



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 683 OF 2018

Govind s/o Taterao Suryawanshi,
Age: 30 years, Occu.: Agriculture,
R/o: Village Halki, Taluka: Shirur,
Anantpal, District: Latur.
[At Present the appellant is in Nashik
Central Jail, Nashik Road, Nashik]

...APPELLANT
[Orig. Accused No. 1]

VERSUS

The State of Maharashtra,
through the Police Station
Shirur Anantpal, Taluka: Shirur,
Anantpal, District: Latur.

...RESPONDENT

Ms. Poonam V. Bodke Patil, Advocate for appellant
Mrs. Uma S. Bhosale, APP for respondent-State

**WITH
APPLN. FOR LEAVE TO APPEAL BY STATE NO. 232 OF 2018**

The State of Maharashtra,
through the Police Station
Shirur Anantpal, Taluka: Shirur,
Anantpal, District: Latur.

...APPLICANT

VERSUS

1. Govind s/o Taterao Suryawanshi,
Age: 30 years, Occu.: Agriculture,
R/o: Village Halki, Taluka: Shirur,
Anantpal, District: Latur.
2. Maroti s/o Hariba Suryawanshi
Age: 63 years, Occupation: Agriculture,
R/o Halki, taluka Shirur Anantpal
District Latur.

3. Uttam s/o Maroti Suryawanshi
Age: 39 years, Occupation: Agriculture,
R/o Halki, taluka Shirur Anantpal
District Latur.
4. Sunil s/o Taterao Suryawanshi
Age: 25 years, Occupation: Agriculture,
R/o Halki, taluka Shirur Anantpal
District Latur.
5. Rahul @ Babasaheb s/o Maroti Suryawanshi
Age: 29 years, Occupation: Agriculture,
R/o Halki, taluka Shirur Anantpal
District Latur.

...RESPONDENTS
[Orig. Accused]

Mrs. Uma S. Bhosale, APP for applicant-State
Ms. Poonam V. Bodke Patil, Advocate for respondent No. 1

.....

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

**RESERVED ON : 09th JULY, 2025
PRONOUNCED ON: 28th JULY, 2025**

JUDGMENT : [PER NITIN B. SURYAWANSHI, J.]

1. This appeal is directed against the judgment and order of conviction of appellant under Section 302 of Indian Penal Code and sentence of life imprisonment imposed on him by learned Additional Sessions Judge, Nilanga in Sessions Case No. 04 of 2016.

2. It is the prosecution case that, Madhav Govind Waghe (PW4) lodged report with Shirur Anantpal Police Station

on 14.10.2015 alleging that he along with his family resides at village Wanjarkheda. His elder brother Rambhau Waghe (deceased) was residing at Hyderabad since last 15 years. On 14.10.2025 his brother had been to his native place and he wanted to proceed to Tuljapur. Earlier his brother had purchased 1 Acre 1½ guntha land at Wanjerkheda. The dispute about said land was going on with the family members of accused Govind Taterao Suryawanshi. A civil suit resulted in favour of his brother, therefore, accused Govind and his family members were having grudge against them. Govind and his brothers were threatening to kill them saying that though the result of the Court has gone in your favour, they will determine their fate. Though, PW4 and his family members tried to give them understanding, it was of no use.

On 14.10.2015 at about 2.00 O'clock in the noon, Rambhau (deceased) reached to his field from Hyderabad and stayed there up to 5.00 pm. Later on they decided to bring mutton from village Halki. Therefore, deceased, PW3- Santosh Surwase and informant have gone triple seat on a motorbike to village Halki to bring mutton. After taking mutton they started back towards their village at about 6.30 pm. PW3 Santosh was riding the bike. PW4 was sitting in the middle and deceased was

sitting behind him. When they reached at a distance of about 1 km from village Halki, near a bridge, they came across accused Govind, Maroti, Sunil, Uttam and one unknown person. Accused asked them to stop their motorbike. Upon stopping of the motorbike, Accused No. 1- Govind came near them and gave a blow of axe on back side of the head of deceased, second blow was dealt on the forehead. Other accused assaulted deceased with kicks and fist blows. Accused Govind was exhorting that Ramya should not go live and after Ramya, catch hold of the informant. Therefore, PW3 and PW4 ran away from the spot. He therefore stated that all the accused have committed murder of deceased Rambhau on account of land dispute.

3. The information that one person has been murdered on Halki to Mushirabad road was received to the police station through Police Patil of village Halki. PW6- Ashok Anantare took entry in the station diary and visited the spot along with his staff. On reaching there he found that dead body of Rambhau was lying on road facing down. He also noticed Police Patil and PW4 on the spot. Dead body was inspected in the lights of lantern, torch and vehicles. Inquest panchnama was conducted on the spot. Dead body was then sent for post mortem.

Informant-PW4 was then taken to police station and his report was recorded at Exhibit-83. Crime No. 83 of 2015 was registered and investigation was handed over to PW6. During the investigation, spot panchnama was conducted. Accused were arrested. Their clothes were seized under panchnamas. On the basis of memorandum statement of accused Govind (Exhibit-64), alleged murder weapon axe used in the crime was recovered vide panchnama (Exhibit-65). On completion of investigation charge sheet was filed.

Five accused persons were charged under Sections 302, 307, 341 read with 149 of IPC and Section 37(1) (3) of Bombay Police Act. Accused denied the charge. Prosecution examined 7 witnesses in support of the charge. On appreciation of evidence Trial Court convicted the appellant as aforesaid and acquitted Accused No. 2 to 5.

4. By filing Application No. 232 of 2018 State has sought leave to file appeal challenging the acquittal of Accused No. 2 to 5. By filing Criminal Appeal No. 683 of 2018, appellant has challenged his conviction.

5. Heard learned advocate for the appellant and learned APP for State.

6. PW3 and PW4 are the eye witnesses in the present case.

PW3 Santosh Surwase has not supported the prosecution and was declared hostile. He deposed that he knows complainant Madhav Waghe and Rambhau Waghe. Rambhau had agricultural land at village Wanjarkheda. He did not know whether there is any dispute of Rambhau Waghe with anyone regarding said land. Rambhau is not alive. He was residing at Hyderabad. On 10.04.2015 he had been to Wanjarkheda from Hyderabad for going to Tuljapur. His field and Rambhau's field were adjacent to each other, so he met him on that day in the field. Till 5.00 pm he and Rambhau were present in their fields. At about 5.45 to 6.00 pm they both went to bring mutton. At about 6.30 pm while returning to the field with mutton on the motorcycle, 5 to 6 unknown persons stopped them by signal with their hand for robbery. It did not happen that he, Rambhau and Madhav had gone to bring mutton and at that time Accused No. 1 Govind stopped them by signaling with his hand and other accused were with him. Then Govind gave blow of axe over the head of deceased Rambhau. It did not happen that Govind also gave blow on his leg with iron bar.

Learned APP was permitted to cross examine this

witness. In the cross examination, he deposed that he knows Accused No. 1 to 4 present before the Court. They are his adjacent land owners, but he is not frequently sitting with them. Even after the death of Rambhau he is on talking terms with accused. He denied that he along with Rambhau and Madhav went to village Halki for bringing mutton and they were returning home at 6.30 pm. At that time Accused No. 1 and 2 stopped them by giving signals with their hands. At that time, he was driving motorcycle, Madhav was sitting in between and deceased Rambhau was sitting behind. He denied that Govind gave blow of axe on the head of Rambhau and Govind gave him a blow with iron rod and therefore they all fell down. He admitted that they ran away from the said spot. He again stated that he ran away from the said spot. He denied that due to the injuries sustained by him he had been to Garad Hospital, Latur for treatment. He denied that he made statements in portion mark A, B and C before police. He also denied the statement portion mark A was made by him in his supplementary statement. He admitted that the statement was recorded earlier before the Court. Statement dated 22.12.2015 (under Section 164 Cr.P.C.) was shown and read over to him. He admitted that it is the same statement and it bears his signature and its contents are true and correct. This

statement is mark Exhibit-77. He denied that due to fear of accused and as there is no powerful male member in the family of victim therefore he is deposing false about the incident.

7. In the cross examination by accused, he admitted that his statement was recorded before the Judicial Magistrate after 02 months and 8 days of the incident and he was forcibly brought to the Court by the police at that time. Police threatened him to tell such facts before the Court otherwise they would join him as accused and due to that fear he stated before the Magistrate.

8. Informant Madhav Govind Waghe (PW4) is the brother of deceased Rambhau. He testified that he has one brother namely Rambhau, he possessed 1 Acre 1 Ghunta land. He is no more. He was doing bakery business at Hyderabad. On 14.10.2015 he came from Hyderabad to Wanjarkheda in order to go to Tuljapur. Santosh Uttam Patil has known to him, he is friend of his brother. He came to Wanjarkheda at about 2.00 pm. He was with him along with Santosh at the field till 5.00 O'clock in the evening. Thereafter they went to bring mutton on the motorbike at Halki. At the time of returning from mutton shop Santosh was rider of the motorbike, his brother (deceased) was

pillion rider and he was sitting in between them. At about 6.00 to 6.30 pm they reached upto a bridge which was on the way to Halki to Mushirabad. One Sunil Suryawanshi, Maruti Suryawanshi, Govind Suryawanshi, and Uttam Suryawanshi along with one unknown person stopped their motorbike. Accused Govind dealt a blow to his brother over the back of his head with the help of axe, his brother fell down. Again Accused Govind dealt another blow over his forehead. Thereafter, rest of the accused started assaulting to his brother with fists and kick blows. Accused Govind was shouting that Ramya should not live alive and he should be killed. Accused were also saying that he should be caught. Therefore, he along with Santosh ran away. Their village is at a distance of 3 km from the said spot. He met some people from the village on the outskirts of their village, then again they reached to the spot. Police had reached on the spot. Police asked him as to the identity of his brother. He confirmed the identity. Police had brought lantern (Batti) and drew scene of occurrence panchnama. Then he was taken to police station. He was asked how the incident has happened. He lodged report Exhibit-83.

Again next morning he was called at 6.00 am to the police station. Two panchas were called. He showed the spot to

them. Blood stained soil was collected from the spot. Then he went to village Halki for his work where he noted presence of unknown person who was along with accused at the time of assault. He inquired the name of that person and came to know his name is Babasaheb Maruti Suryawanshi. Then he went to police station and gave them the name of 5th assailant. Accordingly his supplementary statement was recorded. After couple of days he was called to identify Babasaheb Suryawanshi. His statement was recorded in the Court. There was land dispute in between Govind and his brother. The Court ruled in their favour, therefore accused were holding grudge against them. They used to say that we will deal with you properly. He identified clothes of deceased. He also identified the weapon axe used in the crime. His mother had lodged number of complaints alleging that accused had given threats of life.

9. In the cross examination, he admitted that on 05.10.2017 he had received court summons. On that date he appeared before the Court to sought adjournment as he was not prepared to testify. He did not remember whether after that day for 14 to 15 days, he did not attend the Court. He admitted that on 2 to 4 occasions bailable warrant was issued against him and

his bond was also taken in the Court for further appearance. He did not know whether non bailable warrant was issued against him. He denied that since he was not eye witness he was seeking multiple adjournments to get prepared for making statements before the Court. He further stated that civil suit was in respect of partition of Suryawanshi family, it was a dispute in between step brothers, mother and father. Out of that subjudice property he had purchased 1 Acre land from Maruti Suryawanshi. He did not know whether Accused No. 1 and his father were party to that suit or not. He denied that the civil suit was not against Accused No. 1. He did not sustain any injury in the incident. His clothes were also not stained with blood. He did not notice as to whether motorcycle was present over the spot. He did not notice whether mutton carried by them was lying over the spot in the night and in the morning as well. He denied a suggestion that he is deposing false about assault to his brother and the assailants and he lodged false complaint owing to civil dispute. He denied that accused are involved in the said crime out of enmity, though they have no concern with present crime.

10. By examining Dr. Balaji Devanagare (PW5), prosecution has proved homicidal death of deceased Rambhau.

Dead body of Rambhau was forwarded to him on 15.10.2025 for post mortem. He noticed 8 chop injuries over the head i.e.

- (i) Just above right eyebrows cut lacerated wound 5 x 3 x 0.5 cm deep penetrating almost to the brain.
- (ii) Cut lacerated wound on the right ear 4 x 1 x 0.5 cm runs obliquely.
- (iii) Cut lacerated wound 4x1x0.5 cm above forehead.
- (iv) Cut lacerated wound on upper surface of head 5 x 0.5x 0.5 cm almost cutting the bone and exposing the brain matter.
- (v) CLW 4x1x 0.5 cm L-ve left ear.
- (vi) CLW occipital area horizontally 5x1x0.5 cm (upper)
- (vii) CLW occipital a/w middle area 4.4x1x0.5 cm horizontally.
- (viii) CLW occipital lower area 5x1x0.5 cm horizontally almost exposing the brain.

The injuries were antemortem cut lacerated wounds. He opined that death was due to multiple chop wounds over the head with fracture of skull with injuries to brain. Provisional injury certificate (Exhibit-96) was issued by him and post mortem notes (Exhibit-97) was proved by him.

11. In the cross examination, he deposed that such injuries are possible by sickle. All the injuries were on the

forehead and head. There were no injuries on the other parts of the body. Several assaults are required for all the injuries sustained by the deceased. The deceased might have taken meal earlier to 4 to 6 hours of death.

The defence has not seriously disputed the homicidal death of the deceased. The prosecution has therefore proved the homicidal death of the deceased.

12. Anant Kulkarni (PW1) is the panch to spot panchnama (Exhibit-62). The spot was shown by PW4. He is also panch to memorandum statement of appellant (Exhibit-64) agreeing to produce axe which was kept by him under the tin. After recording the memorandum statement of the appellant, he led them to village Halki and took them near one house. He took out axe and iron rod from the roof of fowl house. The same was seized vide panchnama (Exhibit-65).

13. In the cross examination he has admitted that accused was handcuffed at the time when police asked him by which weapon he had beaten the victim. He admitted that spot of incident is a public road and it is full of traffic.

14. Waman Surwase (PW2) is panch to the panchnama

of seizure of clothes of deceased (Exhibit-71).

15. Police Inspector Ashok Anantre (PW6) was attached to Shirur Anantpal police station at the relevant time. On 14.10.2015 while he was on duty, police patil of Halki informed on telephone that one person is murdered on Halki Mushirabad road. Accordingly, he took entry in the station diary and visited the spot along with staff. On reaching over the spot he found that dead body of Rambhau Waghe was lying there facing downward. Brother of deceased (PW4) and police patil were also present there. He therefore conducted inquest panchnama (Exhibit-100) on the spot and handed over the dead body for postmortem. Brother of deceased (PW4) was taken to the police station and his statement was recorded. Accordingly, Crime No. 83 of 2025 was registered for offence under Section 302, 307, 143, 341, 323 of the IPC and Section 135 of B.P. Act. He deposed that clothes of the accused were seized under panchnama by searching their house vide Exhibits-58 to 61. On 16.10.2015 accused Govind agreed to recover axe and iron rod used in the crime. His memorandum statement (Exhibit-64) was recorded and axe and iron rod were seized vide panchnama Exhibit-65. He got the map of scene of offence (Exhibit-104)

prepared. He forwarded muddemal property to CA through Police Constable Gaware along with covering letters Exhibits-105 and 106.

He deposed that statement of PW3 was recorded as per his say and portion mark A,B, and C in his statement and portion mark A of supplementary statement were recorded as per his say. They were mark Exhibits-108, 109 respectively. He identified seized property before the Court.

16. In the cross examination he admitted that Govind was not party in the civil dispute. The copy of the judgment in civil dispute is at Exhibit-110. The name of accused Govind also does not reflect in the 7/12 extract (Exhibit-111). Arrest panchnamas were confronted to him and were marked Exhibits-112 to 115. He stated that clothes of informant-PW4 and Santosh-PW3 were not seized. He stated that blow of axe was given to the deceased when he was seated on the motorbike in the middle of informant and Santosh. PW3 was the rider. The accused have assaulted all the three who were on the bike. Medical certificate of complainant and Santosh were obtained. Santosh PW3 was assaulted with iron rod. He denied to go for medical. No test identification parade was taken.

17. Rajkumar Gulbhele (PW7) was attached to the outpost Nitur at the relevant time. On 06.09.2014 he was on duty. PSO Shinde was working at Shirur-Anantpal Police Station. He was also knowing ASI Kamble. He could identify their signatures. Deceased had given application to Shirur-Anantpal Police Station about dispute of the land as against Maroti, Uttam and Govind Suryawanshi. The said application was given to him for inquiry. Two to three such applications were filed. He called both the parties and chapter case was filed against them. He proved the Entry No. 225 of 2014. The extract of the same is at Exhibit-117. Copy of preventive measures taken under Section 107 Cr.P.C. is at Exhibit-118.

18. In the cross examination, he stated that preventive action was taken on the applications given by Phulabai.

It is mentioned in Exhibit-118 that applicant-Phulabai (mother of the deceased) gave an application that Maruti Suryawanshi, Uttam Suryawanshi and Govind Suryawanshi gave threats on account of dispute in respect of agricultural land. They claimed that they had taken loan from the deceased and towards security, the land was given to him. Though the loan was repaid, he was not returning the land.

Hence, apprehension of serious crime being committed on account of said dispute is expressed. Therefore, bond under Section 116(3) is obtained from the parties and chapter case under Section 107 is initiated.

19. On careful scrutiny of prosecution evidence we find that evidence of PW4-informant is truthful and reliable. He being brother of the deceased, his presence on the spot at the time of incident is natural. He has vividly described the manner in which accused assaulted the deceased with axe. Medical evidence corroborates his version. Though he has stated that in his presence two blows of axe were given by accused on the head of the deceased, in the medical evidence it has come that there were eight chop wounds on the person of the deceased. But merely because he has not stated about remaining six chop wounds is not sufficient to raise doubt about his version which is otherwise found reliable. He has stated that after hearing exhortation of the accused to catch him, he and PW3 ran away from the spot. It appears that after he left the spot remaining injuries were inflicted on the deceased. His evidence could not be shattered in the cross examination.

20. His evidence is assailed on the ground that he being brother of the deceased is interested witness and therefore his evidence should be disbelieved, particularly in the light of evidence of PW3.

21. It is by now well settled that a "*close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.*" [See **Namdeo Vs. State of Maharashtra**¹]

22. In **Shivaji Sahebrao Bobade vs. State of Maharashtra**² it is held that "*even where a case hangs on the evidence of a single eyewitness it may be enough to sustain the conviction given the sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration.*"

¹ (2007) 14 SCC 150

² (1973) 2 SCC 793

23. Merely because PW4 has not sustained any injury and he has not tried to save the deceased, his presence on the spot cannot be doubted on these grounds. *"Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far as removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."* (Vide ***Rana Pratap and Others V/s State of Haryana***³).

³ 1983 (3) SCC 327

24. The next argument of the accused that since PW3 has not supported the prosecution case his evidence is liable to be discarded from the consideration.

In the cross examination of PW3 conducted by learned APP his previous statements were confronted to him. Portion Mark A, B and C from his police statement dated 16.10.2015 are at Exhibit-108 collectively. They are as follows:

Portion Mark 'A'

“त्याचे शेतात सांयकाळी पाच वाजेपर्यंत थांबलो त्यानंतर त्यांच्या मोटारसायकलने मी, रामभाउ वाघे, महादेव वाघे असे तिघेजण हल्की येथे आलो व तेथील एका मुस्लीमच्या मानसाकडून एक किलो मटण घेवून मोटारसायकलने परत वांजरखेडा गावाकडे अंदाजे संध्याकाळी 6.30 वा. सुमारास जात असतांना हल्की गावापासून वांजरखेडा जानारे रोडवर अंदाजे 1/2 km वर हल्की येथील गोविंद तातेराव सुर्यवंशी याने आमच्या मोटारसायकला हात केला त्यामुळे मी मोटारसायकलचा वेग कमी केला. त्यावेळी तो माझ्या जवळ येवून मोटारसायकलला धरून व त्याचे हातातील कुऱ्हाडीने पाठीमागे बसलेल्या रामभाउ वाघेच्या डोकीत कुऱ्हाडीने जोरात वार केला.”

Portion Mark 'B'

“त्याचे दुसऱ्या हातातील सळईने (रॉडने) माझे पायावर जोरात मारून माझा डावा पाय गंभीर जखमी केला. तेवढ्यात आम्ही तिघेही खाली जमीनीवर पडलो. त्यावेळी हल्की येथील मारुती सुर्यवंशी, सुनील सुर्यवंशी, उत्तम सुर्यवंशी हे पण रोडच्या बाजून थांबलेले तेथे आले व त्यांनीपण रामभाउ वाघेला लाथा बुक्क्यांनी मारहाण करण्यास सुरुवात केली व हे सर्व जण राम्या जिवंत नाही राहिला पाहिजे असे म्हणत होते व त्यांच्या बाजून एक अनोळखी इसम पण थांबलेला होता. रामभाउच्या डोकीत व कपाळावर कुऱ्हाडीचा जबर मार लागला असल्याने तो रोडवरच रक्तबंबाळ होवून पडून

होता. मी व महादेव वाघे घाबरून तेथून जिव वाचवून पळून गेलो. ते सर्वजण या दोघांनाही जिवंत जावू देवू नका असे म्हणत होते. त्यानंतर आम्ही पळत गावी वांजरखेडा येथे गेलो. त्यानंतर अंदाजे सव्वासात वा. सुमारास समजले की रामभाउ वाघे हा जागीच मरण पावला आहे. त्यानंतर माझे माझे डावे पायाला जास्त मार लागलेने मी इलाजासाठी खाजगी दवाखाना गरड हॉस्पिटल लातुर येथे गेलो.”

Portion Mark 'C'

“तरी आमचे गावातील माझा मित्र रामभाउ वाघे व हल्की येथील गोविंद तातेराव सुर्यवंशी यांचे बऱ्यासच्या दिवसां पुर्वि पासून अंदाजे एक ते सव्वा एकर शेतीचा वाद चालू होता. तो वाद कोर्टात होता. कोर्टाने त्या वादाच्या शेतीचा निकाल रामभाउ वाघे यांच्या बाजूने दिलेला होता. त्याचा राग मनात धरून दि. 14/10/2015 रोजी 18.30 वा. सु.”

25. Exhibit-109, Portion Mark 'A' from his supplementary statement is as follows:

“त्यानंतर आज मला आणून पाचव्या अनोळखी व्यक्तीला दाखवले त्या बाबत माझे सांगणे असे की आम्हाला दि. 14/10/2015 रोजी मारणारा पाचवा अनोळखी व्यक्ती तो हाच आहे. मी तुमचे समक्ष त्याला त्याचे नाव विचारले असता त्याने त्याचे नाव राहुल उर्फ बाबासाहेब कांबळे असे सांगितले व त्याला महादेव वाघे यांनीपण ओळखले. आम्हाला मारणारा व रामभाउ वाघे यांना मारणारा हा पाचवा अनोळखी व्यक्ती राहुल उर्फ बाबासाहेब कांबळे हाच आहे.”

26. It is well settled by catena of decisions of the Apex Court that “*Statement of hostile witness can be relied on by the Court, to the extent it supports prosecution case and is corroborated by other evidence.*”

27. In *Prem Singh vs. State (NCT of Delhi)*⁴, it is held that, "such part of evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence."

28. In "*Bhajju V/s State of Madhya Pradesh*"⁵, the Apex Court held :

"35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the Appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Code of Criminal Procedure., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon

⁴ (2023) 3 SCC 372

⁵ (2012) 4 SCC 327

such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party."

In the light of above observations and considering the attending circumstances, we cannot accept arguments of the accused that since PW3 is declared hostile, his evidence is liable to be discarded from consideration. We find that Exhibit-77, Exhibit-108 collectively and Exhibit-109 corroborate the evidence of PW4 and support the prosecution case.

29. By relying on Privy Council decision in ***Brij Bhushan Singh v. Emperor***, it is argued by the defence that statement under Section 164 Cr.P.C. is not substantive evidence.

30. PW3 in cross examination by learned APP has admitted that his statement was recorded before the Court. When the statement shown and read over to him he admitted it to be the same. He had stated that contents of said statement are true and correct and he has signed it. This statement is marked (Exhibit-77). In this statement he has stated that on 14.10.2015 he, deceased Rambhau and PW4 had gone to Halki on motorcycle for bringing mutton. After purchasing mutton they

were returning back at about 6.30 pm. On a bridge prior to Halki while returning towards the village five persons Govind Suryawanshi, Taterao Suryawanshi, Maruti Suryawanshi and one unknown person stopped their vehicle. They all are from Halki. Govind Suryawanshi assaulted Rambhau with axe on the back of head and forehead. He was trying to intervene. In the said assault Rambhau died on the spot. Thereafter accused said Madhav should be caught. That time Madhav ran away. After confirming Rambhau's death he went to the village and informed Police Patil.

31. It is settled legal position that statement under Section 164 Cr.P.C. is not substantive evidence. In ***Vijaya Singh & Another vs. State of Uttarakhand***⁶, the Apex Court has observed:

"27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of the Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses.

28. Considering the conceptual requirement of

⁶ (2025) 3 SC 378

recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. _ _ _ _"

In view of above enunciation of law, said argument of the accused is liable to be rejected.

32. It is argued on behalf of the defence that no blood was detected on the axe and therefore, CA report does not support the prosecution case.

Since we have found the evidence of eye witness PW4 to be reliable, cogent and trustworthy which is corroborated by the medical evidence and as axe is recovered from the accused, in our view, merely because no blood was found on the axe and on the clothes of accused, the prosecution case cannot be disbelieved in the entirety.

33. It is also argued that recovery of axe was not voluntary, as the accused was handcuffed at the relevant time. In support of this submission reliance is placed on ***Deoraj Deju Suvarna and Etc. vs. State of Maharashtra***⁷, wherein it is observed;

"There is another infirmity with regard to recovery of sword at the pointing out of Raju alias Rajendra Vijayan Pille and of chopper at the pointing out of Deoraj Deju Suvarna. P.W. 10 Nandu Namdeo Adsul, the public panch of recovery of chopper, at the pointing out of Deoraj Deju Suvarna, states that at the time of the recovery the accused was in handcuffs. In respect of Raju alias Rajendra Vijayana Pille we find that in the recovery memo Exhibits 25 and 25A, it is mentioned that his left hand was handcuffed. This being the position it cannot be said beyond reasonable doubt that the recovery was voluntary and not the result of duress, threat or pressure by the police authorities. Recoveries made while accused are hand cuffed, in our opinion, can be said to be violative of fundamental right enshrined in Article 20 of the Constitution of India. We are fortified, in our view, by a Division Bench decision of our own court reported in 1992 Cri LJ 3034 Cri LJ 3034 Shankar Raju Banglorkar v. State of Goa."

In the case in hand PW1, panch to the memorandum and seizure panchnama of axe, in the cross examination has stated that when police asked the accused by which weapon he had beaten the victim, he was handcuffed. Merely because at the

⁷ 1994 CRI LJ 3602

time of interrogation accused was handcuffed is not sufficient to discard the memorandum as well as seizure panchnama. PW1 has not stated that at the time of recording memorandum statement of the accused and seizure, he was handcuffed. Therefore, this case law is of no help to the accused.

34. Next submission is that recovery is from the open place and it is an ordinary agricultural implement used by all the agriculturists and therefore not much importance be given to the recovery of axe and on that basis appellant cannot be convicted. In support of this submission reliance is placed on ***Vinodbhai vs. State of Kerala***⁸, wherein the Apex Court by relying on ***Manoj Kumar Soni v. State of M.P.***⁹, has held:

"22. A doubt looms: can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own and without anything more to bring home the charges beyond reasonable doubt."

We do not find any merit in the said submission as the axe was concealed by appellant on the roof of fowl house. Since the

⁸ Criminal Appeal No. 1730/2017

⁹ 2023 SCC OnLine 984

appellant is convicted by relying on the evidence of eye witness PW4, this not a case that only on the basis of recovery at the instance of appellant, he was convicted.

35. There is no substance in the argument of the accused that there is delay in lodging FIR as the incident has taken place at 6.30 pm and the FIR is registered at 11.45 pm. Record indicates that on receipt of information about murder from police patil, PW6 has taken station diary entry and proceeded to the spot. He met PW4 and police patil there. Then he conducted inquest panchnama on the spot. Time of inquest panchnama is between 20.15 hrs to 21.00 hrs and thereafter FIR is registered at 11.45 pm. There is no inordinate delay as such in lodging the FIR.

36. In *Nitya Nand vs. State of U.P. & Another*¹⁰, the Apex Court has considered the scope of Section 149 of IPC. In the present case prosecution has failed to point out any evidence connecting the acquitted accused to the present crime. Therefore, we find no merit in the application filed by the State seeking leave to file appeal challenging the acquittal of Accused No. 2 to 5. The same is therefore dismissed.

¹⁰ Criminal Appeal No. 1348 of 2014

37. The Trial Court has properly appreciated the evidence and has rightly convicted the accused. In the light of foregoing reasons we do not find any merit in the appeal and appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)