

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.443 OF 2006

Yeshwant Pandurang Keer,	]	
Age : 41 Years, Occu.: Driver,	]	
R/at Room No.38, Azad Kutir Society,	]	 Appellant /
Jijamata Nagar, Tin Dongri,	]	(Original Accused
Goregaon (West), Mumbai.	]	No.1)

Versus

The State of Maharashtra,	]	
Through Goregaon Police Station	]	 Respondent

ALONG WITH

CRIMINAL APPEAL NO.1097 OF 2006

Dinesh Suresh Dabade	]	
Age : 20 Years, Occu.: Nil,	]	 Appellant /
Jijamata Nagar, Tin Dongri,	]	(Original Accused
Goregaon (West), Mumbai.	]	No.2)

Versus

The State of Maharashtra,	]	
Through Goregaon Police Station	]	 Respondent

Mr. Ganesh Gole for the Appellant/Original
Accused No.1 in Cr. Appeal No.443 of 2006.

Mr. D.G. Khamkar for the Appellant/Original
Accused No.2 in Cr. Appeal No.1097 of
2006.

Mr. A.S. Shitole, A.P.P., for the Respondent-
State.

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

RESERVED ON : 10TH JUNE, 2015

PRONOUNCED ON : 18TH JUNE, 2015

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

1. Both these Appeals are arising out of the Judgment dated 24th March, 2006 passed by the 4th Ad-Hoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.137 of 2005, thereby convicting the Appellants for the offence punishable under Section 302 r/w. 34 of the IPC and sentencing them to suffer imprisonment for life and to pay fine of Rs.500/- each, in default to suffer imprisonment for one month.

2. For the sake of convenience, in these Appeals also, the Appellants are referred to by their original nomenclature as "*Accused Nos.1 and 2*".

3. Facts, as are necessary, for deciding these Appeals may be stated as under :-

On 20th November, 2004, while PW-7 PSI Vilas More was on

duty as 'Station House Officer' at Goregaon Police Station, at about 8:15 am, PW-1 Manoj Angarkhe telephonically informed him that Accused No.1-Yeshwant and Accused No.2-Dinesh had seriously injured one Laxman More by assaulting him with iron rod and knife. PW-1 Manoj further informed him that the injured was taken to Tiwari Hospital. PW-7 PSI More made Station Diary Entry of the said information and rushed to Tiwari Hospital. There he came to know that the injured was taken to Cooper Hospital. Hence, he went to Cooper Hospital, where he was informed that the injured was already dead.

4. PW-7 PSI More then, accordingly, recorded the detailed statement (Exhibit-12) of PW-1 Manoj, who was present in Cooper Hospital, and on the said statement, telephonically, he obtained C.R. No.766 of 2004, which came to be registered against the Accused Nos.1 and 2 for the offence punishable under Section 302 r/w. 34 of the IPC. Thereafter, PW-7 PSI More prepared Inquest Panchanama (Exhibit-18) in the presence of the Panch PW-4 Shirish Jadhav and sent the dead body for postmortem examination. PW-8 Dr. Shivaji Kachare performed the autopsy and opined that the cause of the death was

“haemorrhage and shock due to multiple injuries”. The Postmortem Report (Exhibit-31) was issued accordingly.

5. From the spot, PW-7 PSI More collected the blood stains, the simple mud and the blood mixed mud, with two coins of Rs.1/- therein, and drew the Scene of Offence Panchanama (Exhibit-15), in the presence of the Panch PW-3 Tushar Lakham. Thereafter, he returned to the Police Station and handed over muddemal to the concerned clerk.

6. Further investigation of the case was taken over by PW-9 PI Firoj Patel. He recorded the statement of one eye witness, namely, Vishwas Sonawane on the very day and tried to take the search of Accused Nos.1 and 2. On 22nd November, 2004, on the reliable information received by PW-7 PSI More, the trap was laid at Oshiwara and in the said trap, Accused Nos.1 and 2 came to be arrested. They were brought to the Police Station and the blood stained clothes on their person came to be seized under Panchanama (Exhibit-20) in the presence of the Panch PW-5 Sandeep Patekar. On 24th November, 2004, PW-9 PI Patel recorded the statement of one more eye witness, namely, PW-2 Abdul Shafiq Shaikh.

7. On 25th November, 2004, Accused No.2-Dinesh, during custodial interrogation, expressed his willingness to point out the place where the weapon of assault, the knife, was kept. Memorandum Panchanama of his statement was made in the presence of the Panch PW-6 Prashant Lakham. Thereafter, Accused No.2-Dinesh guided PW-9 PI Patel and Panch PW-6 Prashant Lakham to the spot, behind Sanskardham High School, and there, from the bushes, he produced the blood stained knife (Article "C"), which came to be seized under Panchanama (Exhibit-22). On 9th December, 2004, all these muddemal articles were sent to Chemical Analyzer vide requisition (Exhibit-34). The C.A. Report is produced on record at Exhibit-35. Further to completion of due investigation, PW-9 PI Patel filed Charge-Sheet in the Court against Accused Nos.1 and 2.

8. In due course, the case came to be committed to the Sessions Court and on committal of the case, the Trial Court framed charge against Accused Nos.1 and 2 for the offence punishable under Section 302 r/w. 34 of the IPC vide Exhibit-3. Accused Nos.1 and 2 pleaded not guilty and claimed to be tried.

9. In support of its case, the Prosecution examined in all 9 witnesses and on appreciation of their evidence, the Trial Court was pleased to hold the guilt of Accused Nos.1 and 2 to be proved beyond reasonable doubt and convicted and sentenced them, as aforesaid.

10. This Judgment of the Trial Court is challenged in the present Appeals by the learned Counsel for the Appellant/Original Accused No.1 Mr. Ganesh Gole and learned Counsel for the Appellant/Original Accused No.2 Mr. D.G. Khamkar, by submitting that the entire Judgment of the Trial Court is based on the sole testimony of a solitary eye witness, namely, PW-1 Manoj Angarkhe. It is urged that though the Prosecution has also examined another eye witness to the incident, namely, PW-2 Abdul Shafiq Shaikh, even the Trial Court has disbelieved his evidence, finding him to be a totally got up witness. According to the learned Counsels for Accused Nos.1 and 2, no corroboration is coming to the sole testimony of PW-1 Manoj and his evidence cannot be qualified as that of a sterling worth, on which implicit reliance can be placed. It is further urged by them that F.I.R. (Exhibit-12) in the case appears to be ante-timed and the second

weapon of assault, i.e. iron rod, is not recovered during investigation. The main plank of their arguments appears to be that no crime is committed without any motive or genesis and in the present case, the Prosecution has failed to prove such genesis or motive. Hence, according to them, it cannot be held that the Prosecution has proved its case against Accused Nos.1 and 2 beyond reasonable doubt. In their opinion, both the Appellants/Accused Nos.1 and 2, therefore, deserve to be acquitted of the offence charged against them by allowing these Appeals.

11. Per contra, learned A.P.P. has supported the Judgment of the Trial Court by pointing out that this is not a case based on the testimony of a single eye witness alone, but there is corroboration to his evidence from the recovery of the weapon of assault at the instance of Accused No.2-Dinesh, which was found to be having the blood stains, matching with the blood group of the deceased. He has further pointed out that, even there is recovery of the clothes of Accused Nos.1 and 2. The blood stains thereon are also matching with the blood group of the deceased. In his submission, therefore, the Trial Court has rightly convicted

the Appellants/Accused Nos.1 and 2 and hence these Appeals hold no merit.

12. In our considered opinion, in order to effectively deal with the rival submissions advanced by the learned Counsels for the Appellants/Original Accused Nos.1 and 2 and learned A.P.P. for the Respondent-State, it would be useful to refer to the evidence on record.

13. PW-1 Manoj and PW-2 Shaikh are examined by the Prosecution as eye witnesses to the incident. PW-1 Manoj was knowing deceased Laxman as well as Accused Nos.1 and 2, as all of them are residing in the same area. According to his evidence, on the date of incident, i.e. 20th November, 2004, at about 8 am, as usual he had left the house for going to the work. On the way, he was standing near Trikoni Maidan and chit-chatting with his friend Vishwas Sonawane. At that time, he saw the crowd near Sai Clinic. Therefore, he and his friend Vishwas went there to see what has happened. There they saw that the Accused Nos.1 and 2 were beating deceased Laxman. Accused No.1-Yeshwant was armed with iron rod and Accused No.2-Dinesh was armed with the knife. Both of them were assaulting deceased Laxman with

the weapons in their hands.

14. As per the evidence of PW-1 Manoj, immediately on seeing this assault, he rushed to the house of deceased Laxman and told his brother Nilesh about the same. Thereafter, along with Nilesh, he returned to the spot and found deceased Laxman lying there with bleeding injuries on his head and stomach. Then Nilesh and his friends lifted Laxman and took him to Tiwari Hospital. From Tiwari Hospital, he was taken to Cooper Hospital. As per the evidence of PW-1 Manoj, he had also been to Cooper Hospital, where he came to know that injured Laxman has died. Police present there made enquiry with him and he narrated the incident to them. In the hospital itself, Police reduced his statement in writing and obtained his signature thereon. The said statement, which is treated as F.I.R., is at Exhibit-12. It contains all the details of the incident, as given by PW-1 Manoj in his evidence before the Court.

15. In his cross-examination, it is again brought on record that, as deceased Laxman was also residing in the area where he and Accused Nos.1 and 2 are residing, he was acquainted with the deceased. However, he does not know what work deceased was

doing. Further it is brought on record that, on that day, he reached Trikoni Maidan at about 8 am. His friend Vishwas was already present there. They were talking for about five minutes. However, there was no special subject of talk. He has also stated that Trikoni Maidan is at the distance of hardly ten minutes walk from his house, whereas, Sai Clinic, where the incident took place, was at the distance of 50 to 60 feet from Trikoni Maidan. There may be 20 to 25 persons on the spot. However, he does not know whether anybody from the crowd was known to him.

16. In his cross-examination further details of the incident are brought on record, like, he saw Accused No.1-Yeshwant gave blow of iron rod on the head of deceased Laxman, whereas, Accused No.2-Dinesh gave blow of knife in his stomach. However, as the incident has happened all of a sudden, he was unable to see who gave the first blow. He has further deposed that the incident might have lasted for about 4 to 5 minutes only. When he saw the incident, Accused No.1 had given one blow of iron rod on the head of deceased and another blow on the hand of the deceased. It is brought on record that he did not hear any talk between Accused Nos.1 and 2 and the deceased. He also did

not find deceased defending the blows given by Accused Nos.1 and 2. Neither he himself nor anyone present in the crowd made any attempt to restrain Accused Nos.1 and 2. The Police Station was at the distance of about 15 minutes run by rickshaw from the spot of incident. After seeing Accused Nos.1 and 2 assaulting deceased, he could not know to call Police telephonically. After Accused Nos.1 and 2 were going away from the spot towards the side of Buddha Mandir, he went to the house of the deceased. However, he did not tell anybody to catch them. He also did not see the injuries of the deceased Laxman, after departure of Accused Nos.1 and 2. The house of Laxman was at the distance of 10 to 12 minutes walk from the spot. Then, along with Laxman's brother Nilesh, he came to the spot again. On the way at Trikoni Maidan, they met Nilesh's friend. One of the friends he knows and his name was Shiva, who is a rickshaw driver. Nilesh and his friend Shiva then took Laxman in the rickshaw to the hospital.

17. As per his further cross-examination, he also went to the hospital, where Police were present and there Police made enquiry with him for about half an hour. On the day of incident,

he did not go to his duty as he was in Cooper Hospital for about quarter to one hour. After recording of his complaint in the hospital, he went with the Police to the Police Station and he was there upto 11:30 am.

18. Thus, even a cursory glance to the evidence of this witness goes to prove that he is totally an independent, natural eye witness to the incident and Defence has not succeeded in making any dent in his testimony. Conversely, in the cross-examination, his evidence is cemented and fortified, by bringing some more details of the incident on record.

19. Prosecution has also examined PW-2 Shaikh Abdul as another eye witness to the incident, who is also residing in the same area and, according to him, on that day, at about 8 am, in order to go to his work, he left the house. On the way, at Trikoni Maidan, he stopped for few minutes as he saw the crowd near Sai Clinic. Hence, he went towards the crowd and saw Accused Nos.1 and 2 beating deceased Laxman. Accused No.1 was armed with the iron rod and Accused No.2 was armed with the knife. Accused No.1 gave the blow of iron rod on the head and hand of the deceased, whereas, Accused No.2 gave blow of knife in his

stomach. Many people were gathered on the spot. When some of them tried to intervene, Accused No.2 pointed knife and threatened them. Therefore, those people were scattered and he went back to his house. In his cross-examination also, it is brought on record that his house is at the distance of only 5 to 7 minutes walk from Sai Clinic and was on the way to the house of deceased Laxman. He was knowing deceased and his brother Nilesh. He was at the spot for about 2 to 3 minutes. However, he did not make any attempt to intervene. After witnessing the incident, he also did not inform about it to anybody else or even he did not go to the Police Station. His statement came to be recorded only on 24th November, 2004, when, for the first time, he disclosed about being an eye witness to the said incident.

20. The Defence has challenged his evidence and, in our considered opinion, rightly so. The Trial Court has also not accepted his evidence as reliable; firstly, on the count that though he is a Social Worker and used to visit Police Station for the social work, even then he did not inform the Police about the incident either on that day or immediately thereafter. In his further cross-examination it is also brought on record that, on

22nd November, 2004, i.e. 2 days after the incident, he had gone to the Police Station in respect of one Panchanama in Sessions Case No.138 of 2005. At that time, PW-9 PI Patel was very much present in the Police Station, even then he did not disclose about witnessing this incident to the Police. This stoic silence on his part resulting into inordinate delay in disclosing the incident to the Police, makes his evidence suspect and bereft of credibility.

21. These are the only two eye witnesses examined by the Prosecution to prove the incident and as, out of them, one i.e. PW-2 Shaikh Abdul is disbelieved, the entire case of the Prosecution, as per the submissions of learned Counsels for Accused Nos.1 and 2, stands on the solitary testimony of PW-1 Manoj. According to the learned Counsels for Accused Nos.1 and 2, his evidence cannot be called as of a sterling worth so as to place implicit reliance thereon.

22. However, in our considered opinion, it cannot be said that the case of the Prosecution stands on the solitary testimony of PW-1 Manoj alone, because, in the first place, the prompt lodging of F.I.R. gives complete corroboration and support to the evidence of this witness. The incident had taken place at about

8:15 am and the F.I.R. (Exhibit-12) depicts that the offence was registered immediately at about 10:30 am. The complaint, as stated above, was recorded in the hospital itself, when it was declared by the Doctor that injured Laxman has already succumbed to death. Police were also informed immediately of this incident on telephone. There is evidence to that effect of PW-7 PSI More and PW-9 PI Patel, which reveals that at 8:15 am, Police received telephonic information of this incident and in the said information also, it was stated that Accused Nos.1 and 2 had assaulted the deceased by means of iron rod and knife and deceased was taken to Tiwari Hospital. Though it is the contention of the learned Counsels for Accused Nos.1 and 2 that, on this telephonic information itself the crime should have been registered, we are not ready to accept this contention, because the information received on the telephone was cryptic. It was not even disclosing the spot of the incident. The information was also not found to be complete as to the other details and hence it was not sufficient to register the crime thereon.

23. According to learned Counsels for Accused Nos.1 and 2, PW-1 Manoj has been contradicted PW-7 PSI More because, PW-1

Manoj has deposed that, after seeing Accused Nos.1 and 2 assaulting Laxman More, he could not know to call Police telephonically. Hence, according to learned Counsels for Accused Nos.1 and 2, on this ground PW-1 Manoj's evidence also became suspect. However, this part of evidence of PW-1 Manoj cannot be interpreted to mean that he has not at all informed about the incident to the Police on telephone. It may be true that during the course of actual assault, he might not have informed, but there is every reason to believe that after the incident, he has informed the Police on phone. There is evidence to that effect of both PW-7 PSI More and PW-9 PI Patel. The presence of PW-7 PSI More in Cooper Hospital immediately after the incident also proves the receipt of telephonic information, whether it was reduced into writing or not.

24. A submission at this stage is also advanced to the effect that the F.I.R. is ante-timed to suite the Prosecution case, because in the Inquest Panchanam (Exhibit-18), which was made in between 10:40 am to 11:40 am, C.R. number is not mentioned. That space is kept blank.

25. However, in our considered opinion, when the investigating

machinery was already set into motion and as per the endorsement made on the F.I.R., C.R. was registered at 10:30 am itself and as per the evidence of PW-1 Manoj, PW-7 PSI More and PW-9 PI Patel, the complaint (Exhibit-12) was recorded in the hospital itself and C.R. number was obtained telephonically from Police Station, which evidence is not at all shattered even in cross-examination, from the mere fact that in the Inquest Panchanama, C.R. number is not mentioned, it is not possible to infer that the F.I.R. is ante-timed. No reason is pointed out or brought on record in the cross-examination for PW-1 Manoj for him to falsely implicate or concoct a case against Accused Nos.1 and 2 or even for the Investigating Officers to do so. Hence, the authority relied upon by the learned Counsels for Accused Nos.1 and 2 that of ***L/NK. Meharaj Singh Vs. State of Uttar Pradesh, 1995 CRI. L.J. 457***, cannot be made applicable to the facts of the present case. In the reported authority, it was found that though the Investigating Officer was preparing the Inquest Panchanama for about half an hour and though the eye witnesses were present at the time of preparing the Inquest Panchanama, even then they did not disclose the fact of having seen the incident. Moreover, in the Inquest Panchanama, the

details of the incident were not mentioned, which was found indicative of the fact that the Prosecution story was still in embryo and had not been given any shape. It was further noticed that the eye witness account was contradicted by the medical evidence and, hence, authenticity of F.I.R. was found to be lost, it being ante-timed and has not been recorded till inquest proceedings were over at the spot.

26. As against it, in the present case, the Inquest Panchanama (Exhibit-18) contained these details and the medical evidence in the instant case is consistent with the ocular account as given by PW-1 Manoj. Not only in the Inquest Panchanama (Exhibit-18) the injuries sustained by the deceased are mentioned, but there is also evidence of PW-8 Dr. Shivaji Kachare, who has conducted postmortem on the dead body, and according to his evidence, on external examination, he found following injuries :-

- (i) *Deep penetrating wound at umbilicus, margins well defined, reddish, 4 cm x 2 cm x deep cavity.*
- (ii) *Deep penetrating wound at right hypochondriam region, angles, acute, reddish brown, 3 cm x 2 cm x cavity deep.*

- (iii) *Incised stab wound at below injury no.1 at anterior abdomen wall, both angles acute, reddish brown, 2 cm x 2 cm x cavity deep.*
- (iv) *Incised stab wound below injury no.(iii), angles acute, reddish, 2 x 2 cm x cavity deep.*
- (v) *Deep lacerated wound at middle of skull extending to occipital region, irregular margins with underneath, bones shows compound fracture, reddish, 10 cm x 3 cm x bone deep and 9 cm x 3 cm x bone deep.*
- (vi) *Linear abrasion at right lateral of neck region, two in numbers, 5 cm x 1 cm, 4 cm x 1 cm, reddish.*
- (vii) *Incised wound at behind right ear pinna, reddish, angles acute, 3 cm x 2 cm x bone deep.*
- (viii) *Abrasion over anterior lateral of right forearm upper region, 3 cm x 0.5 cm, reddish.*

27. On internal examination, he found following injuries :-

- (i) *Injury under the scalp - haemorrhage seen all over scalp scattered. Scalp muscles ruptured.*
- (ii) *Skull - compound fracture middle of skull with fracture right occipital parietal bone.*
- (iii) *Brain - sub-dural and sub-arachnoid haemorrhages seen.*
- (iv) *Walls of abdomen - ruptured at anterior abdomen wall, umbilical and right hypochondria region.*
- (v) *Paritoneum - Ruptured.*

- (vi) *Stomach - small intestine and large intestine - ruptured at various sites and haemorrhages are seen.*
- (vii) *Liver - ruptured at left border and anteriorly and inferiorly.*
- (viii) *Pancreas - ruptured at head and body.*
- (ix) *Spleen - ruptured and pale.*
- (x) *Kidneys - both upper poles ruptured bilateral.*

28. According to PW-8 Dr. Shivaji Kachare, the cause of the death was *“haemorrhage and shock due to multiple injuries”*. In his evidence before the Court, it is brought on record that Injury No.5 - the compound fracture on the head and Injury No.6 - linear abrasion on the neck region, are possible due to assault by hard and blunt substance, like, the iron rod used in the commission of the offence. Whereas, Injury Nos.1, 2, 3, 4 and 7, which are incised stab wounds found on the stomach, are possible by means of knife, with which, as per the evidence of PW-1 Manoj, Accused No.2 has assaulted the deceased. The medical evidence in the case is, thus, thoroughly consistent with the ocular account of PW-1 Manoj. Therefore, it cannot be said that the F.I.R. is anti-timed and prepared to suite the Prosecution

case on the evidence of PW-1 Manoj is a solitary piece of evidence, on which the Prosecution case is standing.

29. The submission that the evidence of PW-1 Manoj cannot fall in the category of 'wholly reliable witness' and hence simpliciter reliance cannot be placed on his testimony, also cannot be accepted. As discussed above, the evidence of this witness is found to be thoroughly consistent and reliable. He is totally an independent witness, who has acted promptly in informing the brother of the deceased about the incident, then informing the Police telephonically, going to the hospital, giving detailed complaint before the Police in the hospital. Thereafter he even did not go to the work on that day and was with Police till 11:30 am; thus, extending complete co-operation to the Police. PW-1 Manoj is neither proved to be the friend of deceased Laxman, nor on enmity terms with Accused Nos.1 and 2. His presence at the spot is also natural, as he is residing in the same area where the deceased, his brother and Accused Nos.1 and 2 were residing. Hence, he was acquainted with them, but not on friendly or inimical terms with any of them.

30. Though the conduct of PW-1 Manoj of not intervening in the

incident and not trying to chase Accused Nos.1 and 2 is challenged as unnatural, we do not find anything unnatural in it as it is judicially recognized that there is no set rule that one must react in a particular way. The natural reaction of a person is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence. There is no set rule of natural reaction. Every person, who witnesses a murder, 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 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. Thus, when the behaviour of the witnesses and their reactions defer from situation to situation and individual to individual, to discredit the evidence of witness on the ground that he did not react in a particular manner, is to appreciate evidence in a wholly unrealistic and unimaginative way. Court cannot be oblivious of the unpredictability of human conduct and lack of uniformity in human reaction, ***[Vide Rana Pratap Vs. State of Haryana, (1983) 3 SCC 327]***.

31. In the present case, the conduct of PW-1 Manoj is not of such an abnormal nature also. A witness can be expected to intervene in the assault only when he is confident of overpowering the assailants. Here in the instant case, there were two assailants and both were armed with the weapons, making indiscriminate assault with those weapons on the deceased. Therefore, the reaction of the ordinary prudent person would not be of intervening in the assault, but of seeking immediate medical help for the injured by informing his family members. That is exactly what PW-1 Manoj has done. He has rushed to the house of the deceased, informed his brother Nilesh and again came along with Nilesh to the spot and then went to the hospital also. Therefore, we are unable to accept the submissions of the learned Counsels for Accused Nos.1 and 2 that the conduct of this witness is unnatural and, therefore, his evidence should be disbelieved.

32. The law, as laid down in ***Vadivelu Thevar Vs. The State of Madras, AIR 1957 SC 614***, is well crystallized that there is no legal impediment to the conviction of the accused person on the solitary testimony of a single witness, provided his testimony

is found to be entirely reliable as in the instant case. It is the quality of evidence and not the quantity or number of the witnesses which matters. The evidence, therefore, has to be weighed and not counted. In the instant case, the oral evidence of PW-1 Manoj is also not a stand alone piece of evidence, but it is corroborated from the prompt lodging of F.I.R. and medical evidence.

33. There is also corroboration to this evidence from other circumstances, like, the recovery of the weapon of assault, the knife, at the instance of Accused No.2. There is evidence of the Panch PW-6 Prashant Lakham and PW-9 PI Patel proving that, in the course of interrogation, Accused No.2 gave a disclosing statement expressing his desire to produce the weapon of assault, the knife. The said statement was reduced to Memorandum Panchanama and thereafter Accused No.2 guided the Police and the Panchas to the place behind Sanskardham High School and from the bushes there, he produced the blood stained knife, which came to be seized and sealed under Panchanama (Exhibit-22). The said blood stained knife was sent to Chemical Analyzer and as per the C.A. Report (Exhibit-35), the

stains of “O” blood group were found thereon. The clothes of the deceased and the blood and blood mixed mud found on the spot was also revealed to be of blood group “O”, thereby establishing the use of this knife in the commission of the offence. This is a strong connecting link to prove the guilt of Accused Nos.1 and 2. Though the Prosecution has also relied upon seizure of blood stained clothes on the person of the Accused, we are not inclined to place reliance on it, as the seizure of clothes is four days after the incident.

34. The last submission advanced by the learned Counsels for Accused Nos.1 and 2 is that the Prosecution has failed to prove the genesis or motive for the offence. The reliance is placed on the observations of the Apex Court in ***Badam Singh Vs. State of Madhya Pradesh, 2004 CRI. L. J. 22***, to the effect that,

“even though existence of motive loses significance when there is reliable ocular testimony, in a case where the ocular testimony appears to be suspect, the existence or absence of motive acquires some significance regarding the probability of the prosecution case”.

35. However, these very observations revealed that, if the ocular testimony appears to be suspect, then the existence or absence of motive acquires some significance. In the instant case, the ocular testimony of PW-1 Manoj is found to be beyond suspect.

36. As a matter of fact, as held in ***Bahal Singh Vs. State of Haryana, 1976 CRI. L. J. 1568,***

“the ocular testimony of the eye witnesses to the occurrence cannot be discarded only on the count that genesis or the motive of the occurrence is not proved, if the said testimony is found to be reliable”.

37. Moreover, in the instant case, the genesis or motive of the incident is brought out by the Defence itself in the cross-examination of Investigating Officer PW-9 PI Patel. In paragraph No.23 of his evidence, it is pointed out that Accused No.1 was assaulted by the brother of the deceased, namely, Nilesh More, and he was prosecuted for the same under Section 307 of the IPC. Therefore, this is not a case where there is no motive or genesis or background for the incident. The very fact that Nilesh,

brother of deceased Laxman, was prosecuted for the offence punishable under Section 307 of the IPC, constitutes the genesis or the cause of the incident.

38. In the face of this positive and concrete evidence on record, we have no hesitation in holding that the Prosecution has succeeded in proving its case beyond reasonable doubt against both the Appellants/Accused Nos.1 and 2 for the offence punishable under Section 302 r/w. 34 of the IPC. Appeals, therefore, hold no merit and, hence, stand dismissed.

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