

Balu S/O. Limbaji Kale vs The State Of Maharashtra on 3 January, 2025

Author: R.G. Avachat

Bench: R.G. Avachat

2025:BHC-AUG:153-DB

Cri.Appeal No.224/2017 with
Connected Appeals

:: 1 ::

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.224 OF 2017

Babu s/o Limbaji Kale
Age 32 years, Occu. Labour,
R/o Kumbhari, Tq. & Dist. Beed
At present Balaji Nagar,
Indrayani Chowk, MIDC, Bhosari,
Pune. ... APPELLANT

VERSUS

The State of Maharashtra
Through : Police Inspector,
Neknoor Police Station,
Tq. & dist. Beed

(Copy to be served on the
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad) ... RESPONDENT

.....
Mr. S.P. Chate, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent
.....

WITH

CRIMINAL APPEAL NO.767 OF 2018 WITH
CRIMINAL APPLICATION NO.422 OF 2024

Vinod s/o Madhukar Ghige

Age 28 years, Occu. Agriculture,
R/o Songaon, Tq. & Dist. Beed
At present Chakradhar Nagar,

Cri.Appeal No.224/2017 with
Connected Appeals

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Pangri Road, Beed,
Tq. & District Beed.

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Station Officer,
Police Station, Neknoor,
Tq. & District Beed.

... RESPONDENT

.....
Mr. P.N. Muley, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

WITH

CRIMINAL APPEAL NO.768 OF 2018 WITH
CRIMINAL APPLICATION NO.883 OF 2024

Rajendra Alias Raju Murlidhar Ghige
Age 42 years, Occu. Agriculturist
R/o Songaon, Tq. & Dist. Beed
Presently residing at Chakradhar Nagar,
Pangari Road, Beed, District Beed.
Maharashtra

... APPELLANT

VERSUS

The State of Maharashtra
Through the Station House Officer,
Police Station, Neknoor, Tal. & Dist. Beed

(Copy to be served on the Office of
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. A.D. Ostwal, Advocate for appellant

Cri.Appeal No.224/2017 with
Connected Appeals

:: 3 ::

Mr. S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.769 OF 2018 WITH
CRIMINAL APPLICATION NO.882 OF 2024

Tuljiram Alias Bappa Ashok Vidyagar
Age 24 years, Occu. Labour,
R/o Kumbhari,
Presently residing at Ambika Chowk,
Shahunagar, Beed, Dist. Beed,
Maharashtra ... APPELLANT

VERSUS

The State of Maharashtra
Through the Station House Officer,
Police Station, Neknoor, Tal. & Dist. Beed

(Copy to be served on the Office of
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad) ... RESPONDENT

.....

Mr. A.D. Ostwal, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.770 OF 2018 WITH
CRIMINAL APPLICATION NO.884 OF 2024

Sudhakar Alias Pintu Bhagwan Bhalerao
Age 36 years, Occu. Labour,
R/o Kumbhari,
Presently residing at Ambika Chowk,

Cri.Appeal No.224/2017 with
Connected Appeals

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Shahunagar, Beed, Dist. Beed,
Maharashtra ... APPELLANT

VERSUS

The State of Maharashtra
Through the Station House Officer,
Police Station, Neknoor, Tal. & Dist. Beed

(Copy to be served on the Office of
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

...

RESPONDENT

.....

Mr. A.D. Ostwal, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.994 OF 2024

The State of Maharashtra, through
Police Station Officer, Police Station,
Neknoor, Tq. & Dist. Beed

...

APPELLANT

VERSUS

- 1) Chandrasen Bhimrao Surwase,
Age 50 years, Occu. Agri.,
R/o Kumbhari, Tq. & Dist. Beed
- 2) Bhaskar alias Bandu Digambar Survase,
Age 38 years, Occu. & R/o as above.
- 3) Popat Manik Kokate, Age 49 years,
Occ. & R/o as above.
At present Shahunagar,
Pangari Road, Beed

Cri.Appeal No.224/2017 with
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- 4) Prakash Manikrao Kokate,
Age 57 years, Occu. Service as
Driver, R/o as above.
- 5) Rajendra alias RajuMurlidhar Ghige,
Age 42 years, Occu. Agri.,
R/o Songaon, Tq. & Dist. Beed,
At present Chakradhar Nagar,
Pangari Road, Beed.
- 6) Vinod Madhukar Ghige,
Age 28 years, Occu. & R/o as above.
- 7) Tulshiram alias Bappa Ashok Vidyagar,

Age 24 years, Occu. Labour,
R/o Kumbhari, At present Ambika Chowk,
Shahunagar, Beed.

- 8) Babu Limbaji Kale,
Age 29 years, Occu. Labour,
R/o Kumbhari, at present
Balaji Nagar, Indrayani Chowk,
MIDC Bhosari, Pune
- 9) Prashant alias Sugriv Bajirao Survase,
Age 40 years, Occu. Agri.,
R/o Kumbhari, Tq. & Dist. Beed
- 10) Sudhakar alias Pintu Bhagwan Bhalerao,
Age 36 years, Occu. Labour,
R/o Kumbhari, at present Ambika Chowk,
Shahu Nagar, Beed
- 11) Satish Rajesaheb Survase,
Age 50 years, Occu. Agri.,
R/o Kumbhari, Tq. & Dist. Beed
- 12) Mahadeo alias Sachin Baban alias
Babruwan Survase,

Cri.Appeal No.224/2017 with
Connected Appeals

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Age 27 years, Occu. & R/o as above

- 13) Sunil Gangaram Survase,
Age 28 years, Occu. & R/o as above-mentioned
- 14) Nandkumar alias Balu Madhukar Survase,
Age 40 years, Occu. & r/o as above.
- 15) Kishor alias Pappu Madhukar Survase,
Age 36 years, Occu. & r/o as above.
- 16) Hanumant alias Balu Vyankatrao Survase,
Age 37 years, Occu. & r/o as above

... RESPONDENTS

.....

Mr. S.D. Ghayal, A.P.P. for appellant - State
Mr. M.B. Ubale, Advocate for Respondent Nos.1 to 4
Mr. A.D. Ostwal, Advocate for Respondent Nos.5, 7 and 10
Mr. P.N. Muley, Advocate for Respondent No.6.
Mr. S.P. Chate, Advocate for Respondent No.8
Mr. N.B. Jadhav, Advocate for Respondent Nos., 11 to 16

.....

WITH

CRIMINAL APPEAL NO.1040 OF 2024

Bhausahab s/o Limbaji Surwase,
Age 49 years, Occu. Agri.,
R/o Kumbhari, Post Neknoor,
Tq. Dist. Beed. ... APPELLANT

VERSUS

- 1) State of Maharashtra
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

Cri.Appeal No.224/2017 with
Connected Appeals

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- 2) Chandrasen s/o Bhimrao Surwase,
Age 50 years, Occu. Agri.,
R/o Kumbhari, Tq. & Dist. Beed.
- 3) Bhaskar @ Bandu s/o Digambar Surwase,
Age 38 years, Occu. Agri.
R/o Kumbhari, Tq. & Dist. Beed.
- 4) Popat s/o Manik Kokate,
Age 49 years, Occu. Agri.
R/o Kumbhari, Tq. & Dist. Beed.
At present Shahu Nagar,
Pangri Road, Beed, Dist. Beed
- 5) Prakash s/o Manikrao Kokate,
Age 57 years, Occ. Agri.
R/o as above.
- 6) Prashant @ Sugriv s/o Bajirao Surwase,
Age 40 years, Occu. Agri.
- 7) Satish s/o Rajesaheb Surwase,
Age 50 years, Occu. Agri.
- 8) Mahadeo @ Sachin Baban @ Babruwan Surwase,
Age 27 years, Occu. Agri.
- 9) Sunil s/o Gangaram Surwase,
Age 28 years, Occu. Agri.

- 10) Nandkumar @ Balu Madhukar Surwase,
Age 40 years, Occu. Agri.
- 11) Kishor @ Pappu Madhukar Surwase,
Age 36 years, Occu. Agri.
- 12) Hanumant @ Balu Vyankatrao Surwase,
Age 37 years, Occu. Agri.

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Connected Appeals

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No. 6 to 12 All R/o Kumbhari,
Tq. & Dist. Beed

- 13) Rajendra @ Raju Murlidhar Ghige,
Age 42 years, Occu. Agri.
R/o Songaon, Tq. Dist. Beed.
Through Jail
- 14) Vinod s/o Madhukar Ghige,
Age 28 years, Occu. Agri.
R/o Songaon, Tq. Dist. Beed,
Through Jail.
- 15) Tuljiram @ Bappa s/o Ashok Vidyagar,
Age 24 years, Occu. Labour,
R/o Kumbhari, Tq. Dist. Beed
Through Jail
- 16) Babu s/o Limba Kale
Age 39 years, Occu. Labour
R/o Kumbhari, Tq. Dist. Beed
Through Jail
- 17) Sudhakar @ Pintu s/o Bhagwan Bhalerao,
Age 36 yerars, Occu.
R/o Kumbhari, Tq. Dist. Beed
Through Jail

(R.No.2 to 5 Orig. Accused No.1 to 4
R.6 Orig. Accused No.9, R.7 to 12
Orig. Accused No.11 to 16, R.13 to 16
Orig. accused No.5 to 8 & R.No.17 is
original accused No.10)

... RESPONDENTS

.....

Mr. G.K. Naik Thigle, Advocate for appellant
Mr. S.D. Ghayal, A.P.P. for appellant - State
Mr. B.B. More, Advocate for Respondent Nos.2 to 5

Mr. N.B. Jadhav, Advocate for Respondent Nos.6 to 12

Cri.Appeal No.224/2017 with
Connected Appeals

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Mr. A.D. Ostwal, Advocate for Respondent Nos.13, 15 & 17

Mr. P.N. Muley, Advocate for Respondent No.14.

Mr. S.P. Chate, Advocate for Respondent No.16

.....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Date of reserving judgment : 17th December, 2024

Date of pronouncing judgment : 3rd January, 2025

JUDGMENT (PER : R.G. AVACHAT, J.) :

This group of 11 Appeals is taken up together for decision since the challenge therein is to one and the same judgment and order dated 10/4/2017, passed by Additional Sessions Judge, Beed (Trial Court) in Sessions Case, No.94/2013. 16 accused persons were put on trial in the said Sessions Case. Vide impugned judgment and order, 5 of them (original accused Nos.5 to 8 and 10) were convicted while the rest of the accused have been acquitted. Relevant part of the operative order under challenge in these appeals is reproduced below :-

01. Accused No. 5 Rajendra alias Raju Murlidhar Ghige, accused No. 6 Vinod Madhukar Ghige, accused No.7 Tuljiram alias Bappa Ashok Vidyagar, accused No.8 Babu Limbaji Kale and Cri.Appeal No.224/2017 with Connected Appeals :: 10 ::

accused No.10 Sudhakar alias Pintu Bhagwan Bhalerao are convicted vide Sec. 235(2) of Code of Criminal Procedure for the offence punishable under Sec. 302 r/w. 149 of IPC and sentenced each of them to life imprisonment and to pay fine of Rs.2,000/ each in default to suffer further RI for three months.

02. Since the accused No. 5,6,7,8 and 10 have been convicted and punished for the major offence under Sec. 302 r/w. 149 of IPC, no separate sentence is passed for committing offences under Sec. 147 and 148 of IPC.

03. Accused No.5, 6, 7, 8 and 10 are entitled for set off under Sec. 428 of CRPC for pre-detention period i.e. from 6.4.2013 till today.

04. Accused No.5, 6, 7, 8 and 10 are hereby acquitted vide Sec.235(1) of Cr.P.C. for committing offence punishable under Sec. 307 r/w. 149 of IPC, 120B of IPC and under Sec.25(1) of the Arms Act.

05. Accused No.1 Chandrasen Survase, accused No.2 Bhaskar alias Digambar Survase, accused No.3

Popat Kokate, accused No.4 Prakash Kokate, accused No. 9 Prashant alias Sugriv Survase, accused No.11 Satish Rajesaheb Survase, accused No. 12 Mahadeo alias Sachin Survase, accused No.13 Sunil Survase, accused No. 14 Nandkumar Survase, accused No.5 Kishor alias Pappu Survase and accused No.16 Hanumant alias Balu Survase are hereby acquitted vide Sec.235(1) of Cr.P.C. for committing offence punishable under Sec. 120B of IPC.

Cri.Appeal No.224/2017 with Connected Appeals :: 11 ::

2. Criminal Appeals No.224/2017, 767/2018, 768/2018, 769/2018 and 770/2018 have been preferred by the convicts. The State was granted leave to appeal against acquittal. It is the Criminal Appeal No.994/2024. The original complainant Bhausahab Limbaji Survase, brother of the deceased preferred appeal against acquittal (Criminal Appeal No.1040/2024).

3. For the sake of convenience, the appellants/ convicts are referred to as per their serial numbers in the Charge (Exh.52).

4. The case of the prosecution, in brief, was as follows:-

The First Information Report (F.I.R. - Exh.129) was lodged by P.W.13 Vinod by 10.45 p.m. on 20/3/2013. Vinod is the son-in-law of real brother of Uddhav Limbaji Survase (deceased). In the year 2012, Gram Panchayat elections of the village Kumbhari were held. All the seats were won by the panel headed by Uddhav (deceased).

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On 20 March 2013, Vinod went to the petrol pump of Uddhav. Both of them then went to Beed. They did their official works at the offices of Public Works Department and Zilla Parishad as well. Uddhav parked his motorbike at the house of one of his relations. Both Vinod and Uddhav started from Beed to Neknoor on the motorbike of Vinod. Vinod was riding the same. Uddhav was riding pillion. They reached near Gawari Pati by 5.45 p.m. A white Indigo Car approaching from behind knocked down their motorbike. As a result, both Vinod and Uddhav fell off the motorbike, away from each other. 3/4 persons alighted the car. They were armed with Kattis (instrument of harvesting sugarcane) like weapon and sword as well. They rained blows on the person of Uddhav with those weapons. The assailants were stated to be in the age group of 35-40 years. It was alleged in the F.I.R. that the assault was made in pursuance of a conspiracy hatched by Chadrassen Survase, Popat Kokate, Prakash Kokate, Bhaskar Survase and others.

5. Based on the F.I.R. (Exh.129), a crime vide C.R. No.34/2013 was registered at Neknoor Police Station for the Cri.Appeal No.224/2017 with Connected Appeals :: 13 ::

offences punishable under Sections 302, 307, 120-B read with Section 34 of the Indian Penal Code, since Uddhav had succumbed to the injuries.

6. During the investigation, it was found that there was a larger conspiracy to eliminate Uddhav. The main motive was said to be victory of his panel in Panchayat elections of the Village Kumbhari. Some other motives have also been attributed.

7. During the investigation, a crime scene panchanama (Exh.72) was drawn. Inquest (Exh.74) and autopsy (Exh.151) on the mortal remains of Uddhav were conducted. P.W.13 Vinod was admitted to the hospital. His injury certificate was obtained. Clothes of both Vinod and the deceased were seized. It was found that the incident was witnessed by two more persons namely P.W.14 Sandipan and one Shri Karande Sir (not examined). Their statements were recorded. The appellants and the respondents came to be arrested one after the other. On arrest of the assailants/ appellants, a test identification parade was held. Statements Cri.Appeal No.224/2017 with Connected Appeals :: 14 ::

of persons acquainted with the facts and circumstances of the case were recorded. All the seized articles were forwarded to the Regional Forensic Laboratory, Aurangabad. Upon completion of the investigation, a charge sheet was filed against the appellants and the respondents in these appeals.

8. The Trial Court framed the Charge (Exh.52). The appellants and the respondents pleaded not guilty. Their defence was of false implication. According to them, the deceased had very many enemies. There was dispute between him on one hand and his neighbouring landholders over a right of way.

9. The prosecution, to bring home the charge, examined 34 witnesses. The defence examined 2 witnesses. Some documents were also produced in evidence by the prosecution. On appreciation of the evidence in the case, the Trial Court passed the order impugned herein (referred hereinabove).

10. Heard. Learned Advocates representing the appellants would submit that, the case had political overtures.

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The deceased was a follower of the head of Shiv Sangram Sanghatana. The head of the Sanghatana was a Sitting M.L.A. Although the incident was said to have taken place by 5.45 p.m., the F.I.R. was lodged after 5 hours of the incident.

The F.I.R. was the outcome of deliberation. The informant in fact suffered a minor injury. He could have been treated at OPD. There was no reason for him to have himself admitted to the hospital for 2 days. Our attention was drawn to certain medical papers to indicate that, in spite of his alleged admission to the hospital soon after the incident, no Medico Legal Case was made. The Police Outpost on the premises of Civil Hospital, Beed was even not informed. The learned Advocate meant to say that the police machinery consciously gave time to the informant and his colleagues to think

over, deliberate and lodge a concocted F.I.R. According to the learned Advocate, the supplementary statement of the informant was recorded very late. Moreover, his statement under Section 164 of the Cr.P.C. was recorded even thereafter. Same is the case about the so called eye witness (P.W.14) Sandipan. According to learned Advocate, all the witnesses Cri.Appeal No.224/2017 with Connected Appeals :: 16 ::

examined by the prosecution were either close relations of the deceased or his friends. No independent witness from the vicinity of the crime scene was examined. The crime scene panchanama was drawn on the following day. No explanation for delay has been offered. The so called eye witness namely Shri Karande Sir has not been examined. The same caused prejudice to the appellants in their defence. A written notes of submissions/ arguments along with a host of authorities (21 in number) have been placed on record :-

- 1) Budhsen & anr. Vs. State of U.P. [1970(2) SCC 128]
- 2) Selveraj Vs. The State of Tamil Nadu [(1976) 4 SCC 34]
- 3) Ganesh Bhavan Patel & anr. Vs. State of Maharashtra (1978) 4 SCC 371
- 4) Awadhesh & anr. Vs. State of Madhya Pradesh (1988) 2 SCC 557
- 5) State of Andhra Pradesh Vs. Dr. M.V. Ramana Reddy & ors.
(1991) 4 SCC 536
- 6) Rajesh Govind Jagesha Vs. State of Maharashtra (1999) 8 SCC 428
- 7) Rajeevan & anr. Vs. State of Kerala [(2003) 3 SCC 355]
- 8) Badam Singh Vs. State of M.P. [(2003) 12 SCC 792]
- 9) Shankarlal Vs. State of Rajasthan [(2004) 10 SCC 632] Cri.Appeal No.224/2017 with Connected Appeals :: 17 ::
- 10) Ravi alias Ravichandran Vs. State represented by Inspector of Police [(2007) 15 SCC 372]
- 11) Deny Bora Vs. State of Assam [(2014) 14 SCC 22]
- 12) Naseem Khan alias Laddu Vs. State of Maharashtra 2016 SCC OnLine Bom 5480
- 13) Harbeer Singh Vs. Sheeshpal & ors. [(2016) 16 SCC 418]

- 14) Reena Hazarika Vs. State of Assam [(2019) 13 SCC 289]
- 15) Amar Singh Vs. State (NCT of Delhi) [(2020) 19 SCC 165]
- 16) Subramanya Vs. State of Karnataka [(2023) 11 SCC 255]
- 17) Gireesan Nair & ors. Vs. State of Kerala [(2023) 1 SCC 180]
- 18) Babu Sahebagouda Rudragoudar & ors. Vs. State of Karnataka [(2024) 8 SCC 149]
- 19) Nilesh Laxmikant Vyas Vs. State of Maharashtra & anr.

2024 SCC OnLine Bom 1204

20) Digambar & anr. Vs. State of Maharashtra 2024 SCC OnLine Bom 2664

21) Chandrakant Ananda Barfe & anr. Vs. State of Maharashtra 2024 SCC OnLine Bom 3018

11. The learned Advocate would further submit that, the test identification parade was held belatedly. The convicts were not kept in veil on their arrest until the test identification parade was held. The Superintendent of Police held a Press Cri.Appeal No.224/2017 with Connected Appeals :: 18 ::

Conference on the next day of the incident. Names of the alleged suspects along with their photographs were published in the local dailies. All the canons of holding a valid test identification parade were thrown to wind by the Executive Magistrate who conducted the same. The informant had not given description of the assailants. One and the same set of dummies were there for three rounds of test identification parade held for identification of the appellants separately. The so called dummies were not of the complexion, height and description in all respects including the age were (compatible) with the suspects. A host of authorities have been relied on so as to urge for discarding such test identification parade and evidence in relation thereto.

12. On the question of recovery of Kattis pursuant to a disclosure statement made by the appellants Sudhakar Bhalerao (original accused No.10), the learned advocate would submit that, it was an open place. The photographs of the so called disclosure statement and recovery pursuant thereto were digitally snapped. Although the photographer was examined in proof of the photographs, no certificate under Cri.Appeal No.224/2017 with Connected Appeals :: 19 ::

Section 65-B of the Evidence Act was produced since the photographs were obtained from the camera in the CD, and then in a pen drive for being produced as evidence before the Court. The learned Advocate would further submit that, the Medical Officer did not give the exact time of death of the deceased. Instead of reiterating the

submissions made by the learned Advocate, we would prefer to deal with the same while appreciating the evidence in the case.

13. So far as regards reliance on the 21 authorities relied on are concerned, we have closely perused the same. Needless to mention, the Head Notes of most of the cases indicate that the observations made therein were based on the facts and circumstances therein. It is reiterated that, there can hardly be a precedent to be relied on for deciding a criminal case since no two cases are similar in facts. A difference of a fact herein and there makes all the difference. With all humility at our command, the authorities relied and the propositions therein are on our mind while deciding the present appeals.

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14. The learned A.P.P. would, on the other hand, submit that, the case was based on eye witness account. One of them was an injured eye witness. Evidence of an injured eye witness carries more weight. The witnesses have no reason to falsely implicate the appellants and the respondents, leaving the actual culprits. According to learned A.P.P., the suggestions given to the prosecution witnesses indicate admission as to presence of the eye witness at the crime scene. He relied on the following two authorities :-

(1) Balu Sudam Khalde & anr. Vs. The State of Maharashtra 2023 LiveLaw (SC) 279

(2) Birbal Nath Vs. The State of Rajasthan & ors.

(Criminal Appeal No.1587/2008, decided on 30/10/2023)

15. According to learned A.P.P., no two persons could have a photographic memory. Reaction of every person to one and the same incident may differ in very many respects. The evidence of the eye witnesses are consistent in material particulars. He, therefore, urged for dismissal of the appeals against conviction and urged for allowing the appeal against acquittal.

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16. The learned Advocate for the victim made submissions on the lines of the submissions made by the learned A.P.P. He took us through certain observations made by the Trial Court. According to him, it was a brutal murder. The theory of conspiracy too has been duly proved.

17. Let us now turn to the evidence on record and appreciate the same.

The incident took place by little past 5.30 p.m. at Gawari Pati. Uddhav Surwase suffered 22 injuries. Most of them were incised wounds. The same indicates the assailants to have used sharp weapons. The number of injuries suggest that the assailants must be more than one. P.W.24 Dr. Upendra conducted autopsy on the mortal remains of Uddhav. In his opinion, Uddhav died of haemorrhagic shock due to bleeding due to multiple injuries in the neck organs and major vessels. The post mortem report finds place at Exh.151. True, neither the post mortem report nor the oral evidence of

P.W.24 suggests the exact time of death. The fact, however, remains that, Uddhav was rushed to the Civil Hospital, Beed. The Cri.Appeal No.224/2017 with Connected Appeals :: 22 ::

distance between the crime scene and Beed was about 25 Kms. We have no reason to doubt the oral evidence of the informant, victim and the witness that soon after the incident both of them were rushed to the Civil Hospital and admitted thereto.

18. Uddhav Surwase met with homicidal death is a fact not in dispute before us. The question is, whether the crime is committed by the appellants and respondents pursuant to a conspiracy hatched in that regard. According to the prosecution, the assailants were Rajendra Ghige and Sudhakar Bhalerao (original accused Nos.5 and 10).

19. P.W.13 Vinod is an injured eye witness. He testified that, deceased Uddhav was his cousin father-in-law. On the given day i.e. on 20/3/2012, he had been to Beed along with Uddhav. After having completed their works, they were on their way back to Neknoor on his (P.W.13) motorbike. While they were near Gawari Pati on Manjarsumba to Neknoor Road, a white car came from behind and dashed his motorbike. As a result of the dash, both of them fell off the motorbike. He got Cri.Appeal No.224/2017 with Connected Appeals :: 23 ::

frightened. He witnessed two persons were assaulting Uddhav with Kattis. Third one was standing with a Khanjar and the other was having a packet containing chilly powder. These last two persons were facilitating the assault. Meaning thereby, they were guarding the assailants if anyone intervenes. P.W.13 further testified that the driver of the car took it ahead and then turned the car suggesting blocking of their way. He further testified that, appellant Sudhakar Bhalerao said, "Chandrasen Surwase and Popat Kokate be informed that as decided Uddhav is finished". He further testified that the said persons then boarded the car. The car proceeded towards Manjarsumba. The evidence of P.W.13 Vinod further indicates that Karande Sir and Sandipan Ghallal (P.W.14) had witnessed the incident. Both of them were passing by on their respective motorbikes. Karande Sir informed him that he was not keeping well. He (P.W.13), therefore, made a phone call to Neknoor Police Station. 10-15 persons had gathered on the spot. In the meanwhile, jeep of Uddhav Surwase arrived. They took Uddhav to Civil Hospital, Beed. He too (P.W.13) had suffered injuries to his hand and blunt trauma as well. He Cri.Appeal No.224/2017 with Connected Appeals :: 24 ::

too was admitted to the hospital. Uddhav breathed his last. P.W.13 went on to state that, he was indoor patient for 2-3 days. The police had come to the hospital. The police recorded his statement-cum-F.I.R. (Exh.129) in the hospital. He referred to the same.

20. P.W.13 Vinod went on to state that, after his discharge from the hospital, he had been to the Central Prison for test identification parade. He identified the assailants, those two others and the driver of the car as well. In the first round of the test identification parade, he identified the

assailants, Rajendra Ghige and Sudhakar Bhalerao (original accused Nos.5 and 10). P.W.13 then referred to his statement recorded under Section 164 of the Cr.P.C.

21. He was subjected to a searching cross-examination by different Advocates representing their respective clients/ appellants/ respondents. It was suggested to him that, he suffered injury to his hand on account of a fall from motorbike. He explained that he gave the history of 'assault' since the car had knocked down them and thereafter Cri.Appeal No.224/2017 with Connected Appeals :: 25 ::

the assault was mounted. According to him, the incident lasted for 4-5 minutes. He admitted that his relations had come to the hospital to see him. He was then shifted to Ward No.5. He admitted to have had not stated to the police that the assault was made with sword. His attention was, therefore, adverted to the F.I.R. and particularly the word 'sword'. Then he was further confronted with the F.I.R. which was silent to record that, "Chandrasen Surwase and Popat Kokate be informed that as decided Uddhav Surwase is finished". He then testified that he did not run away from the spot. His attention was, therefore, drawn to his supplementary statement, wherein such sentence has been recorded. He could not state who admitted him to the hospital. He denied that he left the hospital against medical advice, but it was suggested to him that he left the hospital for attending funeral and then returned to the hospital as an indoor patient. He was also confronted to bring on record that the F.I.R. is silent to record therein that P.W.14 Sandipan and Karande Sir had witnessed the incident. The tenor of further cross-examination indicate that the appellants and the respondents were followers of late Vinayak Cri.Appeal No.224/2017 with Connected Appeals :: 26 ::

Mete, the then Head of Shiv Sangram Party. He denied to have had worked as a P.A. of late Vinayak Mete. A reference to a murder case that dates back to 1994 was made in his cross-examination so as to indicate a motive to eliminate Uddhav. The said suggestion indicates that none of the parties to these appeals were privy to the said incident of murder of one Mahaveer Surwase. In short, according to the defence, the incident might have been a fall out of the murder that took place way back in 1994. Some other motives have also been sought to be brought on record through the evidence of the real brother of the deceased. Without referring thereto, we are of the view that the appellants could not make out their defence of some other motive behind the incident for commission of the crime by someone else. Needless to mention, in a case based on direct evidence, motive plays insignificant role.

22. The fact is that, a few months before the incident, Village Panchayat elections were held. A panel set up by deceased Uddhav won all the seats. The appellants and the respondents belonged to other side. It is true that, Cri.Appeal No.224/2017 with Connected Appeals :: 27 ::

investigating machinery did not place on record station diary entry relating to the phone call made by P.W.13 regarding the incident. The appellants have, therefore, every reason to contend that the informant and his colleagues had deliberations and

the F.I.R. was the outcome thereof. Needless to mention that the informant did not name the names of the assailants in the F.I.R. As such, the F.I.R. was lodged as against unknown assailants. Those who have been named in the F.I.R. were said to have got Uddhav killed in pursuance of a larger conspiracy. We have, therefore, no reason not to rely on the testimony of P.W.13 who himself had suffered injury in the incident. The motorbike that was knocked down by the white car belonged to P.W.13. It is, therefore, but natural for us to infer that it was he and none else who was riding the motorbike and the deceased was riding pillion. The assailants had an intention to kill Uddhav and not the informant. The informant was therefore spared. True, the informant in his statement under Section 164 of Cr.P.C. stated that he ran away in the field, but it was after having witnessed the incident.

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23. Then our attention was adverted to the documents (Exhs.184 and 185). Exh.184 is the injury certificate of P.W.13. The same indicates that he suffered C.L.W. over his left forearm. The nature of injury was simple and the age was within 24 hours. There was a remark in the last column that the patient absconded on 22/3/2012 from the ward. It was P.W.30 Dr. Minakshi who had attended to P.W.13 in the hospital. She was not confronted with the said remark. Instead, it was shown to the investigating officer. The author of the said document is P.W.30 Dr. Meenakshi to whom it should have been confronted. It is true that, the certificate was issued on 4/7/2013 i.e. long after the incident. The learned Advocate representing the assailants Rajendra Ghige and Sudhakar Bhalerao (original accused Nos.5 and 10), however, suggested P.W.13 Vinod that the injury certificate (Exh.184) was issued on the basis of original medical record. The said suggestion helps the prosecution a lot. P.W.30 Dr. Meenakshi being an independent witness and there being nothing to indicate that she had any reason to fabricate false medical papers putting her service at risk. It is reiterated that, the injury certificate was Cri.Appeal No.224/2017 with Connected Appeals :: 29 ::

admitted to have been issued on the basis of the entries in the original record/ case papers.

24. Then our attention was adverted to Exhs.185 and

186. Both these documents were in the nature of information to the Police Station, Beed regarding admission of P.W.13 Vinod and deceased Uddhav to the hospital. The document was referred by the defence itself. Perusal of those documents indicates that the intimation was given on the very day with a history of assault. The timing of admission of both of them to the hospital was 6.45 p.m. Both these documents came into being in the official course of business. It is true that the Medical Officer on duty appears to have not reported the matter to the Police Outpost located on the premises of the Civil Hospital itself as a Medico Legal Case. The appellants had examined D.W.2 Shankar Rathod, Police Constable attached to the said Outpost. According to him, he was not on duty at the relevant time. The fact remains that, the Medical Officer reported admission of both P.W.13 Vinod and deceased Uddhav to the hospital, directly to the Beed Police Station.

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25. The test identification parade was held by the Executive Magistrate (P.W.31) Abhay Maske on 12/4/2013 i.e. about 23 days after the incident. He was examined as a witness in the case. His evidence indicates that the same set of dummy persons were used for three rounds of test identification parade. On this ground alone, the subsequent two rounds of test identification parade got vitiated. More so, when it was only P.W.13 Vinod who was to identify the culprits.

The same suggests that he knew after the first round that the same dummy to whom he did not identify the assailants were there in the subsequent two test identification parade rounds. In the first round he identified both the assailants. Rajendra Ghige and Sudhakar Bhalerao (original accused Nos.5 and

10).

26. P.W.34 Abhay Dongare, the investigating officer in his cross-examination admitted that on the next day of the incident, the Superintendent of Police had held Press Conference. It was informed that 4 suspects were held. He went on to admit that, the photographs of the arrestees were published in the next day dailies with their names. There is Cri.Appeal No.224/2017 with Connected Appeals :: 31 ::

also no evidence to indicate that the dummies were of the same age group and somewhat similar in appearance, height etc. to those to be identified in the test identification parade. We have perused the judgments of the Apex Court in case of Budhsen, Ramana Reddy, Rajesh Jagesha, Ravi @ Ravichandran etc., relied on in relation to discarding of test identification parade evidence.

27. In case of Munna Kumar Vs. State of Andhra Pradesh (AIR 2012 SC 2470), it was held that, even test identification parade was held long after photographs of the accused were published, veracity of the test identification parade did not stand impaired. In paragraph 46 of the judgment, the Apex Court held :

"46. However, we hasten to clarify that it is always appropriate for the investigating agency to hold identification parade at the earliest, in accordance with law, so that the accused does not face prejudice on that count. We may refer to the judgment of this Court in a more recent judgment in the case of Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi) [(2010) 6 SCC 1] : (AIR 2010 SC 2352 : 2010 AIR SCW 4302), where law in relation to purpose of holding an identification parade, the effect of delay and its evidentiary value were Cri.Appeal No.224/2017 with Connected Appeals :: 32 ::

discussed. The Court held as under (Paras 115 and 117 of AIR, AIR SCW) :-

"256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P.: (AIR 2005 SC 402 : 2004 AIR SCW 6537) : SCC pp.

642-45, paras 16-17 & 19) "16. As was observed by this Court in Matru v.

State of U.P. (AIR 1971 SC 1050) identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain. (AIR 1973 SC 2190). The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as Cri.Appeal No.224/2017 with Connected Appeals :: 33 ::

soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of

investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. Cri.Appeal No.224/2017 with Connected Appeals :: 34 ::

parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn. (AIR 1958 SC 350), Vaikuntam Chandrappa v. State of A.P. (AIR 1960 SC 1340), Budhsen v. State of U.P. (AIR 1970 SC 1321) and Rameshwar Singh v. State of J&K. (AIR 1972 SC 102).

19. In Harbajan Singh v. State of J & K, (AIR 1975 SC 1814), though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para

4) '4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene Cri.Appeal No.224/2017 with Connected Appeals :: 35 ::

immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. (air 1971 sc 363) absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

28. Since P.W.13 Vinod did not give the description of the appellants/ assailants and two others in the F.I.R., besides the delay in test identification parade with manifest errors in holding the same, we propose to discard the evidence of P.W.13 Vinod so far as regards the identification of the appellant by him before the Court for the first time. The matter however, does not rest at that.

29. As stated earlier, the case is based on eye witness account. He is none other than P.W.14 Sandipan. True, he is cousin of the deceased (son of maternal uncle). His

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post incident also appeared somewhat unnatural. The fact is, however, that, his presence at or around the crime scene has been impliedly admitted by the appellants during his cross- examination. His police statement too was recorded before 24 hours of the incident.

30. P.W.14 Sandipan testified that he had been to Beed on 20/3/2013. He was on his way back towards Neknoor. He was riding the motorbike. He happened to meet both, P.W.13 Vinod and deceased Uddhav, who were proceeding in the same direction on another motorbike. According to him, Uddhav was riding pillion. P.W.14 Sandipan went on to testify that, on the way, just before Gawari Pati was approached, a white Indigo car gave dash to the motorbike from behind. As a result thereof, both Vinod and Uddhav fell off. He thought that it was a vehicular accident. He further testified that, Sudhakar and Tuljiram (appellant - original accused Nos.10 and 7 respectively) alighted from the car. They were armed with Kattis. Both of them assaulted Uddhav with Kattis. He went on to state further that the appellant Vinod was standing with a dagger in his hand and appellant Rajendra was armed with a Cri.Appeal No.224/2017 with Connected Appeals :: 37 ::

packet of chilly powder. He further testified that, when the vehicle took turn, he saw appellant Babu Kale was at the driver's seat of the car. He claimed to have seen even the number plate in broken condition. He gave the number of the car MH-14-CH-172. He further testified that, Karande Sir also arrived there. All of them lifted Uddhav and took him to Civil Hospital, Beed. On having seen the incident, he was frightened. He required medical attention to himself. He, therefore, went to a private hospital at Neknoor. Later on he learnt Uddhav to have passed away. He further testified that, on the following day, he on his own went to the Police and gave his statement.

31. During his cross-examination on behalf of original accused Nos.1 to 4, it was suggested to him, "It is correct to say that, when the Car had given dash to the motorcycle of Vinod Kawade, I reached the spot on my motorcycle". It is true that, I was going towards eastern side of the road, therefore, I parked my motorcycle on left side of the road near the spot."

According to him, Vinod did not run away in the field from the spot. He was therefore confronted with his police statement, Cri.Appeal No.224/2017 with Connected Appeals :: 38 ::

wherein such matter finds place. It was further suggested to him, "It would be correct that as soon as I reached the spot on motorcycle, immediately Karade Sir came on his motorcycle." There was no discussion amongst himself, Vinod and Karande Sir about the assailants. The witness volunteered that he was frightened. It was further suggested, "It will be correct to say that, the assailants had whisked away from the spot within 3 to 4 minutes after the incident." He did not disclose the names of the

appellants. He further testified that he had been to Civil Hospital while in his examination-in-chief he testified that he directly went to a private clinic.

32. The learned Advocate representing the appellants/ assailants Rajendra Ghige and Sudhakar Bhalerao (original accused Nos.5 and 10) in the cross-examination of this witness, suggested to him that, "It will be correct to say that I was knowing Sudhakar Bhalerao as resident of village Kumbhari prior to the incident. Till today I have no enmity or dispute with Sudhakar Bhalerao. I was on talking terms with Sudhakar Bhalerao before the incident. Before 15 to 20 days of the incident I had seen Sudhakar Bhalerao in a field. It is Cri.Appeal No.224/2017 with Connected Appeals :: 39 ::

correct to say that at the time of incident Sudhakar Bhalerao did not assault me, abused me or threatened me because I have no enmity with him. Immediately after the assault, the assailants left the place of incident. When the assailants left the place of incident, I, Vinod Kawade and Karande Sir were present there. The assailants did not do anything to Vinod Kawade and Karande Sir." The further suggestion merits reproduction. The suggestion was to the effect "It will be correct to say that when Vinod Kawade and Uddhav Survase had overtaken my motorcycle, it was our first meeting on that day." The aforesaid suggestion amounts to implied admission of about P.W.13 Vinod and the deceased having been together. They met P.W.14 Sandipan. Karande Sir was also on his motorbike. He too met them. Appellant Sudhakar did not assault him (P.W.14) as he had no enmity with him. This goes a long way to infer that the assailants' target was Uddhav (deceased) and none else.

33. Although this witness had not disclosed the incident immediately to anyone, the incident was so ghastly, his evidence that he was frightened and was required to take Cri.Appeal No.224/2017 with Connected Appeals :: 40 ::

medical treatment could not be doubted. More so, in view of the aforesaid implied admission in the form of suggestion. He even gave the name of the hospital/ clinic to which he had been to take treatment soon after the incident. It was Dr. Shirsath's hospital.

34. In view of suggestions admitting this witness to have witnessed the incident, his somewhat unnatural conduct post incident would be of little consequence. The case is, therefore, distinguishable with the authorities relied on namely, Shankarlal, Naseem Khan and Amar Singh (supra). Nothing has been brought on record during the cross-examination of this witness to lead us to infer that he had an axe to grind against the appellants and save the actual culprits.

35. On arrest of the appellant Sudhakar, he expressed desire to make a disclosure statement. P.W.12 Parmeshwar is a witness to the disclosure statement. Most of the part of the statement was inadmissible since the appellant Sudhakar took the police

and the panchas to the places wherefrom nothing could be recovered. P.W.12 Parmeshwar testified that, Cri.Appeal No.224/2017 with Connected Appeals :: 41 ::

appellant Sudhakar made a statement that he would produce weapon which he had hidden under ground at Bhoom. He had further disclosed that he would produce Katti like weapon. The police officer recorded the said statement, he signed the same as a witness. The appellant too signed the same. It is at Exh.119. The appellant then took them to one place in agricultural field. It was known as "Bamanpatti". The cameraman had accompanied them. There were 6 rows of heaps of mud. Sudhakar removed two Kattis, one each from under two different heaps. The police seized the same under panchanama (Exh.120). He signed the same. On the same lines is the evidence of the investigating officer who recorded the disclosure statement made by appellant Sudhakar. Then there is evidence of P.W.32 Vikas who had accompanied them to snap the photographs. The evidence of this witness is consistent with the evidence of P.W.12 and the investigating officer. Although the photographs tendered in the evidence by him were not supported by Certificate under Section 65-B of the Evidence Act, his oral testimony would reinforce the prosecution case. During the investigation, both the seized Cri.Appeal No.224/2017 with Connected Appeals :: 42 ::

Kattis were shown to the Medical Officer Dr. Upendra Kulkarni (P.W.24), who opined that the injuries on the person of the deceased were possible by such weapon. The C.A. report (Exh.282) indicates that there was human blood on one of the Kattis. This fact further reinforce the prosecution case. Since the evidence of the witnesses was recorded about three years after the incident, there was bound to be some inconsistency inter-se the evidence of the prosecution witnesses. It was as regards the number of police vehicles which had been to the spot for recovery of Kattis pursuant to the disclosure statement etc. The disclosure statement made by the appellant would further be relevant as conduct under Section 8 of the Evidence Act.

36. We, therefore, find that the evidence of P.W.14 Sandipan as regards appellant Sudhakar to have assaulted the deceased with Katti gets reinforced.

37. During the investigation, the car was found abandoned in a Ghat Section. It was seized under the panchanama (Exh.85). P.W.6 Shrikrishna testified that the car Cri.Appeal No.224/2017 with Connected Appeals :: 43 ::

was found abandoned within the limits of Bhoom village. He described the car as - it was white colour Indigo Car. The radiator thereof was crumbled. Front side number plate was missing. Rear side number plate was intact. It was yellow colour plate with figures thereon written in black colour. The same indicates that it was a public transport vehicle. He gave the car number. The front side parking lamp was damaged. Some documents were seized from the car, particularly diary wherein name of appellant Balu Limbaji Kale was written. A PAN Card of Babu Kale was also

found in the car besides his election/ voter's card. Two blank stamp papers were also seized under the panchanama.

38. Nothing fruitful can be brought on record through his cross-examination.

39. P.W.23 Odin testified that, the said car had belonged to him. His wife was proprietor of a firm, "Peace Tours and Travels". She had purchased the said car. It was registered in the name of the very firm. He further testified that, the appellant Babu Limbaji Kale was a driver on a car in a Cri.Appeal No.224/2017 with Connected Appeals :: 44 ::

year 2012 for one year period. He used to drop him at his work place. On appellant Babu's request, he delivered the said car to him. It was in fact the sale transaction. For purchase of the car a loan was raised from Finance Company. The loan was outstanding. The car, therefore, could not be transferred in the name of the appellant Babu with R.T.O. record. The appellant Babu paid him Rs.84,500/- as against delivery of the car in his favour.

40. During cross-examination, the witness testified that the transaction was oral one. No writing was effected. It needs no mention that the sale of a motor vehicle is governed by the Sale of Goods Act. Delivery of possession and receipt of consideration amount completes the sale transaction.

Property in the goods sold is transferred when intended to be transferred. It may, therefore, be a case of out and out sale or agreement for sale since the entire consideration amount was not paid and the loan of Finance Company was still outstanding. The fact remains that the car changed hands from P.W.23's wife to appellant Babu. There is evidence of P.W.20 Bhausahab to the effect that Babu and some of the Cri.Appeal No.224/2017 with Connected Appeals :: 45 ::

respondents would roam in the same car in the village. Babu in his examination under Section 313 of the Cr.P.C. did not offer any explanation except the denial. He also did not offer any explanation about he having been seen at the driver's seat while the car knocked down the motorcycle. As such, his role in the crime has been duly proved. Although it may appear that he had no intention to kill the motorbike rider since he gave push to the motorbike with the car from behind, so as to facilitate appellant (original accused Nos.5 and 10) to commit murder of Uddhav, the said act is an offence of abetment to commit murder in view of Section 107 of the Indian Penal Code. Moreover, there were break marks trail up to 75 ft. noticed at the crime scene. When the abettor is present at the crime scene, his criminal liability is equal to that of the actual culprit. (Section 114 I.P.C.). He would, therefore, be equally liable for the punishment provided for the offence of murder under Section 302 of the Indian Penal Code.

41. Although very many witnesses were examined, the evidence of most of them is not of much relevance. A passing reference would, however, be made to the same. P.W.1 Cri.Appeal No.224/2017 with Connected Appeals :: 46 ::

Babaso is a witness to the crime scene panchanama (Exh.72). it was drawn on the following early morning. The investigating officer had on the given day to Aurangabad in connection with some other matter. His evidence indicates that, after having been informed about the incident, he reached Civil Hospital by 8.30 p.m. Then he recorded the F.I.R. and registered the crime late in the night. His evidence further indicates that the crime scene was guarded by the Police Constable on his direction. We, therefore, find no fault with him in drawing the spot panchanama after a few hours. At the crime scene a piece of cut human finger was found besides other articles.

42. P.W.2 Raosaheb Tipale is a witness to the inquest panchanama (Exh.74). P.W.3 Raichand, P.W.4 Ashok and P.W.5 Laxman are witnesses to the seizure of clothes. P.W.7 Keshav was a witness to a demo panchanama suggesting that both the vehicles namely the motorbike and the car involved in the incident were brought together. How much relevance is there to such kind of exercise is doubtful. The fact, however, remains that, his evidence indicates that, both the vehicles had received dent and damage at the relevant part thereof.

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43. P.W.9 Raosaheb Sapkal is a witness to the disclosure statement by Sudhakar Bhalerao (appellant in Criminal Appeal No.770/2018). The same is not relevant since the appellant took them to various place where he had been post incident and the place whereat the conspiracy was hatched. The evidence of P.W.10 Ajay, P.W.16 Hanumant and P.W.17 Rajesh was skipped by the learned Advocates representing the appellants. P.W.18 Vasant has testified to have had seen P.W.13 Vinod and Uddhav proceeding on a motorbike. We do not propose to record his evidence in extenso since the said fact has been admitted during cross-

examination of P.W.14. P.W.19 Vitthal is a witness who had carried 5 persons (appellants) in his car to Pune soon after the incident. He could only identify the appellant Babu Kale as one of those 5. P.W.11 Ramdas is a witness relating to seizure of cell phone from appellant Sunil Surwase (panchanama Exh.111).

44. From the appreciation of the evidence so far referred to above, we come to the conclusion that, on the given day, that both P.W.13 Vinod and deceased were proceeding on Cri.Appeal No.224/2017 with Connected Appeals :: 48 ::

motorbike from Beed to Neknoor. At Gawari Pati, a white Indigo Car knocked down the motorbike. The incident was witnessed by P.W.14 Sandipan. He saw appellant

Babu Kale at the driver seat. He also saw the appellants (original accused Nos.5 and 10) assaulting the deceased with sharp weapons. The presence of P.W.14 Sandipan has been admitted. Admittedly, one witness by name Karande Sir was also there. His statement under Section 161 of the Cr.P.C. was recorded. He has not been examined as a prosecution witness. The investigating officer Sayed Asef (P.W.33) who recorded his statement has admitted that, Karande Sir has stated in his statement that two persons had alighted from the car. He meant to say that those two persons had assaulted the deceased. While Karande Sir was not examined as prosecution witness in this case, the Trial Court ought not to have allowed to refer to his police statement. Since the same has already been brought on record and the evidence indicates that there is inconsistency inter-se the prosecution witnesses namely informant, testified that, three persons alighted from the car. According to P.W.14 Sandipan, they Cri.Appeal No.224/2017 with Connected Appeals :: 49 ::

were 4 in number while the investigating officer testified that Karande Sir told him that those were 2 in number. At the cost of repetition, it is observed that, the learned Advocate for the appellants (original accused Nos.5 and 10) has impliedly admitted the presence of P.W.14 Sandipan and further suggested that the appellant Sudhakar did not assault the said witness since he had no enmity with him. Meaning thereby, the presence of appellant Sudhakar has also been impliedly admitted.

45. As already observed above, the evidence indicates that, the car originally belonged to a firm owned by wife of P.W.23 Odin. He knew appellant Babu Kale. The car involved in the incident was sold to appellant Babu Kale. The appellant was seen with the car for many a days preceding the incidence. P.W.14 identified him as the person who was in the driver seat of the car which knocked down the motorcycle. As such, he facilitated the commission of the crime. In view of the inconsistency as to the number of persons alighting from the car, two appellants namely Rajendra alias Raju Murlidhar Ghige and Vinod Madhukar Ghige, deserve to be extended the Cri.Appeal No.224/2017 with Connected Appeals :: 50 ::

benefit of doubt. Admittedly, both of them were not involved in mounting an assault on the deceased. In our view, therefore, their appeals deserves to be allowed.

APPEALS AGAINST ACQUITTAL :

46. The State and brother of the deceased preferred these two appeals and urged for setting aside the acquittal of the respondents therein. Admittedly, these respondents were not present at the crime scene. None of them played any overt act. They are sought to be fastened with criminal liability on the ground of privity to conspiracy to commit the murder. Section 120-A defines the offence of criminal conspiracy. It reads thus :

"120A. Definition of criminal conspiracy.-- When two or more persons agree to do, or cause to be done (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal Cri.Appeal No.224/2017 with Connected Appeals :: 51 ::

conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

47. It is said that it is very easy to allege a case of conspiracy but difficult to prove it. According to the prosecution case, the panel of deceased Uddhav set up for Gram Panchayat election in 2012 won all the seats. The respondents were, therefore, envious of Uddhav's progress. They, therefore, conspired to do away with him. In proof of conspiracy, the prosecution examined P.W.20 Bhasusaheb Survase, P.W.21 Mohan, P.W.22 Digambar Hade, P.W.25 Ganesh and P.W.26 Chandrakant Survase.

48. P.W.20 Bhasusaheb Survase, brother of the deceased, who was not an eye witness to the incident, testified that the respondent Chandrasen Survase left their group 10 years prior to the incident and started working against them. He joined the group of the respondents namely Prakash Kokate, Popat Kokate, Bhaskar Survase, Pintu Bhagwan Cri.Appeal No.224/2017 with Connected Appeals :: 52 ::

Bhalerao, Prashant Bajirao Survase, Balu Madhukar Survase, Pappu Madhukar Survase, Babu Limbaji Kale, Tulshiram Ashok Vidyagar, Satish Rajesaheb Survase, Balu Vyankat Survase, Sunil Gangaram Survase, Sachin alias Mahadeo Survase etc. He further testified that, there were other instances as well besides of dispute over a right of way. This witness was examined to make out a case of motive as well. This witness testified that, the car involved in the incident was driven by appellant Babu in the village and other respondents used to sit therein and roam in the village by rotation. His evidence as regards conspiracy i.e. meeting held by these respondents at Veterinary Hospital at Neknoor is based on hear-say. He had learnt the same from witness Digambar Hade (P.W.22). It, therefore, cannot be said that the evidence of this witness furthered the prosecution case to make out an offence of conspiracy to commit murder.

49. P.W.21 Mohan testified that, on 12/3/2013, i.e. about a week before the incident, he had been to Swagat Beer Bar to dine. In the neighbouring cabin in the hotel, some people were sitting and talking loudly under the influence of Cri.Appeal No.224/2017 with Connected Appeals :: 53 ::

liquor. He further testified that, those persons were saying that there was no alternative than to eliminate Uddhav Survase. He further testified that, one of those persons took a responsibility of everything i.e. defend in the Court of law to the one who would eliminate Uddhav. He then testified that, he peeped in the cabin to see that those were the respondents namely Prakash, Popat, Sugriv, Chandrasen, Bhaskar and some others. He even identified them before the Court. On behalf of

some of the respondents, the presence of this witness in the hotel and even in the cabin (No.10) has been admitted during cross-examination. This witness was, however, confronted with his police statement, which is silent to record therein that he peeped in the neighbouring cabin. This is vital omission amounts to contradiction. Needless to mention, all the contradictions or omissions have been duly proved by the defence by confronting the concerned witnesses and the investigating officer who has recorded the statements.

50. The conduct of this witness, however, indicates that, although he informed the same to Uddhav, who laughed it off, he did not prefer to intimate the same to the police nor did Cri.Appeal No.224/2017 with Connected Appeals :: 54 ::

Uddhav feel to do so. The statement of this witness was recorded on 8/4/2013 i.e. 19 days after the incident.

51. Then comes P.W.22 Digambar Hade. It is in his evidence that, before the incident, he had been to weekly market at village Neknoor. According to him, he witnessed a meeting held under a Neem Tree towards left side of Veterinary Hospital and discussion was going on. As those persons were from village Kumbhari, he went there. In the said meeting, Sachin Survase, Balu Survase, Popat Kokate, Sugriv Survase, Chandu Survase, Sunil Survase, Satish Survase etc. were present. Some other persons were also present. He, however, could not name them. After taking a pause, he pointed out towards the person sitting in the last row in the east corner and said that Prakash Kokate was also present. All these persons were sitting together. According to him, Chndu (Chandrakant) said, "Unless Uddhav is finished, the villagers will not be happy. Respondents Popat, Prakash and Bandu took the responsibility to defend in Courts of law the one who would come forward and eliminate Uddhav.

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52. This witness could not give the day, date and time by which he had seen these respondents sitting at Neem Tree near Veterinary Hospital at Neknoor on weekly bazar day. He did not approach the police on his own immediately after having heard about the conspiracy. His statement was recorded on 25 March (Hade to check) i.e. 5 days after the incident and number of days after alleged conspiracy was hatched.

53. P.W.25 Ganesh testified that, a month before the incident in question, another incident took place. That time he was proceeding on his motorbike. It was about 5.00 p.m. He was passing through the field of Dr. Kalyankar. He saw some persons from village Kumbhari had gathered at a mango tree. Those persons were Popat Kokate, Bhaskar Survase, Sunil Survase, Satish Survase, Sachin survase and another 10 to 12 persons which include Bappa Vidyagar, Sudhakar Bhalerao. However, he did not remember names of all other persons. He identified them before the Court.

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54. This witness only speaks about having seen these respondents together at a particular place. He did not claim to have heard anything being discussed by these persons as a plan to eliminate Uddhav. P.W.26 Chandrakant is a last witness on the point of conspiracy. He testified that, one day before the incident i.e. on 19 March, a party was held in the field of one Babruwan Surwase. He was proceeding from that field. It was 6.00 p.m. he saw respondents Chandrasen, Papat, Prakash and Sachin besides 7 others sitting together there.

55. This witness too did not claim to have heard talk among these persons with regard to eliminating Uddhav. As such, nothing was deposed to by P.W.25 and P.W.26 regarding alleged hatching of conspiracy. Section 10 of the Evidence Act, therefore, could not be invoked.

56. As observed above, that it is very easy to allege a case of conspiracy but difficult to prove the same. In the case in hand, appreciation of the evidence of the witnesses referred to hereinabove lead us to infer the prosecution to have failed to Cri.Appeal No.224/2017 with Connected Appeals :: 57 ::

make out an offence of conspiracy to commit murder and the murder to be the fall-out thereof.

57. In the case of Ganesh Bhavan Patel (supra), it has been observed :

"Although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting accused, are reasonable and plausible, and cannot be entirely and effectively dislodged, or demolished, the High Court should not disturb the acquittal."

58. In the sequel, the appeals against acquittal fail. With this, the following order is passed.

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ORDER

(i) Criminal Appeals No.994/2024 and 1040/2024 preferred by the State and brother of the victim respectively, are hereby dismissed.

(ii) Criminal Appeal No.767/2018 filed by Vinod Madhukar Ghige and Criminal Appeal No.768/2018 filed by Rajendra alias Raju Murlidhar Ghige are allowed. The order of conviction and consequential sentence passed by learned Additional Sessions Judge, Beed, dated 10/4/2017, in Sessions Case No.94/2013, convicting these appellants for the offences punishable under Sections 302 read with Section 149 and for offences punishable under Sections 147 and 148 of the Indian Penal Code are hereby set aside. The appellants Vinod Madhukar Ghige and Rajendra alias Raju Murlidhar Ghige are acquitted thereof. Both of them be set at liberty forthwith if not required in any other case. Fine amount, if paid be refunded to them.

(iv) Criminal Appeal No.769/2018 filed by Tuljiram alias Bappa Ashok Vidyagar and Criminal Appeal No.770/2018 filed by Sudhakar alias Pintu Bhagwan Bhalerao are dismissed, Cri.Appeal No.224/2017 with Connected Appeals :: 59 ::

with slightest modification in the operative order of the Trial Court, i.e. Section 149 is replaced by Section 34 for conviction of these appellants.

(v) Criminal Appeals No.224/2017 filed by Babu Limbaji Kale is dismissed. However, the conviction imposed upon him by the Trial Court is modified and he is convicted for offence punishable under Section 302 read with Section 109 read with Section 114 of the Indian Penal Code. The sentence of life imprisonment against him to stand unaltered, maintaining the quantum of fine as well.

(vi) All the Criminal Appeals are disposed of in above terms.

Consequently, all pending Criminal Applications are disposed of.

(NEERAJ P. DHOTE, J.) (R.G. AVACHAT, J.) fmp/-