

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 414 OF 2011
WITH
CRIMINAL APPEAL NO. 601 OF 2012
&
CRIMINAL APPEAL NO. 602 OF 2012**

- 1] Shivaji Kadaji Pawar,
Age: 53 Years, Occupation: Agricultural
- 2] Vilas Kadaji Pawar,
Age: 58 Years, Occupation: Agricultural
- 3] Namdeo Shivaji Pawar,
Age: 28 Years, Occupation: Agricultural

All R/o: Jamga, Tq. Nilanga,
Dist: Latur

.. APPELLANTS
[Orig. Accused
Nos.1,11 & 13]

VERSUS

State of Maharashtra
[Copy served on the Public
Prosecutor, High Court,
Bench at Aurangabad]

.. RESPONDENT

.....
Mr. Joydeep Chatterji, Advocate for Appellants
Mr. S.D.Kaldate, APP for Respondent - State.
.....

**WITH
CRIMINAL APPEAL NO. 601 OF 2012**

Shahuraj s/o. Baburao Pawar,
Age: 38 Years, Occupation: Agri.,
R/o. At post Jamga, Tq.Nilanga,

Dist. Latur.

.. APPELLANT

VERSUS

- 1] Shivaji s/o. Kadaji Pawar,
Age: 50 Years, Occupation: Agri.
- 2] Madhav s/o. Ganpat Shahapure,
Age: 52 Years, Occupation: Agri.
- 3] Pandhari s/o. Manik Pawar,
Age: 35 Years, Occupation: Agri.
- 4] Tukaram s/o. Shivaji Pawar,
Age: 20 Years, Occupation: Agri.
- 5] Abhimanyu s/o. Raosaheb Pawar,
Age: 22 Years, Occupation: Agri.
- 6] Manik s/o. Ramji Pawar,
Age: 45 Years, Occupation: Agri.& Grocery Shop
- 7] Satyanarayan s/o. Madhav Shahapure,
Age: 21 Years, Occupation: Education
- 8] Balaji s/o. Apparao Pawar,
Age: 25 Years, Occupation: Driver
- 9] Govind s/o. Ganpat Shahapure,
Age: 40 Years, Occupation: Agri : Service
- 10] Ashok s/o. Vishwanath Pawar,
Age: 48 Years, Occupation: Agri. & Service
- 11] Vilas s/o. Kadaji Pawar,
Age: 55 Years, Occupation: Agri.
- 12] Ashok s/o. Kadaji Pawar,
Age: 45 Years, Occupation: Agri.
- 13] Namdeo s/o. Shivaji Pawar,
Age: 25 Years, Occupation: Agri.
- 14] Waman s/o. Dadarao Pawar,

Age: 62 Years, Occupation: Agri.

- 15] Dhondiram s/o. Raosaheb Pawar,
Age: 38 Years, Occupation: Agri.
- 16] Vishwanath s/o. Vithal Pawar,
Age: 75 Years, Occupation: Agri.
- 17] Vaijinath s/o. Vithal Pawar,
Age: 70 Years, Occupation: Agri.
- 18] Udhav s/o. Shivaji Pawar,
Age: 22 Years, Occupation: Education
- 19] Pandurang s/o. Vishwanath Pawar,
Age: 48 Years, Occupation: Service
- 20] Satish s/o. Vajinath Pawar,
Age: 31 Years, Occupation: Business
- 21] Maroti s/o. Madhav Pawar,
Age: 48 Years, Occupation: Agri.
- 22] Vishnu s/o. Madhav Pawar,
Age: 33 Years, Occupation: Agri.
- 23] Chandrahar s/o. Vishwanath Pawar,
Age: 36 Years, Occupation: Agri.
- 24] Vinayak s/o. Raosaheb Pawar,
Age: 42 Years, Occupation: Agri.
- 25] Venkar s/o. Vajinath Pawar,
Age: 38 Years, Occupation: Agri.
- 26] Narayan s/o. Maroti Bhingole,
Age: 40 Years, Occupation: Agri.
- 27] Suresh s/o. Maroti Bhingole,
Age: 55 Years, Occupation: Agri.
- 28] Pandurang s/o. Maroti Bhingole,
Age: 48 Years, Occupation: Agri.

- 29] Haridas s/o. Manik Pawar,
Age: 36 Years, Occupation: Agri.
- 30] Prakash s/o. Kadaji Pawar,
Age: 40 years, Occupation: Agri.
- 31] Devidas s/o. Pralhad Pawar,
Age: 22 Years, Occupation: Agri.
- 32] Satish s/o. Baburao Pawar,
Age: 28 Years, Occupation: Agri.
- 33] Nagnath s/o. Raosaheb Pawar,
Age: 32 Years, Occupation: Agri.
- 34] Vimal s/o. Shivaji Pawar,
Age: 65 Years, Occupation: Household
- 35] Komal s/o. Maroti Pawar,
Age: 66 Years, Occupation: Household

All Respondents are
R/At: Jamga, Tal. Nilanga,
Dist. Latur

- 36] The State of Maharashtra,
Through: Asst. Police Inspector,
Police Station, Aurad Shahajani,
Tal. Nilanga, Dist. Latur

..RESPONDENTS

.....

Mr. A.S.Bayas & Vaishali Deshpande, Advocates for
Appellant

Mr. R.S.Shinde, Advocate for Respondent Nos. 4, 12, 30 &
34

Mrs. M.A.Kulkarni, Advocate for Respondent Nos.3, 14, 17
18, 20, 25, 29, 31 & 32.

Mr. T.M.Venjane, Advocate for Respondent Nos.2, 5 to 10,
15, 16, 19, 21 to 24, 26 to 28, 33 and 35.

Mr. S.D.Kaldate, APP for Respondent - State.

.....

WITH
CRIMINAL APPEAL NO. 602 OF 2012

The State of Maharashtra
Through Assistant Police Inspector,
Police Station Aurad Shahajani
Tq.Nilanga, Dist. Latur

.. APPELLANT

VERSUS

- 1] Shivaji s/o. Kadaji Pawar,
Age: 50 Years, Occu.: Agri.
R/o. Jamga, Tq.Nilanga, Dist. Latur
- 2] Madhav s/o. Ganpat Shahapure,
Age: 52 Years, Occu.& r/o. As above.
- 3] Pandhari s/o. Manik Pawar,
Age: 35 Years, Occu.& r/o. As above.
- 4] Tukaram s/o. Shivaji Pawar,
Age: 20 Years, Occu.& r/o. As above.
- 5] Abhimanyu s/o. Raosaheb Pawar,
Age: 22 Years, Occu.& r/o. As above.
- 6] Manik s/o. Ramji Pawar,
Age: 45 Years, Occu.Agri. & Grocery shop,
& r/o. As above.
- 7] Satyanarayan s/o. Madhav Shahapure,
Age: 21 Years, Occu.: Education
r/o. as above.
- 8] Balaji s/o. Apparao Pawar,
Age: 25 Years, Occu.: Driver
r/o. as above.
- 9] Govind s/o. Ganpat Shahapure,

Age: 40 Years, Occu. Driver
r/o. as above

- 10] Ashok s/o. Vishwanath Pawar,
Age: 48 Years, Occu. Agri. & Service
R/o. As above.
- 11] Vilas s/o. Kadaji Pawar,
Age: 55 Years, Occu. Agri.
R/o. As above.
- 12] Ashok s/o. Kadaji Pawar,
Age: 45 Years, Occu. & r/o. as above.
- 13] Namdeo s/o. Shivaji Pawar,
Age: 25 Years, Occu. & r/o. as above.
- 14] Waman s/o. Dadarao Pawar,
Age: 62 Years, Occu. & r/o. as above.
- 15] Dhondiram s/o. Raosaheb Pawar,
Age: 38 Years, Occu. & r/o. as above.
- 16] Vishwanath s/o. Vithal Pawar,
Age: 75 Years, Occu. & r/o. as above.
- 17] Vaijinath s/o. Vithal Pawar,
Age: 70 Years, Occu. & r/o. as above.
- 18] Udhav s/o. Shivaji Pawar,
Age: 22 Years, Occu. & r/o. as above.
- 19] Pandurang s/o. Vishwanath Pawar,
Age: 48 Years, Occu. & r/o. as above.
- 20] Satish s/o. Vaijinath Pawar,
Age: 31 Years, Occu. & r/o. as above.
- 21] Maroti s/o. Madhav Pawar,
Age: 48 Years, Occu. & r/o. as above.
- 22] Vishnu s/o. Madhav Pawar,
Age: 33 Years, Occu. & r/o. as above.

- 23] Chandrahar s/o. Vishwanath Pawar,
Age: 36 Years, Occu. & r/o. as above.
- 24] Vinayak s/o. Raosaheb Pawar,
Age: 42 Years, Occu. & r/o. as above.
- 25] Venkat s/o. Vaijinath Pawar,
Age: 38 Years, Occu. & r/o. as above.
- 26] Narayan s/o. Maroti Bhingole,
Age: 40 Years, Occu. & r/o. as above.
- 27] Suresh s/o. Maroti Bhingole,
Age: 55 Years, Occu. & r/o. as above.
- 28] Pandurang s/o. Maroti Bhingole,
Age: 48 Years, Occu. & r/o. as above.
- 29] Haridas s/o. Manik Pawar,
Age: 36 Years, Occu. & r/o. as above.
- 30] Prakash s/o. Kadaji Pawar,
Age: 40 years, Occu. & r/o. as above.
- 31] Devidas s/o. Pralhad Pawar,
Age: 22 Years, Occu. & r/o. as above.
- 32] Satish s/o. Baburao Pawar,
Age: 28 Years, Occu. & r/o. as above.
- 33] Nagnath s/o. Raosaheb Pawar,
Age: 32 Years, Occu. & r/o. as above.
- 34] Vimal s/o. Shivaji Pawar,
Age: 65 Years, Occu. & r/o. as above.
- 35] Komal s/o. Maroti Pawar,
Age: 66 Years, Occu. &
R/o. as above.

..RESPONDENTS
[Orig. Accused]

...

Mr. S.D.Kaldate, APP for Appellant - State.

Mr. R.S.Shinde, Advocate for Respondent Nos.4, 12, 30 & 34

Mrs. M.A.Kulkarni, Advocate for Respondent Nos.3, 14, 17 18, 20, 25, 29, 31 & 32.

Mr. T.M.Venjane, Advocate for Respondent Nos.2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35.

Mr. Joydeep Chatterji, Advocate for Respondent Nos.1, 11 & 13 [waived service]

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CORAM: S.S.SHINDE & A.M.BADAR, JJ.

Reserved on : 15th January, 2015.

Pronounced on : 23rd February, 2015.

JUDGMENT: [Per: S.S.Shinde, J.]

1] Accused No.1 Shivaji Kadaji Pawar and accused No.13 Namdeo Shivaji Pawar, and accused No.11 Vilas Kadaji Pawar, being aggrieved by the judgment and order of conviction, preferred the Criminal Appeal No.414 of 2011. The trial Court convicted the appellants - accused No.1 Shivaji s/o. Kadaji Pawar and accused No.13 Namdeo s/o. Shivaji Pawar for the offence punishable under Section 302 of I.P. Code, and they are sentenced to undergo imprisonment for Life and to pay a fine of Rs. Five Thousand each, in default, to undergo further R.I. for the period of two years. The appellants – original accused No.1 Shivaji Kadaji Pawar, original accused No.11 Vilas Kadaji Pawar, and original accused No.13 Namdeo Shivaji Pawar are also

convicted for the offence punishable under Section 452 of I.P. Code and they are sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. Two Thousand each, in default, to undergo further R.I. for the period of six months, and the accused No.1 Shivaji, accused No.11 Vilas and accused No.13 Namdeo are also convicted for the offence punishable under Section 324 of I.P. Code and they are sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. Five Hundred each, in default, to undergo further R.I. for the period of one month.

According to appellant – Shahuraj, the original complainant Baburao Pawar died due to heart attack. The appellant – Shahuraj is son of the deceased Baburao and also injured person in the incident, has filed Criminal Appeal No.601/2012 against 32 acquitted accused, and also against accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar and accused No.11 Vilas Kadaji Pawar for enhancement of their sentence. The State of Maharashtra has filed Criminal Appeal No.602/2012 against 35 accused. Since all the three Appeals are arising out of common Judgment and Order dated 30th June, 2011

passed by the Additional Sessions Judge, Nilanga in Sessions Case No. 14/2008, same are heard together and being decided by the common Judgment and Order.

Brief facts giving rise to the prosecution case are as under:

2] One Baburao s/o. Bhagwanrao Pawar was resident of village Jamga, Taluka Nilanga, District Latur. He resided in the house along with his wife, sons, daughters-in-law and their children together. Gram Panchayat election was held in the year 2007, and it was fought amongst two groups; one headed by Baburao and other by accused persons. Results of election were declared on 09.09.2007, in which four members from the panel of Baburao were elected and 3 members from the panel of accused were elected. On account of this election, quarrels used to take place between these two groups. Tense situation continued during the election process of Sarpanch, and ultimately, election was required to be conducted in presence of Tahsildar with Police Bandobast. The persons from the group of accused alleged to have kept grudge in the

mind against Baburao and his family members. Said Baburao had arranged dinner in his house on 09.01.2008 and had invited relatives and persons from village for dinner. The dinner was ready and persons from the house of Baburao with invitees were to start to take the meal. Meanwhile, Baburao and persons in the house heard noise from outside the house. Then Baburao and persons in the house came out and noticed that, 30 to 40 persons had come in the courtyard with weapons in the hands like sticks, rods. Persons were uttering words “ह्यांनी तर आपली हातातली ग्राम पंचायत घालवली, निकालाच्या दिवशीच यांना खलास करायला पाहिजे होते. त्यावेळेस वाचले. आता ह्यांचं बी पण ठेवू नका.” Uttering these words, the persons from the mob started assaulting the family members of Baburao. A person from the mob namely Shivaji s/o. Kadaji Pawar inflicted sword blow on the chest of Gyandeo, the son of Baburao. Other persons from the mob were giving blows to Gyandeo, Vijaykumar the brother of Baburao; Sanjay, Shahuraj and Sheshrao, the sons of Baburao; Bhagwat, the son of Vijaykumar. Then Baburao and other persons in the house intervened to separate fighting. Meanwhile, persons from the mob rushed against them and restrained them from interfering in the event. In

the event, Gyandeo, Vijaykumar, Sanjay, Shahuraj, Sheshrao and Bhagwat were lying on the earth. The assailants then ran away. Baburao and others injured shifted to the Hospital at Nilanga. Finally, Baburao lodged a complaint.

3] After lodging the complaint, offence came to be registered in Police Station, Aurad Shahajani vide Crime No.2/2008. Investigation was carried out by various Police Officers attached to concerned Police Station. API Shri Thorat prepared panchnama of the place of incident, recovered sticks and iron rods, then blood mixed earth from the place of incident, and proceeded to Nilanga Hospital where he drew inquest panchnama of the dead body of Gyandeo. He made arrest of 10 accused persons, seized their clothes, recorded memorandum statement of these 10 accused persons, and in pursuance to memorandums, recovered weapons from the places pointed out by those accused under the panchnama. He, subsequently, made arrest of accused Vilas, Ashok, Namdeo on 14.01.2008 under the panchnamas. He also recovered clothes from the persons of those accused under the panchnama. On

15.01.2008, he recorded memorandum statement of Balaji and Govind, and recovered weapons under the panchnamas at their instance. On 18.01.2008, he recorded supplementary statements of injured persons. On 20.01.2008, he recorded memorandum statement of accused Namdeo s/o. Shivaji, Vilas s/o. Kadaji and Ashok s/o. Kadaji, and recovered weapons under the panchnama as produced by them. On 21.01.2008, he recovered weapon that was produced by accused Ashok s/o. Vishwanath under the panchnama. On 31.01.2008, he forwarded seized Muddemal to C.A., Aurangabad by a letter. He, then, handed over investigation to API Anant Kulkarni, who made arrest of accused Nagnath s/o. Raosaheb Pawar, Komalbai and Vimalbai. Further investigation was carried out by API Laxman Kendre, who on 04.02.2008 recovered stick under the panchnama that was produced by accused Waman s/o. Dadarao. He forwarded letter to MSEB office and sought information about supply of electricity on the date of incident in village Jamga, more particularly in the house of the complainant. He received letter from the concerned office. On 05.04.2008, he submitted charge sheet against 14 accused, showing accused No. 15 to 37 absconding. On

20.05.2008, he recovered sticks and rods under panchnama that were produced by accused Vishwanath Pawar, Udhav Pawar and Vaijinath Pawar, who were on anticipatory bail. He recorded memorandum statement of accused Pandurang s/o. Vishwanath Pawar and recovered sword produced by him under the panchnama. On 16.06.2008, he made arrest of 13 accused persons and recorded memorandum of those accused and recovered weapons under panchnama that was produced by them. Finally, he submitted supplementary charge sheet against subsequently arrested accused, showing two accused absconding.

4] The Judicial Magistrate First Class, Nilanga after noticing that, main offences alleged against accused persons are exclusively triable by the Court of Sessions, committed case to the Court of Sessions vide his committal order dated 19.07.2008.

5] The trial Court framed charge against the accused at Exh.5 for the offences levelled against them. The contents of the charge came to be read over and explained to the accused, to which they did not plead guilty and

claimed to be tried. The defence of the accused is of total denial and about their false implication in the case.

6] The trial Court framed points for its consideration, and after recording evidence and hearing the parties convicted the accused No.1 Shivaji s/o. Kadaji Pawar and accused No.13 Namdeo s/o. Shivaji Pawar for the offence punishable under Section 302 of I.P. Code and they are sentenced to undergo imprisonment for Life and to pay a fine of Rs. Five Thousand only each, in default, to undergo further R.I. for the period of two years. The accused No.1 Shivaji Kadaji Pawar, accused No.11 Vilas Kadaji Pawar and accused No.13 Namdeo Shivaji Pawar are also convicted for the offence punishable under Section 452 of I.P. Code and they are sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. Two Thousand only each, in default, to undergo further R.I. for the period of six months, and the accused No.1 Shivaji, accused No.11 Vilas and accused No.13 Namdeo are also convicted for the offence punishable under Section 324 of I.P. Code and they are sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. Five

Hundred only each, in default, to undergo further R.I. for the period of one month.

The trial Court ordered that, all the substantive sentences shall run concurrently. Accused No.1 Shivaji, accused No.11 Vilas Kadaji and accused No.13 Namdeo were in jail during trial, and therefore, the set-off is given to them under Section 428 of Criminal Procedure Code. It appears that, accused No.1 Shivaji s/o. Kadaji Pawar, accused No.2 Madhav s/o. Ganpat Shahapure, accused No.3 Pandhari s/o. Manik Pawar, accused No.4 Tukaram s/o. Shivaji Pawar, accused No.5 Abhimanyu s/o. Raosaheb Pawar, accused No.6 Manik s/o. Ramji Pawar, accused No.7 Satyanarayan s/o. Madhav Shahapure, accused No.8 Balaji s/o. Apparao Pawar, accused No.9 Govind s/o. Ganpat Shahapure, accused No.10 Ashok s/o. Vishwanath Pawar, accused No.11 Vilas s/o. Kadaji Pawar, accused No.12 Ashok s/o. Kadaji Pawar, accused No.13 Namdeo s/o. Shivaji Pawar, accused No.14 Waman s/o. Dadarao Pawar, accused No.15 Dhondiram s/o. Raosaheb Pawar, accused No.16 Vishwanath s/o. Vithal Pawar, accused No.17 Vaijinath s/o. Vithal Pawar, accused No.18 Udhav s/o.

Shivaji Pawar, accused No. 19 Pandurang s/o. Vishwanath Pawar, accused No.20 Satish s/o. Vaijinath Pawar, accused No.21 Maroti s/o. Madhav Pawar, accused No.22 Vishnu s/o. Madhav Pawar, accused No.23 Chandrahar s/o. Vishwanath Pawar, accused No.24 Vinayak s/o. Raosaheb Pawar, accused No.25 Venkat s/o. Vaijinath Pawar, accused No.26 Narayan s/o. Maroti Bhingole, accused No.27 Suresh s/o. Maroti Bhingole, accused No.28 Pandurang s/o. Maroti Bhingole, accused No.29 Haridas s/o. Manik Pawar, accused No.30 Prakash s/o. Kadaji Pawar, accused No.31 Devidas s/o. Pralhad Pawar, accused No.32 Satish s/o. Baburao Pawar, accused No.33 Nagnath s/o. Raosaheb Pawar, accused No.34 Vimal w/o. Shivaji Pawar and accused No.35 Komal w/o. Maroti Pawar are acquitted of the offences punishable under Sections 147, 148, 149, 307, 504, 323 of I.P. Code, Section 135 of the Bombay Police Act and Section 4 read with 25 of the Arms Act, 1959. The accused Nos. 2 to 12, 14 to 35 named above were acquitted of the offences punishable under Section 302 of I.P. Code. Accused Nos. 2 to 10, 12, 14 to 35 named above were acquitted of the offence punishable under Sections 452 and 324 of I.P. Code. Bail bonds of accused No. 2 to 4, 6 to 10,

14 to 21, 23 to 27 and 29 to 35 named above stood cancelled due to order passed by the trial Court. Accused No.5 Abhimanyu s/o. Raosaheb Pawar, accused No.12 Ashok s/o. Kadaji Pawar, accused No.22 Vishnu s/o. Madhav Pawar and accused No.28 Pandurang s/o. Maroti Bhingole were in jail. The trial Court ordered that, they be set at liberty forthwith if not required in any other crime. Being aggrieved by the Judgment and Order dated 30th June, 2011 passed by the Additional Sessions Judge, Nilanga in Sessions Case No. 14/2008, three separate Appeal are filed by the convicted accused, by the State and the original complainant.

7] The learned counsel appearing for the appellants in Criminal Appeal No.414/2011, submitted that, the Court below has not at all properly appreciated the evidence on record causing miscarriage of justice. It is submitted that, the prosecution has miserably failed to prove its case against the appellants beyond reasonable doubt. It is submitted that, it is doubtful if the so called eye witnesses could discern the overt acts in the darkness. There are manifold contradictions and omissions which

completely demolished the evidence of the so-called eye witnesses. It is further submitted that, the injuries on the deceased were not possible by the weapons allegedly used. This is demonstrated from the evidence of the Doctor. It is also submitted that, blood group on the clothes of accused and weapons do not tally with the blood group of the injured. The blood group on the sword seized from accused – Shivaji and on the clothes is “O”. Shivaji did not assault PW-25 Vijaykumar, whose blood group is “A”. It is further submitted that, the weapons allegedly used have not been seized. Blood group of deceased is “O” but blood of group “O” is not detected on the soil seized from the spot.

8] The learned counsel appearing for the appellants submits that, in fact, it was not possible for the alleged eye witnesses to watch accused and his overt acts since according to the prosecution case, mob of 40 accused gathered at the alleged spot of the incident. According to the prosecution case, 39 accused formed unlawful assembly and villagers from the village also gathered near the spot of incident. It is submitted that, the trial Court was not correct in placing reliance on the version of the prosecution

witnesses since there are inherent omissions, contradictions and exaggeration. It is submitted that, the complainant has not attributed any overt act to accused - Namdeo, and therefore, he deserves to be given benefit of doubt. It is submitted that, the Hon'ble Supreme Court in the case of ***Masalti vs. State of Uttar Pradesh***¹ held that, when the prosecution alleges unlawful assembly of more than 5 persons, in such a case it would be unsafe to place reliance on the evidence of one witness, but there should be more than two witnesses for incident. It is submitted that, the prosecution case suffers from inherent contradictions, omissions and improvements, and therefore, the benefit of doubt deserves to be given to the appellants. The learned counsel invited our attention to the evidence of prosecution witnesses, and also the medical evidence and submits that, the evidence of prosecution witnesses if examined in the light of the admissions given in their cross examinations, and the portion marked in police statement, it unequivocally indicates that, the presence of the appellants was doubtful, and also there are no corresponding injuries traced out in the medical evidence so as to sustain conviction of the

1 AIR 1965 SC 202;

appellants. It is submitted that, if the version of the prosecution witnesses about accused – Vilas is carefully perused, the overt act attributed to him by his alleged assault by stick, there are no corresponding injuries as it is evident from the evidence of PW-28 Medical Officer. Therefore, the learned counsel appearing for the appellants relying upon the grounds taken in the appeal memo, relevant provisions of Indian Penal Code and the Evidence Act and also notes of evidence would submit that, the appellants deserve to be acquitted.

9] The learned counsel appearing for the appellant submits that, it has come in the evidence of prosecution witnesses [PW-22-Shahuraj] injured eye witness that, Vilas Kadaji had assaulted Shahuraj Pawar by stick on his left shoulder and stomach. However, the injury certificate at Exh. 301 of said injured Shahuraj Pawar does not at all show any injury on the left shoulder and stomach of injured Shahuraj Pawar. Moreover, the injuries shown is 'incised wound penetrating' by hard and sharp weapon. Manifestly, the stick is not hard and sharp weapon. It is also submitted that, it has come in the evidence of prosecution witnesses

[PW-25 Vijaykumar] injured eye witness that, Vilas Kadaji had assaulted Vijaykumar by stick on his head. However, the injury certificate [Exh.303] of said injured Vijaykumar, does not at all show any injury by stick on the head of the said Vijaykumar. The injuries caused to him are all 'Incised penetrating wounds' caused by hard and sharp weapon, and none are on the head. Considering above mentioned medical certificates, the prosecution evidence of injured eye witnesses PW-22 and 25 in respect of accused No.11 – Vilas is clearly falsified by the medical evidence i.e. Injury certificates.

10] The learned counsel appearing for the respondent – accused in Criminal Appeal No.602/2012 submits that, it has come in the evidence of prosecution witnesses / injured eye witnesses that, Ashok Kadaji had assaulted Sheshrao Pawar by 'Katti' on the right leg shin of Sheshrao Pawar. However, the injury certificate of said injured Sheshrao Pawar, does not at all show any injury on the leg of injured Sheshrao Pawar. It is further submitted that, it has come in the evidence of prosecution witnesses / injured eye witnesses that, Prakash Kadaji had assaulted

Shahuraj Pawar by iron rod on his back. However, the injury certificate of said injured Shahuraj Pawar does not at all show any injury by iron rod on the back of the said Shahuraj Pawar. The injury caused to him is incised wound caused by hard and sharp weapon. Considering above mentioned medical certificates, the prosecution evidence of injured eye witnesses in respect of accused Nos. 12 and 30 is clearly falsified by the medical evidence i.e. injury certificates.

11] The learned counsel Mr. R.S. Shinde appearing for the respondent – original accused Nos.4, 12, 30 & 34 further submitted that, if the entire evidence on record is considered, the presence of the accused Nos.4, 12, 30 & 34 is doubtful, and therefore, they deserves to be given benefit of doubt.

12] The learned counsel Mr. T.M.Venjane appearing for the respondent – accused Nos. 2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35 submits that, none of the witnesses have named these accused in their deposition before the Court. It is further submitted that, the presence

of these accused persons is not established by the prosecution at the spot of occurrence. It is further submitted that, when the presence itself is not established, further question of any overt act on behalf of the said accused would not arise. Therefore, he submits that, the order of acquittal passed by the trial Court, giving benefit of doubt deserves no interference.

13] The learned counsel Mrs. M.A. Kulkarni appearing for the accused – respondent Nos. 3, 14, 17, 18, 20, 25, 29, 31 and 32 submits that, the trial Court after appreciating the entire evidence on record, reached to the correct conclusion and acquitted the accused. The view taken by the trial Court is possible, and therefore, this Court may not interfere in the acquittal order. It is submitted that, evidence of the prosecution witnesses is not consistent with each other, and also suffers from the inherent contradictions, omissions and improvements, and therefore, same deserves to be discarded. It is submitted that, the complainant has not named all the accused in the complaint, and therefore, said aspect is also required to be considered by this Court. It is submitted that, the

supplementary statement of the complainant was not considered by the trial Court, and same was not read in the evidence, and therefore, this Court may not rely upon the said supplementary statement. Therefore, the learned counsel submits that, the Appeal filed by the State and also the complainant may be dismissed.

14] Upon careful perusal of the findings recorded by the trial Court, it appears that, trial Court compared statements of the prosecution witnesses under Section 161 with their depositions before the Court. It further appears that, trial Court instead of giving importance and due weightage to the substantive evidence in the nature of eye witnesses coupled with the medical evidence chose to acquit accused Vimalbai holding that the recovery of the weapon from her is not believable. In the present case, there is evidence of 11 eye witnesses and out of said witnesses, as many as 6 witnesses i.e. P.W. 22 to 26 sustained injuries. The injured witnesses Vijaykumar, Sanjay and Sheshrao, sustained grievous injuries, and in particular Vijaykumar sustained as many as 7 injuries, which could have caused his death in case he would not have got timely treatment.

Upon perusal of the Judgment of the trial Court, it appears that, trial Court totally ignored the prosecution case that, the accused more than 5 in numbers went to the house of the complainant Baburao with the deadly weapons. They were aggressors. They were giving slogans. Sum and substance of their slogans was that, they will see that, not even a single member of the family of the complainant is left alive. In furtherance of their common object to cause grievous hurt to the members of complainant's family, accused went to his house entered in the courtyard with deadly weapons committed criminal trespass with afore mentioned object and actually committed various offences. Therefore, it was the duty of the trial Court to address all the issues – points arose before it, and render the findings thereupon. However, as already observed, the trial Court even did not make an attempt to find out that, whether the accused persons gathered together with deadly weapons, they were more than 5 in numbers, they were aggressors inasmuch as they all went to the house of the complainant in the evening, they were giving slogans that, they will ensure that, not a single member from the family of the complainant is left alive. The accused had knowledge that,

such deadly weapons carried by some of the accused, would be used for commission of offence, which would result into grievous injuries, and also death and as a matter of fact, Gyandeo died during attack, and 6 persons were injured.

15] This Court is exercising powers – jurisdiction under Section 386 of Criminal Procedure Code, which reads thus:

386. Power of the Appellate Court. -

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

414 (b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) *with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;*

(d) *in an appeal from any other order, alter or reverse such order;*

(e) *make any amendment or any consequential or incidental order that may be just or proper:*

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

16] Since we are deciding three Appeals, one filed by the convicted accused No.1 Shivaji, accused No.11 Vilas and

accused No.13 Namdeo; another Appeal is filed by the State against the acquittal of the remaining accused and for enhancement of the sentence of the three convicted accused, and the original complainant has filed statutory Appeal under Section 372 of Criminal Procedure Code, and therefore, in view of the provisions of Section 386 of Criminal Procedure Code it is permissible for this Court to appreciate the entire evidence on record and pass the appropriate order as permissible within the ambit and scope of Section 386 of Criminal Procedure Code.

17] We have given careful consideration to the submissions advanced by the learned counsel appearing for the convicted accused, the learned Additional Public Prosecutor appearing for the State in Criminal Appeal No.602/2012, and the learned counsel appearing for the complainant in Criminal Appeal No.601/2012, with the assistance of the learned counsel, we have carefully perused the entire evidence, relevant provisions and also Judgments of the High Court and the Hon'ble Supreme Court cited across the bar by the learned counsel appearing for the respective parties. Since three Appeals are arising out of

the conviction of three accused and acquitted of remaining accused by the trial Court, we propose to re-appreciate the entire evidence available on record. At the outset it would be relevant to reproduce herein below charge framed against the accused by the trial Court:

i] That, you accused No.1 to 35 along with absconding accused Dayanand S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on 09.01.2008 at about 7=20 p.m. at the house of the complainant Baburao S/o Bhagwanrao Pawar situated at village Jamaga, Tq. Nilanga, Dist. Latur, were members of an unlawful assembly, the common object of which was to assault the complainant and his family members, and thereby committed an offence punishable under Section 143 of Indian Penal Code and within the cognizance of Court of Sessions.

ii] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, viz., to assault the complainant and his family members,

committed the offence of rioting, punishable under Section 147 of Indian Penal Code and within the cognizance of Court of Sessions.

iii] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, viz., to assault the complainant and his family members, committed the offence of rioting, and at that time, were armed with sword, knives, dagger, large sickle (Katti), rods and stick, which are sharp cutting instruments and used as weapon of offence, was likely to cause death, and thereby committed an offence punishable under Section 148 of Indian Penal Code and within the cognizance of Court of Sessions.

iv] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, viz., to assault the complainant and his family members, committed house trespass by entering into the house of the complainant Baburao Pawar,

which is used as a human dwelling and as a place for custody of property, having made prepared for causing hurt to them by means of sword, knives, Katti, dagger, rods and sticks or to put them under fear of hurt or assault or wrongful restrain and thereby committed an offence punishable under Section 452 read with 149 of Indian Penal Code and within the cognizance of Court of Sessions.

v] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, assaulted complainant's son Gyandeo alias Dnyanoba, by means of sword and knives and committed his murder intentionally or knowingly caused his death, and you all thereby committed an offence punishable under Section 302 read with 149 of Indian Penal Code and within the cognizance of the Court of Sessions.

vi] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the

common object of said assembly, assaulted the complainant's sons Sanjay, Shahuraj and Sheshrao, his brother Vijaykumar and nephew Bhagwat by means of sword, knives, dagger, Katti, rods and sticks and caused them grievous injuries, with such intention or knowledge, and under such circumstances that if by that act you had caused the death of above persons or either of them, you would have been guilty of murder, and you all thereby committed an offence punishable under Section 307 read with 149 of Indian Penal Code and within the cognizance of Court of Sessions.

vii] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, voluntarily caused hurt to the complainant Baburao, his sons Sanjay, Shahuraj and Sheshrao, his brother Vijaykumar and nephew Bhagwat by means of sword, knives, dagger, Katti, rods and sticks, sharp cutting instruments and which used as weapon of offence was likely to cause death, and you all thereby committed an offence punishable under Section 324 read with 149 of Indian Penal Code and within the cognizance of

Court of Sessions.

viii] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, voluntarily caused hurt to the complainant Baburao, his sons Sanjay, Shahuraj and Sheshrao, his brother Vijaykumar, nephew Bhagwat and other family members, and you all thereby committed an offence punishable under Section 323 read with 149 of Indian Penal Code and within the cognizance of Court of Sessions.

ix] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, intentionally abused and insulted the complainant Baburao Pawar and his family members and thereby gave provocation with intent to or knowingly that such provocation would cause them to break the public peace and you all thereby committed an offence punishable under Section 504 read with 149 of Indian Penal Code and within the

cognizance of Court of Sessions.

x] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, you all have contravened the proclamation issued by the District Magistrate, Latur under Sections 37 of the Bombay Police Act, prohibiting formation of an assembly and to be armed with deadly weapons etc., and thereby committed an offence punishable under Section 135 of the Bombay Police Act, 1951 and within the cognizance of Court of Sessions.

xi] That, you accused No. 1 to 35 along with absconding accused Dayananad S/o Maroti Bhingole and Madhav S/o Shivaji Pawar, on the aforesaid date, time and place, were members of an unlawful assembly, and in prosecution of the common object of said assembly, possessed weapons like sword, knives, dagger, katti without requisite licence, despite issuance of such proclamation by competent authority in this area, and thereby committed an offence punishable under Section 4 read with 25 of The Arms Act, 1959 and within the cognizance of

Court of sessions.

These Appeals raise various points for consideration and determination *firstly*, what are the facts – circumstances prior to occurrence of incident, which laid to actual incident. *Secondly*, whether there was prelude to the incident which occurred on 9th January, 2008. Whether each member of the assembly had knowledge that, by the acts of members of assembly, carrying deadly weapons, would result in grievous hurt to the persons from the complainant's family and other persons present at the spot of the incident. *Thirdly*, whether the accused persons went to the house of the complainant i.e. place of incident, with deadly weapons so as to cause grievous hurt to family members of the complainant's family. *Fourthly*, whether the accused formed unlawful assembly and in furtherance of the common object to assault / cause grievous hurt to the family members of the complainant so as to finish the complainant's family, assaulted the deceased Gyandeo and other persons by weapons like sword, knife, *katti*, sticks, stones, iron rod and fist blows. *Fifthly*, as a result of the assault – attack by the accused persons, there was death of

Gnyandeo and other 6 witnesses sustained injuries dangerous to their life. *Sixthly*, whether each accused member of the unlawful assembly present at the place of occurrence, in furtherance of their common object to assault / cause grievous hurt so as to finish each member of the complainant's family, can be held responsible for the commission of murder of Gyandeo and other injuries on persons. *Seventhly*, whether the ingredients of the provisions of Section 302, 307, 323, 324, 452, 504, 141, 142, 143, 148 and 149 of Indian Penal Code are attracted in the light of the evidence brought on record through eye witnesses, medical evidence and other evidence. *Eightly*, whether each accused whose presence in the unlawful assembly is established by the prosecution, can be held responsible for the commission of offence of murder of Gyandeo and said accused can be punished for life under Section 302 with the aid of Section 149 of I.P. Code. *Ninethly*, whether the prosecution has proved the spot of occurrence and also there was sufficient light so as to watch the incident by the prosecution witnesses.

18] These are the afore mentioned broad points –

aspects arise for the consideration – determination of this Court for which entire re-appreciation of the evidence is necessary.

19] The prosecution has proved spot of incident and spot panchanama through PW-14 Dnyanoba Kadaji Sagare. His evidence is at Exhibit-224 and also Investigating Officer. It would be apposite to reproduce herein below relevant portion of the contents of spot panchanama duly translated by the official Translator of the High Court Registry in English, which reads thus:

SPOT PANCHNAMA

FIRST INFORMATION REPORT NO.

2/2008

REGISTERED ON 10-01-2008

Offence U/Sse. 302, 307, 452, 324, 323, 504, 143, 147, 148, 149, of I.P.C. Sec. 4, 7, (1) 26(3) 27(3) Indian Arms Act and 135 of Bombay Police Act.

Name of the Informant :-

1) Baburao Bhagwanrao @ Bhavan

Pawar,

R/o Jamga, Tal.Nilanga, Dist.Latur.

Mr.M.D.Thorat, A.P.I., Police Station, Aurad (Sha.) called us, the panchas, to act as panchas, in front of the house of Baburao Bhagwanrao @ Bhavan Pawar, R/o Jamga, Tal.Nilanga, Dist.Latur for preparation of a panchnama in connection with Crime No.2/2008 for the offence u/s. 302, 307, 452, 324, 323, 504, 143, 147, 148, 149, of IPC u/s 4, 7, (1) 26(3) 27(3) Indian Arms Act and 135 of Bombay Police Act. On the spot, the complainant was present. He demonstrated the spot of incident. He narrated facts of incident. Accordingly, we, the panchas, accepted the same and agreed to act as panchas.

The complainant, who was present at the spot, stated his name to be Baburao Bhagwanrao @ Bhavan Pawar, R/o Jamga, Tal. Nilanga, Dist. Latur. He narrated the incident before the panchas. In the year 2007, elections of Gram panchyat were held. In that election, our panel got majority. My daughter-in law was elected as Sarpanch of the village

Gram panchayat. Being aggrieved by the said election, rival group, headed by viz Shivaji Kadaji and his associates was having grudge in their mind, from the date of election till election of Sarpanch and Upsarpanch. They deliberately created hurdles in the day to day work of Gram Sabha. As the Sarpanch of village was from our family, they decided to kill the family members. The accused namely Shivajii Kadaji Pawar and other 35 to 36 persons, by holding weapons like sword, knife, sickle, sticks, iron bars and axe in their hands and giving slogans, suddenly, on 09-01-2008 at about 7.15 p.m, came to our house. They pelted stones. They asked all family members to come out of the house. They threatened that they will not leave any body from his family to remain alive. They will finish entire family. On the call, we, the family members, viz, sons, daughter-in-laws, brothers, sister-in-laws, and the relatives, who were gathered on account of a function known as "Kanduri", came out of the house, in the court yard. All accused assaulted my son namely Dnyadeo with the help of sword, knife and sickle in the

court yard and committed murder of my son. They also assaulted my son Sanjay Bhau Vijaykumar and nephew Shahuraj with sword and sickle, causing serious injuries. Myself, my family members and relatives were also beaten. The complainant also shown the spot of incident where deceased Gyndeo, injured Vijaykumar, Shesharao and Shahurao Bhagwat were lying.

While observing the said spot, it is noticed that the said location is a new habitat village Jamga, towards the road leading Nilanga to Sonkhed, towards East-West side, where house of Shri.Baburao Bhagwanrao @ Bhavan Pawar is situated. Said house is situated in the newly occupied area having its face on West side, adjacent to the road towards South-North corner. The house of Baburao Pawar is situated in his own land bearing Gut No. 48(b). The area of said residential house is 95 X 75 feet, towards East-West and North South. Said spot is adjacent to the tar road, at the distance of 22 feet and one room, constructed with brick and cement, consisting of 25 X 18 size,

having door of tin-shutter, which is used as front hall, wherein, sags of grains have been kept. The said room is also having a door of small shutter, wherein, an arrangement of electric light has also been made. Adjacent to the said room, a heap of sand has also been noticed. From the said spot, it is said that, open space of informant is situated at a distance of 50 feet, where a stones were lying scattered. The room which was constructed by cement and bricks is also having 20 feet open space towards Eastern side.

A roof of 18 X 15 size, made of a sheet of dried steams or twigs, is also fixed. On the Eastern side, a tin shed was fixed, as if a wall to the said house. A wooden frame, having a latch and a lock affixed and two folded wooden doors, has also been affixed. While inspecting and entering in the tin shade house, from the door, three sides of wall made up with tin, were noticed. One wooden almirah was found kept adjacent to the door and near a partition of tin which runs towards North side. It was noticed that,

in the kitchen room an earthen kiln was kept. Besides this, in the said tin shed compartment, towards Southern side, two big pots of grains (Kangis) were also noticed. In the same compartment, a cradle was affixed for the use of minor children. Towards the same line of compartments, two rooms have also been constructed towards Southern side. On the South West side, there is a bath room and water tank. Out of two rooms towards Southern side, one has six tins on roof. It is having a cot and T.V. In the same line of compartment, West sides two rooms have been constructed. Out of these two rooms, one room consists of 8 tins on roof, wherein, an iron cot along with household articles are kept. In the room towards Southern side, there is an iron cot, a row of pots, a house of deities and other goods & chattels are kept. In the said three tin compartments, few plates & dishes containing non-veges items were kept ready for being served at the dinner with informant and other male members and invitees. This is the position of the house as was seen. The informant present here has told where the deceased

Gyandev was lying injured. Looking at that place, it is at a distance of 10 feet, in front of the door of tin shed house, towards the West and at a distance of 20 feet, behind the room built by brick and cement. At the said place, there are many big stains of blood. The said place looks like as if it has been dug into by feet of a person. Next to the tin-shed house's door towards the North, there is a big wooden log, used for heating water, which faces the West. Towards the West, in the open court-yard, at the distance of 20 feet, there is the spot where injured Vijay Kumar was lying. At the said spot, at many places, it appears that blood was spilled and stains thereof appear in the shape of blood being clogged there. The door of the brick cement house faces the North and 5 feet from here, is the place where the sand is put and spread where injured Shahuraj Pawar was lying and was found in injured condition. The injured was found lying where the sand was spread. The dried blood can be found on the sand. At the place of incident five sticks, two iron rods are seen lying, as also, small stones are seen lying in the

courtyard and in the tin shed house. An electric wire taken from the house adjacent to the tin shed house and a big bulb hanging from it can also be seen. Towards the West side of the plot of Baburao Pawar and near the Eastern road, there is a horizontal water tank and a vertical water tank. Next to the vertical water tank, an electric cement pole, with a Gram Panchayat bulb, can also be seen. At the place of incident, in the court-yard and on terrace, five sticks - both long and short - two iron rods of different lengths and samples of blood mixed with sand, from two places, have been taken in the presence of the "panchas". The slips of signatures of police and panchas have been attached thereon. The photographs of the place of incident have been taken by a photographer from Aurad (Sh) city.

The four directional boundaries, as seen; from the place where the dead / injured was found, are :-

Towards the East : Residential house of the informant viz. Baburao Pawar and in front of it, there is a plot owned by

Baburao Bhagwanrao Pawar.

Towards the West : Open space in front of the informant's house as well as a living room built by brick and cement and in front of it, a tar road running towards North South, from Nilanga to Sonkhed.

Towards the South : Residential house of Dilip Bhagwanrao Pawar and there is an open Court yard in front of the house. In front of it, residential house of Vijaykumar Bhagwanrao Pawar.

Towards the North : Open plot belonging to the informant Baburao Pawar upt 30 feet. Next to it, is the a agricultural field of Ganesh Shankar Pawar. The crop of harvested tur dal was seen lying. In front thereof, there is residential house constructed in bricks and cement belonging to Raosaheb Bhalrao Suryawanshi.

The abovesaid place of incident seems to be in the courtyard of the residential house of the informant Baburao Bhagwanrao Pawar which consists of 95 X 75 plot which is situated at village Jamga.

The abovesaid panchnama is written, from the beginning to the end, in the presence of the "panchas" and same is read over to them, which is true and correct.

[Emphasis supplied]

20] The prosecution has examined Dnyanoba Kadaji Sagare as PW-14, who acted as panch. He stated in his evidence before the Court that, he came to know about murder of Gyandeo and then came to Jamga. Police had called him for panchanama at the house of Baburao Pawar. Baburao, Dilip, Chandrakant, Kamlakar Jadhav etc. were present. Baburao showed them the spot of incident. At the spot of incident, 5 sticks and 2 iron rods were noticed. There were plates, small-plates and the pot having cooked Mutton. One bulb was in the roof of courtyard. There was also bulb in the shop which part of the house. Near the shop by the side of road, there was bulb on electric pole. At two places on the earth, blood was noticed. Police collected blood mixed earth in two bags. Lables bearing signature of PW-14 and another panch were affixed on the sticks and iron rod. Police had brought with them cameraman and he

snapped photographs of the place of incident. Police prepared panchnama at the spot and obtained his signature. Panchnama now shown to him is the same. It bears his signature. Panchnama is at Exh.225. Sticks, iron rods shown to him are the same, which bears their signatures lables. Those are articles 2 and 3.

This witness was cross examined on behalf of accused Nos. 3 and 29. Through his cross examination defence tried to bring it on record that, this witness is relative of the complainant Baburao. It is true that, this witness has admitted that, the complainant is his brother in law. However, he specifically stated that, panchnama was effected from 7.30 to 8.30 a.m. on 10th January, 2008. Place of incident is a plot admeasuring 95 x 75 sq. ft. The plot is located in the land of Baburao. The construction is at two places in that plot. Incident took place in the portion on backside of shop and front side of the house. The said vacant portion where incident took place admeasuring 25 x 18 sq. ft. Pot containing cooked Mutton was inside the house. There was only one pot. There were ten dinner plates and 10 small plates. He has specifically denied the

suggestion that, blood lying on the earth was of crock. He further stated that, Police collected blood mixed earth only. He also stated that, he noticed sticks, also iron rods, however, he does not know length of such sticks and iron rod. In his cross-examination, he reiterated his version in examination in chief that, the spot panchanama is prepared in his presence and he has signed the same.

According to the prosecution case, the incident had taken place after 7.00 p.m. and there was sufficient light to witness the incident, and according to defence, there was dark. Prosecution did examine PW-8 Shailesh Narayanrao Patil, who was working as Junior Engineer with MSEDCL, Nilanga, Unit Rural 2 at the relevant time. In his examination in chief, he stated that, he is serving since 1999. He is attached to Nilanga Unit as Junior Engineer since 2006. Police had addressed one letter dated 29.02.2008 to his office. It is the same, shown to him. It is his signature on that letter. It is at Exhibit 156. He had given reply to that letter. It is the same shown to him. It bears his signature. It is at Exhibit 157. He did bring the Daily Load Record Register. He has given reply to the letter

of Police after referring the entry in DLR Register. In DLR Register there are entries of existence of electricity on 09.01.2008. He has brought the attested copy of entry in DLR Register dated 09.01.2008, which is as per original, and which is at Exhibit 160.

In his cross examination, nothing has been brought on record by the defence so as to disbelieve his evidence. Therefore, prosecution has proved that, there was electric supply available on the date of incident at the relevant time. To that effect Exhibit 157 has been proved by the prosecution through PW-8. The evidence brought on record unequivocally indicates that, on the date of incident there was electric supply and as a matter of fact, at the time of incident, there was sufficient light, and therefore, the witnesses had sufficient opportunity to watch the incident and also to see the accused persons. As per the prosecution case, panel supported by accused persons did loose in the Gram Panchayat elections inasmuch as they could not get the requisite strength of elected members to have their control. There was an attempt on the part of the accused even on earlier occasions to create dispute, and as a matter

of fact threats were extended by them that, they will not allow to hold Gram Sabha. It has come on record through the prosecution witnesses that, though the election of the post of Sarpanch was scheduled to be held on 23.11.2007, however, it was postponed on next day i.e. on 24.11.2007 due to tense situation created by the accused persons not allowing to hold the election on scheduled date. It is also relevant to mention that, accused persons are resident of the same village, and therefore, the witnesses knew them. Therefore, the question of holding identification parade for identifying them was not necessary, when the witnesses had sufficient opportunity to see the accused persons on the spot.

21] The prosecution examined Dattatraya Narayan Gosavi as PW-9, who was working as Gramsevak at village Jamga at the relevant time. His evidence is at Exhibit 168. He stated that, he was called by the Police in the Court on 28th March, 2008. The complaint was read over to him. The complaint was relating to the incident occurred in the village Jamga. Police demanded Form No. VIII regarding house of Baburao Bhagwan Pawar. Accordingly, he issued extract to

the Police. He stated that, the extract shown to him is the same, which is at Exhibit 169. He specifically denied the suggestion in the cross examination that, he did not issue VIII-A extract, as per the original to the Police. He further stated that, at the relevant time daughter in law of the complainant was Sarpanch of the village Jamga. Therefore, the prosecution has proved that, the house where incident had taken place is belonging to the complainant Baburao.

22] The inquest panchanama of dead body of Gyandeo is at Exhibit-62. The said inquest panchanama has been proved by the prosecution by examining Rajendra Pandu More as PW-1, whose evidence is at Exhibit-61. In his evidence, he stated before the Court that, on 10.01.2008, he had been to Nilanga. On 09.01.2008 at 11.00 p.m. he received telephonic call that, there was an attack on the house of his relative, and the relatives had come to Nilanga, and so, he came to Nilanga. He came to Nilanga on 10.01.2008 at Sub District Hospital at Nilanga. He was called by Police at 7.30 a.m. for panchanama, as he was relative of the complainant. The other panch Shahuraj Patil was also called by police. They both panch witnesses

went near the dead body of the deceased Gyandeo @ Dnyanoba. They saw the dead body and injuries on the dead body.

23] He further stated that, he saw the injuries on the head below left ear. It was cut injury admeasuring 2 inch. He saw the hair at the backside of the head were smeared with blood. He saw that, the eyes and the mouth of the deceased were half-opened, and there was saliva coming from the mouth. He saw injury on the left side of the chest, and it was 2 ½ inch in the length and 0.75 inch deep. It was bleeding injury. He saw 2 injuries on the stomach. Each injury was of 1 inch. He saw the back of the deceased, and there were 2 injuries on the back, and those injuries were 1 inch length and depth. The private part of the deceased was intact and there was no bleeding or semen. There was abrasion on the shoulder. There was abrasion on right knee.

24] He further stated that, the panchnama was written in their presence. It was read over to them. The photographs of the dead body were taken by the photographer. Then he himself, Shahuraj Patil signed said

panchnama. The panchnama shown to him is the same. The panchnama was completed between the period 7.30 a.m. to 8.30 a.m. The contents of the panchnama are correct, which is at Exhibit 62.

Upon perusal of his cross examination, it appears that, defence tried to bring on record that, he is close relative of the complainant except said admission, nothing useful to the defence has been brought on record by the prosecution so as to disbelieve evidence of said witness. The inquest panchnama is also proved by the prosecution through Investigating Officer and Shahurao Baburao Patil.

25] It appears that, clothes of the deceased Gyandeo were seized on 10.01.2010. The panchnama to that effect has been prepared. The said is given Exhibit-65. It appears that, Tanaji Nagorao Gade and Satyanarayan Pandurang Dapake were the panchas for the said seizure panchnama. Rajeshwar Dhondiba Hampalle was examined as PW-3. His evidence is at Exhibit 94. He stated that, on 10.01.2008, he was present in Sub District Hospital, Nilanga when there was post mortem of deceased Gyandeo. He has taken the

clothes on the person of deceased in his custody after the post mortem. The clothes were bunian, pant, sweater, nicker, and one white big handkerchief. Those clothes were in Aurad Police Station. He submitted report to that effect to the Police Station. He identified the contents of the said report before the Court and also his signature. He stated that, the contents of the said report are true and correct. Nothing useful to the defence has been brought on record so as to disbelieve the evidence of this witness before the Court.

26] It appears that, Tanhaji Nagorao Kale who was panch to the seizure of the clothes on the person of the deceased Gyandeo and was examined as PW-4. However, he stated before the Court that, the clothes of Vilas Kadaji Pawar, Ashok Kadaji Pawar, Shivaji Kadaji Pawar were not seized in his presence. However, he has not stated that, clothes on the person of Gyandeo were not seized in his presence. It appears that, clothes of the deceased Gyandeo, which were seized were sent to the Regional Forensic Science Laboratory, State of Maharashtra, Old Nizam Bungalow Cantonment, Aurangabad. The description of the

clothes – articles contained in parcels was Sando Banian [cut] wrapped in cloth labelled – A1, full pant [cut] wrapped in cloth labelled – A2, Sweater wrapped in cloth labelled – A3 belongs to the deceased Gyandeo was sent to the Regional Forensic Science Laboratory, State of Maharashtra. The result of the analysis of the said article A1 to A3 is those were soaked with blood. It further appears that, in presence of PW-2 Govind Keshavrao Birajdar the Police seized clothes on the person of the accused. This witness in his evidence stated that, on 10th January, 2008, he had been to attend funeral of the deceased son of the complainant. The Police called him at Aurad Shahajani Police Station so as to seize clothes on the person of accused. He himself and Hanmant Sagre had been to the said Police Station. They reached at the Police Station at about 4.45 p.m. The Police seized clothes on the person of accused in their presence. He stated the names of accused whose clothes were seized in their presence, which are as follows: 1] Mahadeo Ganpati Shahapure, 2] Shivaji s/o. Kadaji Pawar, 3] Tukaram s/o. Shivaji Pawar, 4] Abhimanyu s/o. Ramsaheb Pawar, 5] Ashok s/o. Vishwanath Pawar, 6] Govind s/o. Ganpati Shahapure, 7]

Satyanarayan s/o. Madhav Shahapure, 8] Pandhari s/o. Manik Pawar, 9] Manik s/o. Ramji Pawar, and 10] Balaji s/o. Apparao Pawar.

27] He further stated that, he had seen clothes seized by Police. He saw blood stains on the clothes seized. The Police seized clothes of those accused by preparing separate 10 panchnamas. The panchnamas were commenced at 5.00 to 5.15 p.m. and were completed till 10.20 p.m. He can identify the clothes seized in his presence, if shown to him. He further stated that, the police prepared 10 separate panchnamas of seizure of clothes. Each panchanama shown to him bears his signature. Content of each panchnamas, which are at Exhibit 77 and 86. The panchnamas at Exh.81 to 86 was shown to this witness before the Court and he stated that, there were blood stains on all clothes seized under the panchnama at Exh.77 to 86. During his cross examination, the defence has brought on record that, he is in blood relations of the complainant Baburao. He has specifically denied suggestion that, he was not able to identify accused persons. He has denied the suggestion that, Police prepared

false panchnama and obtained his signature. He further denied suggestion that, since he being relative of the complainant his signatures are obtained on the panchanama. However, he stated that, accused namely Govind Shahapure, Satyanarayan Shahapure, Pandhari Pawar, Manik Pawar and Balaji Pawar, their clothes were seized. It was not mentioned in panchanama at Exh.81 to 86 that, their clothes were blood stained. However, according to this witness, panchanama at Exh.81 to 86 are false, therefore, the evidence of this witness so far at Exh.77 to 80 and blood stains found on the clothes which were seized appears to be correct.

28] The prosecution did examine PW-5 Subhash Vishwanath Solanke, his evidence is at Exhibit-111, to prove memorandum statement given by the accused Balaji Apparao Pawar and accused Govind Ganpatrao Shahapure. In his evidence, he stated that, accused Balaji Apparao Pawar has given memorandum statement that, he has concealed stick in his house and he would hand over the same. The said memorandum was reduced into writing by Police. It bears his signature and also signature of other

panch Shahajirao. Contents of the said memorandum panchanama are true and correct. He stated that, the accused Govind Ganpatrao Shahapure has also given memorandum statement stating that, he has concealed stick in his house, and he would hand over the same. Police reduced into writing said disclosure in his presence. He identified the contents of the said memorandum panchanama and also he bears signature and signature of other panch Shahajirao.

According to this witness that, the accused Balaji Pawar removed one stick which was under the wooden flanks and same was handed over to the Police in presence of the panchas. He further stated that, accused Govind Shahapure also removed one stick from beneath the matrix on the wooden bed and same was seized by Police in their presence under the panchanama. He identified his signatures and also the stick. In his cross examination, the defence has brought on record that, this witness was relative of the deceased Gyandeo. He has denied suggestion that, the sticks were seized in the Police Station itself.

29] The prosecution did examine Ramakant Uttam Solanke as PW-6. In his evidence, he stated that, accused Ashok Pawar gave memorandum in his presence and showed willingness to hand over one stick from his house. He identified the memorandum panchnama. He stated that, Yuvraj Solunke was another panch. He stated that, the accused entered in the house and handed over one stick to Police. The said stick was at the corner of the room behind row of earthen pots. Nothing useful has been brought on record by the defence so as to disbelieve his version in the examination in chief.

30] The prosecution examined one Goroba Chanderrao Ghorpade as PW-7, who was as Naik Police Constable, B.No.1114, Police Station, Latur on 13.01.2008. He stated that, on 13.01.2008, he had been to Civil Hospital, Latur. Four injured persons were under medical treatment in the said Hospital. He has taken clothes of injured persons from the said Hospital to the Police Station, Aurad Shahajani and he handed over those clothes to PSO, ASI Shri Chavan. He further stated that, those clothes were seized under the panchnama. Accordingly, he submitted

report to the Police Station. He identified the said report and bears his signature, which is at Exh.127. In his cross examination he stated that, he denied suggestion that, report prepared by him was not true.

31] The prosecution examined Madhukar Bapurao Pawar as PW-11. His evidence is at Exhibit-190. He stated in his evidence that, on 20.05.2008, police had called him in the village. He was coming to his house from the field. He reached near the bridge and the Police called him there. Police seized weapons there. Weapon was by the side of stream, and the said stream was by the side of land of Narsing. Weapon was the sword. Police seized the sword. He signed on the panchnama. He identified the weapon at Article No.29. This witness was declared hostile by the learned APP. In his cross examination, he stated that, he know Pandurang Pawar. Pandurang stated in his presence to police that, he will produce the sword and police reduced into writing his disclosure. It bears his signature. It is at Exhibit 191. He went near the bridge. From there below the bridge from the earth below the cement pipe Pandurang removed sword and Police seized it. He signed on the said

panchanama. Panchanama shown to him is the same. It bears his signature. It is at Exh.192. He further stated that, the sword shown to him at Article No.2 is the same. Therefore, he denied suggestion given by defence that, Police called him for panchnama for being rival of Pandurang. He denied the suggestion that, their signatures were obtained on the Panchnama in the village. He further stated that, he denied suggestion that, he is deposing due to political rivalry with Pandurang.

32] The prosecution examined Ram Sambhaji Pawar as PW-12, whose evidence is at Exhibit-209. In his evidence, he stated that, on 04.02.2008, he was at village Jamga. On that day, police had called him. Waman Dadarao Pawar was with the Police. Dayanand Pawar was also with them. Police took him at the house of Waman. Waman produced there a stick from his house. Police seized stick under the panchanama. He signed said panchanama as witness. He identified his thumb impression. Panchanama is at Exhibit 210. The defence has brought on record in cross examination that, this witness is a relative of the complainant Baburao.

33] The prosecution examined one Narsing Namdeo Hingole as PW-13, whose evidence is at Exh. 211. He stated that, on 20.05.2008, he was taken by Police to the house of Vishwanath Pawar. Police took inspection of his house. Vishwanath Pawar handed over one stick to Police which was kept by the side of grain store. Police affixed chit on the stick with his signature and seized it under the panchanama. He identified the said panchanama and his signature [Exh. 212]. He also identified the muddemal stick shown to him before the Court which is at Article No.4. He further stated that, Police took him to the house of Vaijinath Pawar and inspected the house. Vaijinath Pawar produced one stick kept under the cot. Police affixed chit on it with his signature and seized stick under the panchnama. He identified his signature and contents of the said panchanama [213]. He further stated that, Police took him to the house of Udhav Pawar. Udhav produced iron rod before the Police. Police affixed chit of his signature on the rod and seized it under the panchanama. He identified panchanama and his signature on it at Exh.214. He identified said article No.5 i.e. iron rod.

34] The prosecution examined one Maroti Baliram Nagade as PW-15, whose evidence is at Exhibit 226. In his evidence before the Court, he stated that, on 14.01.2008 Police had called him in Police Station, Nilanga. There was one accused. He identified the said accused before the Court. Accused told his name as Mahadu Ganpatrao Shahapure. He further stated that, accused stated before them that, he himself and other 30 to 35 persons went to the house of Baburao Pawar at Jamga and committed murder of son of Baburao by assaulting with sticks and he is ready to produce the stick with which he had assaulted. Police accordingly recorded statement of the accused and obtained his signature on it. He identified statement of the accused Madhav which was shown to him and also signature of PW-15, accused and other panch. He stated that, accused put thumb impression on it.

He further stated that, this witness has also deposed about the memorandum statement of the accused Satyanarayan Shahapure and Manik Pawar and stated that, Satyanarayan disclosed that, he along with other went to

the house of the complainant Baburao and committed murder of his son. He identified his signature on the said memorandum and also thumb impression of the accused. The said memorandum is at Exh.228 likewise he also identified the memorandum at Exh.230 given by accused Manik Pawar. It appears that, in pursuant to the memorandum statement of Manik Pawar, he shown willingness to produce the stick. It further appears that, accused Abhimanyu Pawar also gave memorandum statement and showed willingness to produce the knife used by him. Accordingly, the statement was recorded by Police and signature of this witness was obtained. He identified his signature and memorandum statement. He further stated that, accused Pandhari Pawar gave memorandum statement before him and at his instance iron rod was recovered. He further stated that, accused Tukaram Pawar also gave memorandum statement and showed readiness to produce stick and accordingly said stick was recovered at the instance of the said accused.

He further stated that, accused Shivaji Pawar stated before the police in his presence and showed

willingness to produce the sword used by him in the assault. Accordingly, Police recorded his memorandum and obtained signature of this witness on it. The memorandum shown to him and obtained his signature. He further stated that, accused Madhav Shahapure gave memorandum and accordingly his memorandum was recorded by the Police. Accused Madhav Shahapure showed his house and from a room beneath black box removed a stick and handed over the same to the Police. Likewise, accused Satyanarayan gave memorandum and iron rod was recovered at his instance. He further stated that, Abhimanyu Pawar was also gave memorandum, same was seized under the panchanama and in pursuant to his statement at his instance he showed willingness to hand over knife and accordingly knife article No.51 was handed over by the accused Abhimanyu Pawar to Police. He further stated that, memorandum of Tukaram Pawar was recorded, he signed the same at his instance, police recovered a stick. Accused Shivaji Pawar produced sword from the tin sheet roof of the house. He also stated that, thereafter they went to the house of Manik Pawar from the house of Madhav Shahapure. Manik Pawar went in the house and brought

one stick. He also stated that, police seized the said stick and drawn panchanama and obtained signature of this witness. He identified the panchanama. The defence brought on record through his cross examination that, complainant is his relative. He denied suggestion that, none of the accused gave memorandum nor produced any weapons in his presence.

35] The prosecution did send 27 sealed clothes parcels to the Regional Forensic Science Laboratory, Old Nizam Bungalow, Cantonment, Aurangabad, forwarding letter to the Assistant Police Inspector, Police Station, Aurad Shahajani, District Latur. Upon perusal of result of analysis, it appears that, on almost all articles blood was found. Therefore, result of the analysis shows that, blood stains were found on the articles, which were sent to the C.A.

36] It further appears that, result of the analysis is that, exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 and 27; same blood is human. Exhibits 1, 2, 7, 8, 9, 10, 19, 20, 21 and 24 are

stained with blood of Group 'O'. Exhibits 5, 6, 11 and 14 are stained with blood of group 'A'. Exhibits 15, 16, 17, 22, 23 and 27 are stained with blood of group 'B'. Selection of blood stains on exhibit 26 and grouping thereof reveals that some of the stains are of blood group 'A' and some of blood group 'O'. Group of blood detected on exhibits 3, 4, 12, 13 and 18 cannot be determined as the results are inconclusive.

37] Whether the death of deceased Gyandeo was homicidal, accidental or suicidal will have to be ascertained from the medical evidence. Post-mortem report is at Exhibit-291. The probable cause of death was due to cardio respiratory arrest due to puncture of left ventricle of heart. The prosecution has examined Dr. Pralhad Tulshiram Solanke as PW-27. His evidence is at Exhibit-290. In his evidence, he stated that, on 10.01.2008, he was on duty in S.D.H. Nilanga. On that day, at 11.50 a.m. the dead body of Gyandeo @ Dnyanoba s/o. Baburao Pawar was brought by Police Station, Nilanga by Head Constable Hundekar for post mortem along with inquest-panchnama. He carried post mortem on the dead body of Gyandeo @ Dnyanoba and

found following injuries on his person:

- i] C L W at left Temporal Region Size 3 x 2 x 1 cm
- ii] Deep incised wound at left anterior axillary region, at 5th and 6th Inter costal space with 3 x 2 x Deep dimension
- iii] Deep incised wound at epigastric region 3 x 2 x Deep.
- iv] Deep incised wound at left hypochondric region size 3 x 2 x Deep.
- v] Deep incised wound at left infrascapular region. Size 3 x 2 x Deep.
- vi] Parallel wound deep of same dimension, 5 Cm on left of 5th wound.

He also found following internal injuries on the dead body:

- i] Fracture of 5th and 6th left rib.
- ii] Tear at Ventricular region.
- iii] Left Ventricle get punctured with 1.5 Cm dimensions
- iv] Deep incised wound at left lung paranchyme on back.
- v] Stomach get punctured of dimensions 2 Cm.

He expressed his opinion that, cause of death

was due to cardio respiratory arrest due to puncture of left ventricle of heart, and accordingly, he issued P.M. Notes.

38] During his cross examination, he stated that, C L W injury No.1 can be caused by hard and blunt object, and it is not caused by sharp weapon. He further stated that, if blow is given by weapon like sword on ribs, then there is possibility of cutting of ribs. If sword blow is given horizontal on chest, then ribs of both sides would be cut. In case of sword attack, there is possibility of amputation of organs. Ventricle is one of the chamber of the heart. There are four chambers in heart. Out of that only one chamber is punctured. He further stated that, puncture injury to heart was due to piercing of weapon.

Upon reading the injuries mentioned in column No.17 of the post mortem, and also evidence of PW-27, it is abundantly clear that, Gyandeo died homicidal death.

39] It is also necessary to find out from the Medical evidence about injuries sustained by as many as six eye witnesses to the incident. It appears that, Dr.

Shivanand Shivhari Biradar was examined as PW-28 by the prosecution and his evidence is at Exhibit- 299. In his examination in chief, he sated that, on 09.01.2008, he was attached to Sub-District Hospital, Nilanga as Medical officer. On that day, he examined injured Sheshrao S/o Baburao Pawar, who approached suo-motu and found following injuries on his person:-

- i] Clean Incised wound over left dorsum of forearm, horizontal, near wrist. Size 3 x 1 x 1 Cm. deep.
- ii] Clean Incised wound over left forearm near wrist lower one-third, oblique, dorsoventrally on radial side. Size 8 x 1.5 x 1.5 depth Cms. It was bleeding.
- iii] Clean Incised wound on medical aspect of injury No.2, left forearm.
- iv] Contusion over wrist joint left. Size 3 x 4 x 1 Cm
Movements were painful and restricted.

All these injuries No.1 to 3 were caused by hard and sharp object. Injury No.4 was caused by hard and blunt object. All these injuries were simple in

nature and caused within 6 hours. Patient was referred to Civil Hospital, Latur for orthopedic opinion. Accordingly he has issued injury certificate at Exhibit-300. This witness identified the said certificate, which bears his signature.

40] This witness then examined injured Shahuraj S/o Baburao Pawar and found Incised wound penetrating over right renal angle over back, oblique. Size 4 x 1 Cm penetrating depth not recorded as deep. It was grievous in nature, caused by hard and sharp weapon, within 6 hours. Patient was referred to Civil Hospital, Latur for further treatment. Accordingly, he issued injury certificate at Exhibit 301. He identified the said certificate and stated that, same bears his signature. He further stated that, then he examined Sanjay S/o Baburao Pawar and found Incised penetrating injury over right iliac fossa. Size 5 x 2.5 Cm. penetrating. It was grievous in nature, caused by hard and sharp weapon, within 6 hours. Accordingly, he issued injury certificate at Exhibit 302. He identified

the said certificate and stated that, it bears his signature.

Then he examined Vijaykumar S/o Bhagwanrao Pawar and found following injuries on his person :

- (i) Incised penetrating wound over right back, oblique, Size 10 x 5 Cm muscle deep.
- (ii) Incised penetrating wound over infra-scapular region, right back. Size 5 x 3 Cm. 5 Cm below injury No.1.
- (iii) Incised penetrating wound, over left scapular region. Size 3 x 2.5 Cm x muscle deep.
- (iv) Incised penetrating wound, infra-scapular region, right side. Size 3 x 1.5 Cm. X muscles cut.
- (v) Incised penetrating wound, left lower back, para-spinal region. Size 2 x 1.5 Cm. x deep muscles cut.
- (vi) Incised wound, left zygomatic arch. Size 4 x 1 x ½ Cm.
- (vii) Penetrating incised wound with intestinal

coils protruding out of injury, over supra umbilical region, extending to epigastric region. Size 6 x 4 Cm. perforating.

(viii) Abrasion with C.L.W. over upper lip over nose and upper lip. Size 1 x ½ x ½ Cm.

(ix) Abrasion over left elbow. Size 1 x 1 x ½ Cm.

Injuries No. 1 to 5 and 7 are grievous in nature. Injury Nos. 6, 8 and 9 are simple in nature. Injury no. 9 caused by hard and blunt object. Accordingly, he issued injury certificate at Exhibit 303. He identified the said certificate and stated that, it bears his signature.

He further stated that, then he examined patient Bhagwat S/o Vijaykumar Pawar and found clean lacerated wound over left frontal region, Size 10 x 2.5 Cm. It was caused by hard and blunt object, within 6 hours. It was simple in nature. Accordingly, he issued injury certificate at Exhibit 304. He identified the said

certificate and stated that, it bears his signature.

41] He was cross-examined by Advocate Mr. T.V. Jamdar for some of the accused. In his cross examination he stated that, he recognized injury of Shahuraj as grievous injury, as it is penetrating injury and on vital part. It was grievous injury because it endangers human life. He has also further stated details about the injuries sustained by Sanjay, Vijaykumar and Bhagwat. If his evidence is perused in its entirety including examination in cross, his evidence is not shattered in any manner.

42] The prosecution examined P.Ws.16 to 26 as eye witnesses of the incident. The evidence of original complainant Shri Baburao Bhagwanrao Pawar, who was examined as PW-16 by the prosecution, is at Exhibit-241. PW-16 in his evidence stated that, he resides in the house along with his four sons, four daughters-in-law, mother, grand-children. His four sons are married. His house is located in Survey No.48/B at village Jamga. On 07.09.2007, elections of the Grampanchayat was held. Two panels contested the said election. One panel was headed by him and another was led by accused Shivaji. His panel

was elected in that election. He further stated that, the elections of the Grampanchayat were held on 07.09.2007. Results were declared on 09.09.2007. In that election, 4 candidates out of 7 from his panel were successful. Three candidates of accused Shivaji's panel out of 7 were elected. Since the said elections, relations between him and group of accused No.1 are strained. Thereafter, there was dispute in Gram Sabha. On 23.11.2007, Sarpanch was to be elected. On that day, accused No.1 and his group raised dispute saying that election of Sarpanch will not be allowed to be held. For conducting election of Sarpanch, Naib Tahsildar had come. For the post of Sarpanch, Varsh w/o. Shahuraj Pawar was the candidate from his panel. Finally, on the next day of election of Sarpanch was conducted in Police Bandobast on 24.11.2007, and in that election his daughter-in-law Varsha Shahuraj Pawar was elected as Sarpanch. He further deposed that, in the Gram Panchayat, accused picked up quarrels with him and his panel saying that, they will not allow to hold Gram Sambha and they will not allow them to work as Sarpanch. They made complaint about it to Tahsildar. He further deposed that, incident took place on 09.01.2008 at about 7.00 to

7.15 p.m. On that day, there was next day of *Yal Amawasya Festival*, and he had arranged chicken-dinner. He had invited Chandrakant Solanke, Maroti Jadhav, Waman Pawar, Anant Pawar and Tatyarao Bhingole for dinner at his house. These persons had arrived at his house. He had discussion with these persons about the terror and threats by accused on account of elections. His son Gyandeo and female members of family prepared food for dinner. After cooking food, he himself and above persons sat for dinner under tin-shed roof. At the time of dinner, they heard loud noise from outside. Abusing and stone pelting started. Then he himself, Gyandeo, Vijaykumar, Dilip, Shahuraj, Sheshrao, Bhagwat, Sanjay, aforesaid guests, Anuradha Pawar, Varsha Shahuraj, Santoshibai Sanjay Pawar, Babita Sheshrao Pawar came in the courtyard. About 30 to 35 persons from outside came in his courtyard. Amongst those persons, Shivaji Kadaji Pawar was holding sword, Namdeo Shivaji Pawar was holding sword, Madhav Shivaji Pawar was holding sword like Jamibya, Ashok Kadaji Pawar was holding Katti, Vimalbai Shivaji Pawar was holding knife, Dayanand Bhingole was holding sword. Other persons were holding sticks and iron rods. All these persons rushed on

the person of Gyandeo. Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar caught hold to Gyandeo. Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo. Then, Madhav Shivaji Pawar inflicted sword blow on the right side abdomen of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow near bemby of Gyandeo. Dayanand Bhingole inflicted sword blow on the back side and ribs on right of Gyandeo. Vimalbai Shivaji Pawar inflicted knife blow on the back of Gyandeo. Other accused assaulted Gyandeo by sticks and iron rods. Then Vijaykumar Bhagwanrao was assaulted by Madhav Shivaji Pawar by sword on the face. Namdeo Shivaji Pawar inflicted sword blow to Vijaykumar on shoulder. Udhav Shivaji Pawar assaulted by iron rod to Vijaykumar. Vilas and Haridas Pawar each assaulted Vijaykumar by stick and iron rod. Accused Prakash Kadaji Pawar assaulted Shahuraj Pawar by iron rod. Vilas Kadaji Pawar assaulted Shahuraj Pawar by stick. Accused Shivaji Kadaji Pawar assaulted Shahuraj on back right side by sword. Ashok Kadaji Pawar assaulted on right shin by Katti to Sheshrao Baburao Pawar. Shivaji Kadaji Pawar assaulted on left hand wrist of Sheshrao Pawar by sword. Devidas Pralhad Pawar

assaulted by stick to Bhagwat Pawar on the head. Waman Dadarao Pawar assaulted him by stick on the back. Other accused persons assaulted other persons in their family. Then Gyandeo, Shahuraj, Sheshrao, Sanjay, Vijaykumar, Bhagwat were taken to the Hospital. He himself and other persons were accompanying them. Injured were taken to Hospital at Nilanga. Doctor examined injured persons. Sanjay, Baburao Pawar, Shahuraj Baburao Pawar, Vijaykumar Bhagwanrao Pawar were referred by Doctor to Latur for further treatment. He himself and other guests accompanied them to Latur. Sheshrao and Bhagwat were referred to Latur Hospital on next day for further treatment.

43] PW-16 further deposed that, they received phone at Latur from the Nilanga Hospital that, during treatment Gyandeo Baburao Pawar died. He instructed guest to file application at Aurad Police Station regarding incident. They prepared the application. PW-16 put his signature on it, and then, they went to Police Station, Aurad along with said application and submitted it in the Police Station. This witness identified the said application and also stated that it bears his signature at Exh.259. He

further deposed that, he went to Nilanga Hospital. He saw there the dead body of Gyandeo. Then, post mortem was conducted on the dead body of Gyandeo. Then, he went to village Jamga for effecting spot panchnama at the call of Police. Police prepared the spot panchnama of the place shown by him. Again he came to Nilanga Hospital. After conducting post mortem, Doctor handed over dead body of Gyandeo to him.

44] This witness was cross examined by Advocate for accused Nos. 1, 4, 11, 12, 13, 30, 18, 20, 32, 25, 31, 17 and 34. It appears that, some questions were asked to him about who contested the Grampanchayat elections. However, nothing useful to defence was brought on record from the said information about elections. It further appears that, the defence did ask certain questions about preparation of the application which was submitted to the Police Station. It appears that, this witness has stated that, names of the accused mentioned in the said application were as per his say. It appears that, the defence did ask the question about the contents of the said application, and whether the aspects like accused did not allow to conduct

Gram Sabha were incorporated in the said application or not. However, nothing useful to the defence has been brought on record by asking such questions by the defence. It is pertinent to mention that, PW-16 who was under tremendous mental stress on that relevant night, was not expected to incorporate everything in the FIR. FIR is not encyclopedia.

PW-16 in his cross examination further stated that, at the time of complaint, he had stated before the Police that, accused Shivaji Namdeo Pawar was holding sword. He had not stated before the Police that, Vimalbai was having Katti in her hand. He further stated that, while writing the complaint that, accused Mahadeo Shivaji Pawar had given sword blow on right side abdomen of Gyandeo. However, he cannot assign any reason why it is not mentioned in the complaint. He further stated that, accused Namdeo Shivaji Pawar inflicted sword blow near navel of Gyandeo. The accused Dayanand Bhingole inflicted sword blow on the backside near ribs on right of Gyandeo. He further stated in the complaint that, accused Madhav Shivaji Pawar had given sword blow on mouth of Vijaykumar, and accused Namdeo Pawar inflicted sword

blow on the shoulder of Vijaykumar. Accused Udhav Pawar assaulted Vijaykumar by iron rod. Accused Vilas and Haridas each assaulted Vijaykumar by stick. Accused Prakash Kadaji Pawar assaulted Shahuraj Pawar by iron rod. Accused Vilas Kadaji Pawar assaulted Shahuraj by stick. Accused Shivaji Pawar had given blow with sword on back to right side of Shahuraj. Ashok Kadaji Pawar assaulted Sheshrao Pawar on right shin by Katti. Accused Shivaji Pawar had inflicted sword blow on left hand wrist of Sheshrao Pawar. Accused Devidas Pawar gave stick blow on the head of Bhagwat. Accused Waman Dadarao Pawar assaulted by stick on his back and other persons beat other persons from his family. He further stated that, he cannot assign any reason why above facts are not mentioned in his complaint. He further stated that, at the time of incident about 30-40 persons had come to his house for assault. On that day, three persons from his village and two guests had come to his house for dinner. At that time, 5 to 6 persons from his house were present. At the time of incident, three persons from his village and two guests who had come to his house for dinner, had intervened the quarrel. Assailants assaulted aforesaid 5 persons causing them concealed

injuries. They were assaulted by sticks. There were no visible injuries on their person. Their family members and the persons who come for dinner were raising hue and cry. Other persons from the village did not come at the place of incident on hearing hue and cry. Witness volunteers that villagers did not come at the spot of incident on seeing the mob of assailants. He further stated that, when accused persons went away from the spot of incident, 5 to 50 persons from the village had come there. His daughter in law Varsha Pawar had sustained invisible injuries. They did not resist the assailants. He further stated that, all accused in collusion with each other assaulted them. He can tell names of all accused. He specifically denied suggestion that, at the time of incident, there was dark at his house due to load-shading. He stated that, four persons amongst assailants were holding sword, one was holding knife, one was having katti, two were holding iron rods and 8 to 9 persons were holding sticks. However, he clearly stated that, he does not know what other 22 persons were holding, as the mob of assailants was large. He has specifically denied suggestion that, no incident took place as narrated by him and only with view to extract money from accused, he has

filed false case. He specifically denied suggestion that, incident had not taken place at his house and that blood was not lying in his house. He specifically denied suggestion that, on the day of incident, no dinner programme was arranged at his house and that nobody guest or friends in the village had come to his house for dinner.

45] This witness was further cross examined by the Advocate for accused Nos. 2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35. In his cross examination, he stated that, Pandurang Vishwanath Pawar is in service in Pharmacy College at Nilanga as Store Keeper since many years and he resides at Nilanga along with his family. Dhondiram Pawar is serving as Teacher since many years in Zilla Parishad, and he resides at Nilanga along with his family. Ashok Vishwanath Pawar is serving in Police Department and he resides at Latur since many years. Govind Ganpat Shahapure is also a Teacher. Vishwanath Vithal Pawar, Maroti Madhav Pawar, Vishnu Madhav Pawar, Chandrahans Vishwanath Pawar, Vinayak Raosaheb Pawar, Narayan Maroti Bhingole, Suresh Maroti Bhingole,

Pandurang Maroti Bhingole, Nagnath Raosaheb Pawar, Madhav Ganpat Shahapure, Abhimanyu Raosaheb Pawar, Manik Ramji Pawar, Balaji Apparao Pawar all are agriculturists. Komal Maroti Pawar is household woman. Satyanarayan Shahapure resides at other village. He know all these persons as they hail from his village. Komal Maroti Pawar has no concern with the incident in question. All aforesaid persons are also having no concerned with the incident.

46] This witness was further cross examined by the Advocate for accused Nos. 3, 14 and 29. In his cross examination, he stated that, accused Pandhari and Haridas are real brothers inter se. Both these are nephews of Waman Limbaji Pawar, who had come to his house for dinner. Accused Pandhari has no concern with the incident. He further deposed that, it is not true to say that, he falsely implicated accused Haridas at the instance of witness Waman Pawar. He specifically denied suggestion that, accused Waman Pawar did not assault him by stick, and that accused Haridas Pawar did not assault Vijaykumar by iron rod.

47] PW-16 was re-examined by the Special Public Prosecutor for State. In his re-examination, he stated that, on the next day of incident, Police had come to him and recorded his statement. He was also cross examined by the Advocate for accused Nos. 1, 4, 11 to 13, 17, 18, 20, 25, 30 to 32 and 34, he stated that, complaint was given on 10.01.2008 at 4.00 a.m. Funeral was performed on 10.01.2008 at 2.00 p.m. Spot panchnama was conducted on 10th January, 2008 at 10.00 a.m. Police recorded his statement on 10.01.2008 at 10.00 a.m. At that time, condition of his mind was not good. While recording his supplementary statement, he stated that, accused Satish, Tukaram and Udhav had caught hold Gyandeo when Shivaji assaulted him by sword. He stated that, he cannot assign any reason why Police did not record to that effect in his supplementary statement. He specifically denied suggestion that, police did not record his supplementary statement. It appears that, this witness was re-examined. In his re-cross examination, he denied suggestion that, he did not state before the Police about assault by Haridas by iron road, and accused Waman Pawar assaulted by stick.

48] Upon careful perusal of the evidence of PW-16, it clearly appears that, the accused persons who were aggressors came to the house of complainant holding deadly weapons in their hands and giving slogans that, they will see that, no family members of the complainant is left alive, entered the house of the complainant and by use of deadly weapons like sword, knife, katti, sticks and iron rod assaulted son of the complainant Gyandeo and other persons including his family members, who were present in his house at the relevant time. It has also come in his evidence that, some of the accused pelted stones at his house. It has also come on record that, because of hearing of noise of the accused persons, villagers did not dare to come to the house of the complainant for their rescue. It further appears that, the accused persons were armed and gathered at the spot of occurrence and formed unlawful assembly, and assaulted Gyandeo and other persons who were present at the spot of incident so as to achieve common object of assaulting / causing grievous hurt to the family members of the complainant.

It is abundantly clear from the reading of the evidence of the complainant that, in his examination in chief, he named accused Shivaji Kadaji Pawar was holding sword, Namdeo Shivaji Pawar was holding sword, Madhav Shivaji Pawar was holding sword like Jamibya, Ashok Kadaji Pawar was holding Katti, Vimalbai Shivaji Pawar was holding knife, Dayanand Bhingole was holding sword and other persons were holding sticks and iron rods. It is specifically stated by him that, all these persons rushed on the person of Gyandeo. He further attributed overt act to the Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar, who caught hold to Gyandeo. Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo. Then Madhav Shivaji Pawar inflicted sword blow on the right side abdomen of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow near bemby of Gyandeo. Dayanand Bhingole inflicted sword blow on the back side and ribs on right of Gyandeo. Vimalbai Shivaji Pawar inflicted knife blow on the back of Gyandeo and other accused assaulted Gyandeo by sticks and iron rods. Then Vijaykumar Bhagwanrao was assaulted by Madhav Shivaji Pawar by sword on the face. Namdeo Shivaji Pawar inflicted sword blow to Vijaykumar on

shoulder. Udhav Shivaji Pawar assaulted Vijaykumar by iron rod. Vilas and Haridas Pawar each assaulted Vijaykumar by stick and iron rod. Accused Prakash Kadaji Pawar assaulted Shahuraj Pawar by iron rod. Vilas Kadaji Pawar assaulted Shahuraj Pawar by stick. Accused Shivaji Kadaji Pawar assaulted Shahuraj by stick on back right side by sword. Ashok Kadaji Pawar assaulted on right shin by Katti to Sheshrao Baburao Pawar. Shivaji Kadaji Pawar assaulted on left hand wrist of Sheshrao Pawar by sword. Devidas Pralhad Pawar assaulted by stick to Bhagwat Pawar on the head. Waman Dadarao Pawar assaulted him by stick on the back. Other persons assaulted other persons in their family. Therefore, upon careful perusal of the evidence of this witness, it is abundantly clear that, he named and attributed specific role to the accused Shivaji Kadaji Pawar, Namdeo Shivaji Pawar, Madhav Shivaji Pawar, Ashok Kadaji Pawar, Vimalbai Shivaji Pawar, Dayanand Bhingole, Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar, Vilas and Haridas Pawar, Prakash Kadaji Pawar, Waman Dadarao Pawar and other accused. He has specifically stated the manner in which each of the accused assaulted Gyandeo and other persons including six injured

eye witnesses.

49] Upon careful perusal of his examination in cross, his evidence in the examination in chief has not been shattered in slightest manner, on the contrary, he has reiterated his assertions in the examination in chief during his cross examination. Nothing substantial has been brought on record by the defence useful to accused to disbelieve his version in the examination in chief. However, fact remains that, though the prosecution has named as many as 39 accused. He has not named all 39 accused in his evidence. In his cross examination in para No.10, he has stated that, Komal Maruti Pawar has no concerned with the incident in question. He has specifically stated that, the names of the accused mentioned in para No.10 of his cross examination have no concerned with the incident.

Therefore, upon considering the evidence of PW-16 complainant, we find that, his evidence is fully trustworthy, reliable, truthful and not shaken in the cross examination. His evidence on all points – aspects is truthful and deserves acceptance.

50] The learned counsel Mr. Joydeep Chatterji appearing for the accused Nos.1 Shivaji, accused No.11 Vilas and accused No.13 Namdeo, submitted that, so far Namdeo is concerned, his name is not mentioned in the First Information Report, and he deserves to be given benefit of doubt, cannot be accepted. The First Information Report is not an encyclopedia. In his evidence before the Court, PW-16 has named Namdeo and also specific overt act is attributed to him. It appears that, he was one of the main assailant, who inflicted blows by sword on the deceased Gyandeo and also other injured persons.

51] The prosecution witness Nos.22 to 26 are injured witnesses. Their evidence assumes significance inasmuch as some of them have sustained grievous injuries, which would have caused their death, if timely treatment would not have been given to them.

52] There are in all eleven eye witnesses to the incident who are examined by the prosecution. We have already discussed in detail about the evidence. Of P.W.16 –

complainant. As per the prosecution case, all the eye witnesses sustained injuries. However, in case of some witnesses, injuries were not visible. So far as P.W.22 to 26 are concerned, they are injured eye witnesses.

53] Vijykumar Bhagwantrao Pawar was examined as P.W.25, whose evidence is at Exh.284. This is the witness in whose evidence, there are no omissions, contradictions or improvements; therefore, we propose to discuss his evidence at this juncture.

In his examination-in-chief, he stated that the complainant is his real brother. Deceased Gyandeo was son of the complainant Baburao. The incident took place on 9th January, 2008 in the house of Baburao. On that day, in the house of Baburao, he himself, Shahuraj Pawar, Sheshrao Pawar, Sanjay Pawar, Gyandeo Pawar, Bhagwat Pawar, Maroti Jadhav, r/o Sawangira, Chandrakant Solanke r/o Chandori, Waman Limbaji Pawar, Anant Pawar, Tatyarao Bhingole, Dilip Pawar, Varsha Pawar, Babita Pawar, Popatbai Pawar, Pinkubai Pawar, Urmilabai Pawar, Jijabai Pawar, Trivenibai Pawar, Santoshbai Pawar, Mahadeo

Pawar were present. On that day, there was dinner at the house of the complainant on the eve of 'Vel Amwasaya' and the above persons were present for dinner. The witness stated that at about 7 to 7.15 p.m., they had sat for dinner in room of tins. At that time about 30 to 40 persons all of a sudden came in the door of the house, saying that, "Marto, Hanto, Todto". Persons from the mob were pelting stones. Then the mob came in their court yard. Mob was comprising of 30 to 40 persons. On hearing shouts, Gyandeo came outside first of all, and the witness followed him. Other persons in their house also came in the court-yard. Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar caught hold Gyandeo; and at that time, Shivaji Pawar inflicted sword blow on the left chest of Gyandeo. Vimalbai Pawar amongst mob inflicted knife blow on the ribs of Gyandeo. Dayanand Bhingole inflicted sword blow on the back of Gyandeo. Madhav Shivaji Pawar inflicted sword blow on the stomach of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow above the navel of Gyandeo. Then Gyandeo fell down due to sustaining of bleeding injuries. Satish Pawar, Vaijinath Pawar, Venkat Vaijinath Pawar caught hold this witness P.W.25. Madhav

Shivaji Pawar inflicted sword blow on his face, due to which he sustained bleeding injury on his nose. Madhav then inflicted sword blow above his navel. Namdeo Pawar inflicted sword blow on right thigh, Vilas Pawar inflicted stick blow on his head. Udhav Pawar inflicted iron blow on his left shoulder. Hari Pawar inflicted iron blow on back of this witness. He sustained bleeding injuries, his intestines were pierced out of his stomach. P.W.25 Vijaykumar pointed out persons from accused who assaulted him and Gyandeo, those persons disclosed their names as Shivaji Kadaji Pawar, Vilas Kadaji Pawar, Namdeo Shivaji Pawar, Ashok Kadaji Pawar, Satish Baburao Pawar, Satish Vaijinath Pawar, Udhav Shivaji Pawar and Vimalbai w/o Shivaji Pawar. This witness volunteered that assailants Dayanand Maroti Bhingole and Madhav Shivaji Pawar were not present on that day in the court hall. He stated that he became unconscious at the spot due to assault and regained consciousness in the hospital at Latur after four days. Then he came to know that injured Gyandeo died. He stated that police recorded his statement thrice. His statement was also recorded by Special Executive Officer.

In the cross-examination, P.W.25 Vijaykumar stated that accused Madhav Ganpat Shahapure was not present on the spot of the incident on that day. So also, accused Nos.2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35 were not present at the place of incident at the time of incident. He further stated in his cross-examination that he knows accused Pandhari Pawar and he had no concern with the incident.

P.W.25 Vijaykumar was further cross-examined by Advocate Mr.T.V. Jamdar appearing for some of the accused. PW-25 specifically admitted that 18 persons who are named as accused persons were not present at the time of incident. He identified accused persons who participated in commission of offence and present before the Court. He has stated further details in his cross-examination that before the police, he stated that Madhav Shivaji Pawar inflicted sword blow on the stomach of Gyandeo and Namdeo Shivaji Pawar inflicted sword blow on navel of Gyandeo. He further stated that he stated before the police that Satish Pawar, Vajjinath Pawar, Venkat Pawar caught hold him, Madhav Pawar inflicted sword blow on his face

and above his navel and Namdeo Pawar inflicted sword blow on his right thigh and Vilas Pawar inflicted stick blow on his head and Hari Pawar inflicted iron rod blow on his back. He further stated that after Gyandeo, accused assaulted him. While Gyandeo was being assaulted, he was caught hold by the accused. Then he became unconscious and fell down. He stated that in all 16 persons including females were present in the house when the accused came at the spot of the incident. They could not resist at the time of incident, they did not raise shouts.

54] Upon perusal of the evidence of this witness, it appears that he has specifically stated the manner in which the accused entered in the house [court-yard], they were pelting stones, they were giving slogans, they were armed with deadly weapons and also sticks and they came prepared so as to assault the persons who were in the house of P.W.16 at the relevant time. He has stated the actual incident in a specific manner that Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar caught hold Gyandeo; and at that time, Shivaji Pawar inflicted sword blow on the left chest of Gyandeo. Vimalbai Pawar amongst

mob inflicted knife blow on the ribs of Gyandeo. Dayanand Bhingole inflicted sword blow on the back of Gyandeo. Madhav Shivaji Pawar inflicted sword blow on the stomach of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow above the navel of Gyandeo. Then Gyandeo fell down due to sustaining of bleeding injuries. Satish Baburao Pawar, Vaijinath Pawar, Venkat Vaijinath Pawar caught hold this witness P.W.25. Madhav Shivaji Pawar inflicted sword blow on his face, due to which he sustained bleeding injury on his nose. Madhav then inflicted sword blow above his navel. Namdeo Pawar inflicted sword blow on right thigh, Vilas Pawar inflicted stick blow on his head. Udhav Pawar inflicted iron blow on his left shoulder. Hari Pawar inflicted iron blow on back of this witness.

55] It appears from his evidence that he sustained bleeding injuries, intestines were pierced out of his stomach. He has specifically pointed out accused persons, who were present in the court, and identified them, who assaulted him and Gyandeo. It appears from the medical evidence brought on record by the prosecution and the evidence of the Medical Officers P.W.27 Dr.Pralhad Solanke

and P.W.28 Dr. Shivanand Biradar supports the version of this witness. The version of this witness corresponds with the injuries stated in the injury certificate of Gyandeo and also other six injured persons. Therefore, the evidence of P.W.25 corresponds with the medical evidence. His evidence is fully trustworthy, reliable, truthful and not shaken in any manner in his cross-examination and the same can safely be accepted on all the points including forming an unlawful assembly by the accused persons, who are named in his evidence, in furtherance of their common object to assault / cause grievous hurt to the family members of the complainant in order to finish every member of family of P.W.16 Baburao. The evidence of this witness corroborates with the evidence of the complainant in all material particulars. The evidence of the complainant and also P.W.25 Vijaykumar corroborates each other and also gets corroboration from medical evidence led by P.W.27 Dr.Pralhad Solanke and P.W.28 Dr. Shivanand Biradar.

56] The learned Counsel for the accused Shivaji Kadaji Pawar, Namdeo Shivaji Pawar and Vilas Kadaji Pawar was at pains to argue that, in view of the judgment of the

Supreme Court in the case of **Masalti** (supra), where factions prevail in villagers and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The learned Counsel for the accused relied on the observations of the Supreme Court in paragraph 16 of the judgment in case of **Masalti** (supra) and argued that where the criminal Court has to deal with the evidence pertaining to commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it cannot be treated as irrational or unreasonable. Therefore, in his submission, in the present case, though evidence of P.W.25 Vijaykumar does not suffer from omissions, contradictions and improvements, the evidence of other prosecution witnesses, including the complainant, suffers from contradictions, omissions and improvements and, therefore, the evidence of P.W.25 Vijaykumar alone is not sufficient so as to sustain the conviction of the accused.

57] As already observed, evidence of the complainant P.W.16 Baburao and P.W.25 Vijaykumar corroborates with each other and lends support from medical evidence and therefore, the evidence of the P.W.16 Baburao - complainant and also the P.W.25 Vijaykumar is fully trustworthy, reliable, truthful and has not been shaken, in any manner, in the cross-examination. There is also evidence of other nine eye witnesses.

58] The prosecution examined Shahuraj Baburao Pawar as PW-22, his evidence is at Exhibit-278. In his examination in chief, he stated that, complainant Baburao is his father. Varsha is his wife. She is acting as Sarpanch of the village. Election of the Gram Panchayat was held in the Year 2007, between two panels headed by his father and another by Shivaji Pawar. Panel of his father was elected in the election. On the day of result of election, Shivaji Pawar and his persons assaulted persons from rival group. They filed application in that respect with the Police Station. One and half month thereafter on 23.11.2007 election for Sarpanch was scheduled. On that day, in the election of

Sarpanch, Shivaji Pawar and his persons obstructed. Therefore, complainant's group filed application with Tahsildar. On 24.11.2007, Tahsildar conducted election for the post of Sarpanch in Police Bandobast, and in that election, his wife was elected as Sarpanch. Since then there are strained relations between complainant's group and group of Shivaji Pawar. Persons from the side of Shivaji Pawar used to threat to kill the complainant's persons and they will not allow to conduct the work. He further stated that, deceased Gyandeo was his real brother. Incident occurred on 09.01.2008. It was next day of Vel Amawasya. Dinner of Chicken Mutton was arranged at his house. On that day, Chandrakant Bhagwantrao Solanke, r/o. Chandori, Maroti s/o. Dhanaji Jadhav, r/o. Sawangira and villagers Anant Pawar, Waman Limbaji Pawar, Tatyarao Balaji Bhingole were invited for the dinner. Uncles and other family members were also present. At about 7.00 p.m., they were about to sit for dinner. At that time, all of sudden, noise was heard from outside. Mob came there saying 'Babya, Vijya, Gyana come outside. They were saved on the day of election. Now they are to be seen. Their heritage will not be saved'. About 30 to 40 persons in the

mob came at their house. Persons in the mob were holding swords, sticks and iron rods. They all came from inside in the courtyard. Gyandeo, Vijaykumar, PW-22, Sheshrao, Bhagwat, Dilip, Baburao, Waman Pawar, Anant Pawar, Tatyarao Bhingole, Chandrakant Solanke, Maroti Jadhav, Varsha Pawar, Babita, Santosi, Popatbai, Mahdeo Pawar came in the courtyard. Gyandeo was caught hold by Satish Vaijinath Pawar, Udhav Shivaji Pawar, Tukaram Shivaji Pawar, Shivaji Kadaji Pawar inflicted sword blow in the left chest of Gyandeo. He further stated that, Madhav Shivaji inflicted on the right side stomach of Gyandeo by Jambiya. Namdeo Shivaji Pawar inflicted sword blow on above the navel of Gyandeo. Vimalbai Pawar inflicted knife blow on the left ribs of Gyandeo by katti. Dayanand Maroti Bhingole inflicted sword blow on the back of Gyandeo. Gyandeo sustained bleeding injuries and fell down. Thereafter, Shivaji Kadaji Pawar inflicted sword blow on the waist right side of PW-22. Vilas Pawar beat him by stick on left shoulder and stomach. Prakash Kadaji Pawar gave iron rod blow on right side waist of PW-22. PW-22 also sustained bleeding injury. Thereafter, Vijaykumar, Sheshrao, Bhagwat, Sanjya, Baburao and female members were also

assaulted by persons from the mob with weapons in their hands. Vijaykumar, Sheshrao, Sanjay, Bhagwat also sustained bleeding injuries. Then the injured were admitted in Nilanga Hospital. Vijaykumar, Sanjay and he himself were referred to Latur Hospital for further treatment. They learnt at Latur that, Gyandeo is dead. Police recorded his statement twice. *[Emphasis supplied]*.

59] He was cross examined by Advocate Shri T.V.Jamdar. He stated that, post of Sarpanch was reserved for woman. In Gram Panchayat elections, in all 3 women were elected. Sushilabai Gaikwad, Usha Dinkar Katekar and his wife were elected. He has specifically denied the suggestion that, there was no panel headed by Shivaji in the said election. This witness stated in his examination in cross that, he was taken to the Hospital at Nilanga for treatment. He received first blow by stick on left shoulder and last blow by sword on the back. Upon perusal of his evidence in cross examination, nothing useful to the defence have been elicited.

60. The learned counsel Mr. Joydeep Chatterji

appearing for the accused Shivaji, Namdeo and Vilas invited our attention to the portion marked 'A', 'B' and 'C' from the statement of this witness under Section 161 of I.P. Code and submitted that, this witness in the police station has not named Namdeo or no overt act is attributed to him, and therefore, Namdeo is entitled for benefit of doubt. In our opinion, he has specifically stated in his examination in chief that, Namdeo Shivaji Pawar inflicted sword blow on above the navel of Gyandeo. Aforesaid version about Namdeo gets corroboration from the evidence of other prosecution witnesses and also from the medical evidence, and therefore, contention of the learned Counsel Mr. Chatterji cannot be accepted that accused Namdeo deserves to be acquitted.

61] The prosecution has examined Bhagwat Vijaykumar Pawar as PW-23. His evidence is at Exhibit-279. In his examination in chief, he stated that, deceased Gyandeo was his cousin. Incident took place on 09.01.2008 at about 7.15 p.m. at his house in the courtyard. It was next day of Vel Amawasya. On that day, Chandrakant Solanke, r/o. Chandori, Maroti Dhanaji Jadhav, r/o.

Sawangira and villagers Waman Pawar, Anant Pawar, Tatyarao Bhingole were invited for dinner at his house. He further stated that, while they were about to sit for dinner, mob of 30 to 40 persons came towards his house while abusing and saying 'Babya, Gyana, Vijya. Heritage from their house will not be saved. Mob came in the courtyard with weapons. He further stated that, first of all Gyandeo came from out of house. They others followed Gyandeo. Gyandeo Pawar was caught hold by Satish Vaijinath Pawar, Tukaram Shivaji Pawar and Udhav Shivaji Pawar, and Shivaji Pawar pierced sword on the left chest of Gyandeo. Vimal Pawar assaulted Gyandeo by knife on ribs left side. Dayanand Bhingole inflicted sword blow on the left side back of Gyandeo. Mahadeo Pawar inflicted Jamibya blow on right side stomach of Gyandeo. Namdeo Pawar inflicted sword blow above the navel of Gyandeo. Due to assault, Gyandeo sustained bleeding injuries and Gyandeo fell down. He then went to rescue Gyandeo. Devidas Pawar inflicted stick blow on his head. He sustained bleeding head injury. He moved aside. He further stated that, thereafter, 15 to 16 persons from the mob assaulted by sword, stick, iron rod to Vijaykumar, Shahuraj, Sanjay, Sheshrao and others from

his house, guests, Vijaykumar, Shahuraj, Sheshrao, Sanjay also sustained bleeding injuries. He himself and other injured were taken to Nilanga Hospital. He himself, Gyandeo and Sheshrao were admitted in Nilanga Hospital. He further stated that, other injured were referred to Latur Hospital for further treatment. On the next day morning, he learnt at Nilanga that, Gyandeo is dead. Police recorded his statement.

He was cross examined by Advocate Shri T.V. Jamdar on behalf of the some of the accused. In his cross examination nothing useful to the defence has been brought on record by the defence.

62] The prosecution has examined Sheshrao Baburao Pawar as PW-24. His evidence is at Exhibit-280. In his examination in chief, he stated that, deceased Gyandeo was his real brother. Incident took place prior to 3 years. It was next day of Vel Amawasya. On that day, Chandrakant Solanke, Dhanaji Jadhav, Waman Pawar, Anant Pawar, Tatyarao Bhingole had come to his house for dinner. Incident occurred at 7.00 to 7.15 p.m. They were

about to sit for dinner. At that time, they heard noise of abusing of the mob. Mob came in his courtyard and persons from the mob pelted stone. Some persons from the mob were holding sticks, iron rods, swords, Jambiya, Gyandeo and Vijaykumar came out of house in the courtyard. He further stated that, others followed them in the courtyard. Satish Vaijinath Pawar, Tukaram Pawar and Udhav Pawar caught hold Gyandeo, and Shivaji Pawar pierced sword in the chest of Gyandeo. Namdeo Pawar inflicted Jambiya blow near the navel on left side of Gyandeo. Vimalbai inflicted knife blow on the ribs of Gyandeo. Madhav Shivaji inflicted Jamibya like sword on the ribs of Gyandeo. Dayanand Bhingole inflicted sword blow on the back of Gyandeo. Gyandeo sustained bleeding injuries due to assault and Gyandeo fell down. He further stated that, Shivaji Pawar inflicted 3 blows by sword on his left hand wrist. Ashok Pawar inflicted katti blow on left leg. About 16 to 17 persons in the mob assaulted Vijaykumar, Bhagwat, Shahuraj, Baburao, Dilip, Sanjay. Sanjay, Shahuraj, Vijaykumar, Bhagwat also sustained bleeding injuries. Then the injured were taken to Nilanga Hospital for treatment. He himself, Bhagwat and Gyandeo were

retained in Nilanga Hospital. He further stated that, other injured were referred to Latur Hospital for further treatment. On the next day morning, Doctor informed them that, Gyandeo is dead. Police recorded his statement.

He was cross examined by Advocate Shri T.V.Jamdar. Relying upon his statement that, the portion marked 'A' read over to him, during his cross examination was not stated before the Police. The learned counsel Mr. Chatterji submitted that, when he did not state before the Police that, Shivaji actually assaulted by sword on chest and when this witness further stated that, he has not named Namdeo, both of them are entitled for benefit of doubt. As already observed, there is overwhelming evidence led by the prosecution in the nature of 11 eye witnesses before the Court naming accused Shivaji, Namdeo and also Vilas and attributing specific role to them and also there are corresponding injuries. The evidence of PW-25 remained unshaken and gets corroboration from the evidence of other eye witnesses, and also from the medical evidence, and therefore, the contention of Advocate Shri Chatterji stands rejected.

63] The prosecution has examined Sanjay Baburao Pawar as PW-26. His evidence is at Exhibit-286. In his examination in chief, he stated that, complainant Baburao is his father. Deceased Gyandeo was his real brother. Incident took place on 09.01.2008 in the courtyard. At that time, guests Chandrakant Solanke, r/o. Chandori, Maroti Jadhav r/o. Sawangira, villagers Anant Pawar, Tatyarao Bhingole, Waman Pawar and he himself, Baburao, Shahuraj, Sheshrao, Bhagwat, Dilip, Vijaykumar, Varsha, Babita, Santoshi, Anuradha, Urmila, Popatbai were present in his house. On that day, there was dinner arranged at his house on account of next day of Vel Amawasya. He further stated that, at about 7.00 to 7.15 p.m., they were about to sit for dinner. At that time, electric light was on. From the road in front of house, they heard shouts relating to abuses, 'Babya, Vijya, Gyana, Shahuraj, Gotya, Sheshrao, Sanjya, come out side. Mob was pelting stones on his house. Then mob came in his courtyard. He further stated that, then they came outside from the house. Gyandeo came out of house first of all. Satish Vaijinath Pawar, Tukaram Shivaji Pawar and Udhav Shivaji Pawar caught hold Gyandeo.

Shivaji Pawar inflicted sword blow on the left chest of Gyandeo. Vimalbai inflicted knife blow on left ribs of Gyandeo. Dayanand Maroti Bhingole inflicted sword blow on the back of Gyandeo. Madhav Shivaji Pawar inflicted blow on right side stomach of Gyandeo by sword. He again say that, it was Jambiya like sword. Namdeo Shivaji Pawar inflicted sword blow near navel of Gyandeo. He further stated that, Gyandeo sustained bleeding injuries and Gyandeo fell down. He went near Gyandeo. Madhav Shivaji Pawar assaulted him Jambiya like sword on the right side waist. His intestines were came out. He fell down on the earth. Other accused persons were assaulting other persons in the house. Persons who assaulted him and Gyandeo are the same, who are now present in the courtyard. Witness pointed out the accused and they disclosed their names Satish Vajjinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar, Shivaji Kadaji Pawar, Vimalbai Shivaji Pawar, Namdeo Shivaji Pawar. Other assailants Madhav Shivaji Pawar and Dayanand Maroti Bhingole are not present in the court hall. Injured were then taken in Nilanga Hospital. He regained consciousness after four days in Latur Hospital. Police recorded his

statement. Special Executive Officer also recorded his statement.

He was cross examined by Advocate Mr. T.V.Jamdar on behalf of some of the accused. In his cross examination, he stated that, he had stated before the Police that, Satish Vaijinath Pawar, Tukaram Shivaji Pawar, Udhav Shivaji Pawar had caught hold Gyandeo and then Shivaji Pawar inflicted sword blow on the stomach of Gyandeo, he cannot assign any reason why the police has not recorded in his statement. In his statement under Section 161 before the Police he narrated that, Madhav Shivaji Pawar inflicted sword blow on the right side stomach of Gyandeo, Namdeo Shivaji Pawar had inflicted sword blow near navel of Gyandeo and Madhav Shivaji Pawar assaulted him by Jambiya like sword on the right side waist. However, he cannot assign any reason why above facts are not recorded by police in his statement. Relying upon the portion marked 'A' and 'B' from his evidence, it was tried to be canvassed that, his evidence suffers from omissions and contradictions. However, in our opinion, the said argument deserves no consideration. This witness is injured witness

and sustained grievous injuries. Evidence of other eye witness and medical evidence corroborates his version.

64] P.W.17 Chandrakant Bhagwantrao Solanke was examined by the prosecution, who was an eye witness of the incident. His evidence is at Exh.267. In his examination-in-chief, he stated that the complainant Baburao Pawar is his maternal uncle. The incident occurred on 9.1.2008. On the date of incident, he had been to the house of his maternal uncle Baburao for dinner. He has named the persons who had gathered in the house of Baburao for dinner. He has further narrated details about the elections of Gram Panchayat, which took place in the said village. He has stated further details about whose panel got elected and at the time of election of Sarpanch, there was dispute between the groups of complainant and accused Shivaji.

He further deposed that on 9th January, 2008 in the night in all ten persons had sat at the house of the complainant for dinner. It was about 7 p.m. They heard shouts from the outside to the effect that “*Babya, Gayna, Vijya, Sanjya, Yanchya Gharanyache purna Beej*

Budwayache Ahe.” (i.e. Everybody from the families of Babya, Gayna, Vijya, Sanjya, has to be finished). At that time, stone pelting started at the house of the complainant. Then, in the court-yard of Baburao, accused Shivaji Pawar and other came. Then the witness himself, Gyandeo, Vijaykumar, Sanjay, Shahuraj, Shesherao, Bhagwat, Baburao, Maroti, Waman, Anant, Dilip, Varsha, Anuradha, Santoshi, Babita, Urmila, Popat came outside in the court-yard. Gyandeo went ahead. At that time, Satish Vaijinath Pawar, Tukaram Shivaji Pawar and Udhav Shivaji Pawar caught hold Gyandeo. Accused Shivaji Pawar inflicted sword blow on the chest of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow on the stomach of Gyandeo. Mahadeo Shivaji Pawar inflicted blow by Jambiya like sword on the right side stomach of Gyandeo. Dayanand Maroti Bhingole inflicted sword blow on the back of Gyandeo. Accused Vimalbai Shivaji Pawar inflicted knife blow on the back of Gyandeo. Gyandeo fell down due to oozing of blood from his injuries. P.W.17 Chandrakant Solanke further deposed that, then Namdeo Shivaji Pawar assaulted Vijaykumar by sword on right side stomach. Mahadeo Shivaji Pawar assaulted Vijaykumar on the stomach by Jambiya like

sword. Vilas Kadaji Pawar assaulted Vijaykumar by stick on the back. Udhav Shivaji Pawar assaulted Vijaykumar by iron rod on right shoulder. Haridas Manik Pawar assaulted Vijaykumar by iron rod on the backside at lower portion. Due to assault, Vijaykumar fell down and his intestine had come out. Mahadeo Shivaji Pawar assaulted Sanjay by Jambiya like sword on right side of abdomen. Shivaji Kadaji Pawar assaulted Shesherao on left hand by 3 blows with sword. Ashok Kadaji Pawar assaulted Sheshrao by Katti on left leg shin. Shivaji Kadaji Pawar assaulted Shahuraj by sword on the waist at right side back. Prakash Kadaji Pawar assaulted Shahuraj by iron rod on the back. Devidas Pralhad Pawar assaulted Bhagwat by stick on the head. Prakash Pawar assaulted him by iron rod on the back. Waman Dadarao Pawar assaulted complainant Baburao by stick on the back. Remaining persons assaulted the female members from the side of complainant.

65] He further stated that the injured were taken by him and Baburao Pawar and other relatives to the Nilanga Hospital. Doctor advised to shift Vijaykumar, Sanjay and Shahuraj to Latur for further treatment. Accordingly, they

were taken tot he Hospital at Latur. They came to know in the hospital at Latur that injured Gyandeo died during treatment at Nilanga Hospital. Accordingly, his statement was recorded on the next day of the incident.

This witness was cross-examined by the Advocate of Accused Nos.2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35. During his cross-examination by the Advocate of aforesaid accused, he stated that accused Komalbai Maroti Pawar has no concern with the incident. He was further cross-examined on behalf of the accused Nos.3, 14 and 29 wherein he stated that Haridas Manik Pawar is known to him. There were 30 to 40 persons in the mob. He specifically denied the suggestion that he was not present at the time of the incident. He was further cross-examined on behalf of accused Nos.1,4,11 to 13, 17, 18, 20, 25, 30 to 32 and 34. The defence tried to elucidate from his cross-examination that he did not identify all the accused. It is true that in his cross-examination, this witness stated that out of 37 accused persons, he identified 10 to 12 persons on the day of the incident and remaining persons were unknown to him and he could not identify those

accused who were pelting stones. He has reiterated his assertion in his examination-in-chief about the manner in which the accused came to the house of Baburao, giving slogans with deadly weapons, fully prepared and formed an unlawful assembly with an object to cause grievous hurt in order to finish the entire family of the complainant Baburao. His evidence in the examination-in-chief is not shattered in his cross-examination, in any manner.

66] The learned Counsel Mr.Chatterji appearing for the accused Shivaji Kadaji Pawar, Namdeo Shivaji Pawar and Vilas Kadaji Pawar criticized the evidence of P.W.17 Chandrakant Solanke on the ground that there are contradictions in his evidence inasmuch as, the manner in which he stated overt-acts of the accused, has no corroboration from the other evidence. He invited our attention to the portion marked as "A" from his police statement and submitted that accused Namdeo is not named by him in his police statement.

Upon appreciating the evidence of P.W.17 Chandrakant in its entirety, as already observed, his

evidence remained unshaken. It appears from his statement that, police have narrated his version in the police statement u/s 161 of Cr.P.C. not in the manner in which he stated about the incident and, therefore, portion marked in his police statement cannot be considered as an omission. His substantive evidence before the court gets corroboration from the evidence of complainant and also from the evidence of P.W.25 Vijaykumar and all other eye witnesses to the incident, coupled with medical evidence and therefore, in our opinion, there is no substance in the contention of the learned Counsel appearing for the accused Namdeo that, Namdeo could have been given benefit of doubt since this witness has not named Namdeo Shivaji Pawar and not attributed any overt-acts in his police statement. Therefore, evidence of P.W.17 Chandrakant Solanke on all aspects is reliable, trustworthy and truthful.

67] Prosecution has examined Dilip Bhagwanrao Pawar as PW-18 who is an eye witness. His evidence is at Exhibit – 269. In his examination in chief, he stated that, he is brother of the complainant Baburao. They all are three brothers. Vijaykumar is their third brother.

They reside separately in one Wada. Their tin-sheet rooms are adjoining to each other. Incident occurred on 09.01.2008 at about 7.15 p.m. On that day, there was Mutton dinner arrangement on account of next day of Vel Amawasya at the house of complainant Baburao. For dinner, guests Chandrakant Solanke, Maroti Dhanaji Jadhav and guest from village Tatyarao Bhingole, Waman Pawar and Anant Pawar were invited. He himself and Vijaykumar, Bhagwat were also invited for dinner. Varsha Pawar is daughter-in-law of the complainant Baburao. She was elected as Sarpanch of the village. There was dispute between the panels headed by complainant and accused Shivaji on account of elections. The said election took place in the year 2007. In the election, 4 members from the panel of complainant Baburao were elected. He further stated that, on 09.01.2008, they (aforementioned persons) were taking dinner at the house of complainant Baburao. At that time, all of sudden they heard noise of abuses. Then stone pelting took place from outside on

the house of Baburao. Then in the court yard of Baburao mob of 30 to 40 persons came. Then this witness, Gyandeo, Shahuraj, Sheshrao, Sanjay, Vijaykumar, Bhagwat, Baburao, Chandrakant, Maroti, Tatyarao, Anant came outside in the court-yard. Gyandeo went ahead. Satish Pawar, Tukaram Shivaji Pawar and Udhav Shivaji Pawar caught hold Gyandeo. Accused Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo. Vimalbai Shivaji inflicted left side ribs on Gyandeo by knife. Namdeo Shivaji Pawar inflicted sword blow on the stomach of Gyandeo. Dayanand Bhingole inflicted sword blow on the back left side of Gyandeo. Mahadeo Shivaji Pawar inflicted blow by Jambiya like sword on the right side abdomen of Gyandeo. Gyandeo sustained bleeding injuries and he collapsed. Madhav Shivaji Pawar assaulted Vijaykumar by Jambiya like sword two blows on the stomach and single blow on the face. Namdeo Pawar inflicted sword blow on right leg. Udhav Shivaji Pawar assaulted Vijaykumar by iron rod on right shoulder. He

further stated that, Vilas Kadaji Pawar assaulted Vijaykumar by stick on the back. Haridas Manik Pawar assaulted Vijaykumar by iron rod on the back. Madhav Shivaji Pawar assaulted Sanjay by Jambiya like sword on right side abdomen. Vilas Kadaji Pawar assaulted Shahuraj by stick on left shoulder. Prakash Kadaji Pawar assaulted Shahurao by sword on the right side back. Ashok Kadaji Pawar assaulted Sheshrao by Katti on right leg shin. Shivaji Kadaji Pawar inflicted 3 blows by sword on left hand of Sheshrao. Devidas Pralhad Pawar assaulted Bhagwat by stick on the head. Remaining persons assaulted female members of the complainant. He identified the assailants Shivaji Kadaji Pawar, Vilas Kadaji Pawar, Namdeo Shivaji Pawar, Ashok Kadaji Pawar, Vimalbai, Udhav, Devidas, Tukaram, Satish. Injured were admitted in Nilanga Hospital for treatment. This witness was accompanying them. He further stated that, in Nilanga Hospital, Gyandeo, Sheshrao and Bhagwat were treated. Vijaykumar, Shahuraj and Sanjay were referred by the

doctor to Latur Hospital. Accordingly, they carried them to Latur Hospital and admitted them there. Baburao and other guests were with him while going to Latur. At Latur they came to know that, Gyandeo died at Nilanga during the course of treatment. He identified the weapons used by the accused before the Court. He stated that, those weapons are at Article Nos. 1, 35, 39, 37, 36, 8, 9, 7, 10, 11, 2, 48.

He was cross examined by Advocate Mr. M.B. Jadhav on behalf of accused nos. 2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35. In his cross-examination, he stated that, accused Vishwanath Vithal Pawar is 80 years old. He was the Chairman of Jamga Society for 25 years and elected unopposed and thereafter he retired from politics. Accused Pandurang Pawar is in service since 1987 in Maharashtra Pharmacy College, Nilanga as Store-Keeper. He resides at Nilanga along with his family. He had a son Umesh who is mentally retarded. Ashok S/o Vishvanath Pawar

is in Police Department service since 1980 and he was at Solapur till 2007. Accused Satyanarayan Madhav Shahapure is student for M.Sc. Softwear Engineering since 5 to 7 years. Manik Ramji Pawar runs grocery shop and also does agriculture at village Jamga. His house is at a distance of 700 to 800 ft. from his house. On the day of incident, Komalbai Maroti Pawar along with her husband and brother-in-law Vishnu Madhav Pawar had gone to village Bhutmugali due to death of her uncle. He stated that, accused nos.2, 5 to 10, 15, 16, 19, 21 to 24, 26 to 28, 33 and 35 have no concern with the incident in question. Dhondiram Raosaheb Pawar is a Teacher since 1991 in Zilla Parishad, and since 1999 he is serving at Lambota. He resides at Nilanga. Govind Ganpatrao Shahapure is also Teacher in Zilla Parishad since 1992. Bhagyashri D/o Vinayak Pawar is married with Manoj Mule. On the day of incident, Vinayak Raosaheb Pawar had gone to the hospital to see his daughter in Jyoti Hospital at Latur, whose abortion was carried there.

68] He was further cross-examined by Mr. V.S. Gaikwad, the learned counsel on behalf of accused nos. 3, 14 and 29. In his cross examination, he stated that, complainant Baburao is his real brother. Accused Pandhari Manik Pawar has no concern with the incident. He did not see him at the time of incident. Haridas Pawar assaulted Vijaykumar by iron rod. He did not assault this witness. He has specifically denied the suggestion that, Haridas Pawar was not present at the time of incident and he did not assault Vijaykumar by iron rod. He has specifically denied suggestion that, Haridas Pawar and Waman Pawar were not present and they did not assault anybody.

69] He was further cross-examined by Advocate Mr. T.V. Jamdar on behalf of accused nos. 1, 4, 11 to 13, 17, 18, 20, 25, 30 to 32 and 34. He stated in his cross examination that, he did not state before police the portion marked A read over to him from his

statement. He further stated that, he cannot assign any reason why police recorded so in his statement. He further stated that, he did not state the portion mark B read over to him before the Police. However, in para 6 of the cross-examination, he has again reiterated his version about the accused, who actually participated in the commission of offence and also the manner in which they inflicted injuries on deceased Gyandeo and other witnesses. He has given minute details in para 6 of his examination in cross. He has specifically stated that, Gyandeo had sustained three blows, one blow by Jambiya like sword and one blow by knife. Chest blow of Gyandeo and other blows by sword were also piercing. On the back of Gyandeo on left side, there was sword blow. Third blow was on the stomach i.e. four fingers above the navel. Knife blow was on left side ribs of Gyandeo. Blow by Jambiya like sword was on the right side stomach of Gyandeo. Bhagwat had sustained stick blow on the head. Shahuraj was beaten by sticks and iron rod after he fell down. He was given 4 to 5

blows by stick and 4 to 5 blows by iron rod. Sheshrao had sustained 4 blows by Katti and sword. Sword blow was given on the left hand wrist by sharp edge. Blow by Katti was given on the left leg shin of Sheshrao. He had not sustained any other injury. Sanjay was assaulted by Jambiya like sword on the right side abdomen. He was given 4 blows by stick and 4 blows by iron rod. Vijaykumar was given 2 sword blows on the stomach and one blow by sword on the nose. Nose blow was by vertical sword. Nose and lips were cut. He had received other concealed injuries.

He has specifically stated that, afterwards though villagers had gathered at the time of incident, none of them came for their rescue. They did not resist assailants. They did not attempt to flee away from the place of incident. At the time of incident, one female accused was there and 17 males were present. He has also stated details about the manner in which the incident had taken place. He has specifically denied

suggestion that, he is deposing falsely that, accused assaulted deceased and other injured by weapons.

70] Mr. Joydeep Chatterji, the learned counsel invited our attention to Portion Mark at 'A', 'B', 'C' from his (PW-18) statement under Section 161 before the Police and tried to submit that, his evidence before the Court is contradictory to his statement before the Police. We have carefully perused the evidence of PW-18, in his examination-in-chief and also his cross-examination, he has deposed about incident in minute details. His evidence is consistent and finds corroboration from other eye witnesses and also medical evidence. The statement before the police officer and the statement in the evidence before the Court are not so inconsistent or irreconcilable with each other that both of them cannot co-exist, and therefore, submission of learned counsel deserves no consideration. In our opinion, his evidence is not shaken in any manner. It appears from his evidence

that, he wanted to convey that, the manner in which he stated before the Police about each accused and overt act attributed to them has not been recorded properly. However, the said portion marked cannot be taken to mean that, same are omissions. Therefore, his evidence is reliable, trustworthy, appears to be truthful and deserves acceptance.

71] Prosecution examined Maroti Dhanaji Jadhav as PW-19, whose evidence is at Exhibit – 272. In his evidence he stated that, he was invited for dinner by complainant Baburao on the date of incident. He went there. At about 7 to 7.15 p.m. they were about to sit for dinner, at that time, from the outside of house of Baburao, they heard noise of abuses and there was stone pelting on the house of the complainant. Then they came out of room in the court yard. Gyandeo went ahead. Gyandeo, Vijaykumar, Sanjay, Sheshrao, Bhagwat, Baburao, Chandrakant and this witness and family members in the house came in the court yard.

All of sudden, 30 to 40 persons from outside came in the court yard of Baburao. 2 to 3 persons caught hold hands of Gyandeo. Shivaji Pawar then inflicted sword blow on the chest of Gyandeo. Two other persons came there. One person from them inflicted sword blow on the right side of navel of Gyandeo. Another person inflicted sword blow on the left side of navel of Gyandeo. Then wife of Shivaji Pawar inflicted knife-blow on the above side of waist (ribs) of Gyandeo. Gyandeo sustained bleeding injuries and he fell down. Then Vijaykumar was assaulted by the mob. Three persons had caught hold Vijaykumar. Sword blow was given on the stomach of Vijaykumar. One more person gave sword blow on the stomach of Vijaykumar. Other persons were also beating Vijaykumar. Sanjkumar was inflicted sword blow on the stomach and ribs. This witness again said that, one blow was given to him by Jambiya and another blow was given by sword. Then some persons rushed on the person of Shahuraj. He was given sword blow by the side of waist. Then

Sheshrao was assaulted. Three blows were given on the hand of Sheshrao. A stick blow was given to Bhagwat. Injured sustained bleeding injuries and they collapsed in the court-yard. Injured were thereafter shifted to Nilanga hospital.

72] This witness was cross-examined by Advocate Mr. T.V. Jamdar on behalf of some of the accused. It appears that, defence cross-examined him on the aspect that, he is close relative of the complainant – Baburao. He stated in his cross-examination that, Varsha is the daughter of his cousin brother, who is daughter-in-law of complainant Baburao. He stated in his cross-examination that, it is true to say that, he was deposing for the first time today before the Court that, Shivaji Pawar assaulted Gyandeo by sword, however, in our opinion, it is quite possible that, this witness, who is relative of the complainant from some other village, did not know about the name of all the accused, and therefore,

merely because first time he stated before the Court that, Shivaji Pawar assaulted Gyandeo by sword would not affect credibility of his evidence. Therefore, his evidence also appears to be trustworthy. His evidence is clear, cogent and does not suffer from any omissions, contradictions or improvements and defence has not brought anything on record so as to disbelieve his evidence before the Court.

73] The prosecution examined Varsha Shahuraj Pawar as PW-20. Her evidence is at Exhibit – 273. In her examination in chief, she stated that, complainant Baburao is her father-in-law. She know accused. They are from her village. She is Sarpanch of village Jamga. She was elected three years before. In the election, panel of her father-in-law was elected. On the day of election, Shivaji Pawar and his persons had assaulted. Two months after the election, she was elected for the post of Sarpanch. On the day of election for Sarpanch, Shivaji Pawar and his persons obstructed in the Gram

Panchayat office and said that, they will not allow to hold election. Therefore, the meeting could not be held and they went in Tahsil office and informed Tahsildar about it. On the next day, Tahsildar, his colleagues and police came in the village and conducted election for Sarpanch. On 24th election was over and she was elected as Sarpanch. Shivaji Pawar and his companions were threatening them not to allow to work in the Gram Panchayat office and they will ruin heritage of their family.

She further stated that, incident took place on 09.01.2008. It was next day of Vel Amawasya festival. Incident took place at about 7.00 to 7.15 p.m. On that day, there was non-vegetarian dinner at their house. Maroti Jadhav, Chandrakant Solanke and villagers Waman Pawar, Anant Pawar, Bhingole Tatyaraao were also invited for dinner at their house. Persons from the house and guests were about to sit for dinner, at that time, stone pelting started and abuses

started from outside of their house. Then mob and shout raising persons about 30 to 40 came in their court yard. Gyandeo went ahead of all. Thereafter, Vijaykumar, Sanjay, Shahuraj, Sheshrao, Bhagwat, Baburao, this witness and other females came in the court yard. Guests who had came for dinner also came in the court yard. Gyandeo was caught hold by 3 persons amongst mob. Those were Satish Pawar, Tukaram Pawar and Udhav Pawar. Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo. Namdeo Pawar inflicted sword blow near navel of Gyandeo. Mahadeo Shivaji Pawar inflicted Jambiya blow on the right side stomach of Gyandeo. Accused Vimalbai gave knife blow on the back side ribs left side of Gyandeo. Dayanand Bhingole inflicted sword blow on the left side back portion of Gyandeo. Gyandeo had sustained bleeding injuries and felled down. Then Waman Dadarao Pawar inflicted stick blow on her back. Then she did not understand what happened thereafter. Persons from the mob then assaulted

Vijaykumar, Sanjay, Bhagwat, Sheshrao and females. Injured were taken to Nilanga Hospital for treatment. Doctor advised to shift three injured to Latur for further treatment. Gyandeo, Bhagwat and Sheshrao were retained at Nilanga for treatment. Gyandeo died during the course of treatment.

This witness was cross-examined by Advocate T.V. Jamdar for some of the accused. In her cross-examination, she reiterated her version in her examination-in-chief about the manner in which incident had taken place and also prelude about the incident.

74] Mr. Joydeep Chatterji, the learned counsel invited our attention to portion mark 'A', 'B' from the evidence of this witness and tried to submit that, this witness has not named Namdeo in the said portion mark, and therefore, Namdeo is entitled for benefit of doubt. Upon perusal of the evidence of this witness, in examination-in-chief and also in cross-examination,

she has named Namdeo Pawar and also overt act is attributed to him that, he inflicted sword blow near navel of Gyandeo, and therefore, when her evidence finds corroboration from evidence of other prosecution witnesses and medical evidence, there is no reason to disbelieve her evidence.

75] One Mahadeo S/o Sheshrao Pawar was examined as PW-21. His evidence is at Exhibit – 274. In his examination-in-chief, he stated that, Baburao is his grand-father. Vijaykumar is also grand-father. Deceased was his uncle. Sanjay, Shahuraj are also his uncles. Sheshrao is his father. Bhagwat is his cousin brother. He stated that, incident took place on 09.01.2008 at about 7.15 p.m. On that day, this witness, Baburao, Vijaykumar, Bhagwat, Sheshrao, Sanjay, Shahuraj, Gyandeo and other females were at the house. On that day, it was next day of Vel Amawasya and so dinner of chicken was arranged at their house. For the dinner, guests Chandrakant

Solanke, Maroti Jahdav and villagers Waman Pawar, Anant and Tatyarao Bhingole were invited. While they were sitting for dinner, mob came in the court yard and were saying that, they will ruin their heritage, they will cut them into pieces and the mob then started stone pelting. About 30 to 40 persons were in the mob. Then persons in the house came outside in the court-yard. Gyandeo came ahead of all. Thereafter, Vijaykumar and other persons came in the court yard. Satish Vaijinath Pawar, Udhav Shivaji Pawar and Tukaram Pawar caught hold Gyandeo. Shivaji Pawar inflicted sword blow on the chest of Gyandeo. Mahadeo Shivaji Pawar inflicted Jambiya blow on the right side stomach of Gyandeo. Namdeo Shivaji Pawar inflicted sword blow on the left side of navel of Gyandeo. Vimalbai Pawar inflicted knife blow on the back of Gyandeo. Dayanand Bhingole inflicted sword blow on the left side of Gyandeo. Due to assault, Gyandeo sustained bleeding injuries and he fell down. Then mob assaulted Vijaykumar. Satish Baburao Pawar, Vaijinath Pawar,

Venkat Vaijinath Pawar caught hold Vijaykumar. Madhav Shivaji Pawar inflicted three blows by sword on the face of Vijaykumar. Other persons also inflicted blows on Vijaykumar. Vijaykumar also sustained bleeding injuries and he also felled down. Shahuraj was also assaulted on the back by Madhav Pawar by Jambiya. Shahuraj, Sheshrao, Bhagwat were also assaulted. Then injured were taken to Nilanga Hospital. Doctor told in the hospital that, Gyandeo was dead.

This witness was cross examined by Advocate Mr. T.V. Jamdar on behalf of some of the accused. This witness stated that, he did not state portion mark 'A' read over to him from his police statement. Portion mark 'B' read over to him from his statement is not stated by him before the Police and that, he cannot assign any reason why police recorded the said portion in his statement. Though the Investigating Officer has stated that, the said portion mark 'A' and 'B' was stated by this witness, that is to the effect that, Gyandeo was caught hold by Govind

Shahapure, Dhondiram Raosaheb Pawar, Ashok Vishwanath Pawar and Shivaji Kadaji Pawar assaulted Gyandeo by sword. Another portion mark 'B' is PW-21 does not know, who assaulted. From these portion marks 'A' and 'B', in our opinion, nothing useful to the defence has been brought on record. On the contrary this witness has reiterated his version in his examination-in-chief even in cross examination. It appears that, the Investigating Officer stated in his cross-examination that, this witness has not stated before him the facts read over to him from para 3 of his chief-examination, lines no. 1 to 14. In fact there are no third paragraph in his examination-in-chief. In our opinion, trial Court was not correct in allowing such cross-examination.

76] At this juncture, it would be relevant to observe that, the trial Court while marking portions from the statements of the witnesses before Police under section 161 of Code of Criminal Procedure, has

not adhered to the procedure. The trial Court has not properly appreciated, keeping in view the judgment of the Supreme Court in the case of **Tahsildar Singh and another V/s State of U.P.²**, what amounts to omissions, contradictions and improvements. The Supreme Court in the case of **Tahsildar Singh and another (supra)** held that, the contradiction, under the section, should be between what a witness asserted in the witness-box and what he stated before the police-officer, and not between what he said he had stated before the police-officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is

² AIR 1959 SC 1012

stated in evidence. This indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police-officer and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other. It is further observed by the Supreme Court in paras 26 and 27 of the said judgment that, it is for the trial Judge to decide in each case, after comparing the part or parts of the statement recorded by the police with that made in the witness-box, to give a ruling, having regard to the aforesaid principles, whether the recital intended to be used for contradiction satisfies the requirements of law.

77] In the present case, even if the portion marked in the police statement of the witnesses, and cross examination on it of said witnesses is considered, there are no material omissions, contradictions or improvements, which would eclipse evidence of eleven

eye witnesses coupled with medical evidence and other evidence led by the prosecution.

In our opinion, course adopted by the trial Court to allow defence to confront the witness by asking question about whole paragraph without specifying particular portion, was not proper. Keeping in view relevant procedure, provisions and the judgment of the Supreme Court in the case of **Tahsildar Singh and anr (Supra)**, the Trial Court ought to have considered omissions, contradictions or improvements.

78] P.W.21 in his police statement, in portion mark 'A', 'B', has stated that, he could not state about specific names of the assailants of all injured witnesses i.e. Vijaykumar, Sanjay, Shahuraj and Sheshrao, but that is not helpful to the defence. The evidence of this witness corroborates with the evidence of other prosecution witnesses, whose evidence has already

been discussed.

79] After exhaustively discussing evidence of 11 eye witnesses, in foregoing paragraphs, it would be appropriate in nutshell to state herein below the overt-acts attributed by the eye witnesses to the accused persons.

P.W.16 Baburao deposed that accused Satish Vaijinath Pawar, Tukaram Shivaji Pawar and Udhav Shivaji Pawar caught hold deceased Gyandeo and Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo, Madhav Shivaji Pawar inflicted sword blow on the right side abdomen of Gyandeo, Namdeo Shivaji Pawar inflicted sword blow on stomach of Gyandeo, Dayanand Bhingole inflicted sword blow on the back side and ribs on the right side of Gyandeo, Vimalbai Shivaji Pawar inflicted knife blow on back of Gyandeo. P.W.16 stated that other accused assaulted Gyandeo with stick and iron rods.

As regards assault on injured witness P.W.25 Vijaykumar, Baburao P.W.16 attributed overt-acts to the accused stating that accused Madhav Shivaji Pawar assaulted with sword on the face of Vijaykumar, accused

Namdeo Shivaji Pawar inflicted sword blow on the shoulder of Vijaykumar, accused Udhav Shivaji Pawar assaulted by iron rod to Vijaykumar.

As regards assault on injured P.W.22 Shahuraj, Baburao P.W.16 attributed overt-acts to the accused stating that accused Prakash Kadaji Pawar assaulted Shahuraj with iron rod, accused Vilas Kadaji Pawar assaulted Shahuraj with stick, and accused Shivaji Kadaji Pawar assaulted Shahuraj with sword.

As regards assault on injured P.W.24 Shesherao, Baburao P.W.16 attributed overt-acts to the accused stating that accused Ashok Kadaji Pawar assaulted by Katti on right shin of Shesherao Pawar, accused Shivaji Kadaji Pawar assaulted him with sword on left wrist.

As regards assault on injured P.W.23 Bhagwat Pawar, Baburao P.W.16 attributed overt-acts to the accused stating that accused Devidas Pralhad Pawar assaulted with stick on the head of Bhatwat.

As regards assault on himself, Baburao P.W.16 attributed overt-acts to the accused stating that accused Waman Dadarao Pawar assaulted with stick on his back.

80] **P.W.17 Chandrakant Pawar** attributed overt-acts to the accused as regards assault on Gyandeo stating that accused Satish Vaijinath Pawar, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on the back of Gyandeo, Madhav Shivaji Pawar inflicted blow of Jambiya like sword on the stomach of Gyandeo and Namdeo Shivaji Pawar inflicted sword blow on the stomach of Gyandeo.

As regards assault on injured P.W.25 Vijaykumar, Chandrakant Pawar P.W.17 attributed overt-acts to the accused stating that accused Namdeo Shivaji Pawar assaulted with sword on the right side stomach of Vijaykumar, accused Madhav Shivaji Pawar inflicted Jambiya blow on the stomach of Vijaykumar, accused Vilas Kadaji Pawar assaulted with stick on his back, accused Udhav Shivaji Pawar assaulted Vijaykumar with iron rod on right shoulder, Haridas Manik Pawar assaulted Vijaykumar with iron rod on back side of lower portion.

As regards assault on P.W.26 Sanjay, Chandrakant Pawar P.W.17 attributed overt-acts to the

accused stating that accused Madhav Shivaji Pawar assaulted Sanjay by Jambiya like sword on right side of abdomen.

As regards assault on P.W.24 Shesherao, Chandrakant Pawar P.W.17 attributed overt-acts to the accused stating that accused Shivaji Kadaji Pawar assaulted Shesherao on left hand with three blows of sword, also on the waist at the right side back of Shesherao, accused Ashok Kadaji Pawar assaulted Shesherao with Katti on leg shin, accused Prakash kadaji Pawar assaulted by iron rod on back.

As regards assault on P.W.23 Bhagwat, Chandrakant Pawar P.W.17 attributed overt-acts to the accused stating that accused Devidas Pralhad Pawar assaulted him with stick on his head.

As regards assault on P.W.16 Baburao, Chandrakant Pawar P.W.17 attributed overt-acts to the accused stating that accused Waman Dadarao Pawar assaulted Baburao with stick on back.

81] **P.W.18 Dilip Pawar** attributed overt-acts to the accused stating that accused Satish Vaijinath Pawar,

Tukaram, Udhav caught hold Gyandeo and Shivaji Kadaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai inflicted knife blow on the left ribs of Gyandeo, Namdeo Shivaji Pawar inflicted sword blow on the stomach of Gyandeo, Dayanand Bhingole inflicted sword blow on back side (left side) of Gyandeo, Madhav Shivaji Pawar inflicted blow on the right side of abdomen of Gyandeo with Jambiya like sword.

As regards assault on P.W.25 Vijaykumar, Dilip Pawar P.W.18 attributed overt-acts to the accused stating that accused Madhav Shivaji Pawar assaulted Vijaykumar with Jambiya like sword on the stomach and face, Namdeo Pawar inflicted sword blow on right leg of Vijaykumar, Udhav Shivaji Pawar assaulted Vijaykumar with iron rod on right shoulder, Vilas Kadaji Pawar assaulted with iron rod on back of Vijaykumar.

As regards assault on P.W.26 Sanjay, Dilip Pawar P.W.18 attributed overt-acts to the accused stating that accused Madhav Shivaji Pawar assaulted with Jambiya like sword on right side abdomen of Sanjay.

As regards assault on P.W.22 Shahuraj, Dilip

Pawar P.W.18 attributed overt-acts to the accused stating that accused Vilas Kadaji Pawar assaulted with stick on the left shoulder of Shahuraj, Prakash Kadaji Pawar assaulted with iron rod on waist of Shahuraj, Shivaji Kadaji Pawar assaulted with sword on right side back of Shahuraj.

As regards assault on P.W.24 Sheshrao, Dilip Pawar P.W.18 attributed overt-acts to the accused stating that accused Ashok Kadaji Pawar assaulted by Katti on right leg shin of Sheshrao, Shivaji Kadaji Pawar inflicted three sword blows on left hand of Sheshrao.

As regards assault on P.W.23 Bhagwat, Dilip Pawar P.W.18 attributed overt-acts to the accused stating that accused Devidas Pralhad Pawar assaulted with stick on head of Bhagwat.

82] **P.W.19 Maroti** attributed overt-acts to the accused stating that 2 to 3 accused caught hold Gyandeo, Shivaji Pawar inflicted sword blow on the chest of Gyandeo, one person inflicted sword blow on the back of Gyandeo, two other persons came and one of them inflicted sword blow on the right side of navel of Gyandeo and another person

inflicted sword blow on the left side of navel of Gyandeo, and wife of Shivaji Pawar inflicted knife blow on the back of Gyandeo.

As regards assault on P.W.25 Vijaykumar, Maroti P.W.19 attributed overt-acts to the accused stating that accused Vijaykumar was assaulted by the mob, three persons caught hold Vijaykumar, sword blow was given on the stomach of Vijaykumar, one more accused person gave sword blow on his stomach and sword blows were inflicted on his stomach and ribs.

As regards assault on P.W.22 Shahuraj, Maroti P.W.19 attributed overt-acts to the accused stating that some accused persons rushed on Shahuraj and gave three sword blows on hand of Shahuraj.

As regards assault on P.W.23 Bhagwat, Maroti P.W.19 attributed overt-acts to the accused stating that accused gave stick blow to Bhagwat.

83] **P.W.20 Varshabai Pawar** attributed overt-acts to the accused stating that accused Satish, Tukaram, Uddhav caught hold Gayndeo and Shivaji Pawar inflicted

sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on back of Gyandeo, Madhav Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo and Namdeo Shivaji Pawar inflicted Jambiya (sword) blow on the navel of Gyandeo.

As regards assault on herself, this witness attributed overt-acts to the accused stating that Waman Dadarao Pawar inflicted stick blow on her back.

84] **P.W.21 Mahadev Pawar** attributed overt-acts to the accused stating that accused Satish Vaijinath, Tukaram, Uddhav caught hold Gayndeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on back of Gyandeo, Madhav Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo and Namdeo Shivaji Pawar inflicted Jambiya (sword) blow on the navel of Gyandeo.

As regards assault on Vijaykumar P.W25,

P.W.21 Mahadev Pawar attributed overt-acts to the accused stating that accused Satish Baburao Pawar, Vaijinath Pawar and Venkat Pawar caught hold Vijaykumar, Madhav Shivaji Pawar inflicted three blows of sword on the face of Vijaykumar.

He also attributes overt-act to accused Madhav Pawar in assaulting Shahuraj with Jambiya.

85] **P.W.22 Shahuraj Pawar** attributed overt-acts to the accused stating that accused Satish Vaijinath Pawar, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on the back of Gyandeo, Mahdavi Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo, Namdeo Shivaji Pawar inflicted Jambiya blow on the navel of Gyandeo.

As regards assault on himself, P.W.22 Shahuraj Pawar attributed overt-acts to the accused stating that Vilas Kadaji Pawar assaulted with stick on left shoulder and stomach of Shahuraj, Prakash Kadaji Pawar assaulted with

iron rod on right side waist of Shahuraj, Shivaji kadaji Pawar assaulted with sword on the right side waist of Shahuraj.

86] **P.W.23 Bhagwat Pawar** attributed overt-acts to the accused stating that Satish, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on the back of Gyandeo, Mahdav Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo, Namdeo Shivaji Pawar inflicted Jambiya blow on the navel of Gyandeo.

As regards assault on himself, P.W.23 Bhagwat Pawar attributed overt-acts to the accused Devidas Pralhad Pawar stating that accused Devidas assaulted him with stick on the head.

87] **P.W.24 Sheshrao Pawar** attributed overt-acts to the accused stating that Satish Vaijinath Pawar, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand

Bhingole inflicted sword blow on the back of Gyandeo, Mahdav Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo, Namdeo Shivaji Pawar inflicted Jambiya blow on the navel of Gyandeo.

As regards assault on himself, P.W.24 Sheshrao Pawar attributed overt-acts to the accused stating that accused Shivaji Pawar inflicted three blows of sword on his left leg, accused Ashok Pawar inflicted Katti blow on the left leg.

88] **P.W.25 Vijaykumar** attributed overt-acts to the accused stating that Satish Pawar, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the left chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on the back of Gyandeo, Mahdav Shivaji Pawar inflicted sword blow on the stomach of Gyandeo, Namdeo Shivaji Pawar inflicted sword blow on the navel of Gyandeo.

As regards assault by accused on himself, P.W.25 Vijaykumar attributed overt-acts to the accused stating that Satish Pawar, Vaijinath Pawar and Venkat Pawar caught hold him, Madhav Shivaji Pawar inflicted

sword blow on his face, Madhav also inflicted sword blow on his navel, Namdeo Pawar inflicted sword blow on the right thigh, Vilas Pawar inflicted stick blow on head, Udhav Pawar inflicted iron blow on left shoulder, Hari Pawar inflicted iron blow on the back. Due to the assault, his intestines came out.

89] **P.W.26 Sanjay Pawar** attributed overt-acts to the accused stating Satish, Tukaram, Udhav caught hold Gyandeo and Shivaji Pawar inflicted sword blow on the chest of Gyandeo, Vimalbai Pawar inflicted knife blow on the ribs of Gyandeo, Dayanand Bhingole inflicted sword blow on the back of Gyandeo, Mahdav Shivaji Pawar inflicted Jambiya like sword blow on the stomach of Gyandeo, Namdeo Shivaji Pawar inflicted Jambiya blow on the navel of Gyandeo.

As regards assault on himself, P.W.26 Sanjay Pawar attributed overt-acts to the accused stating that the accused Madhav Shivaji Pawar assaulted him by Jambiya like sword on the right side waist due to which his intestines came out.

90] Maroti Dnyanoji Thorat was working as A.P.I.

since 19.05.2007 till 2008 at Police Station Aurad Shahajani Police Station. He was examined as PW-29. His evidence is at Exhibit 316. He stated that, he received complaint of Baburao Bhagwanrao Pawar at 4.00 p.m. Then, he registered crime and retained investigation with him. On that day, he visited the spot of incident and prepared its panchanama. He further stated that, spot of incident was courtyard premises of house of complainant at village Jamga. Panchnama was prepared in presence of two panchas. Panchnama shown to him is the same. It is at Exh. 225. He seized simple earth and blood stained earth in separate papers, five sticks and two iron rods under the spot panchnama. Labels bearing signatures of PW-29 and panchas were affixed on those sticks and iron rods. Sticks and iron rods shown to him are the same. Those are at article Nos. 2 and 3. On that day, he went to Sub District Hospital, Nilanga and prepared inquest panchnama of dead body of Gyandeo. Inquest panchnama Exh.62 shown to him is the same. Then dead body was sent for post mortem along with police Constable Songir. He further stated that, on that day, he arrested 10 accused under arrest panchnamas. He seized clothes from the person of arrested

accused in presence of panchas under panchnama. Arrested accused were Balaji Apparao Pawar, Madhav Ganpat Shahapure, Manik Ramji Pawar, Abhimanyu Raosaheb Pawar, Satyanarayan Madhav Shahapure, Shivaji Kadaji Pawar, Ashok Vishwanath Pawar, Govind Ganpat Shahapure, Pandhari Manik Pawar, Tukaram Shivaji Pawar. Panchnama of seizure clothes of these accused shown to him are the same. It bears his signature and panchas. It is at Exh.80 to 84, 78, 79, 85, 86, 77. He recorded statements of three witnesses. He further stated that, on 12.01.2008, he issued letter to Special Executive Officer for recording statement of injured persons. He also recorded statements of injured by going in Latur Hospital. On 13.01.2008, he recorded statements of 2 injured persons. On 14.01.2008, accused Shivaji Kadaji Pawar, Madhav Ganapati Shahapure, Manik Ramji Pawar, Abhimanyu Raosaheb Pawar, Pandhari Manik Pawar, Tukaram Shivaji Pawar, Satyanarayan Madhav Shahapure gave memorandum of statement. He recorded it in present of witnesses. In pursuance of their statements, weapons produced by them from respective places were seized under panchnama. Memorandum bears signatures of PW-29 and panchas. It is at Exh.227, 228,

229, 230, 231, 232, 233. Seizure panchnama are at Exh.234, 235, 240, 236, 237, 238, 239. On 14.01.2008, he arrested three accused namely Vikas Kadaji Pawar, Ashok Kadaji Pawar and Dnyandeo Shivaji Pawar under arrest panchnamas. It bears signatures of PW-29 and panchas. It is at Exh.317 to 319. He seized clothes panchnama. Panchnama shown to him are the same and bears signatures of PW-29 and panchas. It is at Exh.320 to 322. He again said that, panchnamas bear signatures of Ganganbone. He knows his signature. He further stated that, on 15.01.2008, he recorded memorandum of Balaji Apparao Pawar, Govind Ganpat Shahapure, in presence of panchas. It bears signature of PW-29 and panchas. It is at Exh.112 and 113. In pursuance to these memorandums, accused produced weapons from the places pointed out by them and he seized those weapons under the panchnama in presence of panchas witnesses. Panchanamas bear signatures of PW-29 and panch witnesses. It is at Exh.114 and 115. He affixed labels bearing signature of PW-29 and panchas on the seized weapons. He further stated that, on 18.01.2008, he recorded supplementary statement of injured persons. On 20.01.2008, he recorded

memorandums of accused Namdeo Shivaji, Vilas Kadaji Pawar and Ashok Kadaji Pawar in presence of panchas. Memorandums shown to him are the same. It bear signatures of PW-29 and panch witnesses. It is at Exh.323 to 325. Then, he seized weapons produced by those accused from the places pointed by them under panchnamas in presence of panchas. Panchnama shown to him are the same. It bears signatures of PW-29 and panchas. It is at Exh.326 to 328. On 21.01.2008, he recorded memorandum of accused Ashok Vishwanath Pawar. It is at Exh.124. He seized weapon produced by accused from the place pointed out by him, under the panchnama in presence of panchas. Panchnama Exh.125 shown to him is the same. It bears signature of PW-29 and panchas. Lables bearing signatures of PW-29 and panchas were affixed on the weapons seized. On 31.01.2008, he sent seized muddemal to C.A. Along with letter. Office copy of that letter shown to him is the same. It bears his signature. It is at Exh. 329.

He was cross examined by Mr. T.V.Jamdar advocate for the accused. In his cross examination, he stated that, on the very day i.e. on 10th January, 2008, he

recorded supplementary statement of the complainant. He has denied suggestion that, panch witnesses on all panchnamas were from relations of the complainant only and that those panchas were provided by the complainant. He also denied suggestion that, he shown false spot of incident and that none of the accused gave memorandum and none of the accused produced weapons in pursuance to such memorandums and that he prepared false memorandums and panchanamas. He further stated that, he has recorded statement of persons referred in the complaint. He specifically denied suggestion that, he posed false witnesses at the instance of complainant and that conducted improper investigation and examined only the persons who are relatives of the complainant. He denied suggestion that, he manipulated panchnama regarding seizure of clothes of accused persons. Further accused have not given memorandum statement before him nor produced any weapon in pursuance to such memorandum. He denied suggestion that, he prepared false panchnama about seizure of weapons and clothes from the accused.

91] PW-30 Laxman Dnyanoba Kendre, who

investigated the crime from 31.01.2008 to 18th June, 2008 as API. In his evidence, he stated that, API Thorat handed over investigation to him. On 02.02.2008, he collected injury certificate of injured and P.M. Report. On 04.02.2008, he inquired with accused Waman Dadarao Pawar and seized stick produced by him under the panchnama Exh.210. Panchnama shown to him is the same. It bears his signature. Lable bearing signatures of PW-30 and panch was affixed on the stick. He further stated that, he took Waman Pawar to Police Station, arrested him and seized clothes on his person under the panchnama. Panchnama shown to PW-30 is the same. It bears his signature. It is at Exh.357. He further stated that, on 29.02.2008, he sent letter to MSEB office, Nilanga whether on the day of incident and at the time of incident there was electricity supply at village Jamga. The office copy of said letter shown to him is the same. It bears his signature. It is at Exh.156. Reply to said letter is at Exh.157. He further stated that, he recorded statement of Gram Sevak Goswami and collected the Gram Panchayat extract of the place of incident. On 05.04.2008, he submitted charge sheet against accused Nos. 1 to 14 as there was sufficient evidence against them,

showing accused No.15 to 37 absconding. He stated that, on 20.05.2008, accused Vishwanath Pawar, Udhav Pawar and Vaijinath Pawar were released on anticipatory bail, and they produced sticks and iron rod before him and he seized the same under separate panchanamas. Panchanama shown to him is the same. It bears signature of PW-30 and panch witnesses. It is at Exh.214, 213 and 212. Accused Pandurang Vishwanath Pawar gave memorandum in presence of panchas, and he seized sword produced by him in pursuance of memorandum, under the panchnama in presence of panch. Memorandum and panchnama shown to him are the same. It bears signatures of PW-30 and panch witnesses. It is at Exh.191 and 192. He stated that, on 16.06.2008 he arrested 13 accused. Accused Vishnu Pawar, Vinayak Pawar, Maroti Pawar, Chandraharsha Pawar, Satish Vaijinath Pawar and Pandurang Maroti Bhingole gave memorandum before him in presence of panchas, and each accused produced weapon from different places in pursuance to memorandum, and he seized those weapons under panchnamas in presence of panch witnesses. Memorandums are at Exh.358, 360, 362, 364, 366 and 368. Panchnamas are at Exh.359, 361, 363, 365,

367, 369 and 371. Lables bearing signatures of PW-30 and panch were affixed on seized weapons. Then due to his transfer, he handed over investigation to PSI Naginwad. Nothing useful to the defence has been brought on record from his cross examination.

92] One Anant Mahipatrao Kulkarni was examined as PW-31. His evidence is at Exhibit-379. He stated in his evidence that, he attached to Aurad Shahajani Police Station from 20.06.2008 to January 2009 as API. He received investigation in Crime No.02/2008 on 20.06.2008 from API Kendre. He had arrested accused Nagnath Pawar, Vimalbai Pawar and Komalbai Pawar. Arrest panchnamas shown to him bears his signature and panch. Arrest panchanamas are at Exh.380 to 382. He stated that, accused Komalbai had produced knife / batai before him which recovered under panchnama in the presence of panch. Panchnamas at at Exh.383. Accused Vimalbasi had produced knife before him which he seized under panchnama in the presence of panch. Panchnama shown to him, bears signature of PW-31 and panch. It is at Exh.384. He affixed label to the knife bearing signature of panch and

PW-31. Thereafter, he submitted the charge sheet against above referred accused.

93] We have discussed the entire evidence on record. There is overwhelming direct evidence in the nature of eleven eye witnesses to the incident. The main criticism by the defence qua the evidence of eye witnesses is that they are partisan or interested witnesses inasmuch as, they are in blood relation with the complainant. In this respect, at this juncture, it would be apt to make reference to the judgment of the Supreme Court in the case of **Masalti** (supra). The Supreme Court in the case of **Masalti** (supra) has made it clear that it is, no doubt, the quality of the evidence that matters and not the number of witnesses who give evidence. The Supreme Court in para 14 of the judgment in case of **Masalti** (supra) observed, thus:

“14. Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. 51 S.C.-IO 146 Whether or not there are discrepancies in the evidence; whether or not the

evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

94] In the light of the observations of the Supreme Court in paragraph 14 quoted above, we have discussed the evidence of all eye witnesses. Therefore, in our opinion, merely because the eye witnesses are in blood relation with the complainant, is no ground to disbelieve their evidence. The prosecution has placed on record satisfactory evidence showing the involvement of accused persons in commission of offence. There is overwhelming medical evidence which would unequivocally suggest that, the deceased Gyandeo was brutally murdered by the accused persons by using deadly weapons like sword, knife and also stick and iron

rod. There are six injured witnesses who were examined by the medical officer P.W.28 Dr. Shivanand Biradar. Out of six injured witnesses, three injured witnesses i.e. Vijaykumar, Shahuraj and Sanjay, were examined by the Medical Officer, and the evidence of the Medical Officer suggests that nature of injuries sustained was grievous and dangerous to life. It is not that other five witnesses were not assaulted by the mob but, it is stated by the complainant in his evidence before the Court, that their injuries were not visible and, therefore, medical officer did not examine them.

Another criticism by the defence is that names of some of the accused are not mentioned in the first information report or supplementary statement of the complainant Baburao. The Supreme Court in the case of **Ranjit Singh and Ors v. State of M.P.**³ in para 9 held that in case the informant fails to name a particular accused in the FIR, and the said accused is named at the earliest opportunity, when the statements of witnesses are recorded, it cannot tilt the balance in favour of the accused.

Further argument advanced by the defence is

³ AIR 2011 SC 255;

that, the prosecution has not placed on record satisfactory evidence to prove that the accused persons did form an unlawful assembly either prior to commission of offence or at the time of commission of offence. It is common contention of the learned Counsel appearing for the accused that the ingredients of sections 141, 142 and 149 of the IPC are not attracted in the light of evidence brought on record and, therefore, it cannot be held that the accused persons formed an unlawful assembly in furtherance of their common object to assault / cause grievous hurt in order to kill every member of the family of the complainant as alleged by the prosecution. In this respect, at this juncture it would be apt once again to make reference to the exposition of the Supreme Court in case of **Masalti** (supra) wherein the Supreme Court while explaining scope of sections 141 to 149 of IPC and also section 302 r/w 149 of IPC, in paragraphs 16, 17 and 20 held, thus:

“16. Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with

evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all the prosecution may be entitled to say that the seven accused persons were acquitted because their cases did not satisfy the mechanical test of four witnesses, and if the said test had not been applied, they might as well have been convicted. It is, no doubt, the quality of the evidence that matters and not the number of witnesses who give such evidence. But, sometimes it is useful to adopt a test like the one which the High Court has adopted in dealing with the present case.

17. Mr. Sawhney then attempted to argue that the High Court failed to give effect to the principles enunciated by this Court in the case of *Baladin v. State of Uttar Pradesh* (S) AIR 1956 SC 181. In that case, it was observed by Sinha, J., who spoke for the Court, that it is well-settled that mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under s.142, I.P.C. The argument is (1) A.I.R. 1956 S.C. 181 148 that evidence adduced by the prosecution in the present case does not assign any specific part to most of the accused persons in relation to any overt act, and so, the High Court was in error in holding that the appellants were members of an unlawful assembly. The observation of which Mr. Sawhney relies, *prima facie*, does seem to support his contention; but, with respect, we ought to add that the said observation cannot be read as laying down a general proposition of law that unless an overt act is

proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr. Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of Baladin (S) AIR 1956 SC 181, the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly, and he entertained along with the other members of the assembly the common object as defined by s.141, I.P.C. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of s. 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by S.141. While determining this question, it becomes relevant....to consider whether the assembly consisted of some persons.....who were merely passive witnesses and had (1) A.I.R. 1956 S.C. 181 149 joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin (S) AIR 1956 SC 181 assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed

some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by s.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of Baladin(l) must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition of law such as Mr. Sawhney suggests.

20. That leaves one question still to be considered and that has relation to the sentence of death imposed on 10 persons. Mr. Sawhney argues that in confirming the sentences of death imposed by the trial Court on 10 accused persons in this case, the High Court has adopted a mechanical rule. The High Court has held that the 10 persons who carried fire-arms should be ordered to be hanged, whereas others who have also been convicted under s. 302/149, should be sentenced to imprisonment for life. It is true that except for Laxmi Prasad, the charge under s. 302/149 rests against the other accused persons on the ground that five murders have been committed by some members of the unlawful assembly of which they were members, and the argument is that unless it is shown that a particular accused person has himself committed the murder of one or the other of the victims, the sentence of death should not be imposed on him. In other words, the contention is that if a person is found guilty of murder under s. 302/149 and it is not shown that he himself committed the murder in question, he is not liable to be sentenced to

death. In support of this argument, Mr. Sawhney has relied on certain observations made by Bose J. who spoke for the Court in Dalip Singh v. State of Punjab AIR 1953 SC 64. In that case, what this Court observed was that the power to enhance a sentence from transportation to death should very rarely be exercised and only for the strongest reasons; and it was added that it is not enough for the appellate court to say or think that if left to itself it would have awarded the....greater penalty because the discretion does ,not belong to the..appellate court but to the trial Judge, and the only ground on which the appellate court can interfere is that the discretion has been improperly exercised. These observations have no relevance in the present case, because we are not dealing With a case where the High Court has enhanced the sentence imposed by the trial Judge at all. In fact, both the trial Court and the High Court are agreed that the sentences of death imposed on 10 persons are justified by the circumstances of the case and by the requirements (1) (1954] S.C.R. 145 151 of justice. As a mere proposition of law, it should be difficult to accept the argument that the sentence of death can be legitimately imposed only where an accused person is found to have committed the murder himself. Whether or not sentences of death should be imposed on persons who are found to be guilty not because they themselves committed the murder, but because they were members of an unlawful assembly and the offence of murder was committed by one or more of the members of such an assembly in pursuance of the common object of that assembly, is a matter which had to be decided on the facts and circumstances of each case. In the present case, it is clear that the whole group of persons belonged to Laxmi Prasad's faction, joined together armed with deadly weapons and they were inspired by the common object of exterminating the male members in the family of Gayadin, 10 of these persons were armed with fire-arms and the others with several other deadly weapons, and evidence shows that five murders by shooting were committed by the members of this unlawful assembly. The conduct of the

members of the unlawful assembly both before and after the commission of the offence has been considered by the courts below and it has been held that in order to suppress such fantastic criminal conduct on the part of villagers it is necessary to impose the sentences of death on 10 members of the unlawful assembly who were armed with firearms. It cannot be said that discretion in the matter has been improperly exercised either by the trial Court or by the High Court. Therefore we see no reason to accept the argument urged by Mr. Sawhney that the test adopted by the High Court in dealing with the question of sentence is mechanical and unreasonable.”

95] While considering various provisions of IPC and in particular, sections 148, 149 and 302 IPC, the Supreme Court, in case of **Ranjit Singh** (supra), in paragraph 22 held, thus:

“22. Thus, from the above, the law on the issue remains that in a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the court is of the view that the testimony of such sole eye-witness is not reliable. Though, generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident in a fit case the court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot.”

96] As already observed, we have discussed the evidence of the eye witnesses in detail. It is true that the trial Court has convicted the accused Shivaji Kadaji Pawar and Namdeo Shivaji Pawar for the offence punishable under Section 302 of IPC and the accused Shivaji Kadaji Pawar, Vilas s/o Kadaji Pawar and Namdeo Shivaji Pawar have been convicted for the offence punishable under Section 452 and 324 of IPC and sentenced them as stated herein above. In all 35 accused faced the trial; out of which, accused Dayanand Maruti Bhingole and Mahadeo Shivaji Pawar absconded and their trial is separated by the trial Court. The State and also the original complainant have filed two separate appeals against acquittal of other accused and also for enhancement of sentence of three accused who are convicted by the trial Court. Since we are exercising our appellate jurisdiction under Section 386 of Cr.P.C., it was incumbent upon us to re-appreciate the entire evidence in minute details, since there are three appeals, one against conviction and two against acquittal of the remaining accused. The common argument advanced on behalf of the acquitted accused is that in view of their acquittal by the trial Court, their innocence is reinforced and therefore, this

Court may not interfere in their acquittal order. In that respect, it would be worthwhile to refer the observations of the Supreme Court in case of **State of U.P. vs. Babu & Ors.**⁴, in paragraph 10 of the judgment which reads, thus:

“10. Recently in State of Punjab v. Karnail Singh (2003 AIR SCW 4065) it was observed that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and others v. State of Madhya Pradesh (2002 (3) JT (SC) 387). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and another v. State of Maharashtra (1973 (2) SCC 793), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225]

4 2003 ALL MR(Cri) 2356 (S.C.);

and Jaswant Singh v. State of Haryana (2000 (4) JT (SC) 114).”

Therefore, the paramount consideration of this Court while exercising the jurisdiction under Section 386 Cr.P.C. is to ensure that miscarriage of justice is prevented. As observed by the Supreme Court, miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. Therefore, in the light of these observations of the Supreme Court, as already observed, we have re-appreciated the entire evidence brought on record by the prosecution. (Underline supplied).

97] After discussing the evidence of the eye witnesses, medical evidence, spot panchanama, inquest panchanama and other evidence placed on record by the prosecution, we are of the opinion that, the prosecution did firmly establish that the incident had taken place in the

court-yard of the house of complainant Baburao. It has come in the evidence of P.W.16 Baburao and also evidence of other prosecution witnesses that in the Gram Panchayat election of the village Jamga, complainant's panel secured majority and rival panel, headed by accused Shivaji Kadaji Pawar lost the elections of Gram Panchayat. Thereafter, prosecution has brought on record that at the time of election of Sarpanch, there was obstruction at the hands of rival group headed by Shivaji Kadaji Pawar, as a result of which, election of Sarpanch was postponed to next day of the scheduled date and complainant's daughter-in-law got elected as Sarpanch. The complainant has also stated in his evidence that threats were extended that the elected body would not be allowed to carry on their functions or to hold Gram Sabha. In the present case, there are as many as eleven eye witnesses; out of which, six are injured witnesses, three of which sustained grievous injuries, dangerous to their lives and though the other eye witnesses, according to the prosecution, were assaulted, their injuries were not visible. Therefore, in such a case, where there is direct evidence in the nature of eye witnesses, the motive loses its importance. We have already discussed in detail

the evidence of each witness and the position which emerges from the evidence of complainant and some of the eye witnesses i.e. PW-22, PW-18, PW-17, PW-21, PW-22, PW-25 etc. is that, the mob of more than 30 – 40 persons, with deadly weapons like swords, knife, Katti and also sticks, iron rods came to the house of the complainant in between 7 to 7.30 p.m. The fact that some members of the said group were armed with swords and also knife and other sharp weapons, is a clear indication that using such weapons would certainly result into grievous injuries and death and, with such knowledge, the members of the said group participated, they were aggressors inasmuch as, a group of 30 – 40 persons proceeded to the house of the complainant Baburao, they entered in the house and committed murder of Gyandeo - son of the complainant. And caused grievous injury to Shahuraj, Vijaykumar and Sanjay whereas, simple injuries to other three witnesses. There cannot be a room for doubt that the members of the said assembly had knowledge that use of such weapons would certainly result into casualties. The behaviour of the assembly while proceeding towards the house of complainant, as stated by the witnesses, was certainly

violent, some of them were giving slogans that they would ensure that no member of the complainant's family is left alive. Apart from that, they were instigating and encouraging each other for commission of offence. Therefore, if the evidence of the complainant and other witnesses is considered in its entirety, an inevitable conclusion is that each member of the unlawful assembly had knowledge that there would be commission of offence / casualties. The members knew that weapons which were carried by some of the members of the assembly, if used, certainly would result into death or grievous injuries and therefore, behaviour of the assembly prior to the incident and at the time of incident and the fact that deadly weapons were used, leads to only conclusion that they formed an unlawful assembly in furtherance of their common object to assault / cause grievous hurt, in order to kill every member of the family of complainant Baburao, and in furtherance of that common object, as a matter of fact, Gyandeo was assaulted with swords and other weapons and as a result, he died. Out of eleven eye witnesses, six are injured witnesses; three of them suffered grievous injuries, dangerous to their lives. The overwhelming medical

evidence clearly corroborates the version / evidence of the eye witnesses. P.W.27 Dr.Pralhad Solanke and P.W.28 Dr. Shivanand Biradar were the medical officers examined by the prosecution and we have already discussed their evidence in detail in para 37 to 41. Therefore, it is not necessary to repeat the same once again. In order to hold that the assembly was unlawful, it is necessary to meet the ingredients of sections 141 and 142 of IPC. In the present case, the prosecution has established beyond doubt that there was assembly of more than five persons and the case in hand would be covered by the provisions of section 141 of IPC. Section 141 of IPC reads, thus:

“ 141. Unlawful assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, or the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person

of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

98] Upon careful perusal of the provisions of section 141 of IPC, the present case is covered under “*Clause Third*”. The assembly entered in the house of the complainant and thereby committed criminal trespass. They have also committed offence and therefore, ingredients of section 141 are met in the present case. The accused persons more than five in number, in furtherance of common object to assault / cause grievous hurt to members of complainant's family, so as to kill every member of the family of complainant Baburao, proceeded to the house of the complainant with deadly weapons, their behaviour prior to commission of offence and at the time of commission of offence was certainly in furtherance of common object. Their involvement was not passive. They knew the result of forming such an unlawful assembly. As a matter of fact, the

members of the unlawful assembly who are named and overt act attributed to them, actually participated in commission of murder of Gyandeo and injured other eye witnesses.

99] Section 142 of IPC reads, thus:

“ 142. Being member of unlawful assembly.--Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.”

As already observed, members of the unlawful assembly were aware as to for what purpose they have assembled and were proceeding to the house of Baburao, they were aggressors, they formed an unlawful assembly knowing the object, joined the assembly and they continued their association till the actual offence was committed. Therefore, in the present case, the prosecution has proved that in furtherance of the common object, the accused persons formed an unlawful assembly and they proceeded to the house of the complainant Baburao so as to assault / cause grievous hurt, to finish every member of his family and succeeded in killing his son Gyandeo and injuring other six eye witnesses from his blood relation. The other

witnesses have also received injuries but, those were not visible and the medical officer has not examined them.

100] At this juncture, it would be relevant to refer the provisions of section 149 of IPC which read. Thus:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

101] By applying the test / criteria laid down in the case of **Masalti** (supra) that in case of mob attack, in order to ascertain whether there was actual participation of each accused, the Court should ensure that two or more than two witnesses have actually deposed about the involvement of accused in commission of offence. If said test is applied in respect of accused Shivaji Kadaji Pawar, P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16 Baburao i.e. complainant have in clear words stated his involvement and overt-acts. He assaulted deceased Gyandeo with sword on chest and to that effect, there is corroboration through medical evidence. All other eye

witnesses have also deposed that accused Shivaji assaulted Gyandeo with sword. After assaulting Gyandeo, he even assaulted other eye witnesses i.e. P.W.22 Shahuraj and other witnesses. Therefore, so far as Shivaji Kadaji Pawar is concerned, the evidence of prosecution witnesses is consistent and gets corroboration from the medical evidence. As already observed, P.W.27 Dr.Pralhad Solanke and P.W.28 Dr. Shivanand Biradar were examined as medical officers and they have deposed in their evidence about the injuries sustained by the deceased Gyandeo and other eye witnesses.

As far as accused Shivaji Kadaji Pawar is concerned, the eye witnesses namely, P.W.16, P.W.17, P.W.18, P.W.19, P.W.20, P.W.21, P.W.22, P.W.23, P.W.24, P.W.25, P.W.26, attributed overt-acts to Shivaji stating that he inflicted sword blows on the person of deceased Gyandeo, injured Sheshrao and Shahuraj.

102] So far as accused Namdeo Shivaji Pawar is concerned, again the evidence of P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16 Baburao i.e.

complainant is consistent that Namdeo assaulted with a sword not only to the deceased Gyandeo but, even to other witnesses. Since the evidence of all the witnesses have been already discussed in detail, it is not necessary to repeat the same. Suffice it to say that, as regards accused Namdeo Shivaji Pawar is concerned, eye witnesses namely, P.W.16, P.W.17, P.W.18, attributed overt-acts to accused Namdeo that he inflicted Jambiya blows to Gyandeo deceased and Vijaykumar – injured, P.W.20 attributed that he inflicted Jambiya blow to Gyandeo P.W.21 stated that he gave Jambiya blow to Shahuraj, P.W.22, P.W.23, P.W.24, P.W.25, P.W.26 attributed overt-acts to accused Namdeo that he gave Jambiya blow to deceased Gyandeo. P.W.25 also attributed overt-acts to Namdeo that he gave Jambiya blow him i.e. P.W.25 Vijaykumar.

Suffice it to say that by applying the test in the case of **Masalti** (supra), there is overwhelming evidence regarding involvement of Namdeo Shivaji Pawar in the commission of offence. The eye witness account gets corroboration from the medical evidence. The other eye

witnesses have also stated about his involvement. Though it was argued by the learned Counsel for the accused that Namdeo is not named in the FIR or complaint, FIR is not an encyclopedia and evidence of eleven eye witnesses is before us and involvement of Namdeo is proved by the prosecution beyond reasonable doubt. The eye witness account gets corroboration from medical evidence and other evidence on record.

103] P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16 Baburao i.e. complainant and almost all eye witnesses have stated about presence of Vimalbai Pawar in the unlawful assembly. Not only that, a specific overt-act has been attributed to her that she assaulted on the ribs of Gyandeo with a knife. If medical evidence is perused carefully and in particular, Injury No.5 sustained by deceased Gyandeo, the evidence of prosecution witnesses about the overt-act played by Vimalbai Pawar gets corroboration from medical evidence.

As far as accused Vimalbai Pawar is concerned, P.W.16, P.W.18, P.W.20, P.W.21, P.W.22, P.W.23, P.W.24,

P.W.25, P.W.26 attributed overt-acts to accused Vimalbai that she inflicted knife blow on the back of deceased Gyandeo.

The trial Court acquitted her on the ground that there is no proper recovery of knife from her. In our opinion, it appears that the trial Court failed in its duty to take into consideration the substantive piece of evidence in the nature of eye witnesses and also the medical evidence. Merely because, there is no proper recovery of knife, that by itself cannot be a ground to ignore the evidence of eleven eye witnesses, which gets corroboration from the medical evidence and, therefore, her involvement as a member of the unlawful assembly and actual commission of offence has been proved by the prosecution mainly through the evidence of P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16 Baburao i.e. complainant and other eye-witnesses.

104] Therefore, if the test in the case of **Masalti** (supra) is applied, the prosecution case against the accused Shivaji Kadaji Pawar, Namdeo Shivaji Pawar and Vimalbai

Shivaji Pawar is fully established. It is relevant to mention at this juncture that P.W.25 Vijaykumar was seriously injured and he sustained injuries dangerous to his life. Therefore, his evidence assumes importance and his evidence does not suffer from any contradictions, omissions or improvements. Like in the same manner, evidence of P.W.21 Mahadeo, so far the above three accused are concerned, does not suffer from any contradictions, omissions or improvements.

105] P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16 Baburao i.e. complainant, all of them have stated that the persons from the mob were pelting stones, then mob came in the court-yard, mob was comprising of 30 – 40 persons, on hearing shouts Gyandeo came outside first and P.W.25 Vijaykumar followed him. Other persons in the house also came in the court-yard. Accused Satish Vaijinath Pawar, Udhav Shivaji Pawar and Tukaram Pawar caught hold Gyandeo and at that time, Shivaji Kadaji Pawar inflicted sword blow on left chest of Gyandeo. Almost all eye witnesses including P.W.25 Vijaykumar, P.W.21 Mahadev, P.W.22 Shahuraj and P.W.16

Baburao i.e. complainant are consistent in their deposition that the above mentioned three accused caught hold Gyandeo and then Shivaji Pawar inflicted sword blow on left chest of Gyandeo. Therefore, involvement of these three accused in caught holding Gyandeo facilitated accused persons and in particular, Shivaji Pawar to give blow with sword on the chest of Gyandeo and also to other accused to assault Gyandeo and Vijaykumar. The other witnesses have also stated that after Gyandeo fell down, Satish Baburao Pawar, Vaijinath Pawar, Venkat Vaijinath Pawar caught hold P.W.25 Vijaykumar. Therefore, involvement of Satish Baburao Pawar, Vaijinath Pawar, Venkat Vaijinath Pawar in caught holding P.W.25 Vijaykumar is also stated by the prosecution witnesses.

As regards accused Uddhav Shivaji Pawar, Satish Vaijinath Pawar and Tukaram Shivaji Pawar, P.WS.16, 17, 18, 20, 21, 22, 23, 24, 25 and 26 attributed overt-acts to these accused that they caught hold Gyandeo thereby facilitating other accused to assault him.

P.Ws.16, 17, 18 and 25 also attributed overt-acts to accused Uddhav that he assaulted Vijaykumar by iron rod. P.Ws.21 and 25 attributed overt-acts to Satish

that he caught hold Vijaykumar.

As regards accused Vilas Shivaji Pawar, P.Ws.16 & 18 attributed overt-acts to Vilas stating that assaulted Vijaykumar and Shahuraj by stick, P.WS.17 & 25 stated that he assaulted with stick to Vijaykumar, P.W.22 stated that Vilas assaulted with stick to Shahuraj.

As regards accused Ashok Kadaji Pawar, P.Ws.16, 17, 18 and 24 attributed overt-acts to Ashok that he assaulted injured Sheshrao with Katti.

As regards accused Waman Dadarao Pawar, P.Ws.16, and 17 attributed overt-acts to Waman that he assaulted Baburao with stick on back and P.W.18 attributed overt-acts to Waman that he assaulted Varsha with stick.

As regards accused Dayanand Maroti Bhingole (absconding), P.Ws.16, 17, 18, 20 to 26 attributed overt-acts to Dayanand that he assaulted deceased Gyandeo with sword.

As regards accused Madhav Shivaji Pawar (absconding), P.Ws.16. 21 & 25 stated that Madahv inflicted sword/Jambiya blow to Gyandeo and Vijaykumar, P.Ws.17

& 18 attributed overt-acts to accused Madhav that he assaulted injured Gyandeo, Vijaykumar and Sanjay with sword like Jambiya. P.W.26 stated that accused Madhav assaulted Gyandeo and Sanjay with sword – Jambiya. P.Ws.20, 22, 23, 24 attributed overt-acts to accused Madhav that he assaulted Gyandeo with sword.

As regards accused Haridas Manik Pawar, P.Ws.17 & 25 attributed overt-acts to accused Haridas that he assaulted injured Vijaykumar with iron rod.

As regards accused Devidas Pralhad Pawar, P.Ws.16, 17, 18 and 23 attributed overt-acts to accused Devidas that he assaulted injured Bhagwat with stick.

As regards accused Venkat Vaijinath Pawar, P.Ws.21 & 25 attributed overt-acts to accused Venkat that he caught hold injured Vijaykumar.

As regards accused Vaijinath Vithal Pawar, P.Ws.21 & 25 attributed overt-acts to accused Vaijinath that he caught hold injured Vijaykumar.

As regards accused Satish Baburao Pawar, P.W.21 Mahadeo Pawar attributed overt-act to accused Satish Baburao Pawar stating that along with other accused

he caught hold Vijaykumar. Even, P.W.25 Vijaykumar stated that Satish Pawar caught hold him. Vijaykumar identified the accused Satish Baburao Pawar along with other accused present in the court.

As regards accused Prakash Kadaji Pawar, P.Ws.16,17, 18, 22 attributed overt-acts to accused Prakash that he assaulted injured Shahuraj with iron rod.

Therefore, their presence in the unlawful assembly and their overt-acts has been stated by the prosecution witnesses, which facilitated other accused to assault Gyandeo and also P.W.25 Vijaykumar. We have also observed that the mob formed an unlawful assembly in furtherance of their common object to finish the members of complainant's family and, therefore, the provisions of section 149 of IPC are very much attracted and, therefore, each member of the unlawful assembly is equally responsible being part of the unlawful assembly. Therefore, the prosecution has proved beyond reasonable doubt involvement of Satish Vaijinath Pawar, Udhav Shivaji Pawar and Tukaram Pawar who caught hold Gyandeo and Satish Baburao Pawar, Venkat Vaijinath Pawar and Vaijinath Pawar caught hold Vijaykumar, which facilitated other

accused to inflict blows with their weapons.

106] So far as accused Ashok Kadaji Pawar is concerned, there is evidence of P.W.21 that he was holding Katti and assaulted injured witness Shesherao. P.W.16 has also assigned specific role to him. Some of other witnesses have also deposed to that effect.

107] In case of accused Venkat Pawar, the P.W.25 Vijaykumar attributed overt-act to accused Venkat that he along other accused caught hold this witness while Madhav Shivaji Pawar and Namdeo Pawar inflicted sword blows to him. So also P.W.21 Mahadeo also attributed overt-act to accused Venkat that he caught hold Vijaykumar and facilitated inflicting of sword blows by by Madhav Shivaji Pawar.

108] So far as accused Haridas Manik Pawar is concerned, P.W.25 Vijaykumar in his evidence stated that he assaulted by iron rod on his back. Likewise, accused Prakash Kadaji Pawar assaulted P.W.22 by iron rod. The said fact is deposed by P.W.16 Baburao and also P.W.22

and also other eye witnesses. So far as accused Devidas Pralhad Pawar is concerned, P.W.16 Baburao has deposed that Devidas assaulted Bhagwat Pawar with stick. So far as accused Satish Baburao Pawar is concerned, P.W.21 stated that he caught hold P.W.25 Vijaykumar and also P.W.25 deposed to that effect. Other witnesses have also stated that Satish Pawar caught hold Vijaykumar.

The injuries suffered by the deceased Gyandeo and the injured witnesses are as, under:

(1) Deceased Gyandeo:

- i] C L W at left Temporal Region Size 3 x 2 x 1 cm.*
- ii] Deep incised wound at left anterior axillary region, at 5th and 6th Inter costal space with 3 x 2 x Deep dimension.*
- iii] Deep incised wound at epigastric region 3 x 2 x Deep.*
- iv] Deep incised wound at left hypochondric region size 3 x 2 x Deep.*
- v] Deep incised wound at left infra-scapular region. Size 3 x 2 x Deep.*
- vi] Parallel wound deep of same dimension, 5 Cm on left of 5th wound.*

Internal injuries found on the dead body:

- i] Fracture of 5th and 6th left rib.*
- ii] Tear at Ventricular region.*
- iii] Left Ventricle get punctured with 1.5 Cm dimensions.*
- iv] Deep incised wound at left lung*

paranchyme on back.

v] Stomach get punctured of dimensions 2 Cm.

(2) Injuries suffered by **Sheshrao S/o Baburao**

Pawar:

- i] Clean Incised wound over left dorsum of forearm, horizontal, near wrist. Size 3 x 1 x 1 Cm. deep.*
- ii] Clean Incised wound over left forearm near wrist lower one-third, oblique, dorsoventrally on radial side. Size 8 x 1.5 x 1.5 depth Cms. It was bleeding.*
- iii] Clean Incised wound on medical aspect of injury No.2, left forearm.*
- iv] Contusion over wrist joint left. Size 3 x 4 x 1 Cm Movements were painful and restricted.*

(3) Injuries suffered by **Shahuraj S/o Baburao**

Pawar:

Incised wound penetrating over right renal angle over back, oblique. Size 4 x 1 Cm penetrating depth not recorded as deep. It was grievous in nature, caused by hard and sharp weapon, within 6 hours.

(4) Injuries suffered by **Sanjay S/o Baburao**

Pawar:

Incised penetrating injury over right iliac fossa. Size 5 x 2.5 Cm. penetrating. It was grievous in nature, caused by hard and sharp weapon, within 6 hours.

(5) Injuries suffered by **Vijaykumar S/o**

Bhagwanrao Pawar: :

- (i) *Incised penetrating wound over right back, oblique, Size 10 x 5 Cm muscle deep.*
- (ii) *Incised penetrating wound over infra-scapular region, right back. Size 5 x 3 Cm. 5 Cm below injury No.1.*
- (iii) *Incised penetrating wound, over left scapular region. Size 3 x 2.5 Cm x muscle deep.*
- (iv) *Incised penetrating wound, infra-scapular region, right side. Size 3 x 1.5 Cm. X muscles cut.*
- (v) *Incised penetrating wound, left lower back, para-spinal region. Size 2 x 1.5 Cm. x deep muscles cut.*
- (vi) *Incised wound, left zygomatic arch. Size 4 x 1 x ½ Cm.*
- (vii) *Penetrating incised wound with intestinal coils protruding out of injury, over supra umbilical region, extending to epigastric region. Size 6 x 4 Cm. perforating.*
- (viii) *Abrasion with C.L.W. over upper lip over nose and upper lip. Size 1 x ½ x ½ Cm.*
- (ix) *Abrasion over left elbow. Size 1 x 1 x ½ Cm.*

Injuries No. 1 to 5 and 7 are grievous in nature. Injury Nos. 6, 8 and 9 are simple in nature. Except injury no. 9 caused by hard and blunt object.

(6) Injuries suffered by **Bhagwat S/o Vijaykumar Pawar:**

Clean lacerated wound over left frontal region, Size 10 x 2.5 Cm. It was caused by hard and blunt object, within 6 hours. It was simple in nature.

109] So far as original accused No.2 Madhav Ganpat Shahapure, No.5 Abhimanyu Raosaheb Pawar, No.6 Manik s/o Ramji Pawar, No.7 Satyanarayan Madhav Shahapure, No.8 Balaji s/o Apparao Pawar, No.9 Govind s/o Ganpat Shahapure, No.10 Ashok s/o Vishwanath Pawar, No.15 Dhondiram Raosaheb Pawar, No.16 Vishwanath s/o Vithal Pawar, No.19 Pandurang s/o Vishwanath Pawar, No.21 Maroti Madhav Pawar, No.22 Vishnu Madhav Pawar, No.23 Chandrahar Vishwanath Pawar, No.24 Vinayak Raosaheb Pawar, No.26 Narayan Maroti Bhingole, No.27 Suresh s/o Maroti Bhingole, No.28 Pandurang Maroti Bhingole, No.33 Nagnath Raosaheb Pawar and No.35 Komal Maroti Pawar are concerned, P.W.25 Vijaykumar, who was seriously injured, has stated in his cross-examination that they were not present at the spot. Even, the complainant P.W.16 Baburao in his cross-examination has stated that these persons have no concern with the incident. Even during the course of argument, the learned A.P.P. and also the learned Counsel for the complainant have brought to the notice of

this Court the evidence available against only 17 accused. Those 17 accused persons against whom evidence is available, which is discussed in foregoing paragraphs, are as follows:

1. Shivaji Kadaji Pawar.
2. Tukaram Shivaji Pawar,
3. Vilas Shivaji Pawar.
4. Ashok Kadaji Pawar.
5. Namdeo Shivaji Pawar.
6. Waman Dadarao Pawar.
7. Dayanand Maroti Bhingole. (Absconding).
8. Vimal Shivaji Pawar.
9. Madhav Shivaji Pawar. (Absconding).
10. Haridas Manik Pawar.
11. Udhav Shivaji Pawar.
12. Devidas Pralhad Pawar.
13. Venkat Vaijinath Pawar.
14. Satish Vaijinath Pawar.
15. Vaijinath Vithal Pawar.
16. Satish Baburao Pawar.
17. Prakash Kadaji Pawar.

Out of these 17 accused, Dayanand s/o maroti Bhingole and Madhav s/o Shivaji Pawar are absconding and their trial has been separated.

110] We have discussed the evidence of the

prosecution witnesses in detail and the overt-acts attributed to them qua each accused and also the medical evidence. Upon re-appreciating the entire evidence, inevitable conclusion is that above mentioned accused persons named by witnesses formed an unlawful assembly, they were aggressors, they had knowledge, they went to the house of the complainant, some of them gave slogans that they will see that no member of the family of the complainant is left alive and in furtherance of their common object to assault / cause grievous hurt to members of complainant's family so as to finish entire family, accused entered in the house of the complainant and in court-yard, they killed Gyandeo and injured Vijaykumar, Sanjay and Shahuraj grievously and three others with simple injuries. So far other family members of the family complainant are concerned, it is deposed by the complainant that other members were also assaulted, their injuries were not visible and therefore, they were not examined by the Medical Officer.

At this stage, learned counsel Mr. R.S. Shinde

submitted that, as per the evidence of prosecution witnesses, injury inflicted by accused no.12 assured Sheshrao Pawar by Katti on the right leg shin and by accused No. 30 Prakash by iron rod on the back of Shahuraj. However, the version of the prosecution witnesses about overt act of causing injuries attributed to accused nos. 12 and 30 do not get corroboration from the medical evidence. In our opinion, when prosecution has alleged formation of unlawful assembly, and more than five accused assaulting by deadly weapons on Gyandeo, and also other witnesses were assaulted with common object to cause grievous hurt to the members of the family of the complainant Baburao, each member of the unlawful assembly irrespective of any overt act attributed to him/her, if prosecution has established his/her presence at the spot, and their participation is with the knowledge that, such deadly weapons carried either by the co-accused or by himself/herself in furtherance of common object, is sufficient to hold responsible such accused for

commission of all the offences in view of the provisions of Sections 141, 142 and 149 of I.P. Code. The evidence of PW-16, PW-25 and other eye witnesses corroborates with each other in material particulars about formation of unlawful assembly by the accused persons and in furtherance of common object to assault / cause grievous hurt to the family members of the complainant, each member of said unlawful assembly is equally responsible for death of Gyandeo and injuries inflicted on the prosecution witnesses, and therefore, it becomes wholly irrelevant which member of unlawful assembly had assaulted by which weapon, and whether there is corresponding injuries found on the body of the victims because of blow given by the accused. Therefore, arguments of Advocate Mr. R.S. Shinde for accused deserves no consideration and same stands rejected.

111] In our opinion, punishment should be related to the gravity of the offence. The Supreme Court in the case of

Jai Kumar vs. State of M.P.⁵ while considering various theories of punishment, observed that Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to sub-serve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day.

In the light of observations of the Supreme Court in case of **Jai Kumar** (supra), it is our duty to award appropriate sentence to the accused persons who were members of unlawful assembly and in furtherance of their common object, indeed they participated in the commission of offence and their overt-acts are spelled out by as many as eleven eye witnesses examined by the prosecution. The Supreme Court in the case of **K.C. Mathew and others vs**

⁵ (1999) 5 SCC 1;

State of Travancore-Cochin⁶, while explaining section 149 and 300 IPC, held that section 149 applies not only to offences actually committed in pursuance of the common object but also to offences that members of the assembly know are likely to be committed.

Yet, in another judgment in the case of **Lalji and others v. State of U.P.**,⁷ the Supreme Court held that the members of unlawful assembly cannot be acquitted for lack of corroboration as to their participation in the offence. While explaining scope of section 149 of IPC, it is held that said section makes every member of an unlawful assembly at the time of committing offence guilty of that offence. Section created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly.

Yet, in another judgment in the case of **State of A.P. V Thakkidiram Reddy**⁸, the Supreme Court held in para 17, thus:

“17. From the above judgments of this Court it is

6 AIR 1956 SC 241;

7 AIR 1989 SC 754;

8 (1998) 6 SCC 554;

evident that to ascertain whether a particular person shared the common object of the unlawful assembly it is not essential to prove that he committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object. Once it is demonstrated from all the facts and circumstances of a given case that he shared the common object of the unlawful assembly in furtherance of which some offence was committed - or he knew was likely to be committed - by any other person, he would be guilty of that offence. Undoubtedly, commission of an overt act by such a person would be one of the tests to prove that he shared the common object, but it is not the sole test. Coming now to the present case, the fact that at the dead of night a mob of persons armed with various weapons forcibly trespassed into the house of the deceased after breaking open the door, clearly indicates that they had formed an unlawful assembly with a common object to commit some offence and each of them would be liable for the offence committed or knew likely to be committed by any of the members of the mob. To ascertain what was the common object of the above unlawful assembly, we will advert later. Suffice it to say, at this stage, that in the facts and circumstances of this case the six accused (with whom only we are concerned in these appeals) would be guilty for the offence committed by any other member of the mob, in furtherance of the common object, without proof of any overt act committed by them. We do not, however, wish to dilate on this aspect of the matter any further as we find the second ground canvassed by the High Court that the ocular evidence regarding overt acts committed by A2 to A5 and A9 is not supported by medical evidence, is factually incorrect.”

112] In case of **Dani Singh and others vs. State of Bihar**⁹, the Supreme Court, relying upon the judgment in the case of **Masalti** (supra) and also other judgments, in

⁹ (2004) 13 SCC 203;

para 19 held that, where parties go with a common purpose to execute a common object, each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility.

113] Recently, the Supreme Court in case of **State of U.P. vs. Chandrika**¹⁰, in the facts of that case held that, there was prompt lodging of F.I.R. common object of unlawful assembly armed with Gun was to commit murder. Testimonies of injured witnesses present at spot could not be doubted being corroborated with eye witnesses as well as medical evidence. Finding of acquittal recorded by trial Court ignoring materials on record oral as well as documentary evidence fully supported by medical evidence. Acquittal of accused found to be based basically on dying declaration whose maker was alive. Said statement was not admissible in evidence. On appraisal of evidence on record it was amply clear that prosecution had fully proved its case beyond doubts. Judgment and order of acquittal reversed and all the accused were convicted by allowing government

¹⁰ 2014(2) ACR 1756;

appeal.

In case of **Phodol vs. State of C.G.**¹¹, Chhattisgarh High Court, in the facts of that case, held that injuries found over bodies of deceased were incised wounds, lacerated wounds and depressed fracture of head. Appellants were holding battleaxe and other weapons and they had caused homicidal death of three persons and also caused fatal injuries to prosecution witness by battleaxe and other weapons. Evidence adduced on behalf of prosecution and defence taken by appellants were sufficient to establish fact that appellants had formed unlawful assembly having its common object to commit murder of deceased and in furtherance of common object of assembly, they were armed with deadly weapons. Therefore, Chhattisgarh High Court maintained order of conviction of the accused therein.

In case of **Manilal vs. State of Kerala**,¹² the Kerala High Court while explaining scope of section 149 of IPC, held that even if the identity of some of the accused forming part of the unlawful assembly is not established or even if

¹¹ 2014 CRIL.J.4704;

¹² ILR2014(2)Kerala871; 2014(2)KLT800;

one or more of the accused are acquitted granting benefit of doubt, that does not absolve the other accused from being proceeded against under Section 149 of the Indian Penal Code.

The facts in the case in hand and those in case of **Om Prakash vs. State of Haryana**,¹³ are almost similar. In the said case, the Supreme Court, while considering the provisions of Section 141, 142, 148 and 149 and also sections 302 and 319 of IPC, held that there was no delay in lodging FIR. Ocular testimony gets corroborated from medical evidence. All accused persons came together armed with lathis and gun. Eye witnesses who are natural witnesses, being brothers, have deposed in unequivocal manner about assault by all accused persons. Common object is clearly evident. In such situation, attribution of specific individual overt act has no role to play. All requisite tests to attract section 149 established by prosecution and the contentions raised by appellants therein were rejected and the Supreme Court upheld the order of conviction passed by the High Court. If the evidence in the present case is considered in the light of the judgment of the

¹³ (2014) 5 SCC 753;

Supreme Court in case of **Kuldeep Yadav and Ors. vs. State of Bihar**,¹⁴ that there is cogent, trustworthy, clinching and reliable evidence of the eye witnesses. Out of eleven eye witnesses, six are injured witnesses, out of which, three suffered grievous injuries, dangerous to their lives. These witnesses have attributed overt-acts to afore mentioned 15 accused persons. Therefore, evidence led by the prosecution in the present case satisfy the tests laid down in the case of **Kuldeep Yadav** (supra). However, it would be relevant to mention at this juncture that, it appears that the judgment in case of **Masalti** (supra), which is by the larger Bench consisting four Honourable Judges, was not brought to the notice of the Hon'ble Supreme Court in case of **Kuldeep Yadav** (supra).

114] In the light of detail discussion in the foregoing paragraphs, we are of the considered view that the judgment and order dated 20.6.2011 passed by the Additional Sessions Judge, Nilanga in Sessions Case No.14 of 2008 is not sustainable in law. We modify the order of the trial Court so far original accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar and original accused

¹⁴ (2011) 5 SCC 324;

No.11 Vilas Kadaji Pawar are concerned and also partly allow Criminal Appeal No.601/2012 filed by complainant Shahuraj Baburao Pawar and Criminal Appeal No.602/2012 filed by the State against order of acquittal, on the following terms:

(i) The original accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar, accused No.34 Vimal w/o Shivaji Pawar, accused No.20 Satish Vaijinath Pawar, accused No.18 Uddhav Shivaji Pawar, and accused No.4 Tukaram Shivaji Pawar, who are responsible for death of Gyandeo, are hereby convicted for the offence punishable under Section 302 r.w. 149 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- each, in default, R.I. for a period of two years;

ii) The original accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar, accused No.34 Vimal w/o Shivaji Pawar, accused No.20 Satish Vaijinath Pawar, accused No.18 Uddhav Shivaji Pawar, and accused No.4 Tukaram Shivaji Pawar, accused No.11 Vilas Kadaji Pawar, accused No.12 Ashok Kadaji Pawar, accused No.14 Waman Dadarao

Pawar, accused No.29 Haridas Manik Pawar, accused No.31 Devidas Pralhad Pawar, accused No.25 Venkat Vaijinath Pawar, accused No.17 Vaijinath Vithal Pawar, accused No.32 Satish Baburao Pawar, and accused No.30 Prakash Kadaji Pawar are convicted for the offence punishable under Section 452 r.w. 149 of IPC and sentenced to undergo R.I. for four years and to pay a fine of Rs.5000/- each, in default, R.I. for six months;

iii) The original accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar, accused No.20 Satish Vaijinath Pawar, accused No.18 Uddhav Shivaji Pawar, accused No.4 Tukaram Shivaji Pawar, accused No.11 Vilas Kadaji Pawar, accused No.12 Ashok Kadaji Pawar, accused No.29 Haridas Manik Pawar, accused No.31 Devidas Pralhad Pawar, accused No.25 Venkat Vaijinath Pawar, accused No.17 Vaijinath Vithal Pawar, accused No.32 Satish Baburao Pawar, and accused No.30 Prakash Kadaji Pawar are convicted for the offence punishable under Section 307 r.w. 149 of IPC and sentenced to undergo R.I. for seven years and to pay a fine of Rs.2000/- each, in

default, R.I. for one year;

iv) Original Accused No.14 Waman Dadarao Pawar is convicted for the offence punishable under Section 323 of IPC and sentenced to undergo R.I. for one year and to pay a fine of Rs.1000/-, in default, R.I. for one month;

v) The original accused No.1 Shivaji Kadaji Pawar, accused No.13 Namdeo Shivaji Pawar, accused No.20 Satish Vaijinath Pawar, accused No.18 Uddhav Shivaji Pawar, accused No.4 Tukaram Shivaji Pawar, accused No.11 Vilas Kadaji Pawar, accused No.12 Ashok Kadaji Pawar, accused No.14 Waman Dadarao Pawar, accused No.29 Haridas Manik Pawar, accused No.31 Devidas Pralhad Pawar, accused No.25 Venkat Vaijinath Pawar, accused No.17 Vaijinath Vithal Pawar, accused No.32 Satish Baburao Pawar, and accused No.30 Prakash Kadaji Pawar are convicted for the offence punishable under Section 324 r.w. 149 of IPC and sentenced to undergo R.I. for one year and to pay a fine of Rs.500/- each, in default, R.I. for one month;

vi) All the substantive sentences shall run concurrently.

vii) The original accused No.1 Shivaji Kadaji Pawar and accused No.13 Namdeo Shivaji Pawar, who are in jail, and remaining accused shall be given set off under Section 428 of Cr.P.C. for the period, if already spent in jail.

viii) All the afore mentioned accused, who are convicted and sentenced as above and who are not in jail, shall surrender forthwith.

ix) Original accused No.2 Madhav s/o. Ganpat Shahapure, accused No.3 Pandhari s/o. Manik Pawar, accused No.5 Abhimanyu s/o. Raosaheb Pawar, accused No.6 Manik s/o. Ramji Pawar, accused No.7 Satyanarayan s/o. Madhav Shahapure, accused No.8 Balaji s/o. Apparao Pawar, accused No.9 Govind s/o. Ganpat Shahapure, accused No.10 Ashok s/o. Vishwanath Pawar, accused No.15 Dhondiram s/o. Raosaheb Pawar, accused No.16 Vishwanath s/o. Vithal Pawar, accused No.19 Pandurang s/o. Vishwanath Pawar, accused No.21 Maroti s/o.

Madhav Pawar, accused No.22 Vishnu s/o. Madhav Pawar, accused No.23 Chandrahar s/o. Vishwanath Pawar, accused No.24 Vinayak s/o. Raosaheb Pawar, accused No.26 Narayan s/o. Maroti Bhingole, accused No.27 Suresh s/o. Maroti Bhingole, accused No.28 Pandurang s/o. Maroti Bhingole, accused No.33 Nagnath s/o Raosaheb Pawar, and accused No.35 Komal s/o. Maroti Pawar, are acquitted of the offences with which they were charged;

x) Accordingly, Criminal Appeal No.414/2011 filed by original accused No.1 Shivaji Kadaji Pawar, accused No.11 Vilas Kadaji Pawar and accused No.13 Namdeo Shivaji Pawar, against order of conviction and sentence, is dismissed.

Criminal Appeal No.601/2012 and Criminal Appeal No.602/2012 filed by the complainant and the State respectively, against order of acquittal, are allowed partly and stand disposed of.

[A.M.BADAR, J.]

[S.S.SHINDE, J.]

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