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S.T. No.123/2019  
State Vs. Ganesh Dorle & Oth.  
MHPA040011142019

MHPA040011142019 	Received on	:	19.11.2019
	Registered on	:	19.11.2019
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	Duration	:	05Y. 01M. 21 Ds.

**Sessions Trial No.123/2019**

**Exh.246**

Form No. XXXII

**Part 'A'**

(Title Page of Judgment)

(Para 44(i) of Chapter VI of Criminal Manual)

	<b>IN THE SESSIONS COURT AT HINGOLI, DISTRICT HINGOLI</b> Present : Smt.S.N.Mane (Gadekar) Additional Sessions Judge-1 (Sessions Trial No.123/2019)	
	(FIR 143/2019, p/u/Secs.302, 143, 147, 149 of the Indian Penal Code, Hingoli (Gramin) Police Station, Dist. Hingoli	
Complainant		<b>THE STATE OF MAHARASHTRA</b> Through Police Inspector, Police Station Hingoli (Gramin), Dist. Hingoli (M.S.)
REPRESENTED BY		Shri S.D.MKute, Learned Public Prosecutor for the State
ACCUSED	1	<b>Ganesh Ramkishan Dorle</b> Age: 26 years, Occu.: Agri.
	2	<b>Vithal Namdeo Ghongade</b> Age: 32 years, Occu.: Agri.

	3	<b>Ambadas @ Babusha Namdeo Ghongade</b> Age: 38 years, Occu.: Agri.
	4	<b>Namdeo Tukaram Ghongade</b> Age: 60 years, Occu.: Agri.
	5	<b>Ramkishan Pandit Dorle</b> Age: 60 years, Occu.: Agri.
	6	<b>Dnyaneshwar @ Dnyanba Kishanrao Borgad</b> Age: 42 years, Occu.: Agri.
	7	<b>Maroti Vitthal Dorle</b> Age: 25 years, Occu.: Agri.
		<b>All R/o Raholi (Bk.), Tq.&amp; Dist. Hingoli</b>
REPRESENTED BY		Mr.M.D.Aher, Advocate

### Part – 'B'

(Para 44 (ii) of Chapter VI of Criminal Manual)

Date of Offence	21.05.2019 at 04.00 to 04.30 P.M.
Date of FIR	22-05-2019
Date of Charge sheet	16-08-2019
Date of Framing of Charge	02-03-2020
Date of commencement of evidence	26-08-2021
Date on which judgment is reserved	10-01-2025
Date of the Judgment	10-01-2025
Date of the Sentencing Order, if any	As per final order

### Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
1	Ganesh Ramkishan Dorle	22.5.2019	UTP	143, 147, 148, 302, 307 r/w 149 of IPC	Convicted	As per final order	05 Yr.07 Ms.18Ds
2	Vithal Namdeo Ghongade	23.5.2019	25.09.2019	- Do -	- Do -	- Do -	04 Month 02 days
3	Ambadas @ Babusha Namdeo Ghongade	22.5.2019	01.10.2019	- Do -	- Do -	- Do -	04 Month 09 days
4	Namdeo Tukaram Ghongade	22.5.2019	05.09.2019	- Do -	- Do -	- Do -	03 Month 13 days
5	Ramkishan Pandit Dorle	23.5.2019	05.09.2019	- Do -	- Do -	- Do -	03 Months 12 days
6	Dnyaneshwar @ Dnyanba Kishanrao Borgad	14.6.2019	07.09.2019	- Do -	- Do -	- Do -	02 Months 23 days
7	Maroti Vitthal Dorle	15.6.2019	07.09.2019	- Do -	- Do -	- Do -	02 Month 22 days

#### Part 'C'

(Para 44 (iii) of Chapter VI of Criminal Manual)

### LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

#### A. Prosecution :

RANK	NAME	NATURE OF
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		<b>EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
PW1	Hanuman Sakharam Thorat	Seizure panch
PW2	Rajeshwar Marotrao Shende	Memorandum panch
PW3	Dnyanshwhar S/o Subhash Kagne	Seizure panch
PW4	Kishor S/o Dattatraya Pote	PSI & PSO
PW5	Gangasagar W/o Navnath Dange	Witness
PW6	Dr.Sanjivan S/o Narayanrao Lakhmawar	Medical Officer
PW7	Meera W/o Shankar Dorle	Witness
PW8	Sandip S/o Namdeorao Dorle	Witness
PW9	Francis S/o Patrik Parera	Nodal Officer, Reliance JIO Infocom Ltd.Pune
PW10	Anil S/o Ashok Rankhamb	CA carrier
PW11	Pramod S/o Nagorao Khillare	CA carrier
PW12	Angad S/o Dnyanoba Sudke	Investigating Officer

**B. Defence Witnesses, if any :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
-Nil -	-Nil -	-Nil -

**C. Court Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	-	--

## LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

### A. PROSECUTION :

Sr. No.	Exhibit Number	Description
1	46	Inquest panchnama
2	47	Seizure panchnama
3	49	Spot panchnama
4	51	Memorandum Form of accused Dnyanba
5	52	Seizure panchnama
6	53	Memorandum/Disclosure panchnama of accused Maroti
7	54	Seizure panchnama
8	63	Letter of Police Inspector to provide panchas
9	64	Rest panchnama excluding inadmissible portion
10	65	Seizure panchnama of an axe
11	66	Clothes seizure panchnama
12	67	
13	81	Report
14	82	Printed FIR
15	89	Letter of P.S.Hingoli(Rural) for conduction of post mortem examination of deceased Shankar Laxman Dorle.
16	90	Police Report to be forwarded to the Civil

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		Surgeon with Dead Body sent for post-mortem examination
17	91	Provisional PM Report
18	92	Detail report of PM examination
19	111	Letter sent to Supdt. of police
20	112	Certificate U/Sec.65-B(4)(c) of the Evidence Act
21	113 to 116	Customer Application Forms
22	117	CDR Report
23	118	Cell ID address report
24	119	Cell ID address report of Mob.No.9075340353
25	120	Cell ID address report of Mob.No.9075340353
26	121	CDR Report of Mob.No.9552785674
27	122	Cell ID address report of Mob.No.9552785674
28	123	CDR Report of Mob.No.8459747070
29	124	Cell ID address report of Mob.No.8459747070
30	125	Letter dated 19.01.2019
31	129 & 130	Letter regarding depositing muddamal
32	194 to 196	Arrest panchnamas
33	135	Dead body receipt
34	136	Letter sent to Depo Manager, Bus stand Hingoli
35	137	Letter dtd.24.05.2019 Inspector sent to Circle
36	138 to 142	Extracts of station diary
37	143	Vehicle log-book used at the time of panchnama
38	147	Letter dtd.26.05.2019
39	148	Letter issued to MSEB
40	149 to 151	Extracts of station diary
41	152	Government vehicle log-book

42	153	Letter issued to Supdt.of Police in order to get CDR of seized mobile
43	154	Letter to J.M.F.C. for recording Statements of witness under Sections 164 of Cr.P.C.
44	155	Letter to MO seeking PM report
45	156	Statement u/Sec.164 Cr.P.C. of witness Gangasagar
46	157	Statement u/Sec.164 Cr.P.C. of witness Laxman Dorle
47	158	Statement u/Sec.164 Cr.P.C. of witness Sandip
48	159	Statement u/Sec.164 Cr.P.C. of witness Nazer Khan
49	160	Statement u/Sec.164 Cr.P.C. of witness Mahadu Dorle
50	161	Letter to Depo Manager, Bus Stand dtd.16.06.2019 for providing two government two panchas
51	162	Investigation recorded in the Station Diary dtd.16.06.2019
52	163	Govt. vehicle log book
53	164	CA report about viscera of deceased
54	165	Blood sample report of deceased
55	166	Blood sample report of accused Ganesh Dorle
56	167	CA report about soil mixed with blood
57	168	CA report of blood sample of accused Ambadas Ghongde
58	169	CA report of blood sample of accused Vitthal Ghongde
59	170	CA report of blood sample of accused Namdev Ghongde
60	171	CA reports of two seized sticks and clothes
61	172	CA report of blood sample of accused Dnyaneshwar Borgad
62	173	CA report of blood sample of accused

		Maroti Vitthal
63	174	CA report of blood sample of accused Ramkisan Pandita Dorle
64	175	7/12 extracts at Sr.Nos.1 to 4
65	176	House extract of accused at Sr.Nos.1 to 5
66	177	Printed FIR
67	185	7/12 extract of Gat No.287
68	186	Extract of Lock-up register

### B. Defence :

Sr. No.	Exhibit Number	Description
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### C. Court Exhibits :

Sr. No.	Exhibit Number	Description
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### D. Material Objects :

Sr. No.	Material Object Number	Description
1	Article P1	Black colour mobile
2	Article P2	White shirt of deceased
3	Article P3	Black colour pant
4	Article P4	Greenish colour undergarment
5	Article P5	One piece of footwear of right leg of deceased
6	Article P6	Blue colour banyan of deceased
7	Article P7	footwear



8	Article P8	Mobile of Motorala company
9	Article P9	ATM Card
10	Article P10	Driving licence
11	Article P11	RC Book
12	Article P12	Seized soil
13	Article P13	Seized soil mixed with blood
14	Article P32 & P33	Stick sproduced by accused Dnyaneshwar
15	Article P34	White yellowish shirt of accused Dnyaneshwar
16	Article P35	Black colour pant seized from accused Dnyaneshwar
17	Article P36	White colour shirt seized from accused Maroti
18	Article P37	Black colour jeans pant seized from accused Maroti
19	Article P14	Axe
20	Article P15	Pink colour shirt
21	Article P16	Dark black colour pant
22	Article P17	The seventh photograph of axe took outside the well

**JUDGMENT**

( Delivered on 10<sup>th</sup> January, 2025 )

1] The accused are facing the trial for the offences punishable under Sections 143, 147, 148, 302 read with 149 of the Indian Penala Code or in the alternative an offence punishable under Section 302 read with 34 of the Indian Penal Code.

**The brief facts of the prosecution case are as under :**

2] The informant Laxman Ganpati Dorle is a father of deceased Shankar Laxman Dorle. Three to four months, prior to the day of incident, accused Ramkisan and accused Ganesh both were ploughed the boundary of informant's field. Informant and accused Ramkishan and Ganesh had a quarrel at that time. Deceased Shanakr and informant both had asked accused No.1 and 5 why they ploughed their boundary. Accused Ramkishan and his son Ganesh abused the complainant and they both ran over to him. The quarrel between the two was resolved at that time, due to mediation of relatives. Accused No.1 Ganesh threatened them that he will not release him, but informant did not take it seriously as accused No.1 Ganesh was his nephew and also not report to the police station.

3] There were 200 to 225 orange trees in the informant's farm, at the time of incident. On 21.05.2019, the deceased went to the farm at one O'Clock in the afternoon to water the orange trees. The informant went to his field at 4.30 in the evening, seeing him from a distance, all the accused were going towards the stream. Accused No.1 Ganesh had an axe in his hand. The informant thought that all accused were doing

some work in their field. So, he went ahead and found deceased near a tamarind tree in the field of accused Ramkishan. He was found lying in injured condition. Informant called his nephew Gajanan Kashinath Dorle, who also tried to move him but in vain. At the same time, Kondba Taterao Lokhande, Sandeep Pandita Jadhav also came to the farm. They also tried to wake up but he was died. Accused beat the deceased and killed him due to previous reason of ploughing the boundary of his field.

4] On the report of informant, Crime No.143/2019 for the offences punishable under Sections 302, 143, 147, 149 of the Indian Penal Code came to be registered against the accused.

5] On 16.11.2019, the learned Judicial Magistrate, First Class (Court No.2) Hingoli committed the matter as the offence punishable under Sections 302 of the Indian Penal Code is exclusively triable by the Sessions Court.

6] My learned predecessor has framed the charge at Exh.13 for the offences punishable under Sections 143, 147, 148, 302 r/w 149 of the Indian Penal Code. The contents of the charge were read over and

explained to the accused in vernacular, to which, they pleaded not guilty and claimed to be tried.

7] Prosecution examined in-all twelve witnesses. The statement of accused under Section 313 of the Criminal Procedure Code are at Exh.212 to 218. Their defence is that all the witnesses who have given evidence are the relatives of deceased, therefore, they gave false evidence against them on the instance of informant.

8] The following points arise for my determination and their findings with reasons thereon are as under :

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Does the prosecution prove that on 21.05.2019 at 04.00 to 4.30 P.M. in land Gat No.287 belonging to accused No.5 at village Raholi (Bk), Tq. & Dist. Hingoli, all the accused were members of an unlawful assembly and their common object of which was to commit murder of deceased Shankar Laxman Dorle?	..Yes..
2	Does the prosecution prove that on the aforesaid date, time and place, all the accused were members of an unlawful assembly and in prosecution of their common object to cause murder of deceased Shankar Laxman Dorle and committed rioting using force upon him?	..Yes..
3	Does the prosecution prove that on the aforesaid date, time and place, all the accused were members of an unlawful assembly and	..Yes..

	were at the time they armed with deadly weapons like axe, sticks, sickle, Katti?	
4	Does the prosecution prove that on the aforesaid date, time and place, all the accused were members of an unlawful assembly and their common object was to commit murder of deceased Shankar Laxman Dorle and in prosecution of said common object, they committed murder of deceased Shankar Laxman Dorle ?	..Yes..
5	What Order ?	As per final order.

: REASONS :**POINT NOS. 1 TO 4 :**

9] The point Nos.1 to 4 are inter-linked with each other, therefore, they are decided together in order to avoid repetition of the facts.

10] PW1 is a teacher by profession. On 22.05.2019, he on the call of police acted as a panch on inquest panchnama Exh.46, spot panchnama Exh.49, property search and seizure panchnama Exh.47. The witness had no notice from the police for conducting the said panchnama. Police made a call on his mobile, so he went at first in the Civil Hospital Hingoli, where police shown him dead-body of deceased and prepared inquest panchnama Exh.46.

11] In presence of panch, police seized the clothes, plastic shoe of deceased i.e. Articles P2, P3, P4, P6 and deceased's black colour mobile Article P1, his plastic shoe (footwear in one piece) P5. After it, in presence of this witness, panchnama Exh.47 came to be prepared, which appears his signature and signed of second panch Bairagi. At the time of his evidence, he identified all the Articles P1 to P6.

12] Later on, the witness went on the scene of crime. As per his evidence, the scene of crime was land of Gat No.287 Rahuli (Bk.). There was on tamarind tree and the said tree was on a boundary. One old dilapidated water-well was located at a distance of 50 ft. from the said tree. One babool tree was fell on the said water well. One tin shed was located adjacent to the said water well. There was a crop of turmeric in the land adjacent to the spot of incident. One mobile of black colour was found near the said tin shed. In the cover of said mobile, there were driving licence, registration certificate (RC Book) and one ATM card. The said ATM card was of State Bank. One piece of left foot shoe (footwear) was found at the spot of incident. Police collected the soil mixed with blood and simple soil from the spot. The said mobile was of Motorola company. The said Motorola mobile was containing Sim-card of JIO and IDEA company. He identified the seized footwear

article P7, mobile of Motorola company Article P8, ATM card P9, driving licence P10, RC Book P11, seized soil P12, soil mixed with blood Article P13. At the time of this panchnama, Ramesh Lokhande another panch was also with him and panchnama was prepared during 5.00 to 6.00 P.M.

13] During cross, the witness admitted that the accused and informant are his distant relatives. And if this is a fact, then there is no question of any grudge in his mind against all accused persons. When he was called by the police, there was summer vacation, so he did not obtain any permission from his senior to appear as a panch to conduct the panchnama. He denied the suggestion of the defence that police did not read over the contents of panchnama and just obtained his signature. He deposed the time and date of all the panchnamas accurately. There is no contradiction of the time and place in his evidence. Even, he stated that he saw the orange trees when he was proceeding towards scene of crime.

14] After considering the evidence of the witness, it appears that the witness is an independent witness. He went with the police for

conducting the panchnamas Exh.46, 47 and 49 on the call of police. I did not find that he was biased or connecting to the accused or victim. After comparing his verbal statement with the written panchnama, I did not find any contradictions or anything which will indicate unreliability. During his evidence, I found the witness was confident clear. Hence, I have no hesitation to accept his evidence as reliable.

15] PW2 Rajeshwar was an employee of ST Department Hingoli. On 16.06.2019, Depo manager informed him and one another employee who is a second panch in this case( Rehmatulla Khan Pathan) to act as panch for the panchnama. On the direction of their senior, PW2 and his colleague Rehmatulla Khan Pathan had gone to police station Hingoli (Rural) in between 1.00 to 1.30 P.M. Accused No.6 Dnyaneshwar and accused No.7 Maroti were in the police custody at that time, police introduced this witness with these two accused.

16] On the basis of disclosure statement made by accused No.6 Dnyaneshwar on 16.6.2019 Exh.51 one stick and one old yellow colour shirt and black colour pant were recovered from the house of accused No.6. After recovery panchnama Exh.52 was prepared in the presence of



this witness.

17] Further the witness stated that on the basis of the disclosure statement made by accused No.7 Exh.53, accused No.7 handed over the stick and one white colour shirt and one black colour jeans hanged to one hanger to the police in presence of this witness. He further stated that there were stains of blood on the white colour shirt. Police seized stick and clothes and prepared seizure panchnama Exh.54 in presence of this witness and another panch Rehmatulla Khan Pathan. The witness identified accused Nos.6 and 7 before the Court. Even, he identified the stick produced by accused No.6 Article P32 and another stick produced by accused Maroti Article P33 and the clothes P34, P35, P36 and PW37.

18] The prosecution has produced the written memorandum of accused statement recorded by the police. The confessional statement/recovery panchnamas Exh.51 to 54 all are signed by the witnesses. From the evidence of this witness, it appears that accused Nos.6 and 7 both led the police to the recovery spot and that the object was found as described. The witness is an independent witness. He was present during disclosure statement and recovery. Accused voluntarily made statement.

The defence could not shake the evidence of the witness during cross. The recovery of weapons i.e. two sticks are admissible in evidence because accused Nos.6 and 7 failed to explain to the satisfaction of this Court how they came into possession or for planting the same at the places from where they were recovered. So, considering all these, the evidence of this witness is found trustworthy. Therefore, I have no hesitation to accept it as reliable.

19] PW3 Dnyaneshwar was in service in MSEB as a technician. On 25.05.2019, he was on duty. As per his evidence, P.S.Hingoli (rural) addressed a letter to Asstt. Engineer in respect of providing two panchas as the witness. Letter Exh.63 bears signature of the witness Belsure. In pursuance of Exh.63 and on the instruction of his senior, he and his colleague Vijay Sawalakhe came at P.S. Hingoli Rural at about 11.00 on the same day.

20] After coming there (P.S.Hingoli Rural), police called accused No.1 Ganesh Dorle. On the disclosure of accused Ganesh Dorle Exh.64, the witness, his colleague, accused Ganesh and police inspector and other 2-3 police personnel came at village Rahuli (Bk.) as per

instructions given by accused No.1. Thereafter, they came at the agriculture land where there was one water well. As per instruction of accused No.1 one person entered into the said well with the help of one rope tied to babool tree and took out the said axe. The said person took out the axe from the water well stained with blood. The blood stain on the axe was marked by the police by the marker and prepared its seizure panchnama which bears signature of this witness and signature of his colleague. Police read over the contents of the panchnama Exh.65.

21] The person who took-out the axe from the water well, his name was Mr Thorat. The witness further stated that the said axe was having wooden handle and which is Article P14. The witness identified Article P14 was the same axe which took out from the well. The said seized axe was wrapped in a cloth and pasted a paper slip which bears his signature and signature of his colleague. Even, the seized axe which was wrapped in a cloth also pasted a paper slip which bears his signature and signature of his colleague.

22] On the call of police, they came back to P.S. Hingoli and on the call of police, on the same day at about 03.00 to 3.30 P.M. they were

present at the P.S. Police called accused No.1 Ganesh in their presence on the disclosure statement of the accused No.1 as per Exh.66, they again started journey from the P.S. in police jeep. The witness, his colleague Vijay, 2-3 police personnel, police inspector and accused Ganesh started their journey. They came at Agresan Square Hingoli, Narsi phata and lastly at Rahuli (Bk.). Before entering into the village Rahuli (Bk.) the jeep was stopped and they started to walk towards the agriculture land. There was one small hut(Akhada) in the said agriculture land. There was one closed room by latch.

23] On the disclosure statement of accused No.1, accused Ganesh Dorle took out the clothes which were kept inside the room. Those clothes were stained with blood. Those clothes were pink colour shirt and black blue colour pant. Police prepared the panchnama of those clothes Exh.67. Even the police read over the contents of panchnama and obtained his signature and signature of his colleague. Even, signature of accused. The witness identified the seized clothes i.e. Article P15 and P16. Before the Court witness has identified accused No.1 Ganesh Dorle.

24] During evidence, seven photographs were shown to the witness which were snapped at the time of panchnama. He stated that first photograph was snapped at P.S. Hingoli (Rural), second was at the time of sitting in jeep, third photograph was in respect of panchnama in the field, fourth photograph was in respect of showing an axe in the well, fifth photograph was in respect of an axe which was taken out from the well, sixth photograph was in respect of an axe which was taken out from the well and the last seventh photograph was in respect of showing an axe. All these photographs are at Article P17 at Sr. Nos.1 to 7.

25] Further the witness stated that on 28.05.2019 they were called at P.S. Hingoli (Rural) at about 10.30 to 11.00 A.M. Police called accused Nos.3 and 2. On the disclosure statement of accused Ambadas, as per Exh.68, police reduced the statement of accused Ambadas in writing and prepared panchnama Exh.68 in their presence which bears his signature and signature of his colleague. Police obtained his signature and T.I. of accused Ambadas.

26] At the same place, that time, accused No.2 Vitthal gave his disclosure statement before the witness and second panch. Police

prepared panchnama after the statement of accused Vitthal, obtained his signature and signature of his colleague. Even, police obtained his signature and T.I. of Vitthal. Police read over the contents of panchnama Exh.69 to this witness.

27] Thereafter, this witness, his colleague Vijay, two accused i.e. accused No.2 Vitthal and accused No.3 Ambadas and 2-3 police personnel had been in a police jeep. The jeep was headed from Agresan Square, Hingoli, Narsi phata, Rahuli Khurd and then to Rahuli (Bk.). On the instruction of accused, jeep of police stopped on the road. They started to walk in the agriculture field. There was land having crop of corn, the crop especially used as a fodder to the cattle. There was one mango tree.

28] In presence of this witness, accused No.3 Ambadas took-out the 'Katti' in their presence. Police prepared panchnama Exh.70 in presence of both the panchas. The witness identified Article P18. The slip which was pasted on Article P18 bears his signature and it was marked by marker.

29] Further, the witness stated that accused No.2 Vitthal was called by police. He was ready to produce the sickle Article P19 and thereafter, he took-out the 'Sickle' from the corn crop. Panchnama Exh.71 was prepared in presence of panchas. The witness identified Article P19. Slip was pasted on Article 19. It bears signature of this witness. He identified accused Vitthal and was ready to identify accused Ambadas. On the day of evidence, personal exemption was granted to accused Ambadas by the Court. The defence did not raise any dispute about the identification.

30] Further, the witness stated that thereafter they came back to Police Station Hingoli (Rural). On the same day at about 2.30 P.M. they were called at Police Station. Before that, they took lunch. Again this witness and his colleague went to the Police Station. In their presence, accused Ramkisan produced the clothes which were worn by him on the day of incident. Article P21 was produced by accused Ramkisan. Police prepared panchnama Exh.72. The witness identified both the articles and accused also.

31] As per the evidence of this witness, police called accused Namdeo. He also produced the clothes which were worn by him on the

day of incident in presence of this witness, his colleague and police. Accused produced one shirt (Kurta) which was in white colour and Dhoti, one mobile of Micro-max company. The witness identified all the articles. Kurta Article P22, Dhoti Article P23, Mobile Article P24 and the accused Namdeo also. Police prepared panchnama Exh.73 in his presence.

32] As per the evidence of this witness, accused Ambadas also produced the clothes which were worn by him on the day of incident. Police seized those clothes. He produced one black colour pant Article P25, one shirt with blue strips Article P26. He also produced one mobile of Nokia company Article P27. Police prepared panchnama Exh.74 which bears signature of the witness, his colleague and signature of accused Ambadas at Exh.74.

33] As per the evidence of this witness, accused Vitthal also produced the clothes i.e. shirt and pant which were worn by him on day of alleged incident. The shirt was in chocolate colour Article P29 and pant was in black colour Article P30. He also produced one mobile of Nokia company Article P30. Police prepared its panchnama Exh.75 in



presence of this witness. Panchnama Exh.75 bears his signature, signature of his colleague and thumb impression of accused Vitthal. He identified Article P28, Article P29 and Article P30.

34] As per the version of this witness, the photographs which are at Article P31 at Sr.Nos.1 and 2 were snapped at the time of panchnama in the agriculture land, where corn crop was standing.

35] During cross, the defence pointed out some lacunas in the letter Exh.63. The said letter was addressed to the senior officer of the witness office dated 25.05.2019, From the letter Exh.63 it appears that Inward and outward numbers are not mentioned. In spite of it, these are not the material lacunas in the investigation of the Investigating Officer The present witness acted as a panch with his colleague Vijay Sawalakhe on the oral direction of his senior. The defence tried to show that no procedure of seizure and disclosure statement was followed by the Investigating Officer, but the witness denied to accept it. He is an independent witness, acted on the direction of the concerned officer. He is not the stock witness. He is a neutral person. He had no personal interest in the case. His oral version and the contents of the panchnama

Exh.64 to 75 are similar in nature. There is no material contradictions in the contents of the above panchnamas and the oral evidence of this witness. Even, the defence failed to produce on record that the Investigating Officer failed to follow the legal procedure while preparing all the above panchnamas. The witness signed all the above panchnamas. He gave proper answers of the defence in cross. He voluntarily signed all the panchnamas without coercion of the police. His evidence is free from coercion, force or inducement. The defence could not shake creditworthiness of this witness during cross. Hence, I found it is reliable.

36] **PW4** Kishor Pote was working as Police Sub Inspector at P.S. Hingoli (rural) on 22.05.2019. On that day, he was present at P.S. and the informant Laxman Dorle came at P.S. He informed this witness that there was a murder of his son. The witness made a conversation with him relating to the information given by him and asked him how the incident took place.

37] The witness further stated that the informant stated to him that he has agriculture land admeasuring 09 acre in the premises of village

Rahuli (Bk.). He has two sons and two daughters. Back to four months of the date of incident, there was an altercation in between him and the cousin namely Ramkisan Dorle, nephew Ganesh Dorle. The informant called upon his relatives, villagers to resolve the issue. Due to their intervention, the said issued was settled. However, accused No.1 Ganesh Dorle and accused No.5 Ramkisan Dorle gave threat to the informant that “ Ata tar mitle ahe nantar tujhi soy lawto.”

38] Further the witness stated that on 21.05.2019 at 01.00 P.M. the son of informant namely Shankar Laxman Dorle stated the informant that he was going to the agriculture land to start the electric pump to supply water tot he orange trees. At about 4.30 P.M. the informant went towards the field in order to take a round. The informant found the deceased was lying in an injured condition under the tamarind tree adjacent to the boundary of field of accused Ramkishan Dorle. Informant further stated to the witness that while he was going towards the land, that time, he had witnessed 5 to 7 persons were going towards canal. He saw the accused Ganesh Dorle was carrying an axe in his hand. Informant gave a call to his son by talk, but his son was not talking. The informant called to his cousin who was working at adjoining land. The

relatives came there. Informant noticed injuries to his deceased son near to his eye, on rare side of head and blood was oozing from the injuries. Informant told the witness that it was a murder of his son on account of dispute of land and previous enmity. The murder was committed by accused Ramkisan Dorle, Ganesh Dorle, Ambadas Dorle, Vitthal Dorle, Namdeo Dorle and Dnyaneshwar Dorle. Informant also told him that all these accused formed an unlawful assembly and the committed a murder of deceased son due to previous enmity. This witness typed the narration of the incident on computer as stated the informant. After taking its print out, it was given to the informant for reading. The informant after reading it, signed on the report. The report bears signature of the informant and this witness. After the report, on that day at about 5.03 A.M. he registered the Crime No.143/2019 for the offences u/Secs.302, 147, 149 of the Indian Penal Code and handed over the investigation of this crime to PSI Angad Sudke. Even, a copy of the report was handed over to the informant. Thereafter, he reported the incident of this serious crime to his higher officer. The contents of report as per the witness are true and correct and as started by the informant. The prosecution proved the contents of the report Exh.81 and FIR Exh.82 by this witness.

39] During the cross, witness admitted that at the time of lodging report, Investigating Officer was not present. The Investigating Officer came at Police station on 22.5.2019. The witness was not able to state the exact time of Investigating Officer's arrival at Police Station. He admitted that on that day, he personally did not meet the Investigating Officer Sudke. He admitted that in report Exh.81, there is no specific wording "Nantar tujhi soy lawto." But, it seems that in report Exh.81, the words "will not leave you" were used. "Tula sodnar nahi aani nantar tujhi soy lawto" give the same and one meaning. It means, it was a threat to his life. Further, he stated that he forwarded one copy of FIR to the Magistrate immediately. On 22.05.2019 at about 22.00 to 2230 hours, there was an entry in the station diary that PSI Smt.Kendre and other police staff had rushed at the spot and this witness saw the said entry at the station diary. Further, he stated that when the informant came before him, that time, he was alone and his narration was taken directly on the computer. As report was noted down in the words and language which were used by the informant. He admitted that during his interaction with the informant, he was not brought to his notice that the daughter of the informant was present on the spot of incident. He denied that he noted down the false report of the informant.

40] After considering the evidence on record, it appears that this witness was on duty on 22.05.2019 at Hingoli P.S. (Rural). When the informant disclosed about the murder of his son, the witness made conversation with him and typed his report on computer in the words and language used by the informant. During the course of cross examination, the defence could not bring on record that this witness has a personal interest in the family of informant. In fact, the defence did not make any allegation that witness was biased and he was under coercion while noting down the report of informant and he prepared fabricated report. The defence could not bring on record that this witness has no jurisdiction or power to take the informant's report and the witness did not follow the procedure while taking report from the informant. In cross examination, this witness gave the answers of defence properly without any confusion. He immediately sent the copy of FIR to the Magistrate. After getting down the report, the witness gave a copy to the informant for reading and thereafter took the signature of the informant and also signed on it. Even, he orally reported about the serious crime to his higher officer. While taking the report of informant and after getting knowledge of serious crime like murder, this witness has followed the material legal procedure/steps, I did not find any irregularities in his

evidence and therefore, I have no hesitation to accept it as trustworthy. Informant, Laxman Ganpati Dorle, a father of deceased died during the course of trial. So, he was not available for evidence. But, his reprot Exh.81 was successfully proved by prosecution through witness No.4.

41] Witness No.5 is daughter of informant and sister of deceased Shankar. As per her version incident took place o 21.05.2019. Her father (deceased informant had passed during trial) had gone to Navalgaon for the final rites. At 1.00 P.M. in the afternoon, she and Shankar went to the farm on motorcycle. After reaching the farm, she and Shankar sat in the farm house and had a conversation. Later deceased told her that he would water the orange trees and suggested that she rest on the Akhada until then. After that, she fell asleep.

42] Witness further stated that after a while, she heard screams saying “ Save me! Save me!” She heard there cries between 4 and 5 O’Clock.

43] The complainant further states that after hearing the noise, she got scared and woke up. She looked around and saw that in the field of

Ramkisan Dorle, Shankar was being beaten. She started screaming in that direction. At that time, the accused Ganesh, Babushya, Ethalya, Ramkisan, Namdev, Marolya, Dynya were beating Shankar under a tamarind tree.

44] As per her version, at that time, the accused Ganesh had an axe in his hand, Babusha had a sickle, Vitthal had a sickle, Maroti and Dyanya had a bamboo stick in their hands. The accused Namdev, Ramkishan said, "Beat her upon which, she ran in panic condition towards the 'Akhada'. She went inside it, shut the door and latched it. After a short while, she heard the loud screams of her father. She unlatched the door and came outside. She went under the tamarind tree and her father shouted loudly. Shankar covered in blood, collapsed under the tamarind tree.

45] As per her version, her cousin Gajanan Dorle came there. He first moved Shankar but at that moment, Shankar had fallen dead.

46] The witness identified weapons i.e. Kathi P18, an axe P14, sickle P19, bamboo stick P33 and P32. All the weapons as mentioned



above were in the hands of accused Babusha, Ganesh, Vitthal, Maroti and Dnyeshwar respectively. Even, she identified all the accused persons.

47] The defence brought some omissions on record that her statement is silent that she went to the fields on a motorcycle with Shankar, they chatted together at Akhada and she heard sounds of shouting 'save me, save me.' In the statement recorded by police only the words motorcycle, chatting, save me save me' are not mentioned. That can not be said to be material omissions and does not fatal to the prosecution's case.

48] The defence pointed out during cross examination that in her police statement that the accused Ganesh was holding axe, accused Maroti and Dnyeshwar were holding sticks of bamboo land accused Namdev and Ramkishan . However, from the witness statement, it appear that she has stated to the police that accused Ganesh was holding an axe and accused Babusha was holding Katti and Vitthal was holding sickle but only Maroti and Dnyandev were holding bamboo sticks are missing. This specific detail does not seem to have been explicitly mentioned but it is clearly stated in the witness statement that they were

involved in the assault and she saw all the accused beating her brother in the field of accused Ramkishan. In her statement the word 'Beat her'(Mara) though not mentioned specifically but considering the situation at that time, the accused Namdev and Ramkishan ran towards this witness, which means they were running to attack her. The absence of the exact words 'Beat her (Mara) does not imply that their action i.e. to ran towards her was out of affection or to console her. Therefore, the omissions brought on record by the defence are not so significant that they completely undermine the prosecution's case from its foundation. From the evidence of PW3 prosecution has proved all the accused persons were holding deadly weapons at the time of incident. The recovery is proved by the prosecution through PW3.

49] According to defence, the distance between the 'Akhada' and Malyache shet' is great, so there is no possibility that the witness could have heard the sounds of the deceased. When witness heard sound of screaming, she woke up in fear. This indicates that even though she was asleep, the atmosphere in the field was quite silence and the cries were loud enough to wake her. If six to seven people are trying to attack a man with a deadly weapons then that situation the said man will

scream desperately to escape from their clutches. The way she described hearing the sound is so natural and realistic, there is no reason to doubt her statement. If witness testimony was fabricated, she would have stated that she was working nearby with deceased at the time of incident. She clearly stated she was at the shed in the field. This suggests that her statement was no preplanned but rather a genuine account of events.

50] The witness further states that on the day of incident, she and Shankar had their meal and immediately after finishing their meal, they left for the field. Witness Meera in her testimony specifically answered that on the day of incident, deceased Shankar had taken lunch and usually he had his meal at 10.00 A.M. in the morning. There was no separate lunch for guests on the day of incident and the main meal for every one, was in the evening.

51] The doctor, during post-mortem, found partially digested food in the deceased's stomach(Column No.21). The witness Gangasagar and Meera also stated that the deceased, Shankar had eaten before leaving that day. The evidence of PW6 corroborate the evidence of PW5 and PW7 that deceased had taken meal before the alleged incident.

52] After the incident, the police came to the farm and stayed there till 1 'O'Clock in the night. After the incident, she reported the incident to the police on 27.05.2019 before she did not meet the police.

53] During that time she did not have an opportunity to talk to police. It is very true and natural because after witnessing such a tragic incident, which can shock a person mentally and an uneducated (legally) person do not take a step or pain to tell the police immediately, when there is other male members present in their family i.e. the father-in-law or father. As per her evidence she had disclosed about the incident to her father, on the same day.

54] The Investigating Officer stated in his evidence that he had noticed after reading the complaint it contained eye witness to the incident. In fact, it was the duty of I.O. to immediately approached the witness and statement should have been taken by on 23-24 May, 2019. Even, the statement taken on 27.05.2019 cannot be said to be too late(inordinate delay) looking at the overall incident. The failure of I.O. for recording the statement of eye witness immediately is not a fault of witness. There is nothing on record to suggest that the testimony of

Gangasagar is fabricated by the prosecution. After the completion of 'Tervi ' programme she had gone to her in-laws house. There is no fault of her which bothered the police to record her statement and thus, her statement had to be recorded with delay.

55] As per her evidence whenever there was an argument between accused Ganesh and her father, accused Dnyaneshwar used to stand by Ganesh. Even, a month before the incident when accused No.1 and father of the witness had an argument over the boundary (Bandh) Dnaneshwar was also with accused No.1. Accused Dnaneshwar is the relative of wife of accused No.1. Even, accused No.1 Ganesh and accused Maroti are cousins of each other. So, Maroti also used to stand by Ganesh accused No.1. The evidence of witness is very natural edged and not fabricated and also not found that she testified it with prejudicial intent.

56] PW6 Dr.Sanjivan Narayanrao Lakhmawar was serving as a medical officer at Civil Hospital Hingoli on 22.05.2019. He got a letter Exh.89 from the P.S. Hingoli (Rural) which was addressed to the Civil Hospital Hingoli for conduction of postmortem of deceased Shankar

Laxman Dorle. This witness received the dead body of deceased with letter Exh.89 and it was appended with Inquest panchnama Exh.46 and one police report forwarded to Civil Surgeon filled up by the police. All these documents are at Exh.90. The witness conducted post-mortem on the deceased on the same day at 12.20 P.M and ended at 01.50 P.M. Upon external examination, he noticed that the dead body was of a male, aged 35 years and religion Hindu. The dead body was wrapped in Rakhi colour blanket with blue and red stripes over it, it was wearing white shirt with brown stripes stained with blood, sky blue dark strip pant, blue banian and cream under-pant. The Tulshimala was around the neck of the deceased.

57] The witness further stated that the condition of the body was averagely built and averagely nourished cold body. He noticed rigor mortis present all over the body. There were no signs of decomposition appreciated externally. Post-mortem lividity present on dependent parts of body except at pressure points. Further, he notice features as- eye, mouth partially closed, tongue inside oral cavity. He has not seen oozing from orifices. The condition of the skin was pallor present over the palm. He has not seen any foreign body under the nails appreciated. He has

not seen external injury over the genitals. The body was in supine position, whereas lower limbs were straight and upper limbs were straight and near the body.

58] The witness noticed surface wounds and injuries as :

(1) Chop injury present on forehead above 2.8 cm. Right eye brow, obliquely placed with size 6 c.m. x 4.5 c.m. x cavity deep, with both ends acute with lateral end distal than medial end, clean cut margins with upper margin undermined and lower margin beveled with protuberance of size 7 c.m. x cavity deep with underlying cranial bone fractured with exposure of brain matter to exterior, red.

(2) V-shape chop injury present on occipital area of scalp 2.2 c.m. above occipital incised looking lacerated wound present over left occipito parietal region, about 9 c.m. from the left mastoid admeasuring 9 c.m. x 2 c.m. x cavity deep with margins clean cut with upper margin undermined and lower margin beveled and both ends acute red.

(3) Linear contusion right leg bluish red.

(4) Multiple bruise abrasion on right iliac region in an area of 9 c.m. x 3 c.m. of ranging sizes of 3 c.m. x 3 c.m., 3.5 c.m. x 3 c.m. red.

59] As per opinion of doctor, all these above injuries mentioned in column No.17 were ante-mortem and fresh.

60] Upon internal examination, he noticed that on opening the scalp, the scalp was edematous and contused. Subgaleal hematoma was present mainly over frontal region. Upon vault opening, it was depressed, comminuted fracture of right temporal area and occipital area, red underlined comminuted fractures present underlying injury No.1 and 2 as mentioned in column No.17. On removing the cranial bone, meninges were not intact. On stripping of dura, subdural hematoma present in right fronto temporal lobe area and dark red. There was multiple contusions and laceration present in frontal lobe and occipital lobe. It was diffuse sub-arachnoid hemorrhage present mainly over occipital and frontal lobe areas. On cut section, brain matter was edematous and pale and contused. The weight of the brain was 1150 grams.

61] Upon examination of thorax region, he noticed, there were no injuries to walls, ribs and cartilages. Those were intact. The plura was intact and he has not noticed any injuries. Upon examination of larynx,



trachea and bronchi, he has not notice foreign body and fluid inside. It was pale in nature. Both lungs were mild edematous. The cut surfaces of the lungs were red-pink and have edema. The lung parenchyma was of the usual consistency and shows no evidence of neoplasm, consolidation, thromboemboli, fibrosis or calcification. The weight of right lung was 350 grams and left lung was 340grams.

62] Upon examination of pericardial it was intact. The cavity contains pericardial fluid. There were no abnormal adhesions or patches seen. Upon examination of the hear, the epicardial surface has a normal amount of glitening with minimal pericardial fat deposition. The coronary arteries were free of atherosclerosis. The cut surface of miocaridum show no evidence of hemorrhage, necrosis also shows valvular pathology. The heart weight was 230 grams and it was containing approximately 90 ml. Of blood. The pelmonari trunk and arteries were opened in situ. There was no evidence of thromboemboli. Large vessels were intact and he has not noticed any injuries.

63] He further noticed that the abdomen was dissented with gases. Walls were intact externally. Peritoneum was intact as he noted all

organs in situ. He noticed cavity was intact and no abnormal fluid collection. The teeth were intact and no foreign body was in buckle cavity. Esophagus was containing blood tinged mucus secretions, unremarkable. The stomach was containing about 100 ml. of white colour semisolid food material without any peculiar smell. The gastric mucus was pale on cut section and it was not showing ulceration. Small intestines were containing 50 ml. Yellowish coloured semi digested food without any peculiar smell.

64] The witness further noticed that large intestines were distended with gases and fecal material. Liver was hepatic capsule as intact. On cut section, hepatic tissue was pale. There were no focal lesions to gal bladder and it was partially full with dark green bile. There were no stones. The large bile ducts were patent and non dilated. The weight of the liver was 1270 grams. The pancherias was not showing neoplasia, calcification or hemorrhage. The pancherias and suprarenal were pale on cut section.

65] The witness further stated that the spleen on cut section was splenetic tissue was pale. The weight of the spleen was 105 grams. Upon

examination of kidney, he noticed both the renal capsules were intact. The cuts surfaces reveal a well defined corticomedullary junction. There were no structural abnormalities to the medulla, calyces or to pelvis. The ureters were slender and patent. On cut section, renal tissue was pale. The weight of the right kidney was 110 grams and left kidney was 105 grams. The bladder was intact and empty. Mucosa was unremarkable.

66] The witness further stated that he retained the viscera and it was preserved, sealed, labelled and handed over to the police for chemical analysis. The clothes of the deceased as -white shirt with brown stripes with blood, green underwear, blue banian and sky blue dark strips pant were preserved. He has not noticed any fracture dislocation to the spine and spinal cord in the cervical region.

67] As per the information of this witness, the cause of death of deceased was hemorrhage and shock as a result of head injury. It was unnatural. After completion of post-mortem examination, he handed over dead body to police. Initially, he issued the provisional report as to cause of death which is at Exh.91 which bears his signature.

Subsequently, on next day, he issued a detailed report of post-mortem examination Exh.92. Further the witness stated that injury No.1 mentioned in column No.17 as a chop injury is possible in case of assault by sharp and heavy weapon like as an axe. The Article P14 axe is shown to the witness and he admitted that injury No.1 as mentioned in column No.17 is possible by this axe at article P14. The injury No.2 mentioned in column No.17 is possible in case of assault by sharp and heavy weapon. The witness has shown the weapon 'Katti' at Article P18 upon which the witness replied that it was v-shap injury, this injury by blow by weapon 'Katti' at article P18 is not possible, but he added that it require two blows by the same weapon at one place to have such V shape injury or this injury is possible in case of assault by two different weapons at one place.

68] As per the testimony of this witness, injury No.3 mentioned in column No.17 is possible in case of a dragging or scuffling. The injury No.4 of column No.17 is possible in case of a drag to the person wearing one thread called as 'Kardoda' and it was pulled. Further he added that this injury No.4 is possible in case of drag of a person on uneven ground and looking at situation of the scene, it was a field with clods of earth. The death of deceased was due to the injuries Sr.No.1 to 4 in column

No.17 and it also includes the injuries as mentioned in column No.19. The injuries in column No.17 are corresponding to the injuries mentioned in column No.19. Due to the injuries to the deceased as mentioned in column No.17 and 19, death of a person may be possible at the spot.

69] The witness admitted during cross by virtue of letter Exh.89, police informed him about the history of cause of incident. But, he denied the suggestion of the defence that the post-mortem of the deceased in the present matter was the first case before him as a medical officer. He denied that injury No.1 in column No.17 is possible in case of a assault by sword. He stated that the injury No.1 in column No.17 is possible in case of assault by katta (generally used by the butcher) the injury No.1 is not possible in case of assault by sharp weapon with wide width. When the witness has shown book of Forensic Medical Jurisprudence and Toxicology, the copy of extract of the book which is at Article P34, then, he replied that injury No.1 of column No.17 is corresponding to the size of weapon. After considering the contents of Article P34 then the witness replied that injury No.1 is possible in case of assault by sharp and heavy knife. When he was asked that the size of

injury 6 c.m. x 4.5 c.m. x cavity deep as mentioned in injury No.1 of column No.17 is corresponding to the size of weapon then he replied that it is not only corresponding to the size of weapon but also the force used.

70] While answering the defence question the witness stated that the article P14 axe is not a sharp but injury may be possible by this weapon. The weapon axe at article P14 towards sharp side may be admeasuring 5 c.m.

71] The witness admitted during cross examination that at the time of P.M. examination, he prepared the short notes. He has not given clarification about the measurement of the injuries as per actual snaps taken in the PM report Exh.92 and he did not forward it to the I.O. Further, he admitted that he mentioned in his short notes the date of the injury No.2 as 2.5 c.m., length 3 c.m. and width as 1 c.m. but further he mentioned that the measurement of the injury in his short notes of the injury is visible to him without opening it and mentioned in the report Exh.92 the measurement after opening the vault. He admitted that there is no such reference mentioned in report Exh.92 in respect of measurement visible and the dimensions after opening it. He denied that

the dimensions of the injury in short notes are not in consonance to the dimensions which he mention of injury No.1 in column No.17. He noticed only one injury on the forehead of the deceased, but denied that he mentioned incorrect findings as to the injuries and its measurements at the instance of police.

72] The witness admitted that in this present case specifically for the findings of semi solid food material the process of digestion since last meal may take for above 3 to 4 hours. For causing abrasion, hard and rough surface is necessary. He denied that injury like abrasions are possible in case of fall of a person on a mud ball.

73] After considering the evidence of this witness, it appears that in the P.M. report, he mentioned about the date, time and place when he got the dead body of the deceased. Further he explained in column No.17 and 19, the injuries which were found on the dead body of the deceased. As per his opinion, injuries mentioned in column Nos.17 and 19 are sufficient for the death of the deceased. There are some missing details as I discussed about in the report of this witness. However, those missing details are minor in nature. The death of deceased was homicide

unnatural is explained in the report Exh.92 in column No.22 Blood of the deceased and viscera for CA were preserved during the time of P.M. report. All the injuries upon the dead body of deceased were ante-mortem. It is the case of the prosecution that on the day of incident, the deceased had taken lunch and then went to the field. At the time of P.M. of the deceased, this witness found some semi solid food material without peculiar smell in the stomach and in the small intestine yellowish colour semi digested food without any peculiar smell also found. After considering the evidence of this witness, I did not find it contradict the evidence of eye witness, medical and forensic evidence. Hence, I accepted it as a trustworthy.

74] PW7 is the wife of deceased Shankar and daughter of deceased informant. At the time of the alleged incident, she was living with her in-laws, brother in law Tukaram and husband. As Tuakaram has some mental issue, he used to stay at home and never goes to field for work.

75] On 21.05.2019, there was a program of 'Rasali' at her house, so guests were invited, guest means her parents, her sister in law Gangasar. PW5 Gangasagar came at her house prior to 04 days of the



alleged incident. On the day of alleged incident, in between 1.00 to 1.30 P.M., PW5 and her deceased husband had gone to their field by motorcycle. Deceased Shankar had gone with PW5 by motorcycle with an intention to water the orange trees and to give fodder to the cattles. PW7 was at home to prepared food.

76] Further she stated that accused No.1 who resides in front of his house had gone with his mother by motorcycle. Firstly, her husband went to the field and after 5 to 10 minutes, accused No.1 went. Thereafter, accused No.1's father Ramkishan also went to the field. Her father and nephew Sandip came at her house. Even her father in law Laxamn also returned after attending the last rites. Thereafter, her father in law went to the field. Near about 5.00 P.M. at the time of evening, accused No.1 Ganesh Dorle came at home alone. He parked his motorcycle, his wife locked the house and they went away. Her father and nephew Sandip were waiting for the 'Rasali' food. So, they also went to the field. After some time, her nephew Sandip came at home hurriedly and informed this witness 'Shankar mama' has been lying down under tamarind tree and he has an injury to his head and he has been dead.

77] The witness further stated that after hearing this, she her mother in law and others approached to the field. Her sister in law Gangasag and her father-in-law, father and adjacent neighbour were gathered on the spot. When she approached on the spot, PW5 Gangasagar narrated her that accused No.1 Ganesh Dorle, accused Ambadas Bavbusha Namdeo Ghongade, accused Vitthal Namdeo Ghongade, accused Dnyaneshwar Dnyanvba Kishanrao Borgad, accused Maroti Vitthal Dorle, accused Namdev Tukaram Ghongade, accused Ramkishan Pandit Dorle, all were assaulted upon the deceased Shankar by an axe, Katti, sickle, bamboo stick, bamboo stick again bamboo stick, bamboo stick and committed a murder of deceased Shankar. Further she stated that her statement came to be recorded after 5 to 6 days of the alleged incident. She identified all the accused persons before the Court.

78] In cross examination, the defence pointed out some omissions in her statement As per their submission, her previous s statements is silent that accused 'Dnyaneshwar Borgad' tried to assault upon her deceased husband by the 'cement chool' and on the day of incident, after 5 to 10 minutes, accused Ganesh Dorle also went to his field and her

father in law Laxamn immediately went to the field alone. I have gone through the statement of the witness which came to be recorded by the police on 27.05.2019. In the statement Para No.1 only word 'cement' and 5 to 10 minutes thereafter and 'immediately' all these words are missing, but in other words, she has stated on the day of incident, accused Ganesh Dorle went to the field after some time and her father in law also went to the field. The word alone immediately is missing from her statement. In spite of it, it does not fatal to the whole prosecution's story. Hence, those are not the material omissions. These minor omissions are quite possible after happening of this tragedy with her.

79] Even in her statement, she has narrated that all the accused persons assaulted upon her deceased husband by an axe, katti and sickle on the reason of the dispute over the agriculture field. Except, weapon bamboo, sticks, she has narrated about the other weapons. She started in her evidence that she has educated upto 5<sup>th</sup> to 6<sup>th</sup> standard. The witness statement was recorded by the I.O. on 27.05.2019. But, as per her evidence after the incident, police made inquiry towards PW5, her sister in law and even to this witness also. So, it was the duty of the I.O. to record the statement of the material witness immediately. On

22.05.2019, the funeral of deceased was held. Thereafter, the I.O. could have record the statement of this witness. It is the fault of the I.O. and not the witness. Due to his negligency, the evidence of this witness can not be said to be unreliable evidence. The witness further admitted that on the day of alleged incident, her husband took the food at 10.00 A.M. and at the same time, PW5 also finished her lunch. The evidence of Pw5 Gangasagar and the evidence of this witness in that regard is corroborates to each other. In the PM report Exh.92 at the time of Post-mortem, the doctor found semi liquid food in the stomach of the deceased. When the witness reached on the spot after getting information from his native Sandip, she immediately reached with her mother in law on the spot. PW5 immediately narrated this witness how the incident took place with deceased husband. After considering her evidence, I did not find any material contradictions and omission which will fatal the prosecution's case. She is a wife of deceased, immediately rushed towards the spot after getting information from Sandeep and PW5 informed soumto her about the assault by all the accused. Hence, I accept her testimony as trustworthy.

80] Pw8 Sandeep Dorle was indulged in the water purification

business. He runs his business in the name of 'Shrudha Water Filter Shop'. He is acquainted with accused No.1. On the day of incident, accused No.1 came at his water filter shop to drink water. After drinking water, he went away. On the same day, it came to his knowledge that deceased died. Except this, he did not disclose anything. During the cross, he admitted that to attend the marriage at Sawad, he went at 4.00 P.M. and returned from the marriage ceremony at about 08.00 P.M. He denied the suggestion of defence that on that day, Ganesh Dorle did not come at his shop for drinking the water. From the evidence of this witness, it is clear that on the day of incident, accused No.1 Ganesh was at Rahuli (Bk.).

81] Pw9 Francis Parera is a Nodal Officer of Reliance Jio Info-com Ltd. Pune. He adduced in his evidence that in Crime NO.143/2019, he received letter from Supdt. of Police Hingoli on 11.09.2019. As per that letter, S.P. Hingoli required CDR, SDR and Customer Application Forms of four mobiles i.e. Mobile Nos.7620122514, 9075340353, 9552785674 and 8459747070. After getting the letter dated 21.05.2019, he gave information/reply dated. 23.09.2019 Exh.111 along with certificate Exh.112 and customer application form of the above said mobile

numbers. Those are at Exh.113 to 116.

82] As per the evidence of this witness, he gave information about CDR of the above said mobile numbers dated 21.05.2019 and the incoming and outgoing mobile numbers with Cell ID address. The CDR report Exh.117 and Cell ID address report at Exh.118 and the mobile No.7680122514 was in the name of Maya Ambadas Ghongde.

83] Further witness started that mobile No.9075340353 was in the name of Gyanba Kisanrao Borgad. The CDR report is at Exh.119 along with the details of incoming and outgoing and its Cell ID address is at Exh.120.

84] Further evidence of this witness is that mobile No.9552785674 was in the name of Laxman Ganpati Dorde. The CDR report of this mobile is at Exh.121 along with the details of incoming and outgoing and its Cell ID address dated 21.05.2019, mobile tower address is at Exh.122.

85] further the witness disclosed that mobile No.8459747070 was

in the name of Maroti Vitthal Dorle. The CDR Report dated 21.05.2019 of this mobile is at Exh.123 along with this report, the Cell ID address of the said mobile number dated 21.05.2019 and the income and outgoing call details on the said mobile, mobile tower address, Cell ID address Report is at Exh.124.

86] All the reports are duly signed by the witness and the seal of the Reliance JIO Info-com Ltd. Pune. During cross, he admitted that letter Exh.125 dated 11.09.2019 did not receive to his office. He admitted that in his report, he has not given information that accused Nos.1 and 5 were holding mobile in their names. From the evidence of this witness, it appears that the accused Ambadas Ghongade, Gyanba Kisan Borgad, Maroti Vitthal Dorle, all were having cell phone for communication. The mobile No.7620122514 though was in the name of his wife Maya Ambadas Ghongde, but it is sufficient to hold that accused Ambadas Ghongde had a source of communication. The mobile No.9552785674 was in the name of informant Laxman Dorle.

87] From the Cell ID and Cell ID Address of the mobiles No.76201222514 Exh.118, 8459747070 Exh.120, 9075340353 Exh.129 and 9552785674 Exh.122, the location of these mobile were showing in

Hingoli Tahsil, Maharashtra.

88] Pw10 Anil Ashok Rankhamb, a police personnel adduced in his evidence that on 03.06.2019, he was working as a police constable at P.S. Hingoli (Rural). The Investigating Officer Angad Sudke handed over all the muddemal in Crime No.143/2019 under section 302 of IPC from the possession of Havildar Paikrao to deposit it in Forensic Lab, Nanded for analysis. He also gave two letters with muddemal i.e. 06 sealed box and 06 cartoon box with letter Exh.129 and 130. For getting the said muddemal, he deposited it in the forensic Lab Nanded and obtained endorsement. Thereafter, handed over the said endorsement receipt to the concerned Police Inspector Mr.Sudke. His statement was also recorded in that regard. He denied that he did not deposit the muddemal and it was not in sealed condition. His evidence remained intact during cross. Therefore, I have no hesitation to accept it as trustworthy.

89] PW11 Pramod Nagorao Khillare, Police Naik was serving in P.S. Hingoli (Rural) on 18.07.2019. Police Inspector Angad Sudke handed over the blood samples, sticks and clothes of accused Dnyaneshwar alais Gyanba and Maroti Dorle to deposit it in the Forensic Lab Nanded. The



said muddemal was in the custody of Havildar Paikrao. He had given 05 sealed packets and one sealed cartoon box with letter Exh.132. He handed over the muddemal to Forensic Lab Nanded and took endorsement receipt Exh.132. After coming to the Office i.e. P.S. Hingoli (Rural), he submitted it to Paikrao. His statement was also recorded in that regard. The witness is a police personnel and has no grudge against the accused. He followed the direction of his senior and deposited the muddemal in Forensic Lab Nanded. There is no reason to disbelieve his version. Hence, I accepted it as trustworthy.

90] PW12Angad Sudke was on duty from 18.08.2018 to 12.09.2020 at Hignoli P.S.(Rural) as a Police Inspector. Investigation in Crime No.143/2019 u/Secs. 143, 147, 149, 302 of IPC was handed over to him by police officer Pote. After getting the said FIR, he had gone through it. He visited PM room of Civil Hospital Hingoli and prepared inquest panchnama which is at Exh.46. As per letter Exh.89, he requested the concerned doctor to collect the viscera and the clothes of deceased for CA examination. The dead body of deceased was handed over to the relevant person and its receipt is at Exh.135. The clothes of deceased as described in panchanma Exh.47 and one shoe were seized

and sealed in presence of the panchas and prepared its panchanma Exh.47.

91] Thereafter, in the presence of two panchas in the field Gat No.287, he prepared the spot panchnama. He found one mobile of accused No.1 in which, ATM Card, Driving licence, RC book were kept in the cover of mobile. He collected soil mixed with blood, simple soil and plastic shoe, JIO company mobile and prepared panchanama Exh.49. Even, he sanpped the photographs of the spot P34 at Sr.Nos. 1 to 5. He identified both shoes of deceased which is at Article P5 and clothes of deceased P2, P3, P6, P4 and the mobile of deceased Article P8. He identified the another shoe article P7 of the deceased and Articles P9, P11, P10, P12 and P13.

92] He issued letter exh.78 addressed to the MSEB office and Depo Manager which are at Exh.78 and 136 respectively. He arrested the accused No.1 Ambadas, Viththal, Namdeo Ghongade. On 23.05.2019, he arrested Ramkishan Dorle. On 24.05.2019, he issued letter to the Circle Inspector and called map of spot. Letter in that respect is at Exh.137. He recorded the statement of witness Mahadu Dorle on 24.05.2019.

93] On 25.05.2019, he issued letter exh.63 and called panchas. In response to his letter pancha Sawalakhe and Kagne appeared. In their presence, he recorded the statement of accused No.1 as per Exh.64. Thereafter, as per the direction given by accused Ganesh Dorle, seized an axe, which was used by the accused Ganesh Dorle. It came to be seized as per panchnama Exh.65. Article P14 was identified by this witness. P14 was sealed in the presence of panchas. Pasted one chit and signed upon it. P14 was given in the custody of Mohril. Entry of the panchanama and seizure of P14 were taken in the station diary. The extracts of station diary are on record at Exh.138 and 142. The vehicle which was used for the panchnama, its log-book copy is at Exh.143.

94] On the disclosure statement of accused Ganesh Dorle in presence of panchas, he in presence of panchas, prepared panchnama Exh.68. On the disclosure of accused Ganesh Dorle, he, panchas, accused Ganesh Dorle, police by the police van went on the spot of as directed by accused Ganesh Dorle. He in the presence of panchas handed over the clothes and its panchnama was prepared which is at Exh.70 which bears signature of this witness and panchas. The clothes were sealed bearing signature of accused and also its thumb impression. He

identified Articles P15 and 16. He identified the photos on P17 at Sr.Nos.1 to 7.

95] He recorded the statement of witnesses Dashrath Thorat, Nazer Khan, Gangasagar Dorle on 25.05.2019. On 26.05.2019 letter was issued to the medical officer, Civil Hospital for the medical examination of accused Ganesh Dorle, Ramkishan Dorle, Vithal Ghongade, Ambadas Ghongade, Vitthal ghongade, Namdeo ghongade and collected their blood samples. In the sealed condition, blood samples were received by him as per letter Exh.147.

96] He recorded the statement of witness Dashrath, Gajanan, Shashikalabai and on 27.05.2019, he recorded the statement of Gangasagar, Meera and other witnesses. On 28.05.2019, statement of Sandip was recorded. As per letter Exh.148 issued to the MSEB office Hingoli, the panchas Svalakhe and Kagne appeared before the P.S. Hingoli (Rural). In their presence, accused Ambadas Ghongade gave a disclosure statement. Its panchnama Exh.68 and disclosure statement of accused Vitthal Ghongade is at Exh.69. Both were prepared in presence of panchas, obtained signature of the concerned and thumb impression

also. Thereafter, on the direction of both the above accused, seized Katti P18 and sickle P19. Those were seized in presence of panchas and prepared panchnama Exh.70 and Exh.71. Both the weapons were given in the custody of muddemal clerk. The witness identified P18 and P19 before the Court and both the accused.

97] Witness identified P31 Sr.Nos.1 and 2 photographs and stated that entry in that regard in station diary . The entry copy is at Exh.149 to 151 at government vehicle's log book copy is at Exh.152, the said vehicle was used at the time of said panchnama.

98] The clothes of accused Ramkishan Dorle was seized as per seizure panchanma Exh.72 which bears the signature of the cocnerned relevant person and T.I. The clothes were handed over to Mohril. Witness identified P20 and P21 before the Court and accused also.

99] Thereafter, witness seized the clothes of accused Namdeo Ghongade and his mobile of Micro Max company. The panchnama in that respect is at Exh.73 which bears the signature of concerned person and T.I. The witness identified the accused Namdeo Ghongade before

the Court and Articles P23, P22 and P24.

100] In the presence of panchas, witness seized clothes of accused Ambas ghongade and his mobile. Prepared seizure panchnama Exh.74 which bears the signature of concerned person and T.I. He identified the accused Ambas Ghongade and Article P25, P26 and P27 before the Court.

101] In the presence of panchas, witness seized the clothes of accused Vithal Ghongade and mobile and prepared panchnama exh.75. He obtained the signature of concerned person and T.I. After following due procedure for seizure panchnama, he sealed the articles. He identified P28, P29 and P30 and accused.

102] After collecting all the seized clothes of accused, and the articles as described above, he sent the seized muddemal to the Forensic Lab by the hands of P.C. Rankhma as per Exh.149. The said letter and muddemal were received by the authority of Forensic Lab and also bears signature of Kishor Pote Police Inspector.

103]            Thereafter, the viscera of deceased was sent for CA examination as per letter Exh.130 by P.C. Rankhamb. The said letter bears signature of Police Inspector Kishor Pote. The said muddemal was received the concerned authority of the Forensic Lab. He recorded the statement of PC Rankhamb.

104]            To get the CDR of the seized mobile, he issued letter to the Supdt. of Police Hingoli as per Exh.153. One letter Exh.154 issued to the J.M.F.C. Hingoli to record statement of witnesses under Section 164 of the Cr.P.C. Statement of witnesses were recorded u/Sec.164 of Cr.P.C. by the concerned J.M.F.C. Court. PM report Exh.92 was received on the letter of Exh.155. He identified all the statements of witnesses Exh.156 to 160 which were received by him after recording by the J.MF.C. Court.

105]            On 16.06.2019 letter Exh.161 was issued to get government panchas to conduct the panchnama. In response to his letter Exh.161, panchas Rajeshwar Shende and Pathan appeared to act as panchas. In their presence, the disclosure statement of Dnyaneshwar Borgad was recorded. As per his direction, the witness, panch and other witnesses, accused and other relevant persons went on the spot as per

the direction given by the accused and prepared panchnama Exh.51. Accused Maroti Dorle also gave the disclosure statement. So, panchnama Exh.53 was prepared. As per direction of accused Maroti Dorle and all the other concerned persons in the presence of panchas, accused Sdnyaneshwar Borgad and accused Vitthal Ghongade handed over the bamboo sticks articles P32, P34, P35, P33, P37 and P36. The panchnama Exh.52 came to be prepared.

106] On 09.06.2019 seized muddemal was sent for CA examination as per letter Exh.132. The entry regarding the investigation dated 16.06.2019 was taken in the station diary. Its extract is at Exh.162. For investigation dated 16.06.2019 government vehicle was used. The log book copy in that respect is at Exh.163.

107] Further the witness stated that CDR of the seized mobiles were received as per letter Exh.11. He received certificate Exh.112 and CDR report Exh.117 to 124. As per that report, on the day of incident, the location of accused and informant was in Rahuli (Bk.). The CA reports about the viscera of deceased is at Exh.164, the deceased blood sample report Exh.165, the report of accused No.1's blood is at Exh.166



and other seized clothes, weapons soil, soil mixed with blood report is at Exh.167. The blood sample report of accused Ambadas Ghongade is at Exh.168, blood sample report of accused Vitthal Ghongad, Namdeo Ghongade are at Exh.169 and 170 respectively. The seized two sticks and clothes, CA report is at Exh.171. The blood sample CA report of accused Dnyaneshwar Borgad, Maroti Dorle, Ramkishan Dorle, all are at Exh.172, 173 and 174 respectively.

108] From the Talathi Rahuli (Bk), collected 7/12 extract of the spot which is at Exh.175 at Sr.Nos. 1 to 4, extracts of accused's house Exh.176 at Sr.Nos. 1 to 5, FIR is at Exh.177, during investigation, he realized that all the accused persons formed unlawful assembly on the reason of dispute over the field and by assaulting deceased Shankar with weapons i.e. an axe, Katti, Sickle and Sticks, they assaulted upon the deceased and committed his murder.

109] In the cross examination, the witness admits that on the day of incident, before lodging the FIR by the deceased's father P.S. got information on phone and police went on the spot on the said information. But, this witness could not say whether information

received through phone was recorded in the Police Station diary or not. By this, the defence tried to show that the information received over the phone was different and because of the discrepancies between the complaint actually filed and the information got on phone, witness concealed the complaint received over the phone. To prove this fact, naturally the burden was on the defence that there was some discrepancies in the information got on the phone. In that regard, defence not filed any satisfactory evidence. The I.O. admitted that for the spot panchnama, he had summoned the witnesses orally and not by letter and after arrival of the panchas, he took out the accused out of the lock up at the P.S. But, denied the submission of defence that there was no entry in that regard in P.S. The defence put some information got through the Right to Information Act to show that on 25.05.2019, the accused took out from the lock up at once and locked up once on that day and tried to show that the accused did not take out from the lock up at the second time and also not locked up him. The documents in that regard is at Exh.186. In the regard, the I.O. replied that the concerned staff failed to make entry in that regard. Definitely, such type of mistake is possible by the concerned staff. Due to this minor mistake, it can not be said that the whole evidence of the prosecution under section 27 of

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Evidence Act is unreliable. The defence urged before the Court in the photographs that it is looking that handcuff was used at the time of panchnama Exh.27 of the Evidence Act. The I.O. answered that to use the handcuff for the accused depends upon the circumstances and the behaviour of the accused. This answer is also satisfactory. If the handcuff was used at the time of giving disclosure statement then pressurizing the I.O. for the disclosure statement may be possible. The accused was facing serious offence, so to avoid any complication, if handcuff was used then also the recovery u/Sec.27 of the Evidence Act can not be said to be uncreditable or it was due to pressure of the police.

110] After considering the over-all evidence of the witnesses, it is established that he after getting the order of information in this crime, he started his investigation. The learned advocate for the defence urged that the I.O. was on leave for some period and in spite of it, he had completed the investigation and therefore, he is not reliable. The witness recorded the statement of material witnesses Gangasagar and Meerabai on 27.05.2019 and on that day, he was not on leave. He followed all the legal procedure to seized the weapons, to call the panchas, to seize the clothes, to send the accused for medical examination, to collect PM

report, to send the muddemal for CA examination and to record the evidence of the concerned police constable. The delay in recording the evidence of PW5 and PW7 was the negligence of this witness. I did not find any material lacunas or discrepancies in the investigation of the I.O. which will be fatal to the base of prosecution's case. The defence could not shake the creditworthiness of this witness during the cross. Hence, I accept it as trustworthy.

111] As per evidence of PW6, injury Nos.1 to 4 mentioned in Para No.17 are ante-mortem and fresh. Injury No.1 is possible in case of assault by sharp and heavy weapon like P14 and it is not possible in case of assault by sword. He stated in cross that it is possible, in case of an assault by 'katta' used by butcher. Further, he again replied that it is possible in case of assault by sharp and heavy knife. The injury No.1 is not only corresponding to the size of weapon but also the force used. Lastly, he opined that Article P14 is not a sharp but injury is possible by this weapon. As per his evidence, injury No.2 is also possible by the P14.

112] Injury No.3 in column No.17 is a linear contusion right leg bluish red is possible by a blow from a linear object like a rod, stick or

whip(a per medical jurisprudence). Even formal bruise abrasion on right iliac region in an area of 09 cm x 3 cm of ranging sizes of 3 c.m. x 3 c.m, 3.5 cm x 3 cm. Red. As per his evidence, injury No.3 is possible in case of a dragging or scuffling and injury No.4 is possible in case of a drag and if the person has a Kardoda over around his waist and if he is pulled. As per PM Exh.92 column No.19, the doctor has found multiple contusions and laceration present in frontal lobe and occipital lobe. It indicates that the assault was forcefully, maliciously as well as by more than one person.

113] As per CA report Exh.164 viscera of deceased Shankar contained 99 and 94 milligram of ethyl alcohol per 100 grams respectively in Exh.1 and 2 Blood CA report Exh.165 of deceased Shankar is not helpful to the prosecution as the result was inconclusive.

114] As per report Exh.166, 168, 169, 170, 172, 173, 174, blood group of accused Ganesh is 'O' and blood group of accused Ambadas, Vitthal, Namdev, Dnyaneshwar, Maroti, Ramkishan are 'O', 'O', 'A', 'B', 'B', and 'A' respectively.

115] As per CA report Exh.167, Exh.NO.E1-axe, Exh.E2 Katti, Exh.NO.E3 Sickle ascertained with blood on blade and its human blood.

116] Exlh.No.D1 (Full open shirt of accused Ganesh) Exh.No.D2( Full pant of accused Ganesh), Exh.No.D4 (white kurta of accused Ramkishan), Exh.No.D5 and Exh.No.D6 (Dhoti of accused Namdev and white kurta) Exh.No.D7 and Exh.D-8( Pant and shirt of accused Ambadas respectively) detected human blood. No explanation from all these accused during their statement under Section 313 of the Criminal Procedure Code, how human blood was detected on their above clothes. While recording their statement under Section 313 Cr.P.C, their reply was very formal like, it is not true, or I don't know or a false case has been lodged. There is nothing on record from their side to disbelieve the medical and forensic evidence of prosecution. The defence failed to undermined the prosecution's direct, technical, medical, chemical analysis evidence during the trial.

117] Learned advocate for accused Nos.2 to 4 during the course of argument has placed his reliance upon some case laws:

- 1- Digamber Vaishnav & Anr. Versus State of Chhattisgarh, reported in 2019(1) Acquittal 251(SC)

- 2- Onkar Tukaram Ramteke Vs. The State of Maharashtra, reported in 2022 ALL MR(Cri) 4404
- 3- Ramchandra Bhiva Bhuwad Vs. The State of Maharashtra, reported in 2020 ALL MR(Cri) 3437
- 4- Shri Patru Versus State of Maharashtra, reported in CRIMES, Cri.Appeal No.241/1994, decided by Biombay High Court on 31.01.1994, 649
- 5- Ashraf Hussain Shah Vs. State of Maharashtra, reported in (1996) CriLJ 3147

118] I have gone through the above case laws. The first case is based upon the circumstantial evidence. Second case is regarding the failure of prosecution to establish foundational facts (demand/acceptance of bribe), third one is also based upon circumstantial evidence. In that case recovery evidence was not accepted by the Hon'ble Bombay High Court because the statement of the accused was not voluntary as he was not handcuffed by the police at the time of recording his statement. In the fourth case, accused was acquitted from the charges of Section 5 of TADA because the recovery of evidence was doubtful. In that case there was no evidence about motive. Blood group of axe could not be determined. No evidence about blood group of accused, therefore, the Hon'ble High Court held that it is risky to base conviction only on that circumstances. In the last case, the Hon'ble Bombay High Court acquitted the accused because the statement of

police was recorded after two days from the date of lodging FIR and non examination of witness whose evidence was necessary to the unfolding of narrative. Due to these things, the accused was acquitted. Considering the facts and ratio of above case laws, with due respect, I submit that the facts in this matter are totally different. Hence, with due respect, I submit that all the above case laws are not helpful to the defence and not applicable to the case in hand.

119] The learned advocate for accused Nos.1 and 5 placed his reliance on the following case laws:

- 1- Mangamma Avva alias Nese Yesodamma and others V. State of A.P., reported in 1995 AIR SCW 2297
- 2- Babu Ram and Ors. V. State of Punjab, reported in AIR 2008 Supreme Court 1260
- 3- Sharad Biridhichand Sarda v. State of Maharashtra, reported in AIR 1984 Supreme Court 1622

120] I have gone through the above case laws. In the first case, there was only one eye witness. The Hon'ble Supreme Court did not accept the evidence of eye witness because the eye witness failed to narrate the incident to others at earliest opportunity and there was an inordinate delay in giving her statement. In short, the Hon'ble Supreme Court held that the artificial version of eye witness at belated stage itself



shows that she was fixed up witness. In this case, Gangasagar is a sole eye witness. There was no inordinate delay in giving her statement. She narrated about the incident to witness Meerabai and family members immediately. In the second case, the case was in exercise of right of private defence. The facts of the cited case are not similar with the facts of the case in hand. Hence, it is not applicable to the instant case. The third case is related to scope of section 27 of the Evidence Act. The evidence of PW3 on the point of Section 27 of Evidence Act in this case found reliable, so not applicable to the case in hand. With due respect, I submit that, the facts of cited case law are not applicable to the case in hand.

121] All the accused persons facing the charges u/Secs.143, 147, 148 and Section 302 r/w Section 149 of the Indian Penal Code. So, it is useful to refer Section 149 of the IPC, which reads as follows:

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

122] **In Bhaudev Mandal and Others Vs. State of Bihar, 1981,** the Hon'ble Supreme Court held that before recording conviction u/Sec.149 of the IPC, essential ingredients of Section 141 of IPC must be established. After considering the ingredients of Section 141, the over all evidence of the prosecution it is established that deceased informant Laxman Dorle and accused No.5 Ramkishan Dorle are the cousins of each other. Accused No.1 Ganesh Dorle is the son of accused No.5. It is not disputed that accused Nos.2, 3, 4, 6 and 7 are all the relatives of accused No.1 i.e. his wife relative) i.e. accused No.2 is the father in law of accused No.1 and accused No.3 is cousin father in law. Accused No.4 is father of accused No.2 and rest of the accused No.5 to 7 are also nearest relatives of accused Nos.1 and 5. Accused Nos.1, 5 and 2 to 4 are having agriculture field at Rahuli (Bk.), as pr Exh.175/1 to 175/4.

123] Deceased complainant in his FIR Exh.81 alleged that 3 to 4 months prior to the alleged incident, a quarrel was raised in between him, his deceased son Shankar with accused Nos.1 and 5 on the reason of boundary of field. PW7 Meera in her evidence adduced the same thing of quarrel. She adduced that prior to to one year of the alleged incident, all the accused persons raised quarrel. Accused No.1 and his father

always used to quarrel with deceased husband and father in law. That time, accused Dnyaneshwar tried to assault by clay hearths upon her husband. But, people from their village are relatives pacified the quarrel. In Exh.81, the deceased also mentioned that his relatives gave a proper understanding to accused Nos.1 and 5, that time, accused No.1 threatened them that “Atta tumhi Bhandan mitwile aahe parnatu tula sodnar nahi.” Being nephew, informant, did not pay attention towards the words of accused No.1. The informant unfortunately died in the meantime. In short, in both families the fire of dispute was burning. Informant was old aged. One of his son Tuakram has mental issue and deceased was only a sturdy person in his family. On the other side, all the accused are very close relatives and that accused Nos. 2,3,4,6 and 7 had a strong support to accused Nos. 1 and 5. Most of them were from the same village. However, it appears that accused had knowledge that informant's family is weaker than them. The report Exh.81 was proved by PW4. Deceased on the day of incident, had gone to the field to water the orange trees along with PW5 his sister Gangasaar. On behalf of accused Nos.2 to 4 learned advocate Mr.Sakle conducted cross examination. In Para 14 of the deposition of PW5 at page No.7, the questions he asked were as follows. “Her father owns two types of field.

One is field of Akhada and another is Malache shet Akhada is built of tin.” From this, the defence is directly acknowledging the prosecution case and supporting the version of PW5 that at her father’s field there was Akhada and had a single door and the orange trees were planted in Malache shetat. It is not a disputed fact that on the day of incident, there was programme of ‘Rasali’ at the house of informant and to attend the function Meer’s father Kondaba came with his grand son at the house of informant. Accused Ganesh field and informant’s field is adjacent to each other and there was a tamarind tree on the common boundary of their field as well as the person who standing in the accused’s field clearly see Akhada of informant( Cross examination Para Nos.7 and 9). It was urged by the defence at the time of argument that there was no ‘Akhada’ at informant’s field, but the above cross examination supports the prosecution’s case.

124] PW5 Gangasar saw all the accused person with deadly weapons like axe, Katti, sickle, bamboo sticks and also while assaulting upon the deceased Shankar Dorle. Even accused No.4 Namdeo and Ramkishan ran towards her to assault upon her. Deceased died due to the injuries caused to him as described in column No.17 and 19 of PM

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report Exh.92. As per the evidence of doctor, cause of death of deceased was 'hemorrhagic and shock as a result of head injury ( Unnatural)'. On the day of incident, accused Ganesh had a knowledge that deceased had gone to his field so, he and his father Ramkishan accused No.5 also left their house within 5 to 10 minutes after his departure.

125] Informant had gone to attend the last funeral program at another village with relatives. But, he returned on the same day at his house. Accused probably knew this accused as their houses are face to face and farms are also adjacent to each other. As per evidence of PW7, she could see what was going on accused's house. She saw that within 5 to 10 minutes after the deceased's left home on the motorcycle, accused Nos.1 and 5 followed him. Accused at first went with his mother and accused No.5 followed him. After the alleged incident, when accused No.1 came at his house, first he parked his motorcycle then his wife locked the house and she also went away. All this facts indicate that it was suspense that was resolved later and a preplanned murder. All the accused persons came on the spot like axe, Katti, sickle, sticks, and these were not coincident. This shows that prior to it, they all were decided their common object and that was to finish the deceased Shankar and

that object was unlawful. All the accused were known their common object and with this common object all the accused persons gathered together with deadly weapons. They assaulted upon the deceased as they shared their common object and due to their assault, the deceased Shankar died. In short, all the accused persons, on the day of incident formed unlawful assembly with common object to commit a murder of deceased Shankar and therefore, to achieve their common object they came with deadly weapons on the spot and killed deceased. PM report Exh.92 indicates that the deceased died due to the injuries caused to his head and brain. This also indicates that all the accused persons chose the vital part of the deceased's body i.e. head. Due to the injuries to the vital part of the body of deceased, he died. ( PM report Exh.92 in column No.17 and 19 injuries caused to head and brain.)

126] In short, after considering the over-all evidence of the prosecution, I come to this conclusion that the prosecution by giving satisfactory, cogent and reliable evidence proved the offences against all the accused persons under Sections 143, 147, 148 and Section 302 read with Section 149 of the Indian Penal Code beyond reasonable doubt. Hence, I record my findings as to point Nos.1 to 4 as above and to hear

all accused persons on the point of quantum of sentence, I take a pause here.

127] The accused No.1 submitted that no offence has been committed by him. Accused Nos.2 to 7 did not say anything. However, their learned advocates prayed for lenient view as they are all Karta of their families and accused Nos.4 and 5 are old aged.

128] The learned APP Shri Kute prayed for stringent punishment being serious offence.

129] After hearing both the parties, its my opinion that all the accused, deceased informant and his son deceased Shankar, all were relatives of each other. In spite of it, on a very minor reason of field of boundary, their quarrel was going on since long. The informant was the father of deceased Shankar who died during the course of trial. Informant's second son Tukaram having some mental issues. In other words, there is no male 'Karta' or head in their family. The informant, deceased both had a right to life, but all the accused did not think over their rights. So, considering the nature of offence and the above circumstances, as I discussed above, in the interest of justice, the

following order will meet the ends of justice. Hence, I pass the following order for point No.5.

**ORDER**

- 1 All the accused are hereby convicted for the offence punishable under Section **143** of the **Indian Penal Code** vide Section **235(2)** of the Criminal Procedure Code, and sentenced to **suffer rigorous imprisonment for six months** each and to **pay a fine of Rs.10,000/- (Rs. Ten thousand) each** and in default of payment of fine, to undergo **rigorous** imprisonment for two months.
- 2 All the accused are hereby also convicted for the offence punishable under Section **147** of the **Indian Penal Code** vide Section **235(2)** of the Criminal Procedure Code, and sentenced to **suffer rigorous imprisonment for two years** each and to **pay a fine of Rs.15,000/- (Rs. Fifteen thousand) each** and in default of payment of fine, to undergo **rigorous** imprisonment for three months.
- 3 All the accused are hereby also convicted for the offence punishable under Section **148** of the **Indian Penal Code** vide Section **235(2)** of the Criminal Procedure Code, and sentenced to **suffer rigorous imprisonment for three years** each and to **pay a fine of Rs.25,000/- (Rs. Twenty five thousand) each** and in default of payment of fine, to undergo **rigorous** imprisonment for six months.
- 4 All the accused are hereby also convicted for the offence punishable under Section **302** read with Section **149** of the **Indian Penal Code** vide Section **235(2)** of the Criminal Procedure Code, and sentenced to **suffer life imprisonment** each and to **pay a fine of Rs.50,000/- (Rs.Fifty thousand) each** and in default of payment of fine, to undergo **rigorous** imprisonment for one year.
- 5 Out of the amount of fine, **Rs.300,000/-** (Rupees Three lakh only) be paid to the wife of deceased namely Meera Shankar Dorle after its realization, as a **compensation**, after appeal period is over.



- 6 All the accused persons are entitled for set off under Section 428 of Cr.P.C. for the period which they had already under gone in the jail.
- 7 Muddemal property described in Muddemal Receipt Exh.02, being worthless, be destroyed, after the period of appeal is over in accordance with law, except mobiles.
- 8 All the mobiles described in Muddemal Receipt at Exh.02, be given to the concern persons, if not given on suprutnama, after the period of appeal is over and after due verification.
- 9 The substantive sentence of all accused persons shall run concurrently.
- 10 The copy of judgment be given to all the accused, free of costs.
- 11 A copy of this judgment, be sent to the District Magistrate, Hingoli for information and necessary action.

Judgment is dictated and pronounced in the open Court.

Dated: 10/01/2025

**[Smt.S.N.Mane-Gadekar]**  
Additional Sessions Judge-2,  
Hingoli

**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment/Order is same word for word as per original Judgment/Order.

Name of Steno	:- Azheruddin Siddiqui Stenographer (Grade-I)
Court Name	:- Smt. S.N. Mane-Gadekar Addl. Sessions Judge-2, Hingoli
Date of Order	:- 10.01.2025
Order signed by the Presiding Officer	:- 10.01.2025
Order Uploaded on	:- 13.01.2025