24. In the result, the petition is allowed in terms of prayer clause 'C' & 'D' of the petition.

25. Rule made absolute in aforesaid terms.

Result:- Petition allowed.

ABC 2016 (II) 624 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A.I.S. Cheema, J.)
Criminal Appeal No.868 of 2015
Decided on 20 September, 2016
Aurangabad Bench

MOHAMMAD HANIF ISMAIL KHAN AJMERI - Appellants(s).

Versus

STATE OF MAHARASHTRA & ANR. - Respondent(s).

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 307 r/w 34 — Conviction under — Recovery of weapon — doubtful — Description of the culprits —not given in FIR or subsequently —Poor visibility —incident occurred in dark —Sudden occurrence — Held, If the incident had suddenly occurred, there would be hardly sufficient time to see the assailants properly when it was dark in the area —No specific role attributed — Registration of FIR —Held, the manner in which the F.I.R. was recorded is also not clear — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 10, 11, 12, 13 & 14)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Specific attribution — lack of — the witness referred to the accused persons as the diesel thieves and the assailant— but did not try to say which of them had stabbed—Fatal to prosecution. (Para 9)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Specific attribution — lack of — Poor visibility — contradiction between the evidence of eye-witnesses — fatal to prosecution. (Para 9)

(D) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Apprehending the accused — contradictory statement of the witnesses — fatal to prosecution. (Para 10)

(E) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Complainant — Conduct of — Caught the accused persons himself

and verified their names from them so as to give supplementary statement to the police — was unable to even correctly refer to the accused persons in evidence — Held, It would be difficult to rely on his identification. (Para 11)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Injury — Corresponding stains on the clothes — absence of — fatal to prosecution. (Para 13)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Stab Injury — Corresponding cut on the clothes —absence of — Version of prosecution — the injured was assaulted from the gap of shirt button — Conduct of injured person — Held, , the natural conduct would be to hold on to the injury so that the flow of blood could be reduced — Medical evidence — profuse bleeding — Held, When there are no corresponding blood stains of profuse bleeding on the shirt — it is doubtful if this was the same shirt which was worn at the time of incident — fatal to prosecution. (Para 13)

Facts:- *As per the F.I.R., the complainant on the relevant night, at about 9.30 p.m., was on his Dhaba. One truck came and stopped there and two unknown persons got down and started stealing diesel from the tank of another truck standing nearby, at which time complainant asked them as to why they were stealing diesel. One person took out a knife and gave a stab injury to him between chest and stomach part of the body and he fell down giving out a big shout. At that time, those two persons ran away in the same truck towards. The incident had been seen by his brothers and employees on the Dhaba.*

On the basis of such F.I.R., the offence was registered u/s 307 r/w 34, IPC. It was further the case of prosecution that, the victim remained in hospital for some days and after he was discharged, he again started working on his Dhaba. One day he noticed that the same two persons who were involved in the incident of stabbing him were going in a truck. He took along other persons from his Dhaba and followed the said truck and managed to stop the truck and identified and caught those persons.

The complainant made phone call to police and police came and caught hold of the two accused and also seized the truck. From the truck, the police seized plastic cans as well as knife. After due process the accused persons were convicted and sentenced.

In the present appeal honourbale Bombay High Court observed major discrepancies. Serious doubts were raised if the appellants-accused were the assailants of the complainant. Holding it risky to convict the appellants acquittal was ordered.

Law of relief:- *Absence of stains on the clothes corresponding to the alleged injury is fatal to prosecution.*

a

Held:- Even this P.W.6 has deposed in cross-examination that there was no light on the spot of incident. Thus, these witnesses P.W.2 complainant, P.W.3 Housrao and P.W.6 Machindra are giving different versions of the incident and the number of persons involved as well as who did what. (Para 9)

b

The seizure panchanama Exh.57 was prepared. In addition to the truck, the other articles like plastic cans, pipe as well as seizure of knife was shown from the truck. Where exactly the truck of accused was stopped and they were caught is not very important. Contra evidence is that, the prosecution showed recovery of knife from the said Truck No.MP-09/KB-6817 and which knife has been identified in Court as the instrument of assault. Material is that, P.W.6 Machindra, who had shown the spot to the police, deposed in cross-examination (para 7 of his evidence) that he had seen Article 7 knife, lying on the spot for the first time and that the said knife was handed over to the police by waiters of the Dhaba. Thus, if the knife before the Court was the same instrument by which the assault took place, is also doubtful. (Para 10)

c

d

If the F.I.R. is seen, no description of the culprits was given to the police when the F.I.R. was filed. Neither at the time of F.I.R. when the victim may have just come out after operation nor soon thereafter any statement was recorded regarding the description of the assailants. Admittedly, at the spot of incident it was dark. There are different versions in evidence whether immediately when complainant objected to the theft one of the assailants stabbed or the stabbing took place when one of the thief was being taken along to the Dhaba of complainant. If the incident had suddenly occurred, when theft was objected as was mentioned in the F.I.R., there would be hardly sufficient time to see the assailants properly when it was dark in the area and there would be no opportunity for P.W.3 Housrao or P.W.6 Machindra to seen the assailants properly. Keeping in view the incident as it occurred on 14.12.2006, catching of the accused persons on 11.1.2007, in the manner in which complainant claimed, I find that it was merely on suspicion with M.P. registration of the vehicle giving encouragement to the complainant to claim that it was these accused only who were assailants. As discussed above, the witnesses including the complainant are totally confused regarding which assailant did what. The complainant who had

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caught the accused persons himself and verified their names from them so as to give supplementary statement to the police, was unable to even correctly refer to the accused persons in evidence. It would be difficult to rely on his identification. He has also given different versions where in evidence he attributed role to both the accused which was not what is stated in the F.I.R. (Para 11)

The complainant in evidence claimed that, the white shirt which was before the Court, was the same which he was wearing at the time of incident. The Court itself noted that, the shirt did not have a corresponding cut on the shirt. When the Court noted this, the A.P.P. appears to have brought on record from the mouth of complainant that he was assaulted from the gap of shirt button and, therefore, there was no corresponding cut mark from the said shirt. However, it has further come on record that, the shirt had blood stains only on the lower side and on the back side. Even if by co-incidence the knife passed from the space between the shirt buttons, if it was bleeding injury between ribs and portion of stomach, the natural conduct would be to hold on to the injury so that the flow of blood could be reduced. As mentioned, the evidence of P.W.5 Dr. Anil shows that, when the complainant was brought to the hospital, he had profuse bleeding. When this is so, merely by claiming that the stab went through near the gap of button would not be enough. When there are no corresponding blood stains of profuse bleeding on the shirt, it is doubtful if this was the same shirt which was worn at the time of incident. (Para 13)

Counsel:- ***For Appellants(s):*** *Shri Sk. Mazhar A. Jahagirdar, Advocate.*

For Respondent(s): *Shri B.A. Shinde, A.P.P.*

JUDGMENT

A.I.S. CHEEMA, J.:- 1. This appeal has been filed by original accused No.1 Mohd. Hanif and accused No.2 Akbar Khan Khudabaksh against their conviction under Section 307 read with Section 34 of The Indian Penal Code, 1860 (IPC in brief). The judgment was passed by Additional Sessions Judge, Ahmednagar on 27.10.2005 in Sessions Case No.48/2007. They have been sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.5000/- and in default to suffer simple imprisonment for three months.

2. Being aggrieved, this appeal has been filed. The case of prosecution in short is as follows :

(a) The complainant P.W.2 Prakash Sapate has a Dhaba i.e. Highway Hotel, by name "Sonali Dhaba" at some distance from village Chopadgaon, Taluka Karjat, District Ahmednagar on Ahmednagar Solapur Road. In the night between 14.12.2006 and 15.12.2006, he was admitted at about 11.35 p.m. at Gokul Hospital, at Karmala, District Solapur, which is run by P.W.5 Dr. Anil Motiram. He was admitted due to stab injury on his abdomen over epigastric region with also a cut to the cartilage of left side 9th rib. He was operated. His statement was recorded by Police Head Constable of Karmala Police Station at about 1.00 a.m. and Crime No.0/2006 came to be registered at Karmala Police Station at about 1.30 a.m. on 15.12.2006 under Section 307 read with Section 34 of the Indian Penal Code. The F.I.R. was transferred to Karjat Police Station in the jurisdiction of District Ahmednagar, the area to which the incident was relating to. At Karjat Police Station and offence came to be registered at No.221/2006 at 12.30 noon of 15.12.2006.

(b) In the F.I.R., the complainant informed about his family and stated that he has land where he has been running Sonali Dhaba, which functions day and night. On 14.12.2006 at about 9.30 p.m., he was on his Dhaba. Some trucks had stopped atthe Dhaba and the Drivers were having food. His brothers Subhash and Machindra were also at the Dhaba as well as servants were there. At that time, one truck came and stopped there and two unknown persons in black clothes got down and from another truck which was standing there, they started stealing diesel from the tank, at which time complainant asked them as to why they were stealing diesel. When he so asked those persons, from those two persons, one person took out a knife and gave a stab injury to him between chest and stomach part of the body and he fell down giving out a big shout. At that time, those two persons in the truck, having No.MP-09/KB5656, in which they had come, ran away in the same truck towards Karmala. The incident had been seen by his brothers and employees on the Dhaba.

On the basis of such F.I.R., the offence was registered as mentioned. It is further the case of prosecution that, the victim remained in hospital for some days and after he was discharged, he again started working on his Dhaba. At such time, on 11.1.2007, at about 7.00 p.m., when he was on his Dhaba, he noticed another truck bearing No.MP-09/KB-6817 proceeding from Ahmednagar to Karmala side and noticed that the same two persons who were involved in the incident of stabbing him on 14.12.2006 were going. He took along other

persons from his Dhaba and with 5-6 persons followed the said truck and managed to stop the truck near Nisarg Dhaba of Shivaji Ghanwat (P.W.4) and identified and caught those persons. On being asked, they gave their names as (1) Mohd. Hanif Ismail Khan and (2) Akbar Khan Khudabaksh Khan Mansuri. The complainant made phone call to police and police came and caught hold of the two accused and also seized the truck. From the truck, the police seized interalia plastic cans smelling of kerosene and diesel as well as knife. The panchanama (Exh.57) was drawn in presence of panchas including P.W.7 Kakasaheb Shivne by P.S.I. Prakash Khandekar (P.W.9). In the investigation, police recorded statements of witnesses for both the incidents dated 14.12.2006 as well as 11.1.2007. Spot panchanama had already been drawn when the F.I.R. was registeredand blood stained clothes of the complainant had also been seized. Test identification parade was also held. After investigation, the charge sheet came to be filed. The charge when framed, the accused persons have taken defence of denial.

3. The prosecution examined 9 witnesses to prove its case. The trial Court considered the oral and documentary evidence and convicted the accused and sentenced them as mentioned above.

4. I have heard counsel for both sides. The learned counsel for the appellants - accused referred to the evidence brought on record and his argument is that, the identity of the accused persons was not duly established. Referring to the evidence of witnesses, it is stated that, the witnesses were confused not only with regard to the manner in which incident took place but also which accused did what. The witnesses were giving different stories of the incident. P.W.3 Housrao did not identify any accused in the test identification parade which was got held by the police, but identified the accused persons in the Court. There was even difference of versions regarding recovery of knife. According to the counsel, the trial Court has not recorded reasons on the basis of which the conviction could be maintained. Trial Court simply referred to the arguments and without recording its own reasons, accepted the case of prosecution and convicted the accused.

5. Per contra, the learned A.P.P. supported the conviction recorded by the trial Court. According to A.P.P., there is sufficient evidence to prove that the accused persons acting in furtherance of common intention, stabbed the complainant. According to the evidence of the doctor, P.W.5 Anil, the stab injury caused to the

complainant was sufficient in ordinary course of nature to cause death. According to the A.P.P., in para 20 of its judgment, the trial Court recorded sufficient reasons to convict the accused and the appeal should be dismissed.

6. I have gone through the evidence. Before discussing the evidence regarding the incident, it would be appropriate to keep in view the spot of incident. Apparently, the spot is claimed to be near Sonali Dhaba on the Ahmednagar Solapur Road. The portion is of Highway and the incident occurred at about 9.30 p.m. The spot panchanama Exh.41 has been proved by P.W.1 Nagesh Ghanwat. This was recorded on 15.12.2006 at about 3.00 p.m. The spot panchanama shows that, Machindra Sapate (P.W.6) showed the spot to the police and panchas, which was about 1 km. from Chapadgaon, abutting the Highway. He showed the place in front of the hotel of Housrao Shelke (P.W.3). The said hotel was adjoining the Highway having a small open area sufficient for one or two trucks to stop. It was stated that, at such place, the truck No.MP-09/KB-5656 (which was referred in the F.I.R.) had stood in the night and with persons from such truck, the complainant had a quarrel regarding theft of diesel. The brother of complainant P.W.6 Machindra informed that, from such place, the complainant had caught hold of one person and was taking him along to his own Hotel Sonali and had reached at about 500 ft. away when that unknown person by a sharp instrument stabbed the complainant and ran away. That spot where stabbing took place, was in front of the Gotha of Mahadeo Kale. The spot panchanama then recorded what was situated to the East-West of the spot concerned. Thus, as per the spot panchanama, the complainant had caught hold of one of the unknown persons near the truck No.MP-09/KB-5656 standing in front of the hotel of P.W.3 Hansrao and while he was taking him away to his own hotel and was at about 500 ft., the stabbing took place. The cross-examination of P.W.2 the complainant Prakash shows that, from his sitting counter at his own Dhaba Sonali, the trucks stand stationary at about 100 ft. In the cross-examination, he stated that, the pan stall of Sitabai Shelke from his hotel is at about 400 mtrs. It may be recalled that, the name of P.W.3 is Housrao Shelke. The cross-examination did not make it clear, but possibly same pan stall was being referred. Substance is that, the pan shop of P.W.3 Housrao was at quite a distance. From the Dhaba of complainant, if one was to keep in view that these are pan shops and Dhaba on Highway and the concerned time was of 9.30 p.m., it would be dark vicinity. The complainant

admitted in his cross-examination that, his own hotel is at distance of about 100 ft. from the road. The pan shop of P.W.3 Housrao was abutting the highway with open space only for 1-2 trucks. P.W.3 Housrao in his cross-examination stated that, he was unable to give description of the truck as it was dark. P.W.3 Hansrao has actually deposed that, at the time of incident, there was complete darkness. In his evidence regarding the incident, at one place he deposed that, two persons, who had jumped from the truck and started coming, could not be seen by him properly due to truck lights and so he could not identify the accused before the Court.

7. Keeping the above spot in view, it would be now appropriate to refer to the evidence regarding the incident. I have already referred to the contents of the F.I.R. Exh.43, which in plain terms mentioned that, two unknown persons in black clothes, had got down and were stealing diesel and when complainant objected, one of those persons stabbed the complainant and both of them ran away in the truck No.MP-09/KB-5656, by which they had come. No role was attributed to the second person who was amongst the two. The cross-examination of P.S.I. P.W.9 Prakash shows that, he did not make any investigation with reference to that truck so as to establish any link between the truck in which the assailants and the accused persons had escaped. After keeping in view the F.I.R., if the evidence of complainant is seen, he deposed that, there were some trucks stationary near his hotel and some persons had come to the hotel and out of those persons some were taking out diesel from another truck and committing theft including one person by name Hanif. For this, the complainant pointed out towards one of the accused in the Court who stated his name to be Akbar (that would be accused No.2). The complainant deposed that, he went to catch the culprits and asked them why they were taking outthe diesel and there was hot altercation. Admittedly, the brothers and other staff of the complainant were at the Dhaba and if hot altercation took place, it was not a case of sudden stabbing and running away. The complainant deposed that, out of the two persons one caught him and the other stabbed him. In evidence, the complainant then again pointed out towards accused No.2 Akbar as the person who stabbed him and again stated that his name was Mohd. Hanif, the accused No.1. He was not able to tell the name of the other accused which would actually be Mohd. Hanif. Thus, at two places in his evidence, he referred to accused No.2 naming him as Mohd. Hanif, the accused No.1. This confusion in names, would not be material and can be stated to be

natural when assailants were not known to the complainant and he had caught them after some days of his discharge from hospital and the evidence was being recorded after many years in 2015. However, material is whether the prosecution witnesses are even clear as to who actually stabbed and whether there is consistency in the evidence of witnesses regarding what exactly happened.

8. As mentioned, although in the F.I.R., actual role was attributed to one of the two thieves, in oral evidence, complainant claimed that, out of the two one held him and the other stabbed him. Now if evidence of P.W.3 Housrao is examined, in front of whose Hotel and pan shop the concerned Truck No.MP-09/KB-5656 was standing, he deposed that, at the time of incident, one truck came there and a person alighted from the truck, who was identified by the complainant and caught by him as a diesel thief. P.W.3 did not claim that two persons arrived and were stealing diesel when complainant caught them. He says that, moment a person alighted from the truck, complainant caught him as a diesel thief. P.W.3 deposed that, when complainant caught the said person, the truck in which he had come, left and the complainant started taking that person towards his hotel and asked P.W.3 to follow him towing his motorcycle. P.W.3 deposed that, when this was taking place, the truck returned back and "some persons" jumped down and assaulted the complainant by knife. This P.W.3 was unable to give the name of the person who assaulted by the knife but pointed towards accused No.1 Mohd. Hanif as the person who had stabbed. He deposed that, two persons came to ask him but he ran away towards his Vasti and, as mentioned, two persons, who had jumped from the truck and started coming towards him, could not be seen by him properly due to the truck lights. Thus, if the evidence of P.W.3 is kept in view, he states about involvement of more than two persons in the incident.

9. Now if evidence of P.W.6 Machindra is seen, he claims that, the incident took place in front of his hotel Sonali Dhaba. He deposed that, some outsiders were taking out diesel of a tank from the truck and his brother Prakash -complainant had gone to them. He claims that, he had followed his brother and saw at that time that one of the persons who was taking out diesel, assaulted the complainant by knife and Prakash, the complainant fell down. This P.W.6 referred to the accused persons as the diesel thieves and the assailant, but did not try to say which of them had stabbed. Even this P.W.6 has deposed in cross-examination that there was no light on the spot of incident.

Thus, these witnesses P.W.2 complainant, P.W.3 Housrao and P.W.6 Machindra are giving different versions of the incident and the number of persons involved as well as who did what.

10. The complainant claimed that he was admitted in the hospital for three weeks. Thus, this would be till the first week of January 2007. However, the medical case papers Exh.52 would show that he was discharged on 26.12.2006. I would not give much emphasis on date when he was discharged. Material is that, the complainant admitted that after he was discharged from the hospital, doctor has advised him to take bed rest for another 15 days. He deposed that, he was taking rest at the hotel. Complainant then claimed that, on 11.1.2007, at about 6.00 p.m., he was on his hotel and at that time, the accused were proceeding by truck going towards Karmala. He states that, he saw them and he identified and so he chased them and caught them near Toll Naka. He states that, he was accompanied by 4-5 persons. According to him, the accused were traveling in a truck No.MP-09/KB-6817. He deposed that, there was no hotel at the spot where the accused were caught. Then he claimed that, the accused before the Court were same. According to him, the Karjat Police was informed on phone and they took both the accused to Karjat Police Station. It appears that, test identification parade was carried out and he later on identified the accused. This would be immaterial as the complainant himself claimed that he had caught the accused from the Highway. Now if other evidence is seen, P.W.4 Shivaji has deposed that, on 11.1.2007 at about 7.00 - 7.30 p.m., he was on his Nisarg Dhaba and the complainant and 3-4 other persons had chased a vehicle and intercepted the same near the Dhaba and caught two persons from the vehicle. According to him, the two persons were confined in the room of his Dhaba while the police was called. P.W.7 Kakasaheb also claimed that he was at the Nisarg Dhaba when the complainant and other persons had caught diesel thieves in their truck and brought them to Nisarg Dhaba. He also referred to the truck number No.MP-09/KB-6817. Thus, the complainant claimed that, he chased the accused and caught them at the Toll Naka and nearby there was no hotel, but these two other witnesses claimed that, the complainant had caught the diesel thieves near Nisarg Dhaba and brought them there and handed over to police.

The seizure panchanama Exh.57 was prepared. In addition to the truck, the other articles like plastic cans, pipe as well as seizure of knife was shown from the truck. Where exactly the truck of accused was stopped and they were caught is not very important. Contra evidence is that, the prosecution showed recovery of knife from the

said Truck No.MP-09/KB-6817 and which knife has been identified in Court as the instrument of assault. Material is that, P.W.6 Machindra, who had shown the spot to the police, deposed in cross-examination (para 7 of his evidence) that he had seen Article 7 knife, lying on the spot for the first time and that the said knife was handed over to the police by waiters of the Dhaba. Thus, if the knife before the Court was the same instrument by which the assault took place, is also doubtful.

11. In the cross-examination of complainant (who had written in his F.I.R. registration number of a truck from Madhya Pradesh) was suggested that he had falsely implicated the accused persons as they were traveling in vehicle having Madhya Pradesh R.T.O. passing. The complainant denied the suggestion. He was further suggested that to take revenge of culprits of M.P. about earlier incident, he had involved the present accused. The suggestion was again denied. Although these suggestions have been denied, fact remains that, if the F.I.R. is seen, no description of the culprits was given to the police when the F.I.R. was filed. Neither at the time of F.I.R. when the victim may have just come out after operation nor soon thereafter any statement was recorded regarding the description of the assailants. Admittedly, at the spot of incident it was dark. There are different versions in evidence whether immediately when complainant objected to the theft one of the assailants stabbed or the stabbing took place when one of the thief was being taken along to the Dhaba of complainant. If the incident had suddenly occurred, when theft was objected as was mentioned in the F.I.R., there would be hardly sufficient time to see the assailants properly when it was dark in the area and there would be no opportunity for P.W.3 Housrao or P.W.6 Machindra to seen the assailants properly. Keeping in view the incident as it occurred on 14.12.2006, catching of the accused persons on 11.1.2007, in the manner in which complainant claimed, I find that it was merely on suspicion with M.P. registration of the vehicle giving encouragement to the complainant to claim that it was these accused only who were assailants. As discussed above, the witnesses including the complainant are totally confused regarding which assailant did what. The complainant who had caught the accused persons himself and verified their names from them so as to give supplementary statement to the police, was unable to even correctly refer to the accused persons in evidence. It would be difficult to rely on his identification. He has also given different versions where in evidence he attributed role to both the accused which was not what is stated in the F.I.R.

12. The endorsement on the top of F.I.R. Exh.43 has some scribbling like Doctor's make in the time of 1.00 a.m. on 15.12.2006. The scribbling has not been proved, but if the evidence of P.W.5 Dr. Anil is perused, the evidence is that, the complainant was brought to the hospital at 11.35 p.m. with stab injury. According to Doctor, there was profuse bleeding and patient was in shock. Operation was suggested and carried out. The doctor appears to have operated the complainant in the night itself. If the medical case papers Exh.52 proved by this witness are seen, there are anesthesia notes in the date of 15.12.2006 with time shown as 1.30 a.m. interalia recording that high risk consent has been taken. There are notings regarding the pulse and B.P. etc. Then there are further notings and at 2.30 a.m. the recording is that, the patient was responding to verbal commands and was shifted to the Ward. Looking to such endorsement on the F.I.R. Exh.43 of 1.00 a.m. and then endorsement in the case papers, it would have been appropriate for the prosecution to examine Head Constable who had recorded Exh.43 or brought on record from the evidence of the complainant himself the necessary details as to how the F.I.R. was recorded. Rather, the complainant claimed that, police had recorded his statement in the hospital, but he did not remember. Then he was shown Exh.43 and he accepted that it was correct. Thus, the manner in which the F.I.R. was recorded is also not clear.

13. There is evidence of P.W.8 Prakash Ghanwat that the clothes of the complainant were seized on 15.12.2006 vide panchanama Exh.60. The complainant in evidence claimed that, the white shirt which was before the Court, was the same which he was wearing at the time of incident. The Court itself noted that, the shirt did not have a corresponding cut on the shirt. When the Court noted this, the A.P.P. appears to have brought on record from the mouth of complainant that he was assaulted from the gap of shirt button and, therefore, there was no corresponding cut mark from the said shirt. However, it has further come on record that, the shirt had blood stains only on the lower side and on the back side. Even if by co-incidence the knife passed from the space between the shirt buttons, if it was bleeding injury between ribs and portion of stomach, the natural conduct would be to hold on to the injury so that the flow of blood could be reduced. As mentioned, the evidence of P.W.5 Dr. Anil shows that, when the complainant was brought to the hospital, he had profuse bleeding. When this is so, merely by claiming that the stab went through near the gap of button would not be enough. When

there are no corresponding blood stains of profuse bleeding on the shirt, it is doubtful if this was the same shirt which was worn at the time of incident. Thus, there are some reasons to suspect the manner in which the investigation has been done.

14. I have gone through the judgment of the trial Court. The trial Court accepted the ruling cited by the A.P.P. before the trial Court, which laid down that the evidence of injured witness cannot be brushed aside for minor discrepancies. Trial Court, on such basis, ignored the discrepancy being seen in this record claiming that they were minor. It also ignored the contradictions and omissions on the basis that the incident was of 2006 and evidence was being recorded in 2015. I am aware that the evidence of an injured person has to be given weight and when there is a gap of many years, minor discrepancy will have to be ignored. However, my discussion above shows that there are material variations not only regarding which accused did what, but also there are reasons to doubt if there was real opportunity to the complainant and the witnesses to properly see the assailants. There are discrepancies even regarding the manner in which the incident occurred. Peripheral details can be ignored, but these are major discrepancies. Trial Court gave much weightage to the recovery of knife from the truck of the accused without noting the evidence of P.W.6 Machinda who has deposed that the knife was found on the spot and was handed over to the police by the staff of the Dhaba. Taking overall view of the evidence, I am unable to agree with the trial Court. There are serious doubts if the appellants -accused were the assailants of the complainant. It would be risky to convict these appellants.

ORDER

For such reasons, the appeal is allowed. The conviction of the appellants - original accused Nos.1 and 2 and the sentence as imposed by the trial Court are quashed and set aside. The appellants - accused are acquitted of the offence punishable under Section 307 read withSection 34 of the Indian Penal Code, 1860. The appellants - accused, who are in jail, shall be released forthwith unless their presence is required in any other offence. Fine, if paid, be refunded to them.

***Result*:-** Appeal allowed.