implicating him in the commission and participation of the crime of rioting, is that P.W. 1 Ramesh has identified him and P.W. 7 Bapu has deposed that this appellant Narayan to Aai temple. Barring these two witnesses, the other witnesses, except the complainant P.W. 22 Vithal, have attributed overt acts on the part of this appellant Vinayak, P.W. 2 Sopan swears that this appellant was armed with an axe and he gave a blow with the handle of the axe on his body. P.W. 6 Kondabai came forward with a story that this appellant gave

a blow with an iron-bar on her face. P.W. 15 Manik has testified that this appellant gave a blow with the butt end of an axe on the fellow joint of his brother Hari. It is in the evidence of P.W. 16 Kalavati that this appellant gave two axe blow on Hari. P.W. 17 Mahananda stated that this appellant gave an axe blow on Hari, Govinda and Limba. We find in the evidence of P.W. 18 Bainabai that this appellant gave an axe blow on the forehead of Govinda. P.W. 21 Kundlik has testified that this appellant gave an axe blow on the log of Hari and by opening the door of the cellar of the house of P.W. 15 Manik, took Narayan to Aai temple.

41. Thus so convincing and conclusive is the evidence against this appellant Vinayak, that his presence and participation in the offence can hardly be doubted. The learned additional Sessions Judge had an opportunity to mark the demeanour of the witnesses and has given detailed reasons as to why he was pleased to accept the testimony of witnesses. On carefully going through the judgment of the learned Judge, we see no good reason to take a different view and we are in agreement with those reasons. We hereby maintain the conviction and sentences of appellant No. 2 Vinayak and dismiss his appeal.

42. Appellant No. 3 Prabhu (original accused No. 5) : The appellant No. 3 Prabhu is squarely connected with the crime by testimony of all the eye-witnesses. P.W. 1 Ramesh, beside, identifying the appellant Prabhu, has given testimony that this appellant gave blow with an axe on the forehead of deceased Govinda and axe blow on this right of Limba. P.W. 2 Sopan has stated that this appellant was armed with an axe and assaulted his son P.W. 7 Bapu and had taken deceased Narayan to the Aai temple. P.W. 6 Kondabai's evidence shows that it was this appellant Prabhu who had enquired about the whereabouts of the deceased Narayan, before the latter was hacked to death near Aai tempo. It was in front of the Nim tree that P.W. 7 Bapu was assaulted as per his evidence by the blunt edge of the axe on his head. P.W. 7 Bapu similarly stated that it was this appellant Prabhu who took Narayan to Aai temple. We find the testimony of P.W. 8 Phulchand that Prabhu gave a blow with that butt end of the axe on the head of P.W. 7 Bapu. This is supported by the medical but the medical evidence and corroborated by the other witnesses also. P.W. 16 Kalavati saw that Prabhu gave an axe blow on the leg of Limba. P.W. 17 Mahananda could see this appellant Prabhu assaulting by axe, that head of Govinda and leg of deceased Limba. P.W. 18 Bainabai saw this appellant giving axe blow on the leg of limba. P.W. 20 Padmin saw the assault on the deceased Narayan with axe at the hands is this appellant Prabhu. P.W. 21 Kundlik tells us that Prabhu was armed with an axe, gave blow of an axe on the right leg of Limba, opened the door of the cellar, took Narayan to the Aai temple and cut the leg of Narayan. To somewhat same effect is the testimony so P.W. 22 Vithal, who also states that Prabhu was armed with an axe, gave blow of axe on Govinda, broke open the door of the cellar and ultimately gave an axe blow on Narayan near Aai temple.

It is fruitless to find a minute consistency about the part of the body on which the assault was made. Even then we find that the cumulative effect of the

testimony of all the P.Ws. creates a strong impression in one's mind, despite the so called omissions ; that Prabhu was one of the main assailants of the deceased Hari, Limba, Govinda and Narayan and had also taken part in causing grievous injuries to P.Ws. There cannot be any doubt and we have absolutely no doubt in our mind having gone through the detailed assessment by the learned Additional Sessions Judge as regards the complicity of the appellants No. 3 Prabhu in the crime and having regard to the criticism levelled against it, that this appellant No. 3 Prabhu was a member of the unlawful assembly with an axe in his hand and had taken active part in the riot the murderous assault on the deceased and in inflicting injuries on the P. Ws. We, therefore, confirm the conviction and sentences passed but the learned Additional Sessions Judge on him and dismiss his appeal against the same.

43. Appellant No. 4 Gyanik (original accused No. 8):---The evidence of all the twelve-witnesses in this case leaves doubt in one's mind that this appellant Gyanik was a member of an unlawful assembly and had taken a rigorous and active part in the riot. Not only that, we find from the evidence adduced that this appellant Gyanik was a leading member of the assembly in the murderous assault. P.W. 1 Ramesh has identified him and has attributed the axe blow on Hari through Gyanik. It was Gyanik, according to P.W. 2 Sopan, who amongst other accused, had taken Narayan to Aai temple and had also assaulted P.W. 8 Phulchand P.W. 6 Kondabai states that Gyanik beat her and her son P.W. 8 Phulchand by the handle of axe and he also threatened them not to give evidence. P. W. 7 Bapu states that Narayan was taken to Aai temple and beaten there by the appellant Gyanik. P.W. 8 Pulchand confirms the aforesaid evidence by stating that a sick blow was given on his leg by Gyanik. He also states about the murderous assault on Hari, Govinda and Limba by the appellant Gyanik. A significant evidence is given by P.W. 8 Phulchand as against the appellant Gyanik, to the effect that Gyanik had given threats and had also given a reason for not inflicting serious injuries on him and his father only because they were Wanjaris. The motive was to assault the decoits fatally. P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 7 Bapu and P.W. 8 Phulchand were the associates of the decoits, although they were of Wanjari community. They escaped with minor injuries. The intention of the rioters is, therefore, write large in the evidence adduced before the learned Additional Sessions Judge and has also been made explicit in the arguments made before us. P.W. 15 Manik attributes axe blow on the deceased Hari by Gyanik. P.W. 16 Kalavati says that it was Gyanik who, before assaulting them told the deceased Govinda and Limba to look to the condition of Hari who had fallen down by the assault and had told Govinda and Limba to be ready for a similar fate. According to P.W. 16 Kalavati, Gyanik assaulted on the Mal Hari Limba and Govinda by axe blows. He was armed with an axe. P.W. 17 Mahananda supports the assault by Gyanik by means of an axe on Hari in her testimony. Similar is the testimony of P.W. 18 Bainabai. She also states that an axe blow was given on the right-hand of Hari by Gyanik. The head of Narayan received axe blow by Gyanik as per the testimony of P.W. 20 Padmin. While P.W. 21 Kundik states that

Narayan was assaulted after he was taken out from the cellar of the house of P.W. 15 Manik by Gyanik who, along with other, took Narayan to Aai temple and gave an axe blow on the hand of Narayan. He also testifies that axe blow on the right hand of Hari was by given by Gyanik on the Mal.

44. It is significant to note that complainant P.W. 22 Vital supports the evidence in general, by particularly stating that the right hand of Hari received an axe blow from Gyanik and that Narayan was also taken out by Gyanik. In general and having regard to the backdrop of the entire gruesome drama of murderous assault on three deceased on the Mal of Aai temple, it leaves no doubt in one's mind that the appellant No. 4 Gyanik was the brain behind the riot and had taken a rigorous and active part in assaulting the deceased fatally and also in causing injuries to Wanjari associates. The assessment of the evidence as against this appellant Gyanik made by the learned Additional Sessions Judge in detail has leaves no scope for any other conclusion. Having carefully considered the evidence of all the eye-witnesses and after having given due consideration to the criticism levelled against them were are absolutely in no doubt that the appellant Gyanik was a member of the unlawful assembly, was armed with an axe at that time and had participated in the crime. The conviction of Gyanik recorded by the learned Additional Sessions Judge and the sentences passed on him are quite correct and do not call for any interference in this appeal which, so far as the appellant No. 4 Gyanik is concerned, is hereby dismissed.

45. Appellant No. 5 Shriram (original accused No. 9):---Coming to appellant No. 5 Shriram, consideration of his case would not detain us long because so formidable is the evidence against him and so impressive are the reasons given by the learned Additional Sessions Judge that we think that we can add a few lines by lines only to meet the argument of the learned Advocates advanced before us and to satisfy ourselves as to whether the convictions.

46. To start with, may we point out that barring one witness P.W.6 Kondabai, other witnesses speaking against him have unanimously and consistently stated that this appellant Shriram was armed with an axe. P.W. 1 Ramesh says that this appellant who was armed with an axe took Narayan to Aai temple. P.W. 2 Sopan has testified that this appellant was armed with an axe. P.W. 17 Mahananda swears that this appellant was armed with an axe. P.W. 18 Bainbai 's evidence discloses that this appellant Shriram armed with an axe assaulted Govinda with a stone. P.W. 21 Kundik tells us that this appellant was armed with an axe.

47. We are not unmindful of the fact and we are perhaps conscious of the circumstances that there are some witnesses who state that his appellant assaulted with the stone, while P.W. 22 Vithal, the complainant, says that this appellant pelted stones at Hari. P.W. 18 Bainabai says that this appellant Shriram assaulted Govinda with the stone. Similarly is the story depicted by P.W. 1 Ramesh. Thus evidence of these three witnesses may or may not be believed. However , the fact remains that this appellant was present in the unlawful assembly and he had an axe. We have hasten to add that when a large number

of people take part in a riot and witnesses are moving in tension, they are not expected to see the movements of the accused minutely through a kaleidoscope and they are not expected to remember the detailed acts and actions of the accused or the culprits. Some allowances are required to be given to some sort of exaggerations, some sort of mistakes and that is why it is stated, as point out above, that the attempt should be made to disengage the truth from the falsehood and the prosecution case should not be thrown outright. It is here that we have to make such an attempt and it is in case of this appellant that we have to make sincere and serious attempt in order to ensure that he has not been falsely implicated. The learned Additional Sessions Judge, who had an opportunity of observing the demeanour of the witnesses, has accepted the evidence and found that this appellant took part in the riot and gave the reasons with which we agree and we hold that this appellant Shriram too was a member of an unlawful assembly and has been rightly convicted and sentenced. We, therefore, confirm the conviction and sentences passed on him by the learned Additional Sessions Judge and dismiss his appeal against same.

48. Appellant No. 6 Bhima (original accused No. 10):---While considering he prosecution case against this appellant Bhima, we are aware of the fact that P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 7 Bapu, P.W. 8 Phulchand and P.W. 22 Vithal, the complainant, had not attributed any evidence against him. We have therefore minutely gone through the evidence of P.W. 1 Ramesh, P.W. 15 Manik, P.W. 16 Kalavati, P.W.17 Mahananda, P.W. 18 Baimabai and P.W. 21 Kundlik, who have deposed that this appellant Bhima was one of the members of the unlawful assembly and had wielded axe and particularly so during the assault on Limba. The leg of Limba received injuries which has been amply supported by the medical evidence already referred to. This assault on the leg of Limba has been specifically deposed to by P.W. 1 Ramesh, P.W. 15 Manik and P.W. 18 Bainbai. We have already referred to the natural presence of the ladies during the assault where Hari, Limba and Govinda had received fatal injuries at the hands of his appellant. The concerted assault by so many assailants on her husband and Limba and Govinda has been vividly described by P.W. 17 Mahananda in para 5 of her deposition. We have found that the translated English version of para 5 does not carry the proper import of the evidence. We therefore, quote from the vernacular (i.e. marathi version) which is the authoritative evidence :

xxx xxx xxx xxx xxx xxx xxx xxx

We have quoted it with the sole purpose to show that this appellant was one of the assailants, when the husband of P.W. 17 Mahananda i.e. Hari was assaulted. The evidence shows that along with others this appellant Bhima Jayebhaya assaulted the deceased Limba with an axe. At that time, P.W. 17 Mahananda, who was witnessing the assault from a short distance, implored the assailants which may be best translated as follows :

She implored the assailants, " please do not assault my husband and his brothers, Please allow my husband to remain alive although his hands and legs

have been cut. Do not wipe out "kunku" i.e. vermilion mark on my forehead (thereby meaning that she should not be made a widow)."

At that time, the accused Arun replied sarcastically,

"where is the necessity for you to put "kunku" i.e. vermilion mark?

We are there. Where is the necessity of a husband to you?"

This conversation shows scant respect shown by the assailants to the wife of the victim Hari. The venomous attack and the spite of the assailants is revealed by the further conduct of the appellant No. 17 Arun (original accused No. 22), as deposed by P.W. 17 Mahananda as follows :

"Arun (original accused No. 22) and Bhima (original accused No. 10) immersed their two fingers in the blood deceased Hari and put the blood mark on their forehead."

P.W. 17 Mahananda further states :

"My self, P.W. 16 Kalavati, P.W. 18 Baibai were at a distance of one pata from our husbands, Limba (the deceased) asked for water At that time, the assailants had encircled Limba. (At that time) Arun (original accused No. 22) urinated in the mouth of Limba. Thereafter, the assailants went to the village."

This vivid evidence of the manner in which the assailants rioters had assaulted the deceased brother with vengeance cannot be a figment of imagination on the part of P.W. 17 Mahananda. The evidence establishes beyond a shade of doubt that P.W. 17 Mahananda had followed the assailants and had seen the assault on her husbands and his brothers Govinda and Limba. An indelible impression had created in her mind as it was a murderous assault on her husband before her eyes. We are of the opinion that she could not forget about this most painful experience in her life and there is no reason to discard her evidence especially against the appellant No. 6 Bhima. We, therefore, find that the conviction of the appellant Bhima as a leading member of the of the unlawful assembly, who had taken part in the assault with vengeance with axe in his hand and had assaulted the deceased Limba and others, recorded by the learned trial Court cannot be brushed aside at any costs, least on the ground that he was falsely implicated. We hereby confirm the conviction and sentences passed on appellant No. 6 Bhima by the learned additional Sessions Judge and dismiss his appeal against the same.

49. Appellant No. 7 Arun (original accused No. 22):---So far as the appellant No. 7 Arun is concerned, we have already shown by the evidence of P.W. 17 Mahananda as to how Arun was one of the assailants armed with an axe at the time of the concerted attack by the rioters on Hari, Limba, Govinda and Narayan. The part played by Arun during that assault, particularly on Limba, was at once heinous and inhuman. His act of passing urine in the mouth of Limba, when the helpless Limba counting his last moments and was pining to quench his thirst, is

an act which cannot be condemned adequately by the words. It was indeed a blasphemous act. This single act on his part itself which cannot be doubted, fixes his presence as the member of the unlawful assembly and convinces our mind that assaulted the deceased Limba at that time.

50. The assault on deceased Limba with an axe and passing urine in his mouth is further deposed by P.W. 16 Kalavati P.W. 15 Manik tells us that this appellant Arun gave three axe blows on the legs and thigh of Limba. P.W. 18 Bainabai testifies that Arun also gave axe blow on the deceased Hari and axe blow on the right leg of Govinda. P.W. 1 Ramesh who, besides identifying the appellant Arun, has stated that this appellant gave an axe blow on Hari and on the leg of Govind. P.W. 21 Kundlik corroborates this testimony. The complainant P.W. 22 Vithal, besides stating that appellant Arun had given axe blows on the right leg of Govinda, also stated about the passing of urine by Arun in the mouth of the injured Limba. The cumulative effect of the entire evidence of these witnesses unmistakably points to the complicity of the appellant No. 7 Arun in the crime and we find that the appellant. Arun was member of the unlawful assembly in question, armed with an axe and with an axe had assaulted the deceased Hari, Govind and Limba with an axe. We, therefore, hereby confirm the conviction and sentences imposed on appellant No. 7 Arun by the learned additional Sessions Judge dismiss his appeal also.

51. Appellant No. 8 Ashok (original accused No. 38):---All the twelve eye-witnesses, except P.W. 20 Padmini, have testified about the presence and participation of the appellant No. 8 Ashok in the heinous crime. P.W. 1 Ramesh states that the appellant Ashok gave an axe blow on the deceased Hari. P.W. 15 Manik's evidence shows that the appellant Ashok gave axe blow on the neck of Hari and assaulted him twice with axe. P.W. 16 Kalavati states generally that he was also the assailant of Hari, Govind and Limba. P.W. 17 Mahananda refers to the appellant Ashok as the assailant giving the blow of the axe on the head of Hari. P.W. 18 Bainabai also confirms the fact that the appellant Ashok was armed with an axe and had dealt blow on the head of Hari. P.W. 21 Kundlik testifies that appellant Ashok gave axe blow on the right leg of Hari and had, while chasing and enquiring about the deceased Narayan, opened the door of the cellar of the house of P.W. 15 Manik. P.W. 22 Vithal the complainant, also testifies that a blow of the axe was given on the left of Hari by the appellant Ashok.

52. The assailants, after assaulting Hari, Limba and Govinda, in which the appellant Ashok seems to have taken a major part in inflicting blows on Hari, had gone to the village in search of the deceased Narayan. The evidence shows that the appellant Ashok had enquired about whereabouts of Narayan. The appellant beat P.W. 6 Kondabai while enquiring about Narayan. P.W. 2 Sopan and P.W. 8 Phulchand have stated that Ashok used the blunt edge of the axe on the knee of P.W. 8 Phulchand and dragged him out. In short, the part played by the appellant No. 4 Gyanik was not so significant. Otherwise, he would not have the eye on almost all the eye-witnesses. The presence of the appellant Ashok in the unlawful

assembly, the wielding of the weapon, the overt act of enquiring about Narayan and the murderous assault on the deceased Hari-are all facts revealed in the evidence of the eye-witnesses which rule out the possibility of false implication of the appellant No. 8 Ashok in the crime. We are convinced about his being a member of the unlawful assembly in question and about his active participation in the assault and in sharing the common object of the unlawful assembly. We, therefore, confirm the finding of his conviction and sentences recorded by the learned by Additional Sessions Judge and dismiss his appeal.

53. This, we find that all the eight appellants in Cri. Appeal No. 133 of 1983 have been proved to be the members of the unlawful assembly in question and about their murderous assault on the deceased and taking part in inflicting injuries to the six P.W. and we therefore, find that the conviction of all the eight appellants-accused and the sentences imposed upon them were correct and that, therefore, no interference in Criminal Appeal No. 133 of 1983 is called for. As regards the common object of the unlawful assembly, there is no doubt in our mind that the common object of the unlawful assembly was not only to chastise and maim the notorious dacoits. Limba, Govinda, Hari and Narayan, but to liquidate them by murderous assault. The said object has been proved by convincing evidence already discussed above.

54. It was contended by the learned Counsel for the appellants accused in the alternative that in the alternative that in case the appellants have been proved to have taken part in the unlawful assembly, whose action has resulted in the deaths of the co-deceased Hari, Govinda, Limba and Narayan, the conviction needs to be altered to be one u/s 304 read with section 149, I.P.C., since according to him the object possibly was to main the deceased victims as all the four deceased victims had received injuries on their legs cutting their popliteal vessels. We cannot agree with this contention for the simple reason that it was cutting of the popliteal vessel which must have resulted in profuse hemorrhage and instantaneous shock which, in turn, took the lives of the four deceased on the spot instantaneously. The intention has to be judged from the consequences and for that purpose only the common object of the unlawful assembly has been writ large in the evidence and more so in the medical evidence of the numerous injuries sustained by the deceased. We cannot, therefore, persuade ourselves to come to a conclusion that the offence u/s 302 read with section 149 can be reduced to one u/s 304 read with section 149, I.P.C. in the facts and circumstances of the case. We, therefore, hereby dismiss Cri. Appeal No. 133 of 1983 and confirm the conviction and sentence of all the eight appellants-accused.

55. We now turn to the case against the respondents-accused in Cri. Appeal No. 177 of 1983. It is not necessary to repeat the findings already recorded and the general observations which we have already made. Suffice it to refer to the evidence of the eye-witnesses who have connected them beyond all reasonable doubts and to find out which of them are guilty of the offences and which of them can be given benefit of doubt on the ground of even slight suspicion of

false implication.

56. This brings us to the appeal of twelve persons who are acquitted by the learned Additional Sessions Judge. These twelve persons appeal namely Criminal Appeal No. 177 of 1983 as state above is also being disposed of by this judgment. We are aware of the fact that this appeal is against acquittal and we are conscious that we have to follow some guidelines as this appeal is rather different from the appeal against conviction. So we are dealing with this appeal against twelve persons separately and we have not mixed this appeal with the appeal convicted persons. It is for this reason we are dealing with the case of these persons at this stage and we are now proceeding to bear in mind while appreciating the evidence against these accused.

57. It is so well settled that the Appellate Court has full power to review the evidence upon which the order of acquittal is founded and "substantial and compelling reasons", "strong reasons", "good and sufficiently cogent reasons" are not intended to curtail the undoubted power of the Appellate Court to review the entire evidence and to come to its own conclusion. We find these observations in Sanwat Singh and Others Vs. State of Rajasthan, .

58. We may also refer to yet another decision of the Supreme Court reported in Harbans Singh and Another Vs. State of Punjab, , wherein Their Lordships of the Supreme Court have dilated upon while directing the power of the Appellate Court u/s 386 of the Criminal Procedure Code while hearing appeals against acquittal observing :

"In emphasising the necessity of " compelling reasons" to justify an interference with an order of acquittal Supreme Court did not in any way try to curtail the power bestowed on Appellate Courts u/s 423 of the Code of Criminal Procedure when hearing appeals against acquittal the Court was anxious to impress on the appellate Court the importance of bestowing special care in the sifting of evidence in appeal against acquittals. What may be called the golden thread running through all the decisions of the Supreme Court is the rule that in deciding appeals against acquittal the Court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interface with the order only when satisfied that the view taken by the acquitting Judges is clearly unreasonable. Once the Appellate Court comes to the conclusion that the view taken by the lower Court is clearly an unreasonable one that itself is a "compelling reason" for interference, for, it is a Court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

59. It was vehemently contended by Shri Deshpande, the learned Advocate appearing for the acquitted accused- respondents, that the view taken by the learned Additional Sessions Judge while acquitting the respondents should be disturbed only when there are compelling reasons for differing with the trial

Court. It was also contended that the learned trial Court, after considering the evidence of the eye-witnesses carefully, has come to the conclusion that it was not safe to accept the evidence against the respondents particularly when there were omissions regarding the overt acts attributed to each of the accused-respondents and implied contradiction inter se in the evidence of the prosecution witnesses as regards the weapon used and the injury caused and that, therefore, it cannot be said the view taken by the acquitting Judge was unreasonable.

60. It is true that the view taken by the learned trial Court, if found reasonable, should be accepted. It is also true that when two views are possible, one beneficial to the accused should hold the field. However, after carefully going through the evidence of the prosecution witnesses against each of the acquitted accused we are unable to come to the conclusion that view the taken by the learned Additional Sessions Judge, in so far as ten of the respondents are concerned, can be considered as reasonable. On the other hand, we find that while acquitting these ten respondents, the learned Judge has applied double standard. He has accepted in part the evidence of the prosecution witnesses and rejected the same merely on the ground that there were omissions as regards the overt act attributed to the accused in the substantive evidence before the Court. The view taken by the learned trial Court in giving benefit of doubt to the accused on the ground that there are omissions in the statements of the witnesses u/s 161, Cri. P.C. or even the statements of the witnesses u/s 164, Cri. P.C. is not that way correct. It appears that the learned trial Court has treated the statements made by the witnesses u/s 164, Cri. P.C. as a substantive piece of evidence while dealing with the omissions. This view is also not correct. It has been explained by this Court for far back as in 1935 in Harnam's case. reported in AIR 1935 Bombay 26 that the statement of a witness recorded u/s 164 can be used only for the purposes of cross-examining him by bringing forth the contradiction properly under the Evidence Act, but that statement is not a substantive evidence and cannot be acted upon as such. The approach of the learned trial Court to the statements of the witnesses u/s 164 of the Code of Criminal Procedure, treating them as a substantive evidence and using the omissions thereof for doubting the testimony of the witnesses given in the trial is not that way correct and we find that those statements have not been properly used in the trial. So far as statements of witnesses u/s 161, Cri. P.C. are concerned, we have already observed that those statements have lost much if their value in view of the fact that right from the arrival of the Investigating Officer Dy. S.P. Shri Kedare (P.W. 24) assisted by P.W. 23 P.S.I. Kawale, at the scene of the offence Anterweli and from the moment the investigation commenced, a clear-cut attitude of hesitation is deserved on that part of the Investigation Officer in not recording the statements properly. The learned Session Judge has rightly observed about the attitude of the Investigating Officer and has characterised the investigating as perfunctory. In that view, he applied double-standards of making use of statements u/s 161 of the Code of Criminal

Procedure. While considering the evidence against the convicted accused in Cri. Appeal No. 133 of 1983, he accepted the evidence of the witnesses but rejected the evidence of the very same witnesses while acquitting the respondents-accused in Cri. Appeal No. 177 of 1983 merely on the ground that the witnesses have omitted to state those facts before the police. This applying of double-standards in considering the case against the acquitted accused as a whole by itself leads to the conclusion that the approach of the learned trial Court was most unreasonable and that by itself can be considered as a "compelling reason" to interfere with the finding recorded by the learned Additional Sessions Judge.

61. Before proceeding further, we have to strike a note that we have already taken above that the learned Additional Sessions Judge has unnecessarily given more than necessary credence and importance to omissions and contradictions to the evidence of the eye-witnesses and we have pointed out in the foregoing lines that these omissions and contradictions do not effect the truth of the testimonies of the eye-witnesses. At least they do not shake the credibility of these witnesses. We want to emphasize that even though the Learned Additional Sessions Judge has himself observed that investigation is perfunctory, we are in fact at pains to note as to why he should give such weight to omissions and contradictions and why he should convict some accused and why he should, applying the double-standards, acquit some accused. It is in this background and bearing these facts in mind and keeping this aspect, we have to proceed to appreciate the evidence. We now embark upon the discussions as regards the complicity of the acquitted accused at Seriatum.

62. To begin with, we first come to the case of respondent No. 1 Tukaram (original accused No. 2). He has identified in the mob by P.W. 1 Ramesh, P.W. 20 Padmin and P.W. 21 Kundlik. It is in the evidence of P.W. 16 Kalavati that this accused Tukaram was armed with an axe and gave blows on Limba, Hari and Govinda. P.W. 17 Mahananda has testified that this accused dealt axe blows on the Limba P.W. 18 Bainabai says that this accused gave axe blow on the right leg of Govinda. The complainant P.W. 22 Vithal has also testified that this accused was in the assembly and offered threats.

63. It is thus clear that more than three witnesses have stated about the presence of this accused in the unlawful assembly and at least three witnesses have categorically stated that this accused was armed with an axe and he assaulted with the axe. So in view of the decision of the Supreme Court in Masalti Vs. State of U.P., , not only the presence but the overt acts of the accused can safely be accepted and it was a gross error on the part of the learned Additional Sessions Judge to acquit this accused, when there was more than sufficient and satisfactory evidence against him to hold that he was not only a member of an unlawful assembly but he actually participated in the unlawful assembly but with a deadly weapon and took part in the assault.

64. We have given our anxious consideration to the reasons given by the learned Additional Sessions Judge for the acquittal of this accused, but it is difficult for us

to agree with reasoning given by the learned Additional Sessions Judge. In substance, the learned Additional Sessions Judge mainly relied on the omissions saying that they are improvements. As repeatedly pointed out by us, the omissions are due to perfunctory investigation and hereinafter we do not propose to attach, as we did not herein before attach, much importance to these omissions. In a riot of nature like this, when brutal murders take place and weapons like axes, sticks and iron-bars are used, some sort of discrepancies in the evidence of the witnesses are bound to be there, some sort of injuries are also likely to be there and as pointed out above, some allowances have to be given to the human tendency and where the truth can be separated from the falsehood, effort has to be made in that direction and when the learned Additional Sessions Judge has on the same reasons separated eight accused, it is not known why he cannot separate at least ten more accused, including this accused. So we are of the firm opinion that the State appeal of this accused must succeed and this accused should be convicted with the offences punishable under sections 147, 148, 152 read with section 149, section 323 read with section 149 and section 302 read with section 149 of the Indian Penal Code.

65. This take us to the case of respondent No. 2 Gangadhar (original accused No. 6). On the presence of this accused in the unlawful assembly, there is evidence of four witnesses, namely, P.W. 2 Sopan, P.W. 6 Kondabai, P.W. 7 Bapu and P.W. 17 Mahananda, apart from the fact that there are other witnesses who swear about his arming with the weapon, participation in the crime and use of the weapon. Out of these witnesses, P.W. 7 Bapu says not only about the presence but further went on to State that this accused took Narayan to Aai Temple and beat Narayan. With what weapon he beat Narayan, Bapu has kept us in the dark. The complainant P.W. 22 Vithal has stated about the presence of this accused in the lawful assembly. He has stated that this accused and other two broke open the door of the cellar with the iron-bar.

66. The other set of witnesses completely implicated this accused felling about his implication and participation in actual assault with deadly weapon like axe. P.W. 15 Manik has stated that this accused gave an axe, blow on the head of Limba and he assaulted Govinda with an axe. P.W. 16 Kalavati has also testified that this accused dealt an axe blow on the head of her husband Govinda. P.W. 18 Bainabai swears that this accused gave an axe blow on the hand of Limba. It is in the evidence of P.W. 20 Padmini that this accused inflicted an axe blow on the right hand of Narayan. P.W. 21 Kundlik points out that this accused gave axe blow on the leg of Narayan and took Narayan to Aai Temple. Thus, there is evidence of six witnesses that this accused was armed with an axe and he assaulted three victims Limba, Govinda and Narayan.

67. It may be added further that Muddemal Article Banian (Art. 36) seized from this accused was found stained with human blood of "A" Group. This group is of deceased Limba. When the accused was asked in the course of his statement u/s 313 of the Code of Criminal Procedure as to how this Banian came to be stained

with human blood, he chose to give simple denial. Denial is no explanation. It means that there is no explanation of the accused as to how his banian came to be stained with human blood. True that this circumstance by itself is of no importance or significance but taken with other evidence of eye-witnesses, it lends some sort of support and it makes other evidence trust-worthy. Only to that extent, we refer to that evidence and for no other purpose.

68. Even then we are rather surprised to see that the learned Additional Sessions Judge was pleased to acquit respondent No. 2 Gangadhar and that too for the reasons which did not appeal to us for the reasons aforesaid. Here, this accused was armed with an axe causing injuries to three victims and whose presence has been stated by three more persons whose testimony we have believed and whose testimony even the learned Additional Sessions Judge has believed while convicting the eight appellants. Why then, one may well ask, that the accused should have been acquitted. That is why when we ask ourselves a question, we are rather surprised and that is why we are compelled to admit this appeal as there are strong reasons to set aside the acquittal. So we set aside the acquittal and convict this accused of the offences punishable under sections 147, 148, 452 read with section 149, section 323 read with section 149 and 302 read with section 149 of the Indian Penal Code.

69. Respondent No. 3 Shivaji (original accused No. 7): The presence of this accused in the unlawful assembly has been identified by P.W. 1 Ramesh, P.W. 6 Kondabai, P.W. 7 Bapu, P.W. 8 Phulchand, P.W. 15 Manik, P.W. 16 Kalavati, P.W.17 Mahananda, P.W.18 Bainabai, P.W. 21 Kundlik and P.W. 22 Vithal, the complainant. The witnesses can be classified in three categories P.W. 1 Ramesh and P.W. 6 Kondabai have spoken only about the presence of this accused in the unlawful assembly. P.W. 7 Bapu and P.W. 15 Manik state that this accused took Narayan to Aai Temple. P.W. 17 Mahananda and P.W. 18 Bainabai state that this accused was armed with an axe, whereas P.W. 16 Kalavati says that this accused assaulted Limba with stick blows. It is also in the evidence of P.W. 21 Kundlik that this accused gave stick blow on Hari and Narayan. The complainant P.W. 22 Vithal says that this accused gave an iron-bar blow on his head and he has received bleeding injury.

70. We are not unmindful of the fact that the evidence is not so consistent so far as the weapons are concerned, when two witnesses are saying that this accused was armed with stick, two state that he was armed with an axe and the complainant comes forward with a case that this accused assaulted him on his head with an iron-bar. However, we are more impressed by the fact that the evidence of the complainant that he was hit with the iron-bar on his head is supported by medical evidence and the Medical Certificate (Exh. 44) reveals that there was a lacerated wound on the head of the complainant going a long way to support his claim and case. It is for this reason we accept the complainant's evidence as regards this accused and further as regards the perfunctory nature of the investigation. We ask ourselves as to how the complainant, after 14 hours,

could forget to tell the Investigation Officer that he had received the injury on his head, though he had time and opportunity to tell and though he must have pain on the said as a result of that injury. We ask ourselves: was not the Investigating Officer expected to ask the complainant as to whether he himself received any injury at the hands of assailants. When the complainant's F.I.R was recorded, as we are told, by the responsible officer like P.S.I and that too in the presence of highly responsible officer as Dy. S.P., we are rather disappointed to see that these matters so important in nature are absent and that is why we find, agreeing with the learned Additional Sessions Judge and agreeing with the arguments repeatedly advanced by Shri Patil, the learned Additional Public Prosecutor for the State, that the investigation is perfunctory. It is for this reason we accept though not stated in the F.I.R., the statement of the complainant that he was assaulted by respondent No. 3 Shivaji and holding his presence, as his presence has been told by others, we convict him u/s 147, 148, 452 read with section 149, section 323 read with section 149 and 302 read with section 149 of the Indian Penal Code, setting aside his acquittal. We are not prepared to accept the reasons given by the learned Additional Sessions Judge, but we find that this accused was the member of the unlawful assembly, he shared the lawful object and he did participate with the common object and to achieve that common object, he assaulted these three victims and so with the aid of section 149 of the Indian Penal Code he is guilty like others whom we have held guilty and we are going to hold guilty.

71. We now advert to the case of respondent No. 4 Atmaram who was originally accused No. 11. May we point out at the very outset that overwhelming is the evidence against him that he assaulted with an axe on Limba. P.W.1 Ramesh identified this accused in an lawful assembly. P.W. 15 Manik has clearly and categorically stated he gave an axe blow on the leg of Limba. P.W. 22 Vithal, the complainant, has also stated this accused gave two or three axe blows on the leg of Limba. P.W. 17 Mahananda swears that this accused assaulted Limba with an axe. P.W. 18 Bainabai too has P.W. 16 Kalavati has come forward with a story that this accused was one of the assailants of Hari, Limba and Govinda, whereas P.W. 21 Kundlik made a statement in the box that armed with an axe this accused took Narayan to Aai Temple.

72. In our view, so convincing is the evidence against this accused and so unimpeachable is the case against him that we fail to understand as why and how the learned Additional Sessions Judge thought it proper to acquit him. Indeed, it baffles our imagination though we tried our hard to find the reasons which he has given, but we are unable to accept the same because the said reasons he has given for conviction of the appellants and we are not in agreement with the said reasons, for we could not see any forcible ground or any logic behind it. So disagreeing with the conclusion of the learned Additional Sessions Judge, we find strong reason to take a different view and convict this accused, of course setting aside his acquittal and holding him guilty of the offences punishable under sections 147, 148, 452 read with section 149, section

323 read with section 149 and section 302 read with section 149 of the Indian Penal Code.

73. Now we come to the case of respondent No. 5 Suryabhan who was originally accused No. 12 To start with, we may point out that P.W. 1 Ramesh has simply identified this accused in an unlawful assembly. However, P.W. 6 Kondabai attributed overt acts on his part stating that this accused held her blouse, pulled it and made her stand. Her evidence further discloses that thereafter Suryabhan, along with other accused, ran towards KUMBHARMATI area in order to beat Hari, Govinda and Limba. It is in the evidence of P.W. 7 Bapu that he saw this accused taking Narayan to Aai Temple. It is also in the evidence of Bapu that this accused along with the other accused beat Narayan near Aai Temple.

74. Coming to the evidence of P.W. 8 Phulchand, we find that this witness has pointedly told us that this accused (Suryabhan) assaulted Narayan with the butt end of the axe and also with the handle of the axe. Pausing here, it was contended with some vehemence on behalf of the defence as to why, when some assailants were armed with axes, the handle or the butt end of the axe was used by Suryabhan. Another question that was put and asked was that even though it was hinted that the butt end of the axe suggests that Suryabhan had an axe, then why he should not use the axe and used only the butt end or the handle of the axe or the stick, as stated by witness P.W. 8 Phulchand. This argument is no doubt appeared to be impressive at the first blush, but despite this apparent state, it must fail on ultimate analysis. Human nature is unpredictable and human conduct cannot be influenced by the sources sprung from reason and wisdom. So while other used axes, Suryabhan might have thought to use axe handle or butt end of the axe and the only answer we can find that for every human action, it is not possible to give logical answer. However, when the other witness have unanimously stated the presence and overt acts of this accused, the evidence of Bapu that Narayan was assaulted by this accused Suryabhan with the stick or the handle of the stick or the butt end of the stick cannot be doubted, because there was no apparent reason for this witness to say about the stick when he could have easily stated that this accused gave an axe blow on Narayan, particularly when Narayan had already sustained axe injuries.

75. P.W.16 Kalavati has told that this respondent was one of the assailants of Hari, Govinda and Limba. This version of Kalavati is amply supported by other remaining witnesses. P.W. 17 Mahanand has categorically told that this accused armed with axe assaulted Limba with that axe. P.W. 21 Kundlik swears that this accused gave an axe blow on the leg of Govinda and took Narayan to Aai Temple. The complainant P.W. 22 Vithal came forward to depose that this respondent gave an axe blow on the left hand of Govinda.

76. Thus there is clinching evidence against this accused to fasten the guilt round his neck and we are unable to agree with the learned Additional Sessions Judge that the prosecution has failed to prove the case against him. Though we have tried to persuade ourselves to follow the reasons given by the learned Additional

Sessions Judge, we cannot follow the logic behind the reasons which contained only the omissions and improvements and for the reasons aforesaid, in the circumstances mentioned above, we are unable to agree with those reasons. We are, therefore, constrained to observe that the acquittal in the case of this respondent should also be set aside and he should be convicted of the offences punishable under sections 147, 148, 452 read with section 149, section 323 read with section 149 and section 302 read with section 149 of the Indian Penal Code and he be held guilty of the above offences.

77. This leads us to the case of respondent No. 6 Sopan (original accused No. 13). He is perhaps the only accused against whom there is evidence that he was armed with a stick and assaulted with the stick. About his presence, P.W.1 Ramesh and P.W. 6 Kondabai are the witnesses. They do not state about his overt acts but they state that he was in that unlawful assembly. P.W. 8 Phulchand swears that this accused took Narayan to Aai Temple. Similarly, P.W. 7 Bapu has testified that he also saw that this accused took Narayan to Aai temple. P.W.15 Manik swears that this accused gave a stick blow on Limba while P.W. 17 Mahananda came forward with a story that this accused gave a stick blow on Govinda. P.W.18 Bainabai states that this accused gave a stick blow on the leg of Govinda. The complainant P.W. 22 Vithal states that he found this accused armed with stick in the unlawful assembly. P.W. 21 Kundlik also states that this accused gave a stick blow on Hari and Govinda and this accused took him from the house of Manik to the back side of the house of Narayan.

78. Thus, taking the overall picture from the evidence summarised above, it leaves behind unforgettable impression that respondent No. 6 Sopan was not only a member of an unlawful assembly, but he participated in that unlawful assembly and took actual part in it by wielding stick blows. No doubt, P.W. 2 Sopan says that he was armed with an axe. May be for a moment that he was armed with an axe or may be Sopan might have committed a mistake in identifying whether he had an axe or a stick, but there is sufficiently cogent, convincing and conclusive evidence against this accused. We are really unable to accept the reasoning given by the learned Additional Sessions Judge that this accused is not guilty and his guilt has not been proved. On contrary, we are of the firm opinion that there are very strong reasons to allow this appeal and the acquittal cannot be allowed to stand and we find ourselves that we would be doing injustice if this appeal is not allowed. So we hold this respondent guilty of the offences punishable under sections 147, 148, 452 read with sections 149, 323 read with section 149 and section 302 read with section 149 of the Indian Penal Code.

Respondent No. 7 Kondiba (original accused No. 14) :

79. If we turn to the evidence of this respondent Kondiba, we would at once say that there is evidence of as man as five witnesses who unanimously and consistently state that this accused was armed with an axe and he assaulted Govinda, in particular, with the axe. P.W. 16 Kelavati says that he assaulted Hari,

Govinda and Limba with the axe and other four witnesses, namely, P.W. 17 Mahananda, P.W. 18 Bainabai, P.W. 21 Kundlik and the complainant P.W. 22 Vithal have stated that this accused gave an axe blow on Govinda. What is well to remember and significant to note is that P.W. 18 Bainabai and P.W. 22 Vithal have stated that this accused gave an axe blow behind the ear of Govinda and this is supported by Medical evidence. P.W. 21 Kadlik has stated that this accused has dealt an axe blow on the right hand of Govinda and this too finds support in the medical evidence.

80. It is not less significant to note that muddemal Article No. 52 shirt seized from this accused was found stained with human blood and the report of the Chemical Analyser (Exh. 121) shows that it had human blood stains of group " B" . This accused has not offered any explained and, as earlier pointed out, mere denial is no explanation. We, therefore, find and find unhesitatingly that it forms as a strong reason that it fixes the nails in the coffin of the accused and we also think here in the case of this respondent also that the learned Additional Session Judge has misunderstood and mis-appreciated the evidence giving wrong reasons in acquitting this accused. Therefore setting aside the acquittal, we convict this respondent of the offences punishable under sections 147, 148, 452 read with section 149, 323 read with section 149 and section 302 read with section 149 of the Indian Penal Code.

81. Naturally we come to respondent No. 8 Sampati who was original accused No. 18. P.W. 1 Ramesh has identified this accused as a member of an unlawful assembly P.W. 15 Manik has told that this accused was armed with an axe in the unlawful assembly. Similar is the evidence of P.W. 21 Kundlik. It is in the evidence of P.W. 16 Kalavati that this accused assaulted Govinda with the axe. P.W. 17 Mahananda has deposed that this accused gave an axe blow on the head of Govinda. The evidence of P.W. 18 Bainabai discloses that this accused gave an axe blow on the right leg of Govinda. The pyjama muddemal Article No. 55 was recovered from this accused and the panchaname (Exh. 80) and the report of the Chemical Analyser (Exhibit. 121) indicate that human blood of group "B" was found on it, and the blood group of deceased Govinda is the same. The accused has simply denied when particularly asked about the recovery of pyjama and bare denial, as already stated, is to explanation. This is more additional circumstance, lending support to the above evidence, though not of conclusive nature.

82. Thus we find and find with unerring certainty that this respondent is guilty and the leaned Additional Sessions Judge has unnecessarily acquitted him, ignoring the basic principles and giving undue importance to the facts and circumstances to which he should not have given much importance. Therefore, setting aside the acquittal, we convict this respondent of the offences punishable under sections 147, 148, 452 read with section 149, 323 read with section 149 and 302 read with section 149 of the I.P. Code.

Respondent No. 9 Woman (original accused No. 27) :

83. P.W.1 Ramesh and P.W. 18 Bainabai have identified this accused in an unlawful assembly, P.W. 2 Sopan has testified that this accused gave an axe blow on the head of his son P.W. 7 Bapu. True it is that this part of evidence of Sopan has surprisingly been not supported by P.W. 7 Bapu, the injured, though we find in the medical certificate (Exhibit 40) of Bapu that there is incised wound on the head of Bapu. Taking little pause here and to come back to what is stated above, we may remind ourselves that this adds strength to our inference that the investigation is perfunctory. Even though P.W. 7 Bapu received incised wound on his head , the Investigating Officer did not ask him as to how he received the injury on his head. Had he taken care to ask such a question, he would have got an explanation. Unfortunately, the learned Additional Public Prosecutor too, did not take into account this aspect, while conducting the trial in the lower Court.

84. Proceeding further, we come to the evidence of P.W. 15 Manik who says that respondent No. 9 Woman was armed with an axe and he gave an axe blow on Govinda. Complainant P.W. 22 Vithal has also stated that this accused gave an axe blow on the head of Govinda. P.W. 16 Kalavati's evidence deposes that this accused is one of the assailants of Hari, Govinda and Limba. It is in this evidence of P.W. 17 Mahananda that this accused caught hold of Govinda and felled him. Thus, there are more than two witnesses who clearly state that this accused was armed with stick and he assaulted with stick and their evidence is supported by medical certificates (Exhibits 37 and 40).

85. The defence wants to make rather loud point of the fact that P.W. 21 Kundlik does not say anything about the acts but says that this accused was armed with the stick and beat Govinda with the stick. Shri Deshpande tried to impress upon us that it would be inconceivable that the assailant is armed both with an axe and with a stick. When there is crowd of forty or more persons, it is to be presumed that there was great tension and panic when the victim and their relatives ran helper shelter to save their lives and the assailants ran after them and in the circumstances it is highly difficult for each witness to observe minutely the weapon each assailant got and it is not unlikely that the witness is likely to commit a mistake about the weapon. So if, as held in Masalti's case (supra), there is consistency about the identity and the weapons between two or more witnesses, then only because one witness has given a different version, undue importance could not be given to such a discrepancy.

86. In the result, we find, on our careful consideration of the entire as against this accused and on perusal of the reasons given by the learned Additional Sessions Judge, that even though the evidence is convincing and well-founded the reasons are wholly unimpressive and we are not satisfied at all with the conclusion reached. We are, therefore, unable to uphold the acquittal. In the result, we hold that acquittal has to be set aside and that this respondent Woman should be convicted of the offences punishable under sections 147, 148, 452 read with section 149, section 323 read with section 149 and 302 read with section 149 of the Indian Penal Code.

Respondent No. 10 Shripati (original accused No. 28) :

87. There is hardly any evidence against this accused to convict him with any offence, much less the offences with which he is charged. There are only three witnesses who speak against this accused. To begin with, the first witness is P.W. 16 Kalavati w/o Govinda who identified this accused and further said that he assaulted Hari. However, it is curious to note that she does not say about the nature of the assault, the weapon this accused had and the manner in which this accused had assaulted Hari. What is more is that her statement that this accused had assaulted Hari is not supported by any other witness.

88. The next witness against this accused is P.W. 17 Mahananda wife of Hari. This witness depicts a different story telling us that this accused was armed with the iron-bar. However it is important to bear in mind that she does not attribute any overt act on his part and that she does not say that he had assaulted anybody. Here again nobody says except Mahananda that the accused was armed with an iron-bar.

89. The third witness is P.W. 18 Bainabai wife of Limba, who has a different tale to tell and she has come forward with a story that this accused had assaulted Hari with the stick. It is significant to note that no other witness has told that Hari was beaten with a stick by this accused. Thus we have got three witnesses telling three different weapons with this accused. With these three conflicting versions of three different witnesses, we entertained a grave doubt as to whether this accused was present in the assembly. In addition, we have carefully perused the judgment of the learned Additional Sessions Judge and we also find that there is some substance when he has acquitted this accused and that the acquittal should not be disturbed for the aforesaid reasons. We may add here that the complainant P.W. 22 Vithal has not stated his name either in the F.I.R or in his evidence and there is no recovery of weapon or the clothes from the person of this accused. These are the additional circumstance in favour of this accused which add to his innocence and which persuade us for his acquittal. We, therefore, dismiss the appeal of the State so far as this respondent No. 10 Shripati is concerned.

Respondent No. 11 Kandlik (original accused No. 35) :

90. On no better footing stands the case of this accused as that of accused No. 28 Shripati. Like the above accused, in the case of this accused too, there are only three witnesses each giving different story, each narrating different tale and each depicting a different picture. P.W. 18 Bainabai w/o Limba has told that this accused Kundlik assaulted Limba with stones on his chest. It is not, however, little surprising to note that there is no stone injury on the chest of Limba and no other witness has told that this accused assaulted Limba with the stone on his chest.

91. P.W.16 is Kalavati w/o Govind has testified that this accused gave an axe blow on the person of Hari but as regards the part of the body on which the blow

had been given she has kept silence.

92. P.W.17 Mahananda w/o Hari, has however, stated that this accused had given the stick blow on the back of Hari. There is no weal mark or contusion on the back of Hari. Thus, three witnesses have given three different weapons and we are rather constrained to observe that their conflicting and contradictory versions, rightly disbelieved by the learned Additional Sessions Judge, have dissuaded us from turning acquittal into conviction. No blood-stained clothes have been recovered. Neither any blood-stained weapon nor even the weapon was recovered from this accused. That is why we hold and hold with some easy mind that the acquittal should not be converted into conviction and it should be allowed to remain as it is. We, therefore, dismiss the appeal of the State so far as this respondent Kundlik is concerned.

Respondent No. 12 Udhav (original accused No. 39) :

93. Except P.W. 17 Mahananda, all other eleven eye-witnesses unanimously speak against him implicating him in one way or the other. P.W.1 Ramesh speaks about his presence in the unlawful assembly. P.W. 2 Sopan says that he was present in the unlawful assembly and at that time he was armed with an axe. P.W. 6 Kondabai too says about his presence. P.W. 7 Bapu tells us that this respondent too Narayan to Aai Temple. P.W. 8 Phulchand reiterates about his presence and speaks about the threat given to this witness that he would commit his murder if he gives evidence against him. We may hasten to add that we are not giving much reliance on such a threat because it is extra-judicial confession to this witness.

94. Coming to the evidence of P.W. 15 Manik, we find that Manik tells us that this accused gave two axe blows to Govinda. P.W. 16 Kalavati has come with the assertion that this accused was the assailant of Hari, Govinda and Limba P.W. 18 Bainabai has a definite tale to tell that this accused armed with an axe gave an axe blow on the head of Govinda and gave a stick blow on the left leg of Limba. P.W. 20 Padmin has deposed that after the leg of Narayan was severed, he took that leg and gave a slogan "Motiram Maharaj ki jay", P.W. 21 Kundlik says that armed with an axe this accused gave an axe blow on the left hand of Narayan and assaulted him on the back side too. The complainant P.W. 22 Vithal swears that this respondent Udhav dealt an axe blow on the left leg of Limba, twisted the right leg of Narayan and moved from place to place. It is thus amply clear that practically all the witnesses are one to say that this respondent was armed with an axe and he assaulted mainly Narayan with the axe, removed his leg by his measly act and after his death took his leg and gave slogan "Motiram Maharaj Ki Jay". This is rather inhuman act. We are, therefore, of the opinion that the learned Additional Sessions Judge was wrong in acquitting this accused and even though there were strong reasons to convict him. We, therefore, find no good reason to justify the acquittal. We are therefore, convinced that this respondent is guilty and his acquittal should at once be set aside and he should be held guilty of the offences punished u/s 147, 148, 452 read with section 149, section

323 read with section 149 and section 302 read with section 149 of the Indian Penal Code.

95. Now we have come to the end of journey and we have come just near the sea shore by the side of the dockyard. We look back not with a view to take the survey of these but only with a view to express our view and feelings, as we have formed unforgettable imprints and impression on analytical analysis of the evidence and we think that it would be proper and better to keep them on record. Time and again, we have stated in the foregoing lines that the investigation is perfunctory. We record our displeasure about the manner in which the investigation was carried out. Had it been done in the proper manner, the result would have perhaps been different. We may also add that the prosecution would not have been conducted in a proper manner at any rate. We may say that the manner in which it was conducted was not commendable.

96. In the first place, the sketch of the scene of the offence was not drawn by the Investigating Officer and the investigating Officer P.W. 24 Dy. S.P. Kedari was not asked as to why a sketch was not drawn. Secondly, the person incharge of the prosecution did not get the sketch drawn after the charge was framed and the evidence commenced. P.W. 24 Mr. Kedari was asked as to why the services of the photographer were not utilised and even after the charge, the services of the photographer could be utilised and the photographs could have been taken and produced during the trial. The sketch or a photograph would have been much helpful to the Court in understanding so many things, but that material was not available. It is a matter of record that complainant P.W. 22 Vithal was sent for medical examination and thereafter his F.I.R. (Exh. 114) was recorded. However, Shri Kedari (P.W. 24) was not asked in the examination-in-chief as to why he did not put to the complainant the question as to how he received the injury. Shri Kedari was also not asked as to why the supplementary statement of the complainant was not recorded. It is also not known, why the Superintendent of Police in a case of such a nature has not supervised the investigation of Dy. S.P. Shri Kedari (P.W. 24), when four brutal murders had taken place. We need not comment much on this and need not take more probe in the matter. The deeper probe is not necessary. We take in the fact that in this Court, the learned Additional Public Prosecutor has taken, from the beginning, the consistent stand that the investigation is perfunctory and he has substantiated this stand on the strength of record and we find, as stated above, substance in his argument.

97. We cannot conclude this judgement unless we record our appreciation of the assistance given to us by the learned Additional Public Prosecutor appearing for the State, Shri S.A. Deshmukh, the learned Counsel for the appellant accused in Criminal Appeal No. 133 of 1983 and Shri. G.D. Deshpande the learned Advocate for the respondents-accused in Cr. Appeal No. 117 of 1983 and but for their assistance we could not have disposed of these appeals within such a short time. About the sentence, we have to say a word. We could have thought in a different manner about the appellant No. 7 Arun (original accused No. 22) and respondent

No. 12 Udhav (original accused No. 39). Arun, it is reported, urinated in the mouth of Limba who was on the verge of death and his dried lips were in need for water and instead of giving him water, he passed urine in his mouth. Udhav on his part took the severed leg of Narayan and went moving the leg shouting "Motiram Maharaj Ki Jay". We gave our thought for a time whether we could give extreme penalty to them for this inhuman, brutal and provoking act of theirs, but we find that in this appeal the State has not made an appeal for enhancement of the sentence so far as Cr. Appeal No. 133 of 1983 is concerned and in the second appeal it is an appeal against acquittal and we should be slow, when we have even set aside the acquittal, to give him penalty as one Court had acquitted him. That is why we should give him imprisonment for life. Hence the following order :

ORDER

Criminal Appeal No. 133 of 1983 is dismissed. The order of conviction and sentences of each of the eight appellant-accused is confirmed.

Criminal Appeal No. 177 of 1983 filed by the State against the acquittal of twelve respondents-accused is partly allowed. We convict respondent No. 1 Tukaram Kerba Chate, respondent No. 2 Gangadhar Sopan Mundhe, respondent No. 3 Shivaji Sopan Mundhe, respondent No. 4 Atmaram Sopan Dahiphale, respondent No. 5 Suryabhan Sopan Mundhe, respondent No. 6 Sopan Sambhaji Mundhe, respondent No. 7 Kondiba Nivrutti Mundhe, respondent No. 8 Sampati Vyankati Chate, respondent No. 9 Waman Jyotiba Mundhe and respondent No. 12 Udhav Sambhaji Mundhe, of the offences punishable u/s 147, 148, 452 read with section 149, section 323 read with section 149 and 302 read with section 149 of the Indian Penal Code and sentence each of them to suffer imprisonment for life. The appeal against respondent-accused No. 10 Shripati Narayan Kande and respondent-accused No. 11 Kundlik Ragholi Aradhare stands dismissed. The bail bonds of these two acquitted respondent-accused stand cancelled.

Order regarding disposal of Muddemal property passed by the learned Additional Sessions Judge is confirmed.

This order as regards disposal of Muddemal property would come into effect after the period of appeal or the decision of appeal, whichever is later, and subject to the modification made by the Appellate Court in this order.

Criminal Application No. 61 of 1988 :

Since we have disposed of Cri. Appeal No. 133 of 1983 and Criminal Appeal No. 177 of 1983, the application filed by Vinayak Gynaik Mundhe (original accused No. 3) for parole is hereby dismissed. The applicant may move the appropriate authority.