

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.174 OF 1994**

The State of Maharashtra ] .... Appellant

***Versus***

|                                            |   |                              |
|--------------------------------------------|---|------------------------------|
| 1. Ragho Dharma Koli, Age : 55 Yrs.        | ] | <b>(Dead)</b>                |
| 2. Baburao Budhaji Koli, Age : 21 Yrs.     | ] |                              |
| 3. Motiram Padu Joshi, Age : 24 Yrs.       | ] |                              |
| 4. Rohidas Balram Joshi, Age : 20 Yrs.     | ] | <b>(Abated as per Court</b>  |
|                                            |   | <b>Order dt. 16/01/2008)</b> |
| 5. Ratan Maruti Vaskar, Age : 21 Yrs.      | ] |                              |
| 6. Satyawar Balu Waskar, Age : 19 Yrs.     | ] | <b>(Dead)</b>                |
| 7. Devidas Maruti Vaskar, Age : 26 Yrs.    | ] |                              |
| 8. Ramnath @ Ram Padu Joshi, Age : 32 Yrs] |   |                              |
| 9. Dnyandeo Sakharan Joshi, Age : 24 Yrs.  | ] | <b>(Dead)</b>                |
|                                            | ] | .... Respondents /           |
| All residents of Own-Peth, Taluka Panvel,  | ] | (Org. Accused                |
| District Raigad.                           | ] | Nos.1 to 9)                  |

Mr. A.S. Shitole, A.P.P., for the Appellant/State.

Mr. Shirish Gupte, Sr. Advocate, i/by  
Mr. Shrikant V. Gavand, for Respondent  
Nos.2, 3 and 5 to 8.

**CORAM : SMT. V.K. TAHILRAMANI &**  
**DR. SHALINI PHANSALKAR-JOSHI, J.J.**

**RESERVED ON : 23<sup>RD</sup> JULY, 2015**

**PRONOUNCED ON : 30<sup>TH</sup> JULY, 2015**

**JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]**

1. This Appeal is preferred by the State challenging acquittal of the Respondents for the offences punishable under Sections 147, 148 and 302 r/w. 149 of the IPC by the Additional Sessions Judge, Raigad-Alibag in Sessions Case No.127 of 1992 by Judgment and Order dated 30<sup>th</sup> September, 1993.

2. Facts, as are necessary, for deciding this Appeal may be stated as follows :-

PW-2 Anant Joshi is the brother of deceased Machindra. Both Anant and Machindra were doing the work of electric fitting. PW-3 Kesarinath Bhagat and PW-4 Vasudev Gaikar were also doing the same work.

3. The Respondents are also the residents of the same village where the deceased and prosecution witnesses were residing, namely, Owi-Peth, Taluka Panvel. The relations between them, however, were not cordial. Respondents were belonging to Congress Party, whereas, prosecution witnesses and the deceased were from Shiv-Sena Party. Hence, in the Election of

Zilla Parishad in 1992, they were on crossed terms. The complaints were lodged against the members of the rival party.

4. In this back-drop, the incident giving rise to this case took place on 26<sup>th</sup> April, 1992. On that day, deceased Machindra had gone to Village Nandgaon for electric fitting work along with PW-3 Kesarinath and PW-4 Vasudev. They returned at about 8:30 pm to the house of deceased Machindra. All the three of them had their dinner and were sitting on the cot in the court-yard. PW-2 Anant was thereafter taking his dinner in the house.

5. At about 9:30 pm, all the Respondents, being armed with various weapons, like, sword, knife, stick and motor-cycle chain, came to the court-yard and started assaulting the deceased with the weapons in their hands. Due to the assault, deceased fell down from the cot, having sustained serious bleeding injuries. His brother Anant took him in the truck of his brother PW-5 Eknath Joshi to Taloja Police Station. There, PW-15 Head Constable Atmaram Tambave was present on duty. Considering the serious condition of the deceased, along with Police Constable Mhatre, he sent the deceased to Municipal Dispensary

at Panvel and then recorded the complaint of Anant vide Exhibit-37.

6. On his complaint, C.R. No.44 of 1992 came to be registered against the Respondents and further investigation of the case was handed over to PW-16 PI Laxman Shejal. On the same night, at about 11:30 pm, PI Shejal received the phone message from Municipal Dispensary at Panvel that Machindra has succumbed to the injuries sustained in the assault. On the next day, in the morning, after performing Inquest Panchanama (Exhibit-26) on the dead body of Machindra in between 8 to 9 am, PI Shejal sent the dead body for postmortem examination. PW-14 Dr. Ramrao Kendre conducted the postmortem examination in between 12:30 to 1:30 pm and found, as many as, 27 injuries in the nature of incised wounds, contusions, CLWs and abrasions on the various parts of the body of the deceased and opined that the cause of the death was *“shock secondary to cerebral contusion due to blood trauma over occipital area”*. He issued the Postmortem Report (Exhibit-67) accordingly.

7. Meanwhile, PI Shejal visited the spot and prepared Scene of

Offence Panchanama in between 10 to 11 am vide Exhibit-42. From the spot, he collected the blood stained quilt (Article No.3) and the simple and blood stained soil. PI Shejal then recorded the statements of the eye witnesses and arrested the Respondents.

8. During custodial interrogation, at the instance of Respondent No.1 Ragho, the stick was recovered on 2<sup>nd</sup> May, 1992, whereas, at the instance of Respondent No.3 Motiram, the sword was recovered on 9<sup>th</sup> May, 1992. The swords also came to be recovered at the instance of Respondent No.5 Ratan and Respondent No.8 Ram on 11<sup>th</sup> May, 1992 and 10<sup>th</sup> May, 1992, respectively. Motor-cycle chain came to be recovered at the instance of Respondent No.4 Rohidas on 11<sup>th</sup> May, 1992. Some sticks were recovered at the instance of Respondent No.9 Dnyandeo and Respondent No.6 Satyawar on 9<sup>th</sup> May, 1992 and 12<sup>th</sup> May, 1992, respectively. PI Shejal has then sent all these seized muddamal articles to Chemical Analyzer. The C.A. Reports are produced in the case at Exhibits '32' and '33'. Further to completion of investigation, Charge-Sheet is filed in the Court against the Respondents.

9. On committal of the case to the Sessions Court, Trial Court framed charge against the Respondents vide Exhibit-2. Respondents pleaded not guilty and claimed trial, raising the defence of false implication on account of inimical relations.

10. In support of its case, prosecution examined in all 16 witnesses and on appreciation of their evidence, the Trial Court was pleased to acquit the Respondents of all the charges levelled against them. This Judgment of the Trial Court is challenged in this Appeal by the State.

11. During pendency of this Appeal, Respondent No.1 Ragho, Respondent No.4 Rohidas, Respondent No.6 Satyawar and Respondent No.9 Dnyandeo were reported to be dead. Hence, the Appeal stands abated against them.

12. In this Appeal, we have heard learned A.P.P. for the State and learned Counsel for the Respondents. With their able assistance, we have perused the entire evidence on record and also the impugned Judgment of the Trial Court. According to learned A.P.P., the Judgment of the Trial Court suffers from

perversity as the evidence of the eye witnesses is disbelieved on flimsy grounds, whereas, according to learned Counsel for the Respondents, the view taken by the Trial Court being a possible and reasonable view, no interference is warranted in the same while this Court is sitting in an appeal against acquittal.

13. Bearing in mind the rival submissions advanced before us and the necessary note of caution struck by learned Counsel for the Respondents, we are deciding this Appeal against acquittal.

14. This case stands on the evidence of three eye witnesses, namely, PW-2 Anant, the brother of the deceased, PW-3 Kesarinath and PW-4 Vasudev. Their evidence is more or less on the same lines as all the three of them were together with the deceased at the time of incident. It is deposed by PW-3 Kesarinath and PW-4 Vasudev that after completing their work of electric fitting at Nandgaon, they returned to the house of the deceased along with him at about 8:30 pm. They took their dinner with deceased Machindra in his house. Thereafter they were sitting on the cot in the court-yard of his house. By that time, PW-2 Anant had also returned to the house and he was

taking dinner in the house. It was about 9:30 pm. At that time, all the Respondents came there shouting and running, with weapons in their hands. It is their consistent evidence that Respondent No.3 Motiram, Respondent No.5 Ratan and Respondent No.8 Ram were carrying swords in their hands. With the said swords, Respondent No.3 Motiram assaulted the deceased on his head, whereas, Respondent No.5 Ratan assaulted the deceased with the sword on his legs. Respondent No.8 Ram also made assault with the sword on the head of the deceased. Their evidence is also consistent to the effect that Respondent No.7 Devidas assaulted the deceased with knife on his foot, whereas, the other Respondents, against whom the Appeal is abated, assaulted the deceased with motor-cycle chain and sticks.

15. As per evidence of Kesarinath and Vasudev, when they saw the Respondents rushing towards the deceased with the deadly weapons in their hands and also shouting, both of them became frightened and went inside the house of the deceased. They stood near the window of the house and saw the Respondents assaulting the deceased with weapons in their hands. Deceased

was trying to save himself from the assault and in the said attempt, he fell down from the cot. After the assault, the Respondents ran away from the spot. Thereafter these two witnesses came out of the house and found that deceased was in an unconscious condition. The deceased was then taken to the hospital in the truck of PW-5 Eknath.

16. The evidence of PW-2 Anant is also to the effect that while he was taking dinner in the house and his brother deceased Machindra, PW-3 Kesarinath and PW-4 Vasudev were sitting on the cot in the court-yard, he heard the shouting of the deceased that he was dying. Hence, he came out and saw that the Respondents were assaulting the deceased with weapons in their hands. According to him also, the swords were in the hands of Respondent No.3 Motiram, Respondent No.5 Ratan and Respondent No.8 Ram. Respondent No.3 Motiram and Respondent No.8 Ram assaulted the deceased with swords on his head, whereas, Respondent No.5 Ratan assaulted the deceased with sword on his legs. He has also deposed that Respondent No.7 Devidas was having knife in his hand, with which he was assaulting the deceased on his legs and foot.

According to his evidence, during the assault by the Respondents, deceased was on the cot and all the time rolling. After the assault, he fell down on the ground from the cot and became unconscious. Thereafter the Respondents ran away from the spot. Then he took the deceased in the truck of his brother PW-5 Eknath to Taloja Police Station. From there deceased was referred to the Municipal Dispensary at Panvel with Police Constable Mhatre. He remained at the Police Station and his complaint came to be recorded.

17. There is corroborating evidence of PW-5 Eknath, who has deposed about finding deceased in injured condition and crowd gathered around him when he returned from Kadav on that night. Thereafter he went to Taloja to bring his truck and took Machindra in his truck to Taloja Police Station and from there to Municipal Dispensary at Panvel.

18. This evidence of the eye witnesses and PW-5 Eknath is again getting complete corroboration from the evidence of PW-15 Head Constable Tambave, who has deposed that on that night, while he was on duty, PW-2 Anant came there with

Machindra in injured condition in a truck. As his condition was serious, he sent Machindra in the same truck along with Head Constable Mhatre to Municipal Dispensary at Panvel, whereas, he recorded the complaint of PW-2 Anant and on the same night on the said complaint, he registered C.R. No.44 of 1992 initially for the offences punishable under Sections 147, 148 and 307 r/w. 149 of the IPC.

19. If at all any further corroboration is required to this evidence, then it is also coming from the contemporaneous document like the F.I.R., which is lodged promptly and which contains the names of all the assailants and the specific weapons which they were carrying and the particulars of the assault made by them on the deceased. The endorsement on the F.I.R. goes to show that it was recorded at 10:30 pm and offence was registered at 10:45 pm. Thus, the prompt lodging of the F.I.R., giving all the details of the incident, further fortifies the evidence of the eye witnesses and the Informant PW-2 Anant.

20. In this case, the medical evidence also goes hand in hand with the ocular account. The Inquest Panchanama (Exhibit-26),

which is admitted in evidence by the Defence, reveals that there were, as many as, 20 injuries on the various parts of the body of the deceased and the evidence of PW-14 Dr. Ramrao Kendre reveals that the deceased had succumbed to those injuries on that night itself at about 11:30 pm. The Inquest Panchanama was made on the next day in the morning and, in the afternoon, the postmortem was conducted by Dr. Kendre. His evidence proved that the face, chest and both forearms of the deceased were smeared with blood. On examination, he found following external injuries :-

- (1) *Incised wound over right leg from medial malleolus to posterior end 3" x 1" x bone deep.*
- (2) *Incised wound over right leg just above No.1 injury with cut of tendo calcaneum over shaped with sharp margins 3" x 1/4" x bone deep.*
- (3) *Incised wound left leg lateral aspect 3" above lateral malleolus anterior to posterior end of laterally 3" x 1 1/4" x bone deep with fracture fibula.*

- (4) *Incised wound left below later mallcolus  $\frac{1}{2}$ " below it is 4" x 1" x bone deep with sharp cut of bones.*
- (5) *Abrasion left medial third leg medially  $\frac{1}{2}$  x  $\frac{1}{4}$  cm.*
- (6) *C.L.W. over left foot bas of big too  $\frac{3}{4}$  % x \$" x  $\frac{1}{4}$ ".*
- (7) *Abrasion mid-line of abdomen to right lateral chest intermittent like chain marks upto 3" below nipple 4" x  $\frac{1}{2}$ ".*
- (8) *Abrasion 1  $\frac{1}{2}$ " above to nipple right side 2" x 1".*
- (9) *Contusion right shoulder to M/3 arm lateral 6" x 1" bluish black coloured.*
- (10) *Abrasion right arm 1/3 posterior intermittent to lateral elbow to M/w forearm 9" x  $\frac{1}{2}$ " chains assault type injuries.*
- (11) *Abrasion right arm post laterior circular 1 $\frac{1}{2}$ " x 1".*

- (12) *Abrasion intermittent shoulder tip to post 4" x 1" like chains.*
- (13) *Contusion over right deltoid m/3 arm posterior laterally 6" x 4" bluish black coloured.*
- (14) *Contused right thigh M/3 laterally 4" x 1" vertical.*
- (15) *Abrasion intermittent below 14 oblique 4" x ½" like chain marks.*
- (16) *Contusion total six irregular over right chest back scapular area to lateral upto shoulder total area of contused 7" x 4½" blackish blue coloured.*
- (17) *Contusion right chest back lower and laterally 2" x 1".*
- (18) *Abrasion just below right renal angle 1" x ½".*
- (19) *C.L.W. over posterior to central area of skull 2½" x ¼" bone deep.*
- (20) *C.L.W. over left of No.9 oblique 1 ½" x ¼ cm x bone deep.*

- (21) *C.L.W. over perito-post centrally oblique 3" x 1" x bone deep.*
- (22) *C.L.W. below No.21 and laterally posterior to right ear 2" x ¼" x bone deep.*
- (23) *C.L.W. below in touch with No.21 right side occipital area, transverse 1" x ½ cm. x bone deep.*
- (24) *C.L.W. left side occipital area behind left ear 2 ½" x ½" x bone deep. All injuries are like in diagram mentioned.*
- (25) *Abrasion right forearm under end medially 1" x ½".*
- (26) *Contusion left lateral chest medial third 2" x 1" with intermittent abrasions like chains.*

21. He further noticed internal injuries, like, the brain was congested with slight hematoma formation over occipital area. Membranes were congested, bluish black coloured with a cut section. He also noticed the fracture of left fibula and of right medial malleolus.

22. According to him, these injuries were sufficient in the ordinary course of nature to cause the death; especially, the injuries over occipital and parietal area of the head. In his opinion, the death was on account of shock secondary to cerebral contusion due to blood trauma over occipital area. In evidence before the Court, he has further deposed that Injury Nos.19 to 24 are possible due to assault by the sword. He was shown Muddemal Article Nos.8 and 11 and he has opined that these injuries are possible by such swords. According to him, Injury Nos.1 to 4 can be caused by sharp instrument, like, knife, whereas, Injury Nos.7, 10, 12 and 15 can be caused by motor-cycle chain. The rest of the injuries are possible by sticks.

23. As regards the age of the injuries, he has stated that they were caused within 24 hours and in view of the finding that half of the stomach was filled with rice, which was not digested, he has opined that probable time of death was within two hours from the last meal.

24. This evidence of Dr. Kendre is not at all challenged in any way and he is not cross-examined at all as to the nature of the

injuries or as to the cause of the death. Thus, the presence of about 27 injuries of various nature, like, incised wounds, contusions, abrasions, CLWs, caused by various weapons, like, sharp edged swords, knives, blunt aged motor-cycle chain, sticks, leaves no manner of doubt about the occurrence of the incident of assault, as deposed by the eye witnesses. It further proves that the assault made simultaneously by about 8 to 9 persons with the various deadly weapons in their hands. Thus, in this case, the medical evidence is thoroughly consistent with the ocular account of the incident, as given by the eye witnesses. The fact that the semi-digested rice was found in the stomach of the deceased also supports the evidence of the eye witnesses that they were sitting in the court-yard, after taking the dinner, when the incident had happened.

25. The prosecution has then relied upon the evidence relating to recovery of the weapons of assault at the instance of the various Respondents/Accused. Prosecution has examined PW-7 Panch Bharat Patil to prove the recovery of sword at the instance of Respondent No.3 Motiram, whereas, recovery of another sword at the instance of Respondent No.5 Ratan is proved by PW-

9 Panch Eknath Bhagyawan. Prosecution has also led the evidence of PW-8 Panch Naresh Shelke to prove the recovery of sword at the instance of Respondent No.8 Ram. The recovery of the stick at the instance of Respondent No.2 Baburao is proved through the evidence of PW-11 Panch Laxman Patil. The prosecution has produced on record the C.A. Report at Exhibit-32 proving that the blood stains found on the quilt seized from the spot of incident, proved through the evidence of PW-6 Panch Prabhakar Bhagat, were of "A" group and the blood stains found on Article No.8-*the sword* and Article No.12-*motor-cycle chain* were also of "A" group. Thus, the use of these swords in the commission of the offence, according to learned A.P.P., is sufficiently established by the prosecution.

26. Learned Counsel for the Respondents has, however, seriously challenged this recovery evidence on the ground that none of the Panchas or even the Investigating Officer PI Shejal has deposed that, on the recovery of these articles, they were wax sealed. Moreover, though Panchas have stated that the labels of their signatures were affixed thereon, when, at the time of evidence, these weapons were shown to them, they have

admitted that they do not bear the labels of their signatures. Further, it is submitted by learned Counsel for the Respondents that recovery of these weapons is made from the open space accessible to all and there is no identification mark on any of these articles or the weapons seized and hence, according to him, the recovery evidence is not at all reliable.

27. In our considered opinion, for the sake of argument, even if the recovery evidence is excluded from consideration, as it is not found reliable by the Trial Court also, even then there is a strong solid foundation to the prosecution case, which is the evidence of the eye witnesses, the prompt lodging of the F.I.R., the medical evidence and Spot Panchanama.

28. As per learned Counsel for the Respondents, the evidence of the eye witnesses in the case cannot be relied upon as the names of both the eye witnesses, namely, PW-3 Kesarinath and PW-4 Vasudev, are not appearing in the F.I.R., which was lodged immediately after the incident. According to him, if these witnesses were present at the time of incident, then PW-2 Anant would not have failed to mention their presence in the F.I.R. The

very fact that their names are not appearing in the F.I.R. makes it necessary to infer that they are introduced subsequently. According to him, in the light of the fact that the relations between the parties were inimical, they being on crossed terms with each other, the possibility of planting these witnesses for false implication of the Respondents, cannot be ruled out.

29. However, as is well settled, F.I.R. is not an encyclopedia, which should contain all the details of the incident. It is an information given to the Police of a cognizable offence, which is first in point of time. The object of the F.I.R. is to set the law in motion. Hence, at times, it is held that even omission to give the name of the assailants in the F.I.R. is also not fatal to the prosecution case. Hence, mere non-mention of the names of the eye witnesses in the F.I.R. can hardly be fatal to the prosecution case. The credibility of eye witnesses does not depend merely upon the fact whether their names are mentioned or not mentioned in the F.I.R. It has to be assessed independently.

30. As held by the Apex Court in ***Narpal S. Vs. State of Haryana, AIR 1977 SC 1066***, omission of names of eye

witnesses in the F.I.R. may be relevant, but, not by itself decisive. While assessing the impact of omission of the names of the eye witnesses in the F.I.R., the Court has to consider the circumstances under which the F.I.R. came to be lodged, the impact of the crime on the relatives of the deceased, who are eye witnesses to the assault, the shock and panic, which would rule supreme at the relevant time and other ancillary factors are also to be kept in mind while deciding this aspect. Such omission of the names of the eye witnesses in the F.I.R. could be due to several other factors, like, physical and mental condition of the Informant.

31. In the instant case, the F.I.R. is lodged by the real brother of the deceased. He was an eye witness to the incident and has seen the ferocity of the assault, which has resulted into not less than 27 injuries on the body of the deceased. At the relevant time of lodging the F.I.R., his brother was in a very critical condition, taken to the hospital. The assault was made by 9 to 10 assailants with the deadly weapons. Naturally, the impact of such incident on PW-2 Anant, who has rushed to the Police Station directly with his injured brother himself, can be imagined

and is required to be understood. While his brother, in critical condition, was being taken to the hospital by PW-5 Eknath, his F.I.R. was being recorded by PW-15 Head Constable Tambave. Even then, he has given all the necessary details about the assault, like, the names of the assailants, who were known to him, the incriminating acts played by those assailants, the weapons in their hands etc, which was sufficient for the investigating machinery to set the law in motion. Mentioning of the names of the eye witnesses in the F.I.R. at that time may not have been found so crucial or of importance to him, considering his mental traumatic condition.

32. It is also not the case that the presence of these eye witnesses at the spot can be in any manner called as unnatural. They were working with the deceased for electric fitting work. All of them had gone together to Nandgaon for the said work and then, on return, they had dinner in the house of the deceased and sat chit-chatting in the court-yard. There is absolutely no cross-examination of any of these witnesses on this crucial aspect of their evidence. They are also not the close relatives of the deceased, which can raise the probability of they having

been planted or introduced subsequently. Their statements are recorded by the Police immediately on the next day, as the incident had taken place at night. Therefore, in our considered opinion, the attack made on the evidence of these eye witnesses on the special plea that they are planted, cannot be accepted.

33. The second ground on which their evidence is challenged is that they belong to the same faction or party to which the deceased belong and, therefore, they are interested witnesses. However, on this aspect also, we have to state that when the presence of the witnesses at the spot is natural, merely on the ground that they belong to the same faction or party as that of the deceased, their evidence cannot be disbelieved. If the incident takes place between two factions, it is very rare or difficult to get the evidence of any independent eye witness as such; especially, when such incident had taken place in the court-yard of deceased's house, where the presence of adjoining occupants is not expected at the time of 9:30 pm in the night. When it is impossible, therefore, for the Investigating Officer or prosecution to secure presence of independent witnesses, then prosecution cannot be asked to do something impossible and to disbelieve the prosecution, if it cannot do so.

34. The evidence of PW-2 Anant is challenged on the ground of his criminal antecedents. It is submitted that this witness is not reliable considering that an externment order has been passed against him by the Police and a criminal case is also filed against him for assaulting one Zappu Abdul Karim with a knife, which fact is admitted by him. However, there is neither a rule of law nor a rule of procedure that witness having criminal antecedents should be disbelieved.

35. The evidence of the eye witnesses is challenged on the ground of their conduct of running inside the house after seeing the assailants and not making any attempt to save the deceased from the assault is unnatural. It is urged that if these witnesses were really present and sitting along with the deceased, then they should have taken the deceased also with them inside the house, instead of running alone to save their own skin. In the opinion of learned Counsel for the Respondents, therefore, this conduct of the eye witnesses creates doubt about their credibility.

36. We are not inclined to accept this leg of argument also, as,

in our opinion, there is no set rule that one must react in a particular way. The behaviour of witnesses or their reactions defer from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses is, therefore, unrealistic. Only when behaviour is absolutely unnatural, the testimony of a witness may not deserve credence. However, in the instant case, the behaviour of these eye witnesses cannot be branded as absolutely unnatural. The evidence on record proves that about 9 to 10 assailants came fully armed with the deadly weapons in their hands. When the assailants came there, all of a sudden, these witnesses might not be knowing the intention of the assailants to assault the deceased only. Therefore, it is but natural that all of them started running away to save their own skin, which is the natural human tendency. In the face of 8 to 9 persons assaulting the deceased with the weapons in their hands, it cannot be expected that these eye witnesses will rush to the rescue of the victim. Hence, non-intervention by the witnesses in the course of occurrence of the incident, particularly when the assailants were armed with deadly weapons, cannot be a circumstance against their credibility.

37. As held by the Supreme Court in ***Paramjit Singh Vs. State of Punjab, AIR 2008 SC 441***,

*“If eye witnesses are not courageous enough to inform police or to go to the help of the injured, who was not a relative, it cannot be inferred that he had not witnessed the occurrence or that they are giving false evidence.”*

38. Moreover, to discard the evidence of a witness on the ground that he did not react in a particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. In this respect, we can also make useful reference to the case of ***Birendra Rai Vs. State of Bihar, AIR 2005 SC 1284***, wherein the father of the deceased victim has left the scene on seeing his son being attacked and did not return for a long period. Even then, the Supreme Court held that such conduct, does not determine whether he is a truthful witness or not. Every person cannot act or react in a particular manner. His reaction has to be viewed in the totality of his mental makeup and extent and nature of fear generated.

39. In the instant case, therefore, we do not find any reason to suspect the credibility of these eye-witnesses merely because they rushed inside the house to save themselves from the attack; especially, when they were not knowing whom the assailants were going to attack.

40. According to learned Counsel for the Respondents, the evidence of these witnesses that they saw the attack on the deceased from the window of the house is also not believable. Especially, when, according to their evidence, 8 to 9 persons were at the same time attacking the deceased with different weapons in their hands, the evidence of these witnesses identifying the particular role played by each of the assailants is not believable.

41. In our considered opinion, however, when the witnesses knew the assailants very well and they had also seen the assailants coming to the spot with the weapons in their hands, it is not something improbable for them while watching from the window to know which assailant was armed with which weapon and the particulars of the assault made by the assailants. If the

witnesses are found to be trustworthy, truthful and reliable, in our considered opinion, the possibility factor cannot be stretched to such an extent that all imaginary doubts creep into the appreciation of the evidence. Truth, when projected through the human element, always suffers from imperfection and it has to be accepted as such. Otherwise also, when the case or evidence of the witnesses is without any infirmities or lacunae, then also it becomes too perfect to be believed upon.

42. Much capital is made of the fact that, according to the Postmortem Report, thighs and legs of the dead body were smeared with mud. It is urged that when the incident had taken place in April and in the court-yard of the house, which was having the rough surface, no explanation is offered by the prosecution as to how the legs and thighs of the dead body were smeared with mud. Hence, according to learned counsel for the Respondents, there is no possibility of incident taking place at the spot, as deposed by the prosecution. This submission, in our opinion, is also devoid of any substance as the spot of incident proved through the evidence of Panch PW-6 Prabhakar Bhagat shows the presence of the blood stains in the court-yard. There

was also the quilt with blood stains thereon lying near the cot in the court-yard. The possibility of the thighs and legs of the deceased being smeared with the blood mixed soil cannot be ruled out. This is too insignificant a fact to give much importance thereto so as to disbelieve and discard the entire prosecution case as such.

43. In our considered opinion, the Trial Court has erred in giving undue weightage and importance to these insignificant aspects of the case and ignored and disbelieved the substratum of the prosecution case, proved through the evidence of convincing and reliable eye witnesses. Absolutely no cogent reasons are given as to why the evidence of these eye witnesses, whose presence at the spot is proved and whose evidence has remained unchallenged and unshattered on record, should be disbelieved. On supposed considerations and the probabilities, which are too remote to consider, the Trial Court has disbelieved the prosecution case.

44. As held by the Supreme Court, in ***State of Punjab Vs. Jagir Singh Baljit Singh and Karam Singh, AIR 1973 SC 2407,***

*“A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the produce of interplay of different human emotions. In arriving at the conclusion of a crime, the court has to judge the evidence by yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the court should not, at the same time, reject evidence which is ex-facie trustworthy on the grounds which are fanciful or in the nature of conjectures.”*

45. In the instant case, we find that the evidence of the eye witnesses is beyond any reproach. It is ex-facie trustworthy and

in tune with the prosecution case, deserving implicit reliance thereon. The approach of the Trial Court in disbelieving such evidence and throwing out the prosecution case cannot be called as a “possible” or “reasonable” approach. The Judgment of the Trial Court, therefore, suffers from perversity in the sense that the evidence which ought to have been considered, accepted and relied upon, is disbelieved and discarded. We have no hesitation, therefore, in quashing and setting aside the acquittal of the Respondents and convicting them for the offences charged and proved against them, except for Respondent No.2 Baburao, against whom no specific overt act is attributed by any of the witnesses, and hence the benefit of reasonable doubt can be extended to him.

46. In the ultimate analysis, therefore, we allow this Appeal and quash and set aside the Judgment of the Trial Court.

47. Consequently, Respondent No.3 Motiram, Respondent No.5 Ratan, Respondent No.7 Devidas and Respondent No.8 Ram are hereby convicted for the offences punishable under Sections 147, 148 and 302 r/w. 149 of the IPC.

48. They are sentenced to suffer R.I. for life and to pay fine amount of Rs.5,000/- each, in default to suffer R.I. for 3 months.

49. No separate punishment is passed for the offences punishable under Sections 147 and 148 of the IPC.

50. Amount of fine, if recovered, be paid to the legal heirs of deceased Machindra under Section 357(3) of the Cr.P.C.

51. Respondent No.3 Motiram, Respondent No.5 Ratan, Respondent No.7 Devidas and Respondent No.8 Ram to surrender to their Bail Bonds before the Trial Court within a period of ten weeks.

52. The acquittal of Respondent No.2 Baburao, as recorded by the Trial Court, for the offences punishable under Sections 147, 148, 302 r/w. 149 of the IPC stands confirmed. His Bail Bond stands cancelled.

**[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]**