

STATE OF MAHARASHTRA
v.
TULSHIRAM BHANUDAS KAMBLE AND ORS.

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AUGUST 21, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Penal Code, 1860—ss.302/149, 452/149—Criminal trespass by 15 accused—In the house of deceased—With deadly weapons—Causing death of two and injuries to three persons—Five eyewitnesses including injured eye-witnesses—Trial Court acquitting four of the accused while convicting others u/ss.302/149, 324/149 and 452/149—High Court altering the conviction from 452/149 to u/s 452/34, whereas acquitting all the accused of rest of the charges—On appeal, held: Interference by High Court with conviction u/s 302/149 not justified—High Court having accepted the case of criminal trespass, not justified in passing acquittal u/s 302/149—The conviction and sentence of the accused u/s 452/149 by Trial Court upheld—However, in absence of State appeal before High Court seeking enhancement of their sentence, the same cannot be enhanced.

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Evidence—Injured eye-witness—Testimony—Evidentiary value of—Held: Although in accepting such witness, caution is required to be maintained—But the same cannot be discarded only because they were inimical to the other party.

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Maxim—'Falsus in uno falsus in omnibus'—Applicability of.

Criminal Law—Common object—Appreciation of—Held: Once formation of common object amongst the accused is proved, it is not necessary for the court to consider the specific overt act played by each of them.

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Appeal—Appeal against acquittal—Scope of—Held: When two views are possible, Supreme Court cannot interfere with such case—But when there exist substantial and compelling reasons and interference is just and proper, Supreme Court cannot refuse to interfere—Constitution of India, 1950—Article 136.

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Appellants-accused alongwith others (in all 15 persons) were tried for

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A having caused death of two persons and caused injuries to others. Prosecution case was that the appellants-accused alongwith others came to the house of one of the deceased armed with deadly weapons. There, they caused death of two persons and caused injuries to three of the eye-witnesses namely PWs 7,8 and 11. Other eye-witnesses to the incident were PWs 12 and 13. All the accused were charge-sheeted u/ss. 147, 148, 149, 302, 30, 323, 32, 188 and 452 IPC.

Trial Court acquitted Accused Nos. 3,4, 12 and 13 of all the charges. All the accused were acquitted of charges u/s 307 r/w 149 IPC. Accused Nos. 1, 2, 6, 10 and 11 were convicted of the charges u/s 302 r/w s.149. Accused Nos. 1, 10 and 14 were further convicted for charge u/s 324 r/w s. 149 IPC and Accused No. 1,2 and 5 to 11, 14 and 15 were convicted for charge u/s 452 r/w s.149 IPC.

Accused Nos. 1, 2 and 6 to 14 filed an appeal. High Court converted the conviction of Accused Nos. 1, 7, 10 and 14 from that under s. 452 r/w s.149 to that murder s.452 r/w s.34. The accused were acquitted of rest of the charges. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1. The High Court has not assigned cogent or sufficient reasons for disagreeing with the findings of the trial court. The judgment of the High Court, is based on surmises and conjectures. This is not a case where the High Court should have interfered with the conviction by the trial court under Section 302 IPC. Thus, by reason of the judgment of the High Court, a great miscarriage of justice has taken place. It is well settled that when the reasoning of the High Court is perverse, the Supreme Court can set aside the judgment of the High Court of acquittal and restore the judgment of conviction and sentence passed by the trial court. [Para 40] [199-D, E]

State of U.P. v. Nawab Singh, [2005] 9 SCC 84, relied on.

1.2. The facts of the case lead to the inevitable conclusion that appellants had come with arms and deadly weapons to the house of the complainant party and with the common intention and common object to kill the complainant party. Each one of the appellants herein was armed with deadly weapons. They came together and death was caused to the deceased. They entered into the house. Two of the appellants had inflicted blows with swords. Common object on the part of each of the appellants stands proved. Once formation of common

object amongst the accused is proved, it is not necessary for the court to consider specific overt act played by each of them. A

[Paras 43 and 53] [200-A; 202-H; 203-A]

1.3. High Court has rejected the evidence of the four eye witnesses, three of whom were injured, on flimsy grounds. The evidence of all the four eye witnesses are broadly consistent. They have mentioned that the accused came to house of the complainant with arms and deadly weapons and they attacked the deceased and other persons including the injured witnesses. B

[Paras 35 and 38] [198-F; 199-B]

1.4. The witnesses examined on behalf of the prosecution, apart from being eye-witnesses, were injured witnesses. Their presence at the place of occurrence, therefore, cannot be doubted. Only because they were inimical to the respondents, the same by itself cannot be a ground to discard their evidences. Although in accepting the same, some amount of caution is required to be maintained. Enmity, it is well known that enmity is a double edged weapon. It can be a ground for false implication, but it can also be a ground for correct implication. C D
[Paras 29 and 33] [196-A, B; 198-B]

Ramashish Rai v. Jagdish Singh, [2005] 10 SCC 498; *State of U.P. v. Kishan Chand and Ors.*, [2004] 7 SCC 629 and *Baitullah and Anr. v. State of U.P.*, [1998] 1 SCC 509, relied on. E

1.5. Though it is true that it is not necessary to invariably accept the version of the injured witnesses but it is well settled that greater weight has to be given to the testimony of the injured witnesses. There is no reason to disbelieve them. [Para 39] [199-C]

Nain Singh and Anr. v. State of U.P., [1991] 2 SCC 432; *State of Punjab v. Gurmit Singh and Ors.*, [1996] 2 SCC 384 and *Ramappa Halappa Pujar and Ors. v. State of Karnataka*, (2007) 6 SCALE 206, relied on. F

1.6. In India the doctrine of falsus in uno falsus in omnibus (false in one false in all) does not apply. The court can partly reject and partly accept the evidence of a witness, and it is not correct to say that merely because some part of the evidence is found to be false the entire evidence has to be rejected. If the Court finds that out of several co-accused, one or more are falsely implicated, that does not necessarily mean that everyone was falsely implicated. [Para 34] [198-C, D, E] G

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A *Krishna Mochi and Ors. v. State of Bihar*, [2002] 6 SCC 81, relied on.

1.7. Once the Court has accepted that the appellants have committed the offence under Section 452 IPC, it follows that High Court has accepted the prosecution version that the accused along with others are the aggressors and the incident has happened in the courtyard of one of the deceased as alleged by the prosecution. Thus the High Court has accepted the place of the incident, therefore, it is surprising that the High Court has held these accused not guilty under Section 302 IPC. [Para 26] [195-C, D]

1.8. The conviction of the five accused who had been convicted by the trial court under Section 302 IPC being accused No.2, 5, 10 and 11 is restored. These accused are found guilty under Section 302 of the Indian Penal Code and are sentenced to life imprisonment. [Para 45] [200-C, D]

1.9. Accused Nos. 7, 9, 14 and 15 had been convicted by the trial court under Sections 452/149 IPC. The State Government had not filed any appeal in the High Court for enhancement of the sentence awarded to these accused by the trial court and hence this court cannot enhance the sentence. However, the sentence awarded by the High Court is set aside and the sentence of three years' R.I. awarded to them by the trial court is restored.

[Para 46, 47, 48 and 49] [200-D-H; 201-A, E]

2. The scope of an appeal against acquittal is limited. It is trite that only when two views are possible, this Court cannot interfere with a judgment of acquittal; but that would not mean that despite existence of substantial and compelling reasons, the Court will refuse to interfere in a case where it would be just and proper to do so. It is a fit case, where this Court should exercise its jurisdiction under Article 136 of the Constitution. [Paras 50 and 52]

Chandrappa and Ors. v. State of Karnataka, (2007) 3 SCALE 90; *Ramappa Halappa Pujar and Ors. v. State of Karnataka*, (2007) 6 SCALE 2006 and *Mohinder Singh and Ors. v. State of Punjab*, [2006] 10 SCC 418, relied on.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 85-87 of 2000.

From the final Judgment and Order dated 5.4.1999 of the High Court of Judicature at Bombay in Criminal Appeal Nos. 32, 71 and 83 of 1996.

H Sushil Karanjkar and Ravindra Keshavrao Adsure for the Appellant.

Uday U. Lalit, Sudhanshu Chaudhary, Gaurav Agarwal and Prashant Kumar for the Respondents. A

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. These appeals have been filed against the impugned judgment dated 5.4.1999 of the Bombay High Court in Criminal Appeal Nos. 32, 71 and 83 of 1996. B

2. Heard learned counsel for the parties and perused the record.

3. There were initially fifteen accused in the case which was tried by the Additional Sessions Judge, Pandharpur, District Sholapur, who were charge-sheeted under Sections 147, 148, 149, 302, 307, 323, 324, 188 and 452 of the Indian Penal Code. The trial court convicted accused no.1 Tulshiram Bhanudas Kambale, accused no.2 Ramchandra Bhanudas Kambale, accused no.5 Ganesh Kisan Shirsat @ Paparkar, accused no.6 Ashok Sahebrao Waghmare, accused no.8 Dnyaneshwar Shankar Naikwadi, accused no.10 Anil Dhondiram Mane and accused no.11 Sunil Dhondiram Mane under Section 302 read with Section 149 of the Indian Penal Code and sentenced them to life imprisonment. He also convicted accused no.1, accused no.10 and accused no.14 under Section 324 read with Section 149 of the Indian Penal Code and sentenced them to two years rigorous imprisonment. He further sentenced accused no.1, accused no.2, accused no.5 to 11, accused no.14 and 15 under Section 452 read with Section 149 of the Indian Penal Code and sentenced them to three years rigorous imprisonment. He acquitted accused no.1 to 15 of the offence punishable under Section 307 read with Section 149 of the Indian Penal Code hence Section 188 of the Indian Penal Code. He gave the benefit of doubt to accused nos.7, 9, 14 and 15. He acquitted accused nos.3, 4, 12 and 13 of all the punishable offences for which they were charged. C
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4. The State did not file any appeal against the accused who have been acquitted by the trial court and hence the acquittal of those accused has become final.

5. However, nine of the accused, being original accused no.1, 2, 6 to 14 being Tulsiram Bhanudas Kamble, Ramchandra Bhanudas Kamble, Ashok Sahebrao Waghmare, Dagadu Shankar Naikwadi, Dnyaneshwar Shankar Naikwadi, Santosh Dashrath Kothalkar, Anil Dhondiram Mane, Sunil Dhondiram Mane and Rajendra Dashrath Kothalkar filed an appeal before the Bombay High Court. The High Court by the impugned judgment dated 5.4.1999 acquitted G
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A five of the appellants being Ramchandra Bhanudas Kamble, Ashok Sahebrao Waghmare, Dnyaneshwar Shankar Naikwadi, Santosh Dashrath Kothalkar and Sunil Dhondiram Mane on all counts and ordered them to be released.

B 6. The High Court also acquitted Tulsiram Bhanudas Kamble and Anil Dhondiram Mane for the offence under Section 302 read with Section 149 of the Indian Penal Code. It also acquitted the accused Tulsiram Bhanudas Kamble, Anil Dhondiram Mane and Rajendra Dashrath Kothalkar for the offence under Section 324 read with 149 of the Indian Penal Code.

C 7. The High Court converted the conviction of accused Tulsiram Bhanudas Kamble, Dagadu Shankar Naikwadi, Anil Dhondiram Mane and Rajendra Dashrath Kothalkar from Section 452 read with Section 149 of the Indian Penal Code and altered it to Section 452 read with Section 34 of the Indian Penal Code. It reduced the sentence to the period already undergone. The Court further set aside the conviction of Ganesh Kisan Shirsat @ Paparkar on both the counts namely Section 302 read with Section 149 and Section 452 read with Section 149 of the Indian Penal Code. It further allowed the appeal and set aside the conviction of Dhanaji Dashrath Kothalkar under Section 452 read with Section 149 of the Indian Penal Code.

8. The appeal in this Court has been filed by the State of Maharashtra and the following persons have been made the respondents :

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1. Tulsiram Bhanudas Kamble
Govindpura,
Tal. Pandharpur,
Dist. Solapur.

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 2. Ramchandra Bhanudas Kamble
Govindpura,
Tal. Pandharpur,
Dist. Solapur.

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 3. Ashok Sahebrao Waghmare
R/o Vagholi,
Tal. Mohol,
Dist. Solapur.

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 4. Dagadu Shankar Naikwadi

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| | Tal. Mangalwedha,
Dist. Solapur. | A |
| 5. | Dnyaneshwar Shankar Naikwadi
Tal. Mangalwedha,
Dist. Solapur. | B |
| 6. | Santosh Dashrath Kothalkar
R/o Haridas Ves,
Tal. Pandharpur,
Dist. Solapur. | C |
| 7. | Anil Dhondiram Mane
R/o Govindpura,
Tal. Pandharpur,
Dist. Solapur. | D |
| 8. | Sunil Dhondiram Mane
R/o Govindpura,
Tal. Pandharpur,
Dist. Solapur. | E |
| 9. | Rajendra Dashrath Kotalkar
R/o Kolegalli,
Tal. Pandharpur,
Dist. Solapur. | F |
| 10. | Ganesh Kisan Shirsat
Tal. Mohol,
Dist. Solapur. | F |
| 11. | Dhanaji Dashrath Kotalkar
R/o Kolegalli,
Tal. Pandharpur,
Dist. Solapur. | G |

9. Seven of these respondents before us had been convicted under Section 302 read with Sections 34 and 149 of the Indian Penal Code. Two of these seven persons convicted under Section 302 have died and now the remaining accused convicted by the trial court under Section 302 of the Indian

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A Penal Code are accused no.2 Ramchandra Bhanudas Kamble, accused no.5 Ganesh Kisan Shrisat @ Paparkar, accused no.6 Ashok Sahebrao Waghmare, accused no.10 Anil Dhondiram Mane and accused no.11 Sunil Dhondiram Mane.

B 10. It may be noted that the trial court acquitted accused no.3 Walchand Hiralal Shah, accused no.4 Manikchand @ Babushah Shah, accused no.12 Dalu Jagannath Kambale and accused no.13 Laxman Kisan Shirsat @ Paparkar on all counts. Since no appeal was filed by the State Government against these accused hence their acquittal has become final.

C 11. The remaining eleven accused who have been convicted by the trial court, have filed Criminal Appeals in the High Court. In Criminal Appeal No.32 of 1996 there were nine appellants while in Criminal Appeal Nos.71 of 1996 and 83 of 1996 there were only one appellant in each of these cases.

D 12. The High Court acquitted appellants Ramchandra Bhanudas Kamble, Ashok Sahebrao Waghmare, Dnyaneshwar Shankar Naikwadi, Ganesh Kisan Shrisat @ Paparkar, Dhanaji Dashrath Kothalkar, Santosh Dashrath Kothalkar and Sunil Dhondiram Mane on all counts. Thus seven more of the accused were acquitted by the High Court, and the conviction of those accused convicted under Section 452 read with Section 32 and 149 of the Indian Penal Code was converted into conviction under Section 452 read with Section 34 of the Indian Penal Code.

E 13. In this appeal we are concerned with those convicted by the trial court under Section 302 read with other provisions of the Indian Penal Code as well as those not convicted under Section 302. Out of the seven convicted under Section 302 by the trial court, two have died as already stated above. F Hence, we are concerned with the cases of the other accused. We have carefully considered the evidence on record and the judgments of the High Court and trial court.

G 14. The prosecution case is that the appellants belong to the Koli community and are inter-related. Between them on the one hand and the informant Rajabhau Kamble (PW-7), Dattatraya Kamble (PW-8), Bhaskar Bhinge (PW-11), his brother Mahesh Bhinge (PW-12), Laxman Kamble (the deceased) and Kailas Bhinge (the deceased), there was long standing enmity of an acute nature. Its details have been furnished in paragraph 9 of the statement of the informant Rajabhau Kamble.

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15. It is alleged that on 19.2.1995 at about 5 p.m. the deceased persons **A**
Bhaskar Bhinge and Dattatraya Kamble along with some others were watching
a film on Television inside the house of the deceased Laxman, in Pandharpur
Taluka within the limits of District Sholapur. The informant Rajabhau Kamble
and Pandurang Bhinge also came there. After some time Panduran Bhinge left.
At about 7.30 p.m. the film got over. Thereafter the deceased persons, Dattatraya **B**
Kamble and Rajabhau Kamble came and sat in the courtyard of Laxman.
Bhaskar Bhinge remained inside and was listening to the news. At that time
in the jeep of acquitted accused Laxman Paparkar, the appellants along with
acquitted accused Laxman Paparkar, Walchand Shah, Manikchand @ Babusha
Shah and Balu Kamble came. They were armed with weapons Sattur, axe and **C**
sword. They entered inside the courtyard of Laxman. Appellants Tulsiram
Kamble and Dagadu started inflicting blows with swords on Dattatraya's
person. Appellants Rajendra and Anil Mane assaulted Dattatraya with Sattur.
Kailas Binge, the deceased at that time was sitting by the side of water tank
which was in the courtyard. Appellants Ramchandra with an axe, Santosh,
Dhananjay alias Dahanaji acquitted accused Laxman, Walchand and Babusha **D**
with swords started assaulting him. Appellant Tulsiram also is said to have
joined them. Bhaskar Binge (PW-11) in the meantime came out, caught hold
of Babusha Shah, and asked him as to why he was assaulting Kailas,
whereupon he inflicted a blow from the blunt side of sword on his right thigh.
Thereafter Babusha Shah and Tulsiram lifted Bhaskar Binge and took him to
the gate of the house and made him stand there. Appellants Dagadu with **E**
sword, Raja alias Rajendra Kothalkar, Anil Mane, Sunil Mane, Ashok Waghmare
and Ganesh Paparkar assaulted the deceased Laxman with Sattur on various
parts of his body like head, face and hand. In the meantime Bhaskar Bhinge's
son Mahesh Bhinge (PW-12) came and Walchand Shah inflicted a sword blow
on this person. After assaulting Laxman, Kailas, Dattatraya, Bhaskar Bhinge
and Mahesh Bhinge, the appellants and the acquitted accused are alleged to **F**
have run away.

16. This incident was seen by the victim, Rajabhau Kamble and Suresh
Sobaji (PW-13) in electric light. It is said that Kailas Bhinge succumbed to the
injuries on the spot. **G**

17. Immediately after the appellants and the acquitted accused persons
had run away, Rajabhau Kamble took Laxman Kamble and Dattatraya Kamble
to the Municipal Dispensary, Pandharpur. Bhaskar Bhinge and Mahesh Bhinge
also came there. **H**

A 18. The evidence of Dr. Anil Joshi (PW-9) of Municipal Dispensary, Pandharpur shows that at 7.45 p.m. he examined Laxman Kamble and found him to be dead. At 8 p.m., 8.45p.m. and 9.15 p.m. the same day, Dr. Joshi examined Dattatraya Kamble, Bhaskar Bhinge and Mahesh Bhinge, respectively.

B 19. On the person of Dattatraya Kamble, Dr. Joshi found two incised wounds and one contused lacerated wound. Two of the incised wounds were situated on the head and the remaining two on fingers of the right hand. The contused lacerated wound was situated on the middle finger of the right hand. Since the condition of Dattatraya was precarious, at 8.30 p.m. he was transferred to Civil Hospital, Sholapur.

C 20. On the person of Bhaskar Bhinge, Dr. Joshi found a contusion 6 x 4 cm. on right thigh interior aspect and a transverse abrasion 6 cm. over right thumb.

D 21. On the person of Mahesh Bhinge, Dr. Joshi found 2 lacerated wounds. One out of them of the dimensions of 2 cm. x 1 cm. was situated on left hand little finger and the other which was 5 cm. muscle deep was located on the left hand terminal finger.

E 22. On 20.2.1995 Dr. Joshi (PW-9) performed the autopsy on the corpse of Laxman Kamble and found on the same 16 ante-mortem injuries, their break-up being thus : 15 incised wounds and 1 contused abrasion. Nine of the incised wounds were situated on the head and face and were accompanied by extensive internal damage. According to Dr. Joshi the injuries of the deceased were sufficient in the ordinary course of nature to cause death and five of them namely injuries no.1, 2, 3, 4 and 12 were fatal in nature.

F 23. The evidence of the informant Rajabhau Kamble (PW-7) shows that from Municipal Hospital, Pandharpur the police took him to Pandharpur Town Police Station where his FIR was lodged at 8.40 p.m., the same day. It was recorded by A.P.I. Vithal Jadhav (PW-18), who on its basis registered a case under Sections 147, 148, 302, 307, 452, 323, 324 and 188 I.P.C. vide C.R. No.23 of 1995.

G 24. It is pertinent to point out that the same day between 11 p.m. to 11.50 p.m. Sharana Basappa Tarapore (DW-3) an Executive Magistrate, recorded the statement of Dattatraya Kamble. The said statement is Exhibit-130 and in it Dattatraya stated that the same day between 7 to 7.30 p.m. while he was sitting with Kailas Bhinge and Laxman Kamble, appellant Tulsiram Kamble,

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Anil Mane, Dagadu Naikwadi, Raja Kothalkar and two other unknown persons came and started assaulting him. Tulsiram and Dagadu assaulted him with swords and the other persons with axe. All were shouting that "he be killed".

25. It may be seen that there are as many as five eye witnesses to the incident namely PW-7 Rajabhau Kamble (first informant), PW-8 Dattatraya Kamble, PW-11 Bhaskar Bhinge, PW-12 Mahesh Bhinge and PW-13 Suresh Sobaji. However, there still leaves four eye witnesses namely PW-7 Rajabhau Kamble (first informant), PW-8 Dattatraya Kamble, PW-11 Bhaskar Bhinge, PW-12 Mahesh Bhinge. In our opinion there was no good reason to disbelieve these four eye witnesses. Out of these four, three are injured witnesses.

26. It is surprising that while the High Court has found these accused to be guilty under Section 452 of the Indian Penal Code, it has found them to be not guilty under Section 302 of the Indian Penal Code. Once the Court has accepted that the appellants have committed the offence under Section 452 of the Indian Penal Code it follows that High Court has accepted the prosecution version that the accused along with others are the aggressors and the incident has happened in the courtyard of Laxman as alleged by the prosecution. Thus it is accepted by the High Court that the accused came with deadly weapons to the house of Laxman and committed criminal trespass in the said house. Thus the High Court has accepted the place of the incident. We, therefore, find it surprising that the High Court has held these accused not guilty under Section 302 of the Indian Penal Code.

27. It is evident from the record that these accused came with deadly weapons to the house of Laxman in a jeep. There is also no dispute that two persons died in the incident and three of the eye witnesses were injured witnesses, one of them Dattatraya Kamble having very serious injuries being incised wounds in his head and contused lacerated wound on his fingers. We, therefore, fail to understand how the High Court acquitted the accused under Section 302 of the Indian Penal Code.

28. The reasoning given in paragraph 14 of the High Court judgment to discard the evidence of these four eye witnesses are :

- (a) They are inimical to the appellants
- (b) They have falsely implicated Laxman Shirast @ Paparkar; and
- (c) They have falsely stated that Suresh Sobaji (PW-13) witnessed the incident.

A 29. Each of the reasoning assigned by the High Court, in our opinion, is contrary to the well-settled legal principle. The witnesses examined on behalf of the prosecution, apart from being eye-witnesses, were injured witnesses. Their presence at the place of occurrence, therefore, cannot be doubted. Only because they were inimical to the respondents, the same by itself cannot be a ground to discard their evidences. Although in accepting B the same, some amount of caution is required to be maintained.

30. In *Ramashish Rai v. Jagdish Singh*, [2005] 10 SCC 498, this Court held:

C “7. We are clearly of the view that the findings of the High Court were erroneous, resulting in grave miscarriage of justice. The eyewitnesses – PWs 1, 2, 3, 5, 8 and 10 consistently supported the case of the prosecution throughout. They were subjected to lengthy cross-examination but nothing could be elicited from their mouth so as to discard the creditworthiness of their statements. The ocular evidence D of the eyewitnesses was corroborated in material particulars by the medical evidence. In our view, therefore, the acquittal recorded by the High Court on the aforesaid reasoning is perverse. The High Court discarded the eyewitness account, branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If E otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to F examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court has rejected the otherwise creditworthy testimony of eyewitness account merely on the ground that there was enmity between the prosecution party and the accused party.”

G 31. In *State of U.P. v. Kishan Chand and Ors.*, [2004] 7 SCC 629, this Court observed :

H “9. The submission of the counsel for the accused that the testimony of PWs cannot be acted upon as they are interested witnesses is to be noted only to be rejected. By now, it is well-settled principle of law that animosity is a double-edged sword. It cuts both sides. It could

be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the given facts of the present case, they are but natural witnesses. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished.”

32. In *Baitullah and Anr. v. State of U.P.*, [1998] 1 SCC 509, this Court noticed *Arjun vs. State of Rajasthan* [1994] Supp. 3 SCC 189, wherein it was observed :

“9. Learned counsel for the appellants first contended that there was long-standing enmity between the complainant and some of the witnesses on one hand and the appellants on the other and some criminal proceedings between them were going on when the alleged incident took place and hence it was due to this enmity that the appellants were falsely implicated. It was also submitted that Bahori, PW1 and Sat Pal Singh, PW7 are also relatives of the deceased and other prosecution witnesses are also close associates and, therefore, there is possibility of false implication of the appellants in the crime in question. It is an admitted fact that the complainant and the appellants were on inimical terms and some criminal proceedings were ending between them even at the time when the occurrence took place. It is equally true that Bahori, PW1 is the brother of the deceased and informant Sat Pal Singh, PW7 is the son of the deceased. But we are not convinced by the aforesaid arguments that either on account of animosity or on account of relationship they did not divulge the truth but fabricated a false case against the appellants. It is needless to emphasize that enmity is a double-edged sword which can cut both ways. However, the fact remains that whether the prosecution witnesses are close relatives of the deceased victim or are on inimical terms with the deceased involved in the crime of murder, the witnesses are always interested to see that the real offenders of the crime are booked and they are not, in any case, expected to leave out the real culprits and rope in the innocent persons simply because of the enmity. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant and the accused persons were on

A inimical terms. Similarly the evidence could not be rejected merely on the basis of relationship of the witnesses with the deceased. In such a situation it only puts the Court with the solemn duty to make a deeper probe and scrutinize the evidence with more than ordinary care which precaution has already been taken by the two courts below while analyzing and accepting the evidence.”

B 33. As regards enmity, it is well known that enmity is a double edged weapon. It can be a ground for false implication, but it can also be a ground for correct implication.

C 34. As regards the second ground for rejecting the evidence of these eye witnesses given by the High Court, namely that they have falsely implicated Laxman Shirast @ Paparkar, this too, in our opinion was hardly a good ground of rejecting their evidence. It is well known that in India the doctrine of *falsus in uno falsus in omnibus* (false in one false in all) does not apply. The court can partly reject and partly accept the evidence of a witness, and it is not correct to say that merely because some part of the evidence is found to be false the entire evidence has to be rejected. [See *Krishna Mochi and Ors. v. State of Bihar*, [2002] 6 SCC 81]. If the Court finds that out of several co-accused, one or more are falsely implicated, that does not necessarily mean that everyone was falsely implicated. Similarly, the third ground for rejecting the testimony of the four eye witnesses, namely that they have falsely stated that Suresh Sobaji had witnessed the incident, is in our opinion not a good ground for rejecting the prosecution version in toto.

D 35. Thus, in our opinion, the High Court has rejected the evidence of the four eye witnesses, three of whom were injured, on flimsy grounds.

E 36. Learned counsel for the appellant has taken us through the evidence of these four eye witnesses and we have carefully examined the same. He submitted that Dattatraya Kamble did not mention the names of many of the accused in his statement before the Magistrate in the Hospital.

F 37. In this connection, it may be noted that the incident in question had taken place at about 5 p.m. and Dattatraya Kamble received deadly injuries on his head with sharp edged weapon because of which he became unconscious. He has stated in his evidence before the trial court that he regained consciousness at about 11 p.m., and the statement before the G Magistrate was also recorded at about 11 p.m., that is soon after he became H

conscious. His pulse at that time was 90/50. Obviously, therefore, he could not be expected to give an accurate version of the incident when he was unconscious for six hours and he had just regained consciousness. Hence, even if he has not named some of the accused before the Magistrate that does not help the case of the accused.

38. The evidence of all the four eye witnesses are broadly consistent. They have mentioned that the accused came to house of the complainant with arms and deadly weapons and they attacked the deceased and other persons including the injured witnesses.

39. Though it is true that it is not necessary to invariably accept the version of the injured witnesses but it is well settled that greater weight has to be given to the testimony of the injured witnesses. We see no reason to disbelieve them and we agree with the view taken by the trial court. [See *Nain Singh and Anr. v. State of U.P.*, [1991] 2 SCC 432, *State of Punjab v. Gurmit Singh and Ors.*, [1996] 2 SCC 384 and *Ramappa Halappa Pujar and Ors. v. State of Karnataka*, (2007) 6 SCALE 206]

40. In our opinion, the High Court has not assigned cogent or sufficient reasons for disagreeing with the findings of the trial court. The judgment of the High Court, in our opinion, is based on surmises and conjectures. In our opinion this is not a case where the High Court should have interfered with the conviction by the trial court under Section 302 of the Indian Penal Code. Thus, by reason of the judgment of the High Court, a great miscarriage of justice has taken place. It is well settled that when the reasoning of the High Court is perverse, the Supreme Court can set aside the judgment of the High Court of acquittal and restore the judgment of conviction and sentence passed by the trial court, *vide State of U.P. v. Nawab Singh*, [2005] 9 SCC 84.

41. The post mortem of Laxman Kamble has shown as many as sixteen ante-mortem injuries out of which fifteen were incised wounds and one contused abrasion.

42. The deceased Kailas Bhinge succumbed to his injuries on the spot. His ante-mortem injuries shows that thirteen were incised wounds, many of them on the head and other vital parts of the body. The injured Dattatraya Kamble has two incised wounds on his head and the injuries particularly incised wounds were found on the other witnesses who were injured in the incident.

A 43. These facts lead us to the inevitable conclusion that appellants had come with arms and deadly weapons to the house of the complainant party and with the common intention and common object to kill the complainant party.

B 44. This is a case of great injustice which has been caused by the judgment of the High Court which has acquitted the accused of the offence under Section 302 of the Indian Penal Code on flimsy grounds. Such a judgment if upheld will shake the confidence of the public in the judiciary.

C 45. For the reasons given above, the judgment of the High Court is set aside. The conviction of the five accused who had been convicted by the trial court under Section 302 IPC being accused No.2 Ramchandra Bhanudas Kamble, accused No.5 Ganesh Kisan Shirsat @ Paparkar, accused No.6 Ashok Sahebrao Waghmare, accused No.10 Anil Dhondiram Mane and accused No.11 Sunil Dhondiram Mane is restored. These accused are found guilty under Section 302 of the Indian Penal Code and are sentenced to life imprisonment.

D 46. As regards accused No.7 Dagadu Shankar Naikwadi, he had been convicted by the trial court under Sections 452/149 IPC and sentenced to three years' rigorous imprisonment. The High Court on appeal observed that he had already undergone 12 months' imprisonment and hence his sentence was reduced to the period already undergone provided he deposits a fine of Rs. 10,000/- within a period of six months. In our opinion the High Court erred in reducing the sentence of accused No. 7 Dagadu Shankar Naikwadi since all the four eyewitnesses viz. Rajabhau Kamble (PW7), Dattatraya Kamble (PW8), Bhaskar Bhinge (PW11) and Mahesh Bhinge (PW12) have stated that this accused had also come along with other accused in a Jeep to the complainant's house and had attacked the persons with deadly weapons. It may be mentioned that the State Government had not filed any appeal in the High Court for enhancement of the sentence awarded to accused No. 7 Dagadu Shankar Naikwadi by the trial court and hence we cannot enhance the sentence. However, we set aside the sentence awarded by the High Court and restore the sentence of three years' R.I. awarded to him by the trial court.

H 47. As regards accused No.9 Santosh Dashrath Kothalkar, he has also been convicted under Sections 452/149 IPC and sentenced to three years' rigorous imprisonment. In appeal the High Court acquitted him on all counts. It has come in the evidence of Rajabhau Kamble ((PW-7), Dattatraya Kamble (PW-8), Bhaskar Bhinge (PW-11) and Mahesh Bhinge (PW-12) that these

accused came along with the other accused persons and attacked, *inter alia*, Kailash, the deceased, with a Sattur. There is no cogent reason to disbelieve these witnesses. Since the State Government had not filed any appeal before the High Court against the sentence awarded to accused No. 9 Santosh Dashrath Kothalkar by the trial court, we cannot enhance this sentence. But we set aside the acquittal of accused No. 9 by the High Court and restore the sentence of three years' R.I. under Sections 452/149 IPC awarded to him by the trial court.

48. As regards accused No.15 Dhanaji Dashrath Kothalkar, he has been found guilty by the trial court and convicted under Sections 452/149 IPC and sentenced to three years' rigorous imprisonment, but his conviction was set aside by the High Court. The accused has been named in the FIR and it has also come in the evidence of the four witnesses mentioned above that he was also in the group of people who came in the Jeep and attacked the complainant party with a deadly weapon. According to Rajabahu Kamble (PW-7), this accused had Sattur in his hand by which he attacked the deceased. The State Government did not file any appeal before the High Court against accused No. 14 Rajendra Dashrath Kothalkar for enhancement of the sentence awarded to him by the trial court. Hence we cannot enhance that sentence. However, we set aside the sentence awarded by the High Court and restore the sentence of three years' R.I. awarded to him by the trial Court.

49. For the same reason as mentioned above, we restore the sentence of three years' R.I. awarded to accused No. 15 Dhanaji Dashrath Kothalkar by the trial court and set aside the lesser sentence awarded to him by the High Court.

50. We are not oblivious of the limited jurisdiction of this Court in interfering with the judgment of acquittal. The scope of an appeal against acquittal is limited. It is trite that only when two views are possible, this Court cannot interfere with a judgment of acquittal; but that would not mean that despite existence of substantial and compelling reasons, the Court will refuse to interfere in a case where it would be just and proper to do so.

51. In *Chandrappa and Ors. v. State of Karnataka*, (2007) 3 SCALE 90, a Division Bench of this Court upon considering a large number of cases, opined:

“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing

- A with an appeal against an order of acquittal emerge;
- (1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;
- B (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
- C (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
- D (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- E (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."
- F

[See *Ramappa Halappa Pujar and Ors. v. State of Karnataka*, (2007) 6 SCALE 2006 & *Mohinder Singh and Ors. v. State of Punjab*, [2006] 10 SCC 418]

G 52. Applying the said principle also, we are of the opinion that it is a fit case, where this Court should exercise its jurisdiction under Article 136 of the Constitution.

H 53. Each one of the appellants before us was armed with deadly weapons. They came together and death was caused to the deceased. They entered into

the house. Two of the appellants had inflicted blows with swords. We are, therefore, of the opinion, that common object on the part of each of the appellants stands proved. Once formation of common object amongst the accused is proved, it is not necessary for the court to consider specific overt act played by each of them. A

54. Those found guilty by us should be taken into custody forthwith to serve out their sentences as awarded by the learned trial court. The appeals are allowed. B

K.K.T.

Appeals allowed.