

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 23.8.2017

Judgment Delivered on 26.09.2017

CRA No. 56 of 2003

1. Udit Narayan Singh, S/o Shyam Sunder Singh, aged about 55 years, R/o Thathari, P.S. Jangjir Champa, Chhattisgarh
2. Athanand, S/o Makhanram Satnami, aged 33 years.
3. Satanand, S/o Makhanram Satnami, aged 46 years.
4. Pyare Lal, S/o Tiharuram Mahilange, aged 42 years.
5. Ashwani Kumar, S/o Sawan Navrange, Caste Satnami, aged 27 years.

No.2 to 5 are residents of village Khamariya, P.S. Baradwar, District Janjgir Champa, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh, through P.S. Baradwar, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Appellants	:	Shri Praveen Das, Shri Jagat Sher Singh & Shri UKS Chandel, Advocates
For Respondent	:	Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

C A V Order

Per. P. Diwaker, J

...../9/2017

1. This appeal arises out of the impugned judgment and order dated 30.12.2002 passed by the Additional Sessions Judge, Sakti in S.T. No.287/2002 convicting the appellants under Sections 302/149 & 148 of the Indian Penal Code (for short 'the IPC') and sentencing each of them to

undergo RI for life and fine of Rs.1,000/-, in default to undergo additional RI for 3 months, and RI for 1 year respectively.

2. In the present case name of deceased is Gouri Lal Satnami, father of PW-1 Naresh.
3. Brief facts of the case are that there was old land related dispute between accused/appellant No.1 and deceased and on the date of incident also there was some quarrel between them and during the course of said quarrel, the accused/ appellant No.1 had threatened the deceased for dire consequences. It is further alleged that in the night intervening 16th & 17th December, 2000 all the five accused persons armed with variety of weapons entered the house of deceased and committed his murder by causing grievous injuries to him. Incident was witnessed by PW-1 Naresh, son of deceased, who at the relevant point of time was present in the adjacent room and had witnessed the entire incident through an orifice in the door of the room. Further case of the prosecution is that as the accused/appellants have brutally murdered the deceased, therefore, said Naresh (PW-1) got scared and kept quiet till morning and next morning at about 8.20 a.m. he lodged the Merg Intimation (Ex.P-1). At 8.30 a.m. FIR (Ex.P-21) was lodged by him under Section 302/34 IPC against all the five accused persons specifically mentioning therein that on account of old land dispute between his father and accused/appellant No.1, at about 12 in the midnight when his father was sleeping in the verandah, the accused persons attacked on him and committed his murder by inflicting incised wounds on various parts of his body. Inquest over the body of deceased was prepared vide Ex.P-4 on 17.12.2000. Body was sent for post-mortem examination which was conducted by Dr. Jagdish Singh (PW-11) vide Ex.P-22 and he noticed following injuries:-

- Wound over neck front & lower part of 2.7" x 1" to 1.5"x 2"
- Incised wound over right side of face of 3.5" x1", bone deep
- Incised wound over right shoulder of 1.5" x 0.3"x0.3"
- Incised wound over right upper arm, 10 cm above from Injury No.3, of 2.5" x 0.5" x 0.5cm
- Incised wound over left side of face of 2"x1.5 to 1/2" x 2" in size.
- Incised wound over head of 2.5" x 1" in size.
- Incised wound over left shoulder of 1.5" x 1/2" x 1" in size.

The doctor has opined that cause of death was shock and haemorrhage due to injuries over body i.e. skull fracture & other bony fractures, and the death was homicidal in nature. In the course of investigation, memorandum statement of accused/appellant No.1 was recorded vide Ex.P-9 and based on which one club was recovered vide seizure memo Ex.P-14. Memorandum of accused/appellant No.2 was recorded vide Ex.P-13 and based on which one axe was seized vide Ex.P-17. Memorandum of accused/appellant No.3 was recorded vide Ex.P-12 and in consequence of that information, one axe was seized vide seizure memo Ex.P-16. Memorandum statement of accused/appellant No.4 was recorded vide Ex.P-11 and on the basis of this disclosure statement, one axe was seized at his instance vide seizure memo Ex.P-15. Memorandum statement of accused/appellant No.5 was recorded vide Ex.P-10 and based on this disclosure statement, one crowbar was seized vide seizure memo of Ex.P-18. Seized articles were sent for chemical examination to the Forensic Science Laboratory from where report of Ex.P-34 was received. As per report of FSL, blood was found in all the seized articles and human blood was detected on the weapons seized from accused/appellants No.2 to 5. Statements of witnesses under Section 161 CrPC were recorded.

4. After completion of investigation, charge sheet was filed against the accused/appellants under Sections 302/149 & 148 of the IPC and the trial

Court accordingly framed the charges against them.

5. So as to hold the accused/appellants guilty, the prosecution examined as many as 12 witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted & sentenced the accused/appellants as described above.
7. Learned counsel for the accused/appellants submits that:
 - PW-1 Naresh is none else but the son of the deceased and, therefore, he is a highly interested witness and as such his sole testimony should not be accepted in convicting the appellants without any corroboration from independent source.
 - though PW-1 Naresh has stated in the merg intimation & diary statement that there was light in the verandah where the deceased was sleeping but in the Court statement he has not deposed so. Thus, it is clear that the incident had occurred at midnight and there was no light at or around the place of occurrence in order to enable PW-1 Naresh to see the assailants who had actually committed the offence in question and therefore the trial Court erred in accepting the version of this witness that he had seen the accused attacking & assaulting the deceased with a particular weapon.
 - conduct of PW-1 Naresh at the time of incident and after the incident was highly unnatural which creates doubt about his presence on the spot at the time of alleged occurrence. It is settled position that the order of conviction cannot be based on the evidence of solitary

eyewitness unless his presence at the place of occurrence was found to be natural and his testimony is strong and reliable and free from any blemish.

- conduct of PW-1 Naresh, son of deceased, in not going to the rescue of the deceased when he was in the clutches of the assailants or not raising alarm for help and remained silent for about long 7 hours after the incident, was unnatural, particularly in view of the fact that relatives of this witness were residing adjacently.
- PW-1 Naresh has exaggerated his version while deposing in the Court and stated that crowbar has pierced through face of the deceased, and likewise the accused have caused other injuries in brutal manner but no such statement was made by him either in the FIR or diary statement.
- there is no report of serologist to establish the fact that the weapons have human blood thereon and therefore the recovery cannot be used to connect the appellants with crime in question.
- the deceased himself was a man of criminal antecedents, he might have been killed by some of his enemies and the appellants have been falsely implicated by PW-1 Naresh due to old land related disputed between appellant No.1 & the deceased.
- in the spot map there is no mention of any hole in the door of the room from where PW-1 Naresh has allegedly witnessed the entire incident.
- Reliance is placed on the judgements delivered in Balaka Singh & ors v. The State of Punjab reported in AIR 1975 SC 1962; Baldev Singh v. State of Punjab reported in AIR 1991 SC 31; State of Rajasthan v. Bhola Singh & anr reported in AIR 1994 SC 542; Dayaram & anr v. State of MP reported in 1997 J.L.J. 38; Toran Singh v. State of MP reported in (2002) 6 SCC 494; Joseph v. State of Kerala reported in

(2003) 1 SCC 465; State of Punjab v. Sucha Singh reported in (2003) 3 SCC 153; Bhimapa Chandappa Hosamani v. State of Karnataka reported in (2006) 11 SCC 323; Sattatiya alias Satish Rajanna Kartala v. State of Maharashtra reported in (2008) 3 SCC 210; Bhajan Singh @ Harbhajan Singh & ors vs. State of Haryana reported in AIR 2011 SC 2552; Shivasharanaappa & ors v. State of Karnataka reported in (2013) 5 SCC 705.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that;-

- conviction of accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
- the conviction could be based on the sole testimony of a solitary witness provided his presence at the place of occurrence was natural and his testimony should be strong, reliable and free from any blemish. In the present case also, PW-1 Naresh is the son of deceased and the incident occurred in the mid night at the house of deceased where PW-1 was also residing along with the deceased and therefore presence of PW-1 on the spot is natural.
- it is not the quantity of witnesses examined by the prosecution to prove its case but it is the quality of witnesses which needs to be considered. Here in this case, there is nothing on record to discredit the evidence of PW-1, who has categorically deposed about the presence of all the five accused/appellants on the spot at the time of incident.
- PW-1 Naresh has categorically stated in his Court statement that

there was light at the place where the deceased was sleeping and he saw the entire incident through the hole in the door of his room. No suggestion has been put to this witness in his cross-examination that there was no source of light at the place of occurrence and therefore now it cannot be argued that there was insufficiency of light or no light on the spot.

- PW-1 Naresh is the son of deceased and conduct of this witness in not going forward to help the deceased at the time of incident was most probable and natural human conduct, which most men faced in such situation would resort to. Not having courage to stop a person armed with a deadly weapon was not and could be a circumstance to disbelieve the testimony of PW-1 Naresh particularly when he has stood the test of cross-examination. The entire evidence of PW-1 cannot be discarded on the ground that he did not react in any particular manner at the time incident. Thus, the conduct of PW-1 Naresh in not immediately informing about the incident to others was natural and does not make his evidence unreliable or untrustworthy.

9. We have heard learned counsel for the parties and perused the material available on record.
10. Accused/appellant No.1 Udit Narayan Singh is reported to have expired during the pendency of this criminal appeal and this fact has also been confirmed by the State Counsel. Accordingly, this appeal as regards appellant No.1 Udit Narayan Singh stands abated and dismissed as such.
11. Naresh Kumar Satnami (PW-1) is the sole eyewitness to the incident. He has stated that the incident occurred at 12.30 in the midnight. All the five

accused persons had murdered his father Gowrilal. At that time he was sleeping inside the house and on hearing bleats of cattle, he woke-up. He has further stated that accused/appellant No.1 assaulted on temple region & chest of his father by sword. Accused/appellant No.5 caused injury on the temple region of his father by gupti which had pierced through the head of his father. He has further stated that accused/appellant No.2 had assaulted his father by crowbar on his chest with such a force that it had pierced through the chest of his father. Accused/appellant No.3 had assaulted near the shoulder, back side of neck and both the hands of the deceased by axe. All the accused persons had cut his father into pieces. He has further stated that accused/appellant No.4 was carrying axe in his hand and he had assaulted on the hand of his father by it. He has further stated that on seeing the incident he got scared and thinking that he may also not be killed, he did not raise alarm. He has further stated that he saw the entire incident from the hole of the door. The accused persons after committing the offence fled from there. He has further stated that on sunrise he immediately went to the house of his uncle Joidha and narrated the entire incident to him. He had also disclosed the incident to his uncle Mathura Prasad (not examined), Rampyare, Sarpanch & Kotwar and thereafter all of them went to the police station and lodged the report. This witness had duly proved the Merg Intimation (Ex.P-1) & FIR (Ex.P-2). He is also a witness to the inquest (Ex.P-4). This witness has further stated that when his father asked Sattar Singh (PW-9) for removing the earth which had fallen from his field situated adjacent to his field, accused/appellant No.1, who was already standing there, refused to do so and threatened to make burial of his father under the same. He has further stated that a dispute with accused/appellant No.1 is pending in the Court at Sakti for the last

ten years. In the cross-examination, various questions were put to this witness to establish that on the date of incident he was not present at the spot, but nothing incriminating could be elicited in the cross-examination to brand the evidence of this witness unreliable or untrustworthy. There is also a suggestion that he could not have seen the incident, but he stuck to his version stated by him in the examination-in-chief as to the manner in which he saw the incident. There appears to be some improvements in his Court statement from that of his diary statement but the same are of no significance.

12. Siyaram Sahu (PW-2) is the witness of Inquest (Ex.P-4), seizure memo (Ex.P-7), however, he did not support the prosecution case and turned hostile. Jai Singh (PW-3) & Sampatlal (PW-4) are the witnesses of memorandums (Ex.P-9, P-10, P-11, P-12 & P-13) and seizure memos (Ex.P-14 to Ex.P-18). These witness have also not supported the prosecution case and turned hostile. However, they have admitted their signatures over the aforesaid documents.

13. Smt. Daras Bai (PW-7) is the wife of deceased. She has stated that there had been a long standing dispute over some landed property between the accused/appellant No.1 and her husband (deceased) and that on the date of incident also there was a dispute between them over throwing of soil in the field of Sattar Singh (PW-9). She has further stated that on the date of incident she was not in her house and had gone to village Baradwar to meet her brother.

14. Joidha Prasad Satnami (PW-8), brother of deceased, has stated that he was informed by Naresh Kumar (PW-1) that accused/appellants had killed his father (deceased). He has also stated that Naresh (PW-1) further informed him that he did not raise alarm due to fear of his life. This

witness has also stated about the pendency of civil dispute between the deceased and accused/appellant No.1.

15. Sattar Singh (PW-9) did not support the prosecution and turned hostile. Hulasram (PW-10) is the Patwari who prepared the spot map (Ex.P-5). He has denied the suggestion that the place where deceased was brutally murdered is not visible from the place where from PW-1 claims to have seen the incident.
16. Dr. Jagdish Singh (PW-11) is the person who conducted post-mortem examination over the body of deceased and opined that cause of death was shock & haemorrhage due to injuries over head i.e. skull fracture and other bony fractures and the death was homicidal in nature. This witness had examined the weapons seized at the instance of accused/appellants and opined that the injuries noticed on the person of deceased Gowrilal could be caused by these weapons.
17. A.S. Dhruv (PW-12) is the investigating officer who has duly supported the prosecution case.
18. Present is the case where the conviction of accused/appellants is solely based on the evidence of solitary eye-witness to the occurrence i.e. Naresh Kumar Satnami (PW-1), son of the deceased. Since the sole eye witness is a close relative being son of the deceased, therefore, before proceeding further, something should be said about the position of law with respect of appreciation of evidence of interested witness, related witness and solitary witness.
19. The law relating to evidence of solitary eye witness has been discussed by the Supreme Court in a number of cases. It has been consistently held that as a general rule the Court can and may act on the testimony of

single witness provided his evidence has a ring of truth and the same is cogent, credible and trustworthy. In **Vithal Pundalik Zendge v. State of Maharashtra** reported in **AIR 2009 SC 1110**, the Supreme Court while dealing with a murder case where the prosecution had relied upon the solitary testimony of an eye witness, observed as under:-

"6. On a consideration of the relevant authorities and the provisions of the [Indian Evidence Act](#), 1872 (in short the '[Evidence Act](#)') the following propositions may be safely stated as firmly established:

- (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
- (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
- (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

7. Therefore, there is 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."

In the aforesaid judgment, the Supreme Court also referred to the judgment in **Vadivelu Thevar v. The State of Madras** reported in **1957 CriLJ 1000**. The relevant portion is quoted as under:

"11. ... 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."

20. In **Jagdish Prasad v. State of MP** reported **1994 CriLJ 1106**, the Supreme Court has observed as under:-

"There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

21. In **State of Gujarat v. Naginbhai Dhulabhai Patel** reported in **AIR 1983 SC 839** it has been held by the Supreme Court that the mere fact that the witnesses were relations or interested would not by itself be sufficient to discard their evidence straight-way unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind

of the court.

22. It is also well settled that evidence of interested witnesses cannot be discarded on the sole ground of interestedness, but their evidence should be subjected to a close scrutiny. Interested witnesses are not necessarily false witnesses. Evidence of interested witness cannot be equated with that of a tainted witness. There is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. Simply because an eye witness happens to be the son of the deceased, his evidence cannot be discarded if his testimony is otherwise acceptable. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. For that, the decision of the Hon'ble Supreme Court in **State of Rajasthan v. Smt. Kalki** reported in **(1981) 2 SCC 752** may be seen.

23. Section 134 of the Indian Evidence Act enshrines the well recognized maxim that "evidence has to be weighed not counted". The matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be 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 accused may be established by the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of case for the prosecution..

24. Keeping the above principles in mind, statement of the sole eye witness namely Naresh Kumar Satnami (PW-1) is being examined. Perusal of the evidence of PW-1 Naresh Kumar goes to show that he has categorically described the incident in detail. He has deposed that on the fateful night at about 12, the accused/appellant armed with variety of weapons came to his house and committed murder of his father (deceased) by causing grievous injuries to him. According to this witness, on hearing bleats of cattle he woke-up and saw that accused/appellant No.1 had assaulted on the neck & chest of his father by sword. Accused/appellant No.2 had caused axe injuries on both hands, shoulder & neck of his father. Accused/appellant No.3 had assaulted on the chest of his father by crowbar which pierced through the chest of his father. Accused/appellant No.4 had inflicted axe injury on the hand of his father (deceased). Accused/appellant No.5 assaulted on the temple of his father with gupti and said gupti had pierced through the head of the deceased. He has further stated that on account of fear that in case he raised any alarm he would meet the same fate, therefore, he did not raise alarm and remained inside the room. He has further stated that he saw the entire incident from the hole in the door of his room. According to this witness, the accused/appellants after committing the incident left the place, however, he remained inside his room whole night and after sunrise, he went to the house of his uncle Joidha (PW-8) and narrated the entire incident to him. He also disclosed the incident to his another uncle Mathura Prasad, Rampyare, Sarpanch & village Kotwar and thereafter all of them had gone to the police and lodged the report of incident. This witness has further deposed that when his father asked for removing the earth which had fallen from the adjacent field of Sattar Singh (PW-9), accused/appellant No.1, who was already standing there, refused to do so and threatened to

make their burial under the same. He has further deposed that on account of long standing dispute over landed property, some ill-will was there which ultimately led to the brutal murder of his father at the hands of accused persons. His material deposition is in consonance with the statement to the police. This witness had been cross-examined at length but the defence has not been able to point out any contradiction of a material nature in his deposition which makes this witness unbelievable or unreliable.

The manner of occurrence and the weapons used, as described by PW-1 Naresh Kumar, finds support from the medical evidence as the post-mortem report proved by the prosecution clearly show that the deceased received as many as seven grievous injuries on his body, all were ante mortem in nature and caused by hard & sharp object. On 20.12.2000 the Investigating Officer made request to Dr. Jagdish Singh (PW-11) to have his opinion regarding use of weapons recovered at the instance of accused/appellant. The doctor examined those weapons and opined vide his reports (Ex.P-24, P-26, P-28, P-29 & P-30) that injuries present on the person of deceased could be possible with the weapons seized from possession of accused/ appellants.

Admittedly, the prosecution has failed to produce the serological report but, in our view, that would not provide a handle to the defence to attack the prosecution case. No doubt, it would have been better if the investigating officer would have sent the blood stained articles to the Serologist for chemical examination. However, the said omission on the part of the investigating officer is not a flaw of that type so as to invite the consequence of jettisoning the sworn testimony of the eye-witness.

No doubt, it is true that the doctor did not notice any injury across

the chest of the deceased and there is minor contradiction on this point in the oral evidence and medical evidence. However, we find that this contradiction between the ocular testimony and medical evidence is very minor and it has not shaken or weaken the prosecution case. Some discrepancies in the narration of details of incident are bound to be there. Minor variations between the ocular evidence and medical evidence are not relevant. The corroboration of testimony of the witnesses by medical evidence cannot be expected with accuracy. Therefore, we are of the opinion that this contradiction cannot be said to be material and as such, it has no significance.

That apart, the weapons seized from the accused/appellants were sent for chemical examination and human blood was found on the crowbar & axes recovered at the instance of accused/appellant Nos.2, 3 & 4, whereas weapons seized at the instance of accused/appellant Nos.1 & 5 were found to be stained with blood. The questions in this regard were put to accused/appellants during recording of their statement under Section 313 Cr.P.C., but except vague denial, they said nothing more. Thus, the above fact of recovery of the bloodstained weapons on being pointed out by the accused/appellants is an additional link to prove their guilt.

25. Coming to the next argument advanced by counsel for the accused/appellants regarding non-availability of electric light at the scene of occurrence to enable PW-1 to witness the incident and see clearly the faces of the assailants. Naresh Kumar (PW-1) firstly in the merg intimation (Ex.P-4) recorded at his instance named the accused/appellants and attributed a specific role to them in the crime. He has stated that at the time of occurrence a bulb was burning in the verandah and in the light of

that bulb he had identified the accused/appellants. In the statement recorded under Section 161 CrPC also this witness has clearly stated that there was light and he had identified the assailants in that light. Overall testimony of PW-1 reveals that even a feeble suggestion as to absence of light at the place of incident was not put to this witness by the defence. Of course, there was a suggestion to the effect that incident was not witnessed by this witness, but that was specifically denied by this witness by stating that he had seen the murder of his father from his own eyes. Except this suggestion nothing has been brought on record by the defence either to disbelieve the evidence of PW-1 or what he stated has no factual basis. In this context, it will not be out of place to refer to a decision of the Supreme Court in **State of UP v. Sheolal & ors** reported in **AIR 2009 SC 1912** wherein, the Supreme Court held that *"identification of accused in an offence of murder which took place at night could not be discarded merely because the accused and eye-witness are closely related and the source of light was not indicated in the FIR."*

Considering the facts of case and more particularly, the unchallenged statement of the eyewitness claiming presence of light while the incident was in progress, we do not find any substance in the argument of counsel for the appellants that for want of light, the witness could not have seen the incident or the accused persons could not have been identified. Admittedly, there is no mention regarding presence of light at the spot, but we feel that the omission to precisely mention the source of light in the FIR is not sufficient to approach the evidence of PW-1 with any amount of undeserved doubt or suspicion.

26. We also do not find any force in the submission of counsel for the appellants that conduct of PW-1 in not going to the rescue of his father

(deceased) when he was in the clutches of the assailants was unnatural. 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. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. The Hon'ble Supreme Court in **Bachittar Singh & anr v. State of Punjab** reported in **(2002) 8 SCC 125** on human behaviour, held as under:-

"Human behavior vary from man to man. Different people behave and react differently in different situations. Human behavior depends upon the facts and circumstances of each given case. How a man would behave in a particular situation, can never be predicted. In the given circumstances, the behavior of Joginder Singh - PW-3 sleeping on the roof of the house of Sukhwant Singh; after seeing the accused armed with weapons and hearing of firing, jumping from the roof and running towards his village Mastewala to inform his father and family members instead of loitering around in the village Dholewala and informing somebody risking his life, is quite natural. One should not forget that the incident had happened at 1.00 A.M. and that at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk."

27. In the present case, the incident took place at 12.30 in the midnight in which father of PW-1 had been brutally murdered by accused/appellants and a perusal of FIR shows that after committing the murder of deceased, the accused persons have knocked the door of room of PW-1 but thinking that he may also be killed, he did not open the door. In such a situation, Naresh Kumar (PW-1) going out of his room in the midnight and approaching anybody in the village would be risking his own life. His immediate reaction, therefore, would be to avoid approaching anybody to inform about the incident and to lodge a report without loss of time. We think that the approach adopted by PW-1 was the correct one in the facts and circumstances of the case. Not having the courage to stop the persons armed with deadly weapons was not and could not be a circumstance to disbelieve the testimony of PW1 particularly when he has stood the test of cross-examination. Therefore, on this ground, the otherwise creditworthy and reliable testimony of PW-1 Naresh Kumar could not be impeached.

28. As regards the submission of counsel for the appellants that due to long standing dispute between accused/appellant No.1 & deceased, the accused/appellants have been falsely implicated in the crime in question. No doubt, there was enmity between the deceased and the accused/appellant No.1, but from the evidence on record it does not appear that the accused/appellants were falsely implicated by PW-1 Naresh Kumar on account of aforesaid enmity. Furthermore, the enmity between the accused and the deceased is a double edged weapon. It may provide incentive for the crime and it may also provide reasons for falsely implicating the accused. In the present case, it cannot be reasonably inferred or presumed that the accused/appellants were falsely implicated by PW-1 because of enmity. The enmity is no ground for discarding the

evidence of PW-1 as his evidence is reliable and trustworthy and corroborated by medical evidence as well.

29. In the instant case, statement of sole eyewitness Naresh Kumar (PW-1), who is close relative of the deceased being son of the deceased, appears to be reliable and trustworthy and his evidence is corroborated from the medical evidence as well. Therefore, in these circumstances, if the trial Judge has recorded conviction against the accused/appellants for the offence under Section 302/34 IPC on the basis of sole testimony of PW-1, who happens to be the son of the deceased, it has not committed any illegality or irregularity in doing so. Hence, the argument that it was unsafe to base conviction of the accused/appellants on the testimony of PW-1 stands rejected.

30. In the facts of the case, in our opinion, the decision reported in the matter of Bhola Singh's case (supra) cited by learned counsel for the accused/appellant is of no help for the reason that in that case the evidence of solitary witness has been disbelieved by the Court on account of exaggeration in the evidence of solitary witness. Whereas in the present case there is no exaggeration and embellishments in the evidence of PW-1 Naresh and he stuck to his statement made during investigation in all material particulars.

Similarly, the judgment rendered in the Baldev Singh's case (supra) is also of no help to the defence because in this case the eyewitness to the incident had admitted in his cross-examination that he could not identify accused/appellant due to darkness. However, the factual position in the present case is altogether different. Naresh Kumar (PW-1) has given full and vivid description of the offence committed by accused/appellants and attributed specific roles to each of the assailants

and that can be narrated only by an eyewitness and none else.

In so far as the reliance placed by counsel for the appellant in Balaka Singh's case (supra) is concerned, the eyewitness account has been disbelieved on the ground that it is not in conformity with the medical evidence on the record. In that case, according to eyewitness, two accused appear to have assaulted injured with a sharp-cutting instrument, namely Barcha and Spear, but this version was completely falsified by the medical evidence of the doctor, according to whom, all the injuries were caused by blunt object. However, in the case in hand, we do not find any material contradiction between the ocular evidence and medical evidence making the testimony of solitary eyewitness unreliable or untrustworthy. Minor variation between the ocular evidence and medical evidence are not relevant and the corroboration of testimony of witnesses by medical evidence cannot be expected with accuracy.

So far as judgements i.e. Sucha Singh (supra) & Shivasharanappa (supra) relied upon by the counsel for the appellant while attacking on the behaviour/conduct of Naresh (PW-1), the appellant does not get any help from these judgements for the reason that there is no set rule that one must react in a particular way, the natural reaction of man is unpredictable. Everyone reacts in his own way and hence, natural human behaviour is difficult to prove by credible evidence. It has to be appreciated in the context of given facts and circumstances of the case. In the instant case, the testimony of PW-1 Naresh Kumar has also been tested on the anvil of ordinary human conduct and in our considered view the conduct of this witness is natural human conduct. Simply because he failed to gather courage to physically intervene, that by itself does not make his conduct unnatural.

31. Looking to the vivid description made by Naresh (PW-1), sole eye-witness, that it was the accused/appellants who committed murder of his father is not vulnerable to the framework of imagination and therefore the legal mandates cited by the counsel for the accused/appellants drawing support to negate his testimony are altogether distinguishable on facts involved in the present case.
32. Thus, the cumulative effect of the above is that evidence of Naresh Kumar (PW-1) is truthful, reliable and inspires confidence. He has narrated the incident in a most natural way and the manner in which he has narrated the incident, inspires confidence of this Court. Thus, all the contentions raised by the learned counsel for the accused/appellants stand rejected and no interference is called for with the findings of guilt and conviction recorded by the trial Judge relying upon the solitary evidence of Naresh Kumar (PW-1).
33. Accordingly, the appeal being without substance is liable to be dismissed and it is dismissed as such. The accused/appellants are reported to be on bail. Their bail bonds stand cancelled. They be taken into custody forthwith to serve out the remaining jail sentence imposed on them by the trial Court.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

roshan/-