

(2017) 08 BOM CK 0015
In the Bombay High Court
Case No : 400 of 1998

The State of Maharashtra,?(Through P.S.O. Gangakhed). Vs Govind & Ors

Date of Decision : 23-08-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 386 - Power of the Appellate Court
Indian Penal Code, 1860, Section 302,&br/>Section 34, Sect

Citation : (2017) 08 BOM CK 0015

Hon'ble Judges : S.S. Shinde, S.M. Gavhane

Bench : DIVISON BENCH

Advocate : R.V. Dasalkar, R.N. Dhorde, Vasant N. Shelke, B.R. Kedar

Judgement

1. This Appeal is filed by the State challenging the Judgment and order dated 2nd May, 1998, passed by the Additional Sessions Judge, Parbhani in Sessions Trial No.112 of 1995, thereby acquitting the Respondent Nos.1 to 3/original accused Nos. 1 to 3, for the offences punishable under Sections 302, 307, 324, 323, 452 and 427 read with Section 34 of the Indian Penal Code (For short "I.P. Code").

2. The prosecution case, in nutshell, is as under :

A) Informant Padminibai w/o Shatrughan Nirundunde is resident of village Pimpaldari, TqGangakhed, DistParbhani. Vithal Maroti Nirdunde is resident of village Pimpaldari. He had four sons (1) Shriram (2) Laxman (3) Bharat (deceased) and (4) Shatrughan (deceased). Vithal has one daughter by name Gayabai, who is married with one Namdeo Hingrupe also resident of Pimpaldari. He has also another daughter by name Prayagbai. The name of Laxman's wife is Urmilabai. The name of Bharat's wife is Vimalbai. The name of Shatrughan's wife is Padminibai, who is informant in the present prosecution. It is the prosecution case that Vithal and his sons were residing jointly at village Pimpaldari. Bharat Vithal Nirdunde (deceased) and Shatrughan Vithal Nirdunde (deceased) were residing in the house constructed on field Survey No.198

alongwith their wives and children, situate within Shiwar of village Pimpaldari. Shriram and Laxman were residing in the house situate at village Pimpaldari. It is the prosecution case that, Vithal and his sons formed joint family.

B) Accused Nos.1 to 3 are the sons of deceased Gangaram. Accused Nos.1 to 3 are residents of village Pimpaldari, earning their livelihood by doing agricultural occupation.

C) The field Survey No.198 situate in the Shiwar of village Pimpaldari, was admeasuring 25 acres. Deceased Gangaram Piraji Kendre also owned land in the field Survey No.198. About 20 to 25 years ago, due to the mistake of revenue authorities in the field Survey No.198, 13 acres agricultural land was mutated in the name of Vithal and his family. Due to this, dispute arose between the parties and consequently resulted into filing of civil suit between the father of the accused persons namely Gangaram Piraji Kendre and father of Vithal namely Maroti. Said Civil Suit was decided, and it was ordered by the Court that, Gangaram Piraji Kendre should retain 12 and 1/2 acres land out of field Survey No.198 and Maroti, the branch of complainant should retain 12 and 1/2 acres land. Accordingly, during the execution of decree through Court bailiff, possession of 12 and 1/2 acres land was given to the family of Vithal and remaining 12 and 1/2 acres land out of said Gut number was given in the possession of Gangaram Piraji by the Court bailiff. But, due to the mistake of revenue authorities, 13 acres land was mutated in the name of family of Vithal.

D) In the year 1985, Bombay Prevention of Fragmentation and Consolidation On Holdings Act came into force. Before the authorities under this Act, deceased Gangaram Piraji Kendre made an application stating before them that, in the name of Vithal and his family only 12 and 1/2 acres land should be recorded instead of 13 acres. He also made an application that, in the 7/12 extract in his name 13 acres agricultural land should be recorded. The say of Gangaram Kendre was accepted by the said authorities and the matter was decided in his favour. Thereafter, Vithal filed suit before the Civil Court at Gangakhed against said decision, in which injunction was granted in favour of Vithal against Gangaram s/o Piraji Kendre, and Gangaram Piraji Kendre was restrained and prevented from entering into the field of Vithal. In the year 1985, due to obstruction by Gangaram Kendre and his sons, complaint was filed by Vithal Nirdunde, on the basis of which prosecution was filed against Gangaram Kendre and his sons. Even thereafter, Gangaram Kendre was often troubling and harassing Vithal and his sons. The field of Gangaram Piraji Kendre is situate to the southern side of the field of Vithal and they are adjacent to each other. There is common boundary between these two fields.

E) On 2nd January, 1995, an informant Padminibai, Vimalbai, deceased Shatrughan, deceased Bharat and their sister Prayagbai and Laxman's wife Urmilabai were present in the field Survey No.198. At about 12.00 noon, informant Padminibai, Vimalbai, Urmilabai and their husband's sister Prayagbai were plucking the cotton in the field. Shatrughan was watering grams crop in the

same field Survey No.198. Bharat had pains in his tooth and hence he was taking rest at the Akhada(cattleshed) erected on the field. It is the prosecution case that, when female members stated above were plucking the cotton, deceased Shatrughan was watering grams crop and deceased Bharat was taking rest, from the western side of their field, accused No.1 Govind Gangaram Kendre, accused No.2 Balaji Gangaram Kendre and accused No.3 Dyanoba Gangaram Kendre came and entered in the field of informant. Accused Govind had an axe in his hand. Accused Balaji had iron Katti and accused Dyanoba had stick in his hand. They went near Shatrughan and questioned him as to why he had left free his cattle in the wheat crop of accused persons. After saying this, accused Govind inflicted blow with an axe on the head of deceased Shatrughan. Accused Balaji inflicted blow with Katti on the left hand of deceased Shatrughan. Accused Dnyanoba gave blows with stick with him on both the legs and right leg thigh. After receipt of such beating, deceased Shatrughan fell on the ground in the field itself. On seeing this, Padminibai and other female members made hue and cry and on hearing their hue and cry, deceased Bharat went towards deceased Shatrughan. When Bharat reached near accused persons, accused Govind inflicted blow with an axe in his hand. Accused Balaji inflicted blow with iron Katti on the left hand of deceased Bharat and accused Dnyanoba inflicted blow with stick on the right leg of deceased Bharat. When Padminibai and Vimal went to rescue deceased Bharat, accused Dnyanoba beat Padminibai with stick on her head and caused injuries. He also beat Padminibai on both her legs. Accused Balaji inflicted blow with Katti on the right leg of Vimal. Accused Dnyanoba also beat Vimalbai with stick.

F) After beating so, accused Nos.1 to 3 went towards the village Basti. Urmila and Prayagbai also went towards the village by following accused persons.

G) Accused Nos.1 to 3 went to the residential house of Shriram and Laxman in the village. Laxman was present at his house alongwith his parents, brother Shriram, Shriram's wife Savitribai and daughter Meera. It was about 1.00 to 1.30 p.m. Accused went to Laxman who was present at his house, and extended him threat by saying that, "Kumbharde Majle Ahet". They abused Laxman and others. At that time, accused Govind had an axe. He wore chocolate coloured half pant and white coloured banyan. Accused Balaji had iron Katti with him and he wore snuff coloured Chaddi and white banyan. Accused Dnyanoba had stick with him and he wore blue coloured Chaddi and dark blue coloured banyan. Accused Nos.1 to 3 as aforesaid, entered in the residential house of Laxman and threw away grocery articles and other material in the shop of Laxman. At that time, Laxman was sitting in the "Dhalaj" (courtyard) of his residential house. Accused Balaji inflicted blow with Katti on the head of Laxman. After so beating, accused Nos.1 to 3 were dragging Laxman outside the house. Shriram's wife Savitribai rescued Laxman and pulled him inside the house and then closed the door of their house from inside.

H) Thereafter, it is the prosecution case that, accused Nos.1 to 3 climbed on the

roof of the house of Ganpati Kendre and then pelted stones towards the house of Shriram and Laxman. When they were so pelting stones, Laxman's wife Urmila returned to her residential house from the field and she witnessed such pelting of stones. Deceased Gangaram Kendre was standing on the road with stick in his hand and he did not allow Urmila to go towards her house. Thereafter, Urmila went by some other way towards the house of one Dadarao and reported him the incident and requested him to accompany her towards her house. Accordingly Dadarao accompanied with Urmila. Dadarao gave understanding to accused Nos.1 to 3, but they did not pay any heed towards the request of Dadarao. Accused persons asked Dadarao not to intervene in their matter. Thereafter, accused Nos.1 to 3 went away. Urmila went in her residential house. She came to know that, accused Balaji injured her husband by giving blow with Katti on the head of her husband. At that time, Urmila reported the incident took place in the field, to the inhabitants of the house.

I) It is the prosecution case that, Police Jamadar Laxman Phad and Police Constable Dahiphale attached to Gangakhed Police Station were posted on duty at Checkpost at Pimpaldari from 17th December, 1994. Accordingly, on the day of incident, they were on duty at the said checkpost. On 2nd January, 1995, both aforesaid Police officials were not feeling comfortable in the village and hence they went in the field of Police Patil of village Pimpaldari. When they were so present in the field of Police Patil, at about 1.45 p.m. Laxman's daughter Meera went to them and requested them to come to the village. When questioned, Meerabai narrated that, her parental cousin uncles, Bharat and Shatrughan were killed by axe, Katti and stick by accused Nos.1 to 3 and that their corpse were lying in the field. She further reported that, accused Nos.1 to 3 after killing Bharat and Shatrughan, came to the village and were pelting stones and that they were beating the inhabitants in their house. On hearing this, Head Constable Phad and Police constable Dahiphale immediately went alongwith Meera to the house of the informant. At that time, user door of the house was chained from inside. Head Constable Phad requested inhabitants in the house to open the door and accordingly the door was opened. Laxman Nirdunde had bleeding injury to his head and material in the grocery shop was scattered here and there. When questioned to Laxman by Constables, he narrated the incident and informed the Constables that, he was injured at the hands of accused persons and the material in the grocery shop was thrown here and there by accused persons.

J) Thereafter, Laxman was sent along with Police Constable Dahiphale and Laxman's wife Urmila, for medical treatment to Gangakhed by S.T. Bus. Head Constable Phad and Bali Kotwal of the village went to the field. There were corpse of Bharat and Shatrughan lying on the field. They had injuries on their person. Padminibai had also injury to her head. Padminibai was sent for filing complaint to Gangakhed and Head Constable Phad waited there on the field.

K) Accordingly, injured Laxman and Police Constable Dahiphale went to Police

Station Gangakhed along with Laxman's wife Urmila. Police Station Officer, Gangakhed alongwith a letter, sent Laxman for medical examination. Dr. Ghule attached to Rural Hospital Gangakhed, examined Laxman Nirdunde on 2nd January, 1995 at about 5.15 p.m. and issued injury certificate.

L) Police Inspector (for short "P.I.") Choudhary attached to Police Station, Gangakhed was present in the police station on 2nd January, 1995. At about 7.00 p.m. informant Padminibai Nirdunde had gone to Gangakhed Police Station and orally narrated the incident and the same incident was reduced into writing as per Exhibit18. On the basis of the complaint of Padminibai, Crime No.2 of 1995 was registered under Sections 302, 307, 324 of the I.P. Code. Reports were submitted by him to his superiors.

M) Thereafter, P.I. Choudhary proceeded to the spot where he noticed two corpse; one of deceased Bharat and another of deceased Shatrughan. On the next day morning, inquest panchnamas of deceased Bharat and Shatrughan were prepared by him. Thereafter P.I. Choudhary drew scene of offence panchnama of the situation on the field. Some articles were seized. Chappal of accused was seized from the scene of offence. From the spot of field, normal earth and earth mixed with blood were taken as sample. The scene of offence panchnama of the residential house was also prepared by P.I. Choudhary. Thereafter dead bodies were sent for postmortem and the postmortem was carried out on the dead bodies of Bharat and Shatrughan. The investigating officer carried out the investigation. During the course of investigation, statements of witnesses were recorded by P.I. Choudhary. The clothes on the person of deceased Bharat and Shatrughan were seized by drawing seizure panchnamas. Then, after due investigation, accused Nos.1 to 3 were chargesheeted.

N) Thereafter the case was committed to the Court of Additional Sessions Judge, Parbhani. A charge under Sections 302, 307, 324, 323, 452 and 427 read with Section 34 of the I.P. Code was framed against all the accused persons and the same was explained to them. The accused persons pleaded not guilty and claimed to be tried, with the defence of total denial.

3. After recording the evidence and conducting full fledged trial, the trial Court acquitted all the accused persons from the offences with which they were charged, as stated herein above in Para1 of the Judgment. Hence this Appeal.

4. Heard learned A.P.P. appearing for the State and learned senior counsel appearing for Respondentsaccused, at length. Learned A.P.P. appearing for the State invites our attention to the evidence of three eye witnesses i.e. PW1 Padminibai, PW11 Vimal and PW12 Urmila and submits that these witnesses have categorically stated that accused assaulted deceased Shatrughan and deceased Bharat by axe, Katti and stick, and they have witnessed the incident. PW13 Laxman Nirdunde is injured witness. He submits that overt act is attributed against all the accused persons. He further submits that the trial Court has not appreciated the evidence on record in its proper perspective, and the findings

recorded by the trial Court are not in consonance with the evidence brought on record by the prosecution. He submits that, there is overwhelming evidence brought on record by the prosecution in the nature of eye witnesses, corroborated with medical and other evidence. Therefore, he submits that the Appeal may be allowed.

5. Mr. R.N. Dhorde, learned senior counsel appearing for the original accused/ Respondents invites our attention to the findings recorded by the trial Court and submits that, on analysis of the evidence of all the prosecution witnesses and in particular evidence of alleged eye witnesses i.e. PW1 Padminibai, PW11 Vimal and PW12 Urmila, the trial Court found that it suffers from serious contradictions, omissions, improvements and therefore benefit of doubt is given to the accused. It is submitted that PW1 Padminibai has stated different versions in her First Information Report (for short "F.I.R."), statement recorded by the Investigating Officer and in her deposition before the Court. Learned counsel submits that it is the case of the prosecution that the incident has happened at about 11.00 to 11.30 am. on 2nd January, 2015, in which two persons were seriously injured and died on the spot and thereafter the accused persons have gone to the village Pimpaldari and they had pelted stones and caused injuries to PW13 Laxman Nirdunde. He submits that PW12 Urmila, claims to be the eye witness to both the incidents i.e. first incident in the field and second incident in the house. PW12 Urmila stated that she had gone to the police station at 5.00 p.m. and reported the matter to the police station and then PW13 Laxman was referred to the hospital for medical treatment. However neither the station diary entry made in that behalf by head constable Deshpande, present in the police station at the relevant time, is produced on record nor said Deshpande is examined. Therefore, whatever report had been given to police by PW12 Urmila and PW13 Laxman, is suppressed in order to substitute another version suitable to the prosecution and/ or informant. He further submits that there is no explanation as to why PW9 Laxman Phad, police head constable, Gangakhed police station, who according to him, has gone in the village and met PW13 Laxman Nirdunde at around 2.00 O'clock, has not reduced into writing the F.I.R. of Laxman. Therefore, the case of the prosecution appears to be suspicions and doubtful. Informant, PW1 Padminibai specifically stated that in her F.I.R. the details of dispute on the cause of agricultural land between them and accused have been stated by Vithalrao, her father in law. It is surprising as to how the part of the F.I.R. can be given by somebody, who is not informant. PW1 Padminibai stated that PW9 Laxman Phad had sent her and Vimalbai for medical examination however, PW9 Laxman Phad does not support the said version. Thus the F.I.R. Exhibit18 is fabricated and concocted piece of evidence. The genesis of the incident is suppressed by PW9 Laxman Phad and PW19 Shivaji Choudhary. It is submitted that considering the version of the Investigating Officer PW19 Shivaji, it is clear that the complaint which is shown to have been lodged at 7.00 p.m., is concocted complaint.

6. Learned senior counsel referring to the written notes of arguments, further submitted that the evidence of three eye witnesses i.e. PW1 Padminibai, PW11

Vimal and PW12 Urmila, claiming to be eye witnesses, is not true and they are not the eye witnesses. There are various contradictions and omissions in the evidence of PW1 Padminibai. Padminibai was present in the field when the incident had taken place, is not corroborated by any independent witness. The names of various persons stated like Vithal, Namdeo, Dnyanoba, Uttam, Sheshrao Guruji, Janardhan, Sitaram, whose houses are located nearby, however not a single person is examined about the incident in the house of pelting stones or accused persons being present in the surrounding area. Medical evidence disproves the version of PW1 Padminibai that deceased Bharat had breakfast at 9.00 a.m. PW1 Padminibai has not disclosed the said incident to anybody from 11.30 to 7.00 p.m. till lodging of the F.I.R. Thus, it is clear that she was not present at the scene of offence and she has not witnessed the incident. It is further submitted that there are serious omissions and contradictions in the evidence of PW11 Vimalbai and therefore Vimalbai cannot be said to be an eye witness to the incident. PW12 Urmilabai claims to be an eye witness and present at both the spots i.e. in the field and in house, however she has not sustained any injury. There are contradictions, omissions and various improvements in her evidence, because she claims to have left the field immediately after the accused have left the field. Thus, when two persons were injured and lying in the field, she left the field for no reasons and therefore, her conduct is not natural.

7. Learned counsel further submitted that PW13 Laxman Nirdunde in his evidence stated that Balaji has caused him injury by Katti, however C.A. Report reveals that on Article 16 no blood stains were found. On the contrary, Doctor has specifically stated that the injury is caused by axe. Therefore evidence of PW13 Laxman Nirdunde cannot be believed. It is further submitted that evidence of PW14 Dadarao cannot be accepted as he is declared hostile. The evidence of PW9 Phad is concocted evidence. PW10 Dahiphale claims to have accompanied with PW13 Laxman and PW12 Urmila, but Laxman does not say so nor there is any other independent evidence and therefore, the evidence of PW10 Dahiphale cannot be believed. It is submitted that in the evidence of Investigating Officer PW19 Chaudhary, there are serious omissions and contradictions and he has carried out the investigation in most callous manner. PW19 Chaudhary has not recorded the statements of independent witnesses of surrounding area or who were present there. There is no explanation as to why PW19 Chaudhary has not recorded F.I.R. immediately when he visited the field. His evidence is contrary to the evidence of other witnesses and he has categorically stated that, earth smeared with blood was taken from the spot, however, no blood was found in C.A. Report.

8. Learned senior counsel further submitted that only interested witnesses have been examined. No independent witnesses have been examined. The evidence of police witnesses is contrary to the evidence of alleged eye witnesses and therefore cannot be believed. The spot of incident is not proved. Recovery of weapons and clothes is not proved. No blood stained clothes of PW1 Padminibai and PW11 Vimalbai have been recovered. The investigation does not disclose

clearly that the Respondents are guilty of said offence alleged to have taken place in the field. Similarly, regarding the second incident at house in village, no independent witnesses have been examined. There were no injuries caused to any other person other than Laxman. There is hardly any evidence to show that, the incident had taken place in the field and/or in the house. There is delay in lodging the F.I.R.

9. Learned senior counsel in the end submitted that the Appeal is against the acquittal and as possible view has been taken by the trial Court, the Appeal deserves to be dismissed.

10. Mr. Dhorde, learned senior counsel appearing for the Respondents, in support of his submissions regarding delay in lodging First Information Report, pressed into service the exposition of law in the case of Kunju Muhammed Alias Khumani and another vs. State of Kerala¹, (2204) 9 S.C.C. 193, Rajeevan and another vs. State of Kerala,, A.I.R. 2003 S.C. 1813. In support of his submissions that if only interested witnesses are examined by the prosecution, corroboration from collateral or surrounding circumstances needed, such as scientific evidence like medical and other evidence in order to exclude possibility of false implication, he placed reliance on the exposition of law in the case of Jalpat Rai and others vs. State of Haryana, (2011) 14 S.C.C. 208, Babu Ram and others vs. State of Punjab, A.I.R. 2008 S.C. 1260, Harijana Thirupala and others vs. Public Prosecutor, High Court of A.P., Hyderabad.

11. The learned senior counsel submitted that the material witnesses mentioned in the F.I.R., like Prayagbai and Gayabai are not examined by the prosecution and therefore adverse inference has to be drawn. In support of said submission, he placed reliance upon the case of Thulia Kali vs. The State of T.N., A.I.E. 1973 S.C. 501. In support of his submission that blood stained clothes of the witnesses are not seized, he relied upon the observations in the case of State of Rajasthan vs. Taran Singh and another, 2004 Cri. L.J. 654. He further placed reliance upon the case of Niranjana Panja vs. State of West Bengal, (2010) 6 S.C.C. 525 in support of his submissions that prosecution failed to bring on record exact time of death of Bharat and Shatrughan. In support of his submission that prosecution failed to prove the spot of incident, he placed reliance on the exposition of law in the case of Buta Singh vs. The State of Punjab, A.I.R. 1991 S.C. 1316(1), State of U.P. vs. Madan Mohan and others, A.I.R. 1989 S.C. 1519. He relied upon the case of State of Maharashtra vs. Prabhu Barku Gade, 1995 Cri. L.J. 1432, and submitted that clothes and Muddemal seized were not sealed and therefore evidence of recovery has to be excluded.

12. The learned senior counsel submitted that though F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it, but omissions of important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case. He placed reliance on the exposition of law in the case of Ram Kumar Pande vs. The State of M.P, A.I.R. 1975 S.C. 1026(1). In

support of his submission that if the entire prosecution case is suspicious then the accused are entitled to benefit of doubt, he placed reliance upon the case of Sunil Kundu and another vs. State of Jharkhand, (2013) 4 S.C.C. 422 and Sevi and another vs. State of T.N. and another, A.I.R. 1981 S.C. 1230. He further submitted that, merely because accused failed to prove its defence, the same cannot be the basis for conviction. He placed reliance on the exposition of law in the case of Vikramjit Singh alias Vicky vs. State of Punjab, 2007 Cri. L.J. 1000, in support of his said submission.

13. Learned senior counsel appearing for the Respondents submitted that, prosecution must prove the case beyond reasonable doubt, and if two views are possible benefit of doubt must go to the accused. He placed reliance upon the case of State of Maharashtra vs. Syed Umar Sayed Abbas and others, (2016) 4 S.C.C. 735, and in the case of Sujit Biswas vs. State of Assam, 2013 Cri. L.J. 3140. In support of his submission that, while dealing with appeal against order of acquittal, an appellate Court must bear in mind that in case of acquittal, there is double presumption in favour of the accused, firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law, and secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial Court, the counsel placed reliance on the exposition of law in the case of Murugesan and others vs. State through Inspector of Police, A.I.R. 2013 S.C. 274 and in the case of Chandrappa and others vs. State of Karnataka, 2007 A.I.R. S.C.W. 1850.

14. We have recorded herein above the detailed submissions of counsel appearing for the parties. Now, we would like to discuss the evidence of the prosecution witnesses in detail.

15. The prosecution has examined PW15 Dr. Ramgopal Mandanal Biyani. He deposed that from the year 1990, he was working as Medical Officer, Rural Hospital, Gangakhed. On 3rd January, 1995, he has received a letter from Investigating Officer, police station, Gangakhed, requesting him to go at Pimpaldari for conducting the postmortem, two in number, by going at Pimpaldari on the spot itself. He produced the original letter Exhibit 48, received from Investigating Officer, P.S.I. Choudhary. In the left hand side column of the letter, he has put an endorsement about receipt of the same and put the date and time of the receipt of the letter. On 3rd January, 1995, he alongwith his staff reached at Pimpaldari on the spot at about 10.30 a.m. and accordingly he has performed postmortem examination there. PW15 Dr. Ramgopal Biyani further deposed that firstly, he performed the postmortem of the corpse of Shatrughan s/o Vithal Nirdunde. The postmortem was started at about 10.30 a.m. and completed at about 11.25 p.m. He found multiple injuries over body. Such injuries are described on the separate sheet of paper annexed to as part of the postmortem report. The external injuries were as follows:

- "1. Incised wound with fracture of right parietal bone 7 1/2 x 1 x 3 1/2 cm. vertical over right parietal bone 1/2 cm. from midline. Wound was cleancut. Parietal bone was fractured, deeper layers and coverings of brain were torn. Brain tissue was lacerated and haemorrhage occurred. Blood was accumulated in middle and anterior cavity.
2. Incised wound with fracture of right parietal bone 5 X 1 1/2 cm. over right parietal bone, lateral side, 1 cm. above ear border, vertical. Bone was fractured and brain tissue was lacerated. Bleeding occurred.
3. Incised wound 5 X 1 1/2 X 1 cm. over left palm, thumb side, vertical extending from metacarpophalangeal joint of index finger, clotted red blood present over wound. Palm was stained with blood and mud. 4. Incised wound 2 1/2 X 1 X 1/2 cm. over web in between thumb and index finger, right side, vertical, clotted red blood present with mud over wound. Palm was stained with blood.
- . All above four injuries were spindle shaped clean cut, edges were everted and gaping
5. Contusion with fracture 5 X 2 cm. over lower 1/3rd of right forearm front side. Both bones fractured, forearm was loose horizontal red in colour.
6. Contusion with fracture 2 X 1 cm. over right clavical, lateral 1/3rd red in colour Clavicle was fractured at injured part and felt by palpation.
7. Compound fracture with lacerated wound 7 X 1 X 1 1/2 cm. over right leg lower 1/3rd lateral side, oblique clotted red blood with mud present over wound, Fractured bone ends seen through the wound Leg part was loose.
8. Compound fracture with lacerated wound 3 X 1 X 1 1/2 cm. over left leg 1 cm. above ankle. Inner side oblique wound was covered with red blood and black mud Fractured end of tibia bone is seen through the wound.
9. Contusion 1 1 X 1/2 cm. over right cheek.
10. Abrasion 7 X 1/4 cm. over back of right shoulder.
11. Contusion with abrasion 7 X 3 cm. over right upper arm upper 1/3rd backside oblique.
12. Abrasion 5 X 2 cm. with contusion over middle 1/3rd of right forearm back side.
13. Contusion 3 X 2 cm. over left elbow lateral side.
14. Contusion 3 1/2 X 1 cm. over left scapula at lower end.
15. Contusion 2 X 1 cm. over left pubic crest bone.
16. Contusion 2 X 1/2 cm. over left leg at calf part.
17. Contusion 3 X 1/2 cm. over right knee upper and inner side.

18. Contusion 7 X 3 cm. over back of left knee.

19. Abrasion 9 X 1/2 cm over right scapula horizontal at midpart".

. All contusion and abrasion injuries are red in colour. Subcutaneous tissue shows diffused blood.

. PW15 Dr. Ramgopal Biyani further deposed that, on internal examination, he found following internal injuries:

"Right side of the chest shows rib fracture at 7th, 8th and 9th at convex angle. Both fractured ends of the ribs lacerated lower lobe of lung lateral and back side at three places. Size of laceration 1/2 cm. to 2 cm. X 1 to 1 1/2 cm. deep. Blood accumulated in plureal cavity about 250 cc. Clotted blood was red in colour over lacerated wounds and at fractured ends of the ribs". . PW15 Dr. Ramgopal Biyani further deposed that, in his opinion, injury No.1 to 4 were caused by sharp cutting edged substance and rest of the injuries by hard and blunt object. Injury Nos.1, 2 and internal injuries were dangerous to life and injury Nos.3 to 8 were grievous in nature and rest of the injuries were simple in nature, and age for all injuries was within 24 hours. He has prepared postmortem examination report, for postmortem of Shatrughan, which is scribed and signed by him. It is at Exhibit49. In his opinion, the death of Shatrughan was caused due to multiple injuries over body with fracture of right parietal bone with laceration of brain tissue and intracranial haemorrhage with fracture of ribs right side and laceration of right lung, haemorrhage, shock and

death. He is shown axe (Article19), Katti (Article20) and stick (Article21). He deposed that injury Nos.1 and 2 externally noticed by him on the person of Shatrughan could be caused with an axe (Article19). Injury Nos.3 and 4 could be caused by Katti (Article20) if it's straight sharp part coming in contact with force. Injury No.4 could be caused by entire blade of Katti. Injury Nos.5 to 18 could be caused with stick (Article21). So also injury No.19 could be caused with stick. Internal injuries mentioned at Sr. No.20 in postmortem notes could not be caused by stick (Article21). Injuries mentioned at Sr. No.20 in postmortem notes could not be caused even if forceful blow with stick by holding the stick in both hands is given. If person falls on the ground and coming in contact with hard surface, the internal injury mentioned in Column No.20 could be caused.

. PW15 Ramgopal Biyani further deposed that on the same day, he started postmortem of Bharat s/o Vithal Nirdunde at about 11.30 a.m. and the same was completed by 12.30 p.m. At the time of postmortem, he noticed following surface injuries and wounds found on the person of deceased Bharat:

"1. Incised wound 12 1/2 X 1 X 2 1/2 cm. over left parietal bone vertical 2 cm. above ear border anterior half portion of the injury was deep and bone was fractured. Coverings of brain torn and brain tissue was lacerated. Haemorrhage occurred and clotted red blood present over brain tissue and at injury Godhadi was stained with blood at head part of the deceased.

2. Incised wound 7 1/2 X 1 X 1/2 cm. over left parietal bone Vertical extending from occipito parietal joint and 2 cm. from midline. Clotted red blood present over wound. Scalp hairs were stained with blood and mud.

3. Incised wound 1 1/2 X 1/2 X 1 cm. over left forearm near wrist oblique lateral side.

4. Incised wound with compound fracture of left forearm bone 2 X 1/2 X 1 cm. over left forearm, back side lower 1/3rd oblique clotted red blood with mud present over wound. Surrounded part was stained with blood and mud. Hand was loose and fractured ends of the bones were seen through the wound.

5. Incised wound 2 1/2 X 1/2 X 1 1/2 cm. over back right side at thoracic 8th vertebra half cm. from midline oblique Clotted red blood present over wound. Wound was opened inside in the plural cavity, pleura was torn and blood was collected in right pleural cavity about 50 cc.

6. Incised wound 1 X 1/2 X 1 cm. over right upper arm, back and lateral side oblique upper 1/3rd Clotted red blood present over wound with mud.

7. Incised wound 5 X 1/2 X 1/4h cm. over right parietal bone 3 cm. above ear border vertical clotted red blood present.

8. Incised wound 2 X 1/2 X 1/4 cm. over occipito parietal joint oblique right side 1 cm. from midline. Clotted red blood was present over wound. Scalp hairs were stained with blood.

9. Incised wound 2 X 1/2 X 1/2 cm. over left upper arm, upper 1/3rd lateral side oblique Clotted red blood present over wound with mud.

. All above incised wounds were spindle shaped Margins were cleancut even gaping and edges were everted.

10. Contusion with abrasion 7 X 4 cm. over right calf red in colour.

11. Contusion 10 X 5 cm. over right foot and ankle lateral side. Part was red and swollen and covered with mud.

12. Contusion 3 X 2 cm. over left metacapo phasal joint and dorsum at index finger red in colour part was swollen and on internal examination, fracture of proximal pharynx was found.

13. Contusion 2 X 1 cm. over right knee upper & lateral side red in colour covered with black mud.

. All contusion and abrasion injuries shows defused blood in subcutaneous tissue".

. PW15 Ramgopal Biyani further deposed that Injury Nos.1 to 9 on the person of Bharat could be caused by sharp cutting edged substance and injury Nos.10 to 13 could be caused by hard and blunt object. Injury Nos.1, 2, 4, 5, 7, 8 and 12

were grievous injuries and rest were simple injuries. Injury Nos.1 and 5 were dangerous to life even. In his opinion, the age of all injuries was within 24 hours. In his opinion, cause of death was multiple injuries over body and skull bones with fracture of left parietal bone with laceration of brain tissue and intracranial haemorrhage leading to shock and death. He has scribed and signed postmortem report of Bharat, Exhibit 50. He deposed that injury Nos.1 and 2 on the person of Bharat could be caused by axe shown to him. Injury Nos.1, 2, 5, 7 and 8 could be caused by axe (Article 19). Injury Nos.3, 4, 6 and 9 could be caused by Katti (Article 20). For causing injury No.4, such weapon should be used forcefully. Injury Nos.10 to 13 could be caused with stick (Article 21).

. During the course of his cross-examination, PW15 Ramgopal Biyani stated that necessarily the injury inflicted is not corresponding to the length of the blade of weapon. It could be more than or some times less than that. He was unable to say how much more would cause or how much less would cause than the length of the blade. Injury of the large size than the length of the blade of the weapon could be caused maximum by 2 to 3 cm., and less length of the blade depends on how much part of the blade comes into contact. Even if the blade is not sharp one and if force is applied then edges of injury would come clean cut. If the blade is not clean cut and sharp then edges would not be even and clean cut. He was unable to say how much healing process would be done within 24 hours after causing of the injuries in respect of edges. In respect of the injuries noticed by him, he has firstly mentioned length, then width and then depth. When injury No.1 was caused to Shatrughan, he must be in lying down position on one side. So also injury No.2 must have been caused when he was in the same position. Width of the weapon has nothing to do with the size of the injury. It is his say that, the width of the weapon might be 1/2 cm., 1 cm. 1 1/2 cm. but the same size of the injuries in width would be inflicted. He again said that width of the weapon would change the width of the injury. He is shown axe before the Court. After seeing the weapon he stated that the width of the blade is more towards upward portion of the blade than lower end. When the depth of the injury is 3 1/2 cm. then the width of the injury would correspond to the width of the blade of axe. Even though he is of the opinion that, width of the injury must correspond to the width of the blade, still he says that injury Nos.1 and 2 could be caused by axe before the court. For causing injury Nos.1 and 2, two separate blows are required. He denied that injury Nos.1 and 2 could not be caused by the same weapon.

. During the course of his cross-examination, PW15 Ramgopal Biyani further stated that, in respect of Bharat, the depth of injury No.1 was 2 1/2 cm. and depth of injury No.2 was 1/2 cm. In respect of both the injuries, their width is similar i.e. 1 cm. He does not agree with the proposition that the width of the injury is to correspond with the width of the weapon. The width of the axe before the Court at the height of 2 1/2 cm., which is more than 1 cm. The width of axe at the height of 1/2 cm. is less than 1 cm. He was shown the blade of axe (Article 19). Approximately, its length is 2 1/2" to 3". It is not his say that the

length of the blade for causing injury Nos.1 and 2 on the person of Bharat should be more than 4 inches. For causing injury No.1 of the length of 121/2 cm. for causing such injury, more than one blow is necessary. He has not mentioned in his postmortem report concerning Bharat that more than one blow is required for resulting injury of the length of 121/2 cm. In respect of injury No.1 of Bharat, he has not mentioned as to how much anterior half portion of injury No.1 was deep. In respect of injury Nos.1 and 2 of Bharat and Shatrughan, their length differs. Length of the injury depends on how much part of the weapon comes in contact. He admits that in respect of Bharat, the length of injury Nos.1 and 2 is considerably more than the length of blade of an axe (Article19). He does not agree with the proposition that injury Nos.1 and 2 on the person of Bharat and Shatrughan could be caused by other hard and sharp weapon. On the basis of report from the police in Column No.5 of postmortem reports (Exhibit49 and Exhibit50) he has mentioned that, death occurred due to beating by axe, knife and Lathi. The said report of police of which he has mentioned in Column No.5 was received to him on 3rd January, 1995. The said report is signed by the Investigating Officer Shri Choudhary. In the postmortem notes of Shatrughan, the breadth and the depth mentioned is uniform throughout the length. He admits that injury Nos.3, 4, 6 and 9 on the person of Bharat were on nonvital parts of the body. So also, injury Nos.10, 11, 12 and 13 on the person of Bharat are on nonvital parts. He admits that injury Nos.5 to 19 on the person of Shatrughan were on nonvital parts of the body of Shatrughan. Shatrughan might have taken his last meals about 6 hours before his death, so also Bharat. There was no food in the stomach cavity. Injuries on the person of Bharat possibly were caused while lying down on one side on parietal region.

16. We have discussed in detail the evidence of the medical officer PW15. In his evidence, he has clearly stated that the death of Shatrughan and Bharat was homicidal. He also expressed the opinion that the age of all injuries was within 24 hours. On 3rd January, 1995, he started postmortem of the corpse of Shatrughan at about 10.30 a.m. and completed at about 11.25 p.m. On the same day he started postmortem of the corpse of Bharat at about 11.30 a.m. and completed at about 12.30 p.m. The evidence of the medical officer is consistent with prosecution case with the alleged incident that had taken place on 2nd January, 1995 at about 12.00 noon. Therefore, his evidence clearly shows that the multiple injuries over the bodies of deceased Shatrughan and Bharat were caused within 24 hours preceding the postmortem. Upon careful perusal of the cross-examination of Dr. Ramgopal Biyani (PW15), it is abundantly clear that nothing useful to the defence has been elicited and brought on record by the defence. The trial Court on appreciation of the evidence of the medical officer, observed that, on perusal of medical evidence on record and cross-examination of PW15 Dr. Ramgopal Biyani it is seen that, it is not seriously disputed by the accused persons that death of deceased Bharat and Shatrughan was homicidal one. It is further observed that there is sufficient evidence on record to show that death of Bharat and Shatrughan were homicidal one. Therefore, the

prosecution has proved beyond doubt that death of Bharat and Shatrughan was homicidal and injuries found on their person were inflicted within 24 hours preceding performing the postmortem of both the deceased.

17. The prosecution examined PW17 Manohar Keshavrao Ghule. He deposed that he was attached to Rural Hospital, Gangakhed from January, 1991 to August, 1997. Injured Vimalbai w/o Bharat, Laxman s/o Vithalrao and Padminibai w/o Shatrughan were referred to him for medical examination by Police Station Officer, Gangakhed. Laxman was referred to him for medical examination on 2nd January, 1995, alongwith the letter. He examined Laxman s/o Vitthalrao Nirdude on the same day at about 5.15 p.m. and on examination, he found following injuries on the person of Laxman: "1. Incised wound 6 X 1 X 1/2 cm. on left parieto occipital region of skull edges were clearly cut. Blood clot was present.

2. Contusion 5 X 4 cm. on left forearm Doral aspect reddish discolouration was present.

3. Contusion 7 X 4 cm. on left thigh middle 1/3 level ventral aspect oblique in direction reddish discolouration was present.

4. Abrasion 5 X 3 cm. on right scapular area reddish discolouration present.

5. Contusion 5 X 4 cm. on right scapular area reddish discolouration was present."

. Medical Officer (PW17) Manohar further deposed that Injury No.1 was grievous in nature, caused by hard and sharp object. The age of the injury was within 12 hours. Injury Nos. 2 to 5 were caused by hard and blunt object. They were simple in nature and age was within 12 hours. Accordingly, he has prepared certificate Exhibit54, which is scribed and signed by him. The patient was referred to Medical College, Ambejogai for the treatment of head injury.

. Medical Officer (PW17) Manohar further deposed that on 3rd January, 1995, Police Station Officer, Gangakhed referred Padminibai w/o Shatrughan Nirdunde and Vimalbai w/o Bharat Nirdunde for medical examination, along with reference letter dated 3rd January, 1995, Exhibit55. He has first examined Padminibai w/o Shatrughan and on examination he found following injuries:

"1. Contused Lacerated Wound 3 X 1 X 1/2 cm. on left frontal region of skull Blood clot was present. reddish discolouration was present.

2. Contusion 5 X 4 cm. on right forearm reddish bluish discolouration was present.

3. Contusion 5 X 4 cm. on right arm middle 1/3 level oblique in direction reddish bluish discolouration was present.

4. Contusion 5 X 4 cm. on left infrascapular area reddish bluish discolouration was present."

. Medical Officer (PW17) Manohar further deposed that, all these injuries could

be caused possibly by hard and blunt object. The age of injuries was within 24 hours and they were simple in nature. He has prepared the certificate Exhibit55, of such examination, which is scribed and signed by him.

. Medical Officer (PW17) Manohar further deposed that, at the same time, and date, he examined Vimalbai w/o Bharat Nirdunde and on examination, he found following injuries present on her person:

"1. Abrasion 3 X 1/4 cm. on right arm upper 1/3 level. Blood clot was present redish bluish discolouration was present.

2. Contusion 3 X 2 cm. on right arm anterior aspect bluish redish discolouration was present."

. Medical Officer (PW17) Manohar further deposed that the injuries were caused by hard and blunt object. They were simple in nature and age of injuries was within 24 hours. Accordingly, he prepared certificate Exhibit57 and scribed and signed by him.

. Medical Officer (PW17) Manohar further deposed that, injury No.1 on the person of Laxman could be caused by hard and sharp object like axe. Injury No.1 could be caused by axe (Article No.19) shown to him. Such injury cannot be caused by any other weapon except an axe. Rest of the injuries on the person of Laxman could be caused with the stick (Article No.21) shown to him. Injuries present on the person of Padminibai could be caused by stick (Article No.21) shown to him. Injuries on the person of Vimal could be caused by stick, like Article No.21 shown to him.

. During the course of his cross-examination by the counsel for accused Nos.2 and 3, Medical Officer (PW17) Manohar stated that, when Laxman was produced before him on 2nd January, 1995, at about 5.15 p.m., initially he was conscious. In his presence, statement of Laxman was not recorded by Taluka Executive Magistrate.

18. The prosecution examined PW1 Padminibai w/o Shatrughan Nirdunde, who is informant in this case. The prosecution examined PW11 Vimal w/o Bharat Nirdunde. The prosecution examined PW12 Urmilabai w/o Laxmanrao Nirdunde. The prosecution examined PW13 Laxman Vithalrao Nirdunde. We would discuss, in detail, the evidence of PW1 Padminibai, PW11 Vimalbai, PW12 Urmilabai and PW13 Laxman, in later part of the Judgment.

19. The prosecution examined PW2 Keshav Sambhaji Paithane and PW3 Datta Gyanba Kappe, panch witnesses to inquest panchnama Exhibit20, Exhibit21 and spot panchnamas Exhibit22 and Exhibit23. But they turned hostile and did not support the prosecution case. The prosecution examined PW4 Parashram Namdeo Chavan and PW5 Tukaram Khanduji Ambhore, panch witnesses to Memorandum Exhibits26 to 28 and seizure panchnama of weapons Exhibits29 to 31. But they turned hostile and did not support the prosecution case. The prosecution examined PW6 Ramchandra Narayan Gaikwad and PW7 Narhari

Dnyanoba Solanke, panch witnesses to arrest panchnama Exhibit34 and panch witnesses to seizure panchnama of clothes of deceased, Exhibit35. But they also turned hostile and did not support the prosecution case. The prosecution examined PW8 Vithal Baburao Shinde, panch witness to seizure panchnama of clothes of deceased, Exhibit35. But he also turned hostile and did not support the prosecution case.

20. The prosecution examined PW9 Laxman Bhaurao Phad, police head constable, police station, Parbhani (Rural). He deposed that from 1993 to 1996, he was attached to Gangakhed police station and worked as head constable. He was posted for duty at Pimpaldari checkpoint by P.S.I. Gangakhed. Police constable Dahiphale was posted on duty along with him. On 2nd January, 1995, he himself and his companion constable had gone to the field of police patil casually, because they were not feeling comfortable in the village. At about 1.45 p.m., Meera Laxman Nirdunde, aged about 12 years, had come to call them from the field. She informed them in the field of police patil that, Kendre's sons had killed her cousin uncles Bharat and Shatrughan. On hearing the said information from Meera, he himself and his companion constable went to village Pimpaldari. Meera informed him names of Kendre's sons as Govind, Dnyanoba and Balaji. She also informed him that the father of Govind, Balaji and Dnyanoba was at village Pimpaldari. Govind, Balaji and Dnyanoba had come to village from the field and they along with their father attacked on the house of Meera and beat her father, her cousin uncle and other family members present at the house. Meera also informed that these accused pelted stones on their house and then beat. Along with Meera, they went at her residential house and he noticed that the door of the house was closed from inside. The inhabitants of the house were not ready to open the door. He disclosed his identity and on hearing his identity, they opened the door of the house. There were injuries on the person of Laxman. Such injuries were caused with Katti. Other inhabitants of the house had sustained invisible injuries due to beating. The household articles in the house were scattered here and there. There were stones lying in front of their house. In the S.T. Bus, he sent injured Laxman along with the constable for medical treatment. He had enquired with Laxman and other inhabitants and they told that accused beat them. Laxman informed that, Balaji injured him with Katti and Dnyanoba with stick. They also informed him that stones were pelted. Fists and kick blows were also given to them. In the circumstances, they further informed that, by closing door of the house, they sat inside the house. . PW9 Laxman Bhaurao Phad, further deposed that after sending Laxman for medical treatment, he along with Kotwal of the village, went to the field at the spot. The field is about 2 K.M.s away from the village. The wife of Bharat, the wife of Shatrughan were present in the field. There were corpse of Bharat and Shatrughan lying. Their wives, who were present in the field, started weeping. There were injuries present on the head of both the deceased. He waited in the field. After some times, P.S.I., Gangakhed namely Choudhary came to the field. The wife of Shatrughan had also sustained injury. For that night, he waited near the corpse.

On the next day morning, postmortem were performed.

. During the course of his crossexamination, PW9 Laxman Phad stated that, in the field of police patil, there was no one present and both the constables had gone to the field and sat there. Whatever incident that was reported to them by Meerabai, was reported to them in the field only and thereafter not at any time. On receiving report from Meera, they were satisfied that cognizable offence was committed. They did not reduce into writing the report given by Meera. He did not reduce into writing the incident reported to them by Laxman. It would have been possible for him to reduce in writing the report given by Laxman and submit the same to the police station along with the constable. He was also crossexamined by the counsel for accused Nos.2 and 3.

21. The prosecution examined PW10 Baburao Manikrao Dahiphale, police constable, police station, Gangakhed. He also deposed in tune with Laxman Shahurao Phad (PW9). He was also crossexamined by the counsel for the accused.

22. The prosecution examined PW14 Dadarao Kishanrao Mundhe. But he turned hostile and did not support the prosecution case.

23. The prosecution examined PW16 Ramrao Namdeorao Muley, P.S.I. He deposed that in the year 1994/95 he was attached to police station, Gangakhed. On 31st January, 1995 at about 8.30 p.m. when he was present at police station, Gangakhed, he arrested accused Gangaram, Balu and Govind. He has seized the clothes on the person of accused, namely Chaddi and banyan.

24. The prosecution examined PW18 Balasaheb Shankarrao Shinde, Talathi of Pimpalgaon Sajja who deposed about the details of the concerned survey numbers, names of land holders in the village, and the lands owned by the family of the accused persons and the family of deceased persons.

25. The prosecution examined PW19 Shivaji Salubaji Choudhary, Investigating Officer in this crime. He deposed about the manner in which he has carried out the investigation of the crime. In his evidence, he stated that on 2nd January, 1995 at about 7.00 p.m. informant Padminibai Nirdunde had come to the police station, Gangakhed, and she orally narrated the incident which was reduced into writing. He has further stated details about the registration of the F.I.R. i.e. Crime No.2 of 1995 under Section 302, 307, 324 of the I.P. Code. He further narrated details of carrying out the spot panchnama, inquest panchnama and other details.

26. The prosecution also examined PW20 Ismailkhan Yusufkhan, P.S.I., Gangakhed. He deposed about various panchnamas effected by him. He further deposed that after recording memorandum panchnamas, accused Govind Gangaram Kendre produced axe, accused Balaji produced Katti and accused Dnyanoba produced stick.

27. As already observed, the prosecution has proved that the death of Bharat

and Shatrughan was homicidal. The real question falls for consideration is, who is author of the injuries inflicted on the person of Bharat and Shatrughan and ultimately responsible for their death. It appears that the trial Court instead of making honest endeavour to find out who are the real culprits of the death of Bharat and Shatrughan, and also serious injuries inflicted/ caused on the person of Laxman (PW13), keeping aside the core/substratum of the prosecution case, travelled in periphery and tried to find out reasons to dislodge and disbelieve the evidence of the injured eye witnesses to the incident i.e. PW1 Padminibai and PW11 Vimalbai and so also overwhelming medical evidence brought on record by the prosecution which corroborates to the evidence of eye witnesses. The trial Court has given much importance and emphasis on motive for commission of offences. It is trite law that when the case rests upon the direct evidence, the motive loses its importance and the intention assumes significance. However, the trial Court proceeded to discuss in detail about the motive for commission of such offence. The trial Court after discussing the evidence of prosecution witnesses, observed that though the civil dispute was pending between the parties, since for considerable period there was no any scuffle or untoward incident between the parties, there was no motive for alleged commission of offence by the accused. In fact the evidence of Padminibai (PW1) and also the other witnesses unequivocally indicates that the accused arrived at the spot armed with axe, Katti and stick, with an intention to assault and kill Shatrughan and thereafter when Bharat came to rescue him, then they assaulted Bharat and killed him. The witnesses in their evidence, have stated that the accused armed with weapons when arrived at spot, were saying that the cattle of deceased Shatrughan had entered in their field of the wheat crop and damaged the wheat crop, since Shatrughan has left his cattle free, and that was the immediate reason/cause for the accused for commission of offences alleged against them by the prosecution and also enmity on account of civil dispute.

28. At this juncture, and before we proceed to discuss the evidence of the eye witnesses, we deem it appropriate to remind ourself the scope of appeal under Section 386 of the Code of Criminal Procedure filed by the State against the acquittal of the Respondents. The Supreme Court in the case of State of M.P. vs. Bacchudas Alias Balram and others, (2007) 9 S.C.C. 135, in Para 9 of the Judgment, observed thus: "9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that of if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast

upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.*, (2003) 3 S.C.C. 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 S.C.C. 793, *Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 S.C.C. 225, *Jaswant Singh v. State of Haryana*, (2004) 4 S.C.C. 484, *Raj Kishore Jha v. State of Bihar*, 2003) 11 S.C.C. 519, *State of Punjab v. Karnail Singh*, 2003) 11 S.C.C. 271, *State of Punjab v. Phola Singh*, (2003) 11 S.C.C. 58, *Suchand Pal v. Phani Pal*, (2003) 11 S.C.C. 527 and *Sachchey Lal Tiwari v. State of U.P.*, (2004) 11 S.C.C. 410. (Underlines added)

29. The same view is reiterated by the Supreme Court in the case of *Valson and another vs. State of Kerala*, (2008) 12 S.C.C. 241.

30. Keeping in view the observations made by the Supreme Court in the case of *State of M.P. vs. Bacchudas Alias Balram and others* (supra) and in the case of *Valson and another vs. State of Kerala* (supra), we would proceed to review/reappreciate the crucial evidence brought on record by the prosecution.

31. The prosecution examined PW1 Padminibai w/o Shatrughan Nirdunde. She deposed that she was married with the deceased Shatrughan Nirdunde. She has two sons and two daughters born out of the said wedlock. Shriram is her husband's elder brother. Laxman is also her husband's elder brother, so also deceased Bharat. Her family and family of deceased Bharat were residing in the field alongwith them. Their family and family of Bharat were residing jointly. Shriram, Laxman and rest of the family members were residing in the village Pimpaldari. The field in which they were residing, is situate about 5 to 7 fields away from the village Basti. Initially they owned and possessed 121/2 acres agricultural land. Out of that, they sold 61/2 acres land and now they possess only six acres agricultural land. The agricultural land of deceased accused Gangaram is situate to the south of their agricultural land and adjacent to the same. There is a common Dhura between their agricultural land and land of Gangaram. The Survey Number of their agricultural land is 198. The total area of field Survey No.198 was 25 acres. In the decision of Civil Court, half of that land i.e. 121/2 acre land was given to Gangaram and rest 121/2 acres land to their family. Dispute was going on between their family and family of accused persons on the cause of agricultural land. It was the say of deceased Gangaram that, her family was in possession of some portion of agricultural land of Gangaram. . PW1 Padminibai further deposed that incident took place about 3 and 1/4 years prior to recording her evidence. It was the date 2nd, of beginning month of new year. On that day, she herself, Vimal w/o Bharat and her husband's sister Prayagbai

were plucking cotton in the field. The deceased Bharat was taking rest at the Akhada (cattleshed) erected in the field. Her husband was watering grams crop. It was about 11.00 a.m. During the time her husband was watering grams crop, the assailants came and then assaulted her husband. The assailants came from the western side. The assailants were Govind, Balaji and Dnyanoba. They were wearing halfpant, banyan and handkerchiefs were tied around the forehead. Accused Govind had an axe in his hands. Accused Balaji had Katti with him. There were two injuries on the head of her husband due to an axe blow given by Govind. There were injuries of Katti on the right hand fingers, and fingers were partly cut off. They were so cut off due to injuries by Katti of Balaji. Accused Dnyanoba had stick with him. There were beating marks on the hands and legs of her husband due to which fractures were caused to the hands and legs and bones were almost separated and hanging. On hearing the shouts of her husband, she went running to her husband. When she was proceeding towards her husband and she was at a distance of about 4 to 5 ft. from her husband, accused Dnyanoba came towards her and inflicted blow with stick on her head, hands and legs. Due to blows with the stick as aforesaid, she became unconscious and fell on the spot where beating was given. On hearing their shouts, Bharat came running towards them and when he was at some distance from them, accused Nos.1 to 3 beat him. Vimalbai and Prayagbai also came running towards them. Assailants went away towards the village. The right leg of Bharat was fractured. Vimal and Prayagbai followed the accused, who proceeded towards villagebasti. Prayagbai reported her that, accused also beat to the inhabitants at their house in the village. Prayagbai reported her that, brother Laxman (Bhau) was injured with Katti. Police came to the field. When police came to the field, her husband Shatrughan was lying in dead condition and Bharat was alive. After the police came in the field, Bharat made signal with his hand and then he died. Police officer Phad had come to their field after the incident.

. PW1 Padminibai further deposed that, on that day it was the say of accused persons that, her husband Shatrughan had left free his cattle in the wheat crop of accused persons. On that day, at about 6.00 she herself, Padminibai and Vimalbai were taken to Gangakhed. She was examined by the doctor in the hospital at Gangakhed. Her statement was recorded by the police. The complaint dated 2nd January, 1995, which was shown to her, bears her signature. The contents of the complaint after recording the same, were read over to her. The complaint is at Exhibit 18. Muddemal property Article No.19 (axe), Article No.20 (Katti) and Article No.21 (stick) shown to her, were the same weapons. She identified the clothes of Shatrughan and Bharat. At the time of incident, accused Govind was wearing stitched halfpant. Accused Balaji and Dnyanoba were wearing halfpants having elastics at the waist (readymade). Accused Govind was wearing banyan (Article No.23), accused Dnyanoba was wearing banyan (Article No.27) and accused Balaji was wearing halfpant (Article No.22), accused Dnyanoba was wearing Article No.24 and accused Balaji was wearing Article

No.26.

. During the course of her crossexamination by the counsel for accused No.1, PW1 Padminibai stated the details about the field Survey No.198 owned by them. She further stated that the height of common Dhuras of three subdivisions is ranging from 2 ft., 2 1/2 ft. to 3 ft. There is well in the subdivision where there was cotton crop. Around the well there is heap of excavated material like stone and earth, having the height upto the ceiling of the CourtHall from the ground level, i.e. 13 to 14 ft. In the subdivision of the field where there is well, to the western side of the well there is half Dhura having the height of about 3 ft. from the ground level in that subdivision of the well. The Akhada on the field is at a distance of about 30 to 40 ft. from the well and not at a distance of about 300 to 400 ft. Such Akhada is erected to the western side of the well on the first Dhura of subdivision after the well, towards western side. On the said Dhura, and surrounding the residential house and Akhada, there are trees of Jambhul, Sheoga, Babhul, Anjan. She has further stated details about the Akhada (cattleshed) and their residential house. She further stated that at the time of incident, cotton was stored in the house. At the place of residential house and Akhada on the field, there is heap of fodder, adjacent to Dhura. She has further stated about the details about the fields owned by other persons. She further stated that, adjacent to their field where there was cotton crop, big bullockcart way leading to village passes. The said road also leads to villages Waghadari, Pisewadi, Anandwadi, Tandalwadi, Selmoha and Anterwali. The said bullockcart way is busy road, and there is often traffic on the said road. She further stated that village Pimpaldari is at a distance of about 1 1/2 K.M. to 2 K.M. from their field. She further stated details about her residential house and the details about adjoining houses. She further stated that front portion of their residential house is constructed in stones and mortar. Rest of the three walls of the house are constructed in mud. After effecting entry in the house, by the front entrance door, on both sides there are "Dhalaj" (open space). There is staircase inside the house for going on the terrace of their house. If the northern side entrance door is closed, then no one can enter in their house, and entry to the outside is prohibited.

. During the course of her crossexamination, PW1 Padminibai further stated that prior to the incident, on the large scale Ganja plants were seized by the police from the fields of villagers of their village. She further stated that after the incident, she herself and Vimalbai are residing at their motherhood respectively.

32. We have discussed in detail, in foregoing Paragraph, the evidence of PW1 Padminibai. It is brought on record by the prosecution that Padminibai also sustained the injuries. Medical Officer PW17 Manohar Ghule deposed in his evidence that, he medically examined Padminibai w/o Shatrughan and on examination he found four injuries which are already mentioned while discussing the evidence of PW17 Manohar Ghule. He has stated that the age of injuries was within 24 hours and the injuries sustained by Padminibai were simple in nature.

The fact that PW1 Padminibai sustained injuries is brought on record by the prosecution. There was no reason for the trial Court to hold that Padminibai has not witnessed the incident. As already observed, the trial Court after discussing the evidence of Padminibai, recorded the conclusion that Padminibai was not eye witness to the incident. At one stage the trial Court reached to the conclusion that Padminibai (PW1) has not witnessed the incident at all, and then went on discussing her evidence by observing that, even as per her version she has not actually seen the assault by the accused on Shatrughan.

33. If the evidence of Padminibai (PW1) as discussed herein above is considered in its entirety, she stated the date of incident, the approximate time of the incident. She further stated that she herself, Vimal w/o Bharat and her husband's sister Prayagbai were plucking cotton in the field. Deceased Bharat was taking rest at the Akhada (cattleshed) erected in the field. Her husband was watering grams crop. It was about 11.00 a.m. When her husband was watering grams crop, the assailants came and then assaulted her husband. She stated that assailants Govind, Balaji and Dnyanoba arrived at the spot armed with weapons. Accused Govind had an axe in his hands. Accused Balaji had Katti with him and accused Dnyanoba had stick with him. On hearing the shouts of her husband, she went running to her husband. When she was proceeding towards her husband and was at a distance of about 4 to 5 feet from her husband, accused Dnyanoba came towards her and inflicted blow with stick on her head, hands and legs. Due to the blows of stick she became unconscious and fell on the spot where beating was given to Shatrughan. Her evidence, even slightestly cannot be doubted. Therefore the findings recorded by the trial Court that she had no opportunity to see assailants or the assailants holding the weapons or that she did not see assailants actually assaulting the husband, are totally perverse. As stated by Padminibai, she was at a distance of 4 to 5 feet from her husband, and she started going towards her husband after hearing the shouts of her husband, that itself indicates that she witnessed that the blow by axe was given by accused Govind on the head of Shatrughan and other accused were also assaulting him. Padminibai (PW1) had complete opportunity to see the accused, the weapons held by them, their demeanour and actual assault on Shatrughan. Ultimately, Padminibai and other eye witnesses are residing in the village, and it is not expected from the rustic villagers that they should tell exact time of the incident and minute details, that too in such a state of mind when Padminibai was witnessing the incident of murderous attack by the accused on her husband Shatrughan. At the cost of repetition, Padimibai is injured witness and her injuries are noticed by medical officer (PW17) Manohar Ghule on her medical examination. By any stretch of imagination her presence at the spot of incident cannot be doubted or disbelieved. Her evidence is completely trustworthy, and inspires full confidence. The suggestion given by the defence that on account of some dispute in her joint family, there was quarrel amongst four brothers, and as a result there was scuffle, in which death of Shatrughan and Bharat took place, and Laxman sustained serious injuries, has been firmly denied by Padminibai

(PW1) and other witnesses as well. On the contrary, Padminibai reiterated her version stated in the examination in chief, that accused assaulted Shatrughan and when Bharat came to rescue Shatrughan, then Bharat was also assaulted, and both of them were killed by the accused. Merely because Padminibai stated during her crossexamination that, she does not know about the civil dispute pending between the family of the deceased and accused, cannot be the ground to dislodge or disbelieve her evidence. Though it is argued by the senior counsel appearing for the Respondents that the part of the F.I.R. is as per narration of Vithal i.e. fatherinlaw of Padminibai about the pendency of civil suit, on that ground we are not convinced to disbelieve the evidence of Padminibai. Ultimately F.I.R. is an information given to the police station so as to set the investigation in motion. The F.I.R. is not an encyclopedia. As already observed, neither the defence nor the trial Court concentrated on the core/substratum of the prosecution case, as narrated by the injured witness Padminibai and Vimal and other witness Urmila that the assailants came armed with weapons and assaulted Shatrughan and Bharat on vital parts, which resulted into their death. Upon considering the evidence on record in its entirety, it is crystal clear that the accused came prepared having weapons in their hands like axe, Katti and stick and gave blows on the vital parts of the body of Shatrughan and Bharat. The intention was obvious, that they wanted to ensure the death of Shatrughan, and in the said process when Bharat came to rescue Shatrughan, then Bharat was also assaulted on vital parts, and both of them were killed by the Respondentsaccused. When there is substantive piece of evidence/direct evidence in the nature of eye witnesses and it gets complete corroboration from the medical evidence, it needs to be emphasized that, it is not necessary to search for further corroboration to the evidence of the eye witnesses. The evidence of Padminibai gets complete corroboration from the medical evidence, and also from the evidence of other eye witnesses.

34. It appears that the trial Court went on discussing insignificant admissions given by the witnesses in crossexamination which would not really affect core/substratum of the prosecution case and also proceeded to rely upon the minor contradictions and omissions, and thereby disbelieved the entire evidence of the eye witnesses. The trial Court observed that there is pendency of civil litigation between the parties on the cause of agricultural land since 194950, however there was no any untoward incident in the past between two families, and therefore there was no immediate cause to kill two persons and attempt to kill third person by the accused. As already observed, Padminibai in her evidence has stated that the accused were asking her husband Shatrughan, why he left free his cattle in wheat crop of the field owned by the accused. Though the learned Judge has observed that, he is aware that question of motive is not material where there is direct evidence of acts of accused and acts themselves are sufficient to disclose the intention of the actor, however proceeded to discuss the "motive" and devoted few pages, and ultimately reached to the conclusion that, there was no motive for commission of offence, and also there was no

immediate cause to kill the deceased and attempt to kill Laxman. Such findings recorded by the trial Court that there was no immediate cause to kill deceased and attempt to murder Laxman, are perverse and contrary to the evidence of the prosecution witnesses brought on record that, there was immediate cause for attacking the deceased by the accused on account of cattle of the deceased Shatrughan entering into the field of the accused, as stated by the accused themselves when they arrived at the spot of incident armed with weapons. The finding recorded by the trial Court that there was no damage to the wheat crop is insignificant, in as much as, it would not affect the core/substratum of the prosecution case as stated by the eye witnesses, of actual assault by the accused and death of Shatrughan and Bharat and subsequent murderous attack by the accused on Laxman by going to his house situate in village, immediately on the same day, after the main incident which had taken place in the agricultural field of the deceased. It has also come on record that the deceased i.e. Shatrughan and Bharat, along with their family members, were residing in the field having their houses in the field and other two brothers, Laxman and Shriram were residing in the house situate in village, which is about 11/2 to 2 K.M. from their agricultural field. The presence of Padminibai, Vimalbai and Urmila in the agricultural field at the relevant time was but natural being agriculturists and they were in the field for plucking the cotton. It is disturbing to note that the trial Court observed, Padminibai (PW1) maintained the secrecy about the incident and about the names of the assailants till the time of recording First Information Report on 2nd January, 1995 till 7.30 p.m.

35. It is also observed by the trial Court that there was delay in lodging the F.I.R. and when the police constable came to the field and arrived at the spot there was no reason for not lodging the F.I.R. immediately. Such findings recorded by the trial Court are completely unacceptable and perverse, in as much as Padminibai herself sustained injuries and thereafter, for a while she was unconscious, and in such a state of mind and mental trauma when her husband was killed in front of her, delay of few hours in lodging the F.I.R., by any stretch of imagination cannot be considered fatal to the prosecution case and reason for the criticism by the trial Court and defence. Therefore, the argument of the learned senior counsel appearing for the defence that there was delay in lodging the F.I.R. and therefore the case of the prosecution should be disbelieved, is without any substance. The Reported Judgments on which reliance has been placed by the learned senior counsel, in support of his submission about delay in lodging the F.I.R. are pronounced in total different fact situation, and facts of said cases cannot be compared visavis the facts involved in the present case. The Supreme Court in the case of Mukesh and another vs. State (NCT of Delhi) and others, (2017) 6 S.C.C. 1, in Paras 53, 54 and 55 held thus: "53. In the context of belated FIR, we may usefully refer to certain authorities in the field. In Ram Jag v. State of U.P., 1974) 4 S.C.C. 201, it was held as: (SCC p. 208, para 16)

"16. ... that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the first information

report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution."

54. In *State of H.P. v. Rakesh Kumar*, (2009) 6 S.C.C. 308, the Court repelled the submission pertaining to delay in lodging of the FIR on the ground that the first endeavour is always to take the person to the hospital immediately so as to provide him medical treatment and only thereafter report the incident to the police. The Court in the said case further held that every minute was precious and, therefore, it is natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. The Court, under the said circumstances ruled that in fact, it was a case of quick reporting to the police.

55. Judged on the anvil of the aforesaid decisions, we have no hesitation in arriving at the conclusion that there was no delay in lodging of the FIR."

36. There was no question of maintaining secrecy about the incident by Padminibai as has been held by the trial Court. It has come on record that other eye witnesses have also witnessed the incident. It is common knowledge that independent witnesses are always hesitant to come forward to give evidence against accused persons by reason of apprehension on their part as regards the safety of their person or property. In the present case, the accused dared to kill Shatrughan and Bharat by using sharp weapons, assaulted Padminibai (PW1) and Vimalbai (PW11), and attempted to kill Laxman by going from field to his house and also challenged other family members of Laxman that, they should not dare to come forward against accused. In such a situation when the accused committed two murders in broad day light and also assaulted Padminibai (PW1) and Vimalbai (PW11) and attempted to kill Laxman, the expectation that independent witnesses should come forward to depose against them, was impossible. Merely because Padminibai, Vimal and Urmila were interested witnesses, is no ground to dislodge or disbelieve their evidence as has been observed by the trial Court.

37. The main criticism by the defence qua the evidence of PW1 Padminibai, PW11 Vimal and PW12 Urmilabai is that they are partisan or interested witnesses. In this respect, at this juncture, it would be apt to make reference to the judgment of the Supreme Court in the case of *Masalti vs. State of Uttar Pradesh*, AIR 1965 SC 202. The Supreme Court in the case of *Masalti* (supra) has made it clear that it is, no doubt, the quality of the evidence that matters and

not the number of witnesses who give evidence. The Supreme Court in para 14 of the judgment in case of Masalti (*supra*) observed, thus: "14. Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. 51 S.C.O 146 Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

38. The Supreme Court in the case of Rakesh and another vs. State of Madhya Pradesh, (2011) 9 S.C.C. 698, in Para 18 of the Judgment, observed thus: "18. Evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witness who are related to the victim are as competent to depose the facts as any other witness. Such evidence is required to be carefully scrutinised and appreciated before reaching to a conclusion on the conviction of the accused in a given case. [See Himanshu v. State (NCT of Delhi), 2011) 2 S.C.C. 36 and Bhajan Singh, (2011) 7 S.C.C. 421."

39. It is also surprising to note that the trial Court proceeded to take into consideration and gave much importance to the subsequent conduct of Padminibai, after incident was over. In fact as already observed, the trial Court ought to have concentrated on the core/substratum of the prosecution case instead of traveling in periphery and making endeavour to disbelieve the prosecution case by disbelieving evidence of injured eye witnesses and overwhelming medical evidence which corroborates to the evidence of eye witnesses. The prosecution witnesses have no control over the police officers and in the present case on the constables who went to the spot of incident. The informant cannot be blamed for not passing on the information by the concerned police constables to their superiors and recording the F.I.R. by the concerned police station immediately after the incident was over and when the police constables visited the place of occurrence. It has also come on record that police station is at Gangakhed which is about 15 KMs. away from the place of occurrence. Upon appreciation of evidence of Padminibai (PW1), we are of the

view that the evidence of Padminibai, gets complete corroboration from the medical evidence, and can form the basis for convicting the Respondentsaccused for committing murder of Shatrughan and Bharat and also assaulting Padminibai (PW1) and Vimalbai (PW11). Though the defence tried to bring on record certain omissions, contradictions and improvements in the evidence of Padminibai, nevertheless those alleged omissions, contradictions or improvements are not of substantial in character, which would affect the core/substratum of the prosecution case and nullify the direct evidence of injured witnesses which gets complete corroboration from the medical evidence. The Supreme Court in the case of Mahendra Pratap Singh vs. State of Uttar Pradesh, (2009) 11 S.C.C. 334, in Para 28 of the Judgment, observed that: "28. In Inder Singh v. State (Delhi Admn.), (1978) 4 S.C.C. 161 this Court while dealing with the appreciation of evidence in a criminal case, held that: (SCC p. 162, para 2)

"2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect."

40. The suggestion given to Padminibai in her crossexamination that Shriram and Laxman at one hand and Bharat and Shatrughan at the other hand, on account of some dispute and differences, quarreled with each other and the incident was outcome of their scuffle/quarrel has been denied in toto by Padminibai and other prosecution witnesses. It is improbable and unacceptable that injured prosecution witnesses will leave the real culprits aside and will falsely implicate the Respondentsaccused in the commission of offence.

41. Now we would like to discuss the evidence of PW11 Vimalbai w/o Bharat Nirdunde. Vimalbai (PW11) deposed that her marriage with deceased Bharat took place at Pimpaldari about 12 years ago from the date of recording her evidence. After marriage, she started residing with her husband at village Pimpaldari. Deceased Bharat, Shatrughan, she herself and Padminibai and their children were residing in the field. The area of that field was 121/2 acres. She knows accused Nos.1 to 3. Their names are Govind, Balaji and Dnyanoba. The name of their father is Gangaram Kendre. The agricultural land of accused is situate to the southern side of her agricultural land. There were disputes on the cause of the field between them and Gangaram, but she did not know the details of such dispute. . PW11 Vimal further deposed that incident took place about 3 and 1/4 years ago from the date of recording her evidence. It was the date 2nd of 1995, and Marathi month "Poush". She herself, Prayag, Urmila and Padmini were plucking the cotton in the field. Bharat and Shatrughan were also present in the field. Shatrughan was watering grams crop. Her husband was taking rest at the Akhada. Govind, Balaji and Dnyanoba came from southern side. She again says that they came from western side. They wore banyan and Chaddi and handkerchiefs were tied to their heads. Balaji had on his person readymade Chaddi and white banyan. Dnyanoba had on his person readymade half Chaddi

and blue coloured sandow banyan. Accused Govind had an axe in his hands. Accused Balaji had Katti and accused Dnyanoba had stick with him in his hands. First of all Govinda came, thereafter Balaji and thereafter Dnyanoba. They assaulted Shatrughan. Accused Govinda inflicted blow with an axe on the head of Shatrughan. Accused Balaji inflicted blow with Katti on the left hand palm of Shatrughan. Accused Dnyanoba gave stick blows on the legs of Shatrughan due to which fractures were caused to the legs and bones had come out. Accused assaulted Shatrughan alleging that cattle were left free in their wheat crop. After assault to Shatrughan, Padmini went towards Shatrughan. She went near Shatrughan and requested accused not to assault her husband. In that process, she had received beating on her head because of which due to giddiness, she fell on the ground. Accused Dnyanoba gave blow with stick on the head of Padmini.

. PW11 Vimal further deposed that, her husband, who was resting at the Akhada, went towards western side, the place where Shatrughan was assaulted. Accused Govind, Balaji and Dnyanoba assaulted her husband. Govind inflicted two blows with an axe on the head of her husband due to which head of Bharat was cut. Accused Balaji inflicted blow with Katti on the left hand of her husband. Accused Dnyanoba inflicted blow with stick on the right leg of her husband, due to which there was severe swelling to the right leg. When she went near her husband, accused beat her. Accused Balaji gave blow with Katti on right leg on ulna bone. Accused Dnyanoba beat her with stick.

. PW11 Vimal further deposed that, after assaulting aforesaid, accused Nos.1 to 3 proceeded towards village. Urmila and Padmini also went to the villagebasti. She was waiting in the field upto 6 to 7 p.m. When Phad Jamadar came to the field, her husband Bharat was in the bullockcart. After Phad came, her husband made signal to Phad by his hand and then her husband died. She herself, Padmini and Gaya put Bharat in the bullockcart for taking him towards village. Police Jeep came and then they took them to police station, Gangakhed. Thereafter, they were taken for medical examination. She was interrogated in the police station.

. During the course of her crossexamination, PW11 Vimal stated that she did not know whether dispute on the cause of field is going on between family of accused persons and her family since last 40 to 50 years. She did not know what is mean by subdivision and fragmentation. She did not understand consolidation, injunction, civil suit. She did not know about mutation of names, recording names in the 7/12 extract. She knows that there was dispute over agricultural land between her family and family of accused persons. She did not know since when such dispute existed and subject matter and details of the dispute. In the adjoining lands of her land, agricultural operations, watering of the crops were in progress. The agricultural lands of accused persons is situate to the southern side of her agricultural land. The assailants came from western side. The "Maramari" (fight) took place in the field where there was standing grams crop. Shatrughan was lying in the field where there was grams crop standing. Bharat

was lying in the adjoining field where there was cotton crop standing. On hearing hue and cry, she herself and Padmini started towards the same. It did happen that Padminibai led on the person of her husband and she herself on the person of her husband. Her clothes were blood stained. She showed her blood stained petticoat to the police but police did not take the same in their possession and police burnt the same in fire. Incident took place at about 11.00 to 11.30 a.m. She was in the field upto 6.30 p.m. Police Jamadar first arrived at the spot. Thereafter 2 to 3 villagers had come to the field. They saw the situation and then went away. She denied that on the day of incident, Shriram and Laxman came in the field and demanded agricultural produce from Bharat and Shatrughan and on that cause dispute took place and in that dispute Bharat and Shatrughan sustained injuries and died.

. PW11 Vimal further stated in her crossexamination that her statement was recorded by the police. The contents of portion marked "A" were read over to her. She asserted that she has not so stated in her statement before the police. Her fatherinlaw did not tell the contents of portion marked "A" in her statement. She did not know as to how the contents of portion marked "A" came to be incorporated in her statement dated 3rd January, 1995. She has stated in her statement before the police that accused wore banyan, Chaddi and handkerchiefs were tied to their heads. She cannot assign the reasons for such omission in her police statement. She has stated in her statement before the police that, Balaji had on his person readymade Chaddi and white banyan, Dnyanoba had on his person readymade half Chaddi and blue coloured sandow banyan. She cannot assign any reason for such omission in her police statement. She has stated in her statement before the police that, accused Govind inflicted two blows with an axe on the head of her husband due to which head of her husband was cut into two portions. She cannot assign any reason for such omission in her police statement. She has not stated in her statement before the police that, after the incident was over, Padminibai proceeded towards village. She has stated in her statement before the police that, when Phad Jamadar came to the field, Bharat was kept in the bullockcart. She cannot assign any reason for such omission in her police statement. She has stated in her police statement that, after Phad Jamadar arrived in the field, her husband Bharat made signal to him by hand and then he died. She cannot assign any reason for such omission in her police statement.

42. We have discussed the evidence of Vimal (PW11) in detail in aforesaid paragraph. She has clearly stated in her evidence that family of Shatrughan and her family were residing in the field. She has stated about the details how the incident had taken place. As already discussed, she categorically stated that accused assaulted Shatrughan. Accused Govind inflicted blow with an axe on the head of Shatrughan. Accused Balaji inflicted blow with Katti on the left hand palm of Shatrughan. Accused Dnyanoba gave stick blows on the legs of Shatrughan. We have already discussed the evidence of PW17 Manohar Ghule who medically examined Vimalbai (PW11) wherein he noticed two injuries on her person. His

evidence shows that Vimalbai suffered injuries within 24 hours before she was examined by him and he described that those injuries are simple in nature. Therefore, Vimalbai was not only eye witness to the incident but she was also injured in the said incident. She stated that when she went near Bharat, accused beat her. She further deposed that after the said incident in the field, the accused proceeded towards the village. Evidence of Vimalbai (PW11) is not shattered in the crossexamination, in as much as she denied the suggestion that on the day of incident, Shriram and Laxman came in the field and demanded agricultural produce from Bharat and Shatrughan and on that cause dispute took place and in that dispute Bharat and Shatrughan sustained injuries and died. She reiterated during her crossexamination, the manner in which the incident had taken place and how the accused assaulted Shatrughan and Bharat and killed them and also assaulted Padminibai and herself. It appears that the trial Court by ignoring the evidence of Vimalbai on the core/substratum of the prosecution case, proceeded to discuss her evidence and gave importance to minor contradictions, omissions, and recorded perverse finding that the presence of Vimalbai on the spot is not proved by the prosecution beyond reasonable doubt.

43. Upon considering the evidence of Padminibai (PW1) and Vimalbai (PW11) in its entirety, their evidence corroborates with each other and also gets corroboration from the medical evidence. Their presence on the spot cannot be doubted since both of them sustained injuries during the said incident, as noticed by PW17 Manohar Ghule. The Supreme Court in the case of Mukesh and another vs. State (NCT of Delhi) and others (supra), while discussing the evidentiary value of the injured witnesses, in Para 81 and 82 of the Judgment held as under: "81. The injuries found on the person of PW 1 and the fact that PW 1 was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight.

82. In *Mano Dutt v. State of U.P.*, (2012) 4 S.C.C. 79, it was held as under: (SCC pp. 9092, para 31)

"31. We may merely refer to *Abdul Sayeed v. State of M.P.*, (2010) 10 S.C.C. 259 where this Court held as under: (SCC pp. 27172, paras 2830)

"28. The question of the weight to be attached to the evidence of a witness who was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a builtin guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar*, (1973) 3

S.C.C. 881, Malkhan Singh v. State of U.P., (1975) 3 S.C.C. 311, Machhi Singh v. State of Punjab, (1983) 3 S.C.C. 470, Appabhai v. State of Gujarat, 1988 Supp. S.C.C. 241, Bonkya v. State of Maharashtra, (1995) 6 S.C.C. 447, Bhag Singh v. State of Punjab⁴, (1997) 7 S.C.C. 712, Mohar v. State of U.P., (2002) 7 S.C.C. 606 (SCC p. 606bc), Dinesh Kumar v. State of Rajasthan, (2008) 8 S.C.C. 270, Vishnu v. State of Rajasthan, (2009) 10 S.C.C. 477, Annareddy Sambasiva Reddy v. State of A.P., (2009) 12 S.C.C. 546 and Balraje v. State of Maharashtra, (2010) 6 S.C.C. 673.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, 2009) 9 S.C.C. 719 where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 72627, paras 2829)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp. (3) S.C.C. 235 this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand, (2004) 7 S.C.C. 629 a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy crossexamination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana, (2006) 12 S.C.C. 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.""

44. Now, we would proceed to discuss the evidence of PW12 Urmilabai w/o Laxmanrao Nirdunde. PW12 Urmilabai deposed that the name of her fatherinlaw is Vithalrao. Bharat, Shatrughan, Shriram and Laxman were residing jointly. Shriram and Laxman were residing in the house in the village and Bharat and

Shatrughan in the house which was in the field. She did not know the Survey Number of the field. Gangaram's land is situate to the southern side of her land. She did not understand as to how many acres land her family owned. The dispute was going on in respect of agricultural land, but she did not know such dispute. . PW12 Urmilabai further deposed that incident took place about 3 and 1/4 years prior to recoding her evidence. They were plucking cotton. It was about 10.00 to 11.00 a.m. She herself, Prayag, Vimal and Padmini were plucking the cotton. Bharat and Shatrughan were also present in the field. Shatrughan was watering grams crop and Bharat was taking rest. Govind Kendre, Dnyanoba Kendre and Balaji Kendre, all of a sudden came there and all inflicted blow with an axe on the head of Shatrughan. They came from Varla side (western side). Govind Kendre inflicted blow with an axe. Heavy beating was given on the leg which caused multiple fractures. Dnyanoba Kendre so beat. Balaji Kendre beat on the hand and fingers. Shatrughan was shouting for help. Bharat came running on hearing such cry. On hearing the cry of Shatrughan, she also proceeded towards Shatrughan. When Bharat was coming, beating was given to him on his head by all three accused. Govind assaulted Bharat with an axe on his head. Balaji beat on the leg of Bharat. Dnyanoba beat on the hand. Balaji assaulted with Katti on the hand of Bharat. Dnyanoba assaulted with stick on the leg. Then she proceeded to village. Accused persons after assaulting as such, also proceeded towards village.

. PW12 Urmilabai further deposed that, as the accused proceeded towards village, she also started. When she reached at her house, she saw that stone pelting was going on their house. As the stone pelting was going on, hence she did not go to her house. Then she went to one Dadarao Mundhe to whom she reported the incident happened in the field and earnestly requested him to accompany with her as accused also beat her husband. Accordingly, Dadarao came along with her to her house. Her husband was lying down in the house. He made arrangement for taking her husband for medical treatment. Accordingly, her husband was taken to S.T. Bus. She also accompanied with her husband. So also Dahiphale constable accompanied them.

. During the course of her crossexamination by the counsel for accused No.1, PW12 Urmilabai stated that she did not know the details of dispute over the land between them. She did not know anything about fragmentation and consolidation. She has stated in her statement before the police that, dispute was going on between her family and family of accused on the cause of agricultural land. Vithalrao did not provide information to the police in respect of fragmentation, consolidation, civil suit and stay order. Field of accused persons is at a distance of two fields away from her house in the field. They were plucking cotton at a distance of about 15 to 20 ft. from the residential house in the field where Bharat was taking rest. She herself and Padminibai were plucking cotton on the same portion of the land. Vimalbai was also with them plucking the cotton. She herself, Padmini, Vimal and Prayagbai started going together on hearing the hue and cry. Padminibai was little ahead of three of them. Bharat

also reached near Shatrughan along with them, simultaneously. The road passing adjacent to their field goes to village Pimpaldari, Anterveli, Selmoha etc. The said bullockcart way passes through the field of Gangaram. The cattleshed in the field of the accused had no door.

. PW12 Urmilabai further stated that, towards the village side, accused first proceeded and then she followed them. In the fields, by both the sides of the road leading to village Pimpaldari, the respective land owners were working. While going towards her house, she was shouting and weeping. She further stated that when she herself and Dadarao reached to her house, the door of her house was open. Police had just reached ahead of them at her house. She had talk with the police and she informed the police that her two family members were killed in the field. She denied that there was dispute between Shriram and Laxman on one hand and Bharat and Shatrughan on the other hand, on the cause of partition of landed property. She denied that Bharat and Shatrughan were demanding partition from Shriram and Laxman, to which Shriram and Laxman were resisting. She further denied that, on the day of incident, Shriram and Laxman came to the field and wanted to take the agricultural produce along with them, and Bharat and Shatrughan resisted them to give agricultural produce unless property was partitioned and on that cause quarrel took place, during which Bharat and Shatrughan sustained injuries and died.

. PW12 Urmilabai further stated that, she has stated in her statement before the police that, Govind Kendre, Dnyanoba Kendre and Balaji Kendre all of a sudden came there and all of a sudden inflicted blow with an axe on the head of Shatrughan and Govind Kendre inflicted blows with an axe. She was unable to assign any reason for such omissions in her police statement dated 3rd January, 1995. She has stated in her statement before police that, multiple fractures were caused to the leg of Shatrughan. She was unable to assign any reason for such omissions in her police statement. The defence has further brought on record certain omissions in her police statement.

. During the course of her crossexamination by the counsel for accused Nos.2 and 3, PW12 Urmilabai stated that after the incident at residential house, when she returned to her house alongwith Dadarao, her husband Laxman was lying down on the cot on which quilt was laid. Serious injury was caused to the head of Laxman, from which blood was oozing and spread on the quilt which was on the cot. As it was bleeding, in order to stop such bleeding, she poured kerosene oil in the injury and then tied injury with pant. Despite her aforesaid treatment bleeding did not stop and the same continued till she reached in the hospital. During the process of tying injury, Phad Jamadar was present near her and Laxman. The blood also spread on the clothes of Laxman. The pant with the help of which injury was tied was also blood stained. At the S.T. Stand of Pimpaldari, waiting for the bus, she had taken head of Laxman on her lap. She further stated that from the time of her return to the house till she started for Gangakhed for treatment of her husband, one hour passed. When she herself, her husband and

police constable Dahiphale started by the bus for Gangakhed, her Bhaya Shriram was also with them in the same bus.

. PW12 Urmilabai further stated that, while they four female members were plucking cotton, they heard the shouts of Shatrughan and then on hearing the cries, they started towards that direction. The cotton crop standing in the field where they were plucking the cotton, was of the height upto neck to head level. When they reached on the spot, they saw that Shatrughan was lying down on the ground. Thereafter they all four females started shouting loudly and on hearing their shouts, Bharat came running to the spot. She again said that Bharat reached to the spot simultaneously with them. After the dispute was over, when she started towards the village, she was alone. Thereafter she did not return to the field.

45. We have discussed the evidence of Urmilabai (PW12) in detail. The finding recorded by the trial Court that she did not know details about the civil dispute and discussed about other minor contradictions, omissions and improvements in her evidence and recorded the finding that the prosecution has not proved her presence on the spot of incident, which are contrary to the evidence brought on record by the prosecution.

46. As already observed, there is sufficient evidence brought on record by the prosecution in the nature of evidence of Padminibai (PW1) and Vimalbai (PW11). Their evidence corroborates with each other and gets sufficient corroboration from the medical evidence, and therefore we need not search for any other evidence. However, evidence of Urmilabai (PW12) also lends support to the prosecution case. The Supreme Court in the case of Mukesh and another vs. State (NCT of Delhi) and others (supra), in Paras 86 to 89 of the Judgment, held as under: 86. In this context, we may fruitfully reproduce a passage from State of U.P. v. M.K. Anthony, (1985) 1 S.C.C. 505: (SCC p. 514, para 10) "10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ..."

87. In Harijana Thirupala v. Public Prosecutor, (2002) 6 S.C.C. 470, it has been ruled that: (SCC p. 476, para 11)

"11. ... In appreciating the evidence the approach of the court must be

integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses."

88. In *Ugar Ahir v. State of Bihar*, A.I.R. 1965 S.C. 277, a threeJudge Bench held: (AIR p. 279, para 6)

"6. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

89. In *Krishna Mochi v. State of Bihar*, (2002) 6 S.C.C. 81, the Court ruled that: (SCC pp. 10405, para 32)

"32. ... The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time. In *Inder Singh*, (1978) 4 S.C.C. 161, Krishna Iyer, J. laid down that: (SCC p. 162, para 2)

"2. ... Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes."

In *State of U.P. v. Anil Singh*, 1988 Supp. S.C.C. 686, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is

as important as the other. Both are public duties which the Judge has to perform."

47. Now, regarding the second part of incident which had taken place in the house of PW13 Laxman, we would like to discuss the evidence of PW13 Laxman Vithalrao Nirdunde. PW13 Laxman Nirdunde deposed that he himself, Shiram, their wives, children and their parents were residing in the house in village Pimpaldari Bharat and Shatrughan, their wives and children were residing in the house in the field. It is Survey No.198, admeasuring six acres. Groundnut, grams, cotton and wheat crop were standing in the field. The Survey Number of the land of Gangaram is also 198. The total area of Survey No.198 was 24 acres. During the implementation of consolidation and fragmentation scheme, 13 acres land from Survey No.198 was detached and then consolidated to some other Survey Number. Against such decision, Gangaram filed case, claiming 6 acres land from them from Survey No.198. Then his family members filed civil suit in the Civil Court at Gangakhed. Injunction was issued in their favour and against Gangaram by Civil Court. . PW13 Laxman Nirdunde further deposed that, incident took place about 3 years and 3 months prior to recording his evidence. On that day, he himself, Shiram, their parents were present at their house. He was sitting in front of his grocery article shop, in the "Dhalaj" (courtyard). It was about 1.00 to 1.30 p.m. When he was so sitting, Govind, Balaji and Dnyanoba came to his house with axe, stick and Katti in their hands. They abused him by saying "Kumbhardya". Govind had an axe in his hand wearing halfChaddi and banyan of white colour and chocolate coloured Chaddi. Balaji had on his person white banyan and snuff coloured Chaddi. Balaji had Katti in his hand. Dnyanoba was wearing blue coloured banyan and Chaddi and he had stick in his hand. Accused Balu inflicted blow with Katti on his head. He was sitting in the courtyard of his residential house. After so assaulting him, accused started pulling him out of the house. Savitribai, his brother's wife came near him and rescued him and shut the door of the house from inside. Then stone pelting was started from near the house of Ganpati Kendre by climbing on the roof of house of Ganpati Kendre. Thereafter, his wife came to the house from the field. He was conscious. His wife reported him that, Govind, Dnyanoba and Balu killed Bharat and Shatrughan in the field. Thereafter, he was taken for medical treatment at Gangakhed.

. He further deposed that he would be able to identify the weapons and clothes on the persons of accused persons. Katti (Article No.20) before the Court shown to him was the same. Stick and axe (Article Nos.19 and 21) shown to him are also the same. Chaddi (Article No.23) and Banyan (Article No.22) belonged to accused Govind. Article Nos.26 and 27 are the clothes of Dnyanoba. Articles Nos.24 and 25 are the clothes of Balaji.

. During the course of his crossexamination by the counsel for accused No.1, PW13 Laxman Nirdunde stated that, besides his family members, Ram Nivrutti and Ram Madhav Mundhe are other sharers in Survey No.198. The claim of Gangaram before the Consolidation Officer was allowed, and decided in favour of Gangaram. The dispute restricted to the office of Consolidation Officer and in the

Court. His family members and Gangaram had no dispute with northern side land owners namely Babu, Trimbak, Sudam and Ankush, and eastern side land owners namely Maroti and Ganpati. Ram Nivrutti and Ram Madhav Mundhe had no dispute with them. Ram Nivrutti had dispute with Gangaram. He was unable to say area of the lands of Ram Nivrutti and Ram Madhav, the other holders of the land in Survey No.198. Ram Nivrutti's land was vacant and there was ground nut crop in the field of Ram Madhav. He was unable to say whether on that day ground nut crop in the field of Ram Madhav Mundhe was being watered by Ram. He further stated about the details of the crops in the field. The process of plucking cotton from the land by the side of the well was in progress. He denied that he himself and Shriram were claiming that they should be allowed to take agricultural produce stored in the house at the field at home, for which Bharat and Shatrughan were opposing. He denied that on the day of incident, they wanted to bring the agricultural produce from the field to the house and Bharat and Shatrughan opposed the same by saying that unless property was partitioned and given to them, they would not allow him and Shriram to take the agricultural produce. He further denied that on the said cause fight took place between the brothers and in that fight, Bharat, Shatrughan and he himself sustained injuries.

. PW13 Laxman Nirdunde further stated that his statement was recorded by the Magistrate on 2nd January, 1995. He has stated in his statement before the Magistrate that after beating him, accused pulled him outside the house, and that Savitrabai intervened and rescued him from accused persons and then she closed the door of the house from inside, and that accused climbed on the roof of the house of Ganpati Kendre and from there accused pelted stones, and that his wife informed him that accused Nos.1 to 3 killed Bharat and Shatrughan. He was unable to assign any reason for such omissions in his statement before the Magistrate. He has stated in his statement before the Magistrate that accused Govind had axe in his hand and Govind wore white banyan and chocolate coloured Chaddi, and that accused Balaji had Katti in his hand and he wore white banyan and snuff coloured Chaddi, and that accused Dnyanoba had stick in his hand and he wore blue coloured banyan and Chaddi. He was unable to assign reasons for such omissions in his statement before the Magistrate. He further stated that police did not show him the clothes from the person of the accused seized by the Police after seizure till the date of recording of his evidence. He denied that clothes and weapons before the Court are not of the accused.

. During the course of his cross examination by the counsel for accused Nos.2 and 3, PW13 Laxman Nirdunde stated that their residential house in village Pimpaldari is situate on the main road of village Pimpaldari. He understands the difference between Chaddi and underwear (Jangya). Article Nos.22, 24 and 26 were shown to him. He denied that those were underwears (Jangya) and not Chaddi. Prior to the incident, at any time he had not seen accused Nos.1 to 3 on Jangya on their person, or such Articles before the Court. Articles like Article Nos.22, 24 and 26 before the Court, are available in the open market. In every

house of agriculturist, stick, Katti and an axe are available. There is no special identification marks on the clothes Article Nos.22, 24 and 26, and sticks, Katti and axe before the Court. The house of Ganpati Kendre is not visible after closing the door of his house from inside the house.

. PW13 Laxman Nirdunde further stated that, their residential house faces towards east. To the east of their house, there is temple of Motiram Maharaj. The temple is not visible by standing in the door of their house. Even such temple is not visible if one comes from the road in front of their house. Even if loud shouts are raised from in front of their house, such loud shouts are not audible from temple. He further stated about the details of other houses near his house. He stated that after attack, he himself or his family members did not shout for the help. Stone pelting was made after they closed the door of their house from inside. There was heavy bleeding from the head after receiving beating to the head. He was not made to sleep on the cot. He was sitting inside the house resting the wall. He was resting to the wall till he started going to Gangakhed. After receiving injury to his head, till he started for Gangakhed for medical treatment, he was conscious. After reaching at Gangakhed, from S.T. Stand at Gangakhed they hired autorickshaw and went in front of police station and parked autorickshaw on the road for a while. His wife went in the police station, reported the incident and then police came near autorickshaw and then they went for medical treatment. For that night, he was admitted in the hospital and on next day, he was referred to Ambejogai hospital.

48. The second part of the incident had taken place in the house of PW13 Laxman. Prosecution witnesses in detail, have stated that after the incident of killing Shatrughan and Bharat, accused proceeded towards the village and then they made murderous attack on Laxman. Since Laxman (PW13) himself was examined by the prosecution, we have discussed his evidence in detail. It clearly emerges from his evidence that the accused abused him by saying "Kumbhardya". He deposed that Govind had an axe in his hand, Balaji had Katti in his hand and Dnyanoba had stick in his hand. As already discussed, he had stated about the manner in which he was assaulted. We have already discussed the evidence of medical officer PW17 Manohar Ghule, wherein he deposed that on medical examination of Laxman, he found five injuries on the person of Laxman. It appears that Laxman was examined by PW17 on the day of incident itself at about 5.15 p.m. PW17 deposed that injury No.1 was grievous in nature, caused by hard and sharp object. Injury Nos.2 to 5 were caused by hard and blunt object. They were simple in nature. He also observed that age of injury was within 12 hours. Therefore, the evidence of PW13 Laxman, who was injured witness, gets complete corroboration from the evidence of medical officer PW17 Manohar Ghule and therefore apart from the evidence of other witnesses who supported the version of Laxman, the evidence brought on record by the prosecution is sufficient to hold that the accused tried to kill Laxman. It has been brought on record that thereafter Laxman was taken for medical treatment at Gangakhed and from there, he was referred to Medical College, Ambejogai for

the treatment of head injury. Though some omissions are brought on record by the prosecution in the evidence of PW13, same are minor and insignificant in nature and would not affect core of the prosecution case.

49. We have also referred to the evidence of other prosecution witnesses who acted as panch, however it appears that some of them turned hostile.

50. The prosecution case also gets support from the evidence of PW9 Laxman Phad, who was police constable and visited the spot of incident in the agricultural field. His evidence clearly points out and suggested the spot of incident of murder of Shatrughan, Bharat and assault on Padminibai (PW1) and Vimalbai (PW11) by the accused was in the agricultural field of the deceased. We have already discussed his evidence in detail and same supports the prosecution case on various aspects.

51. Though the learned senior counsel appearing for the Respondents had made serious endeavour to point out the improvements, omissions and contradictions in the evidence of Padminibai (PW1), Vimalbai (PW11), Urmilabai (PW12) and also Laxman (PW13), in our opinion those contradictions, omissions and improvements are not of the substantial nature which would affect the core of the prosecution case. The evidence of Padminibai and Vimalbai who are the injured witnesses, inspires full confidence and gets corroboration from the medical evidence. Their evidence corroborates with each other. The evidence of Urmilabai (PW12) also lends support to the evidence of PW1 Padminibai and PW11 Vimalbai, so far incident of murder of Shatrughan and Bharat in the agricultural field is concerned. The evidence of PW13 Laxman about the incident which had taken place in his house coupled with the medical evidence is sufficient to hold Respondents responsible for attempt to murder Laxman. The evidence of Urmilabai (PW12) lends support to the evidence of Laxman (PW13). It is true that some prosecution witnesses to the panchnamas turned hostile and also there is no assistance from the C.A. report to the prosecution case. But as already observed, evidence brought on record by the prosecution in the nature of eye witnesses and the medical evidence is sufficient to hold that the Respondents accused were responsible for the murder of Shatrughan and Bharat and attempt to commit murder of Laxman and also for assaulting Padminibai (PW1) and Vimalbai (PW11). The prosecution has proved beyond reasonable doubt that the Respondents accused killed Shatrughan and Bharat and caused injuries to Padminibai and Vimalbai during the course of assaulting to Shatrughan and Bharat, and thereafter proceeded to village and forcibly entered in the house of Laxman and attempted to kill Laxman.

52. The evidence brought on record by the prosecution shows that, murder of Shatrughan and Bharat was committed by the accused with brutality and exceptional violence, and they further attempted to kill Laxman with determined mind with an intention to finish the entire family of deceased and his brothers.

53. We find considerable force in the argument of learned A.P.P., assisted by

Advocate Kedar, that the family of deceased hails from minority community i.e. potter and there is only one house of them in the village Pimpaldari. It has also come in the evidence of Laxman that accused uttered word "Kumbhardya" (person from potter community) to him. It is argued by the A.P.P. that the deceased family belongs to minority community, and in the entire village it is single family from potter community, and with a view to finish said family, accused belonging to influential community having sizable population in the village, tried to dominate and made serious attempt to finish the family of deceased, and they substantially succeeded in it.

54. In the light of discussion in foregoing paragraphs, we hold that the findings recorded by the trial Court are totally perverse and view taken by the trial Court was not possible. There is total miscarriage of justice and Judgment and order of acquittal of accused passed by the trial Court is clearly unreasonable and unsustainable, since overwhelming evidence of injured eye witnesses, other witnesses and also medical evidence brought on record by the prosecution is unjustifiably disbelieved and discarded, and under the aforesaid compelling reasons the impugned Judgment and order deserves to be quashed and set aside and the accused Respondents are liable to be convicted and sentenced for the offences with which they were charged by allowing the Appeal. In the result, we pass the following order: O R D E R

(I) The Criminal Appeal is allowed.

(II) The Judgment and order dated 2nd May, 1998, passed by the Additional Sessions Judge, Parbhani in Sessions Trial No.112 of 1995, thereby acquitting Respondent Nos.1 to 3/original accused Nos. 1 to 3 for the offences punishable under Sections 302, 307, 324, 323, 452 and 427 read with Section 34 of the Indian Penal Code, is quashed and set aside.

(III) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/each and in default to suffer rigorous imprisonment for six months.

(IV) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are further convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten (10) years and to pay a fine of Rs.3000/each and in default to suffer rigorous imprisonment for four months.

(V) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are further convicted for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three

(3) years and to pay a fine of Rs.2000/each and in default to suffer rigorous imprisonment for three months.

(VI) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are further convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one (1) year and to pay a fine of Rs.1000/each and in default to suffer rigorous imprisonment for three months.

(VII) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are further convicted for the offence punishable under Section 452 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for four (4) years and to pay a fine of Rs.3000/each and in default to suffer rigorous imprisonment for four months.

(VIII) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre are further convicted for the offence punishable under Section 427 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two (2) years and to pay a fine of Rs.2000/each and in default to suffer rigorous imprisonment for three months.

(IX) All the substantive sentences shall run concurrently.

(X) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre would be entitled to set off under Section 428 of the Code of Criminal Procedure.

(XI) Accused No.1 Govind s/o Gangaram Kendre, accused No.2 Balaji s/o Gangaram Kendre and accused No.3 Dnyanoba s/o Gangaram Kendre shall surrender to their bail bonds immediately before the Sessions Judge, Parbhani. The Sessions Judge, Parbhani to ensure that, accused shall surrender immediately to undergo sentence recorded as above against them and send the compliance report to that effect, to this Court.