



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY:**  
**NAGPUR BENCH: NAGPUR**

**CRIMINAL APPEAL NO. 457 OF 1993**

The State of Maharashtra,  
(through P.S.O. Badnera)

**...APPELLANT**

**...VERSUS...**

1. Shrikant @ Balya s/o Gulabrao Shinde,  
aged about 17 years,
2. Rajesh s/o Gulabrao Shinde,  
aged about 22 years,
3. Gulabrao s/o Vyankatrao Shinde,  
aged about 55 years,  
(Appeal against R. No. 3 abated as per  
Court's order dated 2.7.2007)
4. Pradeep s/o Gulabrao Shinde,  
aged about 27 years,

All r/o Yeshodanagar, Amravati,  
Tq. & Distt. Amravati.

**...RESPONDENTS**  
**Accused**

=====  
Shri. N.S.Khubalkar, A.P.P. for Appellant – State.  
Shri R.M. Patwardhan, Advocate, for Respondent Nos. 1, 2 & 4  
=====

**CORAM :- K.J.ROHEE & S. R. DONGAONKAR, JJ.**  
**RESERVED FOR JUDGMENT ON : 04.08.2007**

**JUDGMENT PRONOUNCED ON : 17.08.2007**

**JUDGMENT (per S.R.DONGAONKAR, J.)**

1. The appellant State has preferred this appeal to challenge the acquittal of the respondents in Sessions Trial No. 188/92, recorded by Additional Sessions Judge, Amravati, by his judgment dated 13.9.1993, for the offence under Section 302 r/w Section 34 of Indian Penal Code.

2. The brief facts leading to the prosecution of the respondents are that,-

Respondent No. 1 Shrikant @ Balya, Respondent No. 2 Rajesh and Respondent No. 4 Pradeep who are sons of Respondent No. 3 Gulabrao (now deceased) were living at Yeshodanagar, Amravati. One Rajan s/o Netram Vijaywargi was residing at Navi Wasti, Badnera. On the day of incident i.e. on 13.7.1992 at about 3.30 – 4.00 p.m., Rajan was proceeding from his house by the side of Mahavir Jain Dharmashala. It is alleged that this Rajan had an evil eye over the daughter of

respondent No. 3 - Gulab. On that day when he was proceeding by the road, all these accused persons came across the said Rajan near Mahavir Jain Dharmashala, Badnera. They obstructed and assaulted him by knife. He suffered injuries on his chest and stomach. PW-1 Bablu Jayant Mishra and PW-3 Chandresh Pandya had witnessed the whole of the incident i.e. they had seen the actual assault by the accused persons on the deceased Rajan and the manner thereof. The deceased was taken by these P.Ws, one Ajay and other persons in auto to the Police Station Badnera. He was so taken in the autorickshaw of one Gaffar. Thereafter, considering his seriousness of injuries, he was taken to General Hospital, Amravati. In the Hospital, the dying declaration of the deceased came to be recorded. The same was recorded by PW-6 Madhukar Sonone, Special Judicial Magistrate of Amravati (Exh.32). It was recorded after obtaining the certificate of the Medical Officer regarding fitness of deceased Rajan to make a statement. This fitness certificate was issued by PW-4 Dr. Sau. Nalaini Shinde. It may be stated that at the time of admission of deceased in the

Hospital, PW-5 Dr. Kalpana Chandrashekhar had examined him and had issued certificate of his injuries, which is at Exh. 34. According to her, the injuries were sufficient to cause death of the deceased in the ordinary course.

3. During the course of investigation, when the knife was seized at the instance of accused no. 1, the same was referred to Dr. Kalpana Chandrashekhar for medical opinion and she had stated that the said injuries on the person of deceased Rajan could have been caused by this knife. This Rajan expired in the Hospital. The inquest panchanama was prepared and autopsy on the dead body was conducted. PW-2 Dr. Kiran Wathodkar prepared post mortem report, which is at Exh. 27. He had opined that there was incised wound in the lung which was vital organ and that the deceased had died due to shock due to injury to vital organ and extensive haemorrhage. The offence which was registered earlier for the offence under Section 307 r/w Section 34 of Indian Penal Code vide Crime No. 164/92 on the basis of the said dying declaration, was later on converted

into one under Section 302 of Indian Penal Code because of the death of deceased. API Barbade (PW-8) carried out the investigation. He prepared spot panchanama (Exh.13). He seized clothes of the injured (deceased) as per Exh. 12. He had arrested the accused persons on 14.7.1992. On intimation of the death of Rajan on 15.7.1992, he had registered the offence under Section 302 of Indian Penal Code. During the investigation, he had sent the seized articles and blood sample etc., for Chemical Analyzer's report, so also, he had seized the knife from accused No. 1 Shrikant. He submitted the charge-sheet for the relevant offence against Respondents.

4. On committal of the case, learned Additional Sessions Judge, Amravati, framed the charge against the respondents. When the same was explained to the respondents, they pleaded not guilty. According to all of them, they did not commit the offence and they were at different places at the relevant time. Respondent No. 1 Shrikant in defence has claimed that PW-1 Bablu and PW-3 Chandresh are companions of the deceased

and they are deposing false. They had also beaten respondent Rajesh. Respondent No. 2 Rajesh has contended that at the relevant time he was appearing for B.A.M.S. Course and he was in the college, attending lecture. Respondent No. 3 Gulab raised a defence that he was doing his duty of watchman at the relevant time in his M.S.E.B. Office. Respondent No. 4 Pradeep claimed that at the relevant time he was at Surat. Thus, all of them denied to have assaulted the deceased and also their presence on the spot.

5. The prosecution has examined the above mentioned witnesses to prove the case. Prosecution has specifically relied on the evidence of PW-1 Bablu and PW-3 Chandresh, who claimed to be the eye-witnesses to the incident. It has also relied on the evidence of PW-6 Madhukar Sonone, Special Judicial Magistrate, to prove the dying declaration of deceased Rajan. Apart from this, the prosecution has relied on the evidence of PW-2 Dr. Kiran Wathodkar to prove the P.M.Report and PW-5 Dr. Kalpana Chandrashekhar to show what injuries

were on the person of deceased Rajan when he was admitted in the hospital. PW-4 Dr. Nalini Shinde, as stated above, is the witness to certify the fitness of the deceased to make dying declaration. PW-7, PSI Thakur and PW-8, API Barbade are I.Os.

6. The defence has also led evidence of 5 witnesses. DW-1 Suresh Devoolkar has been examined by the defence to show that on 13.07.1992 i.e. on the date of incident, respondent Gulab was on duty of watchman from 3 p.m. to 11 p.m. i.e. the time during which the offence is alleged to have been committed. Said witness has produced the copy of the register of the 'handing over and taking over of daily charge of the watchmen' of his office Vidyut Bhawan as per Exh.64. He has deposed that respondent Gulab had taken charge from one Tayade at 3 p.m. He has also stated that Vidyut Bhawan is situated in the Camp Area, Shivaji Nagar, Amravati, which is about 11-12 Kms., from Badnera i.e. the spot of incident. DW-2 Dr. Vijay Desai is the Principal of Vidarbha Ayurved

Mahavidyalaya and DW-3 Dr. Udhao Chore, is the Professor in the said Vidyalaya who have come to state that R.G.Shinde, Respondent No. 2 was 2<sup>nd</sup> year student of the said college at the relevant time and Dr. Udhao Chore had while taking roll-call of his class marked his presence and he had engaged the period from 3.15 to 4 p.m. on 13.7.1992. This was in order to show that at the relevant time respondent no. 2 R.G Shinde was in the college. DW-4 ASI Pundlik has been examined by the defence to establish that respondent No. 2 Rajesh had lodged report against PW-1 Bablu regarding assault on him by razor as he had taken objection on his keeping evil eye on his sister. DW-5 Shakil Raheman of Surat has been examined by the defence to show that since January 1992 Respondent No. 4 Pradeep was employed by him on daily basis in his workshop i.e. Everest Fabrication Works. He was being paid the wages of Rs.35/- per day. On the day of incident i.e. on 13<sup>th</sup> July, 1992, respondent No. 4 Pradeep and other workers were working in his workshop at Surat and therefore, it is contended by the defence that it was impossible for Respondent No. 4 Pradeep to

commit the alleged offence. One DW-6 Gaffar is also examined by the defence. He had carried P.Ws. & deceased in his authorickshaw. Thus, the defence wanted to show that it was impossible for the accused as they were at different places to come together to commit this offence at Badnera.

7. On considering the evidence and submissions of the learned counsel for the parties, learned Trial Judge found that the defence story is probable, and it was established that Respondent NO. 2 Rajesh was in the College, Respondent No. 3 Gulab was working as watchman in Vidyut Bhawan at the relevant time and Respondent No. 4 Pradeep was working at Surat on the day of incident. The learned trial Judge did not accept the contention of the prosecution that all the defence witnesses are engineered witnesses to prove the 'alibi'. He has found that unless there was pre-plan by the respondents, they could not have come suddenly on the spot of incident, unless they were knowing the movements of deceased Rajan. Three respondents were far away from the spot of incident and

therefore, they could not have gathered as to when deceased Rajan would have come to the spot of incident and thereby facilitating the assault by knife by all of them. He has also found that the prosecution witnesses PW-1 Bablu and PW-3 Chandresh are highly interested witnesses and their evidence is contradictory to the dying declaration made by deceased Rajan. He has found that P.Ws who had allegedly seen the assault did not implicate respondent No. 3 Gulab for the alleged offence, whereas in the dying declaration deceased Rajan had implicated all the accused. He has found that the defence evidence appears to be cogent & sound and as such the the presence of Respondent No.2 Rajesh, Respondent No.3 Gulab and Respondent No. 4 Pradeep on the spot has not been established and they are falsely implicated. As such he discarded the evidence of the alleged eye witnesses PW-1 Babul and PW-3 Chandresh as unreliable, so also the dying declaration and acquitted the respondents by giving benefit of doubt.

8. This judgment of acquittal of the accused is challenged

by the State in this appeal.

9. Learned A.P.P. Mr. N.S.Khubalkar, for appellant State has contended that deceased Rajan had died of homicidal death. The fatal injuries on his person are clearly established by the post mortem report as well as by the evidence of Medical Officer. He has contended that there is no sufficient reason to discard the evidence of PW-1 Bablu and PW-3 Chandresh who are alleged eye-witnesses and whose evidence is supporting the dying declaration made by deceased Rajan to PW-6, Special Judicial Magistrate – Madhukar Sonone. He has contended that the maxim **falsus in uno falsus in omnibus** is not applicable in India, atleast 3 of the accused can be found guilty on the basis of evidence led by the prosecution. He has further submitted that the evidence led by the defence is totally untrustworthy and in fact the same is fabricated. In any case, as the said evidence is discrepant, the plea of alibi of the respondent Nos. 2 to 4 is not established. He has specifically submitted that the evidence of DW-2 Dr. Vijay and DW-3 Dr.

Udhao does not show that Respondent No.2 Rajesh had in fact attended the college at the relevant time. It is also his submission that the evidence of DW-1 Suresh, Administrative Officer of Vidyut Bhawan does not show that Respondent No. 3 Gulab was present in the office at the time of the alleged incident. He had made signature later to make out his presence at the time of incident in the office. He has also submitted that evidence of DW-5 Shakil, the factory owner, does not conclusively show that Respondent No.4 Pradeep was working at his fabrication factory at the relevant time. Needless to state that he has submitted that the relevant documents produced by the defence witnesses i.e. the Watchman Duty Register of Vidyut Bhawan by DW-1 Suresh; Certificate & Roll Call Register produced by DW-2 Dr. Vijay & DW-3 Dr. Udhao and Attendance Register of the Workmen produced by DW-5 Shakil are fabricated documents. According to him, even if they are held as not fabricated documents, they are not sufficient to establish the plea of 'alibi' raised by defence. He has relied on some authorities to contend that the maxim **falsus in uno falsus in**

**omnibus** is not applicable in India **(2006) 10 SCC 499 [Major Sing vs. State of Punjab]; (2003) 12 SCC 449 [ Gorle S. Naidu v. State of A.P.]; (2004) 10 SCC 120 [ Gubbala Venugopalkaswamy vs. State of A.P].**

**10.** Mr. R.M.Patwardhan, learned counsel for the respondents has supported the order of the lower court for the reasons mentioned in the judgment. It is submitted that the defence has clearly established the fact that Respondent Nos. 2, 3 & 4 were at the different places as stated by them and defence evidence clearly proves the same. It is also his contention that PW-1 Bablu and PW-3 Chandresh are totally unreliable witnesses as their evidence is contradicted by the material evidence of dying declaration. The theory of assault as alleged by these alleged eye witnesses i.e. respondent No. 4 Pradeep catching hold of the deceased at the time of the assault is clearly negated and therefore, it is proved to be false. Further, dying declaration implicating Respondent No. 3 Gulab is false, inasmuch as PW-1 Bablu and PW-3 Chandresh did

not state anything about the same. According to them, as the prosecution evidence is materially contradictory to each other i.e. evidence of eye-witnesses and dying declaration, they need to be disbelieved totally as the truth and the falsehood cannot be separated from each other. According to him, the view taken by the learned trial Judge in acquitting the respondents cannot be said to be perverse or even untenable and as such, this being an appeal against the acquittal, the same cannot be reversed.

11. In order to appreciate the rival contentions of the parties, it is necessary to note the scope of consideration of the judgment of acquittal passed by the trial Judge in appeal is considered in following the observations of the Apex Court in **2007 (2) Crimes 103 SC [Chandrappa & ors. vs. State of Karnataka]** wherein it has been observed

*“35. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

- (1) *An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;*
- (2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
- (3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc., are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
- (4) *An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person has to be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.*

- (5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.*

12. Therefore, even if, the other view of guilt of the respondents is possible, unless the judgment of the trial Judge of acquittal is shown to be perverse to the record or unless there are some compelling reasons to overturn the same, the same cannot be interfered with.

13. Here is the case where bold defence has been taken by the defence by leading the evidence of 6 witnesses. Their main contention seems to be that Respondent Nos. 2 to 4 were at different places where they could have been in the natural course. The spot of incident is far away from the residence of Respondent No.1 and therefore, all of them could not have come together as they could not have been in a knowledge of the movements of deceased Rajan, to assault him. Therefore, it is necessary to appreciate the evidence of eye-witnesses &

dying declaration vis-a-vis the impact of the defence evidence.

14. It would be seen from the prosecution evidence particularly PW-1 Bablu and PW-3 Chandresh that their case is that at the relevant time, they had seen respondent No.1 Rajesh and Respondent no.2 Bala with knife. They and Respondent No. 4 Pradeep came running through lane of Jakhade Sahab. At that time deceased Rajan was coming from Manna Sharma's house and this Bablu & Chandresh saw this deceased Rajan being held by Respondent No. 4 Pradeep and giving knife blows to him by Respondent No. 1 Bala and Respondent No. 2 Rajesh. Both of them did not say anything regarding the presence or any overt act, by Respondent No. 3 - Gulab. PW-1 Bablu also says that they called auto and took Rajan to Police Station Badnera and one Ajay Joshi & Vilas also accompanied them. Thereafter Rajan was taken to General Hospital, Amravati, from the Police Station. As regard this evidence, both of them are together.

15. In cross examination, PW-1 Bablu has stated about some omissions in his statement. He has also stated in the cross examination that accused Gulab i.e. Respondent No.3 Gulab is working in Electrical Department at Amravati; Respondent No.4 Pradeep is working at Surat. He also stated in cross examination that Respondent no. 2 Rajesh is taking education in Ayurved College. He admitted that deceased Rajan was prosecuted in Joshi's murder case and there are many prosecutions pending against him. He has pleaded ignorance as to whether deceased Rajan had beaten Respondent No. 3 Rajesh. He has further stated that there were no differences between Rajan and accused persons i.e. respondents, meaning thereby that there was no reason or motive for any assault.

16. PW-3 Chandresh has supported the prosecution case in this regard. He also specifically stated that Respondent No. 4 Pradip had held deceased Rajan across the neck and the other respondents assaulted him by knife. In cross examination, he stated that he had friendship with deceased Rajan since

childhood. Therefore, it is clear from their evidence that they are closely associated with deceased Rajan. His evidence is also riddled with the improvements.

17. Thus, it would be seen that both these witnesses clearly excluded Respondent No. 3 Gulab from the list of alleged assailants. They also clearly stated that Respondent No. 4 Pradeep had held the deceased at the time of assault. It is also apparent that they are interested witnesses.

18. The incident is of broad day light. Considering the spot of incident, there is every possibility of there being the independent witnesses noticing this incident, but none of them has been examined.

19. The death of the deceased because of the injuries mentioned in P.M. notes is not disputed. PW-2 Dr. Kiran has deposed about the same. He stated that death was due to shock due to injury to vital organ i.e. Lung and extensive

hemorrhage. He has also opined that the knife shown to him could have caused the injuries.

20. As such, it clearly appears that the deceased had died due to assault by knife in the incident, but the crucial question is whether it is established that all these respondents or any of them are responsible for the same.

21. This takes us to consider the evidence of dying declaration of the deceased. PW-6 Madhukar Sonone has stated that he had recorded the dying declaration after getting the fitness certificate from the Medical Officer. This dying declaration clearly shows that deceased had made a statement that all the respondents had assaulted him. In his words, he has named all these respondents as an assailant. It is important to note what he stated to, two of the questions, particularly “what happened to you” and “who admitted you in the Government Hospital this day”. The answers are;

*Answer : This day 13.7.92 at 3 O'clock in the afternoon when I*

*was coming from the house the persons namely Rajesh Shinde, resident of Badnera, who is from Electric office, Bala Shinde, resident of Badnera, and Pradeep Shinde, these three Brothers and their father Gulabrao Shinde (caught me) near Mahavir Dharamshala, Badnera, and assaulted me with knife. I sustained injuries on my chest and abdomen.*

*Answer : After I was assaulted, I went to Badnera Police Station where I lodged report and thereafter the Police from Badnera Police Station admitted me in the Government Hospital, Amravati.*

It will clearly show that deceased had named all the respondents as an assailants and he specifically named respondent no. 3 Gulab of having assaulted him by knife. He also stated that after he was assaulted, he came to Badnera Police Station and lodged report and thereafter Badnera Police had sent him to Amravati Government Hospital. No authority is needed to say that this dying declaration is in material contradiction with the evidence of the eye witnesses as regards assault by Respondent No. 3 Gulab & taking him to P.S. Badnera.

22. At this stage, it is necessary to consider the defence

evidence. As regards Respondent No. 4 Pradeep, the defence has examined DW-5 Shakil, who is resident of Surat, who has stated that he runs “Everest Fabrication Works” at Surat and he had engaged the services of Respondent No. 4 Pradeep Shinde since January, 1992. He produced the muster of his workers in which he marked presence by letter 'P' and absence by 'X'. He has produced zerox copy of the relevant muster, which showed that respondent No.4 Pradeep was there on 13<sup>th</sup> July, 1992 i.e. the day of incident. He also states that he had paid the wages on 26<sup>th</sup> July, 1992. He further stated that on 1.8.1992 the policemen had come and asked about Respondent No. 4 Pradeep and he told about the presence of Respondent No. 4 Pradeep on the relevant day. The zerox copy of the Muster Roll produced by him, also shows the names of other workers to whom he had paid wages and their signatures on the same. It also seems that he used to mark 'P' for presence and 'X' for absence. He has produced the muster of earlier months also. There is nothing on record to infer that the same might have been fabricated. It is true that this witness in cross examination

has admitted that such muster rolls are available in market and he did not inform the presence of his workers to the concerned Labour Officer, but then this fact by itself would not cast doubts on the zerox copies of the muster roll which showed the maintenance of the same in his regular course of business, even for earlier months. Nothing has been pointed out as to why it should be held that this witness has any reason to fabricate the muster roll in such a fashion to save Respondent No. 4 Pradeep. It is obvious that, had he been fabricating the evidence of muster roll only to save Respondent No.4 Pradeep, he would not have prepared the muster rolls of earlier months mentioning the names of this respondent no. 4 Pradeep and other workers. Even the material brought in the cross examination does not exclude the possibility of respondent no. 4 Pradeep being present at his workshop on the day of incident. This would clearly mean that the theory of the eye-witnesses and the dying declaration as regards implicating respondent no. 4 Pradeep in the said assault is not trustworthy.

23. This takes us to consider the defence evidence regarding Respondent No. 3 Gulab. DW-1 Suresh, who is working as Administrative Officer in Vidyut Bhawan Circle, Amravati, has been examined. He deposed regarding the presence of respondent no.3 Gulab on duty from 3 p.m. to 11 p.m. on 13.7.1992. He has produced the relevant extract of watchman register which shows 'giving & taking charge' and its time. Register shows the presence of watchmen mentioned in the said register upto 16.7.1992. His office had also issued letter to respondent no. 3 Gulab to call explanation of his absence from 14.7.1992. There is nothing in his cross examination to show that he has any reason to prepare false record to save respondent no. 3 Gulab. As already pointed out above, PW-1 Bablu and PW-3 Chandresh also did not implicate him, but only dying declaration of deceased Rajan shows that he was one of the assailant. This clearly tends to show that the dying declaration of deceased Rajan is far from trushworthiness.

24. Adverting to the evidence of other defence witnesses

DW-2 Dr. Vijay Desai and DW-3 Dr. Udhao Choure, it would be seen that respondent Rajesh was studying in B.A.M.S. Part II in the relevant year and his presence was shown for the lecture of DW-3 Dr. Udhao Choure during the period from 3.15 p.m. to 4 p.m. on the day of incident. This witness has no doubt admitted that he concentrates upon the subject and does not tally the number of the person present with the register, but that fact by itself will not discredit his evidence and that of DW-2 Dr. Vijay. It is pertinent to note that though it is true that any student can make out the presence of other student possibly by proxy; it is not possible to say in this case that respondent no. 2 Rajesh did the same thing to make a show of his presence in the college, though he had taken part in the assault on the deceased. It is necessary to bear in mind that mere possibility of his presence being marked by other student, cannot lead to that conclusion unless there is some other material on record to make out that possibility, a reality. In our opinion, in such a case, Respondent No.2 Rajesh would not have taken a risk of examining his lecturer and principal to prove his "alibi". It is

difficult to say that Respondent No.2 Rajesh had done all these things to prove his alibi after taking part in the incident and even that the witnesses of such status would have later on helped respondent no. 2 Rajesh to save him; from the liability of serious offence.

25. Therefore, the evidence led by the defence clearly rules out the probability that Respondent Nos. 2 to 4 must have taken part in the said incident of fatal assault on deceased.

26. The question then would be, whether on the strength of the prosecution evidence, respondent no. 1 Shrikant can be held guilty of the offence charged.

27. We are aware that even if some part of the evidence of the witnesses is found to be unreliable, the other part can be relied upon and the maxim **falsus in uno falsus in omnibus** is not applicable in India. But then reliable evidence need to be capable for separation from unreliable evidence i.e. it should be

possible to sift grain from chaff. There cannot be pick & choose in evidence for having conviction.

28. At this stage, therefore, it is necessary to see the dying declaration. Deceased has stated that he had been to Badnera Police Station. He did not refer to PW-1 Bablu and PW-3 Chandresh or any other witnesses, while answering the question. The tenor or his answer in the dying declaration to the relevant question would show that he alone had been to Badnera Police Station. This inconsistency is not explained by the learned prosecutor. Apart from this, it would be seen from the evidence of DW-6 Gaffar Beig, although he was declared hostile by the defence, has stated that at the relevant time one boy came to him and asked him if auto rickshaw is available. He said 'no'. Thereafter Rajan and one Bablya came to him. He took them to Police Station Badnera. He does not refer to other persons including PW-3 Chandresh. Although in cross-examination by learned A.P.P., he stated that the first boy who came to him was Chandresh. His evidence clearly shakes the

prosecution case. No doubt, he has not fully supported the defence, but the fact remains that he was also cited by the prosecution as prosecution witness and it did not examine him. Therefore, his evidence, clearly negatives the statement made by the deceased in the dying declaration.

29. As already pointed out above, deceased Rajan has been admitted to have faced one murder charge and he was facing some criminal cases. The possibility, therefore, of others having assaulted him cannot be overruled. No doubt, in the circumstances of the case, there is suspicion, atleast against Respondent No. 1 Shrikant, but then that suspicion cannot take a place of proof. The conviction has to be based on legally admissible evidence and the same has to be found trustworthy and should not be susceptible of admitting any doubt. In this view of the matter, authorities referred by the learned A.P.P. are not attracted.

30. The learned trial Judge after considering the evidence

on record has come to the conclusion that the defence raised by Respondent Nos. 2 to 4 has clearly proved their case and the prosecution case as alleged is, therefore, improbable. He has also found that the presence of PW-1 Bablu and PW-3 Chadnresh on the spot is doubtful. The reasons recorded by him, to reach the judgment of acquittal, cannot be said to be perverse to the record. As already pointed out above, merely because the view that the respondent no. 1 can be guilty of the offence alleged is possible, it is not sufficient to reverse the judgment of acquittal. As such appeal needs to be dismissed. The same is dismissed.

**JUDGE**

**JUDGE**

Rvjalit