

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

**CRIMINAL APPEAL NO. 109 OF 2011
WITH
CRIMINAL APPEAL NO. 110 OF 2011**

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CRIMINAL APPEAL NO. 109 OF 2011

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| 1. Pravin Dhondiram Chorge
Age.22 years, Occ. Labourer,
R/at : Janata Vasahat, Near Vithal
Temple, Pune. | .. Appellants
[Original
accused
Nos.4to6] |
| 2. Shailesh Gulab Dhage
Age. 22 years, Occ. Rickshaw Driver,
R/at : Janata Vasahat, Near Vithal
Temple, Pune. | |
| 3. Ajit Krishna Ghanekar
Age. 23 years, Occ. Labourer,
R/at : Nallasopara, Arunoday Housing
Society, Near Hanumant Temple,
Thane. | |

[At present lodged in Yerwada
Central Jail, Pune)

Versus

The State of Maharashtra [At the instance of Khadak Police Station, Pune]	.. Respondent
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**WITH
CRIMINAL APPEAL NO. 110 OF 2011**

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| 1. Sameer Sitaram More,
Age. 25 years, Occ. Labourer,
R/at: Gayatri Apartment, Flat
No.9, Ekata Nagari, Sinhgad Road,
Pune. | .. Appellants
[original
accused
Nos.1to3] |
| 2. Ganesh Suresh Mane
Age. 20 years, Occ. Labourer,
R/at : Janata Vasahat, Near Vithal
Temple, Pune. | |
| 3. Nilesh Deepak Hiwale
Age.22 years, Occ. Rickshaw Driver,
R/at : Janata Vasahat, Near Vithal
Temple, Pune. | |

[At present lodged in Yerwada
Central Jail, Pune]

Versus

The State of Maharashtra [At the instance of Khadak Police Station, Pune]	.. Respondent
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Mr.D.G. Khamkar, Advocate for original accused Nos. 1 & 3
in Cri.Appeal No.110 of 2011 & original accused Nos.4 & 5
in Cri.Appeal No.109 of 2011.

Mr.Nitin Sejpal, Advocate for original accused No.2 in
Cri.Appeal No.110 of 2011.

Mr.S.R. Pasbola i/b. Mr. Rahul Arote, Advocate for
original accused No.6 in Cri.Appeal No.109 of 2011.

Mr.Arfan Sait, A.P.P. for the State.

**CORAM : SMT.V.K. TAHILRAMANI &
A.M. BADAR, JJ.**
RESERVED ON : 22.12.2016
PRONOUNCED ON : 10.01.2017

JUDGMENT [PER : A.M. BADAR,J.] :-

1. By these appeals, appellants/convicted original accused Nos.1 to 6 are challenging judgment and order dated 11.11.2010 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.234 of 2008, thereby convicting them of offence punishable under sections 147, 148 and 302 read with section 149 of the Indian Penal Code. For offences punishable under section 147 of the Indian Penal Code, they are sentenced to suffer rigorous imprisonment for one year and for offence punishable under section 148 of the Indian Penal Code, they are sentenced to suffer rigorous imprisonment for two years. For offence punishable under section 302 read with section 149 of the Indian Penal code, appellants/original accused Nos. 1 to 6 are sentenced to

suffer imprisonment for life and to pay fine of Rs.1000/- each and in default to undergo further rigorous imprisonment for six months by each of them.

2. Briefly stated, the prosecution case and background facts are thus :-

a) Pradeep Ganpat Shinde (since deceased) was residing at Shinde Wada located at Shukrawar Peth, Pune. His sister P.W.2-Kalyani Bajrang Khillare is also resident of Shinde Wada. Acquitted accused No.8 Bhau alias Ravindra Chavan and acquitted accused No.9 Balkrishna Chavan are maternal uncles of appellant/accused No.1-Sameer More. They are also resident of Shinde Wada. Rest of appellants/accused Nos. 2 to 6 are stated to be friends of appellant/accused No.1-Sameer More. It is case of prosecution that appellant/accused No.1-Sameer More and his friends appellant/accused Nos. 2 to 6 used to visit the house of

acquitted accused No.8-Bhau @ Ravindra and acquitted accused No.9 Balkrishna Chavan at Shinde Wada, Shukrawar Peth, Pune. Shinde Wada is stated to be containing 81 tenements occupied by different families including those of deceased Pradeep Shinde, P.W.2-Kalyani Khillare, acquitted accused No.8-Bhau alias Ravindra Chavan and acquitted accused no.9-Balkrishna Chavan.

b) In the last week of May, 2007 as well as on 06.09.2007 there was a quarrel between appellant/accused No.1-Sameer More and his associates on one side and deceased Pradeep Shinde on other side. This has resulted in lodging reports with Khadak Police Station. This enmity of appellant/accused No.1-Sameer More and his associates with deceased Pradeep More is stated to be motive behind the crime in question.

c) The incident of murderous assault on Pradeep Shinde took place at about 8.30 p.m. of 08.10.2007 at

populous locality of Pune. According to the prosecution case, Pradeep Shinde (since deceased) was standing near Bafna Petrol Pump at Shukrawar Peth, Pune. At that time P.W.17-Vinod Kad was also stated to be present at that place. All of a sudden, armed with deadly weapons, appellant/accused No.1-Sameer More, appellant/accused No.2-Ganesh Mane, appellant/accused No.3-Nilesh, appellant/accused No.4-Pravin Chorge, appellant/accused No.5-Shailesh Dhage, appellant/accused No.6-Ajit Ghanekar along with juvenile in conflict with law Santosh Khandke rushed on person of Pradeep Shinde. Appellant/accused persons were successful in giving one blow of a sharp edged weapon on head of Pradeep shinde at that place. For rescuing himself Pradeep Shinde started running towards a lane adjacent to Pritam Hotel. He was chased by appellants/accused, who were successful in accosting him in the lane, opposite to Bafna Petrol Pump. All appellants/accused assaulted Pradeep Shinde by means of sword, knives, chopper etc. Resultantly, Pradeep Shinde

collapsed with several bleeding injuries on his person and died on the spot.

d) According to the prosecution case P.W.2-Kalpana Khillare-sister of deceased Pradeep Shinde was returning from the market after purchasing vegetables. At that time the incident is stated to have happened in presence of P.W.2-Kalpana Khillare. P.W.6-Hemant Lele was returning to his office, which was near the Bafna Petrol Pump. Upon seeing Pradeep Shinde lying in injured condition in a pool of blood, he intimated this fact telephonically to Khadak Police Station. This information recording was recorded in the station diary (Exh.34).

e) P.W.13-Dnyandeo Bhalsing, A.P.I. with Khadak Police Station along with his staff immediately rushed to the spot of incident. He found P.W.2-Kalpana weeping near Pradeep Shinde, who was lying in the lane. She was

then sent to Phadgate Police Out-post with Police Naik Polekar for lodging the F.I.R. P.W.12-Rajendra Vaibhandik, A.P.I. was incharge of Phadgate Police Out-post. He then recorded the F.I.R. (Exh.79) lodged by P.W.2-Kalpna Khillare and accordingly Crime No.272 of 2007 for offences punishable under sections 143, 147, 148, 149, 302, 120-B, 201 of the Indian Penal Code, under section 37 read with section 135 of the Bombay Police Act and under section 4 read with section 25 of the Arms Act came to be registered against appellants/accused at Khadak Police Station. The Wheels of investigation were then set in motion.

f) P.W.13-Dnyandeo Bhalsing, A.P.I. recorded spot panchanama (Exh.72). He sent Pradeep Shinde to Sasoon Hospital, where he was declared dead. Inquest panchanama was drawn and dead body was sent for autopsy. Immediately on the very next day i.e. on 09.10.2007 all appellants/ accused came to be arrested and their

bloodstained clothes were seized by effecting panchanamas. During the investigation, on the basis of confessional statements of appellants/accused, bloodstained weapons of the offence came to be seized. On completion of investigation, charge-sheet came to be filed against appellants and other accused persons.

g) On committal of the case, the learned Additional Sessions Judge framed charges under various sections of the Indian Penal Code, the Bombay Police Act and the Arms Act against accused persons. They abjured the guilt and claimed trial.

h) In order to bring home the guilt to accused persons, the prosecution has examined in all 17 witnesses. They can be categorized as eye witnesses, panch witnesses and official witnesses who examined accused persons, conducted autopsy on dead body of Pradeep Shinde and investigated the crime. P.W.2-Kalyani

Khillare-sister of the deceased, P.W.3-Deepak Pawar-cashier of Bafna Petrol Pump, P.W.4-Rajaram Salvi, P.W.5-Sanjay Pawar (both servants at Bafna Petrol Pump), P.W.6-Hemant Lele, P.W.8-Nitin Shinde-Salesman present near the spot and P.W.17 Vinod Kad-friend of the deceased Pradeep were stated to be eye witness to the incident in question. However, except P.W.2-Kalyani Khillare and to some extent P.W.6-Hemant Lele, none of these alleged eye witnesses supported the case of the prosecution. Panch witnesses such as P.W.7-Namdeo Kunjir, P.W.9-Vishal Dongare and P.W.10-Suryakant Salunkhe also turned hostile to the prosecution. P.W.11-Dr. Kishor Pedgaonkar had examined the appellant/accused No.2-Ganesh Mane and appellant/accused No.6-Ajit Ghanekar immediately after their arrest on 09.10.2007 and had issued injury certificates (Exh.110 and Exh.111) certifying injuries found on their palm. P.W.14-Dr.Ganesh Poojary had conducted post-mortem examination on dead body of Pradeep Shinde on 09.10.2007. P.W.12-Rajendra Vaibhandik,

A.P.I., P.W.13-Dnyandeo Bhalsing, A.P.I., P.W.15-Nandkumar Suryawanshi, P.I. and P.W.16-Chandrakant Sagale, the then Police Inspector had investigated the crime in question.

i) The defence of appellants/accused was that of total denial. They had filed their written statements contending that they are falsely implicated in the crime in question.

j) After hearing both the parties, the learned Additional Sessions Judge was pleased to hold appellants/accused guilty of offence punishable under section 147, 148 and 302 read with section 149 of the Indian Penal Code and accordingly they were sentenced as indicated in the opening para of this judgment.

3. We have heard S/Shree Pasbola, Shejpal and Khamkar, learned Counsel appearing for appellants/accused

in both these appeals at sufficient length of time. It was argued by the learned Counsel for appellants that P.W.2-Kalyani Khillare is a sole witness on whose statement the learned Trial Court has returned the finding of guilt against appellant/accused. She is an interested witness having inimical disposition against appellants/accused. It is argued that P.W.2-Kalpana Khillare is a chance witness and her version is totally unbelievable because she claims to be present at Bafna Petrol Pump while returning to her house at Shinde Wada after purchasing vegetables but evidence on record shows that Bafna Petrol Pump is not on the way from Shinde Wada to Phule Mandai (Market) of Pune. The conduct of P.W.2-Kalyani in not rushing to her house, not going near her injured brother, absence of blood on her clothes makes her unbelievable witness. She is a tutored witness as she claimed to have identified the appellants/accused though the house of maternal uncle of appellants/accused No.1 is not visible from her house at Shinde Wada. The

presence of P.W.2-Kalyani on the spot is not properly explained and she being an interested witness, false implication of appellants/accused cannot be ruled out. In support of these contentions, reliance is placed on Jarnail Singh & Ors. Vs. State of Punjab, (2009) 9 SCC 719 and Harjinder Singh alias Bhola Vs. State of Punjab, 2004 CRI.L.J.3854 (S.C.).

4. It is argued on behalf of appellants/accused that first assault on deceased Pradeep is stated to have taken place at Bafna Petrol Pump and then the murderous assault on him is alleged to have taken place in the nearby lane. However, as no blood was found at Bafna Petrol Pump, the evidence of P.W.2-Kalyani is totally unreliable. There is no evidence to show that the deceased was in a position to run with injury on his person. The distance between the alleged place of the first assault and that of the second assault is vast and therefore there is no possibility of P.W.2-Kalyani

witnessing the actual assault on her deceased brother Pradeep Shinde.

5. It is argued by learned Counsel for appellants that evidence of P.W.6-Hemant Lele and that of P.W.13-Dnyandeo Bhalsing-Investigating Officer is contradictory. P.W.6-Hemant Lele does not say that P.W.2-Kalyani was present on the spot; whereas P.W.13-Dnyandeo Bhalsing says that he had not seen anybody on the spot except P.W.2-Kalyani and injured Pradeep. It is further argued that during trial of the juvenile in conflict with law-Santosh Khandve, P.W.2-Kalyani had not identified him and in her evidence before that forum she had stated that Santosh Khandve had not participated in the assault. The learned Counsel for the appellants further argued that the F.I.R. does not mention presence of P.W.17-Vinod Kad on the spot making version of P.W.2-Kalyani doubtful.

6. Learned Counsels for appellants vehemently

argued that recoveries on the basis of confessional statements of appellants/accused are not proved. There is no evidence that seized articles were sealed on the spot. To buttress this submission, reliance is placed on the judgment of this Court in Malhari Gopal Bhoval & Ors. Vs. The State of Maharashtra, reported in MANU/MH/2275/2015.

7. According to learned Counsel for appellants, conviction is based on the testimony of sole eye witness P.W.2-Kalyani and her version is wholly unreliable. As such the learned Trial Court ought not to have convicted appellants/accused. To demonstrate the principles of appreciation of evidence of sole eye witness, reliance is placed on judgment in the matter of Anil Phukan Vs. State of Assam, 1993 CRI.L.J.1796 (S.C.) and Jagdish Prasad and Ors. Vs. State of M.P., 1994 CRI.L.J.1106 (S.C.) wherein it is held that if evidence of a single eye witness is open to doubt of suspicion, the Court will require

sufficient corroboration to record the finding of the guilt.

8. We have heard the learned A.P.P., who vehemently supported the impugned judgment and order of conviction of appellants/accused. By placing reliance on judgment of the Apex Court in the matter of Alagupandi alias Alagupandian Vs. State of Tamil Nadu, AIR 2012 SC 2405 and Rameshbhai Mohanbhai Koli & Ors. Vs. State of Gujarat, 2011 AIR SCW 378, the learned A.P.P. argued that conviction can be recorded on the basis of the sole testimony of trustworthy eye witness. P.W.2-Kalyani is a witness of truth. He further argued that evidence of the Investigating Officer can be accepted for holding that the prosecution has proved recoveries on the basis of confessional statements of accused persons.

9. We have carefully considered the rival submissions and also examined the record and proceedings

including depositions of witnesses and documentary evidence tendered on record. For the below mentioned reasons, we are unable to accept submissions of learned Counsel appearing for appellants/accused that evidence of sole eye witness P.W.2-Kalyani is unreliable and the same is uncorroborated by other evidence of the prosecution and therefore appellants/accused are entitled to acquittal.

10. At the outset, it needs to be put on record that the fact that Pradeep Ganpat Shinde died homicidal death on 08.10.2007 is not seriously disputed by the defence. The inquest panchanama at Exh.74 is an admitted document. This inquest panchanama shows that dead body of Pradeep Shinde was having more than 45 injuries. The post-mortem examination on the dead body of Pradeep Shinde was conducted by P.W.14-Dr.Ganesh Poojary with Dr. Wabale at Sasoon Hospital, Pune on 09.10.2007. The evidence of P.W.14 Dr. Ganesh Poojary corroborated by contemporaneous

documents such as report of post-mortem examination (Exh.126), inquest panchanama (Exh.74) shows that dead body of Pradeep Shinde was having multiple chopped wounds on vital parts of body, such as head, trunks and limbs apart from several incised wounds all over the body. During autopsy, corresponding internal injuries were also noted by P.W.14-Dr.Ganesh Poojary. The autopsy surgeon has categorically deposed that all injuries sustained by deceased Pradeep Shinde were sufficient in the ordinary course of nature to cause death of a human being. As per version of P.W.14-Dr. Ganesh Poojary, which is well corroborated by the report of post-mortem examination, Pradeep Shinde died due to traumatic and hemorrhagic shock as a result of multiple chopped wounds. This evidence is sufficient to put on record that Pradeep Shinde died homicidal death on 08.10.2007.

11. Now let us examine whether appellants/accused had formed an unlawful assembly with common object of

committing murder of Pradeep Shinde and in execution of that common object, they committed murder of Pradeep Shinde on 08.10.2007 in a lane near Bafna Petrol Pump, Shukrawar Peth, Pune. As stated in foregoing para, except P.W.2-Kalyani and P.W.6-Hemant Lele, rest of eye witnesses are not supporting the case of prosecution. They have turned hostile to the prosecution. The trend of witnesses turning hostile due to various factors is noted by the Hon'ble Apex Court in the matter of **Ramesh & Ors. Vs. State of Haryana, AIR 2016 S.C.5554**, relied by the learned A.P.P. It is well known fact that the public at large is generally insensitive to the crime taking place even in their presence. Treats, intimidation, inducement, use of muscle or money power, protracted trials, culture of compromise etc. are few reasons for witnesses not supporting the case of prosecution. In this scenario, we are required to appreciate testimony of sole eye witness P.W.2-Kalyani who is also sister of the deceased and is sought to be branded as chance witness by

appellants. P.W.6-Hemant Lele has not seen the actual incident of assault and therefore fate of the prosecution case to a large extent hinges on testimony of P.W.2-Kalyani. Prior to adverting to her evidence, let us put on record the law laid down by the Hon'ble Apex Court in the matter of appreciation of evidence of sole eye witness. In the matter of Alagupandi (Supra), the Hon'ble Apex Court has crystallized this law in para 16 of its judgment, which reads thus :-

"16. We are not impressed with the contention that PW1 is the sole and interested witness and, therefore, his statement cannot be relied upon by the Court for returning the finding of conviction. It is a settled principle of law that the Court can record a finding of guilt while, entirely or substantially, relying upon the statement of the sole witness, provided his statement is trustworthy, reliable and finds corroboration from other prosecution evidence. In the case of Govindaraju @ Govinda v. State of Srirampuram P.S. & Anr., [Crl]. Appeal No. 984 of 2007 decided on March 15, 2012], this Court held as under:

"11. Now, we come to the second submission raised

on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon the sole testimony of the police witness (eye-witness). It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In the case of [Lallu Manjhi and Anr. vs. State of Jharkhand](#) (2003) 2 SCC 401, this Court had classified the oral testimony of the witnesses into three categories:-

- a. Wholly reliable;
- b. Wholly unreliable; and
- c. Neither wholly reliable nor wholly unreliable.

12. In the third category of witnesses, the Court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness

should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty. Reference in this regard can be made to the cases of [Joseph v. State of Kerala](#) (2003) 1 SCC 465 and [Tika Ram v. State of Madhya Pradesh](#) (2007) 15 SCC 760. Even in the case of [Jhapsa Kabari and Others v. State of Bihar](#) (2001) 10 SCC 94, this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.

13. In the case of Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a 14 years old boy) did not name the wife of the deceased in the fardbayan, it would not

in any way affect the testimony of the eye-witness i.e. the wife of the deceased, who had given graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the statement of an eye-witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy."

. Similar is the ratio of judgments in cases of Anil Phukan (Supra) and Jagdish Prasad & Ors. (Supra).

12. Similarly P.W.2-Kalyani is sought to be branded as chance witness by appellants/accused and for this purpose, reliance is placed on Jarnail Singh & Ors. (Supra). In para 21 to 23 of judgment in the matter of Jarnail Singh, the Hon'ble Supreme Court has crystallized the law regarding appreciation of evidence of chance witness. Those read thus :-

21. [In Sachchey Lal Tiwari v. State of U.P.](#) (2004) 11 SCC 410, this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passerby had deposed that he had witnessed the incident, observed as under:

"If the offence is committed in a street only passer- by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there."

The Court further explained that the expression 'chance witness' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence ([Satbir v. Surat Singh](#) (1997) 4 SCC 192; [Harjinder Singh v. State of Gujarat](#) (2004) 11 SCC 253; [Acharaparambath Pradeepan & Anr. v. State of Kerala](#)

(2006) 13 SCC 643; and [Sarvesh Narain Shukla v. Daroga Singh and Ors.](#) (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide [Shankarlal v. State of Rajasthan](#) (2004) 10 SCC 632).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide [Thangaiya v. State of Tamil Nadu](#) (2005) 9 SCC 650).

. Similar is the ratio of judgment in the matter of **Harjinder Singh alias Bhola (Supra)** relied by the learned Counsel for appellants.

13. To put it briefly the finding of guilt can be recorded relying upon the evidence sole eye witness provided such evidence is trustworthy and reliable and gaining corroboration from other evidence of the prosecution. The evidence of chance witness can be accepted provided statement of such witness adequately explain presence of said witness and such evidence stands

test of caution and close scrutiny. Similarly conduct of the chance witness is also a relevant factor while appreciating his evidence.

14. Undisputedly P.W.2-Kalyani is an elder sister of deceased Pradeep. She claims to have witnessed the incident at about 8.30 p.m. of 08.10.2007, while returning from the market after purchasing vegetables. The incident took place near Bafna Petrol Pump and at the lane opposite to it. She is being criticized as chance witnesses interested in conviction of accused because of her inimical dispositions towards appellants, let us examine her evidence with caution and close scrutiny in order to ascertain whether her presence on the spot is properly explained and whether she falls under the category of wholly reliable witness in order to base conviction on her testimony. At the same time it will have to be kept in mind that merely because the eye witness is a family member of the deceased, his/her

evidence cannot per se be discarded. Relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. At the same time it needs to be kept in mind while appreciating evidence of such witness that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the guilty. [See **Vinay Kumar Vs. State of Bihar, AIR 2008 SC 3276**]. Similarly in the matter of **Balraje @ Trimbak Vs. State of Maharashtra, reported in (2010) 6 SCC 673**, the Hon'ble Apex Court has held that when the eye witnesses are stated to be interested and inimically disposed towards the accused, it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. If after careful analysis and scrutiny of their evidence, the reason given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

15. It is in evidence of P.W.2-Kalyani that deceased Pradeep Shinde-her younger brother was residing with his family at Shinde Wada and she is also a resident of Shinde Wada, which comprises of 81 tenements having either one or two rooms. Maternal uncles of appellant/accused No.1-Sameer, namely, accused No.8-Rajendra and accused No.9 Balkrishna Chavan were also residents of Shinde Wada in her neighbourhood. As per version of P.W.2-Kalyani, appellant/ accused No.1-Sameer as well as his friends appellants/accused Nos.2 to 6, namely, Ganesh, Nilesh, Pravin, Shialesh and Ajit were visiting the house of maternal uncle of appellant/accused No.1-Sameer frequently. P.W.2-Kalyani testified that in the last week of May, 2007 as well as on 06.09.2007, there were minor quarrels between appellant No.1-Sameer and his associates with Pradeep Shinde (since deceased) leading to lodging report with Khadak Police Station. Because of this, appellant/accused No.1-Sameer used to

give angry look to Pradeep Shinde.

16. So far as the actual incident is concerned, as per version of P.W.2-Kalyani, she was as usual returning from the market after purchasing vegetables at about 8.30 p.m. on 08.10.2007. She further testified that when she was on the other side of the road which was in front of Bafna Petrol Pump, she saw her younger brother Pradeep Shinde standing near that petrol pump. His friend Vinod Kad was also there. As per version of P.W.2-Kalyani appellant/accused No.1-Sameer with rest of appellants/accused, namely, Ganesh, Nilesh, Pravin, Shailesh and Ajit came there all of a sudden and assaulted her brother Pradeep with a weapon. Then Pradeep ran towards the lane located near Siddhi Vinayak Video Parlour in front of Bafna Petrol Pump. As stated by P.W.2-Kalyani, all appellants chased Pradeep and apprehended him in that lane and then assaulted him by means of Sword, Chopper and Koyta on his head, back and hands. Her brother

Pradeep then fell down bleeding profusely. P.W.2-Kalyani further stated that brain matter of Pradeep was protruding from the skull and he died on the spot. All accused persons fled from the spot. She started shouting "*wachwa wachwa*", thereby appealing to the people for rescue. P.W.2-Kalyani deposed that some people came there so also the police. The dead body of her brother was sent to Sasoon Hospital; whereas she was taken to Phadgate Police Outpost for lodging report. P.W.2-Kalyani has stated that Santosh Khandve-Juvenile in conflict with law had also accompanied appellants and took part in the assault. While in the witness box P.W.2-Kalyani identified all appellants so also weapons produced before the Court.

17. On the backdrop of this version of P.W.2-Kalyani, the material brought on record from her cross-examination is interesting. The same will have to be appreciated keeping in mind the situation prevalent on

the spot of the incident, reflecting from the spot panchanama at Exh.72 and the rough sketch of the spot annexed to the panchanama prepared by P.W.13-Dnyandeo Bhalsing. P.W.2-Kalyani is sought to be discredited on the ground that her presence on the scene of occurrence is suspicious as Bafna Petrol Pump is not on the way of Shinde Wada to Phule Mandai (Vegetables Market) of Pune. P.W.2-Kalyani has admitted in the cross-examination that while going to Phule Market from Shinde Wada, Bafna Petrol Pump is not intervening. At this juncture it is required to be noted that what is stated by P.W.2-Kalyani in her chief examination is regarding her return journey to her house after purchasing vegetables from the market. P.W.2-Kalyani has not claimed that she was returning to Shinde Wada after purchasing vegetables from Phule Mandai of Pune. P.W.2-Kalyani is not further interrogated by cross-examining her in respect of the place from where she had purchased the vegetables. No questions are asked to her in order to probe whether she had been to Phule

vegetable market or any other vegetable market in evening hours of 08.10.2007. Her cross-examination reveals that it was her routine practice. It is a matter of common knowledge that generally a big vegetable market is visited for weekly purchases and not for daily purchases. Hence, such half-hearted cross-examination of P.W.2-Kalyani is insufficient to cast a shadow of doubt on her version to make her evidence regarding her presence on the spot suspicious.

18. Be that as it may, even if it is presumed that P.W.2-Kalyani was returning to Shinde Wada from Phule Mandai of Pune, then also material elicited from her cross-examination does not make her evidence regarding her presence on the scene of occurrence doubtful. In her cross-examination it is brought on record that it is usual practice of P.W.2-Kalyani to leave her house at about 8.00 p.m. for purchasing vegetables. This explains cause of her presence outside the house and near Bafna

Petrol Pump at about 8.30 p.m. on 08.10.2007. Apart from this, from cross-examination of P.W.2-Kalyani, it is brought on record that Bafna Petrol Pump is located on the Western side of Shinde Wada and Akra Maruti Kopra road is on the Eastern side of Shide Wada. Phule Mandai is on the Northern side of that Akra Maruti Kopra road. This implies that Phule Mandai is on Northern side of Shinde Wada i.e. the place where P.W.2-Kalyani used to reside. It is further seen from the cross-examination of P.W.2-Kalyani that at the Eastern side of Bafna Petrol Pump, there is road known as Bhau Maharaj road, which runs from North-South direction. The evidence on record shows that there are lanes connecting that Bhau Maharaj road and running East-West. The sketch map with the spot panchanama shows that towards Northern side of Bafna Petrol Pump, a lane going East-West direction joins Bhau Maharaj road, running North-South from the front side of Bafna Petrol Pump. Siddhi Vinayak Video Parlour is on the Northern side, at a distance of about 100 ft. from

Bafna Petrol Pump. From this situation of the scene of occurrence, it is clear that even if it is presumed that P.W.2-Kalyani was coming from the Northern side of Bafna Petrol Pump, then also it is apparent that she is not required to cross Bafna Petrol Pump for going to her house at Shinde Wada. She was required to take turn towards Eastern side lane prior to Bafna Petrol Pump for going to Shinde Wada. Thus, even if it is presumed that P.W.2-Kalyani was returning from Phule Mandai of Pune for going to her house at Shinde Wada, then also Bafna Petrol Pump and the entrance of the lane located on the Northern side of Bafna Petrol Pump connecting Bhau Maharaj Road was visible to her. Hence, by no stretch of imagination, it can be said that while P.W.2-Kalyani was returning from Phule Mandai to Shinde Wada, she had no occasion to be near Bafna Petrol Pump to witness the incident. This situation and topography of the scene of occurrence brought on record by the prosecution clearly and cogently explains the presence of P.W.2-Kalyani on the spot of the

incident at the time of the incident. Close scrutiny of evidence of P.W.2-Kalyani and particularly the material brought on record from her cross-examination in-fact cemented her presence on the spot of occurrence at the time of the incident.

19. It is brought on record from cross-examination of P.W.2-Kalyani that the incident of murderous assault on her deceased brother Pradeep lasted for about 10-12 minutes. It is elicited during her cross-examination that she knows appellants/accused Nos. 1 to 6 very well and while in the witness box and during cross-examination, P.W.2-Kalyani pointed out appellant Nos.1 to 6 by disclosing their names specifically and the learned Trial Court has observed that on enquiry it was found that she has correctly pointed out names of appellants/accused. P.W.2-Kalyani while under cross-examination has categorically stated that she is in a position to tell which weapon produced before the Court

was used by which of appellants/accused during the course of assault on her brother by them. This candid answer of P.W.2-Kalyani vouches her truthfulness and makes it clear that she was very much present on the spot of the incident and had witnessed the incident.

20. Trustworthiness of P.W.2-Kalyani is sought to be put under the cloud with an argument that there was no trail of blood from Bafna Petrol Pump to the lane where deceased Pradeep was found in the pool of blood. However, this argument is squarely answered in the material found in para 19 of cross-examination of P.W.2-Kalyani. While under cross-examination, P.W.2-Kalyani has stated that her brother Pradeep received only one blow at Bafna Petrol Pump causing bleeding injury to him. P.W.2-Kalyani further stated in her cross-examination that then her brother Pradeep arrested bleeding from the wound caused by blow to rear side of his head by putting his hand on the said wound. Then he started running away

from the spot to save his life. Cross-examination of P.W.2-Kalyani, as such, makes it clear that no successive blows were dealt on her brother Pradeep at Bafna Petrol Pump and that Pradeep started running immediately by covering the wound by his hands after receiving a single blow at that place. As such, non-finding of blood at Bafna Petrol Pump is of no consequence to espouse the cause of appellants. This version of P.W.2-Kalyani is perfectly in consonance with recitals in the spot panchanama (Exh.72), which also shows that there was no blood at Bafna Petrol Pump. This makes it clear that P.W.2-Kalyani had actually seen the mode and manner of assault on her brother Pradeep by appellants/accused to whom she was already knowing. There is no reason to disbelieve this material brought on record from cross-examination of P.W.2-Kalyani, who had witnessed the incident of murderous assault on her brother for about 10-12 minutes and has duly identified the assailants while in the witness box.

21. Cross-examination of P.W.2-Kalyani reveals that in September, 2007, accused No.9-Balkrishna Chavan-maternal uncle of appellant/accused No.1-Sameer had filed a criminal case against her husband and her deceased brother Pradeep. Then there was settlement between the parties. P.W.2-Kalyani denied that her husband and deceased brother Pradeep had grudge against accused No.8-Bhau alias Ravindra and accused No.9-Balkrishna. With this material, it is sought to be contended that P.W.2-Kalyani had inimical disposition against accused persons. However, one may note that P.W.2-Kalyani has not deposed anything against original accused No.8-Bhau alias Ravindra and original accused No.9-Balkrishna. If really P.W.2-Kalyani had an axe to grind against these accused persons, she would have added embellishment in her version by roping in accused No.8-Bhau alias Ravindra and accused No.9-Balkrishna in the incident of murderous assault on her brother Pradeep. This conduct of P.W.2-

Kalyani speaks volumes and shows that she is a reliable witness because obviously due to settlement arrived at in the said criminal case, there was no cause to continue enmity with accused persons.

22. It is true that in the F.I.R. (Exh.79) lodged with promptitude P.W.2-Kalyani has not disclosed presence of P.W.17 Vinod Kad on the spot of incident, but it is well settled that the F.I.R. is not an encyclopedia of the crime. Therefore, this aspect is of no consequence.

23. Evidence of P.W.2-Kalyani shows that she witnessed horrid incident of murder of her brother Pradeep who died on the spot in most brutal assault. This fact is also clear from injuries on his dead body noted in the post-mortem report. P.W.2-Kalyani has stated that skull of her brother was broken and his brain matter had come out. P.W.2-Kalyani is a Staff Nurse by occupation. In the wake of witnessing such gruesome

murder of her real brother and condition of his dead body, conduct of P.W.2-Kalyani in not touching the dead body of her brother on the spot cannot be said to be unnatural. She was even otherwise overtaken by this diabolic murder.

24. The evidence of P.W.2-Kalyani gains corroboration from the F.I.R. lodged by her immediately after the incident by going from the spot to Phadgate Police Outpost soon after the incident. The evidence of P.W.2-Kalyani is consistent with the F.I.R. lodged by her immediately after the incident. She has categorically named assailants in her prompt F.I.R. and as such it cannot be said that there is possibility of false implication of appellants/accused in the crime in question. Being close relative of deceased Pradeep, P.W.2-Kalyani had no reason to spare the real culprits and falsely implicate appellants/accused. Her evidence, read as whole, vividly explains the mode and manner of

the incident and her presence on the spot is duly explained. Careful scrutiny and close circumspection of evidence of P.W.2-Kalyani makes it clear that her evidence is interracially reliable, inherently probable and wholly trustworthy. We are, therefore, of considered opinion that conviction of appellants/accused can safely be recorded on her sole testimony. We do not find any force in submission of learned Counsel for appellants that in the trial of the juvenile in conflict with law, P.W.2-Kalyani has not identified said juvenile in conflict with law and had stated that he had not participated in the assault. That aspect is not the part of record nor any steps were taken by appellants for invoking provisions of Section 391 of the Criminal Procedure Code, 1973. We also do not find necessary resorting to such exercise in the wake of clear evidence of P.W.2-Kalyani. Therefore, we accept evidence of P.W.2-Kalyani.

25. Now let us see whether evidence of P.W.2-Kalyani is gaining corroboration from other evidence on record. P.W.6-Hemant Lele is an independent witness, who is neither knowing appellants nor the deceased. He has office in the lane in front of Bafna Petrol Pump and deals in construction contracts. He is, as such, a disinterested witness. At the relevant time he was going to his office on his motor-cycle. P.W.6-Hemant Lele has stated in his evidence that he heard hue and cry while crossing Bafna Petrol Pump and turning to his office. As per his version, he turned back to see 4-5 persons running from Bafna Petrol Pump towards the lane of Siddi Vinayak Video Parlour. P.W.6-Hemant Lele testified that when he came back from his office, he saw one person lying in a pool of blood and therefore he telephonically informed this fact to the police. At that time, 3-4 persons were present there and thereafter police arrived on the spot. Evidence of P.W.6-Hemant Lele, as such, shows that 4-5 persons rushed in the lane of Siddi

Vinayak Video Parlour from Bafna Petrol Pump and soon thereafter one person was found lying in the pool of blood at the lane in an injured condition. This goes to show that the assault was by 4-5 persons. It is sought to be contended that evidence of the prosecution is inconsistent because P.W.6-Hemant Lele has not spoken about presence of P.W.2-Kalyani on the spot. Evidence of P.W.6-Hemant Lele shows that 3-4 persons were present on the spot. In his half-hearted cross-examination, no suggestions were given to this witness that they all were males and no lady was present on the spot. In the wake of this, it needs to be held that evidence of P.W.6-Hemant Lele is not suffering from any infirmity and same is consistent with the version of the prosecution. Resultantly cogent and trustworthy evidence of P.W.6-Hemant Lele is corroborating the version of P.W.2-Kalyani.

26. The evidence of P.W.2-Kalyani is gaining further

corroboration from the spot panchanama (Exh.72), which shows that there was a pool of blood on the spot disclosed by this witness. An amputated finger of the deceased was found to be lying there, apart from other bloodstained articles. Inquest panchanama at Exh.74 recorded by P.W.12-Rajendra Vibhandik, A.P.I. reflecting about 48 injuries on the dead body duly corroborates version of P.W.2-Kalyani, which is to the effect that appellant/accused had given successive blows of sharp weapons to her deceased brother Pradeep. Her evidence is further gaining corroboration from version of P.W.14-Dr.Ganesh Poojary-Autopsy surgeon and post-mortem report (Exh.126) reflecting about 31 wounds including multiple chopped wounds on the dead body of Pradeep Shinde.

27. It is seen from evidence of P.W.13-Dnyandeo Bhalsing, A.P.I. that he arrested appellant/accused No.2-Ganesh and appellant/accused No.3-Nilesh on 09.10.2007. Their bloodstained clothes were seized by him by

preparing panchanama Exh.90. P.W.12-Rajendra Vibhandik, A.P.I. deposed that he arrested appellant/accused No.4-Pravin and appellant/accused No.5-Shailesh on 09.10.2007 itself and their bloodstained clothes came to be seized vide panchanama Exh.117. P.W.15-Suryawanshi, P.I. deposed that appellant/accused No.1-Sameer and appellant/accused No.6-Ajit Ghanekar were arrested by him on 09.10.2007 and bloodstained clothes of those two accused were seized by him by preparing panchanama Exh.129. Unfortunately for the prosecution, panch witnesses P.W.7-Namdeo Kunjir has turned hostile and has not supported the seizure of clothes of appellant/accused No.2-Ganesh and appellant/accused No.3-Nilesh. From cross-examination of P.W.15-P.I. Suryawanshi, it is brought on record that seized clothes were wrapped in separate papers and lables under signatures of panchas and that of himself were affixed on it.

28. According to the prosecution case, on the basis

of confessional statements of all appellants/accused, weapons of offence were seized. P.W.15-P.I. Suryawanshi has testified that on 11.10.2007 confessional statements of appellant/accused No.1-Sameer and appellant/accused No.6-Ajit Ghanekar were recorded in presence of panch witnesses and consequently weapons were seized in consequence of information given by them. P.W.9-Vishal Dongare, panch of this incident has turned hostile. Memorandum of statement of appellant/accused No.1-Sameer is at Exh.100. It was recorded on 11.10.2007 in between 12 to 12.10 hours. Memorandum of statement of appellant/accused No.6-Ajit Ghanekar is at Exh.102. It was recorded in between 12.15 hours to 12.25 hours of 11.10.2007. Exh.101 is recovery panchanama of bloodstained weapon – chopper recovered at the instance of appellant/accused No.1-Sameer. It was recorded from 12.30 hours to 13.15 hours of 11.10.2007. It is seen from this recovery panchanama that bloodstained chopper was recovered from the thicket near the water tank. Exh.103 is recovery

panchanama of bloodstained weapon like sword at the instance of appellant/accused No.6-Ajit Ghanekar. It was recorded from 12.30 hours to 13.30 hours of 11.10.2007. Both these recovery panchanamas show that paper seals were used for sealing bloodstained weapons. Cross-examination of P.W.15-P.I. Suryawanshi shows that these weapons were seized by wrapping them in separate papers and labelling them under signatures of panchas and his own signature. It is seen from recovery panchana Exh.103 that at the instance of appellant/accused No.6-Ajit Ghanekar, bloodstained weapon like sword was recovered from the thicket near the electric poll. We do not find any irregularity or illegality in timings of these recoveries. It appears that confessional statements of appellant/accused No.1-Sameer and appellant/accused No.6-Ajit were recorded on same day after one another and recoveries were effected in pursuance of such information one after another, from about same locality. The Investigating Officer has chosen convenient procedure and

as such it cannot be said that those are concocted recoveries.

29. P.W.13-Dnyandeo Bhavsing, A.P.I. has proved recoveries on the basis of confessional statements of appellant/accused No.3-Nilesh and appellant/accused no.2-Ganesh recorded respectively on 11.10.2007 and 12.10.2007. P.W.10-Suryakant Salunke, panch witness to confessional statement and recovery at the instance of appellant/accused No.3-Nilesh has turned hostile. However, evidence of P.W.13-Bhalsing, A.P.I. shows that these two appellants/accused made confessional statements in presence of panchas which came to be recorded and then recoveries were effected. Exh.107 is the memorandum of statement of appellant/accused No.3-Nilesh recorded on 11.10.2007. Exh.108 is the resultant recovery panchanama recorded on 11.10.2007, by which a bloodstained sword came to be recovered at the instance of appellant/accused No.3-Nilesh from under the wooden cot of the house.

Exh.122 is the memorandum of statement of appellant/accused No.2-Ganesh recorded on 12.10.2007 and Exh.123 is the resultant recovery panchanama of that day showing recovery of bloodstained Cookri from under the cupboard of the residential room at the instance of appellant/accused No.2-Ganesh.

30. Evidence of P.W.12-A.P.I. Vibhandik shows that he recorded confessional statements of appellant/accused No.4-Pravin and appellant/accused No.5-Shailesh in presence of panch witnesses resulting in recovery of weapons on 12.10.2007 and 10.11.2007 respectively. Exh.118 is the memorandum of statement of appellant/accused No.4-Pravin recorded on 12.10.2007. Exh.119 is the resultant recovery panchanama, by which recovery bloodstained Rambo knife came to be seized from the showcase in the residential room at the instance of appellant/accused No.4-Pravin. Exh.91 is the memorandum of statement of appellant/accused No.5-Shailesh recorded

on 11.10.2007. Exh.92 is the resultant recovery panchanama by which bloodstained Sattoor came to be seized from the iron cupboard of two room house at the instance of appellant/accused No.5-Shailesh.

31. Now the question is whether recoveries at the instance of appellants/accused as well as seizure of their clothes can be said to be proved in the wake of panch witnesses turning hostile. In the matter of **State Government of N.C.T. of Delhi Vs. Sunil & Anr., reported in 2000 AIR SCW 4398** in paras 20 & 21, the Hon'ble Supreme Court has held that it is a fallacious impression that when recovery is effect pursuant to any statement made by the accused, the document prepared by the Investigating officer contemporaneous with such recovery must necessarily be attested by independent witness. It is further held that it is archaic notion that actions of the police officer should be approached with initial distrust. The Court cannot start with presumption that

the police records are untrustworthy. As a proposition of law, the presumption should be other way round. The official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. In the case in hand, we found that evidence of P.W.12-A.P.I. Vibhandik, P.W.13-A.P.I. Bhalsing and P.W.15-P.I. Suryawanshi to be fully trustworthy regarding seizure of clothes of appellants as well as recovery of weapons at their instance.

32. The learned A.P.P. has rightly relied on judgment in the matter of Rameshbhai Mohanbhai Koli & Ors. (Supra), which deals with appreciation of evidence of the Investigating Officer. Paras 23 to 25 of that

judgment read thus :-

“Evidence of Investigating Officer

23) An argument was advanced about reliance based on the evidence of investigating officer. This Court in [State of U.P. vs. Krishna Gopal and Another](#), (1988) 4 SCC 302 has held that courts of law have to judge the evidence before them by applying the well recognized test of basic human probabilities. Prima facie, public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. [vide [State of Kerala vs. M. M. Mathew & Anr.](#), (1978) 4 SCC 65)]

24) In [Modan Singh vs. State of Rajasthan](#), (1978) 4 SCC 435, it was observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in [Mohd. Aslam vs. State of Maharashtra](#), (2001) 9 SCC 362. [In](#)

Anter Singh vs. State of Rajasthan, (2004) 10 SCC 657, it was further held that even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.

25) This Court has held in large number of cases that merely because the panch-witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the Investigating Officer alone. In the instant case, it is not the case of defence that the testimony of Investigating Officer suffer from any infirmity or doubt. [Vide Modan Singh's case (supra) Krishna Gopal's case (supra) and Anter Singh's case (supra)]"

33. All recovery panchanamas by which weapons were recovered at the instance of appellant/accused shows that P.W.15 P.I. Suryawanshi, P.W.13-A.P.I.Bhalsing and P.W.12-A.P.I. Vibhandik have used paper seals while sealing bloodstained weapons recovered at the instance of appellants. Cross-examination of P.W.15-P.I. Suryawanshi

throws light on this aspect. It makes it clear that those weapons were separately wrapped in separate papers and then labels under signatures of panchas and investigating officers were affixed on those bundles. This procedure is sought to be criticized by placing reliance on the judgment of this Court in the matter of **Malhari Gopal Bhoval & Ors. (Supra)**. It is observed in the said case that non-sealing of articles at the spot is a serious infirmity because possibility of tampering with said articles cannot be ruled out. However, in the case in hand, it cannot be said that recovered weapons were not sealed. In-fact, perusal of contents of duly proved recovery panchanamas as well as the evidence coming on record from cross-examination of P.W.15-P.I. Suryawanshi goes to show that weapons were separately wrapped in papers and paper seals containing signatures of Investigating Officers and panch witnesses were affixed to those bundles. There is no cross-examination of official witnesses seizing those weapons to demonstrate

that when those weapons were sent for chemical analysis, paper seals were in broken condition. On the contrary, C.A. reports (Exh.162, 163, 164, 165, 166, 167, 168, 169 and 170) shows that the Forensic Science Laboratory has received sealed packets with seals intact. There is no rule of law that sealing must be done by wax seal and sealing by paper seal is not permissible. Ultimately, there should be a reasonable doubt about tampering of seized bloodstained articles/weapons. Such doubt cannot be an imaginary, trivial or merely possible doubt. It should be a fair doubt based upon reason and common sense. When C.A. report shows that seized articles were received by the Forensic Science Laboratory in sealed condition with seals in-tact, then it cannot be said that there was possibility of tampering with seized articles/weapons. We, therefore, are unable to accept arguments of learned Counsel for appellants that because of non-sealing of articles/weapons by a wax seal, seized weapons were susceptible to tampering and therefore C.A.

Reports are of no use to infer guilt of appellants.

34. It was sought to be argued that weapons stated to be recovered at the instance of appellant/accused No.1-Sameer and appellant/accused No.6-Ajit Ghanekar were found at open space accessible to all and therefore the recovery is doubtful. In **Mehbub Malek & Ors. Vs. State of Gujarat (1996) 10 SCC 480**, there was recovery of Gupti at the instance of the accused from dilapidated building and it was concealed below hip of earth. It was held that this recovery cannot be disbelieved merely because the said house was open place accessible to all. In the case in hand also recoveries at the instance of appellant/accused No.1-Sameer and appellant/accused No.6-Ajit were from the thicket and weapons were ultimately found to be stained with human blood. Recovery panchanamas do show that both these accused were knowing places where those weapons were hidden. As such, merely because the places from where recoveries were effected

were open places, it cannot be said that recoveries are doubtful. Ultimately after chemical analysis, those weapons were found to be stained with human blood of "AB" group which happens to be the blood group of the deceased.

35. For these reasons, we hold that the prosecution has successfully proved seizure of clothes of appellants/accused and recovery of weapons from them. Those clothes and weapons were sent for chemical analysis along with other seized articles including bloodstained clothes of deceased Pradeep. C.A. report at Exh.120 shows that seized clothes of appellant/accused No.1-Sameer, appellant/accused No.2-Ganesh, appellant/accused No.3-Nilesh, appellant/accused No.4-Pravin, appellant/accused No.5-Shailesh and appellant/accused No.6-Ajit were stained with human blood. Blood of AB group was found on T-Shirt of appellant/accused No.4-Pravin and seized baniyan of appellant/accused No.5-Shailesh. C.A.

Report at Exh.164 shows that result of chemical analysis of post-mortem, blood of deceased Pradeep is inconclusive. However, there was profuse bleeding from his wounds. His clothes were literally drenched with his blood. Report of chemical analysis of his seized clothes at Exh.120 shows that blood of group "AB" was found on those clothes of the deceased. Hence, it needs to be concluded that deceased Pradeep was having blood of AB group. Finding of human blood on seized clothes of appellants/accused as such is an incriminating circumstance and this forensic evidence corroborates the version of eye witness P.W.2-Kalyani.

36. Similarly blood of AB group was found on seized Koyta, Sword, Kukree and Sattoor recovered at the instance of appellant/accused No.1-Sameer, appellant/accused No.6-Ajit, appellant/accused No.2-Ganesh and appellant/accused No.5-Shailesh. The sword seized at the instance of appellant/accused No.3-Nilesh

Hiwale was found to be having human blood. This forensic evidence supports the case of prosecution and duly corroborates the version of P.W.2-Kalyani. This incriminating evidence connects appellants to the murder of deceased Pradeep Shinde.

37. After their arrest, appellant/accused No.2-Ganesh and appellant/accused No.6-Ajit were subjected to medical examination because of finding of injuries on their palm. Evidence of P.W.11-Dr.Pedgaonkar, which is duly corroborated by contemporaneous medical certificates at Exhs.110 & 111 shows that appellant/accused No.2-Ganesh was having incised wound to right side of palm thumb base of size 3 x $\frac{1}{2}$ cm. Appellant/accused No.6-Ajit was having incised wound on left side of palm thumb palmer aspect of size $\frac{1}{2}$ x $\frac{1}{2}$ cm. apart from abrasion to left side palm ring finger dorsal aspect. These injuries are probable due to handling of sharp edged weapon in the incident of murderous assault and as such this is an

additional factor which is corroborating the version of P.W.2-Kalyani.

38. In the result, even on re-appreciation of evidence adduced by prosecution, we are in full agreement with the findings of guilt of appellants/accused recorded by the learned Trial Court. The evidence on record unerringly points out that appellants/accused Nos.1 to 6 had formed an unlawful assembly with common object of murdering Pradeep Shinde and in furtherance of that common object, armed with deadly weapons, they implemented said common object by murderous assault on Pradeep Shinde at Bafna Petrol Pump as well as in the lane of Siddhi Vinayak Video Parlour near that petrol pump. As such, with ample trustworthy evidence against appellants/accused, the prosecution is successful in proving guilt of appellant/accused for offence punishable under sections 147, 148 and 302 read with section 149 of the Indian Penal Code. We are unable to accept the case

of the appellants. We are satisfied that appellants are rightly convicted and sentenced by the learned Trial Court. Appeals are, therefore, devoid of any merits and consequently they are dismissed.

[A.M.BADAR, J.]

[SMT.V.K.TAHILRAMANI, J.]