

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.877 OF 2008

Suresh Shripal Chougule,	]	
Age : 45 Years, Occ.: Agriculture,	]	
R/o. Kasbe Digraj, Tal. Miraj,	]	 Appellant /
District Sangli.	]	(Original Accused)

Versus

State of Maharashtra,	]	
C.R. No.77 / 2007,	]	
Registered at Sangli Rural Police Station,	]	 Respondent /
District Sangli.	]	(Org. Complainant)

ALONG WITH

CRIMINAL APPEAL NO.1386 OF 2008

The State of Maharashtra,	]	
Through PSO, Sangli Rural Police Station.,	]	
District Sangli.	]	 Appellant /
C.R. No.77 / 2007	]	(Org. Complainant)

Versus

Rekha Suresh Chougule,	]	
Age : 35 Years, Occ.: Household Work,	]	
R/o. Kasbe-Digraj, Tal. Miraj,	]	 Respondent /
District Sangli.	]	(Original Accused)

Dr. Yug Mohit Chaudhary for the Appellant-Original Accused in Appeal No.877 of 2008 and for the Respondent-Original Accused in Appeal No.1386 of 2008.

Mr. J.P. Yagnik, A.P.P. for the Respondent-State in Appeal No.877 of 2008 and for the Appellant-State in Appeal No.1386 of 2008.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

RESERVED ON : 8TH DECEMBER, 2016.

PRONOUNCED ON : 21ST DECEMBER 2016.

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

1. Criminal Appeal No.877 of 2008 is preferred by the Original Accused, who stands convicted by the Judgment and Order dated 21st July 2008 of Ad-Hoc District Judge-2 and Additional Sessions Judge, Sangli, in Sessions Case No.31 of 2008 for the offences punishable under Sections 302 and 506 of IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer R.I. for six months, on the first count, and R.I. for one year and to pay fine of Rs.1,000/-, in default to suffer further R.I. for three months, challenging his conviction and sentence. Whereas, Criminal Appeal No.1386 of 2008 is preferred by the State challenging acquittal of Original Accused No.2-Rekha for the offences punishable under Sections 302, 323, 504 and 506 r/w. Section 34 of IPC.

2. Thus, as both these Appeals are arising out of one and same

Judgment of the Trial Court, they are being decided by this common Judgment.

3. For the sake of convenience, the parties are referred to by their original nomenclature as “*Accused No.1-Suresh*” for the Appellant in Criminal Appeal No.877 of 2008 and “*Accused No.2-Rekha*” for the Respondent in Criminal Appeal No.1386 of 2008.

4. Brief facts of the Appeals can be stated as follows :-

Accused No.1-Suresh and deceased Milind were brothers *inter se*. They had two more brothers by name Chavgonda and Ravindra and one sister by name Padmavati (PW-1). They were residing in the same house, which was partitioned amongst them. Accused No.2-Rekha is the wife of Accused No.1-Suresh and they had one minor son by name Shukracharya. PW-1 Padmavati was separated from her husband. Hence, she was residing in the house of deceased Milind along with their mother. Their father had 7 acres of agricultural land at Kasbe-Digraj. In the oral partition, effected in the year 1994, he had allotted 2 acres of land, each, to his sons Chavgonda, Suresh and Ravindra; whereas, only 20 gunthas of land was allotted to deceased Milind. Their father was also having one

more piece of agricultural land, admeasuring 4 acres, and a plot admeasuring 3 ½ gunthas at village Bhose. He had not given any share in the said land to Ravindra and Milind. The plot was, however, given equally to all the four brothers and the sister. PW-1 Padmavati was, however, not allotted any share in the agricultural land of her father. As per prosecution case, on this count of unequal partition, the relations between the brothers *inter se* were not cordial.

5. In this back-drop, the incident took place on 6th October 2007. On that day, at about 10 a.m., deceased Milind was standing in front of his house; whereas, PW-1 Padmavati was standing on the door. Milind was requesting his brother, Accused No.1-Suresh, not to throw garbage in the courtyard. Thereupon, Accused No.1-Suresh and his son Shukracharya came over there; then they went to their house and came out of their house within a short time along with Accused No.2-Rekha. At that time, Shukracharya was armed with iron-pipe. Both, Accused No.1-Suresh and Shukracharya, started assaulting Milind. To escape from the assault, Milind started running towards the cow dung-pit of the house of Balasaheb Nikam, which was nearby. Accused No.1-Suresh and Accused No.2-Rekha

followed Milind to the cow dung-pit. PW-1 Padmavati also followed them and saw that, both, Accused No.1-Suresh and Shukracharya were beating Milind and Shukracharya was assaulting Milind with iron-pipe. Meanwhile, Accused No.2-Rekha went to her house and brought an axe and handed over it to her husband, Accused No.1-Suresh. With the said axe, Accused No.1-Suresh inflicted several blows on the neck, face and other parts of the body of Milind, one after another. As a result, Milind got injured and fell down in the said cow dung-pit. Accused No.1-Suresh and Shukracharya dragged Milind by holding his leg and threw him on the road. PW-1 Padmavati tried to go near Milind, but Accused No.1-Suresh slapped her and threatened to kill her also. Accused No.1-Suresh, his wife Accused No.2-Rekha and their minor son Shukracharya thereafter left the spot of incident. PW-1 Padmavati then went near Milind and found that he had already succumbed to the injuries. The information of the incident was then given to Police. PW-13 PI Jadhav came to the spot and recorded the complaint of PW-1 Padmavati vide Exhibit-8. On this complaint, C.R. No.77 of 2007 came to be registered at 12:30 p.m.

6. PW-13 PI Jadhav then himself took over investigation of the case. He conducted the Spot Panchanama (Exhibit-31), the Inquest

Panchanama (Exhibit-29) and sent the dead-body for postmortem examination. On the same day, he recorded the statements of various witnesses, including that of PW-12 Shobha, wife of Chavgonda, and Prabhavati, wife of Ravindra.

7. On the same day, PW-13 PI Jadhav arrested Accused No.1-Suresh and Accused No.2-Rekha and seized the clothes on their person under Panchanama Exhibit 33. The clothes of the deceased were seized under Panchanama Exhibit-34. On the next day, PW-13 PI Jadhav arrested Shukracharya and seized the clothes on his person under Panchanama Exhibits 35. During the course of further investigation, on 10th October 2007, Accused No.1-Suresh gave a disclosing statement, of which Memorandum Panchanama was made vide Exhibit-36. Thereafter, Accused No.1-Suresh guided the Police and Panchas to his house at Kasbe-Digraj. In that house, from the heap of fodder, he produced the blood-stained axe and the iron-pipe, which came to be seized under Panchanama Exhibit-37. All the seized muddemal articles were sent to Chemical Analyzer on 17th October 2007. The C.A. Report is produced at Exhibit-39. Further to completion of investigation, PW-13 PI Jadhav filed Charge-Sheet against Accused No.1-Suresh and Accused No.2-Rekha in the Court

of Judicial Magistrate, First Class, Sangli; whereas, the minor son Shukracharya was forwarded to Juvenile Justice Board along with the Report.

8. On committal of the case to the Sessions Court, the Trial Court framed charge against Accused No.1-Suresh and Accused No.2-Rekha vide Exhibit-3. Charge was read over and explained to both the Accused. Accused pleaded not guilty and claimed trial, raising the defence of denial and false implication.

9. In support of its case, the prosecution examined in all thirteen witnesses. However, except for PW-1 Padmavati, PW-10 Dr. Doulat Sawant and PW-13 PI Laxmanrao Jadhav, the Investigating Officer, all other witnesses had turned hostile and not supported the prosecution case.

10. The Trial Court found the evidence of PW-1 Padmavati to be of sterling quality and being fully supported and corroborated from the medical evidence on record. Hence, the Trial Court held the guilt of Accused No.1-Suresh to be proved beyond reasonable doubt and convicted him for the offences punishable under Sections 302 and

506 of IPC and sentenced him, as aforesaid, to life imprisonment and fine.

11. As regards Accused No.2-Rekha, Trial Court found that, though her involvement in the offence is proved, as she has brought the axe from her house and handed it over to her husband Accused No.1-Suresh, Trial Court came to the conclusion that the common intention on her part to kill the deceased being not proved, she deserves to be given benefit of doubt. Accordingly, Trial Court acquitted her of all the offences leveled against her.

12. Being aggrieved by this judgment of the Trial Court, Accused No.1-Suresh has preferred the Criminal Appeal No.877 of 2008, challenging his conviction; whereas State has preferred Criminal Appeal No.1386 of 2008, challenging acquittal of Accused No.2-Rekha.

13. In these Appeals, we have heard, at length, learned counsel for Accused Nos.1 and 2 Dr. Yug Mohit Chaudhary and learned APP for the Respondent-State Mr. J.P. Yagnik.

14. In our considered opinion, in order to appreciate the rival submissions advanced at bar by learned counsel for Accused Nos.1 and 2 and learned A.P.P., it would be useful to refer to the evidence on record.

15. The main reliance of the prosecution in this case is on the testimony of PW-1 Padmavati, as rest of the witnesses have turned hostile and have not supported the prosecution case. Though, they were cross-examined at length by learned APP, nothing worthwhile is elicited in their cross-examination to prove the prosecution case.

16. The law relating to the appreciation of evidence of a solitary eye-witness is now fairly well settled and crystallized through various decisions of the Hon'ble Apex Court. Learned Counsel for Accused Nos.1 and 2 has also relied upon the recent decision of the Hon'ble Apex Court in the case of *Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*, (2012) 8 SCC 21. This case pertains to the offence of gang-rape punishable under Section 376(2)(g) of IPC and in this case, while considering whether the implicit reliance can be placed on the sole testimony of the victim of gang-rape, the Hon'ble Apex Court has been pleased to lay down, in paragraph No.22 of its

judgment, the legal position relating to the evidence of solitary eye-witness. According to Hon'ble Apex Court, such solitary eye-witness has to be the "sterling witness" and evidence of such "sterling witness" can be relied upon, only if his/her evidence satisfies following conditions :-

"22. In our considered opinion, the "sterling witness" should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons

involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence, where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness”, whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

17. According to learned counsel for the Accused, if on the anvil of the above principles, the version of PW-1 Padmavati is tested, then it has to be held that she has failed to pass in all the tests mentioned above. He has urged that there are material omissions in her version from what was stated in the complaint and what was deposed before the Court at the time of trial. Moreover, she is not only the relative but also the “interested witness” in the outcome of the case, as she would get share in the property of the Accused. Hence, she has roped in all the family members of Accused No.1-Suresh. It is urged that, her evidence is also not getting corroboration from the evidence of PW-12 Shobha, who was, admittedly, as per her evidence also, present at the time of incident. The prosecution has not examined another eye-witness to the said incident, namely Prabhavati, the wife of other brother. In such situation, according to learned counsel for the Accused, when none of the witness or Panchas, either to Seizure Panchanama or to Spot Panchanama, are supporting the prosecution case, then, it is not possible to place implicit reliance on the sole testimony of PW-1 Padmavati to hold Accused No.1-Suresh guilty, that too for the offence punishable under Section 302 of IPC, the punishment for which is imprisonment of life.

18. Whereas, according to learned APP, the evidence of PW-1 Padmavati is passing all the tests laid down in the above said decision of the Hon'ble Apex Court. It is submitted that merely because PW-1 Padmavati is a relative, her evidence cannot be disbelieved in any way. She was related equally to Accused No.1- Suresh and deceased Milind, being their sister. Hence, there was no reason for her to falsely implicate the Accused. Moreover, her evidence is also getting support and corroboration from the medical evidence and the evidence of PW-13 PI Jadhav. Hence, according to learned APP, the Trial Court has rightly placed reliance on her testimony, after scrutinizing and testing it on the anvil on the above principles, and rightly held the guilt of Accused No.1- Suresh to be proved beyond reasonable doubt.

19. In the light of these rival submissions advanced by learned counsel for Accused and learned APP, if the evidence of PW-1 Padmavati is appreciated, then, we have no hesitation in upholding the Trial Court's finding that she has come out as a reliable and truthful witness, so as to place implicit reliance on her testimony to prove the guilt of Accused No.1-Suresh beyond reasonable doubt. Her evidence reveals that she was residing along with deceased

Milind and her mother. Whereas, her other brothers, namely, Accused No.1-Suresh, Ravindra and Chavgonda, were residing in the same building, but separately. It is her further evidence that though she was married, on account of differences with her husband, she has started residing separately from him since one year after the marriage, with her parents and working as "Teacher". At the time of incident, she was running the age of 62 years. It is admitted by her that Milind was also married, but there was divorce between him and his wife. Milind was not having any issue. Both of them were residing with their mother.

20. As per her evidence, her father was having 7 acres of agricultural land at Kasbe-Digraj, which he had orally partitioned amongst his sons, namely, Chavgonda, Suresh and Ravindra, allotting them 2 acres of land, each; whereas only 20 gunthas of land was allotted to Milind. Her father was also having an agricultural land, ad-measuring 4 acres, at village Bhose and the plot ad-measuring 3 ½ gunthas. Out of the same, her father gave 2 acres of land, each, to Chavgonda and accused No.1 Suresh. However, no share was allotted from the said land to Ravindra and Milind.

21. As regards the incident, PW-1 Padmavati has deposed that on 6th October 2007, at about 10.00 am, Milind was standing in front of his house and saying don't throw garbage in his courtyard. She was also standing at the door of his house and she noticed that Accused No.1-Suresh and his son Shukracharya came over there and then went to their house. Within short time, Accused No.1-Suresh and Shukracharya came there along with Accused No.2-Rekha. At that time, Shukracharya was armed with iron-pipe and he and Accused No.1-Suresh started assaulting Milind. To escape from the assault, Milind ran away towards the cow dung-pit of the neighbour Balasaheb Nikam. Accused No.1-Suresh, Accused No.2-Rekha and Shukracharya followed Milind there. As per the evidence of PW-1 Padmavati, she also followed them and went near the cow dung-pit. There she saw that Accused No.1-Suresh and Shukracharya were assaulting Milind. Shukracharya was assaulting Milind with iron Pipe. By that time, Accused No.2-Rekha went to her house and brought an axe and handed it over to Accused No.1-Suresh. Then Accused No.1-Suresh inflicted several blows of axe on the neck, face and other parts of the body of Milind, one after another. As a result, Milind fell down in the said cow dung-pit. Accused No.1-Suresh and Shukracharya dragged Milind by holding his leg and threw him on

the road. PW-12 Shobha, Chavgonda's wife, and Prabhavati, Ravindra's wife, were also present at the time of incident. When PW-1 Padmavati tried to go near Milind, Accused No.1-Suresh slapped her and threatened to kill her also. After this incident, both the Accused left the spot along with Shukracharya. Hence, PW-1 Padmavati could approach and go near Milind. She noticed that Milind has already succumbed to the injuries. Then the police were informed. Police came to the spot, made inquiry with her and recorded her complaint on the spot itself, vide Exhibit-8.

22. This evidence of PW-1 Padmavati has remained totally unshattered, despite her cross-examination at length. Nothing worthwhile is elicited in her cross-examination to disbelieve her in any way. She has remained thoroughly consistent. Defence has not been successful in extracting any material improvements or contradictions. No doubt, an attempt is made to elicit some omissions in her cross-examination, but, in our considered opinion, those omissions are of minor details, which do not affect the core version of her testimony. Those omissions are to the effect that PW-1 Padmavati has stated that Shukracharya was armed with "iron-pipe" and Police have recorded it in the complaint as "iron-rod",

instead of iron-pipe. In the first place, this omission is not of grave nature and, secondly, Shukracharya's case is separated and it is tried before the Juvenile Justice Board. Therefore, this omission cannot have any bearing so far as the case against Accused No.1-Suresh and Accused No.2-Rekha is concerned.

23. Another omission pointed out is to the effect that, though PW-1 Padmavati stated before the Police that she was standing at the door of Milind's house, when Milind was shouting '*do not through garbage in front of his house*', it is not appearing in the complaint Exhibit-8 and she fails to assign any reason for the same. However, this omission is not put up to the Investigating Officer PW-13 PI Jadhav, nor any attempt is made to prove the alleged omission, though it was necessary to do so, considering that, according to her categorical version, she has stated this fact when her complaint was recorded by the Investigating Officer PW-13 PI Jadhav. Therefore, this omission, being not proved properly, cannot be considered.

24. It is also submitted that PW-1 Padmavati has not stated before the Police that she followed Accused No.1-Suresh, Accused No.2-Rekha and Shukracharya, when they followed Milind to the cow

dung-pit. However, in this respect, there are two material aspects to be remembered. The first is that, when PW-1 Padmavati had witnessed the assault on Milind in the courtyard of the house at the hands of Accused No.1-Suresh and Accused No.2-Rekha, and, to escape from that assault, she had also seen Milind running towards the cow dung-pit and Accused No.1-Suresh, Accused No.2-Rekha and Shukracharya following Milind there, it is but natural on her part also to follow them for two reasons; either to see what is happening, and, secondly, to rescue Milind from the said assault. Moreover, even accepting that she has not stated the said fact in her complaint, there is no reason to disbelieve her on this aspect, because the complaint was lodged within two hours after this ghastly incident of Accused No.1-Suresh inflicting several blows of axe on the body of Milind, as a result of which Milind has succumbed to the injuries on the spot itself. So, some time was required for her to recover from the said incident and to give all these minor details and particulars in her complaint, immediately after such incident. Secondly, her evidence also goes to show that near the cow dung-pit, PW-12 Shobha, wife of Chavgonda, and Prabhavati, wife of Ravindra, were also present. This fact clearly goes to show that she was also very much present at the cow dung-pit and that is why she noticed the

presence of Prabhavati and PW-12 Shobha. Thus, as regards the actual incident of assault, there is absolutely no reason to disbelieve her in any way.

25. Moreover, evidence of PW-1 Padmavati is getting full support and corroboration from the prompt reporting of the incident and the prompt recording of the FIR. The incident had taken place at about 10.00 am, whereas crime is registered at 12.30 in the Noon i.e. within two and a half hours. The Police have come to the spot, as can be seen from the evidence of the Investigating Officer PW-13 PI Jadhav, and recorded her complaint immediately after the incident. Therefore, this is not a case where evidence of PW-1 Padmavati is not getting corroboration from any other source. Conversely, it finds complete support and corroboration from the complaint lodged immediately after the incident and also from the evidence of the Investigating Officer PW-13 PI Jadhav.

26. The strong corroboration and support to her evidence is coming from the testimony of the Medical Officer PW-10 Dr. Doulat Sawant. He has conducted the postmortem examination on the dead-body of Milind on the same day in the afternoon at about 2.00

p.m. and found, as many as, 28 injuries in the nature of contusions, abrasions and incised wounds, as follows:

- “1. Contusion over left scapular region (18 cm x 2 cm oblique).
2. Contusion over upper thoracic spine (15 cm x 2 cm).
3. Contusion over left para spinal lumbar.
4. Multiple major abrasion, 7 in number, $\frac{1}{2}$ x $\frac{1}{2}$ cm each over Lumber-1 and Lumber-2.
5. Contusion over right scapular region (12 cm x 2 cm).
6. Major abrasion over right nape of neck (7 cm x $\frac{1}{2}$ cm).
7. Incised wound over mid sub occipital region, left side (7 cm x $\frac{1}{2}$ cm) bone deep, directing obliquely upwards.
8. Two horizontal incised wounds 2 cm front and apart from injury No.7, each measuring 7 cm x $\frac{1}{2}$ cm and 8 cm x $\frac{1}{2}$ cm, converging over right occipital region directing upwards.
9. Vertical incised wound over occipital prominence (9cm x $\frac{1}{2}$ cm) bone deep, direct obliquely to right side.
10. Incised wound over left occipital region, horizontally placed (7 cm x $\frac{1}{2}$ cm) bone deep taling laterally on left side.
11. Incised wound over right parieto occipital region, bone deep, directed obliquely upwards.
12. Chopped incised wound with degloring of skin to left lateral aspect (8 x 4 cm) flap bone deep tangential to bone behind left ear over left mastoid bone.
13. Incised wound over right parieto occipital region (4 x $\frac{1}{2}$ cm bone deep).
14. Abrasion over right arm upper 3rd posterior aspect (2 x 1 cm).

15. *Punctured wound with irregular margins over right forearm, middle third, ulnar aspect.*
16. *Abrasion over right forearm lower third ulnar aspect (3 x 1 cm).*
17. *Contusion over right arm, upper third, lateral (12 x 2 cm).*
18. *Incised wound over left shoulder (7 x 1 cm) over superior aspect, bone deep.*
19. *Abrasion over right supra mammary region (9 x ¼ cm).*
20. *Incised wound over left anterior aspect of neck, lower third, measuring 2.5 x 1 x ½ cm horizontally placed.*
21. *Contusion over left supra mammary region (8 x 1 cm) oblique.*
22. *Abrasion over left shoulder, 4 cm, superior (upper) aspect (13 x ¼ cm)*
23. *Incised wound over left mandibular region (8 x 4 x 5 cm) deep, directed medially rupturing underlying muscles and major blood vessels along with minor blood vessels and nerve plexus.*
24. *Incised wound below left mastoid over left lateral aspect of neck (3 x ½ x 2 cm) deep.*
25. *CLW over left maxillary prominence (2.5 x 5 x 5 cm) deep.*
26. *Incised wound over chin extending to left sub mandibular region, 10 cm with degloring of skin below chin with visible fracture mandible.*
27. *Incised wound below chin 3 x ½ cm and 1.5 x 0.5 cm skin deep.*
28. *Abrasion over right palm base of right middle finger (½ x ½ cm)."*

27. According to his evidence, injury Nos.1 to 6, 14 to 17, 19, 21, 22 and 28 were simple injuries, in the nature of abrasions and contusions. However, the remaining injuries were grievous. Out of that, injury No.23, which was an incised wound over left mandibular region, has resulted into rupture of underlying muscles and major blood vessels on vital part of the body like neck and the cause of the death was, therefore, *“shock due to excessive massive blood loss and which resulted into massive hemorrhagic shock”*. He has further stated that the age of these injuries was within six hours and the injuries in the nature of incised wounds were possible by sharp cutting object like an axe; whereas, the injuries in the nature of contusions were possible due to assault by an iron-pipe and the injuries in the nature of abrasions were possible by friction against hard and rough surface, which supports the evidence of PW-1 Padmavati that deceased Milind was dragged from the cow dung-pit to the road, where his body was left.

28. Thus, the medical evidence in the case goes hand-in-hand with the ocular evidence of PW-1 Padmavati. All the injuries, which are noted above, are found reflected in the Postmortem Report Exhibit-21. The Death Certificate Exhibit-22 further corroborates the same,

which leaves no doubt about the manner in which the incident had occurred, as deposed by PW-1 Padmavati. Her evidence that Accused No.1-Suresh has inflicted several blows of axe, one after another, on the vital parts of the body of Milind, like, face and neck, gets complete corroboration from the fact that there were, as many as, six incised wounds on the body of the deceased. Her evidence that Shukracharya was assaulting deceased Milind with iron-pipe also gets support from the fact that there were, as many as, fifteen injuries in the nature of contusions and seven injuries in the nature of abrasions found on his body were, as deposed by PW-1 Padmavati, on account of dragging of his body. Therefore, this medical evidence leaves no iota of doubt as to the ocular account of version as given by PW-1 Padmavati.

29. Even the evidence of PW-12 Shobha goes to prove that she saw dead-body of Milind lying on the road. Therefore, in the instant case, even if Panchas to the Spot, Inquest and Recovery of the axe, at the instant of Accused No.1-Suresh, have not supported the prosecution case, that does not affect the veracity of the prosecution case, as the prosecution case stands on the solid foundation of the evidence of PW-1 Padmavati and the medical evidence of PW-10 Dr. Doulat

Sawant. PW-1 Padmavati can be said to be a witness on whose testimony the Court can place implicit reliance. Her presence at the spot of the incident is also very natural, as she was the inmate of the house of deceased Milind and closely related, both, to deceased Milind and Accused No.1-Suresh also.

30. According to learned counsel for Accused, however, PW-1 Padmavati is an interested witness, not only because she is related to Milind and Accused, but because she was interested in the outcome of the case. It is urged that, as admitted by her, she was not given any share by her father in the ancestral property. Even Milind was also not given equal share like that of his other brothers. Therefore, there is possibility of her having a grouse against her other brothers, including Accused No.1- Suresh. Further it is submitted that, if the family of the Accused gets convicted for this offence, then she is bound to gain some share. Moreover, as Milind was issue-less, she is going to benefit, as she would get the share of Milind and also the share of Accused No.1-Suresh in the ancestral property. Thus, it is urged that she being an interested witness, her evidence should not be relied upon.

31. In order to substantiate this contention, learned counsel for

Accused has relied upon the decision of the Hon'ble Apex Court in the case of *Dalbir Kaur vs. State of Punjab, 1977 SC 473*, wherein, the term "*interested witness*" is explained by the Hon'ble Supreme Court, in paragraph No.13 of its judgment, to the effect that, "*the term "interested witness" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason.*"

32. In our considered opinion, however, these submissions advanced by learned counsel for Accused No.1-Suresh are in the nature of assumptions and presumptions, in the absence of any evidence brought on record to show that PW-1 Padmavati was having any inimical relations with Accused No.1-Suresh or other brother so as to implicate Accused No.1-Suresh and all his family, falsely in the assault on Milind. It is pertinent to note that, she is related equally, both, to the deceased Milind and Accused No.1-Suresh. There is not a single suggestion put up in her cross-examination that she was more interested or was partial in favour of Milind and had any dispute with Accused No.1-Suresh or her other brothers. Therefore, merely because she was residing with Milind, as

his wife has left him and he was issue-less, and their mother was also staying with deceased Milind, it cannot be accepted that her relations with her other brothers, that of Accused No.1-Suresh and others, were strained or not cordial.

33. Moreover, nothing is brought on record to show that she was interested in the ancestral property of her father. Her cross-examination goes to reveal that the partition in the ancestral property was effected in the year 1994 and, at that time, no dispute was raised regarding the alleged unequal partition. She had denied the suggestion that she was angry with Accused No.1-Suresh, as no share was given to her in the partition at the instance of Accused No.1-Suresh. Nothing is brought on record to that effect even from the evidence of PW-12 Shobha, though she is declared hostile and has not supported the prosecution case, and in her cross-examination, the details about the partition of the ancestral property are brought on record. Conversely, her cross-examination goes to show that PW-1 Padmavati has purchased a plot towards western side of their house. Therefore, there was no reason at all for PW-1 Padmavati to have any grouse about her father, not giving any share to her in the ancestral property. There is no suggestion in the

cross-examination of PW-12 Shobha also that as a result of the death of Milind or the involvement of Accused No.1-Suresh in the said incident, PW-1 Padmavati was going to get any share in the property. It must be noted that, apart from PW-1 Padmavati, Milind and Accused No.1-Suresh are having two other brothers, namely, Chavgonda and Ravindra. Therefore, there is hardly any substance in the contention of learned counsel for Accused No.1-Suresh that PW-1 Padmavati is going to benefit by involving the accused persons in this assault.

34. As a matter of fact, as observed by the Hon'ble Apex Court in the above said decision of *Dalbir Kaur (supra)*, *"ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. A witness is, therefore, normally to be considered independent unless he or she springs from sources, which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely"*.

35. It was further observed by the Hon'ble Apex Court that, *"it is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom*

a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

36. In the instant case, the Accused have failed to lay such foundation to show that PW-1 Padmavati had any reason to carry a grudge against the accused persons. Neither the alleged enmity is brought on record, nor the assumption that she may get more share in the property is even suggested or brought on record.

37. According to learned counsel for the Accused, in the instant case, though there were two other eye-witnesses to the incident, namely, PW-12 Shobha, wife of Chavgonda, and Prabhavati, wife of Ravindra, as deposed by PW-1 Padmavati herself, PW-12 Shobha has not supported the prosecution case; whereas, Prabhavati is not examined by the prosecution and, therefore, the evidence of PW-1 Padmavati cannot be accepted as a gospel truth. Her evidence needs to be scrutinized carefully.

38. In our considered opinion, even on this careful scrutiny, the testimony of PW-1 Padmavati stands of sterling worth, as it is of a very high quality and caliber. Her version has remained

unassailable, natural and consistent with the case of the prosecution. She has withstood the test of cross-examination successfully and has not given any room for doubt as to the factum of occurrence, the persons involved therein as well as the sequence of it. Her version had co-relation with each and every other supporting material, like, recovery of axe at the instance of Accused No.1-Suresh, proved through the evidence of PW-13 PI Jadhav; then the medical evidence proving the use of axe in the assault on deceased Milind. The medical evidence supports her version and the manner of the incident. Therefore, as observed in the case of *Vadivelu Thevar Vs. The State of Madras, AIR 1957 SC 614*, relied upon by learned counsel for the Accused, she falls in the category of the first witnesses, who are wholly reliable and there is no need to seek corroboration to her evidence from any other sources. It is apart that such corroboration is also coming in the instant case from the medical evidence and the evidence of the Investigating Officer.

39. Hence, so far as Accused No.1-Suresh is concerned, in our considered opinion, the prosecution has successfully proved its case against him beyond reasonable doubt.

40. However, at this stage, alternate submission is advanced by

learned counsel for the Accused that the case of Accused No.1-Suresh falls under Exception 1 to Section 300 of IPC that of '*grave and sudden provocation*'. According to him, there is every possibility of Milind quarreling with Accused No.1-Suresh on the alleged ground of Accused No.1-Suresh throwing garbage in his courtyard. It is urged that, if one considers the cross- examination of PW-12 Shobha, it is revealed that Milind was addicted to alcohol. He used to quarrel with his wife. Hence, his wife has left him and, therefore, if one considers his nature, there is reason to hold that he might have provoked Accused No.1-Suresh and therefore, Accused No.1-Suresh has lost the self-control and assaulted Milind.

41. By placing reliance on the judgment of the Hon'ble Apex Court in *Sukhbir Singh Vs. State of Haryana, AIR 2002 SC 1168*, it is submitted that, even if there is time-span between the quarrel and the assault, as the said time-span is of few minutes or short duration only, it has to be held that the occurrence had taken place in a "*sudden*" manner.

42. However, we are not at all inclined to accept this submission, as absolutely no evidence is brought on record to show the alleged

quarrel between deceased Milind and Accused No.1-Suresh. There are absolutely no suggestions put up to that effect to PW-1 Padmavati, far remain to elicit any material to that effect through her cross-examination. Even no suggestions are put to PW-12 Shobha, who has been declared hostile. Therefore, without any such foundation being laid even in the form of suggestions to the prosecution witnesses, as this Exception of "*grave and sudden provocation*" is put forward, it is bereft of any credence.

43. Learned counsel for the Accused has then placed reliance on the landmark decision of the Hon'ble Apex Court in the case of *K.M. Nanavati Vs. State of Maharashtra, AIR 1962 SC 605*, to submit that, while applying the doctrine of grave and sudden provocation, the Court has to consider, whether a reasonable person belonging to the same class of society as the accused, placed in a similar situation in which the accused was placed, would be so provoked as to lose his self-control. In our considered opinion, even if this test, as laid down in this decision of *K.M. Nanavati (Supra)* is applied, even then, *sans*, any material on record to show any sort of provocation on the part of Milind, like his raising quarrel with Accused No.1-Suresh, it cannot be accepted that the occurrence might have taken

place due to sudden or grave provocation.

44. Learned counsel for the Accused has then placed reliance on the decision of the Hon'ble Apex Court in the case of *State of U.P. Vs. Shyam Veer and Ors.*, (2005) 10 SCC 611, to submit that the time gap of fifteen minutes also, in the dispute and the occurrence, was considered by the Hon'ble Apex Court as insignificant in the said case, while extending the benefit of Exception of "grave and sudden provocation". Again we are constrained to observe that the facts of the reported authority are totally different from the facts of the present case, as, in the said case, the first incident of quarrel and assault was sufficiently proved on record, which has acted as provocation. Here, in the case, there is no evidence on record to that effect.

45. Learned counsel for accused has then relied upon the decision of this Court in the case of *Baba @ Gulam Raza Hussain Hadi Tapti Vs. State of Maharashtra and Anr.*, 2000 (1) Mh.L.J. 164, to submit that, in cases of grave and sudden provocation, number of injuries inflicted by accused on the victim is not a crucial determinative factor. Here in the case, it is urged that, even if there are twenty-

eight injuries found on the body of Milind, out of which six injuries were in the nature of incised wounds, as far as the Exception of '*grave and sudden provocation*' is concerned, these injuries cannot play a crucial role. However, it is pertinent to note that, this observation that "*number of injuries inflicted by the Accused on the victim is not a crucial determinative factor*", was made by this Court, in the above-said authority, only in the matter of sentence, after finding that the case on facts falls within Exception of '*grave and sudden provocation*'. Here in the case, material on record does not, in any way, justify the submission of learned counsel for the Accused that the case of Accused No.1-Suresh can fall under '*grave and sudden provocation*'. Therefore, reliance placed on this authority is also mis-placed.

46. As a result, all the contentions raised by learned counsel for Accused being without merits, we have no hesitation in holding the guilt of Accused No.1-Suresh to be proved beyond reasonable doubt for the offences punishable under sections 302 and 506 of IPC. There is absolutely no reason for this Court to take any other view of the matter and hence the appeal preferred by Accused No.1-Suresh, challenging his conviction and sentence, needs to be dismissed and,

accordingly, the same stands dismissed.

47. As regards the appeal preferred by the State against the acquittal of Accused No.2-Rekha, we find that the only role attributed to her and which is proved on record is that of Accused No.2-Rekha bringing an axe from the house and handing it over to Accused No.1-Suresh. It may be true that, with the same axe, Accused No.1-Suresh has inflicted the fatal blows on deceased Milind. But then, in order to prove the common intention, for Accused No.2-Rekha also to be implicated in this case, there must be evidence on record to show that she was sharing the intention of committing the homicidal attack on deceased Milind or she was exhorting, instigating or provoking Accused No.1-Suresh by her words to kill deceased Milind. Therefore, unless and until some material is brought on record to show that she was sharing the common intention of Accused No.1-Suresh to kill deceased Milind, it cannot be said that the prosecution has succeeded in proving her involvement or the guilt in the offence punishable under Section 302 r/w. Section 34 of IPC against her. The view, therefore, taken by the trial Court being also a plausible and reasonable view, in this appeal against acquittal, we are not inclined or convinced to interfere in the

said view. The Appeal, therefore, preferred by the State, challenging her acquittal, is also devoid of merits and hence stands dismissed. Her bail-bond stands cancelled.

48. As a result, both the Appeals stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]