

CRA-2312-2005

(SANJU@SANJAY Vs THE STATE OF MADHYA PRADESH)

08-05-2017

Shri Vikesh Pratap Singh, learned counsel for the appellants.

Shri Vaibhav Tiwari, learned P.L for the respondent/State.

Whether approved for reporting : Yes/No

J U D G M E N T

(Pronounced on 08.05.2017)

Per : Ashok Kumar Joshi, J.

1. Challenge in this appeal is to the conviction and sentence recorded by the Special Judge, Balaghat in Special Criminal Case No.73/2004 vide judgment dated 28.10.2005, whereby each appellant has been convicted and sentenced under Section 302/34 of the IPC to undergo life imprisonment with a fine of Rs.1000/- and if the fine is not paid, each appellant is directed to undergo six months additional R.I and the detention period is directed to be set off.

2. Undisputedly, present appellants and other acquitted co-accused persons Virendra Suryavanshi, Khemraj Lilhare and Guddu alias Wakeel Khan were arrested by the police in relation to crime No.255/2004 registered at police station Kotwali, Balaghat.

3. Prosecution case in brief is that Assistant Sub-Inspector of Police N.R. Sinha (PW-14) lodged an FIR (Ex.P-21) on 24.06.2004 at 22:40 hours (10:40 P.M.) at police station Kotwali, Balaghat stating that on the same date when he was patrolling with other police constables Netlal, Om Prakash and home guard sainik Satish in town Balaghat by a mobile vehicle driven by Govind Prasad Sharma (PW-15), then during town patrolling at about 9 P.M, when vehicle was going towards the Narmada

Nagar, near the S.T.D/P.C.O shop of Golu Thakre, in the light of the mobile vehicle it was seen that a person was being assaulted by knife, sword, stick, fists & kicks by Sanju, Bablu, Hari Gowara, Guddu, Virendra and Khemraj. Each of the three persons Sanju, Hari and Bablu was having a knife in his hand, Guddu was having a stick and other assailants were assaulting with fists & kicks. After seeing stoppage of police vehicle, all assailants fled away. When they reached near the injured person, injured person disclosed his name as police constable Rajendra Khobragade posted at police station Navegaon, who was having wounds on his head, face, hands and body, caused by knife, sword and sticks. When injured was being taken to hospital through mobile vehicle, then injured constable Rajendra Khobragade intimated that he had caught that kerosene was being poured in a truck, thereafter, above named persons have attacked on him with fatal weapons to cause his murder. Constable Rajendra Khobragade was admitted in district hospital, Balaghat, who died at 10:30 P.M on the same day during treatment. The incident was witnessed by his companions of mobile vehicle and residents of locality.

4. On FIR of complainant N.R. Sinha (PW-14), Crime No.255/2004 was registered on 24.06.2004 regarding offences punishable under Sections 147, 148, 149, 302 of the IPC and Section 3(2)(five) of the SC & ST (Prevention of Atrocities) Act. During investigation, spot map (Ex.P-5), inquest memo (Ex.P-25) were prepared and the dead-body of Rajendra was sent for postmortem with application (Ex.P-9) and the relating bed-head ticket (Ex.P-31) in relation to treatment of deceased in the district hospital, Balaghat was taken. Patwari N.R. Bisen prepared outline diagram of spot (Ex.P-30). Blood stained soil, simple soil and a blood stained brick were seized from the spot and a packet of sealed clothes of deceased received from hospital was also seized. Postmortem of

deceased was conducted by Dr. A.K. Jain (PW-9), who recorded postmortem report (Ex.P-9). During investigation, after arrest of the accused persons, separate memorandums were recorded on disclosure statements of each accused person. On disclosure statements, his blood stained full-pant, a blood stained shirt of full sleeves was seized on being produced by Khemraj, an iron knife and a blood stained T-shirt of half sleeves were seized from Sanjay Sonwane. A blood stained half sleeves T-shirt was recovered from the present appellant Bablu alias Tyagi Chouhan having blood like stains and a knife on which blood, soil and hairs were stuck was also seized from Bablu alias Tyagi Chouhan. A hockey stick having blood like stains was seized from Guddu alias Wakeel Khan. A knife with handle with blood like stains was seized from the present appellant Harishankar with a blood stained black coloured full-pant. Seized materials were sent for chemical analysis to FSL, Sagar. The caste certificate (Ex.P-37) of deceased was also received. Seized knives, clothes and stick were sent to Dr. A.K. Jain with a query letter (Ex.P-10). After completing formal investigation, charge-sheet was filed in the Court of C.J.M, who committed the case to the Court of Special Judge, appointed under the SC & ST (Prevention of Atrocities) Act, Balaghat.

5. Present appellant Bablu alias Tyagi Chouhan denied the charge of Section 302/149, 147 and 148 of the IPC and other accused persons denied the charge framed by the trial Judge against each of them under Sections 147, 148, 302 of the IPC r/w Section 3(2)(five) of the SC & ST (Prevention of Atrocities) Act, r/w Section 149 of IPC. Before trial Court, in total 23 prosecution witnesses were examined. For accused persons defence witnesses, head constable Ranglal Markam (DW-1), Phoolchand Suryawanshi (DW-2) and Pustkalabai Lilhare (DW-3) were examined. The trial Court after recording evidence and hearing, acquitted tried

accused persons Guddu alias Wakeel Khan, Virendra and Khemraj Lilhare, but it convicted and sentenced each appellant as above-mentioned.

6. The learned counsel for the appellants vehemently contended that all alleged independent eye witnesses have not supported the prosecution version and all panch witnesses of each arrest memo, disclosure statement and seizure memo relating to accused persons were also declared hostile by the prosecution as they did not support the relating prosecution case. It was argued that the trial Court erred in convicting the three appellants on the basis of same evidence, on which it had acquitted other three accused persons Virendra, Khemraj and Guddu only on the basis of unbelievable and interested evidence of police departmental witnesses N.R. Sinha (PW-14), Govind Prasad Sharma (PW-15), Satish Tomar (PW-4) and Dinesh Kumar (PW-8), whereas there were material contradictions among their depositions. The evidence regarding oral dying declaration made by seriously injured constable Rajendra Khobragade in mobile vehicle regarding involvement of tried accused persons before the trial Court was not believable, because according to medical evidence of relating doctors, injured Rajendra at that time after having such grievous external and internal injuries, could not have been in a position to speak something. Thus, it is prayed that the appeal be allowed and each appellant be also acquitted from the above-mentioned offence.

7. On the other hand, the learned P.L for the respondent/State has supported the impugned judgment convicting and sentencing the present appellants and has prayed for dismissal of their criminal appeal.

8. Dr. Sanjay Dhabadgaon (PW-21) deposed that on 24.06.2004, when he was on duty at district hospital, Balaghat in the night at 9:50 P.M, he examined injured constable Rajendra, who was admitted in surgical

ward and found that his condition was much critical and his pulse rate was 98 per minute and blood pressure was 90/70 Hg and injured was having multiple incised wounds on his frontal, parietal and occipital regions of his head, on his face and on left & right hands. He has proved his report recorded on bed-head ticket (Ex.P-31).

9. Dr. A.K. Jain (PW-9), who conducted autopsy of dead-body of deceased constable Rajendra Khobragade on 25.06.2004 deposed that rigor mortis was present and deceased was having following external and internal injuries:-

- i. An incised wound of size 5x1 c.m in middle portion of forehead, in which bone was visible.
- ii. An incised wound of size 4x1 c.m on left side of forehead, under which bone was visible.
- iii. An incised wound of size 6x1 c.m on left side of head, which is 1 c.m behind the hairline of size 6x1 c.m, under which bone was visible.
- iv. An incised wound of 4x1.5 c.m on right parietal region.
- v. An incised wound of size 3x1/2 c.m on posterior side of right ear, under which bone was visible.
- vi. Six incised wounds having size of 3x1 c.m, 6x1 c.m, 4x2 c.m, 5x1 c.m, 4x2 c.m and 4x1 c.m on back side of head, which were interlace over one another and occipital bone of skull had totally exposed.
- vii. An incised wound of size 2x1 c.m skin deep on left side of chin.
- viii. An incised wound of size 3x1 c.m skin deep on right side of chin.
- ix. An incised wound of size 5x1/2 c.m on outer side of left hand beneath which muscles had cut and bones were

visible.

- x. An incised wound of size 2x2 c.m on outer side of left wrist, which was bone deep.
- xi. An incised wound of size 3x2 c.m on thumb of the right hand near the joint of thumb and palm, under which muscles and bone had cut and it was tagged with the body only by outer layer of skin.
- xii. An incised wound of size 5x2 c.m in middle portion between middle finger and index finger, which was bone deep.

10. According to Dr. A.K. Jain (PW-9)'s evidence, the cause of death of deceased was shock arisen by extensive bleeding from the external and internal injuries and the time of death was between 12 to 24 hours from starting of postmortem. All found external incised injuries were caused by hard and sharp object and he had sent the clothes found on dead-body with belt, shocks and a pair of shoes and other materials to relating police station through the constable and recorded postmortem report (Ex.P-9). Doctor A.K. Jain deposed that on 07.08.2004 he had seen three knives, which were sent in different sealed packets to him with a query letter and opined that the incised wounds found on the body of the deceased Rajendra could be caused by all the three sent knives and he recorded his written answer (Ex.P-10) in reply to the query letter.

11. Regarding general condition of injured constable Rajendra Khobragade, just after the incident Dr. Sanjay Dhawadgaon (PW-21), who examined injured at 09:50 PM on 24.06.2004 had deposed that at that time, the condition of Rajendra Khobragade was much critical, his pulse rate was 98 per minute and blood pressure was 90/70 Hg. He deposed in cross-examination that at the time of admission of injured in

hospital, his condition was very much serious. On this point, Dr. Ajay Kumar Jain (PW-9), who conducted postmortem, deposed in cross-examination that head of a human body is a vital organ and the deceased was having in total 11 incised wounds on his head and among which six injuries were such deeper that within them bones of the skull were seen and in totality all the injuries of his head were of serious nature. In para-12, Dr. Ajay Kumar Jain (PW-9) deposed that in view of all the injuries of the injured, he opined that due to extensive bleeding injured would had come in state of shock within 5 to 7 minutes after receiving such injuries and after coming in in the state of shock, such injured would not be able to speak anything.

12. It has been forcefully contended by the learned counsel for the appellants that the evidence of some prosecution witnesses regarding oral dying declaration of injured just after the incident is not believable because there are material contradictions between the police departmental interested prosecution witnesses, who have tried to support the prosecution version and it was also impossible for the interested prosecution witnesses, who were seated in police mobile vehicle to see the incident and identify the culprits.

13. Reporter ASI N.R. Sinha (PW-14), police constable Govind Prasad Sharma (PW-15) who was driving the police mobile vehicle on the date of incident, home-guard sainik Satish Tomar (PW-4) and constable Dinesh Kumar (PW-8) deposed in favour of the prosecution, but home-guard hawaldar Netlal Choudhary (PW-7) was declared hostile as he gave his deposition not in accordance with his police statement. All these official witnesses have deposed that in the mobile vehicle, there were partitions and in front portion of the vehicle seated driver Govind Prasad Sharma (PW-15) and ASI N.R. Sinha (PW-14) were able only to see in front side of the vehicle, because other witnesses were seated in

back portion of the vehicle after partition. The material contradictions among depositions of these witnesses are related to the point that how they reached to the spot of incident. Home-guard sainik Satish Tomar (PW-4) deposed that while during patrolling they reached to Narmada Nagar, then at about 9:00 PM, he saw in the light of the vehicle that near a STD shop a person was being assaulted by six other persons by stick, sword and knife and as vehicle reached near them, the assailants fled away, thereafter they lifted the injured to the mobile vehicle to brought him to hospital and in the way, ASI N.R. Sinha (PW-14) asked to the injured, then injured informed that he was constable Rajendra Khobragade, posted at police station Nawegaon and he had seen the pouring of kerosene oil in a truck, on this account Sanjay Sonwane, Bablu Chouhan, Hari, Guddu Pathan and two other persons, whose names were also disclosed at that time had beaten him by knives, sword, fists & kicks, but he deposed in cross-examination (para-2) that the mobile vehicle had left the police station at about 9:00 P.M and the back portion of mobile vehicle was covered. He admitted in cross-examination (para-5) that when they lifted the injured, then his condition was very much serious and his bones of skull were visible at 3 to 4 places and much blood was lying on the spot and at that time the injured could not be identified and he was not able to speak properly. In cross-examination, Satish reaffirmed that injured had disclosed the names of all the six assailants, but the names of two assailants were not remembered by him.

14. Hostile declared home-guard hawaldar, Netlal Choudhary (PW-7) deposed that when they reached during patrolling towards the hospital, then an intimation was received on mobile of ASI Sinha that there being a beating in Moti Nagar, thereafter, mobile vehicle reached to Moti Nagar, where injured constable Rajendra Khobragade was lying on

earth, but he had not seen any beating and after leaving the vehicle when they have asked to injured that who had assaulted him, then injured disclosed only three names of assailants Guddu, Sanjay and Bablu had assaulted him, but the weapons used were not disclosed by the injured and the injured has not disclosed anything about why he was assaulted by the above-mentioned three accused persons.

15. Police constable Dinesh Kumar (PW-8) deposed that mobile vehicle had left the police station at 6:00 PM and during patrolling telephonic information was received from the police control room that a constable has been assaulted at Moti Nagar road and this intimation from control room was received on mobile phone of ASI Sinha and thereafter the mobile vehicle had reached to the Moti Nagar's incident spot, near a STD shop. Dinesh Kumar (PW-8) had deposed that as their mobile vehicle reached on spot, he saw that three accused persons Bablu, Sanju, Guddu and three other persons were running and Bablu was having a sword, Sanju was having a sword and others were having sticks in their hands. Dinesh Kumar deposed that Rajendra Khobragade had intimated that he had been assaulted by Bablu, Guudu, Sanju and other persons, but it was not informed by him that why he had been beaten. In cross-examination (para-6), Dinesh Kumar (PW-8) deposed that the incident had occurred at about 8 to 8:30 PM. In same para, he deposed that when the mobile vehicle was at Hanuman Chowk, then ASI Sinha had received above-mentioned information on his mobile phone from control room, thereafter, ASI Sinha had intimated them that a beating has happened and they have to go to Moti Nagar. He admitted in para-6 that mobile vehicle was covered from both of the lateral sides and when mobile vehicle reached to the spot, accused persons had fled away, but he deposed that when he was seated in the mobile vehicle, then in the light of the mobile vehicle he had seen the accused persons.

In para-7, he deposed that as accused persons have fled away, they did not try to catch them.

16. ASI N.R. Sinha (PW-14) and constable Govind Prasad Sharma (PW-15) have deposed that incidentally mobile vehicle had reached to the Moti Nagar and previously no intimation about incident was received to them. Thus, it is clear that on this point their evidence is contradicted by evidence of police constable Dinesh Kumar (PW-8) and Netlal Choudhary (PW-7). Though, Netlal Choudhary (PW-7) was declared hostile by the prosecution, but the constable Dinesh Kumar (PW-8) was not declared hostile by the prosecution, whereas he had deposed same fact that after receiving intimation of the incident, mobile vehicle was reached to the Moti Nagar.

17. It is observed in the case of ***Rakesh Vs. State of M.P.*** [2005(2) MPWN 46, where decision reproduced in toto] that when a prosecution witness was not declared hostile than his version is binding of prosecution. Thus, in the light of above-mentioned citation, it is clear that the evidence of constable Dinesh Kumar (PW-8) that before reaching of the mobile vehicle to the spot of incident, intimation regarding incident was received from control room on ASI Sinha's mobile phone and thereafter they have reached to the scene of occurrence is binding on prosecution and it would be treated as part of the prosecution's case and thus the evidence given by N.R. Sinha (PW-14) and Govind Prasad Sharma (PW-15) that mobile vehicle had reached to the spot of incident incidentally is not trustworthy and it is clear that mobile vehicle had reached to the scene of occurrence only after receiving intimation about incident from others, thus, the evidence given by these departmental prosecution witnesses that they had seen beating of the injured at the spot of incident from vehicle in the light of mobile vehicle, did not appear to be believable. Hence, the mutually

contradicting evidence of these prosecution witnesses do not inspire confidence.

18. N.R. Sinha (PW-14) deposed that in light of the vehicle, he had seen that Sanju, Hari and Bablu were beating by knife and sword and Guddu Khan was beating by stick and Virendra and Khemraj were beating by fists & kicks and as the police vehicle reached, accused persons fled away. Contrary to other departmental witnesses, N.R. Sinha (PW-14) deposed in cross-examination (para-6) that patrolling was started at 8:10 PM. He deposed in para-9 that at the time of incident, the STD shop of Golu Thakre was opened, whereas Govind Prasad Sharma (PW-15) deposed in cross-examination (para-4) that when mobile vehicle reached to the scene of occurrence then Golu Thakre's STD shop was closed. Govind Prasad Sharma(PW-15) had deposed in his cross-examination (para 6 & 8) that after the incident, the injured constable Rajendra Khobragade was regularly becoming unconscious within five minutes after resuming senses and when the injured was taken out from the vehicle at hospital, then he was unconscious. Govind Prasad Sharma (PW-15) clearly deposed in para-9 that injured had disclosed only the names of accused persons, but had not disclosed the caste or surname of the accused persons. Thus, it is clear that there are material and substantial contradictions among the depositions of these departmental prosecution witnesses and thus their depositions are not supplementary or supportive to each other.

19. Hostile declared shopkeeper Nandu Rawte (PW-1) had deposed that on the date of incident, when a police constable was murdered, he was seated in courtyard of his house at about 9:00 PM, then police officials were running behind some boys, but he could not identify the running boys. Hostile declared Shobharam (PW-2) expressed his total ignorance about the incident in his deposition, whereas according to his police

statement (Ex.P-2) appellant Bablu alias Tyagi Chouhan had purchased kerosene from a shop in his presence, which was later on, poured by Bablu Chouhan in a truck, when constable Rajendra Khobragade caught him. Another hostile declared prosecution witness Vineet Kumar (PW-3) deposed that on the date of incident, when he was seated in his STD shop, then about 9:30 PM, a boy after running had reached to his P.C.O and from his P.C.O that boy had intimated to the police station that a person is lying in injured condition nearby a ration shop. Vineet deposed that he did not know the boy who had given above-mentioned intimation to the police station. Similarly, another hostile declared Sanjay Kawde (PW-5) deposed that on the date of incident when he was seated in his brother's bakery shop, then he heard a noise and when he reached near a ration shop, then there he found an injured person and blood was oozing from his body, thereafter, anybody phoned to the police and later on police came there and injured was taken to the hospital by police officials. Sheikh Aleem (PW-6) was also declared hostile, who showed his total ignorance about the incident in his deposition, whereas according to his police statement, in truck No.WY/2233 which was being driven by him, accused Bablu alias Tyagi Chouhan was pouring kerosene in diesel tank.

20. It would be significant to mention here that Reporter N.R. Sinha (PW-14) had disclosed in his FIR (Ex.P-14) that the acquitted accused Guddu by the trial Court was having a stick (lathi) in his hand, but during investigation a blood stained hockey stick was seized from Guddu. Similarly, in the FIR, it is mentioned that acquitted accused persons Virendra and Khemraj were beating constable Rajendra Khobragade by fists & kicks. It appears that the acquittal of three accused persons Virendra, Khemraj & Guddu alias Wakeel Khan had not been challenged by the prosecution by filing any appeal to this Court. It

is clear that two prosecution witnesses N.R. Sinha (PW-14) and Govind Prasad Sharma (PW-15) have clearly deposed in their deposition against these three acquitted accused persons Virendra, Khemraj and Guddu alias Wakeel Khan. When the evidence of the same alleged eye witnesses have not been found reliable by the trial Court regarding above-mentioned three acquitted accused persons, then this argument of the appellant's counsel could not be outright rejected that N.R. Sinha (PW-14) and Govind Prasad Sharma (PW-15) had tried to falsely implicate three innocent persons Virendra, Khemraj and Guddu Khan alias Wakeel Khan, then their evidence against the appellants also appears to be doubtful, because according to the binding and unchallenged deposition of constable Dinesh Kumar (PW-8) incident had occurred at about 8:30 PM and before it ASI Sinha had received the intimation about incident from police control room and thereafter mobile vehicle had reached to the scene of occurrence. According to evidence of N.R. Sinha (PW-14) and his signed FIR (Ex.P-21), they have reached to the scene of occurrence at 9:00 PM (21:00). It could not be expected that the assailants who were giving beating to the deceased on spot at 8:30 PM would remain present on scene of occurrence till 9:00 PM to be identified and seen by police officials of police mobile vehicle. Thus, it is clear that the eye witnesses account given by Satish Tomar (PW-4), Netlal Choudhary (PW-7), Dinesh Kumar (PW-8), N.R. Sinha (PW-14) and Govind Prasad Sharma (PW-15) not reliable and trustworthy as already discussed there are material contradictions among their depositions on the points that what was stated by the injured, how and at what time the mobile vehicle had reached on spot.

21. It would be significant to mention here some important facts, which were put to the hostile declared prosecution witnesses Nandu Rawte (PW-1) in form of suggestions given by Special Public Prosecutor

regarding his police statement (Ex.P-1). Though, Nandu Rawte (PW-1) denied all the suggestions given by the said Public Prosecutor, but according to these suggestions, at 6:00 PM on the date of incident 24.06.2004, in front of the house of Bablu Chouhan, two appellants Bablu Chouhan and Sanjay were pouring kerosene oil in diesel tank of a truck, who were caught red handed by constable Rajendra Khobragade, who incidentally reached there by his motorcycle and thereafter constable Rajendra Khobragade was demanding Rs.10,000/- from these appellants to settle the case and regarding this account of bribe demanded by constable, conversation between above-mentioned persons remained continued about two hours. According to his police statement, the motorcycle of constable Rajendra Khobragade was got hidden by the appellants. During investigation, no any motorcycle of deceased was recovered.

22. It is not clear from the evidence of above-mentioned official witnesses that how all these accused persons were known to them prior to the incident and from which period, because constable Dinesh Kumar deposed in cross-examination (para-4) that after few days of incident, the identification of three accused persons was conducted by ASI Sinha (PW-14) at police station, Balaghat and at that time 10 to 15 persons were called at police station and at that time memos were prepared about identification parade, which were signed by him (para-5) and by called 5 to 6 persons, three accused persons were rightly identified who were fled accused persons. As indicated before, Dinesh Kumar (PW-8) was not declared hostile by the prosecution, his above-mentioned evidence regarding identification parade of accused persons in police station also totally destroys eye witness account given by him and other above-mentioned departmental witnesses and it also demolishes the alleged oral dying declaration of the deceased just after the incident.

Thus, it is clear that neither the eye witness account given by these witnesses, nor the evidence given about oral dying declaration by the same witnesses appears to be reliable and trustworthy. It is clear that prosecution case against the present appellants is also much doubtful.

23. Investigator Sunil Mehta (PW-22), who was at the relevant time was working as DSP, police station Ajak, Balaghat had deposed in relation to previous different disclosure statements made by appellants and relating recoveries of knives and blood stained clothes of the appellants worn by the appellants at the time of incident, but all the panch witnesses of each memorandum prepared by above-mentioned investigator in relation to previous disclosure statement given by relating appellant and relating seizure memos Jaganlal (PW-10), Krishna Kumar (PW-11), Satyawan Vasnik (PW-12), Ravi Shankar (PW-13), Bhumeswar (PW-17), Riyaz Shah (PW-18) and Raj Kumar (PW-19) had not supported the prosecution's case relating to recovery of seized weapons of offences and blood stained clothes of appellants and acquitted accused persons. All these panch witnesses were declared hostile by the prosecution, but they have admitted their signatures on relating memorandums and seizure memos, but each of them have clearly deposed that no any disclosure statement was given in his presence by any of the appellants regarding any article and in his presence relating articles were not recovered from the places indicated in different seizure memos. Thus, in absence of corroboration by independent panch witnesses, the evidence of investigator Sunil Mehta (PW-22) regarding relating disclosure statements given by each appellant and relating recoveries does not appear to be trustworthy. It would be significant to mention here that according to FSL report (Ex.P-40), only on full-pant of acquitted accused Virendra, shirt of acquitted accused Khemraj and on knife allegedly recovered at the

instance of present appellant Bablu alias Tyagi Chouhan, human blood was found. Virendra and Khemraj were acquitted by the learned trial Court and it appears that their acquittal has not been challenged by the prosecution by filing any appeal. According to above-mentioned FSL report (Ex.P-40), the blood group of the human blood found on the knife allegedly recovered at instance of appellant Bablu alias Tyagi Chouhan could not be identified. Thus, prosecution remains unsuccessful in establishing that human blood of deceased constable Rajendra Khobragade's blood group was found on alleged recovered knife on the previous disclosure statement of accused Bablu alias Tyagi. As relating panch witnesses of memorandums and seizure memos have not supported the evidence of above-mentioned investigator, thus it was clear that the recovery of relating knife on the previous disclosure statement of present appellant Bablu alias Tyagi from the indicated place mentioned in the relating seizure memo was not proved, thus the relating circumstantial evidence in the form of recovered articles is also not capable in establishing any link between the incident and any of the present appellants. Thus, it is clear that the circumstantial evidence of the case, which was tried to be proved by prosecution is also indecisive and not much helpful to prosecution.

24. In result of the above-mentioned analysis and discussion of prosecution's evidence, we are of the considered opinion that the evidence of above-mentioned interested official and departmental witnesses, who claim to have seen the incident is not believable, because of intrinsic weakness and mutual contradictions. It is clear from the binding and unchallenged deposition of police constable Dinesh Kumar (PW-8) that before 8:30 PM, firstly reporter N.R. Sinha (PW-14) had received intimation regarding incident from control room and thereafter patrolling mobile vehicle had reached to the scene of

occurrence. Thus, the evidence of above-mentioned prosecution witnesses that they had seen the appellants assaulting the deceased or had seen the appellants fleeing away appears to be at the maximum possible distance from the truth and no reliance can be placed on such impossible evidence, which is also contradicted by some of the departmental witnesses. The unchallenged and binding evidence of constable Dinesh Kumar (PW-8) regarding identification parade held in police station just within 2 to 4 days from the incident makes the version given by reporter N.R. Sinha (PW-14) in his FIR to be most doubtful. It appears that the patrolling mobile vehicle had reached to the scene of occurrence about half hour after the incident had happened. In such situation, the evidence regarding oral dying declaration given by grievously injured constable Rajendra Khobragade appears to be totally unreliable and unbelievable looking to the evidence of two doctor prosecution witnesses. We are of the considered opinion that the learned trial Court had overlooked the above-mentioned substantial and important facts, which makes the prosecution evidence of some of the prosecution witnesses supporting prosecution's case totally unreliable. The conviction and sentences recorded by the trial Court in relation to present appellants appear to be highly defective as above-mentioned offence was not proved beyond reasonable doubt. The appeal filed by the appellants is worthy of acceptance. On the basis of aforesaid, this Court is of the view that the prosecution has been failed to prove beyond reasonable doubt that present appellants have murdered the police constable Rajendra Khobragade in furtherance of their common intention.

25. In the result, the appeal filed by the present appellant No.1 Sanju alias Sanjay Sonwane, No.2 Bablu alias Tyagi Chouhan and No.3 Hari Shankar Raut is allowed and their conviction and sentences recorded by

the learned trial Court under Section 302 r/w Section 34 of the IPC is set-aside and each present appellant is acquitted from the offence punishable under Section 302 r/w Section 34 of the IPC.

26. All the three appellants who are serving their sentences as imposed by the trial Court are directed to be released forthwith subject to the condition under Section 437-A of the Cr.P.C and if not wanted in any other case. A copy of this judgment be immediately sent to the concerned jail superintendent.

(RAVI SHANKAR JHA)
JUDGE

(ASHOK KUMAR JOSHI)
JUDGE

Amjad