

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 270 OF 2003

SHRI ANANTA JANARDAN PATIL)
Aged 23 Yrs., Occ: Agriculturist,)
R/o. Village Vakalan, Tal. Thane,)
Dist. Thane.)
(All at present serving the sentence of)
rigorous imprisonment at Thana Jail) .. Appellant.
(Org.Accused No.13)

Versus

The State of Maharashtra) .. Respondent.

:- ALONG WITH :-

CRIMINAL APPEAL NO. 285 OF 2003

- 1) DINKAR BALKRUSHNA PATIL,)
Age 32 years.)
- 2) DEEPAK BALKRUSHNA PATIL)
Age 20 years.)
- 3) MANOHAR BALKRUSHNA PATIL)
Age 27 years.)
- 4) ROHIDAS SAKHARAM PATIL)
Age 30 years.)
- 5) SUNIL RAMA PATIL)
Age 26 years.)
- 6) GANESH RAMA PATIL)
Age 23 years.)
- 7) SANDEEP @ PAPPABALKRUSHNA)
PATIL, Age 25 years.)

- 8) RAMA HARI PATIL)
Age 50 years.)
9) ANANTA JANARDAN PATIL)
Age 22 years.)
(Appellant No.9 (Orig. Accused No.)
13) deleted vide Court' order)
dated 11-3-2003))
10) SADANAND BOKYA PATIL)
Age 29 years,)
11) MOTIRAM BOKYA PATIL)
Age 29 years,)
12) SHANKAR BABU PATIL)
Age 64 years,)
13) SANDESH SHANKAR PATIL)
Age 21 years,)
14) ANANTA BALKRUSHNA PATIL)
Age 40 years,)
15) NARESH RAMA PATIL)
Age 20 years,) ... Appellants

All residents of Vaklangaon, Dist. Thane) (Orig. Accused Nos. 1, 2, 5,
(At present in Central Prison, Thane).) 6, 9, 10, 11, 12, 18, 19, 22,
23, 24 and 25)

Versus

The State of Maharashtra. ..) .. Respondent.
(Orig.Complainant)

Mr. S. R. Chitnis, Sr. Counsel with Mr. S. V. Kotwal
for the Appellants in Cri.Appeal No.285/2003 and
Cri. Appeal No. 285/2003.

Mr. S. V. Gavand for Appellants (Original Accused
Nos. 6, 9, 10, 12, 13, 18, 22, 23 and 25).

Mr. B. R. Patil with Mr. S. L. Sakpale for Original Complainant.

Mr. P. S. Hingorani, APP for the State.

CORAM : BILAL NAZKI and

A. R. JOSHI, JJ.

RESERVED ON : 12TH FEBRUARY, 2009

PRONOUNCED ON : 12TH AUGUST, 2009.

JUDGMENT (Per Bilal Nazki, J.):

Prosecution case was that on 26th May, 2001 at 4.00 p.m. in front of the house of one Dnyaneshwar Patil at Village Valkan, Tal. District Thane when the deceased Ananta Bhoir was returning in an auto rickshaw, his auto rickshaw was forced to stop by putting in front another auto rickshaw driven by accused No.7. The auto rickshaw carried two persons other than Ananta Bhoir by name Ratan Mhatre and Ananta Balku Kharpatil. It was being driven by one Balkrishna Keshav Patil. 4 to 5 persons came out of the other auto rickshaw which stopped the auto of the deceased. About 20 to 22 other persons were hiding behind the nearby cactus and all these persons were armed with swords, iron rods, sickles, knives and all of them mercilessly attacked Ananta Bhoir and caused him grievous injuries on all parts of his body. On the basis of these allegations, charges were framed against the accused under Sections 147, 148, 149,

341, 323, 324, 504, 506 and 302 of the Indian Penal Code and under Section 25(1)(A) of the Arms Act. The accused pleaded not guilty and were tried. Prosecution examined 15 witnesses. The trial Court by its judgment dated 21st February, 2003 convicted accused Nos. 1, 2, 5, 6, 9, 10, 11, 12, 13, 18, 19, 22, 23, 24 and 25 for the offences punishable under Sections 147, 148, 149, 341, 506 and 302 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for six months for the offence punishable under different sections and also to suffer rigorous imprisonment for life for the offence punishable under Sections 149 with 302 of the Indian Penal Code.

2. When these appeals came to be listed before a Bench of this Court for final hearing on 22nd February, 2007, the Court was of an impression that a full and complete attempt to arrive at the truth had not been made by the prosecution. Therefore, the Court passed an order under Section 391 of the Criminal Procedure Code directing recording of statements of five witnesses who had been cited as witnesses but whose statements had not been recorded as the learned Public Prosecutor appearing before the trial Court had given up these witnesses. This Court also directed examination of Investigating Officer PW 15. The matter was remanded back to the trial Court. The trial Court has recorded the

statement as per the order of the High Court and has also recorded the statement of the accused under Section 313 of the Criminal Procedure Code and the matter has come back for hearing.

3. At the outset, learned Senior Counsel appearing for the appellants submitted that out of 15 witnesses originally examined by the prosecution, PW1, PW 2, PW 3 and PW 4 were projected as eye witnesses and these witnesses had not deposed anything against the accused which could justify their conviction. He further submitted that even the finding by this Court in its order dated 22nd February, 2007 was that the prosecution had not brought the whole truth before the Court. Now in addition to these witnesses, the prosecution has also examined after remand another 5 witnesses. So in all there are 9 alleged eye witnesses to the occurrence and according to the learned Counsel appearing for the accused persons, on the basis of testimony of all the 9 witnesses, the prosecution would not succeed.

4. PW 1 – Eknath Dinkar Bhoir, is the brother of the deceased. He stated that the deceased was an Ex-Corporator of New Bombay Municipal Corporation. Prior to May, 2001 marriage of deceased's daughter Sangita was arranged at Vaklan. Halad ceremony was arranged prior to the marriage. He and his another brother Gurunath were present

in the pendal at the time of the Haldi ceremony. A quarrel had taken place in the pendal between the persons belonging to Dinkar Balkrishna Patil and them in respect of dancing. His deceased brother was at home at that time. Somebody informed him about the quarrel and hence his brother arrived at the pandal. He requested all the persons not to quarrel at the time of marriage. He also suggested summoning a panchayat for settling the dispute. After one month a panchayat was summoned in a Hanuman Temple. But, accused no.1, Dinkar Patil, was not ready to accept the decision given by the panchayat, since he had sustained damages at the hands of Excise Officials. He threatened the deceased with dire consequences if his damages were not adequately compensated.

Occurrence took place on 26th May, 2001 at about 4.00 p.m. The deceased had gone to admit brother of Ratan Mhatre in the hospital, whose name was Vasudeo. He had to be admitted in E.S.I. Hospital at Vashi. While returning, when he reached near the house of Dnyaneshvar Rama Patil, the accused Dinkar Patil, Manohar Patil, Anant Patil, Sandip Patil and others encircled the deceased. They were armed with swords, sticks, iron rods, choppers and sickles. They assaulted the deceased Ananta Bhoir by the said weapons. Shankar Patil and Balkrishna Patil were instigating others not to leave the Corporator and sever him into pieces.

The witness claimed that he had seen the incident personally. Then he stated that when he went to the spot, his brother was lying in a pool of blood. The assailants were still assaulting him. Accused Dinkar Patil ran to assault him, but his nephew Shanivar Patil asked Dinkar Patil not to assault him. He knew all the accused sitting before the Court. All of them had assaulted his brother. Thereafter, he took his injured brother to Shilphata Police Outpost in his vehicle. Laxman Patil and Ratan Mhatre accompanied him to the police outpost. Police referred deceased to Civil hospital, Thane, for medical treatment. After sometime, his brother succumbed to his injury. He lodged F.I.R. of the incident, which bore his signature and Exhibited as Exh.41. The 5 swords, 4 sticks, 3 choppers and 3 iron rods were identified by him and they were marked as Articles A-1 to A-15.

In his cross-examination, he said that he was running grocery shop at Vaklan. From main road, if one has to go to Vaklan, one has to go 5 Kms. There are 2 to 3 villages on the road to Vaklan. There are agricultural lands on both sides of Vaklan Road. He could not say the width of the road. At the beginning of the village, the house of Dnyaneshwar Patil is situated. It is on road side at the distance of 20 to 25 ft. from the edge of the road. He could not say whether there were cactus

bushes on both sides of the road. He could not recollect as to whether there were bushes and trees on both sides of the road. He denied that his house was at a distance of 3 Kms. from other end of the village. The village has 300 to 400 residential houses. He stated that it was true that the road passing in front of the house of Dnyaneshwar Patil is zigzag. He denied that other houses were 100 to 150 mtrs. away from Dnyaneshwar Patil's house. At about 5.00 p.m. the witness must have gone to the hospital. After about 30 to 35 minutes, he was informed by the doctor that the deceased was dead. Thereafter, inquest panchnama of dead body was prepared by the police. He did not obtain possession of the dead body from the hospital. It was true that Dygad Police outpost is situated on Kalyan turning. He stopped his vehicle at the police outpost. He did not know the names of the police officials sitting in the outpost. He did not enter the police outpost. He cannot read or write, but he can make a signature. Then he stated, *"It is true that police prepared the F.I.R. as per their whims and I made my signature thereon at the instance of police"*. He did not remember as to whether he put his signature on the F.I.R. on 27th or 28th May, 2001. He did not remember as to whether he made his signature on F.I.R. in the evening of 27th May, 2001 or in the morning of 28th May, 2001. He denied that he did not witness the accused persons assaulting his brother. He

denied that the accused were not concerned with the death of the deceased. He had personally put his brother in vehicle after he got injured.

In cross-examination by some other accused, he stated that he did not remember the name of the adjoining village. He denied that village Bamli is adjacent to his village. He, however, stated that it was false to state that he, Ananta, Dinkar, Gurunath and their nephew Santosh were arrested by the police in connection with a case of attempt to commit murder of Dattatraya Gondhale. He also stated that it was false to state that they attempted to commit murder of Dattatraya Gondhale prior to 10 days of the incident. He also stated that it was false to state that Ananta had made firing on the house of Shantaram Mhatre. He also said that it was true that incident of Haladi ceremony had taken place one year prior to the occurrence in which the deceased died. It was false to say that no dispute or quarrel had taken place between them and the Accused at the Haladi ceremony. It was true that neither party had lodged any complaint with the police about that incident. Two days before the occurrence, the accused Dinkar Patil had abused and threatened the deceased at Dahisar Check-post. He was personally present there at that time, but no F.I.R. was lodged. Then there are omissions, namely, *“I did not state before the police that a quarrel had taken place between the persons belonging to the accused*

and our persons regarding dancing. I did not disclose to the police that my brother Ananta arrived in the pendol and requested both sides not to pick up quarrel with each other at the time of ceremony. I did not disclose to the police that my brother Ananta expressed his intention to resolve dispute in a Panchayat.” “I had stated before the police that the accused Dinkar Patil ran to assault me and our nephew Shanivar Patil requested him not to assault me. I cannot assign any reason as to why police did not mention it in my F.I.R.”.

5. PW 2 – Laxman Aba Patil, is running a grocery shop at Vaklan. He stated that he was present at home on 26th May, 2001. He woke up from sleep at 3.30 p.m. and came out of his house and started washing his face in front of his door. He saw Dinkar Patil, Manohar Patil, Ananta Patil, Sandip Patil, Dipak Patil, Balkrishna Patil, Sunil Patil, Rama Patil, Ganesh Patil, Naresh Patil, Santosh Patil, Sadanand Patil, Motiram Patil, all armed with swords, choppers, iron rods and sticks, standing in front of his house. The accused persons in the court were the same. The swords, sticks, choppers and iron rods shown to him were the same. They were marked Articles A-1 to A-15. Then he said that the accused Dinkar Patil asked accused Manohar Gotiram Patil to start his auto rickshaw. Accordingly, Manohar Gotiram Patil started his auto-rickshaw. 4 to 5 accused boarded

the auto-rickshaw. He has a cattle-shed in other locality of the village. He went to his cattle shed by a different route without crossing the route of the accused. The auto rickshaw stopped in front of the house of Shankar Babu Patil, who also arrived on the spot from Dahisar side on scooter. Few accused were sitting in the auto-rickshaw and few were elsewhere. Accused Manohar Balkrishna Patil and Rohidas Patil gave signal to other accused to stand up. Within five minutes another auto-rickshaw from Dahisar side came on the spot of incident. Again accused Manohar Gotiram Patil started his auto-rickshaw and brought in front of that auto-rickshaw. All the accused gathered in front of the house of Dnyaneshwar Patil. The accused dragged the Corporator Ananta Bhoir from the auto-rickshaw and asked him, how he can escape from their clutches. Thereafter, accuse Dinkar inflicted blow of sword on his head. Accused Manohar also delivered blows of sword on him. Accused Ananta Patil assaulted the deceased with sword. Accused Sandip Patil also assaulted him with sword. Dipak Patil was possessing chopper. He pierced the chopper in the mouth of the deceased. Other accused also assaulted him with sticks, iron rods, sickles, etc. Thereafter, the accused fell Ananta Bhoir on the earth. Accused Balkrishna Patil instigated other accused to cut Ananta Bhoir to pieces. Balkrishna Patil was possessing a sickle in his

hand. He delivered blows of sickle on the deceased and threw it on his person. Thereafter, Eknath Bhoir and Ratan Mhatre arrived on the spot. The witness encouraged Eknath Bhoir and Ratan Mhatre to go to the spot. After assaulting Ananta Bhoir, the accused started blotting away from the spot. Meanwhile, one jeep belonging to the deceased came on the spot. They put deceased in the jeep and took him to Dygad Police outpost. The police asked them to shift the deceased immediately to Civil Hospital, Thane. Accordingly, they took Ananta Bhoir to Thane Civil Hospital, where he was declared dead. All the assailants were sitting before the court as accused.

In his cross-examination, he stated his grocery shop was situated in front of house of accused Dinkar Patil. This witness stated that he had three brothers, namely, Balaram, Sakharam and Waman and each of them reside separately. He ran a grocery shop in the heart of the village. He resides in the same structure. His cattle-shed is situated at a distance of 3-4 houses from his residence. Then he said village Vaklan consists of 250 to 300 houses. Few of them are double storied and situated adjacent to each other. His house is single storied. Dahisar is 4 Kms. away from his house. It was true that house of Dnyaneshwar Patil is an old double storied Bungalow consisting of roof of tiles. It is situated at the beginning of

village Vaklan. There are cactus bushes on both sides of the road in front of house of Dnyaneshwar Patil. House of Dnyaneshwar Patil was not visible from his house and also not visible from his cattle-shed. His brother Balaram was Sarpanch of village Vaklan and Bamari before merging of villages in New Bombay Municipal Corporation. It was true that villagers of 14 adjoining villages have boycotted the elections of New Bombay Municipal Corporation since the year 2000. He submitted that it was false that accused Balkrishna Patil, his sons and other family members were on the forcing that because of the boycott, his brother Balkrushna could not contest the election of Municipal Corporation. He submitted that it was false that two families were on inimical terms with each other because of this. Balkrishna Patil is his cousin. His family and the family of the accused had joint agricultural property at Vaklan at the time of their grand-father. He denied that there were conflict on account of certain property which is a grazing land and is used for grazing cattle. He denied that there was a dispute between the family of the witness and the accused on account of grazing of cattle in the grass land. Then he said, his clothes were not stained with blood and hence were not seized by the police. The police recorded his statement on the day of occurrence in the evening. The police did not record any of his supplementary statement after 15 days of the

occurrence. He stated, *“It is false to say that in my supplementary statement, I disclosed to the police that Manohar Gotiram Patil, Barkya Yashwant Patil, Gurunath Yashwant Patil and Laxman Ambo Patil were also amongst the assailants”*. Then many omissions were pointed out to the witness and he stated that, *“I cannot assign any reason as to why all these things do not find place in my statement recorded by the police”*.

In response to cross-examination by some other accused, he stated, *“It is true that Eknath, deceased Ananta and Gurunath are real brothers. Dattu Gondhali was assaulted 4 to 5 days prior to the incident. I know Shantaram Namdeo of our village. It is false to say that in a firing made on the house of Shantaram Namdeo, deceased Ananta was a participant”*. He also stated, *“I along with 5 to 6 persons went to Raigad outpost. 7 to 8 cops were present in the outpost. I narrated them the whole incident. But, they did not reduce it into writing. Only one cop accompanied us to Thane Civil Hospital”*.

6. PW – 3 Ratan Rama Mhatre, in his evidence stated that he and his brother Vasudeo Mhatre reside at village Vaklan. His brother was suffering from heart decease. The witness used to take him to New Bombay Municipal Corporation Hospital for treatment. On 26th May, 2001 at about 10.00 a.m., he went to the residence of ex-Corporator Mr. Ananta

Bhoir. He told him that the Medical Officer of New Bombay Corporation Hospital was not attending to his brother. Therefore, he requested him to request the Medical Officer to offer proper medical treatment to his brother. Anant Bhoir agreed to accompany him to New Bombay Corporation Hospital. He along with his brother Vasudeo, his wife and the deceased boarded auto rickshaw to go to Corporation Hospital. Auto rickshaw started following Dahisar road. At Dahisar check post all of them got down from the auto rickshaw and from there they went by bus to Corporation Hospital. On the request of the deceased the Medical Officer of the Hospital admitted his brother in the Hospital. Thereafter, they returned back to Dahisar. After alighting at Dahisar, he started searching for an auto so that they can reach Vaklan. They got one auto rickshaw. He and Ananta Bhoir boarded the auto rickshaw. One lady co-passenger got down at village Bighu and another lady co-passenger got down at some distance in the same village. He and Anant Bhoir were the only two passengers left in the auto rickshaw. When auto rickshaw reached near the house of Dnyaneshwar Patil, one other auto rickshaw came in front of their auto and stopped them. 4 to 5 persons alighted from that auto rickshaw. He also got down from their auto. Those 4 to 5 persons started abusing. They were armed with swords. They threatened Ananta Bhoir not to spare

since he was found after long gap. Names of those persons were Manohar B. Patil, Dinkar Balkrushna Patil, Sandip Balkrushna Patil. He could not see the faces of remaining two persons. They started assaulting the deceased. He got frightened and he ran towards the village Vaklan. He straight way went to the house of Ananta Bhoir. After crossing the distance of 40 to 50 ft. he looked behind and witnessed a crowd of 10 to 15 people. He reported about the incident to Eknath Bhoir (PW 1) brother of Anant Bhoir. Eknath Bhoir, therefore, went to the place of occurrence and the witness followed him. That time he witnessed 20 to 25 people raising shouts as “Mara Mara”. After some time, son of Anant Bhoir brought Armada Jeep. The witness with the assistance of Sakharam Aba, Laxman Aba and Eknath Dinkar put injured in the jeep and took him to Thane Civil Hospital for Medical Treatment. Ananta had sustained injuries on his face, legs and hands. On the way to hospital, they stopped jeep at Shilphata Police Chowky. Laxman Aba got down at Shilphata for reporting about the incident. From there they went to Thane Civil Hospital.

In cross-examination, he stated that house of Eknath Bhoir is at the distance of 4 to 5 minutes by walking from the house of Dnyaneshwar Patil. He stated that it was true that it was not visible from the house of Dnyaneshwar Patil. He denied that the distance between the

house of Dnyaneshwar Patil and the house of Eknath Bhoir could take 15 minutes by walk. Police did not seize his wearing clothes. It was true that the police had made him sit in the police station for two days and recorded his statement on the subsequent day. After recording his statement, he was allowed to leave the police station. He said, *“It is false to say that police were insisting upon me to take names of Vitthal Balkrushna Patil, Manohar Balkrushna Patil and Sandip Balkrushna Patil for two days and I was continuously refusing”*. He further said, *“I had stated to the Police that the 5 persons alighting from auto Rickshaw threatened Ananta Bhoir not to spare since he was found after a long gap. I had disclosed names of three persons as Dinkar Balkrushna Patil, Manohar B. Patil and Sandip Balkrushna Patil by giving statement. I cannot assign any reason as to why these facts are not recorded in my statement.”* He further said, *“I disclosed to the police that those 5 persons dragged Ananta Bhoir from the auto rickshaw and started assaulting him. I had stated before the Police that while running towards the house of Ananta Bhoir I looked back and witnessed crowd of 10 to 15 people on the spot. I cannot assign any reason as to why these things do not find in my statement.”*

7. PW 4 – Sakharam Aba Patil, has stated that he was running a grocery shop in Joshi Ali locality. On 26th May, 2001 he was present in his

shop. At about 4.00 p.m. quarrel had taken place between the Corporator Ananta Bhoir and Dinkar Balkrishna Patil. He thought his brother also must have been beaten by Dinkar Balkrishna Patil, Manohar Balkrishna Patel, Ganesh Rama Patil, Sandip Balkrishna Patil and Ananta Balkrishna Patil. And therefore he went to the spot of incidence. His brother Laxman Aba Patil, however, was not present at the place of quarrel. He witnessed Ananta Bhoir lying in pool of blood on the spot. He requested the accused not to assault Ananta Bhoir. Accused Manhar and Dinkar were possessing swords in their hands. Accused Ganesh was possessing a stick. There was a chopper in the hands of Dinkar. The said accused started assaulting the witness. Accused Manohar inflicted a blow on his back with bottom side of the sword. All the said accused were sitting before the court. Other persons were also there on the spot. All of them were present in the Court as accused. Meanwhile, daughter of Ananta Bhoir arrived on the spot and converged on his body just to protect him.

In his cross-examination, he stated that it takes 2 to 3 minutes from his shop to reach the house of Dnyaneshwar Patil. All the accused are the residents of his village. Many people assembled in front of the house of Dnyaneshwar Patil. All of them were weeping. After learning about the incident, brothers of Ananta Bhoir including Eknath Bhoir came

on the spot. Villagers brought police on the spot after one and half hours. Tension was created in the village after the incident. It was true that Ananta Bhoir was ex-Corporator of their village. They had assisted him in contesting the election. He was maintaining good relations with Ananta Bhoir as also with all the accused. The accused were maintaining good relations with deceased Ananta Bhoir. He denied that he was used to alcohol. He also denied that at the time of making statement he was under the influence of liquor. He took Ananta Bhoir to hospital. His clothes were not stained with blood. He had a talk with police at Mumbra Police Station. Tigre Police outpost and Mumbra Police station are at a distance of 4 Kms. from each other. He narrated the incident to the police. Thereafter he had never been to the police station.

In his cross-examination by other accused, he stated that Laxman Aba Patil is his real brother. He knew that his brother Laxman Aba Patil was also examined as a witness in this case. Laxman Aba Patil' shop was adjacent to his grocery shop. They reside in the neighbourhood of each other. Then the witness said, *"I had not stated before the police that I thought that accused Dinkar Balkrishna, Manohar Balkrishna, Ganesh Rama, Sandip Balkrishna, Ananta Balkrishna might have assaulted my brother Laxman."* When certain omissions were pointed out, he said, *"I had*

stated before the police that there was a sword in the hands of accused Dinkar. I cannot assign any reason as to why police did not mention it in my statement.” He denied having stated before the police that the accused Ganesh was possessing a stick and accused Dinkar was possessing Chopper. He then stated that accused Manohar, accused Ganesh and accused Dinkar had only assaulted him. Each accused inflicted 2-3 blows of the weapon on him. He had sustained only two injuries on his back. He had shown both the injuries to the medical officer. The witness also said that it was false to state that the accused did not assault him. Thereafter, many many omissions were pointed out to him and he submitted that he cannot assign any reason as to why the police had not recorded it in his statement.

8. These were the four witnesses who were projected as eye witness but this Court earlier found their evidence not sufficient, therefore, remanded the case back for recording the testimony of those cited witnesses who had not been examined in depth. The witnesses examined after remand were PW 16, PW 17, PW 18, PW 19 and PW 20. Testimony of PW 15 will be taken at a later stage as he was an Investigating Officer, whose further examination and cross-examination has been directed in the remand order.

9. PW 16 – Hemant Ananta Bhoir, was projected as eye witness in the charge sheet. He stated that he has seen all the accused. He stated that on 26th May, 2001 after taking lunch at his residence at about 4.00 p.m., he had proceeded towards his grocery shop. At that time Shri Ratan Mhatre (PW 3) rushed to his residence and he told him the names of the accused persons and also told him that those persons were assaulting his father by sticks, iron bar, sickle, chopper, knife and sword. PW 3 also informed him that the accused persons were assaulting his father in front of the house of Dnyaneshwar Rama Patil. Thereafter, he, his uncle (PW 1) and others rushed to the place of occurrence. Accused No.1, Accused No.5, Accused No.11, Accused No.24, Accused No.6, Accused No.9, Accused No.14, Accused No.2, Accused No.10, Accused No.25, Accused No.22, Accused No.23, Accused No.13, Accused No.19, Accused No.18, Accused No.12, Accused No.26, Accused No.15, Accused No.8 and Accused No.21 were seen by him with different weapons like swords, knife, chopper, iron bars, sickle, etc. attributed to all the accused and he identified weapons. He could see dozens of accused and he could also remember which of the accused had which of the weapons in his hand. He further stated that all these accused persons were assaulting his father with the weapon they had in their hand. When his father fell down the accused were saying that his

supporter should also be beaten. Accused have thereafter left the place of occurrence. Thereafter, he, his uncle Eknath Bhoir, Laxman Patil and Ratan Mhatre went to the spot. His brother brought jeep. His sister provided drinking water to his father. She was present before they reached the spot. When he saw his father, he was having severe injuries on his body. They immediately took deceased in jeep to Daighar Outpost within Mumbra Police Station and thereafter his father was taken to Civil Hospital, Thane. After examining, the Doctor had declared him dead. During investigation, the police had recorded his statement twice. He also identified the weapons shown to him as Articles P-1 to P-5. He also identified the Articles P-6 to P-14.

In his cross-examination, he stated that his statement was recorded by the police as per his dictation. His statement in the police station was recorded by Shri Deshmukh, Police Officer. Then certain portion of the statement recorded on 27th May, 2001 was read over to him and he stated that he had not made such a statement before the police. Certain statements which he made before the Court were not in his statement before the Police and he could not give any reason for that. There are omissions and additions in his statements which have been accepted.

10. PW 17 – Balkrushna Keshav Patil, submitted that he was a rickshaw driver. On 26th May, 2001 his parents had gone to Vashi to bring some articles. He had gone to Dahisar Naka to bring them. On that day he had not taken his auto rickshaw to Dahisar. Shrinath Laxman Patil was his friend. He was also a rickshaw driver. He saw his friend was shaving at about 3.30 to 3.45 p.m. His vehicle had registration number MH-05-D-635. There were 5 passengers seated in his auto rickshaw. Out of them 3 were male and 2 were ladies. He told him to take his rickshaw to Vaklangaon. Accordingly, he took the said rickshaw towards village Vaklan. He was knowing Corporator Shri Ananta Bhoir amongst the said passengers. Out of the said passengers, 2 ladies alighted from auto rickshaw near village Nighu. Thereafter, he proceeded towards the village Vaklan. When he reached Vaklan, one auto rickshaw came across his auto rickshaw. In the said auto-rickshaw there were assailants and they were near about 5 to 6 persons. Corporator Ananta Bhoir (deceased) alighted from the auto rickshaw and started fleeing. The assailants were armed with swords and they started assaulting the Corporator. At the relevant time, about 25 to 30 persons were there. They were having iron bars and sticks with them. He was frightened and fled away. The assailants who assaulted the deceased were present before the Court. He identified accused Dinkar Balkrushna

Patil and accused Manohar Balkrushna Patil. He could not identify any other accused. He, however, identified the Articles P-1 to P-14.

In the cross-examination, he stated that on the day of occurrence, he was not having rickshaw licence with him. He had been to Dahisar Naka at about 2.30 p.m. to 3.00 p.m. His parents had gone to Vashi in the morning. His statement was recorded by the police during investigation on 28th May, 2001. After the incident he had seen the accused persons for the first time in the Court. He further stated that it was true to suggest that no identification parade was held where he could identify the accused. In further cross-examination by the advocate for some other accused, he stated that as he was frightened, he did not rush to the police station to inform about the incident. He also accepted that neither on the day of incident nor on 27th May, 2001 he informed the police station about the incident. On 28th May, 2001, i.e. 2 days after the occurrence, his uncle Manik Patil took him to the police station. He accepted that in his statement before the police he had not given any description of the assailants.

11. PW 18 – Vinod Ananta Bhoir, son of the deceased, submitted that he and his elder brother Hemant Bhoir have a shop at village Vaklan. PW 16 is his brother, who also maintains the shop along with him. He and

PW 16 had come to the residence in the noon for lunch. At about 3.30 to 4.00 p.m. he and his brother started to go back to their shop. In the meantime, PW 3 came and he informed them about the assault on his father. He also narrated the story as has been narrated by PW 16 and also gave the names of the accused along with weapons they were holding. He also identified Article P-1 to P-14.

In cross-examination he stated that his statement was recorded by the police at his residence at 11.30 a.m. in the midnight. Cremation of the deceased was performed between 9.00 to 10.00 p.m. on the same day and his statement was recorded after the cremation of his father. His statement was recorded as per his dictate. Thereafter omissions and improvements were suggested to the witness, which were almost all accepted.

12. PW 19 – Sau Suvarna Ramakant Patil is the daughter of the deceased. She came to know, when she was at home, that the quarrel had taken place in front of the residence of Shri Dnyaneshwar Patil. She rushed to the place of occurrence and found 30 to 35 persons present. 5-7 persons were assaulting her father and they were standing there. Witness stated after recounting, others were not assaulting. 5 to 7 persons were assaulting her father by means of swords, chopper and knife. Others were having

sticks and iron bars with them. She asked somebody from the family of Dnyaneshwar Patil to bring water and gave it to her father. In the meantime, her uncle PW 1 and PW 16 came there. She identified the accused present in Court. She also accepted the omissions and improvements in her statement. She also stated that the police recorded her statement after 15 days of the occurrence.

13. PW 20 – Ananta Valku Kharpatil, submitted that his sister is Prema Balaram Bhoir. On 26th May, 2001 he had gone to the village Vaklan to see his sister. He was going by auto rickshaw. It was at about 3.30 to 3.45 p.m. 2 ladies, 2 other male persons, his son along with him were going in rickshaw from Dahisar. One of the lady alighted from the said rickshaw near Ruile, another lady alighted at village Bamali. While proceeding towards Vaklan village, all of a sudden one auto rickshaw came across the rickshaw in which he was sitting. The auto-rickshaw driver applied brakes instantly. As the auto-rickshaw driver had applied brakes abruptly, the bag containing Mangoes which was in the hands of his son, fell down. He tried to see whether his son had sustained any injury. All of a sudden he heard the utterances “Mara”. He was frightened. He along with his son jumped from rickshaw and fled away. One of the said 2 persons, who were still in the auto rickshaw, preferred to stay in the rickshaw,

however, person who was on the right side had already alighted from the rickshaw. He did not know the persons who were along with him in the auto rickshaw. He also did not know as to who were the passengers in the rickshaw which had come across their rickshaw.

14. PW 15 – Laxman Balwantrao Deshmukh, is the Investigating Officer, who was examined and cross-examined initially and again cross-examined after remand. But before his evidence recorded at 2 different points of time is discussed, a look at the statement of the other witnesses is necessary.

15. PW 6 – Dr. Tejaswini Uddhavrao Bhagat, is the Medical Officer, who conducted the post mortem of the dead body on 26th May, 2001 at 9.07 p.m. and found 21 injuries. They were almost all over the body, covering chest, scalp, face, left elbow joint, wrist, fingers, right sole, right angle ankle joint, etc. Out of 21 injuries, only 1 injury was contused abrasions and others were all incised wounds. She found the internal injuries were corresponding to external injuries 1 to 6. The injuries were of grievous in nature. According to her the injuries were possible by weapons marked as Articles A-1 to A-15.

In her cross-examination, she stated that it was true that none of the internal organs specified in column no.20 were damaged. She also

submitted that it was true that she had not mentioned fracture to skull in injury no.1. The person would have died after 2 to 3 hours after having food. It was true that it takes near about 8 to 12 hours of the rigour mortis to develop fully all over the body. It was not correct to say that the person would have died between 10 a.m. to 12. p.m. on 26th May, 2001. It may be pointed out at this stage that the doctor conducted post mortem at 9.07 p.m. whereas PW 18, who is son of the deceased, has contended in his statement that the cremation took place between 9 to 10 p.m. and by 11.30 his statement was recorded by the police. It is submitted that it is hard to believe that when the post mortem was started at 9.07 p.m. as it stated in the Post Mortem Report, how can the cremation take place between 9 and 10 p.m. In Co.4(b) of the post mortem report, Exh.53, it is shown that the P.M. was started at 9.07 p.m. and was completed at 10.45 p.m. on 26th May, 2001.

16. PW 7 – Harishchandra Rajaram Bhoir, is a panch witness to discovery of swords on the disclosure of accused Sandip @ Pappya. According to this witness, the accused had kept sword in bushes behind the house of Janardhan Patil. He made the statement before the witness and panchnama was Exh.55. The accused led the police and panchas behind the house of Janardhan Patil and took out sword from the bushes

and produced before the police. This happened on 2nd June, 2001. On 8th June, 2001, he was called by the police again. This time accused Chandrakant Mahadu Patil made a statement and led the team to get a chopper kept in the bushes, near the house of Kailas Patil. The panchnama was Exh.57. The seizure panchnama was Exh.58. He identified the Articles A-10, A-11 and A-13 as the weapons resembling as those which were seized. He also identified the accused Nos.11 and 4 before the Court.

17. PW 8 – Lalchand Parshuram Patil is another witness who was the panch to the seizure of earth at the place of occurrence which was blood stained. He was also witness to seizure of few sticks and 3 foot wears and 1 sickle. A panchnama was prepared. He signed the panchnama being Exh.39. This happened on 26th May, 2001. On 28th June, 2001 he was called again by the Mumbra Police as Panch. Accused Ananta Patil was present and he made disclosure and then led the team at Valkan near the house of Kailas Patil and took out the sword from bushes and produced before the police. He identified the panchnama and seizure panchnama, Exh. 63 and 64. Again on the next day he was called by the Police. Accused Balkrushna Mahadu Patil was present in the police station, He made disclosure and led the team to the discovery of a sickle near the Jujabe tree. He identified his signature on the panchnama and seizure

panchnama, Exh. 65 and 66.

18. PW 9 -Madhukar Govardhan Patil, is again a panch witness. He was called by the police on 30th May, 2001. Accused No.1 Dinkar Balkrushna Patil was present in the police station. He made a disclosure of auto rickshaw and his scooter. Memorandum of Panchanama was prepared, Exh.68. The witness stated that the accused then accompanied the panch and police team to village Taloja near Sai Saburi Hotel. The accused pointed out the auto rickshaw and scooter which were standing in front of the hotel. Police seized both the vehicles and a seizure panchanama, Exh. 69, was prepared. On 1st June, 2001, he was again called to the police station and accused Rohidas Sakharam Patil made a disclosure, by Exh.70 and led the police team and the pancha to village Valkan near the house of Harishchandra Patil and took out a sword from the heap of wooden planks and produced before the police. Exh.71 is the seizure panchanama exhibited by him and he identified his signature. On 3rd June, 2001, he was again called to act as panch by the Police to the discovery of sword. Accused No.1 Dinkar Balkrushna Patil was present in the police station. The accused made disclosure vide panchanama, Exh. 72. The accused thereafter led the team to recover the sword in village Vaklan behind the house of Shankar Patil. He took out the swords from thorny

bushes and produced before the police. Seizure panchanama was prepared, Exh.73 and he identified his signature on the same.

19. PW 10 – Hanuman Laxman Mhatre, was summoned by the police in Mumbra Police Station on 3rd June, 2001 when accused Sunil Rama Patil was present in the police station. He made disclosure, vide Exh. 75 and led the team near the house of Shankar Bapu Patil in Village Vaklan and took out the sword from thorny bushes behind the house of Shankar Patil. Exh.76 is the seizure panchnama. He identified his signature.

20. PW 11 – Atmaram Govardhan Patil, was witness to discovery and disclosure made by accused Dipak Balkrushna Patil on 2nd June, 2001 vide. Exh.80 and 81. According to this witness, the accused led them to recovery of chopper from village Valkan near a newly constructed house. The accused took out a blood stained chopper from the thorny bushes. Seizure panchnama was prepared.

21. PW 12 – Lahu Shantaram Patil, was called at the police station on 10th June, 2001. Three accused were brought to the police station. The said accused were identified by him sitting in the Court as Accused Nos.12, 13 and 18. A panchnama was drafted of their arrest and memorandums were prepared, being Exhibits 83, 84 and 85. He stated that the accused

led them to Bombay-Pune Road. Thereafter, they went to Dahisar. From there the accused persons led them to village Vaklan. Accused told them to stop the vehicle near the house of Kailash Motiram and they alighted there. The accused took out 3 iron rods from thorny bushes on backside of house of Kailash Motiram. The Police seized them and 3 seizure panchanamas were prepared, being Exh. 86, 87 and 88. He identified his signature. He also identified the 3 iron rods shown to him. They were marked Articles A-5, A-6 and A-7. This witness has nowhere in his statement said that any disclosure was made by the accused persons.

22. PW 13 – Dattatraya Namdeo Borate, was the Police Sub-Inspector attached to Mumbra Police Station. On 26th June, 2001 he was on duty. At about 5.30 p.m. the complainant Eknath Dinkar Bhoir came to the police station and lodged F.I.R. against the accused. According to him, the accused had murdered his brother Ananta Dinkar Bhoir. The accused had also caused injuries to some associates of Ananta Bhoir. He drafted the F.I.R. of complaint of the complainant as per his narration. The F.I.R. was shown to him. It bore his signature and endorsement and marked Exh.41. The witness registered an offence against the accused under Sections 147, 148, 149, 302, 324, 323, 504, 506 r/w 34 of the Indian Penal Code and under Section 25(1)(c) of the Arms Act. Investigation of the offence was

handed over to PSI Deshmukh on the very same day.

In his cross-examination, he stated that on 26th May, 2001 his duty hours were 9.00 a.m. to 9.00 p.m. Prior to 5.30 p.m. there was no entry of the incident in Mumbra Police Station regarding the incident. Digher outpost is at a distance of 6 kms. from Mumbra Police Station. One head constable and 4 constables were deputed at Digher outpost. No police official of the rank of P.S.I. or above was deputed at Digher Outpost. Station diary is maintained in Digher outpost. Occurrence number of the offences are entered in the station diary of outpost. He first wrote down the F.I.R. and then got typed from writer constable. Thereafter, he said that the writer constable typed it under his direction. Name of writer constable was Mr. Tadve. There was no scoring in the F.I.R. except 3 lines in para 3. He could not assign any reason as to why he mentioned sections of the offence. Station diary entry number and timing of registration of offence were mentioned in hand writing in the F.I.R. He sent copy of F.I.R. to the court concerned on subsequent day. Copy of F.I.R. was marked as Exh.100. He denied that after having due deliberation with the complainant, first he got F.I.R. prepared and then got it typed from writer constable by adding names of accused.

23. PW 14 – Vijay Baburao Surve, is the Police Sub-Inspector

attached to Vartaknagar Police Station. He stated that on 26th May, 2001 he was attached to Mumbra Police Station. He prepared the inquest panchnama of the dead body of Ananta Bhoir. He identified his signature on Exh.50.

24. PW 15 – Laxman Balwantrao Deshmukh, is the retired Police Inspector. He was examined and also cross-examined. But was again cross-examined after the order of remand by this Court.

He stated that in the month of May, 2001 he was attached to Mumbra Police Station. He knew the accused Nos.1 to 30 were involved in this case. The case was registered against accused Nos.1 to 30 in the police station on the basis of the F.I.R. of complainant Eknath Dinkar Bhoir. Investigation was handed over to him on the very day. First of all, he visited the spot of incident at village Vaklan near the house of Dnyaneshwar Rama Patil on public way. Few sticks, one sickle, few broken pieces of glass, one blood stained pair of footwear, one black coloured blood stained footwear were lying on the spot of incident. He prepared spot panchanama, which was Exh. 39. Thereafter, he recorded statements of few witnesses. On 27th May 2001 he recorded the statements of few more witnesses. On 28th May, 2001 he went to village Taloja and arrested five accused. On 29th May, 2001 he added section 120-B to the previous

charges against the accused. Thereafter, on the very day, Police Inspector Mr. Shaikh, under his guidance, arrested 14 accused. Panchnama of arrest was prepared, Exh.91. Thereafter, on 30th May, 2001 API Mr. Vakare arrested 2 accused. Arrest panchnama was at Exh.92. On 20th June, 2001 PI Vakare arrested four accused. Arrest panchnama was Exh.107. On 25th June, 2001 PSI Chavhan arrested three more accused. Arrest panchnama was Exh. 93. On 31st May, 2001, accused No.1 Dinkar Balkrishna Patil, agreed to discover the auto-rickshaw and scooter used in committing the offence. Accordingly, he prepared memorandum panchnama. Panchnama was Exh.68, which was shown to him. It bore his signature. Thereafter he referred to other panchnamas about disclosure and recoveries made at the instance of certain accused at different dates and different places. He stated that it transpired during his investigation that all the accused had hatched conspiracy and committed murder of Ananta Dinkar Bhoir on the date, time and place of incident. After completing investigation, he filed charge sheet against 30 accused. He identified all the accused except accused Nos.20 and 21 who were absent on the day he appeared in the court. Accused No.27 was dead.

In his cross-examination, he stated that he was present in the police station on 26th May, 2001 and the offence was registered under his

guidance. In cases of murder, some times, they record F.I.R. on typewriter and sometimes in hand writing. Since the typewriter was available in the police station, he asked PSI Borade to get the F.I.R. typed. Occurrence report was not registered in Tiger Police outpost. He did not recollect as to whether he had verified the station diary on 26th May, 2001. He stated, *“It is false to say that the complainant had lodged a detail occurrence report to Diaghar Police outpost. It is false to say that the complainant had mentioned in the occurrence report that dead body of Ananta Bhoir was lying on outskirts of village Vaklan. It is false to say that in the occurrence report, the complainant did not raise suspicion on anybody in respect of killing of Ananta Bhoir. It is false to say that according to him, some unknown person had killed his brother Ananta Bhoir. It is false to say that I had gone through the occurrence report and since it was favouring the accused persons, I deliberately suppressed it from the charge-sheet.”* He further stated, *“It is true that I did not arrange for test identification parade of accused persons, in respect of the 3 witnesses. It is true that I have seized one scooter during the investigation of offence. The accused No.1 Dinker Patil is owner of the scooter. I do not know as to whether it has been released on supratnama bond or not. I do not recollect as to whether accused No.1 Dinker Patil was the owner of the scooter or not. I have seized both the auto-rickshaw during*

investigation.” Thereafter he said, “I had seized only one auto-rickshaw. I traced out owner of that auto-rickshaw. His name is Srinath Laxman Patil.”

The witness recorded the statement of Srinath Laxman Patil. Thereafter, he stated he did not record his statement. The witness could not assign any reason for that. He further said, *“It is false to say that he had stated before me that on the date and time of incident, the auto-rickshaw was in his possession and it was not utilised for any illegal purpose and hence, I did not record his statement.”* Then he was shown the statements of almost all the witnesses and omissions and improvements were also pointed out to him and whatever improvements were made by the alleged eye witnesses and about the improvements in their statements made before the Court by the alleged eye witnesses, this witness was emphatic that the witnesses had not made such statements before him. Then he stated, *“It is true that the auto-rickshaw and scooter were seized in front of Shraddha hotel. I did not record statement of proprietor of Shraddha hotel. I did not feel it necessary. Shraddha hotel is situated on highway. The people going in Shraddha hotel, park their vehicles in front of the hotel.”* Then he said, *“It is false to say that for recovery panchanamas, I invited the close relatives of complainant' s family only. It is false to say that the complainant himself provided me panch witnesses for recovery panchanama. It is false to say that I prepared false*

spot and recovery panchanamas with the assistance of interested panch witnesses provided by the complainant. It is false to say that I prepared all the memorandum and recovery panchnama by siting in police station and obtained signatures of panchas in the police station. It is false to say that none of the accused agreed to discover anything to the police and none of them discovered anything subsequently.” The witness then said, *“It is true that I sent the articles to C.A. Laboratory after 45 days from the date of incident”*. The witness denied that after arrest of accused No.13, Ananta Janardan Patil, he told him that on the date of incident i.e. on 26th May, 2001 he was present on his duty in the company at Taloja. He further denied that he deliberately did not place the documentary evidence in that respect on record. He denied that accused No.15 had also disclosed that he was on duty on the date of incident.

In his cross-examination by the advocate for the other accused, he stated that he did not record the statements of Vasudeo Rama Mhatre and his wife to whom Ananta Bhoir had taken to New Bombay Municipal hospital. He recorded the statements of Auto-rickshaw driver and passenger Ananta Balku Kharpatil as eye witnesses. He admitted that both of them did not disclose name of any accused. Thereafter he said, *“It is true that PW 2 did not state a sentence before me that he witnessed Dinker*

Patil, Manohar Patil, Ananta Patil, Sandip Patil, Dipak Patil, Balkrushna Patil, Sunil Patil, Rama Patil, Ganesh Patil, Naresh Patil, Santosh Patil, Sadanand Patil, Motiram Patil, all armed with swords, choppers, iron rods and sticks standing in front of their houses. He did not utter sentence before me that 4-5 accused boarded an auto-rickshaw of Manohar Motiram Patil and Dinker Patil asked him to start his auto-rickshaw. He had not stated a sentence before me that without coming across the accused, he went to his cattle-shed by different route from back side. He had not stated a sentence before me that the accused Manohar Balkrushna Patil and Gurudas Patil gave a signal to the remaining accused to stand up.” Thereafter he stated, “PW 2 Laxman Aba Patil had not stated before me that within five minutes, an auto-rickshaw arrived on the spot and accused said Ananta Bhoir as to how he could escape from their clutches. He had not stated a sentence before me that accused Dinker inflicted blow of sword on the head of Ananta Bhoir and accused Manohar also delivered a blow of sword on Ananta Bhoir and accused Ananta Patil also inflicted a blow of sword on him. PW 2 had not stated a sentence before me that accused Sandip Patil also delivered a blow of sword on Ananta Bhoir and accused Dinker Patil was possessing a chopper and he pierced chopper in the mouth of Ananta Bhoir. PW 2 did not state a sentence before me that thereafter, the accused felled Ananta Bhoir on the

earth and thereafter accused Balkrishna Patil instigated other accused to cut him into pieces. He had not stated a sentence before me that accused Balkrishna Patil was possessing a sickle in his hand and he delivered blows of sickle on Ananta Bhoir and threw it on his person. He had not stated a sentence before me that Eknath Bhoir and Ratan Mhatre arrived on the spot and he encouraged them that he would follow them on the spot of incident". Thereafter the witness further said, "I have recorded statement of PW 3 Ratan Rama Mhatre. He had not stated before me that wife of Vasudeo also accompanied him in the hospital. He had not stated a sentence before me that five persons alighting from auto rickshaw threatened Ananta Bhoir not to spare since he was found after a long gap. He had not disclosed before me the names of 3 persons as Dinker Balkrishna Patil, Manohar Balkrishna Patil and Sandip Balkrishna Patil. He had not stated before me that five persons dragged Ananta Bhoir from the auto rickshaw and started assaulting him. He had not stated a sentence before me that while running towards the house of Ananta Bhoir, he looked behind and witnessed a crowd of 10 to 15 people on the spot. He had not stated a sentence before me that he requested Ananta Bhoir that doctors of Corporation hospital were not paying any heed to the medical treatment of his brother Vasudeo and hence he asked Ananta Bhoir to accompany him to the hospital and request the doctors to offer necessary

medical treatment to Vasudeo. It is false to say that I had made to sit the witness Ratan Rama Mhatre continuously for two days in P.St. It is false to say that I had recorded his false statement and made him to depose falsely in the court also.” Thereafter regarding the statement of PW 4, the witness said, “I have recorded statement of P.W.4 Sakharam Aba Patil. He had not stated a sentence before me that there was a sword in the hands of accused Dinkar and accused Ganesh was possessing a stick and accused Dinker was possessing a chopper. He had not stated sentence before me that accused Ganesh was assaulting Ananta by means of a stick. It is true that it did not transpire to me in the investigation that accused Dinker and Ganesh assaulted Sakharam Aba Patil. It is false to say that I have recorded statements of witnesses related to the complainant and deceased only. It is false to say that I wrote names of panchas witnesses later on the panchanamas and prepared false panchanamas. It is false to say that I created false evidence against accused and filed false charge-sheet against them. I did not conduct investigation as to whom the footwear lying on the spot of incident were belonging.”

This witness was then again cross-examined after the order of remand by this Court. Though this cross-examination is a very long cross-examination but emphasis was on the fact that certain important witnesses

were not examined and certain statements attributed to the witnesses were not made by them. But the most important aspect of the case was narrated in his cross-examination by the defence, when he was asked as to whether Shri Katkari was the Police Patil of village Vaklan on the day of occurrence i.e. 26th May, 2001. He said that he did not recollect as to whether Shri Katkari was the Police Patil of the Vaklan village. Then his attention was drawn by the defence to the Station Diary entry no.20 dated 26/5/2001 recorded at 4.45 p.m. in station diary of Diaghar Outpost. He said, *“It is correct to suggest that in the Station Diary entry at Sr. No.20 now shown to me, there is reference of Police Patil Shri Katkari of Village Vaklan”*. Then the entry No.20 was read over to this witness by the defence and he said, *“It is true to suggest that in entry at Daighar post at Sr.No.20, recorded at 4.45 p.m., it is mentioned that as Police Patil Shri Katkari of village Vaklan had brought Shri Anant Bhoir of the said village in an injured condition, he was sent to hospital along with Police constable Shri Raut, Buckle No. 1751 and that therefore, information of the said incident was conveyed to PSI Surve is also mentioned.”* Thereafter the attention of the witness was drawn to the certified copy of the station diary entry at Sr.No.20, and he said, *“The said entry now shown to me is the same. It is correct. It is at Exh.D-183. I had not gone through the said entry during investigation. It is correct to*

suggest that during the investigation, it was revealed that injured deceased Ananta Bhoir was initially brought to Outpost Daighar in an injured condition. I do not recollect today as to whether or not after it was so revealed, I had made any enquiry to that effect at Daighar Outpost.” Thereafter his attention was drawn to the Station diary entry No.21 dated 26/5/2001 recorded at 17.30 hrs. and he said, *“It is correct to suggest that there is entry at Sr.No.21 to the effect that by virtue of my order, to bring photographer and Shwan-pathak, somebody was sent to Kousa and police station”*. Then the witness was shown the certified copy of station diary No.21. He said that the entry shown to him was correct. It was at Exh.D-184. Then he further said, *“It is true to suggest that said order issued by me was in connection with the crime in question. It is true to suggest that no photographs nor report by dog squad have been produced along with the charge-sheet. It is true to suggest that in the event of undetected offenders, the help of dog-squad is to be taken. It is true to suggest that as I was not aware as to who were the culprits regarding the said crime till 17.30 hours, I had made such order for dog-squad.”* Then his attention was drawn to entry No.18 recorded at 14.15 hrs. on 26th May, 2001 at Police Outpost Daighar and he said, *“It is true to suggest that as per the said entry the then police constable Shri Raut, Buckle No.1751 had joined his duty at Outpost at*

relevant time.” The certified copy of the said entry was shown to him and he found it to be correct and it was exhibited as Exh.D-185. Then he said that during investigation he did not record the statement of the said Police Patil Shri Katkari. He admitted the suggestion that no police officer attached to Police Outpost Daighar at relevant time had recorded any statement of Police Patil Shri Katkari. Then he said, *“It is true to suggest that as per Station diary entry No.20, Anant Bhoir (Deceased) was brought in an injured condition to police outpost Daighar for the first time by Police Patil Shri. Katkari. I do not recollect as to whether or not Katkari Wadi of village Vaklan is out of the village limits of village Valkan. During investigation I did not make any note as to what was the report of the dog-squad. It is true to suggest that as per the said entry, the then police constable Shri Raut had accompanied Ananta Bhoir (deceased victim) to Civil Hospital, Thane. I am unable to state as to who recorded the said station diary entries at relevant time at Daighar Outpost”.* Then his attention was drawn to Station Diary Entry No.25 dated 26th May, 2001 recorded at 20.00 hours at Outpost Daighar and he accepted the entry to be correct and accepted that according to this entry, the police constable Shri Raut, who had accompanied to the deceased has returned to the Daighar Outpost from the Civil Hospital at about 8.00 p.m. Then his attention was

drawn to entry No.24 of Station Diary of Mumbra Police Station dated 26th May, 2001. He accepted this entry to be correct and said, *“It was true to suggest that as per this station diary entry, the then P.S.I. Shri Surve along with police constable Shri Bhosale had proceeded to hospital to record statement of victim Shri Anant Dinkar Bhoir (Deceased) who was admitted in the Hospital.”* This entry is exhibited as Exh.D-187. He did not make any inquiry as to whether the PSI Surve had recorded any statement of Ananta Bhoir. The witness did not record the statement of PSI Surve. He stated that he was present in the police station when deceased was brought to Mumbra Police Station. He accepted another entry as Exh.188 pertaining to station diary entry No.24 which shows that constable Thakur, Buckle No.920 along with SRP Platoon No.3 Group No.1 had proceeded towards village Vaklan on 26th May, 2001 at 19.10 hrs. He did not recollect as to who scribed the station diary entry Exh.D-187 at Mumbra Police Station. His attention was then drawn to Entry No.25 recorded at 17.40 hrs. at Mumbra Police Station and he stated that it was true that as per said entry PSI Surve from Civil Hospital, Thane, informed that Shri Ananta Dinkar Bhoir had died at about 17.35 hrs. This entry was marked Exh.D-189. Both Exh.D-187 and D-189 were recorded by the same officer and he was Police Constable Shri Pathak. He did not feel it necessary during investigation to

record the statement of the then constable Shri Pathak. He also did not feel it necessary to record statement of Police Patil Katkari, Police Constable Raut, PSI Surve and Police Constable Bhosale. At 17.45 hrs. on 26th May, 2001 he had instructed PSI Surve to prepare inquest panchanama, which is reflected in entry No.26. It was marked as Exh.D-190. He accepted that according to inquest panchanama, Exh.50, the inquest was started on 17.45 hrs.

In his further cross-examination, he stated that during investigation he had recorded the statements of the daughter and son of the deceased. He recorded the same after about 2 days of the incident. He recorded statement of PW 16 on 27th May, 2001.

25. The evidence of PW 1 to PW 4, who were projected as eye witnesses and who were examined earlier was concerned by this Court while ordering an order of remand. The court found their evidence to be insufficient. We have also seen the evidence and on the basis of this evidence it is difficult to convict any of the accused. Thereafter, the Court tried to get other eye witnesses examined, who have now been examined as PW 16, PW 17, PW 18 and PW 19. PW 20 was the Investigating Officer who was also examined.

26. PW 16 - Hemant Ananta Bhoir, stated that at about 4.00 p.m.

he had proceeded towards his grocery shop. At that time Shri Ratan Mhatre rushed to his residence and disclosed the names of accused persons and also told him that the accused persons were assaulting his father by means of sticks, iron bar, sickle, chopper, knife and sword. It was PW 3 who had informed him that the accused persons were assaulting his father in front of the house of Dnyaneshwar Rama Patil. Thereafter PW 1 and other rushed to the place of occurrence. Now if this witness is to be believed then nobody was real eye witness to the occurrence except PW 3. But all the witnesses claimed that they were eye witnesses. Whatever this witness has learnt about actual incident, he learnt from PW 3. But this again he improved and stated that each of the accused played what role in the occurrence. He could see dozens of the accused and he could also remember which of the accused had which of the weapon in his hand. He, however, stated that all the accused persons were assaulting his father with weapons they had in their hand. Then he said, after he reached his uncle Eknath Bhoir, Laxman Patil and Ratan Mhatre went to the spot. His brother brought jeep and they took the deceased in jeep to Daighar Outpost within Mumbra Police Station and hereafter his father was taken to Civil Hospital.

27. PW 17 - Balkrushna Keshav Patil was another projected eye

witness, who was a rickshaw driver, but had not take his rickshaw but had taken the rickshaw of somebody else. Hew had 5 passengers. 3 were male and 2 were lady. He knew Corporator Mr. Ananta Bhoir amongst other passengers. After 2 lady passengers alighted near and village, he proceeded towards the village Vaklan. From opposite side another auto rickshaw came in which assailants were traveling. They were about 5 to 6 persons. They were armed with swords and started assaulting Corporator. At that time, besides these 5 to 6 persons, 25 to 30 persons also came on the spot. They were armed with iron bars and sticks. He got frightened and fled away. He could identify only 2 of the accused in the Court. No identification parade was carried according to him. As he was frightened, he did not go to the police to inform about the incident. After two days of the incident, his uncle took him to the police station. In his statement, however, he admitted that he did not give description of the accused person.

28. PW 18 - Vinod Ananta Bhoir, is the son of the deceased. He and his brother were running a shop at Vaklan. The other brother was PW 16. He and his brother came to the residence at noon for lunch. At about 3.30 to 4.00 p.m. he and his brother started to go back to their shop, PW 3 came and informed them about the assault by co-villagers on their father

Ananta Bhoir by weapons. He also narrated the same story, which was narrated by PW 16 and for the reasons PW 16 is not believable the story of this witness cannot also be believed.

29. PW 19 - Sau. Suvarna Ramakant Patil, is the daughter of the deceased. She was at home when she came to know of the quarrel had taken place in front of the residence of Dnyaneshwar Patil. She rushed to the place of occurrence. About 30 to 35 persons were present. Out of them 5 to 6 persons were assaulting the deceased and others were standing near them. On the other hand, PW3, PW 16, PW 17 and PW 18 stated that all the persons present were assaulting the deceased. They were assaulting him with swords, chopper and knife. Others were having sticks and iron barws with them. She asked somebody from the family of Dnyaneshwar Patil to bring water and she gave it to her father. In the meantime, her uncle PW 1 and PW 16 came here. She identified the accused persons in the court. She accepted all that has been pointed out and also the improvement made in her statement. She also accepted that her statement was recorded by the police for the first time after 15 days of the occurrence.

30. PW 20 - Ananta Valku Kharpatil is another witness, who statement was recorded after remand. On 26th May, 2001 he had gone to

village Vaklan to see his sister Prema. He was going by auto rickshaw. 2 ladies, two other male persons, and his son were traveling along with him in the auto rickshaw. After the ladies alighted from vehicle, 3 male persons remained in the auto rickshaw. While proceeding towards Vaklan village, all of a sudden one auto rickshaw came in the opposite direction and their auto rickshaw driver applied brakes. As the auto rickshaw driver had applied brakes abruptly, the bag containing mangoes, which was in the hands of his son fell down. He tried to see whether his son had sustained any injury. All of a sudden he heard the utterances "Mara" and he got frightened. He along with his son jumped from the auto rickshaw and ran away. Out of the two persons, who were still in the auto rickshaw, one person preferred to stay in the auto rickshaw. The other person alighted from the auto rickshaw. This witness did not say anything about the occurrence.

31. PW 15 was the Investigating Officer, who was examined and further cross-examined by the orders of this Court. His statement in itself is the testimony to the fact that the full facts have not been brought to the notice of the court. We have recorded his statement in detail.

32. Learned Counsel for the appellants submits that the testimony of projected eye witnesses does not inspire confidence as they have

contradicted each other. Besides that the Investigating Officer recorded the statements of the son and daughter of the deceased after two days of the incident. He further submits that as a matter of fact the true facts have never been brought to the notice of the court, which is manifest from the station diaries maintained at Mumbra Police Station and also at Daighar Out Post. For the first time, according to this diary Shri Ananta Bhoir, the deceased was brought in injured condition to Daighar Out Post at 16.45 hrs. Whereas all the witnesses stated that they accompanied the deceased to the hospital were emphatic that they never took him to the police post. Police Patil Shri Katkari accompanying the deceased Ananta Bhoir to the Dighar Police Out Post at 16.45 hrs on the day of occurrence and he was sent to hospital along with police constable Raut. The information was given to PSI Surve. The Investigating Officer states that he did not find it necessary to examine Police Patil Katkari or PSI Surve or Police Constable Raut. It is contended by the learned Counsel for the appellants that as a matter of fact the deceased was found in an injured condition by the Police Patil and he took him to the Dighar Police Out Post and then to the Hospital. No body was accompanying Ananta Bhoir, the deceased, to the Police Out Post or to the Hospital except Police Patil Shri Katkari whose testimony was, therefore, suppressed from the Court. He submits that the

accused were not known to anybody. Therefore a dog squad was arranged, which has been admitted by the Investigating Officer in his statement and which is reflected in entry No.21 of the Dighar Out Post. The entry reads as under:

"It is noted that, at the noted time on the orders of P.I. (Crime) Shri Deshmukh, photographer and Dog Squad for our work are sent to Kausa and police station."

Shri Deshmukh is the Investigating Officer. He accepted that this Dog Squad was called only to trace the accused persons in connection with the murder of Ananta Bhoir. Then there is entry No.24 in Mumbra Police Station, which shows that PSI Surve and Police Constable Bhosale went with Ananta Dinkar Bhoir for recording his statement. That means after going to Dighar Out Post, the injured was taken to Mumbra Police Station, as this entry says, "*Since the person name Ananta Dinkar Bhoir had suffered injuries; he was sent for medical treatment. Similarly, P.S.I. Surve and P.C. Bhosale went with him for recording statements.*" Nowhere in the evidence of PSI Surve – PW 14, it is recorded whether he went to the Hospital to record statement of the deceased or not. Then at 7.14, there is an entry being Serial No.25, when PSI Surve informed from the Civil Hospital, Thane, that Ananta Dinkar Bhoir had died at 5.35 p.m. and Doctor had declared him dead. The Doctor who examined the deceased for

the first time was not at all examined. He could have at least stated as to who had accompanied the deceased to the hospital.

33. The case of all the eye witnesses was that they were present at the spot, then took the deceased to the police station and then to the civil hospital. Whereas, the record maintained by the police at the police outpost shows that nobody had seen the occurrence and it was the police patil Shri Katkari, who had reported the matter and Mr. Raut, Police Constable had accompanied the deceased to the hospital. The police patil Mr. Katkari was not even examined by the prosecution. Therefore, we have two versions; one of the projected eye witnesses and another by the Investigating Officer supported by the record. Both these versions can not be reconciled. Therefore, we feel that the prosecution has not been able to prove the case against the accused persons beyond doubt.

34. In view of the above, both the appeals are allowed. The impugned Judgment and order dated 21st February, 2003 passed by the II Ad-hoc Additional Sessions Judge, Thane, in Sessions Case No. 18 of 2002 convicting the accused Nos. 1, 2, 5, 6, 9, 10, 11, 12, 13, 18, 19, 22, 23, 24 and 25 for the offences punishable under Sections 147, 148, 149, 341, 506 and 302 of the Indian Penal Code and sentencing to suffer rigorous imprisonment for six months for the offence punishable under different sections and also to suffer rigorous imprisonment for life for the offence punishable under Sections 149 and 302 of the Indian Penal Code is hereby

quashed and set aside. The accused / appellants in both the appeals are hereby directed to be released forthwith if not required in any other case. The fine, if any, recovered from them be also refunded. The bail bond, if any, given by the accused who are on bail to stand cancelled.

Sd/-

(BILAL NAZKI, J.)

Sd/-

(A. R. JOSHI, J.)