

CASE NO.:
Appeal (crl.) 1097 of 2005

PETITIONER:
Sambhaji Hindurao Deshmukh & Ors.

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 17/01/2008

BENCH:
G. P. Mathur & R. V. Raveendran

JUDGMENT:
J U D G M E N T

R. V. RAVEENDRAN, J.

This appeal by the accused 2 to 6 is against the judgment dated 29/30.3.2005 of the Bombay High Court allowing the Criminal Appeal No.193 of 1995 filed by the State of Maharashtra and reversing the judgment of acquittal dated 30.1.1995 passed by the IV Additional Sessions Judge, Satara in Sessions Case No.123 of 1989. For convenience, appellants 1 to 5 will be referred to as accused nos. 2, 3, 4, 5 and 6 respectively.

2. The case of the prosecution in brief is as under :

2.1) The family of Ganpat consisting of himself, his wife Putlabai and sons Shivaji, Vilas and Ananda, were residents of Kusr village. Ganpat and his sons belonged to the group of one Adhikrao Kadam and had canvassed against Sambhaji (accused no. 2) and his group in the Gram Panchayat Elections. Though A2 got elected, his group has defeated. Further Ganpat allegedly refused to transfer three Guntas of land in the village belonging to his family, as demanded by A2 Sambhaji. Consequently A2 and his supporters had a grudge against Ganpat and his family. A2 Sambhaji, as Chairman of the local co-operative society had withheld the issue of 'no-due' certificate to Ganpat and caused hardship to him. Prabhakar (accused no. 1 who died during the pendency of appeal) and Mohan (Accused No.4) were brothers of Sambhaji (Accused No.2). Appasaheb (Accused No.3) was the cousin, and Prahalad and Mahadev (Accused Nos. 6 and 7) were the friends of Sambhaji. Shankar (Accused No.5) was the servant of A1 Prabhakar. All the accused were also residents of the same village. There was simmering differences between the two groups.

2.2) At about 8 P.M. on 18.5.1988, Ganpat's son Shivaji was assaulted by the accused by catching hold of him and tearing his Banian near Jotiba temple. Putlabai, mother of Shivaji, rushed from her house which was nearby and took Shivaji back home. That night at about 10 P.M, when Shivaji and other family members were inside the house, A6 Prahlad called Shivaji to come out. When Shivaji came into the courtyard in front of the house, the accused armed with sword, axes, sticks and stones assaulted Shivaji. Shivaji's parents Ganpat and Putlabai and Ananda came out of the house, one after the other. They were also assaulted by the accused and were injured. Lastly, Vilas another son of Ganpat, came home, when the others were being attacked, and he was also assaulted by the accused. By then Adhikrao Kadam (for whom Ganpat's family worked during the Gram Panchayat Elections) came in his Jeep. Seeing him, all the accused ran away. Adhikrao Kadam took Ganpat and his son Vilas, who were injured to Krishna Hospital at Karad where they were treated around 11.00 P.M.

2.3) On being informed about the fight in Kusr village and two injured being admitted to the hospital, the I.O. (V.G.Chougule, PSI - PW17) went to the hospital accompanied by police staff. He recorded the statement of Vilas

(FIR - Ex.71) at about 1 A.M. on 19.5.1988 to the effect that when he reached home, he saw a crowd in front of his house and learnt from them that there was a dispute between A1, A2 and A3 with his father Ganpat; that when he was entering the house, A1 gave him two blows with a sword, and A2 hit him with a stick and he fell unconscious; and that he and his father were brought to the Hospital for treatment. On the basis of the said FIR, CR No.150/1988 was registered in the Karad Taluk Police Station.

2.4) Immediately thereafter, the IO went to Kusr village (around 1.30 A.M. on the morning of 19.5.1988). He did not find anyone in the house of Ganpat. The accused were also not traced. He returned to the police station around 4.30 A.M. By then Ganpat's another son Ananda reached the police station. The IO again went back to the Kusr village with Ananda and drew spot panchanama (Ex.33), under which blood stained stick and earth smeared with blood and some blood stained stones were recovered from the place of incident. While drawing the spot panchnama, the dead body of Shivaji was found in the bathroom in the cattle shed in front of the house. Inquest panchanama was recorded as per Ex.27. The dead body was sent for post mortem through constable More (PW16). Thereafter, the statements of Ganpat, Putlabai, and Ananda (PWs, 12, 13 and 14) were recorded. During the search, IO found one bamboo stick in front of the house of A1 which was seized under Panchnama Ex. 35 in the presence of PW 3 & 4. The blood-stained clothes of PW12 Ganpat and PW9 Vilas were seized under seizure panchanama Exs.23 and 24.

2.5) In regard to the earlier incident near Jotiba temple that occurred at 8 P.M, Shivaji More, brother of A6 had lodged a complaint with Kole outpost on 18.5.1988 itself, alleging that Ganpat and his sons namely Vilas, Ananda and Shivaji along with others had caused rioting and assaulted him and his brother Tanaji More. The said complaint was passed on to Karad Police Station and registered as CR No.151/1988.

2.6) On 26.5.1988, A2 Samabhaji and A3 Appasaheb were arrested in village Tulsan. Accused 5, 6 and 7 (Shankar, Prahlad and Mahadeo) surrendered on 1.6.1988. Accused 1 and 4 (Prabhakar and Mohan) had secured anticipatory bail and they were formally shown as arrested on 7.7.1988 and 16.7.1988 respectively.

2.7) On 29.5.1988, Sambhaji (A2) offered to give a statement. IO called PW5 and PW6 as witnesses. In their presence A2 made a statement (Memorandum recorded as Ex.37) stating that he had concealed an axe and sword under a Tamarind tree. A2 led the IO and PWs. 5 and 6 to that place and the axe and sword were recovered and seized under Panchnama Ex.37A. Shankar (A5) volunteered on 4.6.1988 to give a statement. IO called PWs. 7 and 8 as witnesses. In their presence A5 stated that he had concealed an axe and stick in the bamboo shrubs and offered to produce the same and his statement was recorded as per Ex.40. A5 led the IO and PWs 7 and 8 to the place where they were hidden and the axe and stick were recovered and seized under Panchanama Ex.40A.

3. On completion of investigation, charge-sheet was filed on 3.10.1988 against A1 to A7 and JMFC, Karad committed the matter to the Sessions Court. Charges were framed for offences under sections 143, 147, 148 and sections 302, 307, 326, 325, 324, and 323 read with section 149 IPC. Alternative charges were framed for offences under sections 302, 307, 326, 325, 324, 323 read with section 34 IPC. The accused pleaded not guilty. During trial, prosecution examined 17 witnesses and one witness was examined on behalf of the defence. The parents of deceased Shivaji (Ganpat and Putlabai) were examined as PWs. 12 and 13. The brothers of the deceased, Vilas and Ananda, were examined as PWs. 9 and 14. All the four were the injured eye-witnesses. V. G. Chougule, IO was examined as PW17. Dr. H.R. Tata (who treated Vilas) and Dr. Madukar Salunkhe (who treated Putlabai and Ananda and conducted postmortem of body of Shivaji) Dr. R.B. Gunaki (who treated Ganpat) were examined as PWs 10, 11 and 15. Maruti Desai (PW1) was the panch witness of inquest panchanama. PW2

drew the sketch of the scene of the crime. PW16 took the body of Shivaji for post mortem. PWs.3 and 4 were the Panch witnesses for the spot panchanama (Ex.33) and recovery panchanama (Ex.35). PWs. 5 and 6 were the panch witnesses for the statement of A2 (Ex.37) and recovery panchanama (Ex.37A). PWs. 7 and 8 were the panch witnesses to the statement of A5 (Ex.40) and recovery Panchnama (Ex.40A). One Kalawati, neighbour of Ganpat was examined as DW1.

4. The defence was one of total denial and false implication by Ganpat and his family due to previous enmity. According to defence version, the mob which had assembled near Ganpat's house (of which they were not a part) had pelted stones at Ganpat's house and members of the mob might have caused injuries to Ganpat and his family.

5. The trial court after appreciating the evidence, acquitted all the accused by its judgment dated 13.1.1995. The trial court found that all the panch witnesses (PW 5, 6, 7 and 8) examined in support of the alleged disclosures by accused A2 and A5, and all the panch witnesses (PW 3, 4, 5,6,7 and 8) in regard to alleged recovery of weapons, had turned hostile and did not support the case of the prosecution. Even the informant Vilas (PW9), brother of the deceased, did not support the case of the prosecution. The trial court found evidence of the father, mother and the two brothers of the deceased were full of contradictions regarding material aspects and particulars, which could not be brushed aside as minor inconsistencies. The trial court found an attempt to falsely implicate the accused in view of their previous enmity. The non-examination of any independent witnesses and neighbours and non-examination of Adhikrao Kadam were found to be significant omissions. It therefore, held that the prosecution had failed to prove that the accused were members of an unlawful assembly and committed a riot armed with deadly weapons or that in furtherance of any common object, they caused the homicidal death of Shivaji, and attempted to murder or cause grievous hurt to Ganpat, Vilas, Putlabai and Ananda. The state filed an appeal against the said acquittal. The High Court held that on the evidence of the parents and brother of the deceased (Ganpat, Putlabai and Ananda) who were natural witnesses who were also injured in the same incident has to be believed. On appreciation of the evidence, it held that the charges against the accused 1 to 6 were proved. As the first accused had died during the pendency of the appeal, the appeal against accused no.1 was treated as abated. It upheld the acquittal of accused no.7 as his participation was not proved. Accused 2 to 6 were convicted for offences under section 302 read with section 149 IPC as also under sections 143, 147, 148, 323, 324, 325 and 326 read with section 149 IPC. In regard to the offence under section 302 read with section 149, the accused 2 to 6 were sentenced to rigorous imprisonment for life and imposed a fine of Rs.5000/- and in default, imprisonment of one year. In regard to offence under section 326 read with section 149, they were sentenced to RI for two years and pay a fine of Rs.2000/- and in default, imprisonment for six months. No separate sentences were imposed in regard to the offences under other sections. The said judgment is challenged by accused 2 to 6 in this appeal.

6. The principles relating to interference by the High Court in appeals against acquittal are well settled. While the High Court can review the entire evidence and reach its own conclusions, it will not interfere with the acquittal by the trial court unless there are strong reasons based on evidence which can dislodge the findings arrived by the trial court, which were the basis for the acquittal. The High Court has to give due importance to the conclusions of the trial court, if they had been arrived at after proper appreciation of the evidence. The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond

reasonable doubt and consequently the accused is entitled to benefit of doubt [vide G. B. Patel vs. State of Maharashtra - 1978 (4) SCC 371, Babu v. State of U.P. - 1988 (2) SCC 21, Awadhesh v. State of M.P. - 1988 (2) SCC 557, Thanedar Singh v. State of M.P. - 2002 (1) SCC 487, and State of Rajasthan vs. Rajaram - 2003 (8) SCC 180]. Keeping the said principles in view, we will examine the evidence to find out whether the findings of the trial court were not based on evidence and whether there was justification for the High Court to interfere with the decision of the trial court.

7. We will first refer to the evidence regarding the alleged attack by the accused on the deceased Shivaji.

7.1) Vilas, brother of the deceased Shivaji, examined as PW9 did not say anything at all about the attack on Shivaji.

7.2) Ganpat (PW12), father of deceased Shivaji stated in his examination in chief that when Shivaji came into the courtyard all the accused rushed towards him; that accused A1 Prabhakar assaulted him with a sword on his head; thereafter A5 Shankar and A4 Mohan assaulted him with axes; and at the same time, A2 Sambhaji and A3 Appaso also assaulted him with sticks and stones. Thus in examination in chief Ganpat assigns specific roles to each of A1 to A5 in the attack on Shivaji. In his cross examination he admitted that when he made the statement to the Police on 19.5.1988, he did not say that A4 Mohan had assaulted Shivaji. He further admitted that in his statement recorded by the police on 19.5.1988, there is no reference to A2, A3, A4 and A5 assaulting Shivaji. He claimed that though he had mentioned to the police that A5 Shankar had assaulted Shivaji with an axe and that A2 and A3 had assaulted Shivaji with sticks and stones, those statements were not recorded by the police. But the IO (PW17) stated :
"In his statement PW12 Ganpat before me dated 19.5.1988, did not state that accused no. 5 Shankar and accused no. 7 Mahadeo were amongst assailants of Shivaji himself and other.

PW12 Ganpat also did not state before me in his statement dated 19.5.1988 that accused no. 5 Shankar assaulted Shivaji with axe or by any other weapon. He also did not state before me that accused no.2 Sambhaji and accused no.3 Appasaheb assaulted deceased Shivaji with stick and stone."

The evidence of Ganpat about A2 to A5 attacking Shivaji with axes, sticks and stones is thus clearly an afterthought and improvement at the stage of evidence, to falsely implicate A2 to A5.

7.3) Putlabai (PW13) mother of Shivaji stated in her examination-in-chief that A1 Prabhakar assaulted Shivaji with a sword, and A5 Shankar and A6 Prahlad assaulted Shivaji with axe. (But her son Ananda (PW4) has clearly stated in his examination-in-chief that A6 Prahlad was unarmed). But in her cross examination she says that when she came out of the house, she saw her son Shivaji running towards the bathroom in the cattle shed and did not return from bathroom. If by the time she came out of the house, Shivaji was already running towards the bathroom and did not return thereafter, it is obvious that she did not see who assaulted Shivaji and with what weapons.

7.4) Ananda, another brother of Shivaji, in his examination-in-chief made a general statement that his brother Shivaji was attacked by all the accused persons with the weapons with which they were armed. He stated that A1 was armed with a sword, A4 and A5 with axes, A2 and A3 with sticks but A6 and A7 were unarmed. In the cross examination he stated that all his family members were inside the house, that Shivaji went out first, thereafter his father went out, thereafter his mother went out and he came out last, and when he came out into the courtyard he saw his brother Shivaji running towards the bathroom. Obviously therefore he also did not see who assaulted Shivaji, as by the time he came out of the house, Shivaji was already running towards the bathroom.

7.5) Thus except Ganpat (PW12), none saw any of the accused attacking Shivaji. PW9 did not see anything; PW13 and PW14 could not have witnessed the attack on Shivaji as according to them, they only saw him running towards the bathroom. Ganpat who is the only person who could have witnessed the attack on Shivaji, says that A1 attacked Shivaji with a sword, both in his statement on 19.5.1988 and in his evidence. In regard to A2 to A5 apparently he did not say anything to police when his statement was recorded on 19.5.1988 but assigned them roles in the attack on Shivaji when he was examined in court. An analysis of the entire evidence thus shows there is only one eye-witness (PW12) in regard to the attack on Shivaji and his evidence is only of A1 attacking Shivaji and there is no evidence of any of the other accused assaulting Shivaji.

8. We may next refer to several strange circumstances in regard to the death of Shivaji and discovery of his body.

8.1) The first circumstance is about the altercation between Shivaji and a crowd at about 8 p.m. on 18.5.1988 near the Jotiba temple (situated at a distance of 10 yards from Ganpat's house). Putlabai says that at about 8 p.m. Shivaji left the house to go towards the shop, that immediately thereafter she heard a hue and cry and came out of the house, that she saw a crowd of many persons (including one Shivaji More and Tanaji More) had gathered near the Jotiba temple and her son Shivaji was standing with his Banian torn and that she advised him not to quarrel and brought him back to the house. Ganpat admits that in regard to the said incident at 8 p.m. Shivaji More and Tanaji More (brother of A6) had filed a complaint alleging that Shivaji and his brothers along with others had assaulted them on 18.5.1988 at 8 p.m. near Jotiba temple. Therefore it is evident that at about 8 p.m., a huge unnamed crowd (including one Shivaji More and Tanaji More) had assembled near the Jotiba temple and in a fight Shivaji's banian was torn and in regard to that incident, Shivaji More and Tanaji More had complained that Shivaji along with his brothers and others had assaulted them. Though in her examination in chief Putlabai stated that A1, A3, A5 and A6 caught hold of Shivaji at about 8 p.m. and tore his banian, in the cross examination she admits that when she heard a hue and cry and went out of the house towards the temple she saw her son Shivaji standing there with banian torn and she brought him back. It is thus evident that she did not witness A1, A3, A5 and A6 or anyone else catching hold of Shivaji or tearing his banian at 8 pm. The reason why a crowd had assembled near the temple near Ganpat's house and what was the quarrel in which Shivaji's banian was torn, remains unexplained. None of the prosecution witnesses has given the reason for a hostile crowd standing at 8 pm near the Jotiba temple and Shivaji being assaulted and his banian being torn. There is also a further reference to the crowd assembling near Ganpat's house at 10 P.M. Putlabai (PW13), Ananda (PW14) and DW1 (Kalawati) refer to a mob of villagers coming near Ganpat's house just before the incident (around 10 p.m.) and stones being thrown at Ganpat's house. The prosecution has not explained why the village crowd was furious with Ganpat and his family, why they threw stones at Ganpat's house and who were the members of the village crowd. DW1, however, categorically stated that none of the accused were part of the crowd/mob that threw stones at Ganpat's house.

8.2) The next is the strange behaviour of Ganpat and his family. Putlabai (PW13) stated that her son Shivaji returned home at 8 P.M. after taking his meal in his friend's house, that he left thereafter to go to his shop, she heard a hue and cry, went out and found Shivaji near Jotiba Temple with his Banian torn, tells him not to quarrel and brings him back to home and confined him in a room so as to prevent him from going out again and bolted the door of the house. Ganpat (PW12) stated that on 18.5.1988 he returned home at about 8 P.M, saw the accused standing in front of his house and suspected danger, so made his escape and went to his house by another way. (But he admitted that there is only one entrance to the house in the front of the house. If the accused were standing in front of the house, there was no question of his coming by another way. Be that as it may). He also stated

that when he entered his house all the accused were present in the courtyard and none assaulted him when he was entering the house. Ganpat further stated that when he entered the house, he saw that all his family members were frightened and his son Shivaji told him that the accused had assaulted him at 5 to 6 P.M. on that day. Ganpat then stated :

"Myself, my son and my family members were sitting in the house by bolting the door from inside, after I came from village. As Prahlad More (Accused No.6) called deceased outside, he (Shivaji) came out of the house. I did not advice Shivaji not to go out of the house."

But Putlabai on the other hand says :

"Myself, my husband, Shivaji and Ananda were in the house prior to Starting of the incident. It is true that at that time so many persons from our village rushed in crowd towards our house showering the stones at the directions of our house. Hearing the hue and cry of this crowd, Shivaji came out of the room and went outside\005.."

If Shivaji had already been attacked, if the family was frightened, if the mob was throwing stones, if they had bolted the door and were remaining inside, one would expect Ganpat and Putlabai to prevent their son Shivaji from going out or at least ask him to stay inside. But they did not. We refer to his aspect only to show that the conduct was not natural or that the events did not happen in the manner put forth by the prosecution.

8.3) The next strange circumstance is the non-discovery of Shivaji's body for more than 8 hours after his death. According to the prosecution case the attack on Shivaji resulting in his death occurred at about 10 pm on 18.5.1988. Ganpat, Putlabai and Ananda stated in their examination that they saw Shivaji being assaulted by some of the accused at about 10 p.m. But the cross examination of the witnesses demonstrates that neither Putlabai nor Ananda in fact saw any of the accused assaulting Shivaji and that only Ganpat apparently saw what happened. Both Putlabai and Ananda stated that when they came out of the house they saw Shivaji running towards the bathroom near the cattle shed. (The incident allegedly occurred in the front courtyard of Ganpat's house and the cattleshed and bathroom adjoined the front courtyard and the distance is hardly a few feet). But Ganpat states in the examination in chief that when accused attacked Shivaji, "Shivaji fell down" and "Shivaji met with death instantaneously". In his cross examination, he said "Shivaji died on the scene of offence itself. I saw the incident by standing in the courtyard of my house." This contradicts the evidence of his wife and his son Ananda that Shivaji on being assaulted, ran towards the bathroom. Ganpat says that after Shivaji fell down, he (Ganpat) was attacked, his wife and son Ananda were attacked and in the meanwhile Adhikrao Kadam arrived in a jeep and seeing him all the accused escaped from the place. He further states that he along with his son Vilas were taken by Adhikrao Kadam to Krishna hospital Karad for treatment. He also says that when going to the hospital, he asked his wife Putlabai and son Ananda to stay back at home. Therefore when Ganpat and Vilas left for the hospital, Shivaji was lying in the courtyard, obviously in coma or dead. He was not taken to hospital. When the IO came about 3 hours later at about 1.30 a.m. on 19.5.1988, the body was not in the courtyard. Who took Shivaji's body to the bathroom? Why was Shivaji's death or his being injured was not informed to police? The IO apparently did not search the entire house (at 1.30 A.M. on 19.5.1988) as no one informed him about Shivaji being dead or injured. Even when Ananda went to the Police Station at 4.30 a.m. on 19.5.1988, he did he not inform about Shivaji being dead or injured. Even when IO returned to the scene of crime around 6 A.M. (as per the evidence of PW14) neither Ananda nor IO searched for Shivaji. The IO found the body only when he went round for drawing the spot panchnama. Why the delay of 8 hours in discovering the body of Shivaji (10 A.M. on 18.5.1988 to 6 A.M. on 19.5.1988) when his body was obviously in the courtyard of the house? These questions have not been answered. It is not only strange but virtually impossible to believe that the body of Shivaji would have remained

unattended and unchecked till next day morning in the background of what had happened.

8.4) The next strange circumstance is why nobody bothered about Shivaji. The natural and instinctive reaction of any parents or brothers would have been to take Shivaji to a hospital and get him treated. But Shivaji was lying in the courtyard itself (according to Ganpat) or went towards the bathroom (according to Putlabai and Ananda). None bothered to verify whether he was dead or alive, nor make any attempt to take him to the hospital for treatment. Ananda who met the IO (at 4.30 A.M. on 19.5.1988) did not inform him that Shivaji was assaulted and he was injured. If really the incident had occurred in the manner narrated by these witnesses and Shivaji was seriously injured it is strange that no one bothered about Shivaji. It was not as if there was any other way to go out of the house through the cattle shed or bathroom and that Shivaji could have gone out that way. Ganpat has clearly admitted that except the main entrance there are no doors to go out of the house. If Ganpat, Putlabai and Ananda were aware that Shivaji was attacked and injured in the manner stated in their evidence and he was lying either in the front courtyard or in the bathroom, the first natural action would have been to find out his condition and give him treatment. It was not done. When Adhikrao Kadam came to the spot in a jeep within a few minutes of the attack on Shivaji, Ganpat made no effort to take Shivaji to hospital. Even Putlabai and Ananda who remained in the house, did not verify what happened to him. When the IO came around 1.30 pm in the early morning of 19.5.1988 he did not find the body of Shivaji nor did he find Putlabai and Ananda at home. But when Investigating Officer returned around 6 pm on 19.5.1988 along with Ananda and while drawing the spot panchnama, he found the dead body of Shivaji mysteriously lying in the bathroom. The postmortem report and the evidence of Dr. Solanki (PW11) who conducted the postmortem shows that the cause of death was "coma and death due to skull injury with heart injury." As per the postmortem report, the death was within two hours from taking the last meal and Putlabai says that the last meal was taken by Shivaji before 8 pm. Therefore it is evident that Shivaji did not go out after the injuries or come back later to die in the bathroom. He died around 10 p.m. which was when the incident occurred. But if the statement of Putlabai and Ananda that they had seen Shivaji running towards the bathroom was true, does it mean that he was not seriously injured then? Significantly Putlabai stated in her cross-examination that she came to know that Shivaji received cut injuries only when his body was taken out from the bathroom on 19th morning after 6.00 a.m. This makes it clear that on 18.5.1988 when Ganpat and family members were injured, she did not even know that Shivaji had been injured. It is also possible that Ganpat and Ananda were also not aware that he was injured or that he died, when Adhikrao Kadam came to the spot. Or it is possible that after Adhikrao Kadam left with Ganpat and Vilas for treatment, Shivaji was injured by someone else. That may explain why Ganpat, Putlabai and Ananda were unconcerned about Shivaji. The alternatives are too many and there are no satisfactory answers. In this connection, one significant discrepancy in the evidence of Ganpat and Ananda requires to be noticed. Ganpat specifically states that after the incident when he left the house with Adhikrao Kadam for the hospital, Ananda was at home and he asked him to remain at home. This is reiterated by Putlabai also. But Ananda says that when he was attacked, he ran away and was not present when Adhikrao Kadam reached the spot. We extract below the relevant evidence of Ganpat, Putlabai and Ananda. Ganpat stated :

"Putlabai and my son Ananda also came out of the house. They were also assaulted by the accused persons. Meanwhile one Jeep vehicle of one Adhikrao kadam arrived there and seeing so all the accused made their escape\005.. I asked my wife and my son Ananda to remain in the house and myself, Adhikrao and PW9 Vilas went Krishna Hospital in Jeep of Adhikrao".

Putlabai confirmed the above by stating that 'my husband and my son Vilas

went to hospital at Karad after the incident. However, myself and my son Ananda remained in the house.' On the other hand, Ananda stated :

"A5 Shankar assaulted me with axe with its but end on my head\005\005 A2 Sambhaji and A3 Apasaheb assaulted with stick blows to Vilas on his back and stomach. Thereafter, I went running towards harijan Basti of our village. Thereafter, I went near Karad Dhebewadi Road at Kole village shop and thereafter, I went to Gharewati. I boarded in a truck and came to Karad Taluka Police Station at about 4 to 4.30 A.M."

The prosecution case if accepted would mean that Ganpat, a father left injured Shivaji unattended in the courtyard even without verifying whether he was dead or alive. It is not only the father, but also mother and brother who did not bother about Shivaji and left him unattended. This is not a natural reaction. We conclude that the answer is not that the conduct of PWs. 12, 13, and 14 was strange, but the facts were otherwise than what is put forth by the prosecution, thereby demonstrating the falsity of the prosecution case.

8.5) The next strange circumstance is the non-examination of Adhikrao Kadam or any neighbour of Ganpat. Ganpat and his family worked for Adhikrao Kadam in the Panchayat election and against A2 Sambhaji. Thus it is obvious that Adhikrao was the leader or important member of the group to which Ganpat and family belonged, which was fighting against A2's group. There was an attack by a mob at 8 p.m. against Shivaji and again an attack by the mob by throwing stones at Ganpat's house at 10 pm. PW13 Putlabai stated in her evidence that 'many persons from our village rushed in a crowd towards our house throwing stones in the direction of the house'. This is reiterated by PW14 Ananda who stated that 'some persons threw stones at our house'. Why was the stone throwing by the villagers, is not explained. But Adhikrao Kadam appears in his jeep around 10 p.m. when the attack against Ganpat's family was going on. According to Ganpat, when Adhikrao Kadam came, the persons attacking his family ran away. Why would the attackers run away? Whether he was alone in the Jeep or he came with a group is not mentioned. But it is stated that the moment he came in his jeep, all the seven accused ran away. The crowd also disappeared. Adhikrao must have witnessed the accused running away. Did he see Shivaji lying in the courtyard? He took Ganpat and Vilas to hospital. He knew whether Ganpat and Vilas were conscious or not. He would have been the ideal witness to answer several questions which have remained unanswered. But strangely he is not examined. In fact the IO does not even refer to recording his statement during the investigation. The IO however stated that during investigation, he recorded the statements of three neighbours of Ganpat, namely Kalawati, Yasoda and Vasala but none of them were examined by the prosecution. On the other hand, the defence examined one of them namely Kalawati who stated that many persons came near the house of Ganpat and threw stones that there was a scuffle between the crowd and Ganpat and his family members. She also stated none of the accused formed part of the said crowd which attacked Ganpat and his family. She also stated that she saw that Ganpat and Vilas sustained injuries, that Putalabai and Ananda did not receive any injuries and that she did not see Shivaji in that scuffle and that while Vilas and Ganpat were shifted to a hospital in the jeep of Adhikrao Kadam, Putlabai and Ananda remained in the house. Nothing has been brought out in her cross-examination to disbelieve her evidence.

9. It is in this background of material inconsistencies, large gaps and prosecution's failure to explain several relevant aspects, the trial court after an exhaustive consideration of the evidence found that the evidence of PWs.12, 13 and 14 was not reliable; that Vilas PW9 who was the informant, had denied any knowledge of having stated that the accused had attacked Shivaji; that except the three interested witnesses who also happen to be the closest relatives of the deceased namely parents and brother, no one else has spoken about the incident. On the other hand the defence examined DW1 a neighbour of Ganpat, who stated that none of the accused formed part of the crowd that assembled in front of the house of Ganpat throwing stones. Even

if her evidence is discounted, the several strange unexplained circumstances referred to above, cannot be brushed aside either as minor inconsistencies or omissions in evidence. The evidence clearly shows that an attempt has been made by PWs. 9, 12, 13 and 14 to implicate all the accused or at least accused 2 to 6 for the death of Shivaji and attack on PW 9,12,13 & 14 on account of previous enmity. It is also evident that Vilas got cold feet, did not go along with family and denied any knowledge when he was examined in court. On the facts and circumstances, there was absolutely no justification for the High Court to interfere with the decision of the trial court. The learned counsel for appellants drew our attention to several other inconsistencies in the evidence of PWs. 9, 12, 13 and 14. As they are minor, we do not propose to examine them.

10. Learned counsel for respondent submitted that there was nothing strange about Ganpat going with Adhikrao Kadam in his jeep for treatment immediately after the incident without verifying what happened to his son Shivaji, even though he had been subjected to a murderous attack and had fallen down at the spot. He submitted that Ganpat himself was unconscious due to his injuries and he was taken by Adhikrao Kadam in his jeep in an unconscious condition and therefore there was no question of the Ganpat leaving for the hospital without bothering about Shivaji. When we examine the evidence, we find that the said explanation is totally unacceptable. Ganpat (PW 12) did not say in his evidence that he became unconscious when he was attacked. In his examination in chief he stated that Shivaji fell down on being assaulted; he, his wife and son Ananda were assaulted; that in the meanwhile the jeep of Adhikrao Kadam came and the accused escaped and he was taken in the jeep to Krishna hospital. Ganpat stated in his cross examination that "I asked my wife and my son Ananda to remain in the house and myself, Adhikrao Kadam and Vilas went out to Krishna hospital in the jeep of Adhikrao Kadam." Thus he was fully in his senses all along and was never unconscious. Even the hospital records support this fact. The physical examination report forming part of the hospital records (marked Ex. P67) and the injury certificate (Ex. P68) show Ganpat was examined on 18.5.1988 at about 11 P.M. for "alleged stab injuries inflicted by sword" and the patient was conscious.

11. Except the oral testimony of PWs.12, 13 and 14 which stands rejected the only other evidence that is relied on to link the accused to the incident is the alleged disclosure statements made by A2 and A5 leading to recovery of the some weapons used in the attack. It is claimed that in a statement alleged to have been made by A2 Sambhaji in the presence of panch witnesses PW5 (N. S. Pisal) and PW6 (A.T Dange), he admitted having concealed the axe and a sword under a tamarind tree and the said axe and sword were recovered by the police in the presence of these Panch witnesses. The memorandum of the alleged statement of A2 recorded by the IO is Ex. 37 and the panchnama regarding recovery is at P37A. Both PW5 and PW6, the alleged panch witnesses turned hostile and stated in their evidence that they did not know A2 Sambhaji; that A2 did not give any statement before them to the police; that Sambhaji was not even present at the police station nor did he lead them to any spot, nor any sword or axe recovered. They denied the contents of the panchnama and stated that even though they protested to police that they would not sign a false panchnama, the police threatened and obtained their signatures to the memorandum of statement and panchnama. Similarly the prosecution alleged that A5 Shankar made a statement in the presence of panch witnesses PWs.7 and 8 (S. J. More and M. H. More) that he had kept concealed an axe and a sword beneath bamboo shrubs and that he took them to that place and the said articles were recovered in the presence of the said Panch witnesses; the statement of A5 was recorded in the form of a memorandum (Ex. 40) and the articles recovered from the place of concealment by A5 were seized under panchnama (Ex. P-40A). But PW7 and PW8 turned hostile and stated that they did not know A5 and he did not make any statement before them, that he did not lead them to any place, nor was the axe and bamboo stick recovered and seized by the police in their presence. They stated that they had signed Ex.40 and 40A at the instance of police. Therefore the entire evidence regarding recovery of weapons at the

instance of the accused 2 and 5 will have to be rejected. Similarly, the recovery of a stick in front of the house of A1 is also not proved as the panch witnesses (PWs. 3 & 4 - S.L. Deshmukh and P.D. Marathe) denied such recovery.

12. We may next consider whether the evidence about Vilas, Ganpat, Putlabai and Ananda being assaulted and injured by the accused is established by reliable evidence.

12.1) Insofar as Vilas (PW9) is concerned, we have noticed that in the statement to the police (FIR) Vilas is alleged to have stated that A1 gave two blows with a sword on his hand and head and A2 hit him with a stick. But in his examination-in-chief he stated that as he neared his house, someone hit him on his head and he fell on the ground unconscious and regained consciousness only in the Krishna hospital. He was treated as hostile and cross examined by the PP. He clearly denied the suggestion that A1 come behind him and gave a blow of sword on his head and right hand, as also the suggestion that A2 gave him a stick blow. He also stated that he did not make statement to the police, naming the accused.

12.2) The evidence of Putlabai (PW13) about the attack on her is very short. In examination chief she stated that 'A5 Shankar Jadhav assaulted me near right eye with an axe and I received injury on that part.' In cross examination she stated 'someone hit me near my right eye with an axe and I received injury and I fell unconscious.' Her husband Ganpat stated that his wife Putlabai was assaulted by accused but does not name anyone. He admitted that he did not tell the police as to who assaulted his wife when his statement was recorded. On the other hand PW14 Ananda stated that when his mother Putlabai came out of the house A4 Mohan assaulted his mother near her right eye. Thus as far as the attack on Putlabai is concerned, PW9 Vilas does not say anything. PW12 Ganpat does not say who assaulted her, Putlabai herself says that A5 Shankar assaulted her near the eye with an axe but in cross examination says "someone" assaulted her with an axe near her eye, and her son Ananda says that A4 Mohan assaulted her with an axe near the eye. Therefore it is clear that the evidence as to who caused injury to Putlabai is also wholly unreliable.

12.3) Ananda PW14 stated in his examination in chief that A5 Shankar assaulted him by giving an axe blow (with butt's end). Ganpat said he did not see who attacked his son Ananda. Putlabai says in her evidence that her son Ananda was attacked by A6 Pralhad. Thus there is a clear variation as to who attacked Ananda. While Ananda says that he was attacked by A5 Shankar with an axe, his mother says that Ananda was attacked with an axe by A6 Pralhad. Thus here again the evidence in regard to as to who attacked Ananda, is also totally unreliable.

12.4) Ganpat stated in his examination in chief that A1 Prabhakar gave a sword blow on his head and another blow on his right cheek. His wife Putlabai also says A1 assaulted her husband with sword. Ganpat said that A4 Mohan and A5 Shankar gave him axe blows, but his wife Putlabai says A5 Shankar and A6 Pralhad assaulted her husband with axes. On the other hand Ananda PW14 says that Pralhad A6 was unarmed and A1 Prabhakar assaulted his father. Therefore the only evidence without any contradiction is about A1 attacking Ganpat with a sword. There is no reliable evidence about A4 or A5 or A6 or any other accused assaulting Ganpat.

13. In other words, as far as A2 to A6 are concerned, there is absolutely no reliable evidence to show that they assaulted or caused injuries to either the deceased Shivaji or any of his family members namely PWs.9, 12, 13 and 14. There is no acceptable evidence that all or any of them with common intent assaulted Shivaji or his family members. Their presence at the site of incident is doubtful. We have already found PWs. 12, 13 and 14 made an effort to falsely involve A2 to A6 in the incident.

14. In view of the foregoing, we find that the High Court was not justified

in reversing the acquittal by the trial court. Accordingly, we allow this appeal, set aside the conviction and sentence of appellants and restore the trial court judgment acquitting the appellants. The appellants who are in jail, shall be set forth to liberty forthwith.

JUDIS