



Gokhale

1 of 52

APEAL-701-23+ (J)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 701 OF 2023

Santosh Vijay Pagare

..Appellant

Versus

The State of Maharashtra

..Respondent

WITH

CRIMINAL APPEAL NO. 762 OF 2023

1. Ganesh Ashok Ughade

2. Santosh Ashok Ughade

..Appellants

Versus

The State of Maharashtra & Anr.

..Respondents

WITH

CRIMINAL APPEAL NO. 1254 OF 2023

Jitesh @ Bandu Sampat Murtadak

..Appellant

Versus

The State of Maharashtra

..Respondent

Dr. Yug Mohit Chaudhary a/w. Mr. Anush Shetty for Appellant in Appeal No.701 of 2023.

Dr. Yug Mohit Chaudhary a/w. Mr. Anush Shetty and Ms. Shraddha Sawant for Appellant in Appeal No.762 of 2023.

Mr. Aniket Vagal a/w. Ms. Savvy Kolhekar for Appellant in Appeal No.1254 of 2023.

Ms. Gauri S. Rao, APP for State/Respondent.

Mr. Akshay Bankapur for Intervenor in all Appeals.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 19 AUGUST 2026
PRONOUNCED ON : 01 SEPTEMBER 2026**

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. All these Appeals are decided by this common Judgment as they arise out of the same impugned Judgment and order. For convenience, the Appellants are referred to as accused as per their status before the Trial Court.

The Criminal Appeal No.762 of 2023 is preferred by the original Accused No.1 Ganesh Ughade and the original Accused No.5 Santosh Ughade.

The Criminal Appeal No.1254 of 2023 is preferred by the original Accused No.2 Jitesh Murtadak.

The Criminal Appeal No.701 of 2023 is preferred by the original Accused No.3 Santosh Pagare.

2. Heard Dr. Yug Mohit Chaudhary, learned counsel for the Appellants in Criminal Appeal No.701 of 2023 and Criminal Appeal No.762 of 2023, Mr. Aniket Vagal, learned counsel for the

Appellant in Criminal Appeal No.1254 of 2023, Ms. Gauri Rao, learned APP for the State and Mr. Akshay Bankapur, learned counsel for the Intervenor in all Appeals.

3. The Accused-Appellants faced the trial before the learned Additional Sessions Judge, Nashik, in Sessions Case No.261 of 2017. Vide the Judgment and order dated 09.05.2023 all of them were convicted and sentenced as follows:

All of them were convicted for commission of the offence punishable under Sections 302, 143, 147, 148 r/w. 149 and under section 120B of the IPC. They were sentenced to suffer imprisonment for life and to pay a fine of Rs.10000/- each and in default of payment of fine to suffer S.I. for six months each, for the offences punishable under sections 302, 120B r/w. 149 of the IPC.

The Appellants-Accused were acquitted from the charges of commission of the offence punishable U/s.135 of the Maharashtra Police Act.

Along with the Appellants, there were two more accused i.e. the Accused No.4 Sagar Jadhav and the Accused No.6 Jayesh @ Jaya Dive who had faced the trial, but those two accused

were acquitted from all the charges.

The Appellants were granted set off U/s.428 of the Cr.PC.

The wife of the deceased was given liberty to approach the District Legal Services Authority, Nashik for appropriate compensation as per rules.

4. The prosecution case, in brief, is that the Accused were having previous enmity with Kiran Nikam-the deceased in this case. On 18.05.2017 at about 10:00 p.m. Kiran was returning home after purchasing cooking oil. He was intercepted near his house by the Accused. He was assaulted with sharp weapons. He was assaulted brutally causing about 101 injuries. The incident was witnessed by a few eye witnesses including a cousin and the wife of Kiran. After the Accused left the place, the police reached the spot; by then, Kiran had died. He was taken to the hospital, but he was declared dead. The FIR was lodged by Kiran's cousin Nitin Pagare vide the C.R.No. I-201 of 2017 at Panchavati police station; at 3:50a.m. on 19.05.2017. The investigation was conducted. Two accused namely Vikas @ Vicky Punjabi and Anupkumar @ Chhotu

Kanojia were absconding. The Accused were arrested on different dates. Various panchanamas were conducted. The postmortem was conducted on the dead body. Two sickles and clothes were recovered at the instance of the Accused No.5 Santosh Ughade on 18.07.2017. The seized articles were sent for the chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During trial, the prosecution examined sixteen witnesses including the eye witnesses, the Medical Officer, the Panchas and the Investigating Officers. Three defence witnesses were examined by the Accused No.2 Jitesh, and two defence witnesses were examined by the Accused No.3 Santosh Pagare. The defence witnesses were examined to establish *alibi* of these two accused.

6. The learned Judge relied on the evidence of the eye witnesses. He did not believe the defence witnesses and the defence of *alibi*. The defence of the Accused Nos.1 and 5 was of total denial. The learned Judge also relied on the evidence of recovery. Based on these reasons, the learned Judge convicted and sentenced the Appellants as mentioned earlier. He acquitted the

other two accused because their names were mentioned by the witnesses subsequently in their supplementary statements, and not in their original statements.

7. PW-1 Nitin Pagare was an eye witness. He had lodged the FIR in this case. He was the maternal cousin of the deceased. He deposed that Kiran and Kiran's brother Shekhar were his maternal cousins. Both of them were residing behind Shani Mandir, Peth road. On 18.05.2017 at 10:00p.m. he had his dinner and he was going to meet his aunt at Navnath Nagar, Panchavati. He reached there at about 10:15 p.m. He saw his cousin Kiran. He was going ahead on his vehicle. The Accused No.3 Santosh Pagare stopped him. The Accused No.3 Santosh Pagare, the Accused No.1 Ganesh Ughade, the Accused No.2 Jitesh Murtadak and the Accused No.5 Santosh Ughade were having weapons like sickle and they started inflicting blows on Kiran. Four more persons came from the chowk; they included Accused No.4 Sagar Jadhav and the two absconding accused Vicky and Chhotu. PW-1 deposed that, all the accused were giving blows. They were exchanging weapons. He could not tell how many blows were inflicted. The incident was

going on for about five to seven minutes. He got scared and went to PW-5 Archana's house, which was at a distance about 25ft. away from the spot. PW-5 Archana was on the terrace. PW-1 told her about the incident. He deposed that, PW-3 Vikram had also seen the incident and he had shouted at that time. Because of his shouts, the accused fled away from the spot. After that, people gathered there and Kiran was taken to the Civil Hospital. PW-1 also went to the Civil Hospital. He came to know that, Kiran had died. He deposed that, he knew the Accused No.5 Santosh Ughade and other accused prior to the incident, but he did not know the cause of the incident. He deposed that, between 1:00 to 1:30a.m. in the night, he had gone to Panchavati police station to lodge his FIR. He identified the FIR. The FIR is produced on record at Exhibit-89. He was shown two sickles in the Court. He identified both those weapons. He correctly identified each of the Appellants-accused by naming them. He further deposed that, after lodging the FIR he had shown the spot to the police in the morning between 6:30a.m. to 7:00a.m. On 01.06.2017, he again went to the police station, as he recollected the names of the Accused No.4

Sagar, Vicky and Chhotu. According to him, he was scared and, therefore, he approached the police after a gap of time.

In the cross-examination, he accepted that, there could be serious cases against Kiran and Shekhar. Shekhar was in jail since past one year. Shekhar and Kiran were having vegetable shop in the main market-yard, Nashik, Panchavati. He could not state as to whether because of antecedents Shekhar and Kiran had many enemies. PW-1's house was at Mhasrul, Rajwada, Nashik. The distance between his house and the spot was about four to five kilometers. According to him, no other incident had taken place before 10:15p.m. He could not give the description of the clothes worn by the Appellants. He had not given the description of the sickle and had not used the name of the weapon as 'sickle' in his FIR.

However, in the FIR he had mentioned that Kiran was assaulted by sharp weapons. He had not intervened in the assault and had not called anyone else for help. He had not lifted the injured and put him in the police van. The police reached at the spot by 10:25p.m. It took about 5 to 10 minutes for the police to

lift the injured and keep him in the van. During that time, he had not disclosed about the incident and the names of the Appellants to the police. Panchavati police station was the nearest of all the police stations from the spot. Before lodging the FIR, he had no occasion to go to Panchavati police station. There was a police chowky at Civil Hospital. He had not given the information at that police chowky. About 100 people i.e. the friends and the relatives of the deceased had gathered at Civil Hospital. Kiran was brought to the Civil Hospital before PW-1 reached there. PW-1 was at the Civil Hospital till 1:30a.m. He had not informed about the incident to the police at Civil Hospital. He reached Panchavati police station at 3:00a.m. He had not informed the doctor about the assailants and the weapons. About 50 persons could have gathered at the spot of the incident. The distance from that spot to the Civil Hospital was about three kilometers. The incident of assault had taken place on the road. Kiran fell down on the road. The incident took place in front of the house of Mr. Salve. It did not take place in the *varhanda* of Mr. Salve. PW-1 did not go immediately to the police station because he was in grief. He went to the police station

at 3:30a.m. He admitted that, he had differences with the Accused No.2 Bandu Murtadak and there were cases registered against each other. But he added that, there was no case against him. He knew all the accused from prior to the incident. Kiran was the son of PW-1's mother's sister. PW-1 did not know regarding the nature of offence against the deceased Kiran. For some days Kiran was in jail. Kiran was a vegetable vendor and was working at market-yard, Panchavati. When he went to his sister in law Archana's house, she was there with her two children. He reached the Civil Hospital at 10:45p.m. He disclosed the names of the assailants to his relatives. There was discussion about the names of the assailants at the hospital itself. He knew PW-14 Vishal. He was a close friend of PW-1.

The FIR was registered at 3:50a.m. on 19.05.2017 vide the C.R.No. I-201 of 2017 at Panchavati police station. It substantially corroborates his deposition. In the FIR he has described the weapons as 'sharp weapons'.

8. PW-5 Archana Nikam was the wife of the deceased. She had seen the incident. She deposed that, she was residing with her

husband and two sons at Yash Laxmi Nisarga Apartment, Panchavati, Nashik. Kiran was selling vegetables. On 18.05.2017 at 2:00p.m. Kiran left for work on his Hero Duet two wheeler. It was owned by Kiran's cousin Nitin. Kiran returned back at about 6:00p.m. with milk. He again left the house for work. At about 9:30p.m., PW-5 went on the terrace with her younger son. She played with him for some time and was looking at the road. It was adjacent to their building. That road was going from Govind Mama chowk towards Datta Nagar. She saw her husband coming from Govind Mama chowk. He reached upto the house of Mr. Salve which was 30ft away from PW-5's building. Accused No.1 Ganesh Ughade, Accused No.2 Bandu Murtadak, Accused No.3 Santosh Pagare, Accused No.5 Santosh Ughade and others were present in front of Salve's house. They all stopped her husband. He parked his motorcycle. All the accused were abusing him. Then they started assaulting her husband repeatedly. They were exchanging the weapons between them and assaulting her husband. She got scared. She did not know what to do. She came back to her house. She left her child alone in the house and she ran towards the

house of Salve. The assailants ran away. She saw her husband having suffered number of injuries all over his body. At that time, her cousin PW-3 Vikram and maternal aunt Sarubai came there and put a blanket on her husband. After some time, the police came there. They put Kiran in police vehicle. She also went with her husband. She deposed that, they were taken to a private hospital. The Doctors declared him dead. The police had come to her, but she was not in a position to talk with them. She was disturbed. She did not leave her house for thirteen days as per the custom. She came to know about the other three persons namely Sagar, Vicky and Chhotu. When she was little stable, she went on her own to the police station and gave her statement. She deposed that, she could identify the assailants if shown to her. She deposed that, four persons seen on the screen and one sitting in the dock were the assailants. She further deposed that, about four months prior to the incident, her deceased husband had some dispute with the Accused No.5 Santosh Ughade. In this connection, a complaint was lodged with Panchavati police station. That dispute was settled. But when her husband used to go to the vegetable market,

the Accused No.5 Santosh Ughade and his associates used to threaten him. Her husband had told this fact to her. He had even showed those persons to her on 'Facebook'. According to her, he had shown those accused when the accused were passing on the road in front of their building.

In the cross-examination, she stated that her building was not immediately next to Salve's house. Salve's house was not seen from her flat. She could not explain as to why her police statement did not mention that the accused were exchanging the weapons repeatedly or that the distance between her house and Salve's house was about 30 meters. She did not recollect whether she had stated to the police that the Accused No.5 Santosh Ughade and others used to threaten her husband and that he had shown their faces on the Facebook, or he had pointed them out to her when they were proceeding from near their building. She could not tell whether there were criminal cases against her husband. But she added that, in one of the offences she was an accused with her husband. But she was acquitted from that case. She admitted that, for many years her husband was in jail. Even on that day, her

brother in law and her husband's friends were in jail in connection with MCOCA case. She could not tell exactly at what time the police arrived at the spot. She herself did not pick up her husband and place him in the police vehicle. While travelling in the police vehicle, she did not give the information about the incident to the police. She volunteered that, she was crying. She added that they had gone to Civil hospital and not to a private hospital. She stated that, she could have mistakenly stated in her deposition that they had gone to a private hospital. When she met the police on the day of the incident, she did not inform them about the incident. She was not in a position to give answers. She went to the police station on 05.06.2017 for the first time after the incident dated 18.05.2017. On the day of the incident, PW-1 Nitin met her on the staircase. When she reached near the body of her husband, about 50 persons had gathered. There were blood stains on her clothes. The police did not ask her to produce her clothes.

9. PW-14 Vishal Varule was an eye witness. He deposed that on 18.05.2017, as he was suffering from acidity, he was going towards Dr. Patil's dispensary from Datta Nagar road, at about

9:00p.m. He saw the accused No.1 Ganesh Ughade, Accused No.2 Bandu Murtadak, Accused No.3 Santosh Pagare, Accused No.5 Santosh Ughade, Vicky and Chhotu near Salve's house. Accused No.5 Santosh Ughade and Sagar Jadhav were having sickles in their hands. Both of them assaulted Kiran. After that, Bandu Murtadak, Santosh Pagare, Ganesh Ughade, Vicky Punjabi and Chhotu took those sickles from them and assaulted Kiran. They were shouting. Few of the assailants fled away on their motorcycles and others ran away. Kiran was lying on the ground. PW-3 Vikram put a blanket on Kiran. The police came there and took Kiran's body to Civil hospital. PW-14 knew the accused as they were also working in the market-yard, Panchavati; as he himself was a vegetable vendor at market-yard, Panchavati. He deposed that, he could identify the accused. Initially, he made a mistake in identifying the Accused No.5 Santosh Ughade, but he corrected himself and then he correctly identified the accused No.5 Santosh Ughade. He identified both sickles produced in the Court. After the incident, he had gone to the civil hospital. He had seen PW-1 Nitin, PW-5 Archana and other relatives at Civil hospital. He

got scared and, therefore, he stayed in his house. He did not come out for about ten days. After that, his statement was recorded.

Apart from his vegetable business, he was also a Reporter. There was one case registered against him for assaulting one Sushil Kakade. According to him, it was a false case. He could not say whether the incident had taken place on the *otta* of someone's house. He could not recollect which clothes were worn by the assailants. When he went to the hospital, he did not discuss the incident with PW-5 Archana. After the tension subsided, he thought of giving information to the police. He gave his statement on 01.06.2017, that was about 13 days from the incident. He explained that he was scared.

10. PW-3 Vikram Mhaske is another important witness. Though, he had not seen the actual incident, but he had seen some accused after the incident. He deposed that on 18.05.2017, he had his dinner and had come out of the house at around 9:45p.m. He was sitting near a shop at Govind Mama chowk. At about 10:00p.m., some persons passed from in front of him. He saw and recognized the Accused No.5 Santosh Ughade as a pillion rider on

one motorcycle. He was having one weapon with blood stains on it. PW-3 could identify him because of the streetlight. He saw the crowd gathered in front of Salve's house which was around 30 feet away from where he was sitting. He saw Kiran lying on the ground. Kiran was the brother in law of PW-3 Vikram. There were bleeding injuries on Kiran. He raised shouts and went to his house and brought his mother to the spot. They brought one blanket and put it on Kiran's body. He saw his sister PW-5 Archana and PW-1 Nitin at the spot. His mother went to the hospital with Kiran's body. She told him that all the Appellants-accused had committed that offence. During trial, he identified the Accused No.5 Santosh Ughade on the screen. He deposed that, he could not identify the weapon seen in the hands of the Accused No.5 Santosh Ughade.

In the cross-examination, he deposed that he knew the Accused No.5 Santosh Ughade because he was working in the vegetable market. He could not tell which clothes the Accused No.5 Santosh Ughade was wearing on 18.05.2017. He could not give the description of the other persons sitting on the motorcycle. He did not tell the police that his sister was present and she was

crying, and PW-1 Nitin was present there.

11. PW-13 Sachin Lokhande was doing vegetable business at vegetable market-yard, Panchavati, Nashik. On 18.05.2017, after taking dinner at about 9:30p.m. he went for a walk at Navnath Nagar. He saw the Accused No.5 Santosh Ughade, Accused No.4 Sagar Jadhav, Accused No.1 Ganesh Ughade, Accused No.2 Bandu Murtadak and Accused No.3 Santosh Pagare near Salve's house. The Accused No.3 Santosh Pagare and the Accused No.1 Ganesh Ughade were waiting on the main road. They were looking at each other and making some signs. PW-13 anticipated that there would be a quarrel, therefore, he returned home. At about 11:00p.m. he came to know that Kiran was murdered near Salve's house. He thereafter went to Mumbai as his grand-mother was not well. He returned after 15 days. Then his statement was recorded. He identified the accused by names before the trial Court.

In the cross-examination, he deposed that, till about 9:35p.m. he had not seen the accused. On that day he had gone to the spot at about 11:45p.m. after the incident. He had not told the police that he had gone to Mumbai because his grandmother was

not well. He could not recollect whether he had told the police that the Accused were making signs amongst themselves and he had anticipated the quarrel.

12. PW-2 Kishor Mohite was a pancha for the inquest panchanama which is produced on record at Exhibit-97. PW-7 Gaurav More was a pancha for different panchanamas. The panchanamas produced on record at Exhibits-150 and 151 are not important because the Accused No.5 Santosh Ughade had shown the place where the accused had hatched the conspiracy, but nothing was recovered or discovered as a result of his statement.

On 20.07.2017 the Accused No.4 Sagar Jadhav produced the motorcycle. It does not concern the other accused. On 27.07.2017 the Accused No.6 Jayesh Dive showed the place where they had taken shelter after the incident. That also does not concern the Appellants in this case. Therefore, evidence of these witnesses is not very important.

13. PW-8 Ganesh Ghansham was present when the police pasted prohibitory orders. PW-11 Nitin Tuplondhe had pasted the prohibitory orders issued by the Deputy Commissioner of Police,

Special branch. PW-10 Police Naik Dilip Bombade had carried the muddemal articles to the laboratory.

14. PW-9 Dr. Anand Pawar had conducted the postmortem examination. The postmortem report is produced on record at Exhibit-172. There were 101 incised wounds all over the body. The cause of death was mentioned as “combined effect of cranio-cerebral damage due to sharp injuries to head and heamorrhagic shock due to multiple stab injuries to neck, chest and abdomen which are sufficient to cause death in ordinary course of nature individually and collectively. All injuries are antemortem in nature, fresh in duration.”

In the cross-examination, he deposed that, at the time of postmortem, two sickles were not shown to him. The sickles produced in the Court were curved in shape. There were no curved shaped injuries on the dead body.

15. PW-4 Yogesh More was a pancha for the spot panchanama which is produced on record at Exhibit-110. He deposed about the spot panchanama conducted on 19.05.2017.

The spot was shown by PW-1 Nitin. It was in the courtyard of Shantabai Salve. There was blood on the ground. The police collected the blood and the soil mixed with blood.

In the cross-examination, he accepted that, he was a Reporter and on many occasions he had visited Panchavati police station. He knew PW-1 Nitin prior to 19.05.2017. He admitted that, in one of the photographs he was seen with the brother of the deceased namely Shekhar. The photograph was taken at some function. However, the spot of the incident is hardly in dispute. A map is also produced. The photographs of the spot are on record.

16. PW-6 Sunil Khatri is an important witness. He was a pancha for the recovery of clothes of the deceased, clothes of the Accused No.1 Ganesh Ughade and for recovery of sickles and clothes at the instance of the Accused No.5 Santosh Ughade. He deposed that the blood stained clothes of the deceased were seized under the panchanama on 19.05.2017. He identified those clothes when produced in the Court. On the same day in the evening, the Accused No.1 produced his clothes in the police station. After two months i.e. on 18.07.2017 again he was called by the police. At

that time, the Accused No.5 Santosh Ughade made a statement that he will produce the weapon. The memorandum statement was recorded. It is produced on record at Exhibit-138. PW-6 identified Accused No.5 Santosh Ughade in the Court. The Accused No.5 led the police and the panchas to Dream Castle. There was an open ground in front of Balaji Heights. There were two electric poles. The Accused No.5 Santosh Ughade dug the middle portion between both the poles and took out one nylon bag. There were two sickles. They were bent. There were clothes in the bag. The articles were seized. The police seized the soil from that place. The panchanama was prepared. It is produced on record at Exhibit-139. PW-6 identified both the sickles produced in the Court.

In the cross-examination, he deposed that on 19.05.2017 in the morning when he reached the police station, the clothes were kept on the table. He admitted that the clothes produced in the Court previously belonging to the Accused No.1 Ganesh Ughade did not show any blood stains when they were produced in the Court. On 18.07.2017, he went to the police station after receiving a call at 11:30a.m. He spoke with the

Accused No.5 Santosh Ughade for about 20 to 25 minutes. At that time, he was behind the bars. He was tied with a rope and he was handcuffed. He was removed from the lockup at 12:00p.m. He explained that, in the panchanama it was not mentioned that the Accused No.5 Santosh Ughade had buried those articles. However, the panchanama mentions that the articles were taken out from the spot where they were buried. The panchanama mentions that the clothes worn by the Accused No.5 Santosh Ughade and the Accused No.4 Sagar Jadhav were recovered under that panchanama; besides the two weapons.

17. PW-12 Sunita Nikam was examined to show the previous enmity between the parties. She deposed that on 03.01.2017, the Accused No.5 Santosh Ughade and the Accused No.4 Sagar Jadhav had assaulted one other Santosh who was working with this witness. She had told about this quarrel to the deceased Kiran and his brother Shekhar. She had lodged a complaint against the Accused No.5 Santosh Ughade and the Accused No.4 Sagar Jadhav. On 18.05.2017, at 10:30p.m. she heard the talks amongst the vegetable vendors that Kiran Nikam was assaulted. She went to

the spot with her son Kunal and saw Kiran lying on the *otta* of the house of Salve. She deposed that, four months prior to this incident, there was a quarrel between the deceased Kiran and the Accused No.5 Santosh Ughade. According to her, because of that rivalry, the accused had committed murder of Kiran. She identified all the accused present in the Court by their names. She accepted that, she revealed the names of the accused to the police after 15 days from the incident.

18. PW-15 P.I. Kailas Wagh was one of the investigating officers. He deposed that, he was entrusted with the investigation in C.R.No. I-201 of 2017 on 24.06.2017. He arrested the Accused No.5 Santosh Ughade on 13.07.2017. On 14.07.2017, he arrested the Accused No.4 Sagar Jadhav. He supervised the recovery panchanama of weapon and clothes at the instance of the Accused No.5 Santosh Ughade on 18.07.2017. He recovered the motorcycle at the instance of the Accused No.4 on 20.07.2017. He arrested the Accused No.6 Jayesh Dive on 25.07.2017. On 04.08.2017, he himself carried the seized muddemal articles to the Forensic Science Laboratory (FSL), Dindori Road, Nashik.

In the cross-examination, he stated that he had not collected the relevant station diary entry. He accepted that the spot was in a crowded locality. He also accepted that the case diary did not mention that there was terror of the accused in the locality and, therefore, no witnesses were coming forward. He further accepted that the deceased Kiran and his brother Shekhar were habitual criminals. Shekhar was facing the offence under MCOCA. There was terror of Shekhar in the vegetable market. One Zonwal had taken down the FIR. He had carried out the spot panchanama and the inquest panchanama. This witness had filed the charge-sheet.

19. PW-16 PSI Mukhtar Shaikh had conducted the investigation before PW-15 PI Wagh. PW-16 received the F.I.R., the spot panchanama and the inquest panchanama. He visited the spot. He deposed that there was atmosphere of fear. He recorded the statements of a few witnesses. He arrested the Accused No.1 Ganesh Ughade. He seized the Accused No.1 Ganesh's clothes. He seized the clothes of the deceased. He recorded the supplementary statement of PW-1 Nitin and PW-14 Vishal. He approached PW-5

Archana for recording her statement. She was scared. Her mental condition was not proper, therefore, her statement was recorded on 05.06.2017. Between 21.05.2017 to 28.05.2017 he was assigned *bandobast* duty, therefore, during that period the investigation was assigned to API Wagh; who had arrested the Accused No.3 Santosh Pagare. After that, this witness again took over the investigation. He arrested the Accused No.2 Bandu Murtadak. His clothes were seized.

In the cross-examination, he deposed that, he had not collected the station diary entry regarding the incident. One Zonwal was on PSO duty on the night of the incident. According to him, the deceased was lying on the platform of Salve's house. There were houses of Shankar Nalawade, Nana Nikam, Donde, Changle and More near the spot. But he could not tell whether there were entries in the case diary and station diary that those persons were called as witnesses. He deposed that, whenever he visited the spot, he did not find any witnesses. The first phone call regarding the incident was made by an unknown person. He proved the omissions from the police statement of the witnesses

which he had recorded.

20. Besides this evidence, the prosecution produced the CA certificate at Exhibit-224. The CA certificate shows that no blood was found on the clothes of the Accused No.1, Accused No.2 and the Accused No.4. The blood group of the deceased was 'B' group as found from his clothes. The blood found on the spot was inconclusive for grouping. The CA report-Exhibit-224 shows that the clothes of the Accused No.5 Santosh Ughade showed presence of blood of 'B' group. Similarly, the clothes of the Accused No.4 Sagar Jadhav also showed presence of blood of 'B' group. Both the sickles which were recovered showed presence of blood of 'B' group.

21. As mentioned earlier, the Accused No.2 Bandu Murtadak and the Accused No.3 Santosh Pagare examined their own defence witnesses. DW-1 Rupali Murtadak who was examined for the Accused No.2 Bandu Murtadak was the wife of the Accused No.2. She deposed that, Kiran's murder took place at 9:00p.m. on 18.05.2017. At about 6:30p.m. the Accused No.2 Bandu Murtadak i.e. her husband had gone to attend the marriage function of one

Chakor. She produced the wedding card before the Court. She came to know about the murder at about 11:30p.m. Her husband's friend Nagesh Dargode (DW-2) came to her house and told her about the same. He told her that the people in the area were naming Accused No.2 Jitesh and, therefore, she should go somewhere else along with her children. She told Nagesh that her husband had gone to attend the marriage. Nagesh told her that he had already informed about this fact to the Accused No.2 Jitesh and, that DW-1 should leave the house with the children. Therefore, she went in hiding with her children. On the third day from the incident, Nagesh came to her house. Both of them went to the police station and they came to know that the Accused No.2 Jitesh was not connected with the murder. Both of them then went to Shubhechha Lawns where the marriage had taken place. They met Chetan Wadhane who was the owner of Shubhechha Lawns. He did not know the Accused No.2 Jitesh, but he offered to check the CCTV footage. He showed the CCTV footage. DW-1 Rupali was satisfied that her husband was present in the marriage ceremony. She, therefore, asked Chetan to give the CCTV footage. He gave

the footage in two pen-drives. She submitted one pen-drive with Panchavati police station and kept one with her. She produced that pen-drive before the Court which she had with her. She further deposed that, her husband was arrested on 28.05.2017. She approached the Crime Branch Unit-1 asking about the pen-drive given by her. She had given an application under the Right to Information Act. She was informed that the pen-drive was filed along with the charge-sheet. She produced the reply at Exhibit-D-248/D-1, but she verified that the pen-drive was not filed with the charge-sheet. She appealed against that order.

Learned Advocate for the defence submitted that the pen-drive was provided by her before the Court, however, the Trial Judge ruled that there was no certificate U/s.65B of the Evidence Act and, therefore, the pen-drive was not played.

This witness was cross-examined by the learned APP. She deposed that, the distance between her residence and Navnath Nagar where the incident took place was half a kilometer. The incident took place near an electric pole. The street lights were on. On 18.05.2017, she had not met her husband. There was no

communication on the phone as well. From 18.05.2017 till 28.05.2017 she did not meet her husband and there was no communication between them even on telephone. She had not informed her husband that he was implicated in the crime. She did not know whether her husband had quarreled with Kiran and Shekhar. She admitted that, she did not know where the CCTV footage was stored and as to how it was removed. She had approached Chetan Wadhane for the CCTV footage on 20.05.2017. She had no document to show that she had supplied the pen-drive to the police. Exhibit-D-251 mentions that the Accused No.2 Jitesh @ Bandu Murtadak was present at Shubhechha Lawns attending the wedding from 19.51 hrs. to 21.42 hrs. However, as held by the learned Judge, these timings are not proved through CCTV footage as there was no certificate U/s.65B of the Evidence Act.

22. DW-2 Nagesh Dargude was also examined on behalf of the Accused No.2 Murtadak. He corroborated the evidence of DW-1 Rupali. His evidence is exactly on the same line.

In the cross-examination, he deposed that the distance between the spot of the incident and Shubhechha Lawns is of half

an hour by two wheeler. He himself had not gone to Shubhechha Lawns. To a specific question put to him, he could not answer as to whom he had met at Shubhechha Lawns. He could not tell in which form the CCTV footage was kept in the office. He had seen the CCTV footage for two minutes.

23. DW-3 Chetan Wadhane, the owner of Shubhechha Lawns, was also examined on behalf of the Accused No.2 Jitesh Murtadak. He deposed that, he could not recollect whose marriage took place on 18.05.2017. There were CCTV cameras. After two days from 18.05.2017, two to three people had come to collect the CCTV footage. They had collected two pen-drives.

In the cross-examination conducted on behalf of the prosecution, he deposed that he did not recollect the names of those two people. According to him, the CCTV footage of the dining hall could have been collected. He did not keep the record of the present CCTV footage.

24. The Accused No.3 Santosh Pagare also examined two defence witnesses. DW-1 Varsha Pagare who was examined on behalf of the Accused No.3 is his wife. She deposed that, on

18.05.2017, in the evening, there was marriage of one Satish Sangle. Her husband left their house at 8:30p.m. to attend the marriage. It was to take place at 10 to 11 kilometers away from her house. Her husband returned home between 11:00 to 11:30p.m. He was apprehended by the police after 3-4 days from that day in connection with murder of Kiran Nikam. She produced the wedding card of that marriage. She had gone to the police station along with the wedding card. She approached Ashok Sangle, father of Satish Sangle asking for video footage, photographs and CD of the marriage. With the help of her brother, she took out the relevant footage wherein her husband was seen in the marriage. It was taken on the pen-drive. She produced the certificate U/s.65B of the Evidence Act along with the pen-drive and the photograph. That certificate was signed by her.

However, it is quite clear that, she was not the person who had kept that device where CCTV footage was captured and, therefore, her certificate U/s.65B of the Evidence Act does not carry any evidentiary value.

25. She further deposed that, she could identify the contents

of the pen-drive and photographs if shown to her. She identified the photograph of her husband. The pen-drive was played in the Court. She identified her husband. She admitted that, she had not produced the pen-drive in the police station.

In the cross-examination conducted on behalf of the prosecution, she admitted that she did not know the meaning of 'downloaded'. She had not personally downloaded the contents of CD. She admitted that the reference in the purported certificate U/s.65B of the Evidence Act, that she had downloaded the video recording from CD, was false. She had not personally used the computer from which the contents of the CD were transferred.

26. DW-2 Ashok Sangle was the other defence witness examined on behalf of the Accused No.3 Santosh Pagare. He deposed that, his son's marriage took place on 18.05.2017 at Aurangabad road, Geetai Lawns. The marriage took place at around 8:30p.m. to 8:45p.m. According to him, the Accused No.3 Santosh Pagare had attended the marriage. The marriage was scheduled to take place on '*goraj muhurt*'. The marriage was video-graphed and the photographs were taken. He identified the

photograph in which his son, his daughter-in-law and the Accused No.3 were seen. The photographs are produced on record at Exhibits 262 and 263.

In the cross-examination, he deposed that the CD was not ready in June 2017. He could not tell on which date the CD was provided to DW-1 Varsha. It was kept with her for 2-3 days. It was prepared by the photographer. He did not recollect the name of the photographer. The photographs did not bear signature and stamp of the photographer. The printouts of the photographs were not taken by him. There could be approximately 1000 guests who attended the wedding. He could not tell the time at which the guests attended the marriage ceremony. Only Accused No.3 Santosh Pagare from his family had attended the marriage. His family had not attended the marriage. After the marriage was performed, this witness was on the stage. He could not tell the exact time when the Accused No.3 Santosh Pagare arrived and left.

This is the entire evidence led in this case.

SUBMISSIONS OF DR. YUG MOHIT CHAUDHARY, LEARNED COUNSEL FOR THE ORIGINAL ACCUSED NOS.1, 3 AND 5:

27. Dr. Chaudhary submitted that, there were 101 injuries

on the dead body. Therefore, it is clear that the offence was committed due to extreme hatred. In that case, it was necessary for the prosecution to have established the motive behind the crime. In the entire evidence, no such motive is brought on record to support the theory of assault due to extreme hatred. In this case, the motive is not established. Admittedly, the area was crowded. The incident had taken place, according to the prosecution, at 10:00p.m., therefore, many people from the locality could be present around that time. Yet no independent eye witness is examined. All the eye witnesses were related to the deceased. They were interested witnesses.

28. The FIR was lodged after about five hours and thirty minutes. This delay is not explained. PW-1 Nitin had not named the three accused i.e. the Accused No.2 Jitesh and two others in his FIR. He had added their names in the supplementary statement. The Accused No.4 Sagar Jadhav who was subsequently named and the Accused No.6 Jayesh Dive were rightly acquitted by the learned Judge. This indicates that, PW-1 Nitin had implicated at least two accused falsely and, therefore, he is not a

reliable witness.

29. According to the prosecution case, PW-1 Nitin was present at the spot. It does not explain his complete silence for about five and half hours. He did not try to help the deceased. Even after the assailants had left the spot, he had not even provided water to the deceased. His conduct was, hence, unnatural. PW-1 Nitin was carrying a phone and he could have contacted the wife of the deceased i.e. PW-5 Archana over phone instead of running to her house. He was a chance witness, residing at four to five kilometers away from the spot of the incident. He had not named the weapons in his FIR.

30. The statement of PW-5 Archana was recorded after 18 days. There is no explanation for not recording her statement earlier. One case is pending against her. She does not appear to be a weak lady and, therefore, there was no reason as to why the police did not approach her in her house to record her statement. Recording of her statement after 18 days shows that she had time to concoct a false story after discussion with others. Her identification of the Accused is not believable. She was not

knowing the accused. No test identification parade was conducted to enable her to identify the accused.

31. PW-3 Vikram was a chance witness. The eye witnesses have stated that the incident had taken place in front of Salve's house on the road. But the spot panchanama shows that the spot of the incident was on *otta* of one Salve's house. The blood is seen on the wall and the *otta* of Salve's house and not on the road. Salve was an important witness, but he was not examined. PW-3 Vikram claims to have been sitting thirty feet away from the spot. He ought to have seen the incident, but he has not described the incident of assault.

32. The Accused Nos.2 and 3 led the evidence of *alibi*. Their witnesses had approached the police at the first instance, but the police had not investigated the case from that angle, and this has caused prejudice to these accused. The evidence of the defence witnesses has to be treated at par with the evidence of the prosecution witnesses. If the evidence of the defence witnesses has to be discarded because they were close friends and relatives, and hence were interested witnesses; the same reasons should

apply equally to the prosecution witnesses who were the relatives and hence were interested witnesses. The learned trial Judge erred in ignoring the defence witnesses. It was too much to expect production of the marriage certificate of the weddings which the accused had attended.

33. The recovery of sickles after two months cannot be relied on. The Accused No.5 Santosh Ughade was handcuffed and was tied with the rope, hence, his memorandum statement was not voluntary. The contents of the CA report were not put to the accused No.5 Santosh Ughade at the time of his examination U/s.313 of the Cr.PC. The inquest panchanama mentions different sections from the FIR which would mean that the FIR was manipulated.

34. Dr. Chaudhary submitted that the nature of injuries on the dead body did not match with the sickle. The description of the weapon shows that semicircular injury ought to have been caused, but in this case, no such injury was found on the dead body.

35. Dr. Chaudhary relied on the following judgments in support of his contentions:

- i) ***Shaikh Mohammed Salim Karimullah and others V State of Maharashtra***¹. In this case, a Division Bench of this Court has held that the attention of the accused has to be drawn to the CA report to seek his response, only then it could be held against the accused.
- ii) ***Ram Lal Narang V. State (Delhi Admn.)***² It was held that, it was the duty of the police officers to investigate into the *alibi* of the accused.
- iii) ***State of U.P. Versus Babu Ram***³ It was held that the defence witnesses are entitled to equal treatment with the witnesses of the prosecution.

SUBMISSIONS OF MR. ANIKET VAGAL, LEARNED COUNSEL FOR THE ACCUSED NO.2.

36. Mr. Vagal, learned counsel for the Accused No.2 adopted the arguments of Dr. Chaudhary, learned counsel for the Accused Nos.1, 3 and 5. In addition, he emphasized that, there was no motive for the Accused No.2 to commit murder. He submitted that, it was very unusual for the Accused to exchange the weapons and to assault the deceased turn by turn. All the witnesses were interested witnesses. No independent witnesses were examined.

1 1998 CRI.L.J. 3170

2 AIR 1979 SUPREME COURT 1791

3 (2000) 4 Supreme Court Cases 515

The supplementary statement was recorded only to attract Section 149 of the IPC, so that, mere presence of the accused could be held punishable U/s.302 of the IPC. There is variance in the time of the incident. There was no recovery at the instance of the Accused No.2. There was delay in recording the statement of PW-5 Archana. The time mentioned by PW-14 Vishal is different from the time of the alleged incident.

SUBMISSIONS OF MR. AKSHAY BANKAPUR, LEARNED COUNSEL FOR THE INTERVENOR.

37. Mr. Bankapur made submissions on behalf of the wife of the deceased. He invited our attention to the map of the incident and also to the photographs. He submitted that, Salve's house was on the road. The *otta* was only a small elevation. It was not of some height where steps were required to climb it. Therefore, the deposition of the witnesses that the incident had taken place on the road, is correct.

38. PW-3 Vikram and PW-5 Archana were residing in the same locality. The deceased Kiran and PW-5 Archana were residing very near to the spot of the incident. PW-1 Nitin has mentioned the presence of PW-3 Vikram, in his FIR. PW-1 Nitin has described the

weapons as sharp weapons and there is nothing wrong in the description. The injuries were caused with sharp weapons. In the inquest panchanama, the C.R. number is correctly mentioned.

39. PW-5 Archana could give her statement only after the 13 days rituals were over; which was not unusual. She was on the terrace. She was a natural witness. There is no fault in her identification of the Accused in the Court. PW-14 Vishal had given his police statement after 10 days, but he has explained that he was scared because of the incident. It was not unnatural. He could give the statement only after the Accused No.1, 3 and 4 were arrested. PW-14 Vishal has also deposed about the presence of PW-3 Vikram at the spot. PW-12 Sunita Nikam has given the background of enmity. Even DW-2 Nagesh for the Accused No.2 had admitted enmity between two groups. PW-13 Sachin has deposed about the prior movement of the accused showing their pre-plan to commit the murder.

40. Considering the brutality, no one else would come forward and, therefore, no independent witnesses could be examined.

41. As far as, *alibi* is concerned, Mr. Bankapur submitted that the defence witnesses examined by both the accused i.e. the Accused Nos.2 and 3 were not with them when they had attended those different weddings. No other person attending those weddings was examined. In any case, the distance from the venues of those weddings was not very far from the spot of the incident. The evidence of DW-1 Rupali for the Accused No.2 shows that, the last frame was at about 9:42p.m. In any case, it was quite possible for the said accused to leave that venue and come to the spot at the time of the incident. The evidence of DW-2 Ashok for the Accused No.3 shows that the marriage was only upto 8:45p.m. Mr. Bankapur submitted that the recovery of weapons and the clothes was not from an open space. This is an additional circumstance. The CA report was shown to the Accused No.5 Santosh Ughade at the time of his examination U/s.313 of the Cr.PC. Considering the number of injuries, it was quite possible that those accused assaulted the deceased with sickles turn by turn. The Medical officer has accepted that the injuries were possible by the same weapons.

SUBMISSIONS OF MS. GAURI RAO, LEARNED APP FOR THE STATE:

42. Learned APP reiterated the submissions made by Mr. Bankapur. She submitted that the wedding card in the defence evidence shows *goraj muhurat*. It was evening and sunset time. The incident had taken place after 10:00p.m., therefore, the evidence of alibi does not help the defence. The nature of injuries depends on the manner of assault.

RESPONSE BY DR. YUG MOHIT CHAUDHARY, LEARNED COUNSEL FOR THE ORIGINAL ACCUSED NOS.1, 3 AND 5:

43. In response to the submissions of the learned APP and Mr. Bankapur, Dr. Chaudhary submitted that, the 13th day from the date of the incident was over on 31.05.2017 and the statement of PW-5 Archana was recorded on 05.06.2017. In between, the I.O. had gone to her house. There was no explanation as to why her statement was not recorded prior to 05.06.2017. PW-1 Nitin has admitted that the Accused No.2 Bandu Murtadak had filed cases against him. The charge-sheet shows that the statements of other witnesses were recorded, but they were not examined during trial. Therefore, adverse inference needs to be drawn.

REASONS AND CONCLUSION

44. The prosecution has examined PW-1 Nitin, PW-5 Archana and PW-14 Vishal as the eye witnesses to the incident. PW-1 Nitin is the most important witness in this case. The deceased was his cousin. PW-1 Nitin had deposed that, after dinner, he had gone to Navnath Nagar, near the spot of the incident to meet his Aunt. He reached there at 10:15p.m. Therefore, though Dr. Chaudhary branded him as a chance witness, he was not an unnatural witness. He had sufficient reason to go to that area. He was knowing all the accused by names. He saw the actual incident of assault on the deceased at the hands of all the accused. Considering that the accused had inflicted as many as 101 injuries, it was not unnatural that he would get extremely scared and would run towards the house of the deceased which was very near to the spot of the incident. We do not find force in the submissions of Dr. Chaudhary that PW-1 Nitin could have made a phone call to the wife of the deceased. If the house of the deceased was hardly a few steps away, PW-1's conduct was natural that he would run to the house to take shelter and to inform the

wife of the deceased. We do not find anything unnatural in his conduct.

45. PW-5 Archana herself has deposed that PW-1 Nitin met her on the staircase. She was on the terrace. This answer was given by her in paragraph-16 of her deposition in the cross-examination conducted on behalf of the Accused No.3. The defence itself has elicited this answer from PW-5 Archana. PW-1 Nitin in his FIR has described that the deceased was assaulted by sharp weapons carried by the accused. His FIR was registered at 3:50a.m. on 19.05.2017 at Panchavati police station. He had gone to the Civil hospital. We do not find any delay in lodging of the FIR or delay in PW-1's informing to the police about the incident. Thus, we find that, he is a wholly reliable witness. Just because he had not lifted the deceased and put him in the police van that cannot be held against him. After suffering 101 incised wounds, there was no chance that the deceased could have survived. PW-1 Nitin was in the Civil Hospital till 1:30a.m. and he had not informed about the incident to the police at Civil Hospital. But then he went to Panchavati police station. The distance between Panchavati police

station and Civil Hospital is about 3 to 4 kilometers. He had gone to the police station at 3:00a.m. in the night and then his FIR was registered. We do not find any unexplained delay in registration of the FIR.

46. PW-1 Nitin's evidence is supported by PW-14 Vishal Varule. On 18.05.2017 in the night, at about 9:00p.m. he was going to Dr. Patil's Dispensary. When he reached near Salve's house, he saw the accused standing there having weapons in their hands. He saw the actual incident of assault. He deposed that, he knew the accused persons from earlier as they were also working in the market-yard. Though, initially, he made a mistake in identifying the Accused No.5 Santosh Ughade, he corrected himself and then rightly identified the Accused No.5 Santosh Ughade. He identified the Accused No.2 Jitesh correctly. The criticism of his evidence was that, his police statement was recorded after 10 days. He has explained that he was scared. He was afraid because of the circumstances. He had stayed in his house and did not leave the house. Therefore, his statement was recorded after ten days. His evidence corroborates the main

evidence of PW-1 Nitin.

47. PW-5 Archana is another eye witness. She was residing very close to the spot of the incident. She was on the terrace with her younger child. She saw her husband approaching their house and on the way, this incident had taken place. She had seen the incident. Dr. Chaudhary criticized her evidence because her statement was recorded after 18 days. Her deposition shows that she was not knowing the accused very well before the incident. She has deposed that, her husband had shown the accused on Facebook and had pointed them out when they were passing on the road in front of their building. Therefore, her identification of the accused is not very clear. The test identification parade was not held. However, it cannot be said that she had not seen the incident or that she was not in a position to see the incident. She was on her terrace. She could easily see the incident. Her presence on the terrace was most natural and, therefore, to that extent, her evidence is acceptable. She cannot be termed as a totally unreliable witness. To that extent she had corroborated the evidence of PW-1 Nitin. She has also deposed that, as mentioned

earlier, PW-1 rushed to her house and met her on the staircase. She definitely corroborates the evidence of PW-1 Nitin.

48. Apart from these witnesses, the prosecution has also examined PW-3 Vikram. He was a natural witness. He was residing in the same area. He was the brother in law of the deceased and cousin of PW-5 Archana. At about 10:00p.m. he had seen the Accused No.5 Santosh Ughade going away on a motorcycle. He was a pillion rider and was carrying a blood stained weapon. This witness was sitting near one shop which was about 30 feet away from the spot. He had seen the crowd gathered in front of Salve's house and, therefore, he went there. He saw his brother in law Kiran lying on the ground. He went back to his house, informed his mother, brought one blanket and put it on Kiran. His mother accompanied Kiran to Civil Hospital. He fairly deposed that, it would be difficult for him to identify the weapon in the Court. This witness has not unnecessarily roped in all the accused. He has stuck to his limited story. He had only described the Accused No.5 Santosh Ughade going away from the spot. He had not seen the actual incident, though, it had taken place in the vicinity of the

shop where he was sitting. There is no specific cross-examination as to whether the spot of the incident was visible, or there were other shops in between where he was sitting and the spot of the incident. He has deposed that the shop where he was sitting was at Govind Mama chowk. Thus, the evidence of PW-3 Vikram also corroborates the evidence of PW-1 Nitin, to this extent. PW-3 Vikram does not appear to be a witness who was giving false evidence. PW-13 Sachin Lokhande's evidence also lends corroboration as he had seen the accused at the spot before the incident.

49. Thus, we find that PW-1 Nitin is a wholly reliable witness and his evidence is corroborated by PW-3 Vikram, PW-5 Archana and PW-14 Vishal. In view of this direct evidence, the motive pales in comparison.

50. As far as, the recovery is concerned, we find force in the submission of Dr. Chaudhary that it was effected after two months from the incident. The accused was tied with a rope and was handcuffed.

The evidence of recovery does not inspire confidence in

this case and, therefore, we are ignoring that evidence.

51. The evidence of PW-9 Dr. Anand shows that he had examined the weapons and, according to him, the injuries mentioned in the postmortem report were consistent with the use of those weapons. Therefore, though in the cross-examination he deposed that the sickles were curved in shape and there was no curved shaped injury on the dead body, his specific opinion is very clear. As rightly submitted by the learned APP, it depends on the manner of the assault.

52. As far as, the evidence of *alibi* is concerned, we have examined the evidence of defence witnesses and we have treated them at par with the prosecution witnesses. We are not discarding their evidence because they were interested witnesses. However, we are not satisfied that the defence has proved their *alibi*. The defence evidence is based on the CCTV footage, the photographs and video shoot. In none of these, the requisite certificate required U/s.65B of the Evidence Act is produced. The device on which those digital images were captured were not used by the defence witnesses who were examined, therefore, they could not have

proved those images.

53. The defence evidence also shows that the venues of those weddings were not very far from the spot of the incident and there is no reliable evidence to show that at the time of the incident i.e. at around 10:15p.m, the Accused No.2 Bandu and the Accused No.3 Santosh Pagare were at some other places. As rightly submitted by the learned APP and Mr. Bankapur, no other guest attending those ceremonies was examined by the defence. DW-2 Ashok Sangle examined by the Accused No.3 Santosh Pagare was the father of groom, but he was on the stage and he could not notice continuous presence of the Accused No.3 Santosh Pagare at the venue. DW-3 Chetan for the Accused No.2 Bandu was only the owner of the lawn. He did not depose about the presence of the Accused No.2 at the wedding ceremony or wedding reception. Both these accused Nos.2 and 3 had absconded and were arrested later. The defence evidence does not help either of these accused.

54. As a result of the above discussion, we are of the opinion that the prosecution has proved its case beyond reasonable doubt and the accused in this case cannot be acquitted. The conviction

and the sentence imposed are proper. The impugned Judgment and order need no interference.

55. All the Appeals are dismissed.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)