

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 559 OF 2018

1. Komal s/o Babusingh Ade,
Age 44 years, Occ.-Agriculturist,
2. Janardhan s/o Ramdhan Rathod,
Aged 43 years, Occ.-Agriculturist,
3. Duryodhan s/o Ramdhan Rathod,
Aged 34 years, Occ.-Agriculturist,

All R/o Somnath Nagar, Manora, Tah. Manora,
Dist-Washim.
(At present in Amravati Central Prison)

...APPELLANTS
(Ori. Accused nos.8,1,2)

VERSUS

The State of Maharashtra,
through P.S.O. Manora Police Station, Dist-Washim

...RESPONDENT

Mr. Avinash Gupta, Senior Advocate with Mr. R.K. Tiwari and Mr. Akash
Gupta, Advocates for the appellants.
Mr. S.S. Doifode, A.P.P. for the respondent/ State.
Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

WITH

CRIMINAL APPEAL NO. 560 OF 2018

1. Dilip s/o Dalsingh Rathod,
Age 51 years, Occ.-Labour,
2. Sudam alias Sudhakar s/o Shivram Chavhan,
Aged 52 years, Occ.-Agriculturist,

3. Ramdhan s/o Mersingh Rathod,
Aged 83 years, Occ.-Agriculturist,
All R/o Somnath Nagar, Manora, Tah. Manora,
Dist-Washim.
(At present in Amravati Central Prison)

...APPELLANTS
(Ori. Accused nos.15,23 &18)

VERSUS

The State of Maharashtra,
through P.S.O. Manora Police Station, Dist-Washim.

...RESPONDENT

Mr. Avinash Gupta, Senior Advocate with Mr. R.K. Tiwari and Mr. Akash
Gupta, Advocates for the appellants.
Mr. S.S. Doifode, A.P.P. for the State.
Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

WITH

CRIMINAL APPEAL NO. 561 OF 2018

1. Ravindra s/o Tulshiram Rathod,
Age 39 years, Occ.-Agriculturist,
2. Ashok s/o Ramlal Pawar,
Aged 43 years, Occ.-Agriculturist,
3. Vinod s/o Haridhan Rathod,
Aged 36 years, Occ.-Agriculturist,
4. Manohar s/o Tulshiram Rathod,
Aged 23 years, Occ.-Agriculturist,

All R/o Somnath Nagar, Manora, Tah. Manora,
Dist-Washim.
(At present in Amravati Central Prison)

...APPELLANTS
(Ori. Accused nos.11, 12, 13 & 14)

VERSUS

The State of Maharashtra,
through P.S.O. Manora Police Station, Dist-Washim

...RESPONDENT

Mr. Avinash Gupta, Senior Advocate with Mr. R.K. Tiwari and Mr. Akash
Gupta, Advocates for the appellants.

Mr. S.S. Doifode, A.P.P. for the State.

Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

WITH

CRIMINAL APPEAL NO. 562 OF 2018

1. Govardhan s/o Haridhan Rathod,
Age 39 years, Occ.-Hotel,
2. Kisan s/o Govardhan Ade,
Aged about 49 years, Occ.-Agril.,
3. Kuldeep s/o Ramlal Pawar,
Aged about 34 years, Occ.-Agril.,
4. Arun s/o Ramlal Pawar,
Aged about 39 years, Occ.-Agril.

All R/o Somnath Nagar, Manora, Tah. Manora,
Dist-Washim.

(At present in Amravati Central Prison)

...APPELLANTS
(Ori. Accused nos.8,1,2)

VERSUS

The State of Maharashtra,
through P.S.O. Manora Police Station, Dist-Washim

...RESPONDENT

Mr. Avinash Gupta, Senior Advocate with Mr. R.K. Tiwari and Mr. Akash Gupta, Advocates for the appellants.
Mr. S.S. Doifode, A.P.P. for the State.
Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

WITH

CRIMINAL APPEAL NO. 570 OF 2018

Dnyaneshwar s/o Babusingh Rathod,
Age 36 years, Occ.-Farmer,
R/o Somnath Nagar, Tahsil Manora,
District Washim.

...APPELLANT

VERSUS

The State of Maharashtra,
through P.S.O. Manora, Dist-Washim.

...RESPONDENT

Mr. A.M. Jaltare, Advocate for the appellant.
Mr. S.S. Doifode, A.P.P. for the State.
Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

With

CRIMINAL APPEAL NO. 576 OF 2018

1. Vishwanath Fakira Jadhao,
Aged about 43 years, Occ. Grocery shop,
2. Bandu Fakira Jadhao,
Aged about 40 years, occ.- Grocery Shop,
3. Madhukar Bhoju Chavan,
Aged about 72 years, occ.-Agriculturist,

4. Pradeep Babulal Jadhao,
Aged about 23 years, Occ.-Agriculturist,

5. Milind s/o Madhukar Chavan,
Aged about 36 years, Occ.-Agriculturist,

All R/o Somnath Nagar, Tahsil Manora, District Washim.
(At present in Central Jail Amravati)

...APPELLANTS

(Ori. Accused Nos.5, 6, 20,21 and 22)

VERSUS

The State of Maharashtra,
through Police Station Officer, Police Station Manora,
District Washim.

...RESPONDENT

Mr. R.M. Daga, Advocate for the appellants.

Mr. S.S. Doifode, A.P.P. for the State.

Mr. C.S. Dharmadhikari, Advocate to assist the prosecution.

CORAM : SUNIL B. SHUKRE &

PUSHPA V. GANEDIWALA, JJ.

RESERVED ON : SEPTEMBER 21, 2021.

PRONOUNCED ON : FEBRUARY 02, 2022.

JUDGMENT (PER : PUSHPA V. GANEDIWALA, J.)

All these Appeals against conviction, preferred under Section 374 of the Code of Criminal Procedure Code, 1973, are directed against the judgment and order dated 10/08/2018 passed by the I/c. Additional Sessions Judge, Mangrulpir (Camp at Washim) in Sessions Trial No. 44/2014, whereby the learned Judge convicted the appellants for the

offences punishable under Sections 302, 307, 147 and 148 read with Section 149 of the Indian Penal Code ("**IPC**").

2. The appellants/ accused are acquitted of the offences punishable under Section 120B of the IPC and Section 135 of the Bombay Police Act (now 'the Maharashtra Police Act, 1951') ("**Act of 1951**").

Accused No. 16 - Babusingh Ramji Rathod and accused No. 17 - Sadashiv Limbaji Jadhao are acquitted of all the offences punishable under Sections 302, 307, 147 and 148 read with Section 149 of the IPC.

For the offence punishable under Section 302 read with Section 149 of the IPC, the appellants/ accused are sentenced to suffer imprisonment for life and fine of Rs.3,000/- each, in default, to suffer simple imprisonment for one year.

For the offence punishable under Section 307 read with Section 149 of the IPC, the appellants/ accused are sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.2,000/- each, in default, to suffer simple imprisonment for one year (three counts).

For the offence punishable under Section 147 of the IPC, the appellants/ accused are sentenced to suffer rigorous imprisonment for one year and fine of Rs.500/- each, in default, to suffer simple imprisonment for one month.

For the offence punishable under Section 148 of the IPC, the appellants/ accused are sentenced to suffer rigorous imprisonment for two years and fine of Rs.500/- each, in default, to suffer simple imprisonment for two months.

All the aforementioned sentences are directed to run concurrently. The appellants/ accused have been given set-off for the period for which they were in jail.

The facts in brief, leading to the filing of the present Appeals, may be stated as under :-

3. In all 23 accused persons were tried before the Additional Sessions Court, Mangrulpir. In the incident of rioting, Devidas, his son Mukesh and nephew - Ganesh received injuries, while the son of Devidas, by name Avinash, succumbed to the injuries received to him.

4. As per the prosecution story, on 18/03/2014, on the eve of Holi festival, Devidas along with his two sons by name Avinash and Mukesh, had been to the house of his elder brother to take blessings of his mother (grandmother of Avinash and Mukesh). The accused Janardhan was playing DJ in front of the house of the elder brother of Devidas during '*fagwa*' celebration. As the grandmother of the Avinash was not keeping well, Avinash asked Janardhan to stop playing DJ. There was a trivial quarrel between them. Thereafter, playing of DJ was stopped. At around 4:00 pm, when Avinash along with his brother Mukesh, father Devidas and cousin Ganesh started to go to their house at Naik Nagar by a car, no sooner than they reached and alighted from the car, the accused persons caught hold of them and assaulted all the four by weapons like iron pipes and wooden planks. It is alleged that some of the accused caught hold of the victims of assault and some accused were instigating to assault. In the said assault, Avinash succumbed to the injuries received to him, whereas Mukesh, Devidas and Ganesh were seriously injured.

5. The information about the aforesaid incident was reached Police Station - Manora. PI. Mr. Shankar Laxman Donkalwar along with the staff proceeded to the spot of the incident and found four persons

smearred with blood lying in front of the house of Janardhan. The injured were shifted to the hospital. On the same day, Avinash was declared dead.

6. On the report of Nirmalabai (PW19) - mother of Avinash, crime for the offences punishable under Sections 302, 307, 147, 148 and 149 of the IPC and Section 135 of the Act of 1951 was registered vide Crime No.38/2014 dated 18/03/2014 (Exhs. 509 and 510) against 21 persons. In the presence of panchas, spot panchanama (Exh. 428) was carried on. Spot of the incident was shown by Nirmalabai. Simple earth and blood-stained earth came to be seized and sealed (Exh. 429). The said articles were deposited in Maalkhana as property No. 14/2014.

7. A.P.I. Mr. Nachankar performed inquest panchanama on the dead body of Avinash and sent the body for autopsy. On the basis of supplementary statement of the informant, two more accused, Accused No. 16 - Babusingh Ramji Rathod and accused No. 17 - Sadashiv Limbaji Jadhao (both acquitted of all the offences) came to be added to the crime. The statements of the injured witnesses and the eye-witnesses came to be recorded. All the accused persons came to be arrested in due course. Blood stained clothes of some of the accused persons were also

seized. The weapons, used by the accused persons, came to be seized vide memorandum and recovery panchanama under Section 27 of the Evidence Act. Seized articles and blood samples of the accused persons were sent for forensic report. After carrying out all other formalities of investigation, chargesheet came to be filed against 23 accused in the Court of the Judicial Magistrate First Class, Manglurpir. The learned Magistrate in his turn committed the case to the Sessions Court as the offence of murder is exclusively triable by the Court of Sessions.

8. The Additional Sessions Judge, Mangrulpir, framed charge against the accused persons for the offences punishable under Sections 120B, 147, 148, 149, 302 and 307 read with Section 149 of the IPC and Section 135 of the Act of 1951. The charge was read over and explained to the accused in their vernacular and their pleas were recorded separately. The accused persons denied the charge and claimed to be tried. Their defence is of total denial and false implication.

9. To substantiate the charge against the accused, the prosecution examined in all 29 witnesses. Out of these witnesses, three are injured witnesses (PW2 Mukesh, PW10 Devidas and PW13 Ganesh), three are eye-witnesses (PW9 Dnyaneshwar, PW14 Vijay and PW19

Nirmalabai), six are medical witnesses (PW20 Dr. Rehman, PW21 Dr. Gote, PW24 Dr. Ramteke, PW25 Dr. Varsha, PW26 Dr. Gadpal and PW29 Rathod - staff nurse) and six are police personnels (PW1 P.C. - Thakre, PW16 H.C. - Kolhe, PW17 P.C. - Murkute, PW23 I.O. - Domkalwar, PW27 H.C. - Jagtap and PW28 I.O. - Ingale). The other witnesses are the panch witnesses for spot panchanama, recovery panchanama, inquest panchanama and seizure panchanama. One nodal officer (PW22) from BSNL was also examined.

10. The learned trial Court recorded the statements of the accused under Section 313 of the Code of Criminal Procedure and called upon the accused to adduce evidence. Accused Nos, 1, 2, 3, 9 to 15, 17, 18 and 21 filed their common written statements below Exh. 725 and stated that both the accused and the victims belong to the 'Banjara' community and are residents of Village - Manora, District - Washim. The father of accused Janardhan, i.e., Ramdhan Rathod earned great respect in 'Banjara' community. During Zilla Parishad Elections, 2013, Ramdhan Rathod did not support the candidature of the injured Devidas, and therefore, Devidas had to withdraw his candidature. Hence, Devidas and his family were keeping grudge against Ramdhan Rathod and his family.

It is further stated that on 18/03/2014, Devidas Chauhan, along with his two sons Avinash and Mukesh, nephew Ganesh and 10-12 unknown persons attacked on the house of Ramdhan Rathod with sticks in their hands. During the attack, Ramdhan Rathod, Janardhan Rathod, Gowardhan Rathod, Kuldeep Pawar and Duryodhan Rathod received various injuries. While the people in the locality rushed to save these persons in that scuffle Devidas, Avinash, Mukesh and Ganesh received injuries. It is stated that the accused persons have not assaulted these persons.

11. Accused Dnyaneshwar Rathod, Vishwanath Jadhav, Bandu Jadhav, Kisan Goverdhan Ade, Komal Babusingh Ade, Madhukar Pradhan and Milind Chauhan, in their separate written statements, have admitted the occurrence of the incident of playing of DJ at Somnath Nagar. They stated that Mukesh initiated the quarrel on this tenuous issue. The DJ was stopped immediately, as the sound of the DJ was intolerable to the grandmother of Mukesh. These accused denied the second incident of riots, and claimed that a false report was filed and the witnesses have deposed falsely against them. They state that nothing has been recovered from these persons.

12. The appellants examined three private medical witnesses in support of their defence to buttress the fact that Devidas and three others attacked on the house of Ramdhan Rathod and sustained injuries to the appellants.

13. The learned trial Court, on appreciation of oral and documentary evidence and considering the submissions made on behalf of both the parties, recorded the finding of conviction against the appellants and awarded sentence in the aforesaid terms. This judgment of conviction is challenged by the convicts in these six Appeals.

14. We have heard Mr. Avinash Gupta, learned Senior Counsel assisted by Mr. R.K. Tiwari, learned counsel, Mr. Akash Gupta, learned counsel (in Criminal Appeal Nos. 559/2018, 560/2018, 561/2018 and 562/2018), Mr. A.M. Jaltare, learned counsel (in Criminal Appeal No. 570/2018) and Mr. R.M. Daga, learned counsel (in Criminal Appeal No. 576/2018) for the appellants, Mr. S.S. Doifode, learned APP for the State and Mr. C.S. Dharmadhikari, learned counsel to assist the prosecution.

15. It is to be noted here that out of 23 accused persons, who faced trial for the aforesaid offences, accused No.16 - Babusingh and

accused No.17 - Sadashiv came to be acquitted of all the offences. It is to be further noted here that one of the accused by name Arjun Komal Ade, since juvenile, case against him was not tried by the Sessions Court.

16. It is further worthwhile to mention here that the accused/ appellants have not been prosecuted independently for the substantive offences punishable under Sections 302 and 307 of the IPC. They were tried for these offences, being members of an unlawful assembly with common object of the assembly to perpetrate deadly assault on the victims with an intention to commit murder and attempt to commit murder.

17. In order to establish the guilt against the accused, the prosecution mainly relied on the testimonies of three injured witnesses and three eye-witnesses amongst other witnesses. Insofar as the testimonies of these witnesses are concerned, it is pointed out on behalf of the appellants that they are almost identical and have given graphic descriptions with respect to the names of all the accused persons (23 in number), role played by each of the accused, the nature of weapon used by each of the accused, the names of the accused who were holding and

who were assaulting the victims, the part of the body where the injuries were inflicted etc.

18. The learned Senior Counsel Mr. Avinash Gupta raised a doubt on the testimonies of these witnesses as it is humanly impossible to give graphic details of the incident by the injured witnesses when as per the prosecution story, all the four victims of the incident were being assaulted simultaneously by the appellant/accused. The learned Senior Counsel further submitted that there are several improbabilities in the prosecution case and as such, it cannot be believed. The learned Senior Counsel Mr. Gupta, so also the learned counsel Mr. R.K. Tiwari appearing for the appellants strenuously argued that the testimonies of these witnesses would reveal that all these witnesses have given a parrot-like version and the role attributed to each of the appellant is almost identical. It is submitted that it is next to impossible that all these witnesses would remember the sequence in which all the accused have assaulted the deceased and the other injured victims in an identical manner. It is therefore submitted that no reliance could be placed on the testimony of such injured and eye witnesses. Reliance is placed on the judgment of the Apex Court in the case of **Lakshmi Singh and others vs State of Bihar, 1976 AIR SC 2263** and the judgment of the

Coordinate Bench of this Court in the case of **Mohd. Hanif, Mohd. Azam, Mohd. Ansar, Mohd. Irfan, Mohd. Amir vs State of Maharashtra through its Police Station Officer, 2017 (2) BCR (Cri) 541.**

19. The learned Senior Counsel Mr. Gupta further pointed out certain other facts from the record to buttress his submission as to how the testimonies of the injured and eye witnesses are not reliable, which we propose to deal with in the later part of this judgment.

20. The learned counsel Mr. R.M. Daga for accused has also argued on the similar lines as Senior Counsel Mr. Avinash Gupta.

21. Mr. Jaltare, learned counsel for accused No.4, through his oral and written arguments submitted that the evidence tendered by the prosecution witnesses is highly unreliable and are not worthy of credence. The prosecution witnesses are interested, and their conduct does not inspire confidence. He further submitted that the evidence of the eye-witnesses is full of material omissions. Accused No.4 was not present at the time of first incident, and therefore, he had neither intention nor motive to participate in the assault. The learned trial Court

ought to have appreciated that the dispute at Somnath Nagar was resolved, and therefore, there was no occasion for the accused, residing at Somnath Nagar, to pick-up a quarrel after a time gap of 4-5 hours and to go to Naik Nagar, Manora. He further submitted that the oral testimony of the injured witnesses, with regard to the injuries, are not supported by the medical evidence. The statements of the alleged eye-witnesses have been recorded belatedly. He further submitted that as per the testimony of the medical witness Dr. Kiran (PW20), the injured persons were conscious, and therefore, it belies the version of the prosecution witness that since they were unconscious, their statements were recorded belatedly. Lastly, the learned counsel submitted that the prosecution has miserably failed to prove its case against this accused, and therefore, he is entitled to be acquitted.

22. Learned A.P.P. Mr. S.S. Doifode appearing for the respondent - State while supporting the impugned judgment and order of conviction, submitted that all the three injured witnesses i.e. PW2 Mukesh, PW10 Devidas and PW13 Ganesh and all the three eye-witnesses, i.e., PW9 Dnyaneshwar, PW14 Vijay and PW19 Nirmalabai have consistently supported the prosecution case. Mr. Doifode took us through the relevant parts of their testimonies so also the documents

and submitted that their testimonies are mutually corroborated. They have given all the minute details of the incident. The learned A.P.P. further submitted that merely because the version given by them is identical cannot be a ground to discard their testimony altogether. Mr. Doifode further submitted that merely because the witnesses are related to each other and are interested witnesses also cannot be a ground to discard their testimonies. It is further submitted that the weapons used for commission of the offence, i.e., iron pipes and wooden planks have been recovered from the appellants. Mr. Doifode further submitted that the statements of injured witnesses were not recorded at an earlier point of time, as the injured witnesses were admitted in the hospital. In support of his submissions, the learned A.P.P. relied on the following judgments :-

- 1. Bhagwan I. Marked vs State of Maharashtra, AIR 2016 SC 4531** on the point of evidentiary value of the injured eye-witness and on vicarious liability.
- 2. Masalti vs State of UP, 2008 ALL SCR (OCC) 52** on the point the witnesses are relatives cannot be a ground to discard their testimony and if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault.
- 3. State of Maharashtra vs Ramlal, 2015 ALL SCR 3436** on the point that evidence has to be weighed and not counted.

4. Sakharam vs State of Maharashtra, 2016(1) Bom. C.R. (Cri.) 117 on the point that where eye-witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive.

5. Indersing vs State of Rajasthan, 2015 ALL SCR 881 on the point that non-explanation of injuries on the person of accused are not fatal and in absence of plea of self defence, it cannot be presumed that accused persons sustained injuries in course of same occurrence and at same place. In order to sustain conviction atleast three witnesses should be in position to name individual accused person.

6. Jodhan vs State of M.P., 2015 ALL SCR 2491 on the point of evidence of injured witnesses are on higher pedestal.

23. With the assistance of the learned A.P.P. as well as the learned counsel for the appellants, we have scrutinized the entire evidence on record.

24. In the instant case, the prosecution examined in all 29 witnesses. Out of these witnesses, as stated earlier, there are three injured witnesses and three eye-witnesses. The testimonies of these witnesses with regard to the incident of assault as pointed out by the learned counsel for the appellant are almost identical. It is the settled principal of law that even if the testimony of a solitary witness is found to be trustworthy, cogent and the one which inspires confidence of the

Court, conviction on the basis of the same could be rested. It is equally settled that merely because the witnesses are relatives cannot be a ground to discard their testimony (**Masalti vs State of UP** (*supra*)). It is also well settled that the testimonies of the prosecution witnesses, before their acceptance must be tested on established parameters of appreciation of evidence and one has to guard against any attempt to put up an exaggerated or concocted story. As for example, when witnesses make parrot-like statements, add improbabilities and impossibilities and so on, their testimonies are least likely to inspire confidence of the Court. Ultimately, all depends upon facts and circumstances of each case.

25. It is also well settled that (**Eknath Ganpat Ahir & Ors. vs State of Maharashtra, 2010 6 SCC 519**) in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in the assault and in such situations, the Courts are called upon to be very cautious and sift the evidence with care.

26. In the case of **Masalti vs State of UP** (*supra*) it is held that where a crowd of assailants who are members of unlawful assembly proceeds to commit an offence of murder in pursuance of the common

object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants.

27. On carefully scrutinizing the testimonies of PW2 Mukesh, PW10 Devidas, PW13 Ganesh and three eye witnesses, it can be seen that they are almost identical and there could hardly be found any dissimilarity in their versions. 23 accused have been roped in this offence. These accused are related to each other and are members of total four families. The genesis of the crime lies in the trivial quarrel between appellant Janardhan Rathod and Milind Chavan on one side and deceased Avinash and injured Ganesh (PW13) on the other side. The reason for such petty quarrel is playing of DJ by the accused Janardhan in front of the house of one of the victims (Ganesh) in Somnath Nagar. The incident of assault was after four to five hours of the first incident of DJ playing. First incident occurred at Somnath Nagar while the incident of assault took place at Naik Nagar, Manora, which is at a distance of 2 1/2 kilometers from the place of the first incident. Considering all these facts one can say that the offences have been committed on an expansive canvass containing too many characters and colours. With such a backdrop to the scene of crime, it becomes all the more difficult for all witnesses to depose in a manner as would match with each others

versions word to word. But, this is a reality here and it creates a whole lot of doubt about prosecution story, the core argument of the learned counsel for the appellants is also with regard to the identical and parrot-like versions given by the prosecution star witnesses. In order to see the commonality and in order to assess the trustworthiness of the testimonies of these witnesses, it would be useful to refer to the relevant part from their testimonies. For ready reference, the relevant parts with regard to the occurrence of incident of assault are reproduced below.

28. PW2 Mukesh Devidas Chavan (injured eye-witness).

“(14) I along with my father Devidas Chavan, Avinash Chavan and cousin Ganesh started for Naik Nagar resident in our Vista car. We stopped near our Naik nagar residence. As soon as we alighted from our car, all the accused caught hold us and dragged us in front of house of accused Janardhan Rathod. Accused Vinod Haridhan Rathod and Ravi Tulshiram Rathod had held me. Accused Gowardhan Rathod and Arun Ramlal Pawar had held my father. Accused Ashok Ramlal Pawar, Kuldeep Ramlal Pawar had held my brother Avinash. Manohar Tulshiram Rathod, Dilip Dalsing Rathod and Pradip @ Dhotya Babusing Rathod had held my Cousin Ganesh. Along with all persons who had held us other person took us in fort of house of accused Janardhan Rathod. In front of house of accused Janardhan Rathod all accused started beating us from weapons, they were having. At that time accused were having iron pipes, iron bars and wooden planks. Accused Janardhan Rathod, Duryodhan Rathod, Milind Chavan, Komal Babusing Ade, Bandu Fakira Jadhav, Vishwanath Fakira Jadhav, Ramdhan Rathod were having iron pipes. Accused Arjun Komal Ade was having iron bar. Accused Dnyaneshwar Babusing Rathod, Madhukar Bhoju Chavan, Shivram Bhoju Chavan, Sudhakar Shivram Chavan, Kisan Gobara Ade,

Fakira Sitaram Jadhav were having wooden planks. Accused Duryodhan Rathod, Milind Chavan, Ramdhan Rathod, Janardhan gave beating on the head of my brother Avinash by iron pipes. Due to beating the head of my brother Avinash was soaked in blood. Due to beating my brother fell down near cement slab in front of house of accused Janardhan Rathod. Accused Komal Babusing Ade and Bandu Fakira Jadhav beat my father Devidas on head and face with iron pipe. Accused Madhukar Bhoju Chavan beat my father on head and hands with wooden planks. Due to beating head of my father had broken, and eye of my father has come out of eye socket and all the teeth had come out due to beating. The witness volunteers that some teeth had come out. Due to beating my father fell down to the ground. Accused Vishwanath Fakira beat me on head by iron pipe. Accused Dnyaneshwar Babusing Rathod and Fakira Sitaram Jadhav beat me with wooden planks on my head, feet, hands and on my knees. I was soaked in blood totally. I fell down to the ground. Accused Arjun Komal Ade beat my cousin Ganesh Chavan by iron bar and accused Fakira Sitaram Jadhav beat my cousin Ganesh with wooden planks. Accused Fakira Sitaram Jadhav beat my cousin Ganesh on his hands and feet. Due to beating, Ganesh was soaked in blood and he fell down. Accused Sudhakar Shivram Chavan, Kisan Gobra Ade and Shivram Bhoju Chavan were inciting other accused and they were saying "Mara Mara". Those accused were beating us with wooden planks. Accused Ashok Ramlal Pawar and Kuldip Ramlal Pawar had held my brother and inciting other accused by saying "Mara Mara". Accused Gowardhan Haridhan Rathod and Arun. Ramlal Pawar had held my father and were inciting by saying "Mara Mara". Accused Vinod Haridhan Rathod and Ravi Tulshiram Rathod had held me and others inciting by saying "Mara Mara, jivane marun taka". Accused Manohar Tulsing Rathod, Dilip Dalsing Rathod and Pradip @ Dhotya Babusing Rathod had held my cousin and were inciting others. Due to beating my brother was lying dead on the spot."

29. PW10 Devidas Dudhram Chavan (injured eye witness).

"(3) At about 4.00 p.m. we started for Naik Nagar from Somnath Nagar in our Indica Car. We had started for our house at Naik Nagar. The distance between Somnath Nagar to Naik Nagar is about 2 to 2.5 k.m. After reaching Naik

Nagar we stopped our car near our home. After stopping our Car at Naik Nagar, we all opened all the four door of the car and alighted from the car. As soon as we alighted from the Car, all accused surrounded us. Each one of us was caught hold by two persons. All accused dragged us to the house of Janardhan. Avinash was caught hold by Kuldeep Pawar and Ashok Pawar. Mukesh was caught hold by Vinod Rathod and Ravi Rathod. Ganesh was caught hold by Manohar Tulshiram Rathod. Dilip Dalsing Rathod and Pradip @ Dhotya Jadhao. The accused Janardhan Rathod, Vishwanath Jadhao, Bandu Jadhao and Komal Rathod were having iron pipes. Accused Madhukar Chavan, Dnyaneshwar Rathod, Fakira Jadhao, Kisan Ade, Sudhakar Chavan and Shivram Chavan were having wooden planks. Accused Arjun Ade was having iron bar.

(4) After being taken upto the house of Janardhan, accused persons started beating us. Accused started beating us by the weapons in their hands. Avinash was beaten by Janardhan Rathod, Duryodhan Rathod, Milind Chavan and Ramdhan Rathod. They beat Avinash by iron pipes on his head. I was beaten by Bandu Jadhao, Komal Ade and Madhukar Chavan. I was beaten by iron pipes by Bandu Jadhao and Komal Ade on my head, face, hands, back and chest. I was beaten by Madhukar Chavan by wooden plank on my head. Mukesh was beaten by Vishwanath Jadhao by iron pipe on head. Mukesh was beaten by Dnyaneshwar Rathod on head and knees by wooden plank. Ganesh was beaten by Arjun Ade by iron bar on his head. Ganesh was beaten by Fakira Jadhao by wooden plank on his head. Fakira Jadhao also gave blows to Mukesh. Shivram Chavan, Sudhakar Chavan and Kisan Ade were having wooden planks and they were inciting others and also giving blows. All three accused were beating all four of us and were inciting others. While being beaten Avinash was caught hold by Kuldeep Pawar and Ashok Pawar. While I was being beaten I was caught hold by beaten, he was caught hold by Vinod Rathod and Ravi Rathod and inciting others. While Ganesh was being beaten, he was caught hold by Manohar Rathod, Dilip Rathod and Pradip @ Dhotya Jadhao. Since Avinash was beaten on his head. He died on the spot. Due to the blows on his hand. Avinash was smeared in blood. I sustained injuries on my head, face, jaws and my hands. Due to the blows on my jaws, my teeth were dislocated. Due to the beating, my eye-ball had come out from the eye socket. Due to the beating my hand was fractured. I also sustained injuries on my chest and back. Since I sustained injuries on my jaw, blood was oozing out from there. I also sustained injuries on my feet. Due to the blows on his head Mukesh was smeared in

blood. Due to the blows on his head, Ganesh was smeared in blood. due to the beating, I fell-down to the ground and became unconscious. Due to the beating Avinash fell-down to the ground and died. Thereafter, when I regain my consciousness I was at Ikon hospital, Akola....."

30. PW13 Ganesh Ramvilas Chavan (injured eye witness)

"(3) At 4.00 p.m. I alongwith my uncle Devidas, cousins Mukesh and Avinash started for Naik Nagar from Somnath Nagar in white Indica Car of my uncle Devidas Chavan. After reaching to Naik Nagar we alighted from the Car near the residence of my uncle Devidas Chavan. I alongwith my uncle Devidas Chavan and my cousins Mukesh and Avinash alighted from the Car. As soon as we alighted from the car, all accused surrounded us. At that time, they were having iron pipe, iron bar, wooden planks Janardhan Rathod, Duryodhan Rathod, Milind Chavan, Ramdhan Rathod, Vishwanath Jadhao, Bandu Jadhao, Komal Ade were having iron pipes Arjun Ade was having iron bar. Madhukar Chavan, Shivram Chavan, Sudhakar Chavan, Kisan Ade, Dnyaneshwar Rathod, Fakira Jadhao were having wooden planks. They took us to the house of Ramdhan Rathod by catching, pulling and dragging all four of us. I was caught hold by Manoj Rathod, Dilip Rathod and Pradip Jadhao. I also know Manoj Rathod as Manohar Rathod. (The witness identified the accused Manoj Rathod) Avinash was caught hold by Kuldeep Pawar Bandu @ Ashok Pawar Mukesh was caught hold by Vinod Rathod and Ravindra Rahod. My uncle Devidas Ade, Sudhakar Chavan and Shivram Chavan were having wooden planks. Kuldeep Pawar and Bandu Pawar had caught hold and were instigating by saying "मारा, मारा, यांना जिवाने मारा." Also other accused who had caught hold were also inciting by saying "मारा, मारा, यांना जिवाने मारा." Gowardhan Rathod, Arun Pawar, Vinod Rathod, Ravindra Rahod, Pradip Jadhao, Dilip Rathod and Manohar Rathod were inciting by saying "मारा, मारा, यांना जिवाने मारा." We were beaten on the incitement of other accused after taking us to the house of Janardhan. Arjun Ade beat me on my head by iron bar. Fakira Jadhao beat me by wooden plank on my legs and hands. Due to the beating, my head was torn; I was smeared in blood and fell-down to the ground. Janardhan Rathod, Duryodhan Rathod, Milind Chavan and Ramdhan Rathod, Duryodhan Rahod, Milind Chavan and Ramdhan beat Avinash by iron pipe on his head. Due to the beating, his head was torn and he was smeared in blood and he fell-

down. Vishwanath Jadhao beat Mukesh by iron pipe on his head. Dnyaneshwar Rathod beat Mukesh by wooden plank on his head and legs. Fakira Jadhao was beating Mukesh and me by wooden plank on hands and legs. Due to that, Mukesh head was torn and he fell-down and was smeared in blood. Bandu Jadhao and Komal Ade beat Devidas with iron pipe on his head, face and back. Madhukar Chavan beat Devidas by wooden plank on his head and hands. Due to that Devidas fell to the ground and his head and face were torn and smeared in the blood. I felt that Avinash was dead on the spot."

31. PW9 Dnyaneshwar Devising Rathod (eye witness).

"(1) The incident is of 18/03/2014. The incident happened at 4.00 p.m. The incident happened when I was passing in front of the house of accused Ramdhan for my work. At that time, I was going to Sarkate Saheb for taking information about field lake. Sarkate was residing at Naik nagar. Sarkate Saheb was an Agriculture Officer. I was intending to go to the house of Devidas Chavan, after my work was over at Sarkate Saheb's resident. When, I was passing all accused were running to the house of Devidas Chavan and they were going by the side of me. All accused were following and running behind the car of Devidas, Mukesh, Avinash and Ganesh. Devidas, Mukesh, Avinash and Ganesh alighted from the car. As soon as Devidas, Mukesh, Avinash and Ganesh alighted from the car, all accused caught hold of them and brought them in front of the house of accused Ramdhan by dragging, pushing and pulling. Avinash was caught hold by Kuldeep Ramlal Pawar and Ashok Ramlal Pawar. Mukesh was caught hold by Vinod Haridhan Rathod and Ravi Tulshiram Rathod. Devidas was caught hold by Gowardhan Haridhan Rathod and Arun Ramlal Pawar. Ganesh was caught hold by Manohar Tulshiram Rathod, Dilip Dhansing Rathod and Pradeep Babusing Jadhao. The persons who had caught hold of Devidas, Avinash, Mukesh and Ganesh shouted "मारा, मारा, यांना जिवाने मारा" and they started beating them with iron pipes, iron bars and wooden planks. Avinash was beaten by Duryodhan, Janardhan, Milind and Ramdhan by iron pipes. Avinash was beaten by the above mentioned four accused on his head and Avinash was smeared in blood and he fell on the ground. Devidas was beaten by accused Bandu Jadhao, Komal Ade by iron pipes and Madhukar Chavan by wooden plank. Accused Bandu and Komal beat Devidas on his head, face, legs, hands and chest. Due to the beating Devidas was drenched in blood and Devidas fell to the ground. Mukesh was beaten by accused

Vishwanath, Fakira Jadhao and Dnyaneshwar Rathod and Fakira Sitaram Jadhao. Accused Vishwanath beat Mukesh by iron pipe on his head. Accused Dnyaneshwar gave blow on the hands, feet, knees and head of Mukesh by wooden plank. Accused Fakira Jadhao gave blow to Mukesh by wooden plank.

(2) Accused Arjun Komal Ade gave blow to Genesh by iron bar on the head. Accused Fakira Sitaram Jadhao gave blow to Ganesh by wooden plank. Ganesh felled down to the ground due to the blows on his head and feet. Due to the beating Ganesh head was injured. Accused Sudhakar Shivram Chavan, Kisan Gobra Ade, Shivram Bhoju Chavan were shouting "मारा, मारा" and they were also giving blows to all four. Due to the beating Mukesh fell down to the ground and he was drenched in blood. At the time of beating, Avinash was being held by Kuldeep Ramlal Pawar and Bandu Ramlal Pawar. At the time of beating of Devidas, accused Gowardhan Haridhan Rathod and Arun Ramlal Pawar had held Devidas and were shouting "मारा, मारा". At the time of beating of Mukesh, accused Vinod Haridhan Rathod and Ravi Tulshiram Rathod had held Mukesh and were inciting by saying "जिवाने मारा". At the time of beating of Ganesh he was held by accused Manohar Tulshiram Rathod, Dilip Dhansing Rathod and Pradeep Babusing Jadhao and were inciting by saying "मारा, मारा". Due to the beating all four felled down to the ground. Avinash fell down to the ground and died near the Rafta "राफटा" in front of the house of accused Janardhan and other three were lying down near the D.P. After that all accused ran away from the spot....."

32. The other two eye witnesses PW14 Vijay and PW19 Nirmalabai (the informant) have also deposed in the same fashion as deposed by the aforesaid witnesses.

33. A moot question that arises for consideration of this court is as to how far the testimonies of these witnesses are reliable? A careful comparison of testimonies of these witnesses would reveal that all these

witnesses have taken the names of all the appellants. In one voice they have stated that accused Janaradhan Rathod, Duryodhan Rathod, Milind Chavan, Komal Ade, Bandu Fakira, Vishwanath Jadhao and Ramdhan Rathod were holding iron pipes. Accused Arjun Ade (juvenile) was holding iron bar. Accused Dnyaneshwar Rathod, Madhukar Bhoju Chavan, Shivram Bhoju Chavan, Sudhakar Chavan, Kisan Ade, and Fakira Jadhao were holding wooden planks. They have taken names of accused Sudhakar Shivram Chavan, Kisan Gobra Ade, Shivram Chavan for their role to incite the other accused ("मारा,मारा") to assault the victims so also they were beating with wooden planks.

34. All these witnesses have identically deposed that accused Vinod Rathod and accused Ravi Rathod were holding Mukesh, accused Gowardhan Rathod and accused Arun Pawar were holding Devidas, accused Ashok Ramlal Pawar and Kuldeep Pawar were holding Avinash while accused Pradip Rathod, Manohar Rathod and Dilip Rathod were holding Ganesh. They have not attributed any role to them in carrying of any weapons and it seems that it has been done quite thoughtfully just to create a show of truthfulness of their version, while forgetting the fact that all the witnesses have deposed in almost identical fashion, without moving an inch away from each other, which is an unnatural conduct for

the human beings. When one incident involving several persons is witnessed by several persons, it is well-nigh impossible for the witnesses to match each other's testimony word by word and version by version but this is happened here.

35. With regard to injuries to head of the deceased Avinash, these witnesses have testified that Duryodhan Rathod, Milind Chavan, Ramdhan Rathod and Janardhan Rathod assaulted Avinash on his head with iron pipes. The postmortem report of the deceased Avinash shows that he had sustained one laceration of size 2X4 cm over the scalp with internal damage. Though PW21 Dr. Gote, who performed the postmortem examination says that one injury is possible if the deceased is repeatedly assaulted on head by four persons provided all the blows should land on the same site, the learned defence counsel has rightly pointed out that it was impossible that when four persons were continuously assaulting and giving repeated blows on the head of the deceased by different weapons, all the blows land on the same site. In this context, the learned trial Court in the impugned judgment has observed that witnesses have the general tendency to tell the incident with exaggeration and embellishment. That is true. However, in this case the trial Court is dealing with the offence of murder. There are 23

accused involved with the charge of murder. The genesis of the crime was the quarrel on the issue of playing of DJ between Avinash and Janardhan Rathod. Not only the family of Janardhan Rathod has been involved but all his relatives, who have no connection with the alleged DJ incident also have been implicated in the crime, attributing each of them with a specific role. The facts and circumstances reveal that a lot of home work has been done to see that none of the accused escapes from the charge levelled against him and it is also revealed that the elder brother of injured Ganesh (PW13) who was in police department posted as Police Inspector was guiding them.

36. With regard to injuries to Devidas, all these six witnesses deposed that Gowardhan Rathod and Arun Pawar were holding Devidas while Komal Babusing Ade and Bandu Jadhao assaulted Devidas with iron pipes on his head, face, hands, legs and chest. Madhukar Chavan assaulted Devidas with wooden plank on his head. The learned Senior Counsel Mr. Avinash Gupta pointed out the discrepancies in the deposition of the injured eye-witnesses and the medical evidence. It is urged that both the injured witnesses, i.e., Mukesh (PW2) and Devidas (PW10) deposed that an eyeball of Devidas came out of the eye-socket,

while clinical findings of Devidas, at Exh.529 dated 19/03/2014, shows that his eyeball movement was normal.

It is further urged that as per the testimony of Mukesh (PW2), teeth of Devidas were dislocated, however, the spot panchanama doesn't mention noticing any teeth on the spot of the incident. These discrepancies in the facts and circumstances of the present the case is vital in nature which cannot be lightly brushed aside.

37. With regard to injures to Mukesh, all these six witnesses deposed that Vinod Rathod and Ravi Rathod were holding Mukesh while Vishwanath assaulted Mukesh with iron pipe on his head, Dnyaneshwar and Fakira assaulted Mukesh with wooden plank on his head, feet and knees.

38. With regard to injuries to Ganesh, all these six witnesses identically deposed that accused Pradip Rathod, Manohar Rathod and Dilip Rathod were holding Ganesh while Arjun Ade assaulted Ganesh with iron bar on his head while Fakira Jadhao assaulted Ganesh with wooden plank on his hands and feet.

39. These witnesses further deposed that all the accused persons who were holding the injured witnesses and deceased Avinash were inciting others for beating.

40. It is the contention of the learned Senior Counsel representing the appellants that the identical version with regard to each and every minute detail of the incident by these witnesses is itself sufficient to come to the conclusion that the prosecution has concocted one story and accordingly FIR came to be prepared and the statements of witnesses have been recorded. In this context, the learned defence Counsel has rightly pointed out that the First Information Report is ante-dated on the ground that there is a material inconsistency between the carbon copy of the FIR (Exh. 629) which was sent to the Magistrate and the original copy of the FIR (Exh. 510) which is brought on record. The prosecution witness No.23 has clearly admitted that Exh. 629 is not the carbon copy of Exh. 510 and there is no plausible explanation from the side of the prosecution on this aspect. The defence counsel also pointed out the printed FIR wherein the genesis of the incident is mentioned as "*due to collection of fagwa*" while FIR (Exh. 510) reveals genesis of the crime is playing of DJ. Considering the other evidence on

record, this part of the evidence would unerringly suggest that the FIR is an ante-timed and ante-dated document.

41. The learned defence counsel also harped on the aspects of delayed recording of statements of witnesses, glaring lacunae in handling the seized muddemal, all the eye witnesses and the panch witnesses are relatives, brother of injured witness Ganesh is in police department on the post of police inspector who was accompanying witnesses during trial. It is further submitted that the prosecution has failed to examine any independent eye witness even though as per prosecution story the incident had occurred in Naik Nagar, a residential locality and crowd had gathered.

42. In the context of describing the incident in graphic details by the witnesses, the Hon'ble Apex Court in the case of **Sakharam** (*supra*) observed that when not less than 23 persons participated in commission of offence with deadly weapons and attacked more than 4 to 5 persons with an intention to kill them, then the witnesses, who are closely related to the victims and who are also themselves the subject of assault, cannot be expected to describe the incident in graphic detail and with such precision as to which member and in what manner he participated in the

commission of offence. When a simultaneous attack is made on several persons by several assailants, in that melee if the witnesses try to specify the role of each of the accused, then it could be called as unrealistic.

43. In case of **Lakshmi Singh** (*supra*) the Hon'ble Apex Court observed that when the incident was witnessed by the independent eye witnesses, the prosecution could have examined any of these witnesses to corroborate the version of the interested witnesses examined by the prosecution. It is further held that the evidence of prosecution witnesses show that they gave graphic description of the assault with regard to the order, the manner and the parts of the body with absolute consistency which gives an impression that they have given a parrot-like version acting under a conspiracy to depose to one set of facts and one set of facts only. It is further observed that initial dispute was between only two of the accused and other accused persons, who were not even remotely concern, have been introduced by way of embellishment in the case at the instance of injured witnesses.

44. In the instant case, in somewhat similar circumstances, the prosecution involved the accused from four families, i.e., Rathod, Ade, Chavan and Jadhao. Although, the initial dispute is of a petty nature

between Janardhan Rathod and Milind Chavan on one side and deceased Avinash and Ganesh on the other, all the accused persons who were even not the residents of Naik Nagar - the place where the alleged incident of riots occurred, have been roped in. Not a single independent witness has been examined by the prosecution even though the spot of the incident is Naik Nagar, a residential locality and there was a crowd of people seen on the spot when police reached the spot immediately after the incident. The identical and parrot-like version of all the star witnesses of prosecution would raise a strong doubt about the truthfulness of their testimonies. It is an admitted fact that brother of injured Ganesh is in Police Department on the post of Police Inspector and it is also brought on record that he visited the Court along with witnesses.

45. The informant of the incident PW19 Nirmalabai is the wife of injured Devidas and mother of deceased Avinash and injured Mukesh. It is improbable for the wife and the mother who claimed to have witnessed the incident to observe and remember each and every minute detail of the incident and report the same to the police. We can imagine the mental condition of a mother who is also a wife, witnessing the incident wherein both of her son and her husband were being assaulted by a mob

of 20 to 25 people holding iron pipes and wooden rods. As per prosecution story, the beating to all the four victims were going on simultaneously. How could Nirmalabai have observed the incident of attack by a mob of 20-25 persons on four persons at a time. Not only Nirmalabai, the injured witnesses Mukesh, Devidas and Ganesh who were allegedly being assaulted simultaneously, could not have witnessed the assault on their companion by the accused and that too with such minute details. It is like victims were not defending themselves but observing as to who is assaulting whom and with which weapon and the organ of the body. It is sheer an impossible story concocted by the prosecution which just cannot be believed and which also does not appeal to the reason. Had it been a case of one witness deposing with such minute details, it may have been believed presuming his extraordinary capacity of observing the things and recollecting the same. But here is the case of six witnesses including the injured witnesses. In case of an injured witness, there may not have been any difficulty in believing his testimony as to assault on him. But, when other injured persons who were subjected to assault simultaneously also start telling about the attack on others in similar words, a serious doubt creeps in prosecution evidence and it becomes difficult to believe the prosecution evidence, without corroboration from independent witnesses. Here, no

independent witnesses have been examined though they were available. So, these witnesses cannot be relied upon.

46. Considering the nature of the evidence brought on record, it is difficult to comprehend as to what exactly had happened on the spot. The defence of the appellant that the victims in order to take revenge of the old political rivalry, entered the house of Janardhan and attacked, in the aforestated facts and circumstances of the case, appears to be probable, especially in the light of the fact that, the spot panchnama does not show the presence of four wheeler on the spot and there is absolutely no evidence as to what has happened to the Indica car of the victims. The cross- examination of the injured eye-witnesses would reveal that the witnesses have given contradictory versions as regards the order in which the injured had collapsed on the ground. Detailed prosecution evidence, on this aspect of the matter, may not be necessary in ordinary course of circumstances. But here it is significant as the victims of the assault are giving in their respective testimonies graphic details of the assault not only on their own person but also on the person of the other victims and they are also stating that they collapsed on ground losing their consciousness and therefore in order to test the veracity of their

versions, it would be necessary to know as to in which order each of them fell down on the ground in unconscious state.

47. This Court in the case of **Mohd. Hanif** (*supra*) in the similar facts and circumstances reproduced the relevant parts from the testimonies of witnesses in paragraphs 15 to 18 of the judgment and observed that all these four witnesses have come with totally identical version insofar as the role played by each of 11 accused is concerned and that too in the very same sequence. The Court noted that as per the prosecution case, these four witnesses have witnessed the incident from four different places. The Court placed reliance on the observations of Their Lordships of the Apex Court in the case of **Lakshmi Singh** (*supra*) which is reproduced below :-

"10. These are the only witnesses who have proved the participation of the five appellants in the assault. No independent witness has been examined by the prosecution to support the assault. In fact P. W.1 Ramji Singh has admitted that when he reached the place of occurrence he found 6 to 7 persons of the village and yet none of them have been examined to corroborate the evidence of the interested or inimical witnesses examined by the prosecution. Moreover the evidence of P.Ws. 1 to 4 clearly shows that they gave graphic description of the assault with regard to the order, the manner and the parts of the body with absolute consistency which gives an impression that they have given a parrot-like version acting under a conspiracy to depose to one set of facts and one set of facts only....."

48. After noting the aforesaid observation of the Hon'ble Apex Court, this Court observed that all the four witnesses have given graphic description of the assault with regard to the order, the manner and the parts of the body with absolute consistency. The Court further observed that the testimony given by the witnesses gives an impression that they have given a parrot-like version acting under a conspiracy to depose to one set of facts and one set of facts only. The Court also noted the observations made by Their Lordships of Apex Court in the case of **Rambilas and others vs State of Madhya Pradesh, AIR 1997 SC 3954**, which is reproduced below :

".....If we compare the evidence of these eye-witnesses it is immediately noticed that their evidence is just like a parrot, telling about what is taught. Even the omissions, contradictions and improvements are identical. The claim of these eye-witnesses is totally unbelievable when they testified that they had gone to the place of occurrence....."

49. This Court further noted the observations of Their Lordships in the case of **Dharam Singh and others vs State of Punjab, AIR 1993 SC 319**, which is reproduced below :-

".....However, as noted above the statement of each witness is verbatim the same as that of others. Contradictions and omissions are the same. Narrations and sequence of events are meticulously in the same order. Therefore, we think it is not safe to place reliance on the evidence of these witnesses."

50. This Court further noted the other grounds in addition to the ground of puppet-like version for not relying the testimony of those witnesses. The Court noted the conduct of prosecution witnesses, absence of any enmity of the deceased with the accused, delay in recording of statement of witnesses. The Court also noted the delay in seizure of blood stained clothes of the accused, the discrepancy in the carbon copy and the original copy of FIR etc.

51. Apart from above noted identical evidence given by the prosecution witnesses and lack of corroboration, in the instant case, there are also other glaring lacunae in the prosecution case which have been brought on record during cross examination of the witnesses. The First Information Report (Exh. 510) was lodged by mother of the deceased Nirmalabai (PW19) immediately after the incident giving graphic details of the incident. Here, the conduct of Nirmalabai, mother of Avinash and Mukesh and wife of Devidas is worth noting. Immediately after the incident she has given the names of 21 accused persons, nature of weapons held by each of them, the name of the accused holding the victim, as to on which part of the body the assault was made etc. She also deposed about the presence of other three witnesses, i.e., Vijay, Dnyaneshwar and Jaipal. However, interestingly in

cross-examination she expressed her ignorance as to whether the neighbours were watching the incident while the incident was going on. She has admitted that there are six houses near her home and she has no quarrel with them and has good relations with them. In further cross-examination she has stated that she had no talk with Vijay (PW14), Jaipal and Dnyaneshwar (PW9) while the beating was going on. She has further admitted at the time of incident, Vijay (PW14,) and Dnyaneshwar (PW9) were not present but they were coming. She stated that after the incident she was weeping and she did not ask her three relatives to go to injured and inquire with them. She further deposed that she did not feel like seeing her husband and sons, when they were taken to the hospital. She said first she had to lodge report and she did not want to see the health of her persons hence she did not go there. She further admitted that it did happen that instead of seeing the health of injured she felt the spot of panchanama should be shown to Police. She deposed that when she showed the spot of incident to the Police she had not shown the vehicle to the Police. Her such evidence is against a background of situation of emergency which demands unwavering attention of a person like mother and wife first to that emergency. Her son, Avinash had been pronounced dead; her husband and another son, as per her own version, were critically injured requiring emergency medical treatment, and here

is a woman who first gathers the facts of the incident in her mind, goes to the Police Station, lodges the First Information Report ignoring her dead son and critically injured husband and son who were taken to the hospital and on top of it says that she did not wish to see the health condition of her husband and sons. This conduct is unnatural and further deepens the doubtful nature evidence of core prosecution witnesses.

52. A perusal of the aforesaid testimony of the informant Nirmalabai, as rightly pointed out by the learned Senior Counsel Mr. Avinash Gupta, is against the natural human conduct. It is very strange that when she was weeping, she could give each and every minute detail of the incident. And at the same time she could not see as to whether neighbours were watching the incident. She felt it necessary to lodge FIR first and then to inquire the health of her sons and husband. She felt it necessary to first show the spot of incident and then to go to the hospital to see her near and dear. Considering her conduct, her presence at the spot and witnessing the incident is doubtful. Interestingly, the original FIR also does not match with its carbon copy which was sent to the Court of Magistrate. Moreover, there is nothing on record as to what has

happened to the four-wheeler Indica Car by which all the four victims allegedly arrived at the spot.

53. The Chemical Analyzer's reports for the articles like clothes and weapons seized during investigation and produced on record by the prosecution cannot be relied on for the simple reason that evidently, the articles were not sent in sealed condition for forensic examinations and the office of FSL has also refused to accept the unsealed articles. The Trial Court has rightly refused to rely on this part of prosecution evidence. The positive CA reports are crucial corroborative evidence in favour of prosecution in any criminal trial, however, the sanctity of the same, at every stage of the process, has to be established beyond reasonable doubt, which is not the case here.

54. PW9 Dnyaneshwar Rathod is a chance witness, who happened to be on the spot at the time of the incident, as he had to go to the house of Mr. Sarkate, the Agricultural Officer, for taking information about the field lake. He is the resident of Village – Vitholi, which is at a distance of around 14-15 kilometers from Village - Manora. Injured Ganesh is his brother-in-law. He deposed about the incident from its starting point to the point the victims were taken to the hospital. He

deposed that after his work with Sarkate Saheb, he had intended to go to the house of Devidas. However, the reason stated by him for his presence on the spot at the relevant time is something which is entirely an omission, a material one, and it has been brought on record by the defence in his cross examination. As it is, he being the relative of injured Ganesh, it is necessary to scrutinize his testimony carefully. He has admitted that he has not tried to save the victims from the hands of the accused persons. He has admitted that on the day of the incident, i.e., 18/03/2014, the Agriculture Office was open. He has also admitted that he had not stated to the Police Officer to have seen the incident, while he has admitted that he was with the Police on 18th and 19th of March. He has also admitted that he did not help in lifting the injured for taking them to the hospital. Even he did not accompany the injured to the hospital. On the contrary, he has stated that after the Police reached the spot, they took the injured to the hospital, and this witness along with Vijay (PW14) and one Jaypal reached the hospital by auto. His statement was recorded on 20/03/2014, i.e., on third day of the incident. In the light of the facts which have been brought on record during cross-examination, his presence at the spot and witnessing the incident is doubtful. It is unbelievable as to how he could recollect each and every minute description of the incident on third day of the incident. Secondly,

as per his version, though he was with the Police in the hospital on 18/03/2014 and 19/03/2014, he did not disclose to the Police that he witnessed the incident. Even he has not taken part in saving the victims, in lifting and taking the victims to the hospital, and even informing the Police about the incident. The presence of this witness on the spot in the evidence of Nirmalabai PW19 is by way of omission. Evidently, his active role started when the injured reached the Icon Hospital, Akola. His presence on the spot and witnessing the incident is doubtful. Being the near relative of the injured Ganesh, the natural conduct of this witness on the spot would have been his taking of efforts to save the victims or to shout and call for help or at least do something in taking the injured to the hospital. Furthermore, this witness has failed to explain as to why he had to go to the house of the Agricultural Officer at 4:00 pm by coming to Naik Nagar when the Agriculture Office was open and which was nearer to his Village – Vitholi. As rightly pointed out by the learned defence counsel, he is nothing but a got up witness of the prosecution.

55. PW10 Devidas, the injured eye-witness, father of deceased Avinash, could not withstand the searching cross-examinations. In his examination-in-chief, he has stated the sequence of the incident with minute description, alike other prosecution eye-witnesses, however, in

cross-examination, he was not firm in answering the questions. Initially he flatly denied that whether Deothana is his original native place and whether his relatives reside at Deothana. Then he admitted that his relatives reside at Deothana and prosecution witness Vijay Rathod (PW14) is son of his maternal uncle. Interestingly, Vijay Rathod admittedly is resident of Village – Deothana. Secondly, he has admitted that there are houses of other residents across the road in front of his house, however, he deposed that he did not pay any attention whether the persons residing nearby had gathered there. There are lots of exaggerations and embellishment with regard to injuries received to him and the material omissions, which have been cleverly brought on record by the defence.

56. PW13 Ganesh the injured eye-witness in his 161 statement has not stated that Vijay Rathod (PW14), Jaypal and Dyaneshwar Rathod (PW9) were present when they were lifted by the police. He has admitted that there are residential premises on all the three sides of the house of Devidas and Ramdhan. However, this witness and the other prosecution eye witnesses have cleverly expressed their ignorance as to whether the residents of the locality have witnessed the incident, which

according to us, as discussed earlier, raises doubt on their testimonies in the facts of the present case.

57. The trial Court has not considered and appreciated the evidence in the light of the above referred deficiencies. It also did not consider the fact that the testimonies of all the six prosecution eye-witnesses were almost identical and, therefore, what could have been their effect. All the three injured witnesses claimed that they were being assaulted simultaneously, and despite that, they could see the assault on other persons and describe with precision which accused was holding which weapon and on which body part he was assaulting. The learned trial Court ought to have found that in such a situation, it was not possible for the injured witnesses to talk about the assault on other victims including the deceased, as in all probability, these victims would be concentrating on their own safety instead of watching others.

58. The learned defence counsel has rightly pointed out that the trial Court ought to have found that the conduct of the chance witnesses; PW9 Dnyaneshwar, PW14 Vijay and PW19 - the informant Nirmalabai was most unnatural, as none of them either tried to save the deceased or the other victims or raised hue and cry. PW14 Vijay though claims that

he attempted to intervene to save the deceased and in that process his clothes got stained with blood, however, the material on record falsifies the claim of PW14 Vijay as none of the other witnesses stated that PW14 Vijay attempted to save the deceased. Furthermore, evidently, the Police did not seize the blood-stained clothes of this witness.

59. The postmortem report of the deceased Avinash reveals that he had sustained one laceration of size 2X4 cm over the scalp with internal damage. Though PW21 Dr. Gote, who performed the postmortem examination says that one injury is possible if the deceased is repeatedly assaulted on head by four persons provided all the blows should land on the same site, the learned defence counsel has rightly pointed out that it was impossible that when four persons were continuously assaulting and giving repeated blows on the head of the deceased by different weapons, all the blows would land on the same site. On this aspect, the testimony of all these eye-witnesses cannot be believed, and they could not have been termed as reliable witnesses.

60. PW2 Mukesh claims that he became unconscious while he was being put in the ambulance at Manora for being shifted to Akola hospital. As against this, as rightly pointed out by the learned defence

counsel from the medical papers on record that PW2 Mukesh was conscious and oriented (Exh. 519). On 19/03/2014, the general condition of Mukesh was normal and moderate (Exhs. 522 and 523). Despite this, the statement of Mukesh was recorded on 24/03/2014. The same is the case with other injured eye witnesses. In the facts of this case, the delayed recording of statements of the witnesses without plausible explanation casts a serious doubt on the credibility of the prosecution witnesses. It is evident from the record that the recording of statements of the eye witnesses was started from the third day of the incident. It is very difficult to believe as to how the injured witnesses, who were allegedly unconscious and who had undergone medical treatment for number of days could recollect each and every detail of the incident after number of days of the incident. The learned defence counsel has brought on record certain material omissions in their testimonies. All these facts go to show that it is very risky to record conviction of the accused.

61. Furthermore, as rightly pointed out by the learned defence counsel that the record does not reveal that if any independent witness has been interrogated by the police. In this context, the learned trial Court relied on the judgments in **Sarwan Singh Vs. State of Panjab, AIR 2002 SC 3652**, and **Ambika Prasad & Anr. Vs. State of Delhi**

Administration, AIR 2000 SC 718 and observed that non-examination of independent witnesses is not fatal to the prosecution case. There is no doubt about the ratio laid down in the above cited authorities. However, at the same time, in the present case, it cannot be lost sight of the fact that not only the chance witnesses but the panch witnesses are admittedly the relatives. Secondly, as discussed earlier, the prosecution eye-witnesses have deposed one set of facts with minute descriptions of the incident coupled with the fact that the statements of these witnesses were recorded belatedly and the Investigating Officer (PW23) could not explain satisfactorily about such delay so also the conduct of the eye-witnesses which has been brought on record during their cross-examinations, raises a serious doubt on the prosecution story. In such circumstances, examination of independent witnesses was necessary in the light of the fact that the site of the incident was in the residential locality and there was crowd of people when police reached the spot. Furthermore, Nirmalabai has admitted that she is having good relations with her neighbours. In such circumstances, the learned trial Court ought to have drawn adverse inference against the prosecution for non-examination of the independent witnesses.

62. Interestingly, the learned trial Court has taken serious note of the lapses in the investigation for not filing MLC report of the injured and the accused with the chargesheet, for not sealing the seized articles and not sending it for chemical analysis within a reasonable time. The learned trial Court has rightly discarded the evidence of seizure of weapons and clothes from the person of accused from consideration. However, the trial Court has erred in extending benefit of defects in the investigation to the prosecution. In our considered opinion, in the peculiar facts and circumstances of the present case wherein 23 accused are involved for the charge of murder, being members of unlawful assembly and in the absence of evidence of independent witnesses and other reliable material, the lapses in investigation with regard to non-sealing of muddemal property and delay in sending the same for chemical analysis are serious of kind and the benefit of the same has to be extended to the accused. For considering the evidence of articles recovered during investigation and using the same against the accused as incriminating material, there should have been sanctity to the process at every stage of handling the property right from seizure of property, sealing, carrying, storing, sending it for chemical analysis till the analysis is done by the Chemical analyser and receipt of C.A. reports.

63. In the light of the discussion with regard to the parrot-like versions of the prosecution eye witnesses and other aspects of the matter as discussed earlier, it is difficult to comprehend as to what exactly had happened on the spot and in such circumstances, the defence of the appellants that on the day of incident, Avinash, Devidas, Mukesh and Ganesh along with others attacked on the house of Janardhan and to save accused Janardhan accused Duryodhan, Govardhan and Kuldeep had a scuffle with them and to save accused Janardhan and his brothers, residents of the locality attacked the complainant party, appears to be probable, the benefit of which must be given to the accused.

64. Furthermore, the defence examined three expert medical witnesses and also brought on record medical documents (Exhs. 768, 769 and 771) showing that accused Janardhan, Duryodhan, Govardhan and Kuldeep had taken medical treatment on 21/03/2014 for their injuries after their arrest. The prosecution has cleverly suppressed the MLC reports of the accused and were not found part of the chargesheet. The prosecution is altogether silent on the injuries received by the accused which in the facts of the present case, supports the defence of the appellants and reinforces the doubt on the prosecution story.

65. The learned trial Court has erroneously observed that only because there is no panchanama of the place in front of house of Devidas where Indica car was stopped, the whole of the prosecution evidence cannot be discarded. In the present case, in order to inspire confidence of the story of the prosecution, the presence of Indica car in front of house of Devidas where the witnesses allegedly alighted from the car and were allegedly taken away forcibly could have been the vital evidence. Absence of this vital evidence gives a serious dent to the prosecution story as it is very difficult to comprehend as to what had actually happened on the spot. It is the defence of the appellants that complainant party was more aggressive and they attacked on the accused Janardhan and his brothers and they suffered injuries, while it is the prosecution story that as soon as the witnesses alighted from the car, they were attacked. In such circumstances, the presence of car on the spot could have been vital evidence in support of the prosecution case.

66. The learned trial Court in para 110 of the judgment has recorded the submissions of defence counsel with regard to the identical versions of the prosecution eye-witnesses. However, the learned trial Court has erred in discarding the same by observing that only because the witnesses are stating the incident in similar fashion, it cannot be said

that the witnesses are tutored. The learned trial Court has not considered at all as to how could it have been possible for these witnesses to observe the things in the same manner from different angles and to state before the police with minute details the names of all 23 accused, role played by each of them, nature of weapons, injuries sustained etc, not immediately after the incident but after some days of the incident. The learned trial Court ought to have dealt with this core defence of the appellants appropriately.

67. In the light of the above discussion, the submission of learned APP Mr. Doifode that the testimonies of eye-witnesses are mutually corroborative cannot be accepted. The learned A.P.P. Mr. Doifode in his lengthy argument mainly concentrated on the aspects of common object of the unlawful assembly, part played by each of the accused, injuries received to the deceased and the victims, nature of injuries, medical evidence and recovery of weapons at the instance of accused persons. The learned A.P.P. Mr. Doifode has also cited a bunch of authorities on these aspects. In our considered opinion, in a case primarily based upon ocular evidence, like the present, it is necessary for the Court first to satisfy itself about reliability of the prosecution witnesses. But, for the reasons stated earlier, we have not found them to

be trust worthy. It is very much obvious from reading of the testimonies of the eye-witnesses that they are almost identical. As discussed earlier, it is difficult to believe that six eye-witnesses deposed the occurrence of the incident in identical fashion with each and every minute detail, which, in our considered opinion, is humanly impossible. Apart from this, as discussed earlier, not a single independent witness (except police and medical witness) was examined even when it is not the case that the incident occurred in isolation or during late night hours. The statements of the witnesses were recorded belatedly which gives scope to believe that the prosecution had time to customize a story and to create evidence. There was serious lacuna in non-sealing muddemal and delayed sending the same for chemical analysis and therefore even though there is evidence of blood stains on clothes and weapons, it is of no use.

68. It is pertinent to note here that while appreciating the evidence on record, we have kept in mind the settled principles of criminal law as pointed out by the learned A.P.P. and the learned counsel for the appellants through various judicial pronouncements.

69. In the result, we find that the prosecution has failed to prove the case beyond reasonable doubt. The accused are entitled to benefit of doubt. As such, the Appeals deserve to be allowed. The Criminal Appeals are allowed. The appellants are acquitted of the offences charged with. Fine amount if paid by appellants be refunded to them. The appellants are directed to be set at liberty forthwith, if not required in any other case.

(JUDGE)

(JUDGE)

Sumit