

In The High Court Of Bombay At Nagpur

Criminal Appeal No. 109 Of 1992

Judgment Date:

14-10-2004

State of Maharashtra

..Petitioner

Suresh s/o. Tukaram Waghade & Others

..Respondent

Bench :

{ **HON'BLE MR. JUSTICE P.S. BRAHME** **HON'BLE MR. JUSTICE B.R. GAVAI** }

Citation :

LQ 2004 HC 6972

Judgment

P.S.Brahme, J.

This criminal appeal is against the order dated 19-11-1991 passed by Additional Sessions Judge, Wardha in Sessions Trial No.27/1986, wherein the respondents came to be acquitted of offence punishable under section 302 read with section 149 of Indian Penal Code.

2.In regard to the incident that took place on 25-12-1985 at about 4.00 p.m., within the jurisdiction of Police Station Fail, Wardha wherein the victim Sadashiv Nevre - father of Lata (P.W.1) and Pushpa (P.W.4) was done to death and witnesses Lata and Pushpa came to be assaulted with weapons, respondents along with three accused persons were tried for offences punishable under sections 147, 148, 302 and 324 read with section 149, I.P.C.. The Trial Court acquitted all the accused persons. The appellant-State has however, preferred the appeal against respondents-original accused no.1, accused no.2 and accused no.3 only.

3.The prosecution case in brief is stated as follows :

Respondents are brothers. Original accused no.4 is wife of respondent no.1 while original accused no.5 is wife of respondent no.3 and original accused no.6 is the daughter the accused no.3. Complainant Lata is married daughter of victim Sadashiv and on the date of occurrence she was at her parents' house and that all the accused persons as well as witnesses-Lata-Pushpa and deceased Sadashiv were resident of same locality at the relevant time. The house of accused-Suresh Pandurang and Shriram are in front of the house of deceased Sadashiv. On the date of occurrence witness-Pushpa had gone to tap to fetch water. When she was taking water from the tap, accused no.1 Suresh at once rushed towards her and uttered filthy words expressing that he wanted to have sexual intercourse with her. When accused Suresh uttered ugly words to Pushpa, she started abusing him but that did not deter Suresh and so he rushed towards her. Deceased Sadashiv was not at home at that time. Lata who was at the house after having seen the advances of accused Suresh sent a boy to call her father. Her father, the victim Sadashiv at once came there and questioned Suresh as to why he uttered such ugly words to his daughter-Pushpa and that gave rise to some oral wrangle between accused Suresh and Sadashiv which was followed by a scuffle in which they beat each other and

thereafter Suresh went to his house. But after some time accused Suresh accompanied by other accused returned to the house of Sadashiv armed with iron bar while accused Shriram and Pandurang were holding sticks. Sadashiv was standing at the door of his house.

Suresh, it is alleged by prosecution dealt a blow with iron bar on the head of Sadashiv which landed on the right side of parietal region near forehead. He came out of the house and went towards the Kanher Flower bushes, whereupon the accused followed him and they assaulted him with sticks and iron bar giving blows on his head, fore-arm, left ear and due to that beating he fell down on the ground. It is alleged by the prosecution that even after he fell down accused no.2 Pandurang dealt a blow of stick on the ear of Sadashiv and that time accused no.1 Suresh threatened Lata and Pushpa saying that if anybody tried to intervene the accused would kill them. It is further alleged that when witness-Lata had started proceeding towards the house, accused Suresh caught hold her saree, however, Lata pushed him and he fell down on the ground as he was in drunken state. It is further alleged that accused no.1 - Suresh somehow stood up and went to house and again returned carrying with him iron bar and he gave two blows of iron bar to her of which one landed on her waist and other on her thigh. It is further a case of prosecution that accused Shashikala came there and took iron bar from accused Suresh and gave blows. with it to Lata and her waist and left thigh. After the accused left, Pushpa went towards her father, who was lying -on the ground. Lata however, went to Police Station, where she lodged report -Exhibit 48, on the basis of which the offence was registered at C.R. No.601/1985.

4.P.I. Patil carried investigation, in which he recorded statements of witnesses Lata, Pushpa and others. He sent the attached article for opinion of Medical Officer. When Lata went to the Police Station to lodge the report, persons who were on the spot including Rambhau and Kusum lifted Sadashiv who had suffered bleedings injuries and brought him to Civil Hospital by Rickshaw. He died in the hospital when he was admitted. Dr. Zavar conducted post-mortem at Sevagram Hospital on 26-12-1985 and prepared Post-mortem Notes - Exhibit 84. In Post-mortem Notes in column no.17, he categorically mentioned the external injuries which he noted on the body of Sadashiv as also internal injuries in column no.19. He opined that death of Sadashiv was due to injuries to vital organs namely brain. P.S.I. Dange, who conducted part of investigation, after recording the memorandum, attached articles from the accused namely sticks, iron bars, blood stained clothes of deceased were also attached by the investigating officer. The opinion of the Medical Officer whether the injuries on the person of Lata, Pushpa and deceased - Sadashiv could be caused by the weapons seized was sought, and accordingly he give his opinion in the certificate. The articles seized were sent to Chemical Analyzer, Nagpur. On 25-12-1985 Dr. Arun Dondulkar Medical Officer Civil Hospital examined Lata for the injuries sustained by her which he has described in the certificate (Exhibit 80) issued by him. Witness Pushpa was examined for injuries on her person which have been given in the certificate Exhibit 82. On 11-1-1986, P.I. Patil filed charge-sheet in the court of Chief Judicial Magistrate, Wardha who committed the case to the Court of Sessions, Wardha.

5.All the accused when appeared before the Sessions Judge, Charge - Exhibit 27 was framed against them and they pleaded not guilty to the charge and claimed to be tried. Their defence was that of total denial. They contended that there was one ALAWA i.e. a ditch 6 feet in length, 3-4 feet in width and having depth of one foot and that there were stones in the ditch and that in the scuffle between accused no.1 - Suresh and deceased Sadashiv, they fell down in that ditch and due to that fall the victim Sadashiv sustained injuries on his head and due to that injury he died.

6.Accused persons have given defence witnesses - Dr. Arun Dondulkar (P.W.1) the same Medical Officer who had examined witnesses - Lata and Pushpa. He was examined as defence witness as he had examined accused Shriram, and found two injuries on his person which were stated in detail in certificate - exhibit 92. He also examined accused Shashikala and issued certificate Exhibit 94 for injury on her person. Defence examined Investigating Officer Patil as witness who admitted that he had signed the requisition for examination of Suresh. But he has not produced the station dairy. On the basis of that, the defence urged that in the scuffle Sadashiv had fallen in the ditch and due to that he sustained injury of which he died.

7.At the trial the prosecution examined in all 11 witnesses including complainant - Lata, her sister - Pushpa

(P.W.4), Panch witness on the attachment of clothes, attachment of articles produced by accused nos.1, 2 and 3, one Kusum Lonare (P.W.7) as an eye-witness, Dr. Arun Dondulkar (P.W. 10) Medical Officer who examined prosecution witness and conducted autopsy on the dead body of Sadashiv. Prosecution produced articles attached i.e. articles 1 to 16 sticks, iron bars and clothes. The trial court on the basis of the medical evidence in respect of the injuries found on the person of the victim - Sadashiv and conclusions drawn by the Medical Officer who conducted autopsy on his dead body and the evidence of prosecution - Witnesses including Pushpa, Lata and Kusum in respect of assault on victim Sadashiv, recorded a finding that Sadashiv died homicidal death. However, the trial court for the reasons recorded in the judgment, discarded evidence of prosecution witnesses namely - Pushpa, Lata and Kusum on account of material omissions and contradictions and discrepancy in their evidence and therefore, came to be conclusion that prosecution has failed to prove that victim - Sadashiv was done to death by accused persons. The trial court found that the prosecution has failed to prove that the respondents and other accused persons from unlawful assembly having common object of committing murder of Sadashiv and causing injuries to witnesses - Pushpa and Lata. Consequent upon these findings, the trial court acquitted respondents and other accused persons. Hence this appeal.

8.Mr Mandpe, learned A.P.P. for State took us through the evidence of witnesses as also material on record. He submitted that the trial court has committed an error in rejecting the evidence of witness - Pushpa, Lata and Kusum, in respect of the assault on victim, Sadashiv by accused - Suresh and -others with the weapon with which they were armed. He submitted that the presence of accused persons on the spot is not disputed. It is also not disputed by the defence that Sadashiv suffered injuries at the time and place when the occurrence took place and further he died of the said injuries. That the weapons have been seized from the accused persons, in that sticks were seized from the original accused no.5, while one stick was seized from accused no.2 and another weapon was seized from accused no.3. He pointed out that as per the report of Chemical Analyzer Exhibit 73, human blood of blood group 'B' was detected on the bamboo sticks - article 1 and article no.10, while human blood of blood group 'B' was detected on the clothes of the deceased namely article nos.6, 7, 8 and 9, while article no.3 - Dhoti, article no.4 - Banyan human blood of blood group 'A' was detected and that article nos.3 and 4 are the clothes of accused - Shriram, while article no.6 is torn banyan of accused Pandurang. He submitted that bamboo stick article no.10 was recovered at the instance of accused - Shriram. The sticks article nos.11 and 12 found on the spot were stained with blood of group 'B'. It is revealed on examination that blood of deceased - Sadashiv was of group 'B'. He therefore, submitted that there was sufficient evidence at least as against respondents to hold them guilty for the offence of committing murder of Sadashiv and causing injuries to witnesses - Lata and Pushpa. He submitted that view taken by the trial court in acquitting the respondents was erroneous and on the weight of evidence on-record it can not be said that the view taken by the trial court was possible view. He therefore, urged that the -appeal be allowed and respondents be held guilty and convicted.

9.Mr. Daga, learned counsel for respondents submitted that the trial court has appreciated the evidence in correct perspective. Finding recorded by the trial court in any case cannot be to be said to be perverse or illegal so as to call for interference by the appellate court in the appeal.. He submitted that the trial court was right in discarding the evidence of prosecution witnesses when evidence was full of contradictions, material omissions. That there is no consistency in the evidence about the overt act committed by the accused persons. He therefore, urged that the appeal deserves to be dismissed.

10.The trial court has rightly concluded that victim - Sadashiv died homicidal death. The witnesses - Lata and Pushpa were examined at the trial who gave in their evidence eye-witness account of the incident. It is the claim of prosecution that both these witnesses - Lata and Pushpa were assaulted by accused persons at the time of occurrence and they suffered injuries. As such their evidence is very material and relevant. It has come in the evidence that the incident was witnessed by Kusum (P.W.7), one Deorao and Rambhau. These persons in fact carried deceased Sadashiv by Auto Rickshaw to the hospital. It is pertinent to note that of these three persons, at the trial, the prosecution examined only witness Kusum. No explanation is given as to why Rambhau and Deorao were not examined as witnesses though undoubtedly their evidence was very much relevant since they were very much present at the time of occurrence. The injuries suffered by witness - Lata and Pushpa are not disputed by defence. However, it was contended on behalf of accused persons that

Medical evidence in respect of injuries sustained by witnesses - Lata and Pushpa does not tally with the account of assault on them made in their deposition before the court. The Trial Court has discarded evidence of these witness as it was found to be inconsistent, with full of contradictions and material omissions making their claim to have witnesses the incident doubtful. Therefore, it is now imperative for us to reappraise the evidence independently.

11.The witness Lata in her evidence while giving eye-witness account of the incident stated that, that day about 4.00 p.m. her sister - Pushpa had gone to fetch drinking water from common tap which was at a distance of 8 to 10 feet from their house, when accused Suresh rushed towards her and uttered filthy words making some verbal gestures due to which Pushpa getting enraged started abusing Suresh and that she (Lata) sent a body to call her father Sadashiv who had gone to Buddha Mandir and when her father Sadashiv came there and asked Suresh about his behaviour and gestures to Pushpa, there ensued scuffle between them in which they beat each other and Suresh then went home. She stated further that after some time all the accused came running towards their house armed with iron bars and sticks and as soon as they reached to their house, where Sadashiv was standing, accused Suresh dealt a blow with iron bar on his head on right side parietal region near forehead and when her father went towards Kanher Flower Bush, accused chased him and they assaulted him with iron bar and sticks on head, fore arm and left ear. As a result of that beating her father sustained bleeding injuries and he fell down and she stated with emphasis that accused no.2 even thereafter dealt a blow of stick on the ear of her father after he fell down. She then stated that accused no.5 asked accused nos.1, 2 and 3 to assault her father. She stated that accused no.1- Suresh threatened them of dire consequences in case any of them had intervened. When she was going towards her mother's house, accused no.1 held her saree and when she pushed him he fell down, but he suddenly stood up and went to his house and brought iron bar and after returning there gave two blows of iron bar to her and that the first blow landed on her waist and while second blow landed on her thigh. She stated that at that time accused no.4 -Shashikala came there and after taking iron bar from accused - Suresh dealt two blows by it on her waist and left thigh.

12.Witness - Pushpa in her evidence before the court gave eye-witness account of the incident stating that she had gone to fetch water from the tap near her house when accused Suresh came who uttered filthy words and made verbal remarks and gestures when some boys were standing there and so she asked to call her father and when her father came and asked accused - Suresh about his verbal remarks and gestures towards Pushpa and then she along with her father went inside the house and accused went to his house. She stated that then accused Suresh returned carrying iron bar. He was accompanied by accused nos.2 and 3 who were armed with sticks and then accused Suresh dealt a blow with iron bar on the head of her father and all accused nos.2 and 3 started assaulting her father with sticks. They look her father towards a ditch and assaulted him there, as a result of that her father sustained injuries on his head. Even after her father fell down having sustained bleeding injuries, Suresh gave two blows of iron bar. She then rushed to her house and her sister that time came out of the house. Then Suresh gave a blow of iron bar on the waist of her sister, accused Shashikala was holding iron bar and she assaulted Lata with iron bar on her thigh, while accused no.6 pelted stones and accused no.5 also assaulted Lata with stones. She stated that when she went towards her father who was lying on the ground, he saw Deorao, Rambhau and Kusum having come there and they removed her father to Civil Hospital.

13.Witness - Kusum in her evidence before the court stated that at the time when incident took place she was at the house of her mother which is near the house of accused Suresh which is also adjacent to the house of deceased Sadashiv. Pushpa was at the common water tap washing brass pot to fill water and she saw that accused Suresh who was drunk went towards Pushpa and accused abused her and when Pushpa expressed anger, accused Suresh uttered ugly words to Pushpa. She stated that her father came there and that time, accused Suresh and Pandurang were near that tap and her father asked both of them as to why they misbehaved in that way. Then Suresh and Pandurang at once assaulted Sadashiv giving blows on his person and then both of them went towards their house. She further stated that accused nos.1, 2 and 3 again returned to that place and as soon as Sadashiv came out of the house Suresh gave blow of iron bar on his head. Accused Shobha, Shashikala and Kisnabai who were standing there started shouting instigating the accused to beat Sadashiv and accused nos.1, 2 and 3 started beating Sadashiv with weapons which they

were armed with and accused nos.4, 5 and 6 started pelting stones towards Sadashiv. When Sadashiv was lying on the ground, again accused nos.1 and 2 gave two blows each to Sadashiv. At that time, son of the witness - Lata came there and so Lata came out of the house to take her son and that time accused Shobha pelted stones on Lata and accused Suresh and Shashikala assaulted Lata with iron bar. She stated then that Deorao and Rambhau and she herself carried Sadashiv to the Hospital. It is pertinent to note that in her examination-in-chief, witness-Kusum candidly stated that she could identify the articles if shown to her. But when iron bar article no.2 and the sticks article no.12 that was shown to her was not identified by her. She stated that article 2 is not same iron bar which was in the hand of the accused Suresh and the stick article 12 was not same stick which was with accused no.1.

14.It has come in the evidence that witness-Lata went to the police station to lodge report-Exhibit 48. She was confronted with that report in her cross-examination by the defence. It is found that what was stated by her in her evidence about the incident was materially discrepant with what was reported by her to the police station. In the report Exhibit 48 she has stated on 24-12-1985 that at about 4.00 O'clock when she along with her sister-Pushpa were in the house, accused-Suresh came there and gave abuses to her father-Sadashiv in filthy language and when she asked him as to why he abused, he rushed towards her and when she pushed him, he went to his house and returned carrying iron bar with him and assaulted her on her waist. She further stated in the report that in the mean time her husband came and caught hold Suresh to remove him from his way and that at that time his brothers-Pandurang and Shriram came there armed with sticks and assaulted her father with iron bar and sticks, Her father fell near the Kanher-Shrub Bush. His head was broken and he sustained bleeding injuries. At the same time Shashikala wife of Suresh, Laxmi wife of Pandurang and Kisnabai wife of Shriram and two daughters of Shriram namely Shobha and Maya came there and they assaulted her and her father.

15.We have already given detailed account of incident as deposed of witness-Lata in the court. It is crystal clear that what was reported by witness-Lata to the police when complaint was lodged, is thoroughly inconsistent with what is stated by her in her evidence before the Court. The genesis of the incident is entirely at variance if the report-Exhibit 48 is taken into consideration. Apart from that there is glaring discrepancy as to the manner in which the incident took place, where witness-Lata and her father Sadashiv came to be assaulted. It is pertinent to note that even considering evidence of witness Pushpa and that of her sister Lata and witness Kusum, it is very much clear that there was no assault on Pushpa by any of the accused. It is not claimed that in the incident that took place there was assault on Pushpa and as a result of that she sustained injury. What was alleged that too against accused Suresh vis-a-vis witness Pushpa was that he rushed towards her making verbal ugly gestures which was retaliated by hurling abuses at him. Therefore, in that context the claim by the prosecution that Pushpa suffered injuries as noticed by the Medical Officer as a result of assault on her, is a total false-hood. If the report Exhibit 48 is read minutely, it is seen that the claim of prosecution that the accused-Suresh rushed towards Pushpa making ugly verbal gestures is totally given go-bye which makes the prosecution case doubtful. It is also pertinent to note that witness-Pushpa claimed in her evidence that she had been to police station and lodged report. However, the prosecution had not brought on record the report lodged by Pushpa. The investigating officer has not given any satisfactory explanation in the regard. It goes without saying that if the report given by witness-Lata was first in time, which appears to be correct as offence has been registered on the basis of the report lodged by witness-Lata, then the report lodged by Pushpa has to be accepted as a statement recorded by police. If that is so then in that case, defence was entitled to test the veracity of witness Pushpa on the basis of her previous statement recorded by police. In the absence of that, in our considered opinion, there is inherent infirmity in the prosecution case.

16.Witness-Lata in her evidence before the court has stated that she was assaulted by the accused persons with the weapons in their hands and more particularly by iron bar and sticks. She claimed that blows were given on her waist, thigh and forehead on account of that she suffered injuries. As against that injury certificate-Exhibit 80 shows that only injury sustained by her was lacerated wound near the forehead in the center size 0.5 c.m. x 0.25 c.m. skin deep. Dr. Dondulkar (P.W. 10) in his cross-examination admitted that the injuries of Lata are possible and simple and superficial and also possible by fall. If witness-Lata is to be believed when she stated that she was assaulted by the accused persons by weapons giving blows in all

probability she must have sustained multiple injuries and that too of severe nature. But the fact that Medical Officer could note only one simple injury which was also possible by fall as stated by Medical Officer. Claim of witness that she was assaulted with weapons by accused persons is totally false, that in why the version she has given before the court about the incident is found to be contradictory to what was reported by her to the police. The disparity as could be noticed is so glaring that it goes to the root of thier claim.

17. So far as witness-Pushpa is concerned, Dr. Arun Dondulkar (P.W.10) on examining her noticed one injury of contusion over her right eye-brow admeasuring 3/4 inch x 1/2 inch as described in the certificate-Exhibit 82. Doctor has opined that the injury was possible by fall. That apart, as we have pointed out in earlier part of judgment, none of the witnesses including Pushpa has claimed that there was assault on her by accused persons. It is found that her version is discrepant vis-a-vis version of Lata. Even witness Lata has not claimed that Pushpa was assaulted by accused persons. If that is so then it is very difficult to hold that solitary injury of contusion noted by the Medical Officer cannot be accounted for as result of assault on her by the accused persons.

18. If we read the evidence of witness Lata and her sister-Pushpa conjointly, it is very difficult to arrive at a specific conclusion that all the accused persons arrived at the scene at one time and assaulted victim-Sadashiv. It is to be noted that the version of witness-Lata and Pushpa is not consistent as to the manner of assault on their father-Sadashiv by accused persons. It is very clear from the cross-examination of witnesses that actually no assault was made by the accused nos.4, 5 and 6 on Sadashiv. The only role attributed to them was that of pelting stones. But that also does not indicate that because of pelting of stones by them injury was caused to Sadashiv. In fact close scrutiny of evidence of these witnesses reveals the accused nos.4, 5 and 6 appeared on the scene, subsequently. Even in case of accused Suresh the version is discrepant in the sense as stated by witness-Lata when he first came and had vulgar verbal remarks at Pushpa, when father Sadashiv came there, there was scuffle between them and then accused Suresh is stated to have gone to his house and had returned carrying iron rod with him and then assaulted deceased-Sadashiv. That time accused nos.2 and 3 were not present. There is another version in the evidence, showing that when accused-Suresh returned he was accompanied by accused nos.2 and 3 who were carrying sticks with them and they assaulted Sadashiv. This version is totally inconsistent with what has been reported by Lata to the police in the report-Exhibit 48. The genesis of the incident as stated by us in earlier part of the judgment is not clear in the sense in the report-Exhibit 48 nothing has been stated by witness-Pushpa about the injury and utterances of vulgar words by accused-Suresh towards Pushpa which give rise to the exchange of abuses and advances made by accused Suresh towards her. There is also discrepancy as to when accused nos.4, 5 and 6 joined rest of the accused. In our considered opinion, therefore, it is not made out by the prosecution as to what was the common object that rest all the accused shared with them arrived at the scene. That apart as could be seen from the evidence of prosecution witnesses, it is clear that accused nos.4, 5 and 6 have not directly assaulted deceased Sadashiv. Therefore, even though they joined subsequently accused nos.1, 2 and 3, it can not be said the accused formed unlawful assembly as there was nothing for the rest of the accused to share the common object. That impairs the prosecution case or claim that accused formed unlawful assembly..

19. Lata's evidence is full of omissions and contradictions. She did state before police that Pushpa had been to water tap for filling water and that it did not happen that some boys came near the house. In the cross-examination Lata admitted that when Pushpa had gone for fetching water at that time her father was at the house. It is omitted by her that Suresh was abusing Pushpa and hence Sadashiv had gone towards Suresh near the water tap. In her statement recorded by police she stated that her father was at the house and the boys were playing and then the father went outside. The witness could not assign any reason as to why in her statement she has stated so. There is very material contradiction as according to her that her father went towards tap and advised Suresh and returned to the house. It is also not stated before the police that Suresh followed her father and came towards the house of Sadashiv and abused in the name of mother and sister to Sadashiv. Further she has not stated that Suresh assaulted her father with iron bar and then afterwards to her. She has stated before the police that when Suresh was abusing then he went to his house and came along with iron bar and then gave two blows of iron bar on her waist and thigh. She has admitted that she has not stated so before the police. She claimed that she also received injury to her waist and her thigh. But as

pointed out earlier-Certificate in respect of injury suffered by her shows the only injury that was found was a lacerated wound on her forehead.

The witness-Lata has not stated that when Pushpa had gone for filling water at that time she (Lata) was standing at the door of her house and that accused Suresh started abusing Pushpa and again rushed towards her. She did not state before the police and in her report when Suresh abused Pushpa and when Lata went towards the tap and when she asked a boy to call her father who was sitting at Buddha Vihar. Again she has omitted to state that there was exchange of words between Sadashiv and Suresh and there was scuffle between them and they beat each other. This omission is so material that it goes to the root of the case. The prosecution case is very much discrepant that at one stage it is claimed that all six accused persons came with Suresh abusing Pushpa while before the court in examination-in-chief and cross-examination witness Lata has given a different version. The omission in that regard was that Suresh went to the house and returned with iron bar and gave blow on the head of her father and when her father was standing at the door of his house. Then Sadashiv started running and Suresh chased him and again beat him with the weapon which he was having in his hand and all the three accused also beat Sadashiv on his head, back and hand. However, witness has omitted to state so in statement recorded by police. There is also omission in respect of the claim made by the witness-Lata that Suresh had threatened to kill them. If we consider the glaring omissions and contradictions in the evidence of Lata vis-a-vis her claim before the court and the statement recorded by the police and the report which she lodged there is certainly a feeling that her claim to have witnessed the incident appears to be doubtful. At least it is not borne out from her evidence about the occurrence that took place, in the manner in which she stated before the court.

20. So far as the witness-Pushpa is concerned, she claimed that accused no.1 was holding iron bar, accused nos.2 and 3 were having sticks and one minor accused was holding stick and Suresh assaulted with iron bar on his head while accused nos.2 and 3 assaulted her father with sticks. However, witness Pushpa could not give particulars of the weapons with which her father was assaulted. Witness Pushpa stated that when Sadashiv was assaulted by Suresh, her sister came out of the house as her son was playing then Suresh gave two blows by iron bar on the waist of her sister-Lata. She also stated that Shashikala assaulted Lata with iron bar giving blow on her thigh. Accused no.6 pelted stones. However, nowhere it is mentioned nor it was a case of prosecution that accused-Shashikala was armed with iron bar and she assaulted witness-Lata. It is significant to note that in this respect witness-Lata and Pushpa had contradicted with each other. In cross-examination witness Pushpa has admitted that Shashikala was not at the tap when she was washing the brass pot. The prosecution has not given any satisfactory explanation as regards the report alleged to have been lodged by Pushpa in the police station. The report lodged by her is not produced on record. Therefore, there is much substance in saying that prosecution has suppressed the fact about the report given by Pushpa. She has stated that report was given by her that Suresh assaulted Sadashiv.

Omission in respect of other accused persons i.e. about their names have not been mentioned. There is also omission about the arrival of Suresh and accused nos.2 and 3 towards the house of Sadashiv. There is further omission in respect of Suresh having assaulted Sadashiv after he fell down near Kanher Bush and then her sister Lata was assaulted with iron bar giving a blow on her waist and thigh. There is omission in respect of holding of stones by other accused persons. Having regard to the material omissions, contradictions and inconsistencies in evidence vis-a-vis the version of witness Lata and Kusum and the factum of injury suffered by her having claimed as a result of assault on her which is not established on evidence and also not being supported by Medical evidence, it is very difficult to place reliance on her evidence. It is in this context the absence of evidence of independent witnesses-Deorao and Rambhau who were very much present at the time of occurrence, no reliance can be placed on the evidence of the witnesses-Pushpa and Lata. The Trial Court has rightly rejected their evidence.

21. The witness-Kusum though the independent witness has given totally inconsistent version vis-a-vis report lodged by Lata and her evidence before the court. She claimed that accused nos.1 and 2 gave two blows each to Sadashiv. However, this claim itself is contradictory to what she stated in her examination-in-chief and also to what witness Lata and Pushpa have stated in their evidence before the Court. It has come in the evidence that Sadashiv was in the house and when he came out of the house Suresh assaulted him with iron

bar. But earlier in the examination-in-chief, she has stated that Sadashiv was at Buddha Vihar who was called by Pushpa and Lata by sending a boy. It is significant to note that what has been stated by witness Kusum in her examination-in-chief is full of discrepancies. She has stated that she returned to the house of Shaikh Kasam after Sadashiv was removed to the hospital. The witness-Kusum did not identify any of the articles i.e. sticks and iron bar. She stated that articles before the court are not the same with which Sadashiv was assaulted. It is brought by defence in her cross-examination as to how her relations were close with the family of Sadashiv. Apart from that it is not mentioned by her in her statement that Suresh gave one blow of iron bar on the head of Sadashiv as soon as he came out of the house and also accused nos.4 to 6 did not beat Sadashiv with stones. So this is most material omission which makes the presence of these witnesses doubtful at the time of occurrence. In her evidence she has stated that only stones were pelted by accused nos.4 to 6, but they have not assaulted Sadashiv or any of other witnesses Lata and Pushpa. She did not know as to how many blows were given to Sadashiv by accused no.3. Her claim that Lata was assaulted with iron bar by the accused persons giving blows on her waist and thigh is falsified having regard to the fact that Lata had sustained solitary injury on her forehead. Therefore, her evidence does not inspire confidence and it is very difficult to accept her claim to have witnessed the incident. The trial court has rightly rejected her evidence.

22. Defence has examined two witnesses. The defence witness - Dr. Dondulkar as admitted by him examined accused Shriram on 25-12-1985 and noted two lacerated injuries on his person as noted in Exhibit 92. He also examined accused-Shashikala for the injuries which he noted in the certificate-Exhibit 94 issued by him. It is the defence of accused that there was quarrel between Shashikala and Pushpa in which Shashikala suffered injuries. It has come in the evidence that when Lata had gone to lodge report accused-Shriram was in the police station. It is admitted that Shriram and his wife Shashikala were present in the police station. But the investigating officer has suppressed their report and that report has not been brought before the court. The defence counsel has called for station diary of police station. But the responsible police officer who was Deputy Commissioner of Police in his evidence stated that station diary was not available. The prosecution has not examined the injuries suffered by accused Shriram and his wife-Shashikala though Doctor Dondulkar has specified the age of the injuries was within six hours. In such a situation when it was likely and possible that accused Shriram and Shashikala had suffered injuries at the time of occurrence when there was scuffle, in the absence of any plausible explanation by the prosecution, it is quite legitimate to infer and hold that the accused persons must have suffered injuries at the hands of the prosecution witnesses at the time of occurrence. It is in that context when prosecution has failed to explain the injuries, in our view that brings out infirmity in the prosecution case.

23. The trial court has recorded finding of acquittal holding that the evidence of prosecution witnesses was not sufficient and clinching to establish prosecution case that the respondents assaulted victim-Sadashiv as alleged and he was done to death. In other words, the evidence on record was found to be not believable to hold conclusively that the death of Sadashiv was on account of assault by the accused persons. In our considered view reasons assigned by the trial court and the findings recorded thereon are found to be justifying and reasonable. We do not find any perversity in the reasons and findings recorded by the trial court. If that is so then as laid down by the Apex Court in 2003 ALL MR (Cri) 2080 (S.C.), State of Rajasthan Vs. Rajaram, interference by the High Court in appeal against order of acquittal is not called for.

24. The Apex Court in recent decision in 2004 Cri.LJ. 640, Ramanand Yadao Vs. Prabhunath Zha and others observed that:

"There is not embargo on appellate court reviewing the evidence upon which the order of acquittal is based. Interference by the appellant court is permissible only when there are convincing and substantial reasons for doing so."

In the decision reported in 2003 Cri.L.J. 3639, State of Maharashtra Vs. Haribhau Krushnaji Deshmukh and others, the Division Bench of our High Court held:

"Power of interfering with the order of acquittal is equal to that of interference with the order of conviction and it can be done for substantial and compelling reasons or it may be said that sufficient and cogent reasons

or for strong reasons. Unless appeal has strong reasons to interfere with the order of acquittal, it need not be done. When two views are possible on appreciation of evidence and the court ordering acquittal has taken one view, which is reasonably possible and the appellant court enquiring into the correctness of the acquittal on reappreciation takes another view, according to criminal jurisprudence, benefit must go to the accused and the High Court should refrain from interfering such acquittal."

This court in 2004 ALL MR (Cri) 1220 - State of Maharashtra Vs. Tukaram Nivrutti Mane and another, decided by one of us (Justice P.S. Brahme) held that the interference by the High Court when the findings and reasons given by the trial court are reasonable is not warranted. In that case the observations made by the Apex Court in 2003 ALL MR (Cri) 2080 (S.C.) State of Rajasthan Vs. Rajaram, were borne in mind. Those observations were :

"Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice, in criminal case is that if two views are possible on evidence adduced in a case, one pointing to the guilt of accused and other to innocence, the view which is beneficial to the accused is to be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. The miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of innocent."

We also took into consideration the fact that the order of acquittal of respondents came to be passed in the judgment delivered by the trial court in the year 1991. Therefore, it is needless to say that when a period of almost 13 years has passed, when the finding recorded by the trial court in acquitting the respondents is found to be reasonable and when there was no perversity or illegality in the order, we do not find that there is any justification to interfere with the order. As has been held by the Apex Court innocence of respondents is further strengthened by the order of acquittal recorded by the trial court. The accused nos.4, 5 and 6 are already acquitted and their acquittal is not challenged and therefore, the acquittal of the respondents for offence under sections 147, 148, 302 read with section 149 of I.P.C. is justified. Therefore, the prosecution has also failed to prove the case for unlawful assembly against the respondents. Hence no interference is called for and the appeal will have to be dismissed. Hence the order.

ORDER

This appeal is dismissed. Bail bonds of respondents shall stand cancelled.