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

CRIMINAL APPEAL NO. 148 OF 2013

- 1] Pradip Sadashiv Sonawane
- 2] Santosh Sadashiv Sonawane

**..Appellants
(Original Accused Nos.6 and 7)**

Vs

The State of Maharashtra

..Respondent

WITH

CRIMINAL APPEAL NO. 200 OF 2013

- 1] Sanjay Hanumant Gaikwad
- 2] Pravin @ Lalya Tukarm Jogdand
- 3] Santosh Tukaram Jogdand
- 4] Subhash Raghunath Kamble
- 5] Ramchandra Basappa Kusalkar

**..Appellants
(Original Accused Nos.1,2,3,4, 5)**

Vs

The State of Maharashtra

..Respondent

WITH

CRIMINAL APPEAL NO. 930 OF 2018

WITH

CRIMINAL APPLICATION NO.1215 OF 2018

- 1] Pravin @ Lalya Tukarm Jogdand
- 2] Santosh Tukaram Jogdand
- 3] Subhash Raghunath Kamble

**..Appellants
(Original Accused Nos.2,3 and 4)**

Vs

The State of Maharashtra
Through Nigadi Police Station, Pune

..Respondent

Ms. Payoshi Roy I/b Dr. Yug Mohit Chaudhary for the Appellants in Appeal No.930 of 2018 and applicant in APPA No.1215 of 2018.

Mr. Priyal G. Sarda for the Appellants in Appeal No.148 of 2013.

Mr. Abhaykumar Apte for the Appellants in Appeal No.200 of 2013.,

Mrs. M.H. Mhatre, APP for the State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

Reserved on 26th February 2019.

Pronounced on 7th March 2019.

JUDGMENT (Per A.S. Gadkari, J.):-

1] The appellants have been convicted under Sections 143, 147, 148, 302 read with 149 of the Indian Penal Code and are sentenced to suffer life imprisonment and to pay fine of Rs.6000/-, each in default of payment of fine to further suffer simple imprisonment for prescribed term therein and under Section 4 and 25 of the Arms Act and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, each in default of payment of fine to further under go simple imprisonment for one and half months by the learned Additional Sessions Judge, Pune in Sessions Case No.233 of 2008 by its Judgment and Order dated 7th January 2013. The Trial Court has directed that, the substantive sentences shall run concurrently. The appellants have impugned the said Judgment and Order

in the present appeals.

2] Heard Mr. P.G. Sarda, the learned counsel for the appellants in Criminal Appeal No.148 of 2013, the Mr. Abhaykumar Apte for the Appellants in Appeal No.200 of 2013, Ms. Payoshi Roy the learned counsel for the appellants in Criminal Appeal No.930 of 2013 and Mrs. P.P. Shinde, APP for the State. Perused the entire record.

3] For the sake of brevity and preciseness, the appellants herein after will be termed as per their original accused numbers before the Trial Court.

(i) The name of the deceased is Vikas Kamble. The date and time of incident is 28th August 2007 at about 5.00 p.m. It is the prosecution case that, the deceased Vikas Kamble was a history sheeter and there was earlier enmity between the appellants and the deceased. The appellants were harbouring a belief that Vikas Kamble had shown their houses to the police in combing operation. It is the prosecution case that, the appellants and the deceased Vikas were residing in the slum area of Dalvi Nagar and with a view to have supremacy in the locality the appellants committed murder of Vikas Kamble.

(ii) Shri Vilas Kamble (PW No.1) is the father of Vikas and was

running a flour mill near his house. That on 28th August 2007 at about 5.00 p.m. Vilas Kamble (PW No.1) along with his wife Smt. Archana (PW No.2.) and their two sons namely Vikas and Kailsh were standing at the said flour mill. At that time, Santosh Sonawane (Accused No.7) and Pradip Sonawane (Accused No.6) came there and hurriedly told Vikas to run from his place as the police van had come there. Vikas got frightened and started running from the lanes of the said slum. His other friends who were accompanying him also started running with Vikas. When they reached near the shop of Lalsab, remaining five accused persons who had concealed themselves in the hut of Raju Sonawane came out of hut with swords and sticks in their hands and assaulted Vikas Kamble by means of the said weapons. It is the further prosecution case that, the first informant Vilas Kamble (PW No.1) and his son Kailash chased the assailants, however, the assailants ran away towards Chinchwad station alongwith the weapons in their hands. Vikas sustained bleeding injuries and succumbed to it.

(iii) After completion of investigation, the police submitted chargesheet in the Court of Judicial Magistrate First Class at Pimpri, District Pune. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial

Magistrate First Class committed the said case to the Court of Sessions as contemplated under Section 209 of Cr. P.C. After committal of the case, the Trial Court framed charge below Exh.69. The said charge was read over and explained to the appellants in vernacular language to which they pleaded not guilty and claimed to be tried.

(iv) The defence of the appellants was of total denial. It was the further defence of the appellants that, they have been falsely implicated in the present crime due to earlier enmity between them and the deceased Vikas. That, the deceased was having criminal antecedents at his discredit and he might have been killed by some other persons and the appellants have been wrongly substituted in place of real culprits. The Trial Court after recording the evidence of the prosecution witnesses and after hearing the parties to the case, was pleased to convict the appellants and sentenced them to suffer life imprisonment by the impugned Judgment and Order.

4] The learned counsel for the appellants submitted that, Ankush Tupe the spot panch has stated that, the spot of incident i.e. the shop of Lalsab cannot be viewed from the place where the alleged eye-witnesses were standing. They further submitted that, Shri Vilas Kamble (PW No.1) the father and Smt. Archana (PW No.2) the mother of the deceased Vikas

are not the actual eye-witnesses to the said incident and their testimony cannot be believed. It was further submitted that, the statement of Sachin Ubale (PW No.3) an eye-witness has been recorded by the police after the gap of three days and in view of his abnormal conduct his statement may not be believed. It is further submitted that, PW No.3 has improved his testimony with respect to the alleged weapons attributed to the appellants. That PW No.3 has not identified the original accused No.1 Sanjay Gaikwad in the Court and therefore also his testimony need not be believed. It is submitted that, Sachin Ubale (PW No.3), Smt. Kantabai Tupe (PW No.4) and Navnath Kasbe (PW No.5) are not the eye-witnesses to the incident. It is submitted that, the testimony of PW No.4 has not been relied upon by the Trial Court and thus the entire case rests on the testimony of Sachin Ubale (PW No.3) who is the solitary eye-witness to the entire incident.

In support of their contentions, they relied upon the following decisions of the Honourable Apex Court:-

(i) Vadivelu Thevar Vs The State of Madras

reported in AIR1957 SC 614;

(ii) Anil Phukan Vs. State of Assam

reported in (1993) 3 SCC 282;

(iii) Malkhasingh And Otheers Vs. Sate of M.P

reported in (2003) 5 SCC 74;

The learned counsel for the appellants therefore prayed that the present appeals may be allowed and the appellants herein may be acquitted from the charge levelled against them.

5] Per contra, the learned APP vehemently opposed the appeals and submitted that Sachin (PW No.3), Smt. Kantabai Tupe (PW No.4) and Navnath Kabse (PW No.5) are the real eye-witnesses to the incident. She further submitted that, Vilas (PW No.1) and Smt. Archana (PW No.2) though have not seen the actual incident of assault on Vikas, they after hearing hue and cry of Vikas immediately rushed to the spot of incident which is hardly few feet away from their flour mill and have witnessed the appellants just fleeing away from the scene of offence with weapons in their hands. She submitted that, the evidence on record indicates that the scene of offence is clearly visible from the shop of Lalsab and there is no substance in the contention of the learned counsel for the appellants that the said place was not visible to the witnesses. She submitted that, there is recovery of weapons namely sword at the instance of Subhash Kamble (Accused No.4) and Ramchandra Kusalkar (Accused No.5) by effecting

recovery panchanamas (Exhs.112 and 113 respectively). Under section 27 of the Evidence Act. She submitted that, the prosecution has brought on record sufficient evidence to show the complicity of the appellants in the present crime and, prayed that the present appeals may be dismissed.

6] Shri Vilas Kamble (PW No.1) in his testimony has stated that, on 28th August 2007 at about 5.00 p.m. he was standing near his flour mill along with his wife Smt. Archana (PW No.2) and his two sons namely Vikas (deceased) and Kailas. That Santosh Sonawane (Accused No.7) and Pradip Sonawane (Accused No.6) called out his son Vikas and told him that vehicle of police has come and he should run away. His son Vikas got frightened and started running from the lane. Vikas went upto the house of Pradip Sonawane. The accused Nos.1 to 5 were standing near the hut of Raju Sonawane and they started assaulting his son Vikas. The appellants were beating his son near Lalsab shop. The appellants assaulted his son by means of sword and stones. That Manoj Kasbe gave call to him and therefore he rushed to the spot where he saw his son Vikas lying in the pool of blood and the appellants/accused persons were running away. He chased the accused persons along with his son Kailas, however, the accused persons ran towards Chinchwad Railway station.

In his cross-examination, he has denied the suggestion that several offences were registered against his son Vikas and on the date of incident Vikas had been released from jail. He admitted that the distance between his flour mill and house of Raju Sonawane is about 100 feet. He has further admitted that, the house of Raju Sonawane was not visible from his place where he was standing. The evidence of Smt. Archana (PW No.2) is similar to that of Vilas Kamble (PW No.1.).

7] It is to be noted here that, PW Nos.1 and 2, though have not seen the actual assault on Vikas, however, had been to the scene of offence immediately after receipt of a call from Manoj Kasbe when he witnessed the assault on Vikas. These two witnesses have seen the accused fleeing away from the scene of offence after assaulting the deceased Vikas along with weapons in their hands.

8] Sachin (PW No.3), Smt. Kantabai Tupe (PW No.4) and Navnath Kabse (PW No.5) are the eye-witnesses to the incident and these witnesses have in detailed narrated the assault by the appellants on Vikas on the date and time of incident.

The said witnesses namely Sachin (PW No.3), Smt. Kantabai Tupe (PW No.4) and Navnath Kabse (PW No.5) witnessed the incident and

though PW No.3 Sachin did not identify the accused No.1 in Court, but other two witnesses have identified all the accused persons and have attributed specific role to each of them. The said three witnesses had given minutest possible account of actual assault on Vikas by the appellants. They have ascribed specific roles with respective weapons to the appellants. The version narrated by them appears to be natural reproduction of the facts and their evidence according to us is trustworthy and reliable.

In their cross-examination, nothing has been brought on record to indicate that the place from where they saw the actual assault on Vikas is beyond the distance of visibility to them. The evidence of the said three witnesses appears to us to be ,natural, trustworthy and reliable.

9] The Honourable Supreme Court in the case of Vadivelu Thevar Vs The State of Madras (supra) in paragraph Nos.11 and 12 has held as under:-

“11The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in S. 134 quoted above. The section enshrines the well recognized maxim that " Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not

seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely;

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

12 In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in

material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

10] A minute scrutiny of the evidence of Sachin (PW No.3), Smt. Kantabai Tupe (PW No.4) and Navnath Kabse (PW No.5) would clearly indicate that, their testimony is wholly reliable. The weapons used in the present crime have been recovered at the instance of Subhash Kamble (Accused No.4) by effecting a recovery panchanama (Exh.112) under Section 27 of the Indian Evidence Act.

11] After perusing the entire evidence available on record, we are of

the considered view that, there is no substance in the contentions raised by the learned counsel for the appellants and the prosecution has succeeded in establishing the charge framed against the appellants beyond reasonable doubt.

Hence, we pass the following Order:-

Criminal Appeal Nos.148 of 2013, 200 of 2013 and 930 of 2013 are dismissed.

12] In view of dismissal of Criminal Appeal No.930 of 2013, Criminal Application No.1215 of 2018 does not survive and the same is accordingly disposed of.

(A.S.GADKARI, J.)

(A.S.OKA, J.)