

(2011) 06 SC CK 0008

In the Supreme Court Of India

Case No : Criminal Appeal No. 364 of 2009

Waman and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2011) 2 ACR 2271 : AIR 2011 SC 3327 : (2012) BomCR(Cri) 418 :
(2011) CriLJ 4827 : (2011) 7 JT 24 : (2011) 4 RCR(Criminal) 503 : (2011) 6
SCALE 594 : (2011) 7 SCC 295 : (2011) 3 SCC(Cri) 83 : (2011) 4 UJ 2718

Hon'ble Judges : P. Sathasivam, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J.P. Dhanda and Amrendra Kumar Singh, for the Appellant; Dushyant Parashar and Asha G. Nair, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—This appeal is filed against the final judgment and order dated 15.03.2007 passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 521 of 2002 whereby the High Court dismissed the appeal of the Appellants herein and confirmed the order dated 22.08.2002 passed by the Additional Sessions Judge, Gondiya convicting the accused persons under various Sections of Indian Penal Code (hereinafter referred to as "IPC").

2. Brief facts:

(a) On 29.10.2000 at about 12:30 p.m., Kamalabai Atmaram Bohare (PW-1), Kusmanbai Suresh Bohare (PW-2) and Pushpabai Ramesh Bohare (PW-3) were working in their fields situated at village Shivantola. At that time, Atmaram Bohare and Suresh Bohare (deceased persons) were also present there. Gowardhan (A-1) was also standing on the road side. Suresh Bohare and Atmaram Bohare after putting paddy at the threshing machine were coming back

to their home. When they reached near the D.P. of electricity situated in the land of Kamalabai, Gowardhan (A-1) passed a comment on them and a quarrel between the parties took place. Immediately after starting of quarrel, A-2 to A-13 rushed there with weapons and started assaulting Suresh Bohare and Atmaram Bohare.

(b) Gowardhan (A-1) was having Farsha and he gave a blow of it on the leg of Suresh Bohare. Mahadeo (A-2) who possessed sword gave a blow of it on the leg of Suresh Bohare. Abhiman (A-3), who was having an axe in his hand gave a blow on the back of Suresh Bohare. Kalpanabai (A-11), gave a blow of spade on the head of Suresh Bohare. Pramilabai (A-10) who was having stick also beat Suresh with it. At the same time, Manoj (A-5) and Waman (A-4) who were having axe in their hands, gave blows on the head of Atmaram. During this, Jaipal (A-6) and Kantabai (A-8) gave an axe blow and stick blow respectively to Atmaram. Shantabai (A-7) and Parvatabai (A-9) gave scissors blow on the mouth of Atmaram. Due to this sudden attack by the accused persons, Suresh Bohare and Atmaram Bohare sustained serious injuries and they fell down on the ground. On hearing the commotion, P Ws 1-3 and one Sakhubai Rakhade (PW-4) rushed towards the place of incident. The accused persons fled away. Suresh and Atmaram were brought to home and were taken to Amagaon Hospital from where they were immediately shifted to KTS Hospital at Gondiya. The doctor on duty declared Suresh brought dead and after sometime Atmaram also died in the hospital. On the oral complaint of Kamlabai (PW-1), a case with FIR No. 183/2000 was registered on 29.10.2000 against 13 accused persons under Sections 147, 148, 302 r/w 149, 323 r/w 149 and 447 r/w 149 of IPC.

(c) During the course of investigation, the accused persons were arrested and various weapons were recovered at their instance. After completion of investigation, they were charge sheeted.

(d) After examining the witnesses, the Additional Sessions Judge, Gondiya vide his order dated 22.08.2002, acquitted A-7, A-9, A-10 and A-11 of the offences punishable under Sections 302, 447 and 323 r/w 149 of the IPC and Sections 147 and 148 of IPC and convicted A-1 to A-6 and A-12 for the offences punishable u/s 302 r/w 149 IPC and awarded life imprisonment with a fine of Rs. 1000/- in default to suffer rigorous imprisonment for one month. Each of them were also convicted for the offences punishable u/s 447 r/w 149 of IPC and were directed to suffer rigorous imprisonment for one month and to pay a fine of Rs. 200/- each in default to suffer rigorous imprisonment for 7 days. A-1 to A-6 and A-12 were also convicted under Sections 147 and 148 of IPC but acquitted of the offences punishable u/s 323 r/w 149 of IPC. A-13 being a juvenile offender, her trial was forwarded to the juvenile court. A-8 died after framing of charge and trial against her got abated.

(e) Aggrieved by the order dated 22.08.2002 of the trial Court, A-1 to A-6 and A-12 preferred an appeal before the Division Bench of the High Court of Judicature at Bombay. The Division Bench, by impugned judgment and order

dated 15.03.2007, dismissed the appeal of the Appellants and affirmed the order dated 22.08.2002 passed the Additional Sessions Judge, Gondiya.

(f) Aggrieved by the said decision, A-4 to A-6 and A-12 only filed this appeal by way of SLP before this Court.

3. Heard Mr. J.P. Dhanda, learned Counsel for the Appellants and Mr. Dushyant Parashar, learned Counsel for the State.

4. Submissions by the counsel:

(a) After taking us through the entire prosecution case, defence of the accused and the materials placed, learned Counsel for the Appellants submitted that inasmuch as all the prosecution witnesses, particularly, eye-witnesses P Ws. 1-4, who are female members of the family of the complainant and close relatives, the evidence of these related witnesses cannot be relied upon. He also submitted that the courts below committed an error in convicting the Appellants mainly on the ground that the weapons of offence were recovered on their disclosure statements. He further pointed out that with the same allegations and similar circumstances, the women accused persons were acquitted by the trial Court and it is not justified in convicting the male accused based on the very same evidence. He also pointed out that in view of contradictions among the eye-witnesses, namely, P Ws. 1-4, conviction based on their evidence cannot be sustained. Finally he submitted that insofar as Dilip (A-12) is concerned, in the absence of recovery of any weapon from him which is also the finding of the trial Court convicting him for the offence u/s 302 along with other accused cannot be sustained.

(b) On the other hand, learned Counsel for the State submitted that there is no bar in accepting the evidence of related witnesses. He pointed out that because of their relationship, courts have analysed their evidence carefully and meticulously and ultimately accepted their version. According to him, there is no contradiction in the evidence of P Ws. 1-4, as alleged even otherwise, minor contradictions in their statement would not affect the ultimate conviction arrived at by the trial Court and affirmed by the High Court. He further pointed out that recovery of weapons and the medical evidence show that the prosecution has proved its case beyond reasonable doubt. Lastly, he submitted that inasmuch as two persons were murdered in the incident and after analyzing the entire materials the trial Court ultimately convicted the accused persons which was affirmed by the High Court, interference by this Court exercising jurisdiction under Article 136 is not warranted and it is not a fit case to interfere by this Court.

5. We have carefully considered the rival contentions and perused all the relevant materials.

Discussion:

6. The incident took place on 29.10.2000. The complainant and others were

working in the field. At that time, Atmaram Bohare and Suresh Bohare (the deceased persons) were also in the field at the place of incident. At about 12:30 p.m., Govardhan (A-1) was standing on the road side and the deceased persons were going home. They had a long standing land and water dispute. On hearing something from A-1 all the other accused rushed there and started abusing and beating the two victims. According to the prosecution, all the accused persons were armed with various weapons and they gave blows on the victims. Due to this incident, both Atmaram Bohare and Suresh Bohare sustained serious injuries and they fell down on the ground. According to the prosecution, the incident was witnessed by Kamlabai Bohare PW-1, Kusmanbai Bohare PW-2, Pushpabai Bohare PW-3 and Sakhubai Rakhade PW-4. PW-1 is wife of Atmaram Bohare (since deceased), PW-2 is wife of Suresh Bohare (since deceased), PW-3 is daughter-in-law of Atmaram Bohare, PW-4 though claimed as an independent witness, is sister-in-law of Pushpabai Bohare (PW-3). It is the case of the prosecution that all the above mentioned 4 persons (P Ws 1-4) witnessed the occurrence of the incident. It is true that all 4 are related to the family of the deceased. Now, let us consider their evidence and acceptability which was relied on by the trial Court and affirmed by the High Court.

Evidence of relatives of complainant/deceased:

7. In view of the stand of the counsel for the Appellants that since P Ws 1-4, eye-witnesses are closely related to the deceased and complainant, conviction can not be based on such evidence, let us state the law on the admissibility/acceptability or otherwise of their evidence as considered by this Court.

8. In *Sarwan Singh and Others Vs. State of Punjab*, a three-Judge Bench of this Court, while considering the evidence of interested witness held that it is not the law that the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration. The fact of being a relative cannot by itself discredit the evidence. In the said case, the witness relied on by the prosecution was the brother of the wife of the deceased and was living with the deceased for quite a few years. This Court held that "but that by itself is not a ground to discredit the testimony of this witness, if it is otherwise found to be consistent and true".

9. In *Balraje @ Trimbak Vs. State of Maharashtra*, this Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be

weighed pragmatically and the court would be required to analyze the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. After saying so, this Court held that if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

10. The same principles have been reiterated in *Prahalad Patel Vs. State of Madhya Pradesh*, . In para 15, this Court held that "though P Ws 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. In a series of decisions this Court has accepted the above principle (vide *Israr Vs. State of U.P.*, and *S. Sudershan Reddy and Others Vs. State of Andhra Pradesh*,

11. The above principles have been once again reiterated in *State of U.P. Vs. Naresh and Others*, Here again, this Court has emphasized that relationship cannot be a factor to affect the credibility of an witness. The following statement of law on this point is relevant:

29... The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the Court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. [Vide *Jarnail Singh and Others Vs. State of Punjab*, *Vishnu and Ors. v. State of Rajasthan* (2009) 10 SCC 477; and *Balraje @ Trimbak* (supra)]

12. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinize their evidence meticulously with a little care.

Evidence of P Ws 1-4:

13. Kamalabai (PW-1), wife of Atmaram and mother of Suresh has narrated how the incident took place one year back after Diwali. According to her, at about 9.00 a.m., she along with Kusumanbai, PW-2 and Pushpabai, PW-3 had gone to her field. At about 12.00 noon Atmaram and Suresh kept the 'Dhan' on threshing machine and they were coming back to their house for meal. At that time, Goverdhan A1 was standing on the road side and he told 'Dhavare' 'Aalera'. Goverdhan was holding Farsha and he gave its blow on the leg of Suresh. Mahadeo was holding sword, he gave its blow on the leg of Suresh. Abhiman gave an axe blow on the back of Suresh. Kalpana gave stick blow on the back of Suresh. Manoj gave axe blow on the head of Atmaram. Waman also gave axe blow on the head of Atmaram. Dilip gave blow of iron pipe to Atmaram. Jaipal gave axe blow to Atmaram. Kantabai beat Atmaram by stick. Shantabai and

Parvatabai gave blow of scissors on the mouth of Atmaram. She deposed that this incident took place in her field near D.P. of M.S.E.B. The place of occurrence was shown by her to the police. Even in the cross-examination, she reiterated the same. Though certain discrepancies were pointed out in her statement u/s 161 Code of Criminal Procedure. and her deposition before the Court, on going through the same, we are satisfied that she witnessed the occurrence and telling the truth.

14. Kusmanbai (PW-2), wife of Suresh Bohare and daughter-in-law of PW-1 reiterated what PW-1 deposed before the Court. She stated in her deposition that she noticed that Goverdhan beat Suresh with Farsha. Mahadeo gave a blow of sword to Suresh. Abhiman gave a blow of axe on the leg of Suresh. Kalpana gave a blow of the spade on the back of Suresh. Pramila and Mangala gave stick blows to Suresh. Waman also gave a blow of axe to Atmaram. Manoj gave an axe blow on the head of Atmaram. Dilip also gave a blow of pipe on the head of Atmaram. Jaipal gave an axe blow on the leg of Atmaram. Parvatabai gave a blow of scissors on the mouth of Atmaram. She asserted that she saw this incident from 30-40 feet and at that time she was cutting the crop in the field in which her house was situated. She also stated that Atmaram and Suresh were conscious till they were brought to their house. Here again, certain omissions in the statement recorded u/s 161 Code of Criminal Procedure. were pointed out. As stated to the evidence of PW-1, there is no material difference in the evidence of PW-2 merely because there is some omission in the statement u/s 161 Code of Criminal Procedure. and her evidence before the Court, there is no need to reject her testimony as claimed by the Appellants.

15. Pushpa Bohare (PW-3), daughter-in-law of Atmaram and PW-1 also deposed in the same line as that of P Ws 1 and 2. She also implicated the Appellants and the role played by them as explained by P Ws 1 and 2. She also specified various weapons used in the commission of offence and implicated all the Appellants including A12 who used iron pipe (Article 47). She asserted that she did inform the police that Dilip (A-12) gave a blow of iron pipe to Atmaram.

16. Sakhubai (PW-4), is sister-in-law of Pushpabai (PW-3). She also narrated that the incident had occurred around 12 noon. At that time, she was going towards her field. She heard a shout from the side of Government well as 'Dhawa Dhawa'. She noticed that fighting was going on in the field of Atmaram. She saw accused Nos. 1 to 6 and 12 were beating Suresh. Farsha and axes were used for the attack. Manoj (A-5) gave an axe blow to Atmaram. She also reiterated that all these persons beat Atmaram. She also affirmed that PW-1, wife of Atmaram and P Ws 2 & 3, daughters-in-law of PW-1 were also present at the scene of occurrence. She asserted that she did inform the police that Manoj (A-5) beat Atmaram by axe. She also informed the police that Pramilabai was possessing spade and Manoj was possessing sword. Merely because these statements were not noted by the police, her deposition can not be rejected.

17. It is true that there is some variance in the testimony while describing

particular weapon held by the persons and injuries on the body of the deceased. However, as rightly analyzed by the trial Court and accepted by the High Court, the testimony of these witnesses is convincing and trustworthy about the incident and there is no reason to disbelieve their statements as claimed by the learned Counsel for the Appellants.

18. Medical Evidence

It is important to note that the evidence of all these witnesses i.e. P Ws-1 to 4 is corroborated by medical evidence. We have already noted that in the said incident, both Atmaram Bohare and Suresh Bohare died. Dr. Satish Humane, PW-7, Medical Officer, KTS Hospital, Gondiya conducted autopsy on the body of Suresh Bohare. He noted the following injuries on the body of Suresh Bohare in Ext. 67

- i) Deep incised wound - U/3rd (L) lateral side of thigh 4 1/2 X 1" X Ms. Deep (1/2")
- ii) Deep incised wound M/3rd (L) Leg. 4"X 1"X Ms. Deep (1/2")
- iii) Deep incised wound L/3rd (L) Lateral side of leg. 5" X 1 1/2" X MS Bone v. deep i.e. Abs. with fracture BB L/3rd (L) Leg.
- iv) Inprint contusion (R) scapular region 3" X1".
- v) Inprint contusion (R) intra scapular region 2" X1"
- vi) Abro-contusion (R) memory region 1/2" X 1/2"
- vii) Abro contusion U/3rd (L) F.A. 1" X 1/2"
- viii) Abrasion - (L) Elbow Jt. 1" X 1/2"

19. Dr. Satish Humane noted the following injuries on the body of Atmaram Bohare in Ext. 68

- i) Incised wound - (R) Frontal region of Head 2 1/2" X 1/4" X bone deep.
- ii) Incised wound - (L) Frontal region of Head 2" X 1/4" X bone deep.
- iii) Incised wound (L) parietal region of Head 2" X 1/4" X scalp deep.
- iv) Incised wound 1/3rd (R) thigh 4" X 1/2" X MS Deep
- v) Incised wound L/3rd (L) thigh 4 1/2" X 1/2" X MS Deep
- vi) Incised wound M/3 (R) Leg 2" X 1/2" X MS Deep
- vii) Incised wound - upper lip 2" X 1/2" X MS Deep
- viii) Incised wound - (L) Eyebrow 1 1/2" X 1/2" X MS Deep
- ix) Contusion - (R) Parotid region 2 1/2" X 2".
- x) Abrasions (B) Elbow Jt. 1 1/2" X 1" each.

xi) Fracture (r) frontal & (L) frontal region of Head.

20. About the nature of injuries sustained by Suresh Bohare, Dr. Satish Humane (PW-7) has opined that he died due to haemorrhage and shock as a result of multiple injuries. His Post Mortem report is marked as Ext.67. Insofar as injuries of Atmaram, PW-7 has deposed that there was fracture of right frontal and left frontal region of the head. There were blood clots under right and left frontal region and left parietal region of head. There was a fracture of right and left frontal region and left parieto temporal region of skull, intra cranial haemorrhage present in brain, heart was empty, both lungs and other organs were intact and pale. There was no food material in the stomach. Injury Nos. 1 to 8 may be caused by hard and sharp object and 9 & 10 may be caused by hard and blunt object. In his opinion, the said injuries were caused within 18-30 hours before Post Mortem examination and according to him, Atmaram Bohare died due to haemorrhage and shock as a result of head injury. His Post Mortem report has been marked as Ext. 68. He also explained to the Court that injury on the head of Atmaram Bohare was fatal and sufficient to cause instantaneous death. He further explained that injury Nos. 1, 2 and 3 coupled with fracture on leg on the person of Suresh Bohare were sufficient to cause instantaneous death. Though an argument was advanced from the side of the Appellants that the deceased Suresh Bohare had sustained injuries only on thighs and legs which are not fatal parts of the body, Dr. Satish Humane (PW-7) has explained before the Court during his cross-examination that there was cutting of major vessels and those injuries were life fatalling. He further deposed that after cutting of major blood vessels, the person may die within 15 to 30 minutes. He also reiterated and asserted that injury Nos. 1, 2 and 3 on person of Suresh Bohare are collectively sufficient to cause death.

21. The analysis of the statements of P Ws 1 to 4 and the assertion of Dr. Satish Humane, PW-7 who conducted the autopsy on the body of deceased Atmaram Bohare and Suresh Bohare as well as his explanation as to the nature of injuries with reference to the weapons used by the accused, we hold that the prosecution has established its charge that both the deceased died due to the injuries sustained in the incident. We accept the prosecution case and agree with the conclusion arrived at by the trial Court as affirmed by the High Court.

Contradictions in the evidence of P Ws

22. Let us consider the argument of the Appellants as to contradictions in the evidence of prosecution witnesses. According to the counsel for the Appellants, the prosecution witnesses were not consistent with the statements as to the weapons used by the accused persons. He also pointed out that after the statements were recorded u/s 161 Code of Criminal Procedure. before the police, they improved their version before the court. On these grounds, the counsel for the Appellants submitted that no reliance need be given to those witnesses and courts below have committed an error in considering this aspect. We have already adverted to the statements of P Ws., particularly, eye-witnesses P Ws.

1-4 as to the narration of the incident, overt act of each of the accused persons, weapons handled, injuries sustained by both the deceased Suresh Bohare and Atmaram Bohare as well as medical evidence by Dr. Satish Humane (PW-7) and post-mortem reports marked as Exs. 67 and 68. In fact, the very same objection was raised before the trial Court and the High Court and while considering the said objection both the courts analysed their evidence in detail. We also verified and considered their statements with reference to the objection raised by the counsel for the Appellants. First of all, the contradictions are minor in nature and not related to the major overt act attributed to each accused. It is relevant to point out that these persons made statements to the police immediately after the occurrence, i.e., on 29.10.2000 and their evidence was recorded before the court in the month of December 2001 nearly after 1 year. Even otherwise, the prosecution witnesses all are hailing from agricultural family and are villagers, we cannot expect minute details as stated in their earlier statements and before the court. In this regard, it is useful to refer various decisions rendered by this Court as to the minor contradictions in the statements of prosecution witnesses and the admissibility of the same.

23. In *Gurbachan Singh Vs. Satpal Singh and others*, , this Court has held that despite minor contradictions in the statements of prosecution witnesses, the prosecution case therein has not shaken and ultimately accepting their statement set aside the order of acquittal passed by the High Court and restored the sentence imposed upon them by the trial Court.

24. In *Sohrab and Another Vs. The State of Madhya Pradesh*, about minor contradictions in the statements of prosecution witnesses, Their Lordships have held in paragraph 8 as under:

... It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the Court comes to the conclusion that what can be accepted implicates the Appellants it will convict them. This Court has held that *falseus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest....

25. It is clear that not all contradictions have to be thrown out from consideration but only those which go to the route of the matter are to be

avoided or ignored. In the case on hand, as observed earlier, merely on the basis of minor contradictions about the use and nature of weapons, injuries, their statements cannot be ignored in toto. On the other hand, we agree with the conclusion of the trial Court as affirmed by the High Court about the acceptability of those witnesses, accordingly, we reject the claim of the Appellants as to the same.

26. Ordinarily, the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in the course of occurrence, if the injuries are minor in nature, however, if the prosecution fails to explain a grievous injury on one of the accused persons which is established to have been caused in the course of the same occurrence then certainly the court looks at the prosecution case with a little suspicion on the ground that the prosecution has suppressed the true version of the incident. However, if the evidence is clear, cogent and creditworthy then non-explanation of certain injuries sustained by the deceased or injury on the accused ipso facto cannot be the basis to discard the entire prosecution case. In the earlier part of our order, we have adverted to the statement of Dr. Satish Humane who was examined as PW-7. He highlighted ante-mortem injuries suffered by Atmaram Bohare and Suresh Bohare. From his evidence, it is clear that there was fracture of right and left frontal region of the head of Atmaram Bohare. There were blood clots under right and left frontal region and left parietal region of the head. There was a fracture of right and left frontal region and left temporal region of skull. In the case of Suresh though it was argued that inasmuch as he sustained injuries on thighs and legs which are not vital parts of the body, the post-mortem doctor (PW-7) has explained before the court that there was cutting of the major vessels and expressed that those injuries were fatal to life. He further explained that after cutting of the major blood vessels a person may die within 15 to 30 minutes. In view of the same, we are unable to accept the statements relating to evidence pertaining to injuries caused by the accused persons.

27. It is true that the disclosure of the weapons by the accused persons were not duly proved as panchas turned hostile. As rightly discussed by the trial Court and the High Court that the accused persons are cultivators and generally they carry with them axes, farshas, sticks, spears etc. In such circumstances if we consider the entire evidence together, the defence plea is liable to be rejected.

Special reference to Dilip, A-12

28. Learned Counsel for the Appellants finally submitted that in the absence of recovery of any weapon from Dilip A-12 and evidence relating to him is similar to female accused who were all acquitted, in fairness the courts could have acquitted A-12 also. On going through the materials placed, we are unable to accept the said contention. It is true that no weapon was recovered from A-12 but prosecution witnesses implicated him for causing fatal injuries along with the other accused persons. Considering the evidence of P Ws. 1-4, weapons seized from various accused, incised wounds on different body parts coupled with

medical evidence clearly implicate A-12 also in the commission of murder. It is not the case of solitary blow but number of blows by various accused hence the intention and knowledge to cause death has been amply demonstrated and proved.

29. Even otherwise, A-12 was also charged u/s 149 IPC as a member of unlawful assembly with the requisite common object and knowledge. Inasmuch as the prosecution evidence insofar as women accused are not cogent, their acquittal cannot be applied to A-12 who was in the company of A-1 to A-6. As mentioned above, apart from conviction u/s 302 Dilip A-12 was convicted u/s 149. Section 149 creates a specific offence and deals with punishment of the offence. Only thing whenever the court convicts any person or persons of any offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence disclosed must show not only the nature of the common object but also that the object was unlawful. In order to attract Section 149 it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly. It must be within the knowledge of the other members as one likely to be committed in prosecution of common object. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same u/s 149. The trial Judge on thorough analysis held that the prosecution has made out a case against the accused-Appellants not only u/s 302 read with Section 149, the prosecution has very well established offences punishable u/s 147, 148 and the accused A-1 to A-6 including A-12 used force and violence being members of unlawful assembly in prosecution of common object of causing death of Suresh Bohare and Atmaram Bohare. The deadly weapons in their hands were axes, farshas, sticks, iron pipe etc. Though there is no recovery of weapon from Dilip A-12 but weapons have been recovered from other accused and prosecution witnesses have asserted that Dilip A-12 gave blow of iron pipe on Atmaram. The said iron pipe was recovered from the house of Mahadeo which also proved that A-12 had participated in the offence with such weapon and therefore he was rightly punished along with other accused Nos. 1-6 u/s 148 for committing offence of rioting armed with deadly weapons.

30. We are satisfied that the prosecution has established long standing land and water dispute among the deceased and the accused, the evidence of eye-witnesses P Ws.1-4 are acceptable, contradictions are trivial in nature and medical evidence corroborate the assertion of prosecution witnesses. All those materials were correctly analysed and accepted by the trial Court and affirmed by the High Court. On perusal of all the above said materials, we agree with the said conclusion. In those circumstances, interference by this Court under Article 136 is not warranted. We do not find any error or infirmity or valid legal ground for interference in the order passed by the courts below, consequently, the appeal fails and the same is dismissed.