Bombay High Court The State Of Maharashtra vs Abdul Kadar @ Raj Mohd Kadar ... on 8 January, 1997 Author: V Sahai Bench: V Sahai, R Desai JUDGMENT Vishnu Sahai, J. 1. By means of this appeal preferred under section 378(1) of the Criminal Procedure Code, the appellant impugns the judgment and order dated 20th December, 1982, passed by the Additional Sessions Judge, Greater Bombay, in Sessions Case No. 444 of 1980, acquitting the respondents for offences punishable under section 143, 147, 148 and 302 r/w 149 I.P.C. in the alternative under section 302 r/w section 34 I.P.C. 2. We may straight away mention that the appeal against respondents No. 1 and 9 namely Abdul Kadar @ Raj Mohd. Kadar Badshah and Abdul Halim s/o Abdul Gani has been dismissed for non-prosecution vide the Order dated 24-2-1986 passed by a Division Bench of this Court. We may also mention that it is not disputed at the Bar that the respondents No. 3 and 8 namely Karunakaran @ Karan and Munna are dead and consequently in view of the provisions contained in section 394 of the Criminal Procedure Code the appeal against them abates. In other words this appeal only survives against respondents Stanley @ Starline, Sadashiv @ Baba, Abdul Hamid Abbas, Fakir Mohd. @ Fakira and Mohamed Hasan. 3. Briefly stated the prosecution case runs as under :- The deceased Abdul Razak Khan was the real brother of P.W. 2, Chotibi and P.W. 3 Sabirabi. The third eye witness Nasima Banu P.W. 4, being the daughter of Chotibi was the niece of the deceased. The evidence shows that the deceased as well as the three eye witnesses lived in the same locality namely Chitta Camp, G-Sector, L-1 within the limits of Police Station Trombay, District Bombay. There was an inimical strain between the respondents on one hand and the deceased on the other. Three reasons for the same have been furnished by the prosecution in the evidence. Firstly it is said that the deceased was helping the police which had initiated externment proceedings against the respondents and absconding accused Appa Durai, since September, 1979. It is alleged that during the course of these proceedings four of the respondents were served with notices in April, 1980 to show cause as to why they should not be externed. Secondly it is said that on 21st January, 1980, Baba respondent No. 4 and Karunakaran respondent No. 3 alongwith some others went to the house of Gulab Khan who resided in the room adjoining that of the informant Chotibi. It is said that the said respondents and others forced Gulab Khan to open the door of his room. Thereafter they injured Gulab Khan and started dragging his daughter Hayatbi. Consequently Chotibi and the deceased Razak Khan intervened and this intervention of theirs seems to have irked the said respondents and their associates (the remaining respondents). It is said that in respect of this incident Hayatbi's husband lodged a complaint and Chotibi and deceased Abdul Razak Khan were witnesses. Thirdly the next day i.e. on 22nd January 1980, the respondents other than Baba and Karunakaran attacked Chotibi's house. During the course of the attack they caused extensive damage. Consequently she lodged a complaint against them. 3A. According to the prosecution on 13th June, 1980 at about 3-30 or 4 p.m., Chotibi and her daughter Nasimabanu were sitting in the open space in front of their room No. 23 in Chitta Camp within the limits of Trombay Police Station, District Bombay. At that time they were

cleaning rice. They heard cries 'Madat Madat, Bachav, Bachav'. On hearing the said cries both of them advanced towards the direction from where they were coming. They went towards Chawl No. M-1 which was in front of their chawl. They noticed that Razak Khan was running and was being pursued by the nine respondents and the absconding accused Appa Durai. It is alleged that respondents 1 to 4 were armed with swords; respondents No.4 and 5 were armed with Trishuls; and respondents No. 7,8, 9 and the absconding accused Appa Durai were armed with hockey sticks. On seeing the respondents chasing Razak Khan, Chotibi shouted for help. At that time respondent Raj Mohd. inflicted a sword blow on the right side of the skull of Razak Khan, which resulted in his falling down. Thereafter respondent Raj Mohamed gave a clarion call to the other respondents to assault Razak Khan and in response to it they assaulted Razak Khan with their respective weapons. It is also alleged that one of the blows dealt by Karan landed on the right arm of respondent Sadashiv @ Baba and that respondent Abdul Halim @ Jalia Halim was also injured while some of the respondents were launching an attack on Razak Khan. 4. According to the prosecution as a consequence of the assault Razak Khan started having convulsions. Chotibi understandably asked her daughter Nasimabanu to run away from the place of the incident and lodge a complaint (F.I.R.) . As Nasimabanu started running, three of the respondents chased her and threatened that in case she lodged an F.I.R. she would be killed. Nasimabanu however, escaped from the clutches of the respondents. Thereafter the respondents are alleged to have run away from the place of the incident alongwith the absconding accused Appa Durai. The evidence of Chotibi P.W. 2 shows that immediately after the assault on the deceased was over and the respondents had run away, Constable Mohamad Patni P.W. 8, her sister Sabirabi P.W. 3 and her brother Chand (not examined) came on the place of the incident. A taxi was arranged for and in the same Mohamed Patni, Sabirabi and Chand alongwith Abdul Razak Khan proceeded for police station, Trombay. Since Razak Khan was precariously injured at the said police station he was immediately directed to be taken to Rajawadi Hospital. 5. In the meantime Chotibi without losing any time proceeded to Police Station Trombay. The evidence of P.I. Ravidhone (P.W. 23) of Trombay Police Station is that she reached the said Police Station at about 4-13 p.m. Immediately P.I. Ravidhone sent for a typewriter and typed her F.I.R. The statement of P.I. Ravidhone shows that the recording of the F.I.R. was concluded at about 4-30 p.m. The F.I.R. is Exhibit 20 and its perusal shows that in the same the recitals mentioned in respect of assault on the deceased are contained. In the F.I.R. the nine respondents are also named. 6. Surprisingly, contrary to the normal practice after recording of the F.I.R. had been completed, P.I. Ravidhone did not make any entry in the station diary of Police Station Trombay regarding the fact that Chotibi had lodged a F.I.R. With this aspect of the matter we would subsequently deal because the contention of Ms. Kiran Gupta, learned Counsel for the respondents is that the said circumstances blasts the claim of the prosecution that the F.I.R. was actually lodged at 4-30 p.m. In her contention it was lodged later and has been shown to be anti-timed by the prosecution. 7. Meanwhile Abdul Razak Khan had reached Rajawadi Hospital.

There Dr. Rajkumar Nebhrajani (P.W. 17) medically examined him. He found on his person the following injuries; 1) Incised wound on the occipital region 3" x 1/2" bone deep. 2) Incised wound on the right occipital parietal region 3" x 1/2" x bone deep. 3) Incised wound 1" x 1/2" x skin deep x occipital deep. 4) Punctured wound with heamotoma on the right forearm middle 1/3rd. 5) Fracture skull occipital region and frontal region, corresponding to incised wound No. 1. 6) Incised wound on the right arm 1" x 1/4" x skin deep. In the opinion of Dr. Nebhrajani the said injuries could have been caused by a sharp edged object and were sufficient in the ordinary course of nature to cause death. With the latter opinion of the doctor there can be no quarrel in view of the several internal damage in the form of fracture of the skull, occipital region and frontal region, corresponding to incised injury No. 1. 8. The evidence of Dr. Nebhrajani is that on 15-6-1980 at about 1.50 a.m. Abdul Razak breathed his last in Rajawadi Hospital. 9. The Postmortem examination of the corpse of Abdul Razak Khan was conducted on 15-6-1980 between 4.35 p.m. and 5.30 p.m. by Dr. Sayed Sami (P.W. 18). On the corpse Dr. Sami found the following injuries :– (1) Sutured wound 8.0 cms, long over occipital region. (2) Sutured wound 8 cms, long over right occipital region. (3) Sutured wound 4 cms, long over occipital region. (4) Contused abrasion 2 x 2 cms, over right occipital region. (5) Linear abrasion 10 cms. over right neck posteriorly extending to right ear. (6) Linear abrasion 8 cms. and 7 cms. over right neck posteriorly. (7) Linear wound 24 cms. long skin deep over right upper back extending to righ arm laterally. (8) Linear wound 3 cms. over right shoulder superiorely skin deep. (9) Sutured wound right arm laterally 11 cms. long. (10) Stab wound over right forearm lower 1/2 portion posteriorly x 1 x 1/2 x 1 cms. muscle deep. (11) Abrasion 2 x 1 cms. over left forehead. (12) Abrasions both elbow posteriorly. (13) Small abrasion over left 2nd, 3rd and 4th interphalangeal joints posteriorly. (14) Abrasion 1 x 1 cms. over right 2nd interphalangeal joint posteriorly. (15) Abrasion 1/2 x 1/2 cms. over right matacar-pophalangeal joint of middle finger. (16) Linear wound skin deep 11 and 13 cms. over left and right thigh respectively on the posteriorly aspect. (17) Linear wound 8 cms. long over left leg posteriorly skin deep. (18) Abrasion 2 x 2 cms. over right upper 3rd leg posteriorly. In paragraph 4 of his deposition Dr. Sami stated that as the injuries were sutured it was not possible to opine whether they were caused by a hard and blunt object or by sharp-edged object but weapons like swords or hockey sticks (Article 4 to 6) could have caused those injuries if the blows were dealt with sufficient force. 10. Going backwards the bulk of the investigation was conducted by P.I. Ravidhone P.W. 23 and P.I. Mahadeo Benulkar (P.W. 22). 11. A perusal of the statement of P.I. Ravidhone shows that after recording the F.I.R. he proceeded to Rajawadi Hospital. Thereafter from the said hospital he came back to Police Station Trombay by 5.45 p.m. and at about 6.30 p.m. left for the place of incident. His statement is that when he reached the place of the incident Chotibi was already present there. S.I. Jadhav who was alongwith him called for two panchas and thereafter at about 6-45 p.m. the panchanama of the place of the incident was prepared. From the place of the incident in the lane between Chawl No. L-1 and M-1 of G-Sector, a pool of blood was found. Some of this blood

was taken into possession. Then P.I. Ravidhone started making inquiries about the eye witnesses of the locality. He went to the house of the complainant as he was told that Nasimabanu was residing with her but did not find her there. On 14-6-1980 he recorded the statement of Chotibi under section 161 of Cr. P.C. Thereafter the same day at 4 p.m. and 5 p.m. he interrogated Sabirabi, and Nasimabanu under section 161 of Cr. P.C. respectively. Thereafter it appears that he was selected for Refresher's course. 12. The evidence of P.I. Mahadeo Benalkar shows that on 20-6-1980 he took over investigation of this case. A perusal of his statement also shows that the main investigation carried out by him centred around recoveries of incriminating weapons on the pointing out of the respondents. A detailed reference with respect to this is found in paragraphs 2 to 10 of his statement. His statement shows :- (a) that on 20th June, 1980 he recovered a blood stained sword on the pointing out of Raj Mohd. (b) On 21-6-1980 he recovered swords on the pointing out of respondents Karan and Stanley; (c) On 21-6-1980 he recovered a hockey stick on the pointing out of respondent No. 5 Abdul Hamid; and (d) On 22-6-1980 he recovered 4 hockey sticks on the pointing out of respon- dent Abdul Halim. The evidence of P.I. Ravidhone is that on 1st August, 1980 he again took up the investigation. It is significant to point out that it was he who had sent some of the recovered articles like three blood stained handkerchiefs with which the injuries of the deceased were tied while taking him to the hospital, to the Chemical Analyst. After completing the investigation on 11-9-1980 he submitted a charge-sheet against the respondents. 13. The case was committed to the Court of Sessions on 2nd October, 1980. During the trial the respondents were charged on the counts enumerated in para 1 of this judgment. To the said charges, they pleaded not guilty and claimed to be tried. 14. During trial apart from tendering and proving a large number of material exhibits prosecution examined as many as 23 witnesses. Three of them namely Chotibi, Sabinabi and Nasimabanu P.Ws. 2, 3 and 4 respectively were examined as eye witnesses. 15. In defence no witness was examined. 16. After recording the evidence adduced by the prosecution, the statements of the respondent under section 313 Cr. P.C.; and hearing learned Counsel for the parties, the learned trial Judge concluded that the prosecution had failed to prove the guilt of the respondents beyond reasonable doubt and hence acquitted them vide the impugned judgment. 17. We have heard Mr. Mhaispurkar for the appellant and Ms. Kiran Gupta for respondents 2, 4, 5, 6 and 7. As mentioned earlier the appeal against respondent Nos. 1 and 9 has been dismissed for non-prosecution vide the order dated 24-2-1986, passed by a Division Bench of this Court and that against respondents 3 and 8 has been ordered by us to abate today. 18. Mr. Mhaispurkar, learned Counsel for the appellant streneously urged that flimsy reasons for acquittal have been assigned by the learned trial Judge in the impugned judgment. He urged that the said reasons can be stigmatised as being grossly unreasonable. He faulted appreciation of evidence of the three eye witnesses by the trial Court as being manifestly unreasonable. He urged that the view of the learned trial Judge in rejecting their testimony cannot be defended as even a possible view. He urged that the prosecution had succeeded in bringing home the guilt of the respondents in respect of all the charges and

we should reverse the impugned judgment of acquittal. 19. On the other hand Ms. Kiran Gupta with a rare combination of tenacity and unfailing courtesy, coupled with a thorough preparation of the brief, contended that it is unfortunate that the judgment of acquittal may not have been very happily worded and in fact may have been sketchy but the material on record amply demonstrates that the view of acquittal was the only possible view. She urged that an order of acquittal should not be lightly disturbed by this Court. 20. A Division Bench of this Court to which one of us (Vishnu Sahai, J.,) was a party in the case of The State of Maharashtra v. Balram @ Nam Amarsingh Talwar, Criminal Appeal No. 51 of 1983 decided on 28-8-1996 has held that in an appeal against acquittal the Appellate Court should not confine itself only to the reasons given out for acquittal by the trial Court but should meticulously examine the entire material on record and take into consideration all other plausible reasons which can be pressed into service to defend the impugned judgment of acquittal. The relevant observations made by the Division Bench are to be found in paragraph 31. They read thus; "Some of the reasons which we have spelt out in this judgment have not been mentioned by the trial Court in the impugned judgment but, all the same when we are called upon as an appellate Court, to decide the question as to whether the acquittal of the respondent warrants to be reversed it is within our domain to examine all possible reasons. In fact we should examine as to what other reasons can be pressed into consideration for determining the question whether the acquittal of the respondent was rightly arrived at or not. After all a judgment of acquittal cannot be reversed on petty technicalities. It should always be borne in mind that this Court only reverses a judgment of acquittal when after the greatest circumspection, it is satisfied that the view of acquittal was not a possible view. For reaching that satisfaction it should meticulously examine the entire evidence and see whether the view of acquittal can be vindicated also by reasons other than those given by the trial Court. And even after doing so, if this Court is satisfied that the view of acquittal was not a possible view, it would certainly interfere with an order of acquittal." 21. It is bearing in mind the position set out above and the fact that in an appeal against acquittal the Appellate Court has to examine whether the view of acquittal was a possible view and not whether it was a plausible one, that we have to evaluate the impugned judgment. 22. We wish to point out that there are a catena of decisions of the Apex Court to the effect that the circumstance that left to itself, the Appellate Court would have taken a view different from that taken by the trial Court would be no ground to upset a judgment of acquittal. (See :– (1) Khedu Mohton & ors. v.State of Bihar), (2) Tota Singh & ors v. State of Panjab. 23. The evidence on the basis of which prosecution presses for conviction of the respondents can be classified under two heads :– (a) recovery of incriminating weapons on the pointing out of some of the re- spondents; and (b) Ocular account furnished by the three eye witnesses namely Chotibi, Sabirabi and Nasimabanu, P.Ws. 2, 3 and 4 respectively. 24. We would first like to take up the evidence of recovery of incriminating weapons on the pointing out of the respondents. As mentioned in the earlier part of our judgment the said recoveries were made by P.I. Mahadeo Benalkar (P.W. 22) on

the pointing out of the respondents. On 20th June, 1980, he recovered a sword on the pointing out of respondent Raj Mohd.; on 21-6-1980 he recovered swords on the pointing out of respondent Karan and Stanley; on 21-6-1980 he recovered a hockey stick at the instance of Abdul Hamid and recovered hockey sticks on the pointing out of respondent Abdul Halim on 22-6-80. 25. Ms. Kiran Gupta, learned Counsel for the respondents vehemently contended that the evidence of recovery of incriminating weapons on the pointing out of the respondents does not inspire any confidence. She urged that no reliance can be placed on it. 26. Ms. Gupta urged that no reliance can be placed on recovery of sword on the pointing out of respondent Raj Mohd. for the following reasons which emerge from the statement of Ibrahim Abdul Rehman P.W. 12, the public panch of recovery :– (a) The officer had already prepared the recovery panchnama and only asked him to sign on it; (b) The accused did not lead the police to the hidden place and take out a sword from beneath the plank; and (c) The sword recovered (Article 3) was not shown to him at the time he put the signatures on the recovery memo. 27. Ms. Gupta urged that no reliance can be placed on evidence of recovery of sword on the pointing out of respondent Karan in view of the following circumstances emanating from the statement of Kazi Alli Hasan (P.W. 13) the public panch of recovery :– a) The officer had told them that the accused had been apprehended in con- nection with the murder and had stated that he was going to show a weapon and therefore, they should accompany him; b) Karan did not make any statement that he could get the weapon recovered in their presence; and c) Anybody could have gone in the laterine where the sword was found. In other words what the witness is trying to say is that it was a place which was open to all and sundry. 28. Ms. Gupta urged that no reliance can be placed on recovery of sword from respondent Stanley and hockey stick from respondent Munna on account of the following infirmities emerging from the statement of public panch of recovery Mohamed Haroon (P.W. 14); (a) The recovery panchanama was not prepared before him. The officer had already written something on a piece of paper and only asked him to sign it; (b) It did not happen that Stanley led them to a condemned Military Barrack from where the sword was recovered; and (c) It did not happen that respondent Munna led them to a common water tap at B-Sector on the western side and from the bushes Hockey stick was recovered. 29. Ms. Gupta also urged that no reliance can be placed on the recovery of 4 hockey sticks on the pointing out of respondent Abdul Halim in view of the following infirmities emerging from the statement of public panch Mohamad Khan (P.W. 16) ; (a) P.I. Benalkar had told them that the respondents stated that they had committed murder and they could show the place where weapons were kept and thereafter he obtained a signature on a piece of paper. He does not say that paper was prepared before him; and (b) The four hockey sticks recovered had been shown to him at the police station. 30. We have given our anxious consideration to the scathing criticism levelled by Ms. Gupta against the recovery evidence and we have no hesitation in accepting her submission that in view of the infirmities mentioned above the evidence of recovery of weapons only has a waste-paper value. Consequently in our view no reliance can be placed on the evidence of recovery of

incriminating weapons from the respondents. 31. We are constrained to observe that to us it appears that the said evidence has been engineered by P. W. Benalkar and if this can happen in a murder case the Court has to become extremely circumspect and cautious while evaluating the testimony of the eye witnesses. This is particularly so in the instant case for the reasons set out hereinafter :– (a) The F.I.R. which on the first blush appears to be promptly lodged by Chotibi was not promptly lodged and is an anti-timed document. We say this because contrary to the normal practice after the recording of the F.I.R. no entry to such an effect has been made in the station diary by P.I. Ravidhone who recorded the F.I.R. ; (b) The claim of the prosecution that P.I. Ravidhone after recording the F.I.R. left for Rajawadi Hospital and the same day after returning therefrom at 5-45 p.m. at police station, left for the place of the incident and prepared the spot panchnama appears to be unacceptable because in the station diary entry of Police Station, Trombay pertaining to 13-6-1980 there is no mention of these things; and (c) The circumstance that all the three eye witnesses of the incident though available to the prosecution on the date of the incident were interrogated the next day also makes us doubt their claim that they saw the incident. 32. It is in this background, bearing in mind that all the three eye witnesses are extremely closely related to the deceased inasmuch as Chotibi and Sabirabi are his sisters and Nasimabanu his neice, and that although independent witnesses saw the incident but none are supporting the prosecution, that we have to evaluate the ocular account. 33. Ms. Gupta urged that if the investigating agency could manufacture evidence pertaining to recovery of incriminating weapons at the instance of respondents, what is the guarantee that it did not manufacture ocular account. We cannot altogether say that her contention is without substance. 34. We begin with, as Ms. Gupta wants us, with the statement of Sabirabi P.W.3. Ms. Gupta invited our attention to the statement of Chotibi wherein in paragraphs 4 and 5 she stated that after the assault on the deceased was over and the assailants had run away did immediately thereafter Sabirabi arrive on the place of the incident with Mohamed Patni and her brother Chand. Ms. Gupta urged that this is at variance with the statement of Sabirabi wherein she has claimed to have witnessed the entire assault on the deceased. She urged that in view of Chotibi's statement it is clear that Sabirabi did not witness the incident. After going through paragraphs 4 and 5 of the statement of Chotibi we find the contention of Ms. Gupta to be correct. 35. The unhappy situation which emerges is that the prosecution has tried to create a false eye witness in Sabirabi as Nasimabanu stated that Sabirabi saw the entire incident. In Ms. Gupta's contention in view of the observations contained in paragraph 6 of the decision of the Apex Court Ishwar Singh v. State of Uttar Pradesh, the circumstance that Nasimabanu stated that Sabirabi also saw the incident would also erode her credibility and would establish that she (Nasimabanu) did not witness the incident. Paragraph 6 of the said decision reads thus :– "The High Court accepted the evidence of the prosecution witnesses who claim to have seen the incident except that of Jait Singh (P.W. 7). Jait Singh and Ram Rikh (P.W. 6) both claim to have seen the assault together from Ram Rikh's house and both have said that they

hurried to the place of occurrence. The High Court thought that Jait Singh's presence at the time of the incident was doubtful and excluded his testimony from consideration. If Jait Singh was not a truthful witness, we do not see how Ram Rikh (P.W. 6) and the other two eye witnesses examined, Mahabir (P.W. 1) and Satyapal (P.W. 2) could be relied on, because they have also said that Jait Singh was present at the place of occurrence. As stated already, the F.I.R. also mentioned Jait Singh as an eye-witness." 36. Ms. Gupta urged that there are other infirmities in the evidence of Sabirabi. She contended that whereas the statement of Chotibi is that she had asked Nasimabanu to lodge the F.I.R. Sabirabi stated that if was she who had asked her to report the matter to the police. 37. Ms. Gupta also pointed out that although Sabirabi and the other two witnesses allege that Sabirabi accompanied Mohamed Razak on a taxi to the police station but the evidence of S.I. Subhash Shinde P.W. 20 does not show this. The said S.I. in paragraph 1 of his statement has clearly stated that Razak Khan was only accompanied by Chand and Mohamed Patni. 38. Ms. Gupta also contended that had Sabirabi seen the incident and had she taken the deceased in a taxi to the police station then the Investigating Officer would have taken her blood stained sari in possession. She invited our attention to that portion of her testimony wherein she stated that her sari had become stained with blood. In this connection she also referred to paragraph 6 of Sabirabi's statement wherein it is mentioned that on account of blood falling the seat of the taxi had become stained with blood. She urged that the Investigating Officer took no blood from the taxi. 39. Ms. Gupta also contended that had Sabirabi seen the incident then being the own sister of the deceased it was only natural for her to have rushed to his rescue and in that process she would have sustained injuries. The argument of Ms. Gupta is certainly attractive on the first blush but we are not inclined to give much credence to it. In our judgment it all depends on the disposition of a individual. There are some in whom the instinct of blood is stronger than that of self-preservation and they rush to rescue when a close relation like a brother is being attacked. There are others who are of the contrary disposition. We do not know of which type was Sabirabi. Hence we are not prepared to give overwhelming weight to the said submission of Ms. Gupta. 40. Examining the criticisms levelled by Ms. Gupta in totality, we are inclined to accede to her contention that it would be very hazardous for us to accept the testimony of Sabirabi. 41. Ms. Gupta urged that the evidence of Chotibi does not inspire any confidence. She firstly contended that her claim of lodging the F.I.R. immediately after the incident does not inspire any confidence, because had it been correct an entry in the station diary of police station Trombay regarding recording of the F.I.R. would have been made by P.I. Ravidhone, who recorded the F.I.R., immediately after the F.I.R. had been recorded. Secondly Ms. Gupta contended that the evidence on record shows that when on the evening of 13.6.1980 P.I. Ravidhone visited Rajawadi Hospital Chotibi and Sabirabi were there. In her contention had Chotibi and Sabirabi really seen the incident, the Investigation Officer would have interrogated them then and there. She also contended that the evidence of P.I. Ravidhone is that at about 6-30 p.m. the same day he reached the place of incident and Chotibi was also

there. She urged that at that juncture Chotibi's statement should have been recorded by P.I. Ravidhone. In our view the inordinate delay in interrogating Chotibi (she was interrogated on the next day i.e. 14-6-1980) shows that she had not seen the incident and P.I. Ravidhone was searching for ocular account. In this connection Ms. Gupta invited our attention to the observations of the Apex Court contained in paragraphs 15 and 18 of the oft-quoted decision of Ganesh Bhavan Patel v. State of Maharashtra, . In the said paragraphs their Lordships have held that it is of primary importance for a prudent investigator to record the statements of witnessess under section 161 Cr. P.C. without any loss of time. They have also held therein that delay of a few hours simplicitor, in recording the statements under section 161 may not, by itself, amount to a serious infirmity in the prosecution case but it would certainly assume significance if it appears that the investigation was marking out time to build the edifice of the prosecution case. In our view the observations of the Apex Court are tailor-made, so far as this case is concerned. In our view not only was the F.I.R. not lodged at 4.30 p.m. but no one was prepared to depose about the incident and, therefore, P.I. Ravidhone was fishing in the dark for the witnesses and that to us is the reason why Chotibi was not interrogated the same day. 42. In our Judgment this circumstance coupled her being a very highly interested witness and that the station diary entry does not confirm her claim of immediately lodging the F.I.R. in asmuch as immediately thereafter no corresponding entry was made in it, are sufficient to throw out her testimony. 43. We next take up the evidence of Nasimabanu (P.W. 4) the daughter of Chotibi. We regret to observe that mother and daughter sail in the same category. Like her mother Chotibi, Nasimabanu was also not been interrogated u/s 161 of Cr.P.C. the same day. The evidence of P.I. Ravidhone is that he interrogated her at 5 p.m. on 14-6-1980. Had the F.I.R. been actually lodged on 13-6-1980 at 4.30 p.m., had Nasimabanu actually seen the incident; what was the difficulty in her not being interrogated either the same evening or on the morning of the next day. Again Nasimabanu's statement that Sabirabi had also told her to go and inform the police is contradicted by the statement of her mother Chotibi, who says that she told her. In our view when the said infirmities are evaluated in the background of the fact that Nasimabanu is a highly interested witness and says that Sabirabi also saw the incident, a claim which we have found to be false, it would be unsafe to accept her testimony in view of the ratio laid down in . 44. Ms. Gupta was not the Counsel who would leave anything unsaid. She strongly urged that the medical evidence also eroded the credibility of the eye witnesses. She invited our attention to three circumstances. She firstly contended that the prosecution case that both respondents No. 5 and 6 namely Abdul Hamid Abbas and Fakir Mohamed assaulted the deceased Abdul Razak Khan with Trishuls is belied by the circumstance that the medical evidence shows only one stab wound on the corpse of the deceased. Even this, in her contention, was not caused by a trishul. She invited our attention to the statement of Sabirabi in cross-examination (paragraph 19) to the effect that Trishuls were used like stick. Secondly Ms. Gupta contended that the prosecution case that four of the respondents namely respondents 1 to 4 assaulted the deceased with swords

is unworthy of belief. Ms. Gupta urged this on the following reasoning. She contended that there is a categorical averment that respondent Raj Mohamed assaulted the deceased with a sword on the right side of his skull. In her contention all the injuries found on the skull of the deceased were on the right side and they were attributable to the sword blow inflicted by Raj Mohd. She urged that if these incised wounds are excluded then according to Dr. Nebhrajani only one incised wound remained on the person of the deceased and according to Dr. Sami two incised wounds remained. What she urged was that even if it is assumed that there were two other incised wounds on the person of the deceased this would belie the case that three respondents namely 2, 3 and 4 assaulted the deceased. In her contention the case of the prosecution would have been true had there been three more incised wounds. Ms. Gupta also urged that the medical evidence makes the prosecution case of assault by four persons with hockey sticks doubtful. In this connection she invited our attention to the comprehensive cross-examination of Dr. Nebhrajani who categorically stated that hockey sticks would cause weal marks and he found no weal marks on the dead body of the deceased. Ms. Gupta also contended that though Dr. Sami who had performed the autopsy of the deceased did find some injuries attributable to hockey sticks but in view of the categorical statement of Dr. Nebhrajani and the conflicting medical evidence, the benefit should go to the respondents and not to the prosecution. 45. We admit that we find the submissions of Ms. Gupta pertaining to the conflict between the ocular account and the medical evidence to be fairly plausible. 46. We are also hesitant to interfere in the instant case because there is no independent eye-witness, deposing about the involvement of the respondents in the incident. The evidence on record shows that the incident took place in a crowded locality. The eye witnesses have said that a large number of persons saw the incident. In our view if the incident really happened at the time and place suggested by the prosecution then why is it that no independent witness is coming forward to depose. This is a circumstances which also detracts from the weight to be given to the ocular account. We may mention that the prosecution had tried to examine an independent witness Sharifabi (P.W. 7) but she did not support the prosecution case. In such a situation in our view it would be very hazardous to reverse the acquittal of the respondents on the testimony of the three eye witnesses who admittedly are highly interested witnesses. 47. When the said infirmities in the prosecution case are examined in the background of the fact that we are evaluating the impugned judgment in an appeal against acquittal wherein we have to be satisfied whether the view of acquittal was a possible view or not? We are left with no other option but to conclude that the view taken by the trial Court was every inch a possible view. In fact it was a plausible view. 48. It is a pity that some of the reasons for recording acquittal which are extremely weightly, are not incorporated in the impugned judgment. But as mentioned by us earlier this Court does not lightly reverse a judgment of acquittal. It only reverses it when after meticulously examining the entire record, it finds that the same is incapable of being sustained. This is not the position here. 49. We would also like to express our anguish that in murder case in which as many as 9 persons were tried such a

sketchy judgment should have been recorded by the trial Judge. The learned trial Judge to our regret has not exhaustively dealt with the evidence of the eye witnesses, and the other infirmities in the prosecution case. It may be that had the impugned judgment been better written this appeal may not have been filed. In the result this appeal is dismissed. The acquittal of respondents Stanley @ Starline, Sadashiv @ Baba, Abdul Hamid Abbas, Fakir Mohd @ Fakira and Mohamed Hasan on the various counts is confirmed. The said respondents are on bail. They need not surrender. Their bail bonds stand cancelled and sureties discharged. As mentioned earlier the appeal against respondents Abdul Kadar @ Raj Mohd. Kadar and Abdul Halim has been dismissed for non-prosecution vide the orders of this Court dated 24-2-1986 and appeal against respondents Karunakaran @ Karan and Munna has been ordered to abate by us as these respondents are dead. Before parting with this judgment we would like to put on record our appreciation for the assistance rendered to us by Ms. Gupta in the disposal of this appeal. The same to a very great extent has facilitated this judgement. In case an application for a certified copy of this judgment is made, the same shall be issued on an expedited basis.