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ITEM NO.101 PH COURT NO. 10 SECTION IIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1071/1999

RAJU TRAMBAK MAGARE & ORS. Appellants

Versus

STATE OF MAHARASHTRA Respondent

(WITH appln. for bail and Office Report)

WITH CrI.Appeal No.1072/1999 ( With Office Report)

Date. 07.12.2000 This/These Petition(s) was/were called on  
for hearing today.

CORAM:

HON'BLE MR. JUSTICE M.B SHAH  
HON'BLE MRS.JUSTICE RUMA PAL

For the Appellant(s)

Mr.Sushi Kumar, Sr.Adv.,  
Mr.R.Sundaravardhan, Sr.Adv.,  
Mr.S.M. Jadhav, Adv.

Mr.Uday Umesh Lalit, Adv.,  
Ms.Aparajit Singh, Adv.

For the Respondent(s)

Mr.I.G. Shah, Sr.Adv.,  
Mr.V.B. Joshi, Adv.,  
Mr.S.S. Shinde, Adv.,  
Mr.S.V. Deshpande, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Heard the learned senior counsel for the parties  
exhaustively. Partly dictated. For completing the order  
list on 12.12.2000 at 3.30 P.M.

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(Vijay Kumar Sharma)  
Court Master

(S. Malkani)  
Court Master

.PA

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for hearing today.

CORAM:

HON'BLE MR.JUSTICE M.B. SHAH  
HON'BLE MRS.JUSTICE RUMA PAL

For the Appellant(s)

Mr.Sushil Kumar ,Sr.Adv. ,  
Mr.Mr.R. Sundravardhan ,Sr.Adv. ,  
Mr.S.M. Jadhav ,Adv.

Mr.Uday Umesh Lalit ,Adv. ,  
Ms.Aparajita Singh ,Adv.

For the Respondent(s)

Mr.V.B. Joshi ,Adv. ,  
Mr.Sambha Rao Shinde ,Adv. ,  
Mr.S.V. Deshpande ,Adv.

UPON hearing counsel the Court made the following  
O R D E R

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Crl.Appeal No.1072/1999 is allowed. Bail bond shall stand discharged. Crl.Appeal No.1071/1999 in so far as it relates to Appellant Nos. 1 and 2 is concerned is dismissed. In so far as Appellant Rahul Shankar Sonawane (Original Accused No.4) is concerned the appeal is allowed. Bail bond shall stand discharged.

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(Vijay Kumar Sharma)  
Court Master

(S. Malkani)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRL. APPELLATE JURISDICTION

CRL. APPEAL NO. 1071 OF 1999@@  
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RAJU TRAMBAK MAGARE & ORS.

Appellants

Versus

STATE OF MAHARASHTRA

Respondent

WITH@@

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CRL.APPEAL NO.1072/1999@@  
CCCCCCCCCCCCCCCCCCCC

LAXMAN KAUTIK SOYANKE

Appellant

Versus

STATE OF MAHARASHTRA

Respondent

O R D E R@@  
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.....L.....I.....T.....T.....T.....T.....J.....  
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In Sessions Case No.89/1986 the Addl.Sessions Judge, Jalgaon convicted the appellants-accused under Section 302 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- each and in default in the payment of fine to suffer further rigorous imprisonment for one year. Against the said judgment and order the appellants preferred Criminal Appeal No.94/1994 in the High Court of Judicature of Bombay which was dismissed by the judgment and order dated 3rd,4th,5th, and 10th August, 1998. That judgment and order is challenged by the accused by filing these appeals. Original Accused Nos. 2,3, and 4 have filed Criminal Appeal No.1071/1999 and accused no.1 has filed Criminal Appeal No.1072/1999.

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It is the prosecution story that information was received at Police Station Bazar Peth, Bhusaval that one person by name Rashid @ Bhurya son of Babu Tadvi was brought to the hospital and he was dead. As per the prosecution version the incident took place on 4.2.1986 at about 7.00 p.m. because accused no.1 Laxman Kautik Soyanka started abusing the persons of the Muslim community in general. The deceased Rashid asked accused no.1 Laxman as to why he was abusing the Muslim community in general. Hence the accused no.1 got enraged. He and accused no.4 Rahul Shankar Sonawane caught hold of the deceased Rashid and dragged him towards the house of one Raheman Murgiwala. When they took deceased Rashid near the house of Raheman Murgiwala accused Nos.1 and 4 were still holding the deceased and accused no.1 asked the other persons who were present there to assault the deceased. Thereafter, accused no.2 Raju Trambak Magare armed with a knife, dealt blow on the person of Rashid causing him bleeding injury. Soon thereafter accused no.3 Ravindra Parashram Kamble who was armed with gupti gave the blows by gupti thereby causing@@

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injury to Rashid. Having received injuries Rashid fell down on the ground and it is alleged that the accused no.7 Sanjay Trambak Magare who was having steel rod gave several blows on the person of the deceased. Similarly, other persons also gave stick blows or blows by iron

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rods. As the people gathered there and intervened the accused persons then fled away.

On receipt of information at the police station PSI Waghare directed PSI Kadanor to go to the hospital and record the FIR. Accordingly, PSI Kadanor went to the hospital and recorded the information given by the father

of the deceased Babu Tadvi wherein he has stated that he was having five sons and at about 7.00 p.m. his son Rashid had gone out. Thereafter, immediately his other son Raju came running after some time and stated that 13 persons named therein have surrounded his brother Rashid and they were carrying weapons like knives. Hence he along with his wife and son Saleem Babu went running towards the mutton market and there he found his son Rashid was lying in front of the house of Laxman. They took him to the Municipal Hospital in a rickshaw. In the hospital Dr. Umap examined him and said that on account of injury Rashid had died at about 7.40 p.m..

It is the say of PW-10 Pandharinath R. Maghare who was attached to the police station Bazar Peth of Bhusaval that on 4.2.1986 when he was on duty he received the intimation in writing from Municipal Hospital Bhusaval that a dead body of Rashid was brought to the hospital and therefore he directed PSI Kadanor to visit the hospital and obtain complaint in writing from the father

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of Rashid and at the same time he received a telephonic message from the police constable Gokul Shankar that marpit is going on in Shivaji Nagar locality. Therefore,@@  
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he deputed PSI Gavali and the police staff to proceed to that place for bandobast. After some time accused No.2 Raju Trambak Magare, accused No.5 Vilas Trambak Magare and one Ganga Ram came to the police station in an injured condition. He referred them to the Municipal Hospital Bhusaval along with requisition. He has further stated that at about 9.45 p.m. the policeman of the cycle-squad produced before him accused NOs.1 to 12 who were arrested by him. On the next day i.e. 5.12.1986 he went to the hospital and drew inquest panchnama. Thereafter, he went to the scene of offence and prepared the panchnama for the same. During the course of panchnama he seized two cycles lying in front of the house of accused no.1 Laxman and one wooden cot lying in front of the house of Akbar. Subsequently, he recorded the statements of 14 witnesses. Thereafter he recorded the panchnama of the clothes of the deceased. On next day i.e.6.2.1986 he recorded the statement of some more witnesses. On 7.2.1986 he recovered mudammal articles@@  
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from the accused after preparing necessary panchnamas. After completing the investigation the accused were chargesheeted before the trial court and subsequently committed to the Sessions Court.

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By judgment and order dated 19.2.1994 the Adl.Sessions Judge, Jalgaon arrived at the conclusion that accused Nos. 1 to 4 were liable to be convicted and the remaining accused were entitled to get benefit of doubt. He further held that the accused were liable to be convicted on the ground that they were members of unlawful assembly consisting of 5 members and more and two of them were armed with deadly weapons like knife and gupti. He therefore convicted them for the offences punishable under section 302 read with section 149 of the I.P.C. and imposed sentence as stated above. In appeal High Court confirmed the conviction but set aside the conviction under section 148 or under section 149. The High Court held that the accused were liable to be convicted under section 302 read with section 34 of the Indian Penal Code.

Mr.Sushil Kumar, the learned senior counsel

appearing for accused Nos.2 & 3 submitted that at the initial stage the prosecution brought out the story of riots, but failed to bring any evidence on record for that purpose. Thereafter, suppressed the genesis of the entire story and examined few witnesses who have narrated only one part of the incident without disclosing how the incident took place and who caused the injuries to appellants-accused 2 and 3 as well as acquitted accused no.5 Vilas Trambak Magare and one deceased Gangaram. He

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has also submitted that prosecution has failed to prove the motive. It is his contention that the investigation carried out by the police was one sided as investigating officer has not examined the material witnesses on the date of incidence or on the next date i.e.on 5.2.1986 and therefore courts below materially erred in relying upon one sided improved version given by the prosecution witnesses PWs 4,6 and 8. He also pointed out that accused after receiving injuries went to the police station for lodging FIR. This also indicates that accused were not aggressors and that incident had not occurred in the manner as stated by the prosecution witnesses.

Mr.R.Sundravardan, the learned senior counsel appearing for accused NOs.1 and 4 submitted that considering the prosecution version as it is, there is no evidence on record for drawing inference that accused Nos. 1 and 4 shared any common intention for convicting them for the offence punishable under section 302 read with section 34 of IPC. He pointed out that incident took place as alleged by the prosecution witnesses on a trivial matter, namely, accused No.1 abusing the Muslim community in general and the deceased Rashid objected to the said utterances. Neither accused No.1 or 4 were armed with any weapon nor they were knowing that accused Nos.2 and 3 were armed with either knife or gupti.@@

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As against this Mr.I.G. Shah, the learned senior counsel appearing for the respondent submitted that the trial court as well as the High Court has considered the entire evidence led by the prosecution and after giving benefit of doubt to the rest of the 11 accused, only four persons to whom specific role is assigned and proved by the witnesses are convicted. It is his contention that the there is no manifest error committed by the High Court or the trial court in convicting the appellants and, therefore, the appeals should be dismissed.

For appreciating the contentions raised by the learned senior counsel for the parties, we would first refer to the evidence of PW-6 Enurbee who is the resident of the locality in which the incident had taken place. She has deposed that at about 7.00 to 7.30 p.m. when she was sitting at the house of her niece Sharifabi she heard the shouts from the side of the road. There she saw that accused no.1 Laxman and accused No.4 Rahul had caught hold of the deceased Rashid. It is her say that along with accused Nos.1 and 4 other accused were also present. At that time accused No.2 was having a knife and accused No.3 Ravindra was having gupti. Accused Laxman was@@

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abusing Muslim community and therefore Rashid asked that he should not abuse the community. She asked the accused Nos. 1 and 4 not to quarrel. Subsequently, accused nos.

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1 and 4 dragged Rashid deceased near the house of Raheman

Murgiwala and accused NO.1 shouted that Rashid should be beaten. Thereafter, accused No.2 Raju Trambak Magare gave a knife blow at the left side of the chest of Rashid and accused No.3 Rahul dealt with gupti blow near the wasit of Rashid. All the remaining accused thereafter started beating Rashid by sticks and/or steel rods. Her statement was recorded on 6.2.1986. In cross-examination she has stated that before the incident there was no quarrel between Rashid and accused No.1 and that she was not knowing the reason for the quarrel on that day. She has further stated that she was not present at the spot till the assailants ran away. The aforesaid prosecution story that accused nos. 1 and 4 caught hold of deceased Rashid is also stated by PW-4 Raheman. He has also stated that Raju gave a knife blow on the person of the deceased and accused Rahul dealt 2-3 gupti blows on the@@

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person of Rashid. After receiving injuries deceased fell down and thereafter other accused assaulted the deceased with sticks or steel rods. In his cross-examination he has specifically stated that he did not see deceased Rashid assaulting accused no.2 Raju by weapon like knife or gupti. He has also specifically stated that Rashid@@

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was assaulted in his presence at the distance of 5 to 6 feet from the electric lamp post near his house and was not knowing whether anything had taken place near the house of accused no.1 Laxman. In further

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cross-examination he has stated that he was not knowing the reason for the marpit and that he came out of the@@

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house after starting of quarrel. The other evidence led by the prosecution is that of one Mohd. Habib, PW-5, who is also resident of the same locality where the incident had taken place. He has also repeated the same version as stated by PW-6. In his cross-examination he has stated that he had not seen deceased Rashid assaulting anybody in exercise of his right of private defence. Nor he has seen any other person assaulting the said accused in order to save Rashid. It is his say that his statement was recorded by the police on the next day of incident. The High Court has not relied upon the evidence of PW-7 and therefore, we are not inclined to deal with it.

Considering the aforesaid evidence produced on record it is apparent that the incident took place all of a sudden because accused no.1 was abusing the Muslim community in general. That was objected to by the deceased Rashid. Consequently, Rashid was given blows by accused nos.2 and 3 as stated by the prosecution witnesses. Injury to the deceased by knife or gupti is probabalised by the medical evidence and in the post-mortem report it has been specifically mentioned that deceased was having as many as 4 stab wounds and 3 incised wounds. According to Dr.Sheshrao, PW-9, who

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conducted the post-mortem examination, injuries nos. 1, 3 and 4 were sufficient to cause the instant death. He has also stated that by describing some injury as stab injury and some as incised wound the type of weapons used for causing such injury cannot be distinguished between pointed cutting weapon or sharp weapon. This witness has also examined accused no.2 Raju and acquitted accused Vilas Trambak Magare and one Ganga Ram on the day of incident and he had found the following injuries on their person:-

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"..On examination of Raju, following injuries were found on his person :-

1) Oblique incised wound 1" x 1/4" x 1/4" on left clavuoulor region of chest middle part.

It was caused within 3 hours and was caused by sharp cutting instrument.

I accordingly issued the injury report. The contents there in are correct. It bears my signature and it is Ext.58@@  
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On the same day at about 8.50 p.m. I examined accused No.5 Vilas Trimbak Magare. He had brought with him the police requisite letter. On examination following injuries were found :-

1) Abrasion 1/2" x 1/4" x 1/4" on front of right leg.

2) Abrasion 1/4" x 1/4", of back of right middle finger 1/4" x 1/4" on back of right ring finger.

3) Abrasion 1/2" x 1/4" on back of left hand.

4) Abrasion 1/2" x 1/4" on back of left thigh.

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5) Contusion 2-1/2 x 2" on middle front of left forearm.

6) Abrasion transverse 4" x 1/2" on upper part of back, both sides in centre.

The injuries could have been caused by stone, steel rods and sticks. I accordingly issued the injury report. The contents therein are correct. It bears my signature. It is Ext.59.@@

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At 8.30 on the same day I examined Gangaram Fula Gavhane and found the following injuries on his person :-

1. Tenderness on left side of chest. 2. Lacerated wound 2" x 1/2" x 1/4" on left parital region of head....."

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He has also examined accused No.3 and issued certificate Ext.61 to the following effect:-

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"..He has been treated at this dispensary for the following:-

1. Caused abrasion on the left lower lip 1/4" x 3/4".

2. Abrasion on the left forearm lower part 3" x 1/4".

3. Abrasion on the left index finger 1st phalange posterital 1/2" x 1/4".

4. Abrasion on the left middle posteriorly 1st phalange posterital 3/4" x 1/2".

5. Abrasion on the left ring finger 1st phalange 1/2" x 1/4".

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The learned counsel for the accused submitted that considering injuries received by the accused 2,3, 12 5 and the deceased Gangaram during the course of incident and the fact that there is no mention by the prosecution witnesses with regard to the assault on the accused, would clearly reveal that there is total suppression of material facts and the genesis of the incident. It is, therefore, pointed out that the trial court as well as the High Court manifestly erred in reconstructing the prosecution story by relying upon improved version given by PW-6 and PW-8. It is also pointed out that after receiving injuries the accused had gone to the police station and lodged the FIR. In support of his contention, Shri Sushil Kumar, the learned senior counsel referred to the decision of this Court in the case of Lakshmi Singh & Ors. vs. State@@ CCCCCCCCCCCCCCCCCC CCCCC of Bihar, (1976) 4 SCC 394.@@ CCCCCCCC

Before referring to the aforesaid decision, we would state that as opined by the doctor the injuries received by the accused 2, 3 and 5 were minor injuries. Apart from being minor injuries it would be difficult to arrive at the conclusion that there is suppression on the part of the witnesses with regard to the injuries received by the accused. It is true that in the present case prosecution has not proved previous incident or enimity between accused No.1 and other persons of Muslim community. For the incident which had taken place on 4.2.1986 it is the say of the 13

prosecution witnesses that the incident started all of a sudden when accused no.1 abused the Muslim community in general and deceased Rashid objected to the said abuse. Further there is nothing on record to establish that PWs 5,6 and 8 are interested witnesses. On the contrary, it is proved that they are residents of the same locality and they came out after hearing the hubb of quarrel between accused no.1 and Rashid. In Lakshmi@@ CCCCCC

Singh's case (supra) after considering the various@@ CCCCCC decisions this Court observed that the omission on the@@

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part of the prosecution to explain injuries on the@@  
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persons of the accused assumes greater importance where@@  
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the evidence consists of interested or enimical@@  
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witnesses or where the defence gives a version which@@  
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competes in probability with that of the prosecution@@  
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one. It is to be stated that in the present case there@@  
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is nothing on record to arrive at the conclusion that  
the prosecution witnesses are in any way interested or  
enimical with the accused. Nor there is any defence  
version which competes in probability with that of the  
prosecution. As such almost all accused have denied  
the prosecution version and have not stated anything  
else except that the accused nos. 1 and 4 submitted  
that they were not present at the scene of occurrence.

In the case of Lakshmi Singh (Supra) the Court@@  
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has found that accused Dasrath Singh had received  
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serious injuries during the incident which have not  
been explained by the prosecution. In that set of  
circumstances the court held that it would be difficult  
to rely upon the evidence of prosecution witnesses when  
some of these witnesses have lied by stating that they  
did not see any injury on the person of accused. The  
Court added and observed thus "We must hasten to add@@

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that as held by this Court in State of Gujarat vs. Bai@@  
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Fatima (1975 (2) SCC 7) there may be cases where the@@  
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non-explanation of the injuries by the prosecution may@@  
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not affect the prosecution case. This principle would@@  
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obviously apply to cases where the injuries sustained@@  
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by the accused are minor and superficial or where the@@  
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evidence is so clear and cogent, so independent and@@  
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disinterested, so probable, consistent and@@  
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creditworthy, that it far outweighs the effect of the@@  
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omission on the part of the prosecution to explain the@@  
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injuries."@@  
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In our view same would be the position in the  
present case and omission, if any, on the part of  
disinterested witnesses far outweighs the effect of  
non-explanation of injuries to the accused.

Further it has come in evidence of PSI that  
after receiving information from the Municipal Hospital  
that the dead body of Rashid was received, he received  
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further information that still marpit was going on at@@  
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the place of incident. For that purpose he sent the  
other police PSI and police constables at the scene of  
the occurnece. Now in that set circumstances if  
something had happened after the deceased was taken to  
the hospital it would be difficult to hold that  
prosecution have suppressed the genesis of the

incidence. The immediate genesis of the incident was solely because accused No.1 abused Muslim community in general.

The learned senior counsel contended that the trial court and the High Court have re-constructed the prosecution version and in support of this contention he has referred to the decision in Ugar Ahir & Ors.@@  
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vs. State of Bihar (AIR 1965 SC 277) wherein this@@  
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Court observed :-

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"(6) The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis,  
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the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained? To reverse the metaphor, the courts removed the grain and accepted the chaff and convicted the appellants..."

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As stated above, in the present case the facts are entirely different. The courts below have not disbelieved the entire prosecution version. It is true that with regard to the assault by the acquitted accused, court has given benefit of doubt, but with regard to the assault by accused Nos. 2 and 3, the prosecution story is consistent and fully corroborated by the medical evidence and there is no question of reconstructing the entire prosecution version. It would be difficult to hold that the courts below removed the grain and accepted the chaff and convicted the appellants. On the contrary the court has cleared the grains by removing the chaff.

In this view of the matter, it would be difficult to hold that the courts committed error in convicting accused Nos.2 and 3. The role assigned to them by the prosecution witnesses is specific, clear, consistent and cogent one.

The next question would be as to whether accused Nos. 1 and 4 would be liable to be convicted.

It has been pointed out that accused Nos. 1 and 4 were unarmed. It is also the prosecution version that they have not taken any part in assaulting the deceased. As alleged accused Nos.1 and 4 dragged the deceased at some distance from front of the house of Sharifabi to the house of Raheman Murgiwala. It is also admitted that the incident took place all of a sudden. There is nothing on record from which it can be inferred that A-1 or A-4 were knowing that A-2 and A-3 were armed with deadly weapons. There is nothing on record that when A-2 and A-3 came at the scene of offence and that they have accompanied A-1 and A-4. It is true that the prosecution witnesses have alleged that accused No.1 shouted that Rashid should be beaten. But from the alleged word "beat" used by accused No.1, it is not possible to arrive at the conclusion that accused No.1 shared any common intention with A-2 and A-3 of murdering Rashid. As stated above, it is the prosecution version that the incident took place all of a sudden and there is no other circumstance from which it can be inferred that accused Nos.1 and 4 shared any common intention with accused Nos. 2 and 3 or that the assault was by A-2 and A-3 in furtherance of common intention of all the accused. It appears that the High Court has not considered this aspect before convicting accused Nos.1 and 4.

12.12.2000.@@  
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Today we have heard the learned counsel for A-2 and A-3 with regard to the offence committed by them. Considering the facts found by us it is apparent that prosecution story with regard to assault by accused Nos.2 and 3 by knife and gupti blows is clear@@  
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consistent and cogent. They were armed with deadly weapons and gave fatal blows to the deceased. In that set of circumstances, it would be apparent that there was the common intention on their part. Hence accused No.2 and 3 are rightly convicted by the High Court under section 302 read with section 34 of IPC.

In the result, Criminal Appeal No.1072/1999 filed by accused No.1 (Laxman Kautik Soyanke) is allowed and he is acquitted. The bail bonds shall stand discharged. Criminal Appeal No.1071/1999 in so far as it relates to A-4 (Rahul Shankar Sonawane) is concerned is allowed, he is acquitted. The bail bond shall stand discharged. In so far as the appeal relates to A-2 (Raju Trambak Magare) and A-3 (Ravindra Parashram Kamble) is concerned, it is dismissed.

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.....J  
(M.B. Shah)

.....J  
(Ruma Pal)

New Delhi,  
December 12,2000