

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 289 OF 2007**

Madhu @ Madhav Nivruti Pawar
Aged 28 years, Residing at
At Post : Nalad, Taluka - Gangakhed,
District : Parbhani,
State : Maharashtra ..Appellant.

versus

The State of Maharashtra
(At the instance of Mahim Police
Station Vide their C.R. No.161 of 2005) ..Respondent.

.....
Dr. Yug Mohit Chaudhary for the Appellant.
Smt. V.R. Bhosale, Addl.P.P. for the State.
.....

CORAM : P.V. HARDAS AND
A.S. GADKARI, JJ.

12th June, 2015.

JUDGMENT (PER A.S. GADKARI, J.) :

The Appellant, original accused No.3 has challenged the judgment and order dated 15th December, 2006 passed by the learned 7th Ad-hoc Additional Sessions Judge, Greater Mumbai at Sewree in Sessions Case No.428 of 2006 thereby convicting the Appellant under Sections 143, 144, 147, 148 and under Section 302 read with 149 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.1,000/- on each count. In default of payment of fine to suffer further rigorous imprisonment for six months. As far as the trial of original accused No.1 is concerned, the same was separated as the original accused No.1 - Suresh @ Suraj Pawar was absconding since prior to filing of charge-sheet in the

present crime. As far as original accused Nos.2 and 4 are concerned, by the same judgment and order dated 15th December, 2006, the learned Trial Court was pleased to acquit them from all the charges framed against them.

2. The facts which are necessary for the decision of the present Appeal can briefly be stated thus :

(i) Parubai Kale (complainant – P.W.1) is the wife of deceased Sakharam Kale. Parubai Kale, her husband Sakharam, her brother-in-laws Sukal and Sitaram and her husband's sisters viz. Laxmi and Kamal were residing together. They were labourers who originally hail from village Nalad, District Parbhani. The maternal home of complainant Parubai Kale is situated at village Rajoor, District Parbhani. They came to Mumbai and started residing in the hut of Ramkishan. Ramkishan also hailed from village Nalad and was also a labourer. Accused No.3 viz. Madhu and other persons viz. Ankush, Suraj @ Suresh and Chandu were also labourers. The complainant, her family members and other labourers including the accused persons used to gather on the footpath in Khar area in search of work. As all the accused persons hail from village Nalad, the complainant was knowing them since long.

(ii) On 16th June, 2005, the complainant and her husband had been to the hospital. The complainant Parubai was not feeling well and therefore, they had been to the hospital on that day. The persons who were residing in the adjoining huts had gone for doing their job.

The complainant and her husband came to their house and were taking rest. At about 11.00 a.m. original accused No.2 Ramkishan, accused No.3 - Madhu along with other persons viz. Chandu, Dharasingh and Sakhu entered inside the house of the complainant. Accused No.3 was holding a thick wooden rod. After entering inside the house, Dharasingh, Chandu and Sakhu caught hold of the complainant. Sakhu gagged her mouth. Accused No.2 - Suraj @ Suresh had caught hold of her husband Sakharam. At that time accused No.3 - Madhu i.e. the Appellant herein gave blows by means of a wooden stick on the forehead of deceased Sakharam. He gave 2-3 blows by means of a wooden stick on the head, ear and back of the deceased. Blood started oozing from the nose of Sakharam and he became unconscious. As the accused persons thought that Sakharam had died, they left the spot and fled away. The said incident was informed to the police by somebody and police came to the house of the complainant. The injured Sakharam was taken to Bhabha Hospital, where before admission he was declared dead.

(iii) P.W.11 - Ravji Waingade was attached to Mahim Police Station on 16th June, 2005. The complainant came to the police station and lodged a complaint. P.W.11 - Ravji registered First Information Report bearing Crime No.161/05 under Sections 452, 143 to 149 and 302 of the Indian Penal Code. P.W.11 thereafter visited the spot and prepared the spot panchanama. The investigation was thereafter transferred to P.I. Vasant Kumbhar (P.W.7).

(iv) P.W. 7 - P.I. Kumbhar received the case papers of the said crime on 17th June, 2005 and started further investigation. On 29th June, 2005 he recorded the supplementary statement of the complainant Parubai Kale. He recorded the statement of other witnesses in the said crime. The Appellant when was in police custody expressed his willingness to show the place where the wooden stick used in the crime was concealed by him. In pursuance of the memorandum panchanama which is at Exhibit 22, the Appellant led the police and panch witnesses near his hut and from behind the rock of that hut, he took out the wooden stick which was kept behind that rock. P.W.7 thereafter sent the stick and other material to the Chemical Analyzer for his opinion. He received C.A. reports of the same which are at Exhibits 25 to 30. The further investigation was thereafter transferred to P.I. Gharal.

(v) P.W.9 - P.I. Gharal after receipt of the papers on 23rd August, 2005 pertaining to the present crime i.e. Crime No.161 of 2005 started further investigation. He took search of wanted accused Darasingh. After completion of the investigation and after collecting the necessary and requisite documents on 2nd September, 2005, he submitted charge-sheet against the accused persons in the Court of Metropolitan Magistrate, 9th Court, Bandra, Mumbai. As the offence punishable under Section 302 of the Indian Penal Code was exclusively triable by the Court of Sessions, the learned Additional C.M.M. 9th Court, Bandra, Mumbai committed the case to the Court of Sessions for trial as contemplated under Section 209 of the Criminal procedure

Code by the order dated 22nd May, 2006.

3. After committal of the said case, the learned Trial Court framed charge below Exhibit 3. The said charge was read over and explained to the Appellant in vernacular language to which he pleaded not guilty and claimed to be tried. The prosecution in support of its case had examined in all 11 witnesses. The learned Trial Court after recording the evidence, the statements of accused persons under Section 313 of the Criminal Procedure Code and after hearing the parties to the said case was pleased to convict the Appellant by the impugned judgment and order dated 15th December, 2006 as stated herein above.

4. Heard Mr. Chaudhary for the Appellant and Smt. Bhosale, the learned APP for the State and also perused the entire record and proceedings pertaining to the present case.

5. Mr. Chaudhary, learned counsel for the Appellant submitted that the present case though is based on the ocular evidence of the victim's wife viz. Parubai Kale (P.W.1), it suffers from reliability. He submitted that in the cross-examination the said P.W.1 has admitted that she had wrongly named accused No.4, who took part in the said incident. He further submitted that P.W.2 - Suman Pawar who had seen the accused persons after commission of offence on the date of incident, her statement under Section 161 of the Criminal Procedure Code came to be recorded by the police after about 14 days. He further submitted that this witness in the cross-examination had admitted that though she had been to the police station earlier to it,

the police did not record her statement and therefore, there is an inordinate delay in recording her statement. He further contended that the recovery of the wooden stick at the instance of the Appellant itself is not sufficient to connect him with the present crime. He, therefore, urged before us, that as there is no legal evidence against the Appellant, the present Appeal may be allowed and the Appellant may be acquitted.

6. Per contra, Smt. Bhosale, the learned APP supported the impugned judgment and order and submitted that there is sufficient evidence which links the present Appellant with the commission of crime in question. She further submitted that the Trial Court has correctly passed the impugned order. She, therefore, submitted that the present Appeal may be dismissed and the conviction of the Appellant may be maintained.

7. In order to effectively deal with the submissions of the learned counsel for the Appellant and the learned APP, it is necessary to advert to the evidence on record in brief.

8. P.W.1 – Smt. Parubai Kale is the wife of deceased and eye witness in the present case. She is also the first informant of the crime. P.W.1 – Smt. Parubai in her testimony has deposed that she originally hails from Nalad, District Parbhani. She has stated that before 8 days from the date of incident, she had been to Mumbai for doing the labour work. She is uneducated. She knew accused No.2 Ramkishan since her childhood. He belongs from her caste. She knew Ankush, Suresh –

absconding accused No.1, Madhu – the present Appellant and Chandu. The said persons are residents of Nalad, District Parbhani. In the earlier year, there was a religious function at the house of her in-laws at Rajoor, District Parbhani. At that time she herself along with her husband had been to the said village. All the accused persons herein were present in the village. Her maternal home is at village Nalad and her husband's village is Rajoor. Both the villages are in Parbhani district. On that particular day of the religious function, all the accused persons came to the house of her husband and attended that function even though they were not invited. That time the accused persons put soil in the food which was to be served to the persons at the time of that function. The accused persons had beaten her mother-in-law, brother-in-law, Bhagwan and Chandu in that incident. That time the accused persons had lodged complaint against her husband, brother-in-law and others and on the basis of the said complaint, police registered offence against her father-in-law, her brother Chandu, Bhagwan, Bhiwa and Wazir. Thereafter she along with her husband, her brother-in-law and his wife came to Mumbai for doing work.

She has stated that the incident took place on 16th June, 2005. On that day, she was sick. Her husband took her to the hospital. At about 10 a.m. she and her husband came to her house. The other persons from the house had gone to do work. She and her husband were only present inside the house. They were taking rest on bed. At about 11 a.m. the accused viz. Madhu (accused No.3), Parubai (accused No.4), Suraj (accused No.1) and Ramkishan (accused No.2)

and Dharsi came to her house. Parubai (accused No.4) sat on her chest. Ramkishan (accused No.2) caught legs of her husband. Absconding accused Rama had caught hold hands of her husband. Suraj (accused No.1) had also caught hold of her husband. Madhu (accused No.3) assaulted her husband by means of a thick bamboo on his head. Accused Parubai and Chandu sat on her chest. Madhu (accused No.3) inflicted four to five blows by means of thick bamboo on the head of her husband. Her husband had sustained bleeding injuries and blood was oozing from his nose and ears. Thereafter all the accused ran away from her house. She herself took her husband to Bhabha Hospital. When she took her husband to the hospital, her brother Chandu and sister Mathurabai were also present. Doctor examined her husband in the hospital and declared him dead before admission. She lodged complaint in respect of the said incident with the police station. The said complaint is at Exhibit 11. Her supplementary statement was recorded by the police. Postmortem was conducted on the dead body of her husband in the hospital. This witness identified the weapon of the crime i.e. the bamboo stick (Article A). This witness has also identified the pant (Article B) and shirt (Article C) of deceased Sakharam. This witness has further stated that the accused persons assaulted her husband on account of earlier incident of Gondhal that had taken place at her village Rajoor, District Parbhani.

This witness was cross examined at length by the accused persons. In the cross-examination P.W.1 – Parubai Kale has admitted that Mathurabai and Chandu had come to the place of incident, but

they did not witness the incident as they came after the incident was over. She has further admitted that the said two persons came after there were hue and cry.

This witness had admitted in the cross-examination that though she has stated about the earlier incident of religious function at her village to the police, the same is not finding place in her complaint which is at Exhibit 11. The omission with respect to Parubai (accused No.4) sat on her chest at the time of incident, and the same is not finding place in her complaint has been proved. Further omission that Parubai along with others had come to the place of offence at the relevant time has been proved. An admission has been extracted from this witness that Sakhubai is the sister of accused Suraj (accused No.1). Sakhubai did not come along with the said accused. She did not understand who gagged her mouth at the time of incident. An omission has been extracted from this witness that, however, she has stated in her complaint that Sakhubai gagged her mouth. An omission has further been proved that though this witness had not stated in her complaint that Ankush had also come along with other accused at the time of incident and caught hold of her husband, the portion marked 'A' about the name of accused Ankush in the complaint to that effect is not correct. It is to be noted here that Ankush is not an accused in the present crime. By proving this omission, an admission has been brought on record that the portion marked 'A' about the name of Ankush in her complaint to that effect is not correct. She has further admitted that it is not specifically mentioned in her complaint that Ramkishan (accused No.2) had

caught hold of the legs of her husband and accused Rama had caught hold of hands of her husband at the time of incident. An improvement has further been proved at her behest to the effect that though she cannot assign any reason why it is not mentioned in her complaint Exhibit 11 that Chandu also sat on her chest she stated so in the examination-in-chief. She has further admitted that police have not recorded the statement of Chandu and Mathurabai in her presence. That neighbours were not present at the time of the alleged incident. She has admitted that at the time of incident she was alone with her husband and did not raise any alarm. In the cross-examination this witness had denied the suggestion that she was not present at the time of alleged incident and she came to know about the same from Mathurabai and Chandu. She has further admitted that the police came at the scene of offence after one hour of the incident and at that time, her husband was lying on the ground in the house. That her husband died on the spot itself.

9. P.W.2 is Ms. Suman Bhairu Pawar. This witness is a child witness and was about 14 years of age on the date of recording of the evidence. She has stated in her testimony that Parubai (P.W.1) is her cousin sister. They used to come to Mumbai for doing labour work along with her mother, father, brother etc. She used to come along with her family members during the period of holidays to her school. The incident took place on 16th of 2005. She did not remember the month of the incident. On that day she had been to fetch water. At about 11 a.m., she came back. At the time when she was going for

fetching water, she saw husband of Parubai (P.W.1) had brought her from the hospital and they came to their house. The complainant Parubai (P.W.1) and her husband went inside the house. Thereafter she saw Madhu (accused No.3/ Appellant), Suraj (accused No.1/ absconding), Rama, Ramkishan (accused No.2), Chandu and Parubai (accused No.4) coming and they entered inside the house of complainant Parubai (P.W.1) where Parubai and her husband were present. She has further stated that after some time all the accused came outside the house of Parubai and went towards the side of bridge. At that time she saw that Madhu (accused No.3/ Appellant) was holding wooden log (bamboo). Thereafter she saw that the police had been at the said spot. Her sister Parubai (P.W.1) had told about the incident to the police. At that time the husband of her sister Parubai (P.W.1) viz. Sakharam was lying inside the house. Blood was oozing from the wound sustained by him and it was spread on the ground. This witness has identified Article 'A' i.e. thick bamboo stick shown to her which Madhu (accused No.3 / Appellant) was holding at that time.

This witness was cross examined at length and in the cross-examination, she has admitted that at the time of incident neighbouring persons were not present in the said area. That there are 100 to 150 huts in that area. She alone was present in the house at that time as her parents had gone to do work. She further admitted that she knew all the accused and she thought that the accused persons might be going to the house of their relative and therefore, she did not raise any alarm. She has further stated in the cross-

examination that after five minutes all the accused came outside the house of the complainant. She has admitted that after 15 days of the alleged incident her statement was recorded by police. She has also admitted that police made enquiry with her in the police station, but they did not record her statement on that day. She has further admitted that she had stated about the incident to the police at the time when they made enquiry with her.

10. P.W.3 - Ismail Mohd. Shaikh is a panch witness to the arrest of the Appellant. The arrest panchanama is at Exhibit 14. P.W.4 - Santosh Nijab is a panch witness to the arrest of original accused Nos.1 and 2. The arrest panchanama dated 16th June, 2005 which is at Exhibit 17 has been proved by this witness. P.W.5 is Ram Namdev Kale. He is panch to the inquest panchanama dated 16th June, 2005 and the seizure of victim's clothes. P.W.6 - Dattaram Akra is a witness to the panchanama of the spot of incident which is at Exhibit 20.

This P.W. Nos.3 to 6 i.e. Ismail Shaikh, Santosh Nijab, Ram Kale and Dattaram Akra are formal witnesses and in their cross-examination no material which is useful to the Appellant has been brought on record.

11. P.W.7 - Vasant Maruti Kumbhar, Police Inspector was attached to Mahim Police Station as Crime P.I. On 16th June, 2005, after the offence bearing Crime No.163/05 was registered by PSI Waingade, on the next day i.e. 17th June, 2005 he received case papers of the said crime for

further investigation. On 29th June, 2005 he recorded the supplementary statement of complainant Parubai. That on 2nd July, 2005 Madhu (accused No.3/ Appellant) while in police custody made a statement that he had kept the wooden stick behind his hut and he would point out that place and would produce the said stick. Accordingly his statement was reduced into writing in the form of memorandum which is at Exhibit 22. Thereafter the Appellant led the said witness and panchas to the hutment area behind Mahim Koliwada. The Appellant took them behind the huts. There was rock behind that hut. The Appellant pointed out the place and took out the wooden stick which was kept behind that rock. P.W.7 seized the wooden stick and prepared the panchanama in presence of the panchas. The said panchanama is at Exhibit 23. He seized and sealed the said wooden stick by affixing labels. The seized articles were sent to Chemical Analyser. P.W. 7 has witnessed the C.A. reports. The C.A. reports are at Exhibits 25 to 30. He has further stated that further investigation was carried out by PI Gharad.

In the cryptic cross-examination of this witness, nothing has been elicited which would give benefit to the Appellant in discarding the testimony.

It is to be noted here that the seizure panchanama of the wooden stick i.e Article A on record mentions that “a solid wooden rod, length 2 ft. 4 inches, width 1.5 inches, wet due to rain”. There is no mention about any bloodstain on the said stick in the said panchanama and according to us, it is obvious that as it was a rainy

season, the said wooden stick / rod was soaked in water due to rain. There is no probability at all of having bloodstains on the same.

It is further to be noted here that the Chemical Analyser's report dated 3rd January 2006 discloses that Exhibit 1 i.e. the wooden rod was stained with blood. The said report further mentions that the result of the specimen blood which was sent for grouping has been mentioned as 'inconclusive'. We are surprised to note that though the seizure panchanama of the wooden stick nowhere mentions about the bloodstains on it and the recovery of the same has been made from the open space in rainy season and the said wooden stick was wet due to rain water, at the time of Chemical Analysis, the same was found having bloodstains.

12. P.W.8 is Vijay S. Gautam, Assistant Police Inspector and was attached to Mahim Police Station from the year 2004. This witness has effected the inquest panchanama of the dead body of Sakharam and also seized the clothes of the deceased. P.W.9 is Police Inspector Zunjarrao Gharal. After completion of investigation, this witness submitted charge-sheet on 2nd September 2005 in the Court of Metropolitan Magistrate, 9th Court, Bandra, Mumbai against the accused persons. It appears to us that P.W.8 and P.W.9 are formal witnesses in nature and therefore, the Appellant / defence has declined to take their cross-examination.

13. P.W.10 is Dr. Rajesh Dere, lecturer department of Forensic

Medicine, Sion Hospital, Mumbai. P.W.10 in his testimony has stated that he conducted the postmortem of Sakharam Kale. He was brought by PC 31520 of Mahim Police Station. He conducted the postmortem from 2 pm to 5 pm on the same day and noted the following injuries on the body of the deceased :

- “1. Contused abrasion of 4 x 1 cm over right eye brow.
2. Abrasion - contused margins of 4 x 1 cm over right side of chin (reddish).
3. Contusion lineal of 3 x 1 cm over lateral side of neck - reddish in colour.
4. Contusion of 3 x 1 cm over both shoulder.
5. Abrasion of 3 x 1 cm over base of right thumb.
6. Contusion of 2 x 1 cm over centre of right forehead (reddish).”

On internal examination, he found the following injuries :-

- “1. Over right frontal area diffused sub-arachnoid hemorrhage.
2. Fracture of interior and middle cranial.”

P.W.10 gave his opinion of the probable cause of death as, shock following cranio-cerebral injury and associated with blunt impact (unnatural). He has proved the postmortem report and its contents which is at Exhibit 36. P.W.10 has further stated that in ordinary course the injuries mentioned in the postmortem are sufficient to cause death. He has stated that the injuries mentioned are possible by wooden bamboo stick (Article A). The cross-examination of this witness has led the defence to nowhere as no material which is useful for the defence has been elicited from this witness.

14. P.W.11 Ravaji Waingade, Police Sub-Inspector was then attached to Mahim Police Station. This witness in his testimony has stated that on 16th June, 2005 he was attached to Mahim Police Station on day duty from 9 to 8 p.m. At about 12.20 p.m. the complainant Parubai (P.W.1) came to the police station and lodged a complaint which is at Exhibit 32. He recorded the First Information Report. He visited the spot. He drew the spot panchanama in the presence of panch witnesses. It appears to us that P.W.11 is a formal witness and in his cross-examination no material which is useful to the Appellant has been brought on record.

15. Before we proceed to analyse the evidence on record adduced by the prosecution, it is necessary to refer to and rely upon two decisions of the Supreme Court in (i) **Vadivelu Thevar v. The State of Madras** reported in **AIR 1957 SC 614** and (ii) **Kanbi Nanji Virji and others v. State of Gujarat** reported in **1970 SC 219**.

16. In the case of **Vadivelu Thevar** (supra) while enunciating the correct legal position with respect to the oral testimony of a witness, the Supreme Court in paragraph Nos.11 and 12 has held thus :

“(11). In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of

witnesses shall, in any case, be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' -9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in

our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

(12) In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being

that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

17. In the case of **Kanbi Nanji Virji** (supra) in paragraph No.7, the Supreme Court has held that, it is true that oftentimes the courts have to separate the truth from falsehood. But where the two are so intermingled as to make it impossible to separate them, the evidence has to be rejected in its entirety.

18. Thus, after taking into consideration the principles laid down by the Supreme Court in the aforesaid two citations, we are of the considered opinion that the evidence of P.W.1 – Parubai falls in the category No.3 as enunciated by the Supreme Court in the case of **Vadivelu Thevar** (supra) i.e. neither wholly reliable nor wholly unreliable. Though P.W.1 in her examination-in-chief had stated the names of all the accused persons, in her cross-examination she has admitted that she gave the name of Parubai (accused No.4) in her complaint, but did not mention the same. She has further admitted that though she had stated in her complaint that Parubai sat on her chest at the time of incident, the said fact is not reflected in her complaint. In her cross-examination, omission with respect to the alleged presence of Sakhubai and Ankush has been proved. She has admitted in the cross-examination that Ankush did not caught hold of her husband. She further admitted that the name of Chandu as an

accused who sat on her chest is not finding place in her complaint. It is clear from the cross-examination of P.W.1 that she wrongly impleaded Parubai (accused No.4) in the present crime. The various omissions and contradictions which have been brought on record by the defence in the cross-examination of this witness have lead us to classify this witness into the category of neither wholly reliable nor wholly unreliable. The evidence of this witness further makes it very clear that it is difficult to separate the truth from the falsehood with reference to the facts mentioned by her and in view of the ratio laid down in the case of **Kanbi Nanji Virji** (supra), the truth and falsehood involved in the testimony of this witness is so intermingled, as to make it impossible to separate from one another and therefore, the evidence of this witness has to be rejected in its entirety.

19. This takes us to the evidence of P.W.2. P.W.2 – Suman Pawar in her cross-examination has admitted that though the police made enquiry when she had been to the police station on earlier occasion, the police did not record her statement immediately and her statement under Section 161 of the Cr.P.C. came to be recorded after a gap of about 15 days after the date of incident. The recording of the statement of this witness after a period of about 15 days by the police creates doubt in the mind of this Court about its genuineness and authenticity. In our considered view, this witness is a chance witness and her evidence cannot be relied upon for the said reason. It is further to be noted here that P.W.2 – Suman Pawar is not an eye witness to the incident and she has only stated about the entry of the

accused persons in the hut of the deceased and their coming out after some time. This witness has nowhere stated that she heard the noise of scuffle from the house of P.W.1 – Parubai, though this witness stays hardly 3-4 huts away from P.W.1. The evidence of this witness does not inspire confidence in our mind.

20. This leads us to the last circumstance against the Appellant. The Appellant produced the wooden rod used in the crime under Section 27 of the Evidence Act which was seized by P.W.7 by effecting seizure panchanama which is at Exhibit 23. As stated herein above, the seizure panchanama which is at Exhibit 23 does not mention about any bloodstains on the wooden rod seized at the instance of the Appellant. The seizure panchanama dated 2nd July, 2005 specifically mentions that “a solid wooden rod, length 2 ft. 4 inches, width 1.5 inches, wet due to rain”. The Chemical Analyser's Report which is at Exhibit 25 mentions about the bloodstains found by the Chemical Analyser on the said rod. This itself creates strong suspicion in our mind about the authenticity of the seizure panchanama which is at Exhibit 23 and Chemical Analyser's report which is at Exhibit 25 and the benefit of the same has to be weighed in favour of the Appellant.

21. Thus after taking into consideration the entire evidence on record, we find that the evidence adduced by the prosecution is insufficient to maintain the conviction of the Appellant. In view of the aforesaid discussion, we are of the considered opinion that the prosecution has failed to establish the guilt against the Appellant

beyond reasonable doubt and therefore, the present Appeal, deserves to be allowed.

22. Criminal Appeal is allowed and the conviction and sentence of the Appellant / Original Accused No.3 – Madhu @ Madhav Nivruti Pawar is hereby quashed and set aside and the Appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the Appellant, be refunded to him. Since the Appellant is in jail, he be released forthwith, if not required in any other case.

(A.S. Gadkari, J.)

(P. V. Hardas, J.)