BHASKARRAO & ORS. A

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 408 of 2014)

APRIL 26, 2018. B

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code, 1860:

ss. 147, 148, 452 r/w s. 149, s.302/149 and s.506 – Prosecution under – For murder of a person – by 16 accused – Trial Court acquitted all the accused – High Court reversed the acquittal order – On appeal, held: Evidence of witnesses were not consistent – There were lot of improvement in the statement of witnesses – There were contradictory statements as regards the number of accused persons involved – All the witnesses were related – Material independent witnesses were not examined – Prosecution failed to prove motive – Panch witnesses as well as medical evidence did not support the prosecution case – Thus, chain of events cannot be said to have been properly brought on record by the prosecution – In view of the shortcomings and discrepancies in the prosecution case, accused persons cannot be said to have formed unlawful assembly with a view to kill the deceased – Guilt of accused not proved beyond reasonable doubt – Acquittal justified. C D E

Criminal Law:

Motive – Evidentiary value – Held: In a case of circumstantial evidence, motive has a role to play – But to dislodge prosecution's case solely based on lack of motive would amount to giving credit to this factor, where it is not due. F

Appeal:

Appeal against acquittal – Interference with and reappreciation of evidence by appellate Court – Scope of – Held: Appellate court is expected to be very cautious in interfering with the order of acquittal – Its interference is called for, only when there are compelling reasons and substantial grounds. G

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A *Evidence:*

Circumstantial evidence – Value of circumstantial evidence rests in its accumulative effect – When several such evidences are taken together, they may carry enough probative force to justify the conviction, if such evidence forms an unbroken chain of events
B *resulting in only one hypothesis so canvassed.*

Witness:

Related witness – Evidentiary value – Held: Interest of the witness does affect his testimony – Under the influence of bias*, a man may not be in a position to judge correctly – Therefore, witness*
C *having interest in the result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth.*

Allowing the appeals, the Court

HELD: 1. In the present case, the trial court, followed by a
D **full-fledged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case, the appellate Court is further burdened with the task of reaffirming the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is**
E **called for only when there are compelling reasons and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their**
F **evidence can be reversed only for very substantial and compelling reasons. [Para 23] [768-F-H; 769-A]**

Surajpal Singh & Ors. v. The State, **1952 CriLJ 331 – relied on.**

G **2. The prosecution relies on the circumstantial evidence to prove the case. The value of circumstantial evidence rests in its accumulative effect, that is to say, while a single piece of circumstantial evidence may only slightly increase the likelihood that the accused is guilty, several such evidences taken together may carry enough probative force to justify the conviction, if such**
H **circumstantial evidence forms an unbroken chain of events**

resulting in only one hypothesis so canvassed. [Para 26] [769-D-E]

3. The witnesses in the present case were inter-related, and this court should be cautious in accepting their statements. Whoever has been a witness before the court of law, having a strong interest in result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remain the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of *bias*, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favorable color. These are most controlling considerations in respect to the credibility of human testimony, and should never to be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case. [Paras 27 and 31] [769-F; 771-F-H; 772-A]

> *Dalip Singh & Ors. v. State of Punjab*, **[1954] 1 SCR 145**; *Masalti v. State of U.P.*, **[1964] 8 SCR 133**; *Darya Singh and Ors. v. State of Punjab*, **[1964] 3 SCR 397**; *Harbans Kaur & Anr. v. State of Haryana*, **2005 CriLJ 2199**; *Namdeo v. State of Maharashtra* **(2007) 14 SCC 150 : [2007] 3 SCR 939 – relied on.**

4. The prosecution has heavily relied on the statement of PW1. The allegation particularly levelled by her was that the accused carried the assault on the deceased at three places i.e., in front of the house of the deceased and near the house of PW3 and at the fields of 'Y'. However, in their depositions PWs 2, 4 and 5 did not mention about such assault on the deceased in front of PW3. It appears from the material that there are no eyewitnesses who had seen the accused attacking the deceased

A **in the fields of 'Y'. The statements of PW3 also appears to be not consistent throughout. At one point of time, he deposed that the deceased had died in front of his house. Altogether a different statement was given to the investigating authorities and in the Court. Similar is the case of PW4, who has made improvements as regards to the assault on the deceased. Also there were varying**
B **statements by the prosecution witnesses as regards PW4, on the aspect of receiving the blow.Though she stated that she could recognize the assailants by their face as she does not know their names, yet test identification parade was not conducted which is fatal to the case of prosecution. [Paras 32 and 33] [77-B, C-F]**

C **5. PWs 2, 3 and 5 in their depositions gave contradictory statements as to the involvement of number of accused persons in the crime and also about noticing the accused who dragged the deceased while assaulting him and dragging towards school whereas PWs 1 and 4 were silent on this aspect. There were also**
D **contradictory statements by prosecution witnesses as regards the availability of light at the time of occurrence. [Para 33] [772-G]**

6. PW1 has not witnessed the chopping of the hand, which resulted in the ultimate death of her husband. It is prudent for this Court to not believe in absence of cogent evidence concerning
E **the culpability of the accused, as her evidence is ridden with apparent internal contradictions and inconsistencies. [Para 34] [773-C-D]**

7. In a case of circumstantial evidence, motive has a role to play, but to dislodge prosecution's case solely based on lack of
F **motive would amount to giving credit to this factor, where it is not due. The motive behind the accused assaulting the deceased was said to be the quarrel during which the deceased had slapped Accused No. 4 near a grocery shop in the village. Incidentally, prosecution could also not prove the same by examining the independent witness present at the grocery shop, though as many**
G **as 19 witnesses were examined by the prosecution. PW10, Head Constable of the Police Station who reduced the oral complaint of PW1 into writing, categorically stated that PW1 had also not mentioned about previous quarrel at the time of lodging of complaint. There were, undoubtedly lot of improvements in the**
H **statement of PW1 from the stage of complaint to her examination-**

in-chief. Moreover, the evidence of PW1 concerning the quarrel is barred for being hearsay evidence. [Para 35] [773-F-G; 774-A-B]

Hari Shanker v. State of U.P. **(1996) 9 SCC 40 : [1996] 2 Suppl. SCR 348**; *Ujjagar Singh v. State of Punjab*, **(2007) 13 SCC 90 : [2007] 13 SCR 653**; *State of U.P. v. Kishanpal & Ors.*, **(2008) 16 SCC 73 : [2008] 11 SCR 1048**; *Bipin Kumar Mondal v. State of West Bengal*, **(2010) 12 SCC 91 : [2010] 8 SCR 1036 – relied on.**

Chandler v. DPP **[1964] AC 763 – referred to.**

General Principles of Criminal Law by Jerome Hall 88 (2d ed. 1960) – referred to.

8. Alternatively, the prosecution has alleged that motive for the crime was that the accused party belongs to non-SC/ST community whereas the victim was belonging to SC community. The prosecution could not prove that the deceased belonged to Scheduled Caste and accused were from non-Scheduled Caste or Tribe and the prosecution has failed to prove any charge against the accused including the charge under Section 3(i)(x) and 2(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As against that charge, the High Court also confirmed the view taken by the trial Court, which in other words proved the prosecution version to be wrong. [Para 36] [774-C-D]

9. An accused is, of course, vicariously guilty of the offence even if he is not directly indulged in the commission of offence but committed by other accused, in case he is proved to be a member of unlawful assembly sharing its common object. It is evident that as per PW1-complainant, in the FIR the number of persons mentioned by her, who have entered into their house was four, while about 20 to 25 persons were assembled outside the house and all of them assaulted the deceased. However, in the examination-in-chief she deposed that there were in all 15 assailants who attacked her husband. Though she failed to name the assailants in her deposition she made out a point that she knew all the assailants. According to PW10, the author of complaint, PW1 did not state about entry of accused Nos. 13 and

15 into her house. There was also no mention by her at the time of lodging of FIR about carrying an axe by A-11, a sword by A-13, a pipe by A-15 and sticks by other accused. Going by the material on record, it can be said that there was no satisfactory explanation on the part of PW1 for omissions in the FIR and improvements before the Court. [Para 37] [774-F-H; 775-A]

10. PW11, a panch witness of seizure of bloodstained clothes of the accused Nos. 1 to 7, did not support the prosecution case. Similarly, the seizure is doubtful in the case of clothes pertaining to accused No. 11 to which PW13 was witness. Going by the material on record, the correctness of seizure of clothes of other accused persons also do not inspire confidence.[Para 38] [775-B-C]

11. PW6 who proved the recovery of weapons at the instance of accused—appellants, could not point out his signature on the respective disclosure statements and seizure panchnamas. He also admitted that Ext.72 (memorandum) and Ext. 73 (seizure panchnama) does not bear his signature. PW9 deposed that after recovering sticks from the houses of accused Nos. 1 to 7, they returned to the village panchayat office where almost all the papers were scribed. Based on the Chemical Analysis report, those sticks cannot be considered to be incriminating articles as there were no blood stains on those sticks. In the same way, the sword and axe allegedly recovered from Accused Nos. 13 and 11 respectively also do not have bloodstains. In these circumstances, the prosecution cannot be said to have proved the fact that the palm of the deceased has been amputated by the accused with those weapons. [Para 39] [775-D-F]

12. In the opinion of the doctor-PW7, who conducted postmortem on the body of the deceased, the cause of the death was due to heavy loss of blood owing to the amputation of his hand. However, his vital organs were found to be normal and there was no injury to the vital organs. PW7 has specifically mentioned that there was no laceration or contusion sustained by the deceased and opined that had there been timely medical treatment, the deceased would have survived. At the same time she made it clear that in case a person is beaten up with sticks and iron pipe, as alleged by the prosecution in the present case,

contusions and lacerations are possible. In her cross-examination, the Doctor also revealed that because of amputation of hand and leg or both, a person may not die. Thus, in totality, the medical evidence is not corroborating with the prosecution's case. [Para 40] [775-G-H; 776-A-B]

13. Many persons, especially neighbours of the deceased, who witnessed the important circumstances and who could be vital independent witnesses have not been examined by the prosecution. There is no convincing explanation forthcoming from the prosecution side. [Para 41] [776-F]

14. In the midst of several contradictory statements among the prosecution witnesses, there is no proper explanation on record for PW1 and police searching for the deceased at the wells and nullahs of the village, instead of searching around the school, as per the prosecution story PWs 2, 3 and 5 were fully aware that the deceased was dragged towards school. Moreover, looking at the ambiguous narration of sequences described by the witnesses, the chain of events in the case cannot be said to have been properly brought on record by the prosecution. [Para 42] [777-B-C]

15. It is always the duty of the Court to separate chaff from the husk and to dredge the truth from the pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements. [Para 42] [777-C-D]

Tahsildar Singh v. *State of U.P.* **AIR 1959 SC 1012 – relied on.**

16. High Court has misconstrued certain aspects of the case. According to PW2 the incident occurred at about 9 p.m. In the FIR also the time was mentioned as 9 p.m. But the High Court in its judgment observed that the incident took place at about 7.30 p.m. Thus, it is clear from the record that the alleged incident has occurred at 9 p.m. and not at 7.30 p.m. as assumed by the High Court, and there were also no eyewitnesses to the alleged amputation of the hand of deceased and causing his death. [Para 43] [777-E-F, G]

17. In view of the shortcomings and discrepancies in the prosecution case coupled with the improvements and contradictions in the statements of prosecution witnesses, it cannot be said that the accused persons had really formed into an unlawful assembly and carried out an assault on the deceased that too with a view to kill him, so as to attract the provisions of criminal law. In the facts and circumstances of the case, it is abundantly clear that the guilt of the accused persons was not proved beyond reasonable doubt. The trial Court had dealt with the case in a fool-proof manner by drawing out 11 important circumstances and delivered a well reasoned judgment thereby acquitting the accused, with which the High Court ought not to have interfered. There were no compelling reasons and substantial grounds for the High Court to interfere with the order of acquittal passed by the trial Court. [Para 45] [778-B-D]

Mahavir Singh v. *State of Madhya Pradesh* **(2016) 10 SCC 220 : [2016] 8 SCR 394**; *L.L. Kale v. State of Maharashtra & Ors.* **(2000) 1 SCC 295**; *Joginder Singh & Anr. v. State of Haryana* **(2010) 15 SCC 407**; *Nankaunoo v. State of U.P.* **(2016) 3 SCC 317 : [2016] 4 SCR 627**; *Tota Singh and Anr. v. State of Punjab*, **1987 CriLJ 974**; *Ramesh Babulal Doshi v. State of Gujarat*, **1996 CriLJ 2867 – referred to.**

Case Law Reference

[2016] 8 SCR 394	**referred to**	**Para 11**
(2000) 1 SCC 295	**referred to**	**Para 11**
(2010) 15 SCC 407	**referred to**	**Para 11**
[2016] 4 SCR 627	**referred to**	**Para 11**
1987 CriLJ 974	**referred to**	**Para 14**
1996 CriLJ 2867	**referred to**	**Para 15**
1952 CriLJ 331	**relied on**	**Para 23**
[1954] 1 SCR 145	**relied on**	**Para 27**
[1964] 8 SCR 133	**relied on**	**Para 28**
[1964] 3 SCR 397	**relied on**	**Para 29**

2005 CriLJ 2199	**relied on**	**Para 29**
[2007] 3 SCR 939	**relied on**	**Para 30**
[1996] 2 Suppl. SCR 348	**relied on**	**Para 35**
[1964] AC 763	**referred to**	**Para 35**
[2007] 13 SCR 653	**relied on**	**Para 35**
[2008] 11 SCR 1048	**relied on**	**Para 35**
[2010] 8 SCR 1036	**relied on**	**Para 35**
AIR 1959 SC 1012	**relied on**	**Para 42**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 408 of 2014.

From the Judgment and Order dated 21.12.2013 of the High Court of Judicature at Bombay Bench at Nagpur in Criminal Appeal No. 290 of 1998.

WITH

Crl. A. Nos. 520, 1328, 1228, 1223, 1229, 1330 & 1578 of 2014.

V. V. S. Rao, Sr. Adv., Ms. Anagha S. Desai, Varun Mathur, Dharmendra Kumar Sinha, Tadimalla Baskar Gowtham, Subodh K. Pathan, Nishant Ramakantrao Katneshwarkar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. These appeals arise out of the common judgment and order, dated 21st December, 2013, passed by the High Court of Judicature at Bombay, Bench at Nagpur, in Criminal Appeal No. 290 of 1998 whereby the High Court reversed the order of acquittal passed by the Additional Sessions Judge, Amravati in Sessions Trial No. 40 of 1995 and convicted all the accused/appellants herein except accused no. 6 (since dead) for the offence punishable under Sections 147, 148, 452 read with Section 149, Section 302 read with Section 149 and Section 506 of the Indian Penal Code (IPC).

2. The prosecution story in short is that, on 19th June, 1995 at about 7 pm, in the village Jalka Shahapur an altercation had taken place between two villagers, namely Shamrao (deceased) and Balya (Accused No. 4) on the road near a grocery shop over repayment of Rs.50/-. It

A was alleged that Shamrao (deceased) had slapped Balya (Accused No. 4) during the scuffle. After sometime, all the sixteen accused persons armed with weapons, while entering the house of Shamrao hurling abuses, dragged him out of the house, assaulted on his hands and legs. They are alleged to have continuously assaulted Shamrao while simultaneously dragging him to a field where they finally cut his right palm and left the B place. During the course of assault by the accused, Chanda (PW1) [*wife of Shamrao*] followed them pleading not to hurt her husband and out of fear she took shelter in some cattle shed. Later on she went to the house of one Harshawardhan Bhalekar and informed him about the incident. Then Harshawardhan Bhalekar along with PW1 proceeded to Amravati C and informed about the occurrence to the family members of Shamrao. After that they went to the office of Superintendent of Police, Amravati where they were advised to lodge a complaint at Nandgaon Peth police station. Accordingly, a complaint (Ext. 55) was lodged on 20th June, 1995 being crime case No. 72 of 1995. It may be relevant to reduce a part of the FIR as under- D

Name and addresses of accused, if any	:	1. Gajanan Chincholkar 2. Balya Bhagat 3. Pramod Khedkar 4. Raju Mohol +20 to 25 persons
E Names and addresses of suspects	:	
F Nature of offence with penal section. Give short descriptions of stolen property with its value if any.	:	The incident is that on the above dt. Time and place, when the husband of the complainant was in the home, when he went to the house of Balya Bhagat out of the accused persons herein for demanding the money of fishes, the accused persons came to the house of the husband of the accused and the accused persons have beaten and pulled from the house and on account of the said occurrence, the offence is registered and taken for investigation.

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3. Dattatray Kulkarni, A.P.I. (PW17) took up the investigation and carried a search for missing Shamrao in the Jalka Shahapur village and ultimately on 21st June, 1995 on the information of one Ananda Bhurbhure, PW1 and PW17 found the dead body of Shamrao, in the fields of one Yeshwant Thawale, without his right palm which they traced at some distance. After conducting the panchanama of scene of occurrence, inquest report was drawn, clothes of the deceased were seized, statements of some witnesses were recorded and the dead body was sent to the Civil Surgeon at Amravati for postmortem. All the accused, except accused no. 16 who was stated to be absconding, were arrested and at their instance, alleged weapons used for the crime were recovered, disclosure statements recorded, seizure panchanama recorded and the accused were got medically examined. After completion of investigation, charges were framed against accused nos. 1 to 15 to which the accused pleaded not guilty and claimed trial.

4. In its effort to prove the guilt of the accused, prosecution has examined as many as 19 witnesses. Learned trial Judge after conducting a full fledged trial, came to the conclusion that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt, therefore, all the accused, against whom trial was conducted (accused nos. 1 to 15), were acquitted of the offences they were charged with. Accused No. 16, who was absconding, came to be arrested at the end of trial. Hence, the trial court directed separate trial against him.

5. Aggrieved by the order of acquittal passed by the trial court, the State of Maharashtra went in appeal before the High Court. During the pendency of the appeal, before the High Court, Accused No. 6 expired. The High Court found fault with the acquittal order passed by the trial court and by its judgment which is impugned herein, convicted all the accused before it except accused No. 6, for the offence punishable under Sections 147, 148, 452 read with Section 149, Section 302 read with Section 149 and Section 506, IPC. They were sentenced to undergo imprisonment for a period of two years for the offence punishable under Sections 147, 148 and 452, IPC. Whereas for the offence punishable under Section 302 read with Section 149, IPC they were sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to further suffer imprisonment for one year. They were also sentenced to suffer imprisonment for a period of six months and to pay a fine of Rs. 500/- each, in default, to further suffer a period of one

A month imprisonment for the offence under Section 506, IPC. However, all the sentences were directed to run concurrently.

6. Dissatisfied with the judgment of the High Court in reversing the order of acquittal, the Accused Nos. 1 to 5 and 7 to 14 are before us in these appeals assailing the judgment of the High Court. It appears
B that Accused No. 15, Gajanan Pandurang Chincholkar, has not preferred an appeal against the judgment of the High Court.

7. It may be beneficial to note that the accused Nos. 1 (Motiram) and 3 (Ravindra) have filed Criminal Appeal No. 1330 of 2014, Accused Nos. 2 (Bhaskarrao), 9 (Maroti Bhaskarrao Bhagat) and 10 (Bhagwat
C Bhaurao Bhagat) have filed Criminal Appeal No. 408 of 2014, Accused Nos. 4 (Balya) and 5 (Vishnu Bharao Bhagat) have filed Criminal Appeal No. 1578 of 2014, Accused No. 7 (Maroti Mahadeorao Kosare) has filed Criminal Appeal No. 1229 of 2014, Accused No. 8 (Laxman Bhaurao Bhagat) has filed Criminal Appeal 1328 of 2014, Accused No. 11 (Prabhakar Narsaji Bhagat) has filed Criminal Appeal No. 1223 of 2014,
D Accused No. 12 (Babarao Laxmanrao Adhao) has filed Criminal Appeal No. 1228 of 2014 and Accused Nos. 13 (Dilip Uttamrao Mankur) and 14 (Pramod Devidas Khedkar) have filed Criminal Appeal No. 520 of 2014.

8. On behalf of Accused No. 8, the arguments were advanced by
E Mr. V.V.S. Rao, learned senior counsel. Ms. Anagha S. Desai, learned counsel has argued on behalf of Accused Nos. 2, 7, 9 and 10 to 14, while Mr. Dharmendra Kumar Sinha, learned counsel made submissions in respect of Accused Nos. 1, 3, 4 and 5. Having heard the arguments advanced by the respective counsel, as the order impugned is one and
F the same, we proceed to deal with all these appeals by a common judgment.

9. It is the case of the appellants—accused that the entire prosecution story has been concocted to falsely implicate the innocent appellants and is not based on the true facts and circumstances. That
G there were several lapses in the prosecution theory. That the dead body of the deceased was found in a field which is about two kms away from the house of the deceased, and there is no eyewitness to the factum of accused committing the murder of deceased. His amputated palm was found at some distance to his dead body, but there was no evidence on record as to who cut the palm of the deceased. There were also no
H bloodstains on any weapon alleged to have been recovered by the

investigating authorities at the instance of accused. All the prosecution witnesses are inter-related and there was no independent witness to support the prosecution case. The trial Court has rightly discarded the evidence of interested witnesses.

10. It is also argued that the prosecution has improvised the circumstances from the stage of lodging FIR to the conclusion of trial. In the FIR, there was no mention about the alleged quarrel that took place between the deceased and Accused No. 4 over a matter of Rs.50/- near a grocery shop. PW1 (wife of the deceased) introduced the story later on. The owner of the grocery shop was not examined as a witness whose evidence would be crucial to prove that a quarrel has taken place which is the whole basis or provocation for the incident. It was also alleged that there were two other witnesses namely Charandas and Anant, but they too were not examined by the prosecution. In the FIR, the names of accused were specified as only four persons, but 16 persons have been dragged into the case as accused. The statements of witnesses varied as to the presence of the accused at the time of occurrence and their depositions are quite contradictory to the prosecution case. There was also no test identification parade conducted and all the accused persons are not familiar to the witnesses. The evidence of prosecution witnesses is unbelievable inasmuch as the allegation was that the deceased was dragged on the ground for about 2 kms from his house to the place where his dead body was found, even then there were no injury marks on the body of the deceased.

11. It is further submitted by the learned counsel that the High Court failed to take into consideration the crucial facts that no test identification parade was conducted, no motive was established, no injuries on vital parts of the deceased were noted, and above all medical evidence did not corroborate with the alleged ocular evidence. The High Court has also failed to take note of the fact that the trial Court has not committed any legal error in appreciating the ocular and medical evidence to reach at the conclusion that the accused are innocent. The law is well settled by this Court with regard to fresh appreciation of evidence in an appeal against acquittal that even if on the basis of evidence, there is a possibility of taking a different view than that of the trial Court, the appellate Court should refrain from disturbing the findings and conclusion recorded by the lower court. In view of the settled law, the High Court ought not have interfered with the order of acquittal passed by the trial Court. But by setting aside the order of acquittal passed by the trial Court, the High

A Court has committed a gross illegality by convicted the appellants—accused thereby causing miscarriage of justice which invites interference of this Court. In support of their arguments learned counsel appearing for the accused—appellants relied on the judgments of this Court in ***Mahavir Singh*** vs. ***State of Madhya Pradesh***, (2016) 10 SCC 220, ***L.L. Kale*** *Vs.* **State of Maharashtra & Ors.** (2000) 1 SCC 295, ***Joginder Singh & Anr.*** *Vs.* ***State of Haryana*** (2010) 15 SCC 407 and ***Nankaunoo*** Vs. ***State of U.P.*** (2016) 3 SCC 317.

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12. On the other hand, learned counsel appearing for the State—Mr. Nishant Ramakantrao Katneshwarkar, supported the impugned judgment and submitted that the learned trial Judge disbelieved the evidence of prosecution witnesses for no valid and reasonable cause. The minor discrepancies in the depositions have been given undue importance to pass the acquittal order against the accused, who in a brutal manner dragged the deceased to the fields and assaulted him with sticks, axe and sword. PW1—Chanda, wife of the deceased, tried her best to save her husband praying at the accused to show mercy, but all the accused in pursuance of their common object, attacked the deceased indiscriminately leading to his death. The High Court has correctly assessed the facts and circumstances of the case and there was no legal error in the impugned order seeking indulgence of this Court.

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13. We have given our consideration to the material placed before us and the arguments advanced by the learned counsel on either side.

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14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in ***Tota Singh and Anr.*** v. ***State of Punjab***, 1987 CriLJ 974 -

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> "The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed

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out that ***the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal.*** The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that ***no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse.*** Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In ***Ramesh Babulal Doshi*** v. ***State of Gujarat***, 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

16. Keeping the aforesaid observations in mind, we may note some statements of the witnesses, who have deposed before the trial court concerning the incident. PW-1 [*wife of the deceased*], has deposed that she came to know about the scuffle, from her husband, which took

A place between her deceased husband and accused no. 4 prior to the occurrence of the incident. She further stated that while she was cooking the dinner for her husband, accused no. 4, 11, 12, 13, 14, 15 and absconding accused (Raju) entered her house. The accused dragged her husband outside onto the courtyard. She states that she saw accused no. 11 was armed with an axe, accused no. 13 was armed with a sword and accused B no. 16 was holding an iron pipe. She further states that rest of the accused were armed with sticks and in total there were 15 assailants. Her husband was dragged to the courtyard of Vinayak Bhalekar, whose house is said to be after three to four houses. At that spot, they again gave some beating to the deceased. PW-1 states that she was continuously C requesting the assailants to spare the life of her husband. At this instant, accused no. 11 is said to have threatened PW-1 so that she may not witness the incident. Accordingly, she ran to the cattle shed of one Sudha Bhalekar, who was attacked by accused no. 14 in the meantime, and remained hidden for about two hours out of fear. Thereafter, PW-1 went to the house of Harshwardhan Balekar, who first accompanied her to D the district head-quarters at Amravati, wherein she informed the family of the deceased (parents-in-law and the brother-in-law) and thereafter went to the Amravati police station. As they were advised to register the case in Nandgaon Police Station, they came back to Nandgaon police station to register the complaint.

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17. During the cross-examination she avers that PW-3, 4 and 5 were closely related to her and the accused were also related *inter se*. Concerning the relationship between the accused no. 4 and the deceased, she states that the relationship between them were cordial. Lastly, she could not assign any reason as to why the earlier scuffle between her F deceased husband and accused no. 4 was not written in the FIR registered by her.

18. PW-2 avers that on the day of the incident, while he was watching television from inside the house, he heard some commotion taking place outside his house. When he went outside the house, he saw G that the accused were beating the deceased with weapons such as axe, pipe, swords and stick. he states that he saw accused no. 11 armed with an axe, accused no. 4 armed with a bamboo stick, accused no. 13 armed with a sword and accused no. 16 was holding an iron pipe. As he was afraid, he did not go behind the assailants. During the cross examination, he avers that there might have been more than twenty persons.

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19. PW-3, states that he saw the accused giving severe beating to the deceased with sticks, swords, iron pipes and axe. He states that he saw accused no. 16, 15 and 11 dragging the deceased towards the school and he did not follow the accused out of the fear and on the following day, deceased body was found in the field of one Yeshwant Sawai. During the cross examination, he states that the deceased died in front of his house, due to severe beating given by the accused. Moreover, he admits that the deceased is his relative.

20. It may be noted that PW-4 and 5 have deposed to the same effect, concerning the incident. They have further admitted that they were related to the deceased. At this point it may be relevant to notice the witness statement of the doctor, who conducted the post-mortem [PW-7]. Concerning the stick blows on the body of the deceased, she notes as under-

> '…Contusions and lacerations are possible in case a person is beaten by sticks or from pipe. I did not find any lacerated wound or contusion sustained by the deceased and as such I did not mention such injury in P.M. Note….'

Concerning the cause of death, PW-7 states as under-

> 'The injury sternum as described in Column No. 20 is possible in case a person fall down on hard surface. Because of loss of blood due to injury the deceased went into the shock and which resulted in his death. The deceased died due to loss of blood. Because of loss of blood the heart chambers were found empty and other organs were found pale. **Vital organs were intact. I did not find any injury to any vital part of the body. Loss of blood is gradually loss of blood and it may take some time. In case of timely medical treatment person may survive**. Hands and legs are non-vital part of the body. Because of the amputation of hand and because of amputation of leg or both person may not die. It is not always possible that a person may die because of incised wounds No. 1, 2 & 5 as described in Coloum No. 17' [*sic.*]
>
> **[emphasis supplied]**

21. PW-10 was stationed as the head constable of Nandgaon police station at the relevant time when PW-1 registered the complaint.

A It may be beneficial for the discussion to observe the cross examination of the aforesaid witness, as under-

> …3. The complainant PW1-Chanda did not state in her complaint the fact that Accused No.4 addressed abuses to her husband when her husband demanded money to Accused No.4. The PW1-Chanda did not state in her complaint the fact that Accused No.13 and Accused No.15 arrived and they entered into her house. PW1-Chanda did not state in her complaint the fact that she requested the assailants not to beat her husband. The PW1-Chanda did not state in her report Exh. 55 the fact that Accused No.11 was armed with an axe, PW1-Chanda did not state in her report Exh. 55 the fact that the Accused No.13 was holding sword. The PW1-Chanda did not state in her report Exh.55 the fact that Accused No. 15 was holding a pipe. The PW1-Chanda did not state in her report Exh.55 the fact that the rest of the Assailants-Accused were holding sticks in their hands. PW1-Chanda did not state in her complaint Exh.55 the fact that the Accused-Assailants had beaten to her husband shamrao in the courtyard….

From the aforesaid witness, it is clear that the FIR did not consist of all those facts which were subsequently deposed by PW-1 and others before the court.

22. It may not be out of context to mention that the formal witnesses concerning seizure such as PW11 and 13 have not supported the case of prosecution in entirety.

23. Before we proceed to analysis of the case, we must first focus on the aspect concerning the standard the High Court has to apply, while hearing a case against an acquittal order of the trial court. In the case on hand, the trial court, followed by a full-fledged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case the appellate Court is further burdened with the task of reaffirming the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is called for only when there are compelling reasons and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by

the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons [*refer* ***Surajpal Singh & Ors.*** *v.* ***The State,*** 1952 CriLJ 331].

24. From the facts and circumstances of this case, we are called upon to examine, whether the High Court was justified in upsetting the findings of the trial court and whether there were compelling reasons for the High Court to set aside the order of acquittal and convict the accused appellant of culpable homicide amounting to murder?

25. We may note that out of eleven circumstances which the trial court has relied upon to find that the prosecution case was not proved beyond reasonable doubt, we are of the opinion that we need to concentrate on four of those circumstance, which may be sufficient, to portray that the case at hand is not proved beyond reasonable doubt.

26. There is no dispute as to the fact that the prosecution relies on the circumstantial evidence to prove the case. It may be noted that, the value of circumstantial evidence rests in its accumulative effect, that is to say, while a single piece of circumstantial evidence may only slightly increase the likelihood that the accused is guilty, several such evidences taken together may carry enough probative force to justify the conviction, if such circumstantial evidence forms an unbroken chain of events resulting in only one hypothesis so canvassed.

27. Coming back to the appreciation of the evidence at hand, at the outset, our attention is drawn to the fact that the witnesses were inter-related, and this court should be cautious in accepting their statements. It would be beneficial to recapitulate the law concerning the appreciation of evidence of related witness. In ***Dalip Singh & Ors. v. State of Punjab***, (1954) 1 SCR 145, *J. Vivian Bose* for the bench observed the law as under-

> A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely.
>
> Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here

A is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

However, we are not attempting any sweeping generalisation. B Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

28. In ***Masalti v. State of U.P.***, (1964) 8 SCR 133, a five-Judge C Bench of this Court has categorically observed as under-

There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the D **evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account.**

But it would, we think, be unreasonable to contend that E **evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type.**

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The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

No hard and fast rule can be laid down as to how much evidence G should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

(**emphasis supplied**)

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29. In ***Darya Singh and Ors. v. State of Punjab***, (1964) 3 SCR 397, this Court held that evidence of an eye witness who is a near relative of the victim, should be closely scrutinized but no corroboration is necessary for acceptance of his evidence. In ***Harbans Kaur & Anr. v. State of Haryana***, 2005 CriLJ 2199, this Court observed that-

> There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.

30. The last case we need to concern ourselves is the case of ***Namdeo v. State of Maharashtra***, (2007) 14 SCC 150, wherein this Court after observing previous precedents has summarized the law in the following manner-

> It is clear that a close relative cannot be characterised as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

31. From the study of the aforesaid precedents of this court, we may note that whoever has been a witness before the court of law, having a strong interest in result, if allowed to be weighed in the same scales with those who do not have any interest in the result, would be to open the doors of the court for perverted truth. This sound rule which remain the bulwark of this system, and which determines the value of evidence derived from such sources, needs to be cautiously and carefully observed and enforced. There is no dispute about the fact that the interest of the witness must affect his testimony is a universal truth. Moreover, under the influence of bias, a man may not be in a position to judge correctly, even if they earnestly desire to do so. Similarly, he may not be in a position to provide evidence in an impartial manner, when it involves his interest. Under such influences, man will, even though not consciously, suppress some facts, soften or modify others, and provide favorable

color. These are most controlling considerations in respect to the credibility of human testimony, and should never to be overlooked in applying the rules of evidence and determining its weight in the scale of truth under the facts and circumstances of each case.

32. The prosecution has heavily relied on the statement of PW1 that the accused—appellants assaulted her husband with deadly weapons on his hands and legs while dragging him for about 2 kms from his house to the fields, which led to his death. The weapons used in the crime were stated to be sword, sticks, axe and pipe. Admittedly, there were no bloodstains found on any of the weapons allegedly recovered from the accused. The allegation particularly levelled was that the accused carried the assault on the deceased at three places i.e., in front of the house of the deceased and near the house of PW3—Vinayak Bhalekar and at the fields of Yeshwant Thawale. However, in their depositions PWs 2, 4 and 5 did not mention about such assault on the deceased in front of Vinayak Bhalekar house. It appears from the material that there are no eyewitness who had seen the accused attacking the deceased in the fields of Yashwant Thawale. The statements of PW3—Vinayak Bhalekar also appears to be not consistent throughout. At one point of time, he deposed that the deceased had died in front of his house. Altogether a different statement was given to the investigating authorities and in the Court. Similar is the case of PW4—Sudha, who has made improvements as regards to the assault on the deceased. Also there were varying statements by the prosecution witnesses as regards PW4—Sudha on the aspect of receiving the blow.

33. The deposition of PW4—Sudha Bhalekar shows that she had seen the involvement of A-1, A-4, A-11, A-13, A-14 and A-16 in the crime. Though she stated that she could recognize the assailants by their face as she does not know their names, yet test identification parade was not conducted which is fatal to the case of prosecution. In their depositions PWs 2, 3 and 5 gave contradictory statements as to the involvement of number of accused persons in the crime and also about noticing the accused who dragged the deceased while assaulting him and dragging towards school whereas PWs 1 and 4 were silent on this aspect. There were also contradictory statements by prosecution witnesses as regards the availability of light at the time of occurrence. According to PW3—Vinayak, husband of PW4—Sudha, whose house is the last in the mohalla and situated at a distance of four other houses

from the house of deceased, the incident took place at 9 pm. The way behind his house goes to the school and there is a tamarind tree in front of his house and the house of Shamrao is not visible by sitting in the courtyard of his house. In his cross-examination, he denied to have deposed to police that the house of deceased Shamrao is situated in the rear side of his house. He further stated, there is 'L' type turn from his house to the house of deceased which is not visible from his courtyard. According to him, deceased Shamrao died in front of his house and on the next day, he saw the dead body of Shamrao in the field.

34. Now coming to the facts of the case, PW1 (wife of the deceased) has not witnessed the chopping of the hand, which resulted in the ultimate death of her husband. It is prudent for this Court to not believe in absence of cogent evidence concerning the culpability of the accused herein, as her evidence is ridden with apparent internal contradictions and inconsistencies.

35. Due to the nature and quality of evidence involved in this case, the prosecution relies on the motive to strengthen the case by bringing in the earlier scuffle, wherein the deceased had slapped the Accused no. 4. This Court has on number of occasions has expressed a general disdain towards motive in direct evidence cases[1]. On the other hand this Court has never approved the extreme position as portrayed in some *English cases*[2] which is best explained by Jerome Hall, when he stated *'[h]ardly any part of penal law is more definitely settled than that motive is irrelevant'*.[3] We may note that the law in India is now well settled that in a case of circumstantial evidence, motive has a role to play[4], but to dislodge prosecution's case solely based on lack of motive would amount to giving credit to this factor, where it is not due.[5] The motive behind the accused assaulting the deceased was said to be the quarrel during which the deceased had slapped Accused No. 4 near a grocery shop in the village. Incidentally, prosecution could also not prove the same by examining the independent witness present at the grocery

[1] ***Hari Shanker Vs. State of U.P.***, (1996) 9 SCC 40.

[2] ***Chandler v. DPP***, [1964] AC 763

[3] Jerome Hall, General Principles of Criminal Law 88 (2d ed. 1960).

[4] ***Ujjagar Singh Vs. State of Punjab***, (2007) 13 SCC 90) and ***State of U.P. Vs. Kishanpal & Ors.,*** (2008) 16 SCC 73.

[5] ***Bipin Kumar Mondal v. State of West Bengal***, (2010) 12 SCC 91.

A shop, though as many as 19 witnesses were examined by the prosecution. PW10—Shrikrishna, Head Constable of the PS Nandgaon Peth who reduced the oral complaint of PW1 into writing, categorically stated that PW1 had also not mentioned about previous quarrel at the time of lodging of complaint. There were, undoubtedly lot of improvements in the statement of PW1 from the stage of complaint to her examination-in-chief. Moreover, the evidence of PW1 concerning the quarrel is barred for being hearsay evidence.

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36. Alternatively, the prosecution has alleged that motive for the crime was that the accused party belongs to non-SC/ST community whereas the victim was belonging to SC community. But, in the opinion of the trial Court, the prosecution could not prove that the deceased belong to Scheduled Caste and accused were from non-Scheduled Caste or Tribe and the prosecution has failed to prove any charge against the accused including the charge under Section 3(i)(x) and 2(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As against that charge, the High Court also confirmed the view taken by the trial Court, which in other words proved the prosecution version to be wrong.

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37. Now we need to concentrate on the other aspects of the case such as the contradictions in the evidence of prosecution witnesses as to the number of accused persons involved in the alleged crime and also in respect of their identification thereby the very purpose of the prosecution in proving the common object of unlawful assembly gets defeated to attract the provisions of Section 149, IPC. An accused is, of course, vicariously guilty of the offence even if he is not directly indulged in the commission of offence but committed by other accused, in case he is proved to be a member of unlawful assembly sharing its common object. It is evident that as per PW1 (wife of the deceased)—complainant, in the FIR (Ext. 55) the number of persons mentioned by her, who have entered into their house was four, while about 20 to 25 persons were assembled outside the house and all of them assaulted the deceased. However, in the examination-in-chief she deposed that there were in all 15 assailants who attacked her husband. Though she failed to name the assailants in her deposition she made out a point that she knew all the assailants. According to PW10—Shrikrishna, the author of complaint, PW1 did not state about entry of accused Nos. 13 and 15 into her house. There was also no mention by her at the time of lodging of FIR about

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carrying an axe by A-11, a sword by A-13, a pipe by A-15 and sticks by other accused. Going by the material on record, it can be said that there was no satisfactory explanation on the part of PW1 for omissions in the FIR and improvements before the Court.

38. PW11—Sagar, a panch witness of seizure of bloodstained clothes of the accused Nos. 1 to 7, did not support the prosecution case. According to him, police called him to the police station and obtained his signature. Similarly, the seizure is doubtful in the case of clothes pertaining to accused No. 11 to which PW13—Gunwant was witness who stated that he had seen those clothes for the first time in the village panchayat office and he had signed the paper at the instance of police without knowing the correctness of its contents. Going by the material on record, the correctness of seizure of clothes of other accused persons also do not inspire confidence.

39. It is also clear from the record that PW6—Sukhdev who proved the recovery of weapons at the instance of accused—appellants, could not point out his signature on the respective disclosure statements and seizure panchnamas. He also admitted that Ext.72 (memorandum) and Ext. 73 (seizure panchnama) does not bear his signature. PW9—Ananda Ramteke deposed that after recovering sticks from the houses of accused Nos. 1 to 7, they returned to the village panchayat office where almost all the papers were scribed. It is also important to note that based on the Chemical Analysis report, those sticks cannot be considered to be incriminating articles as there were no blood stains on those sticks. In the same way, the sword and axe allegedly recovered from Accused Nos. 13 and 11 respectively also do not have bloodstains. In these circumstances, the prosecution cannot be said to have proved the fact that the palm of the deceased has been amputated by the accused with those weapons.

40. In the opinion of Dr. Pushpa Sadhawani—PW7, who conducted postmortem on the body of the deceased, the cause of the death was due to heavy loss of blood owing to the amputation of his hand. However, his vital organs were found to be normal and there was no injury to the vital organs. There were incised wounds over dorsal aspect of right amputated wrist and forearm and lower part of the leg. PW7 has specifically mentioned that there was no laceration or contusion sustained by the deceased and opined that had there been timely medical

A treatment, the deceased would have survived. At the same time she made it clear that in case a person is beaten up with sticks and iron pipe, as alleged by the prosecution in the present case, contusions and lacerations are possible. In her cross-examination, the Doctor also revealed that because of amputation of hand and leg or both, a person may not die. Thus, in totality, the medical evidence is not corroborating with the prosecution's case.

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41. It is quite surprising that PW1—Chanda who witnessed the horrific assault on her husband, remained hidden in the cattle shed for about two hours and then went to the house of Harshwardhan Bhalekar to whom she had narrated the incident. After that, both of them, without searching for the deceased went to the house of PW1's in-laws at Amravati. Then they visited the office of Superintendent of Police and then they went to the police station to lodge the complaint. Ironically, the said Harshwardhan Bhalekar who could have been a prime witness has not been examined. The conduct of PW1 and non-examination of such an important witness Harshwardhan Bhalekar, weakens the prosecution case. At the same time, there was no proper explanation forthcoming for what purpose they visited the office of Superintendent of Police, instead of searching for the deceased or going to police station to lodge complaint. As per the evidence of PWs 1, 2 and 3 Laxman Bhalekar, Bhaurao, Arun Bhalekar and Namdeo Bhalekar are neighbours of the deceased living in the same vicinity, but none of them was examined. Another laches in the prosecution case is that in the FIR it was mentioned that one Dhanjay Sontakke and Janardhan Alekar had also seen the accused assaulting the deceased, but they too were not examined. Similarly, one Anant Bhurbhure who first found the dead body of the deceased in the fields of Yashwantrao, was also not examined. It is clear that all those persons, especially neighbours of the deceased, who witnessed the important circumstances and who could be vital independent witnesses have not been examined by the prosecution. There is no convincing explanation forthcoming from the prosecution side.

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42. Another facet that creates doubt on the prosecution story is that PW5—Maroti, the real brother of PW2—Narendra and nephew of PW4—Sudha, in his cross-examination (Ext.70) differed with the statement recorded by police and marked 'A' that he and his brother (PW2) saw the deceased lying in front of the door. According to him he did not say that fact, police arrived in the village next day morning at 8

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am, and he went to the field along with police at 10 am. PW3—Vinayak husband of PW4—Sudha, made a statement that he had seen the dead body in the field of Yashwant Thawale. PW2—Narendra has also stated that at about 9.30 am on 20.6.1995, he along with other villagers found the dead body of the deceased in the said field. We notice that in the midst of several contradictory statements among the prosecution witnesses, there is no proper explanation on record for PW1 and police searching for the deceased at the wells and nullahs of the village, instead of searching around the school, as per the prosecution story PWs 2, 3 and 5 were fully aware that the deceased was dragged towards school. Moreover, looking at the ambiguous narration of sequences described by the witnesses, the chain of events in the case cannot be said to have been properly brought on record by the prosecution. It is always the duty of the Court to separate chaff from the husk and to dredge the truth from the pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [*See*: ***Tahsildar Singh*** v. ***State of U.P.***, AIR 1959 SC 1012].

43. We have also found from the impugned judgment that the High Court has misconstrued certain aspects of the case. According to PW2—Narendra the incident occurred at about 9 p.m. on 19.6.1995. In the FIR also the time was mentioned as 9 p.m. But the High Court in its judgment observed "insofar as the submissions regarding the availability of light is concerned, we find that the incident took place at about 7.30 p.m. in the village in the month of June and looking to the availability of light in the month of June in Vidarbha region, we have no hesitation in holding that the eyewitnesses had sufficient light to identify the accused persons". It is clear from the record that the alleged incident has occurred at 9 p.m. and not at 7.30 p.m. as assumed by the High Court, and there were also no eyewitnesses to the alleged amputation of the hand of deceased and causing his death.

44. At the conclusion of arguments, it is informed at the Bar that the trial Court had conducted separate trial in respect of Raju—Accused No. 16, who was earlier absconding, and acquitted him of all the charges and the State has not preferred any appeal against his acquittal. We have also noticed that PWs 1, 2 and 3 have given contrary statements at the subsequent trial in Special (Atrocities) Case No. 12 of 2008 held

against Raju—Accused No. 16, deviating from what they deposed in the present case.

45. Taking note of the foregoing shortcomings and discrepancies in the prosecution case coupled with the improvements and contradictions in the statements of prosecution witnesses, it cannot be said that the accused persons had really formed into an unlawful assembly and carried out an assault on the deceased that too with a view to kill him, so as to attract the provisions of criminal law. In the facts and circumstances of the case, it is abundantly clear that the guilt of the accused persons was not proved beyond reasonable doubt. We are of the considered view that the trial Court had dealt with the case in a fool-proof manner by drawing out 11 important circumstances and delivered a well reasoned judgment thereby acquitting the accused, with which the High Court ought not to have interfered. In our view, there are no compelling reasons and substantial grounds for the High Court to interfere with the order of acquittal passed by the trial Court. Added to the above, we are informed that the accused have already undergone about three years' of imprisonment before they were enlarged on bail.

46. Keeping in view the substratum of the prosecution case and the material available on record, we are of the considered opinion that the prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt. In the aforementioned circumstances, we allow these appeals, set aside the impugned order passed by the High Court and restore the judgment and order passed by the trial Court in respect of the appellants before us. Resultantly, their bail bonds stand discharged. Pending applications, if any, shall also stand disposed of.

Kalpana K. Tripathy Appeals allowed.