

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.601 OF 1998

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|-----------------------------------|---|-------------------------|
| 1. Laxman Babulal Rajput | } | |
| 2. Prakash Babulal Rajput | } | |
| 3. Harisingh Babulal Rajput | } | |
| All residing at Rajput Cottage, | } | |
| Meherbaux Colony, Juhu Tara Road, | } | |
| Santacruz (W), Mumbai. | } |Appellants / |
| | | Ori.Accused Nos.1 to 3. |

Versus

The State of Maharashtra	}	Respondents
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Ms. Prabha Mane a/w. Mr. Amit Mane for the Appellants.

Ms. M.M. Deshmukh, APP for the State.

CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

DATE : 3rd JULY, 2021

JUDGMENT (PER SURENDRA P. TAVADE, J.):

1. Being aggrieved and dissatisfied with the impugned judgment and order dated 20.06.1998 passed by the Additional Sessions Judge, Greater Bombay in Sessions Case No.425/1984, the original Accused Nos.1, 2 and 3 have preferred this appeal (hereinafter called and referred as the appellants).

2. The appellants and the original Accused No.5 have been convicted for the offences punishable u/s.144, 148, 302, 324, 449 r/w. Section 149 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.2000/-, in default to suffer further rigorous imprisonment for six months. The Appellants and co-accused No.5 also held guilty u/s.324 r/w. Section 149 of the IPC and they are sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.300/-, in default to suffer further rigorous imprisonment for one month. No separate sentence was imposed on the Appellants and co-accused u/s.144, 148, 149 r/w. Section 149 of IPC.

3. The case of prosecution, in brief, can be summarized as under:

The original Accused Nos.1 to 7 were prosecuted for the offences punishable u/s.143, 144, 148, 302, 326, 324 r/w. Section 149 alternatively r/w. Section 34 of the IPC. It is alleged that in the year 1984, Sampat Pilley (Deceased) was residing at Indira Nagar Hutment, Creek Side Road, inside Juhu Aerodrum, Juhu, Mumbai alongwith his family members. The Informant – Smt. Molli Sampat Pilley is wife of the Deceased - Sampat. The Informant knew appellants as Dhobis residing in the said hutment. The appellants and deceased Accused No.4 were brothers and Accused No.5 Anil is nephew of the appellants. During the trial, the original Accused No.4 reported dead, hence, case was against him abated.

4. On 17.04.1984 in the morning time, the Informant was going to attend call of nature to Juhu Aerodrum ground. The original Accused No.5 and 2 two Bhaiyas i.e. the original Accused Nos.6 and 7 teased the Informant. The Deceased – Sampat happened to pass nearby and he scolded original Accused Nos.5 to 7. In the same day of evening, the original Accused Nos.5 to 7 assaulted the Deceased. Hence, he was scared. He went out of the house on the same day and returned home at about 9.00 p.m. on 19.04.1984.

5. On 19.04.1984, at about 10.30 p.m., the Informant alongwith her husband – Deceased Sampat, her cousin brother Mohan Shetty were sitting at home and her children were sleeping. All of a sudden, 2-3 accused-persons entered into the hut of Informant and thereafter other accused-persons entered the said hut. They were armed with sword, knife, iron rods and bamboo sticks. On seeing them, Deceased – Sampat ran away from rear side portion of the hut. The Informant saw that Accused No.4 Krishan Babulal Rajput @ Pappu was having knife. The appellants were having swords, iron rods and bamboo sticks. It is alleged that the original Accused No.4 assaulted the Informant's cousin brother Mohan Shetty with knife and others assaulted him by bamboo sticks and iron rods. During the assault, Mohan Shetty ran away from the hut. So the accused-persons followed him and her Deceased husband – Sampat. The Informant saw that her husband was in the creek water. She saw that the Appellant Nos.1, 2 and the original Accused No.4 alongwith two Bhaiyas i.e.

original Accused Nos.6 and 7 were assaulting him with swords, iron rods, knife and bamboo sticks. The Informant raised shouts "Bachav, Bachav". In the meantime, the Appellant Nos.1 and 3 came near her and gave blow of iron rod on her right leg and thereby she became semi-conscious and fell down. The Informant saw that her cousin Mohan Shetty was taken towards the hutment.

6. It is the case of prosecution that witness Dattaram More and his wife Smt. Lilla More came to the rescue of Informant and took her to her hut and thereafter to the hospital in autorikshaw. While being taken to the hospital, she was brought to Santacruz Police Station, where she narrated the incident to PSI Mr. Pathan. Thereafter, she was referred to Copper Hospital. PSI - Mr. Pathan recorded statement of the Informant at Copper Hospital, which was treated as FIR. On the basis of FIR, Crime No.257/1984 was registered against the accused-persons u/s.326, 324, 143, 144, 148 r/w. Section 149, alternatively r/w. Section 34 of the IPC in Santacruz Police Station. After registration of crime, PSI - Mr. Pathan rushed to the place of offence in search of husband of the Informant. He drew Panchanama of the scene of offence. He also took search of the Deceased - Sampat in nearby area, but he could not traced him out. On 20.04.1984 at about 7.20 a.m. dead body of Sampat Pilley was traced. It was found floating in the creek water. In presence of two panch-witnesses, it was taken charge of under the Panchnama by PI Mr. Kolekar. The dead body was referred to autopsy. After finding the dead body of Sampat Pilley, offence was

altered to Section 302 of IPC.

7. During the course of investigation, statements of Mohan Shetty, Datta More, Smt. Lilla More, Gopi Pallaswamy were recorded. On 22.04.1984, original Accused No.1 Laxman Babulal Rajput was arrested. On 23.04.1984, original Accused Nos.2 to 7 were surrendered at Santacruz Police Station and they were put under arrest. On 23.04.1984, the clothes of original Accused Nos.1 to 7 were seized under Panchnama. On 29.04.1984, the Test Identification Parade of original Accused Nos.6 and 7 was conducted. The Informant identified the original Accused Nos.6 and 7 in the Test Identification Parade. In the course of investigation, the original Accused No.4 made a voluntary statement and produced Rampuri knife and sword. The said weapons were seized under Panchnama. The clothes of Deceased - Sampat and the Informant were seized under Panchnama. The seized articles were sent to Chemical Analysis. On 01.05.1984 the original Accused Nos.1 to 7 were sent for blood examination to Nagpada Police Station. After completion of investigation and receipt of CA report, a charge-sheet came to be filed against the original Accused Nos.1 to 7 in the 21st Court, Metropolitan Magistrate, Bandra, Mumbai. As the offence u/s.302 of IPC was triable by the Court of Session, hence, the case of the accused-persons came to be committed to the Court of Session.

8. On appearance of the accused-persons, the charge came to be framed

against the accused-persons u/s.143, 144, 148,149, 449, 302, 326, 324 r/w.149 alternatively r/w.Section 34 of the IPC. The accused-persons pleaded not guilty and claim to be tried. The defence of the accused-persons was of total denial.

9. To prove the charge against the accused-persons, the prosecution has relied the evidence of as many as 10 witnesses. On going through the evidence, the trial Court held the Appellant Nos.1 to 3 and the original Accused No.5 guilty for the offences punishable u/s.144, 148, 302, 324, 449 r/w. Section 149 of IPC and sentenced them as aforesaid.

10. Heard learned Counsel for the Appellants and learned AGP for the State.

11. Learned Counsel for the Appellants submits that the entire case is based on the sole testimony of the Informant – Molli Pilley. The evidence of alleged eye-witness Molli is having material contradictions and omissions and improvements. Therefore, her evidence should have been discarded by the trial court. It is also submitted that the alleged incident had taken place at 10.30 p.m. near the Juhu creek. There was no provision of electricity at the spot, hence, there was no possibility of PW-6 – Molli Pilley to witness the incident in the darkness. It is also submitted that the PW-6 – Molli identified Appellant No.3 – Harisingh Rajput as Arun, but there is no material on record to establish

that Appellant No.3 was also known as Arun in the locality. Thus, the identify of Appellant No.3 is not established through the evidence of PW-6 – Molli. It is contended that the prosecution has not proved unlawful assembly at the time of incident as the trial Court has acquitted the original Accused Nos.6 and 7. It is contended that the presence of five or more persons on the spot is not proved by the prosecution. It is contended that the trial Court has not appreciated the evidence in proper perspective and wrongly relied on the evidence of PW-6 – Molli. Therefore, the judgment and order of conviction passed by the trial Court and the sentence awarded to the Appellants be set aside and the Appellants may be acquitted.

12. On the other hand, learned AGP submitted that the first part of incident had taken place in the hut of Deceased – Sampat where his wife Molli (PW-6) was present. The sole eye-witness Molli (PW-6) had an opportunity to see the Appellants prior to the incident and even at the time of incident. She knew the Appellants prior to the incident. She described the act of the Appellants while assaulting her husband. There are minor omissions in her evidence, but as a whole her evidence is reliable. Therefore, the trial court has rightly believed the evidence of Molli (PW-6). It is contended that there were street lights nearby the scene of offence. Similarly, there was a lamp in her hut. Therefore, Molli (PW-6) had an opportunity to see the Appellants properly. Though the incident had taken place in the night, but sufficient light was available at the

spot, thereby Molli (PW-6) could identify the Appellants. It is also contended that the trial court has considered the evidence in proper perspective and come to the correct conclusion. There is no need to interfere in the impugned judgment and order.

13. To prove the homicidal death of Sampat, the prosecution has relied on the evidence of Molli (PW-6), Dr. Krishnaji Gore-Medical Officer (PW-7) and PSI - Mr. Pathan - PSI (PW-9). According to Molli (PW-6), on 19.04.1984 at about 10.30 p.m., the Appellants and co-accused entered into her hut. On seeing the Appellants and co-accused, her husband ran away from the hut. Thereafter, the Appellants and co-accused assaulted her nephew Mohan Shetty and then rushed behind her husband - Deceased Sampat. She also followed them. She further deposed that in the creek, Appellant Nos.1 to 3 and co-accused assaulted her husband by sword, iron rod, knife and bamboo sticks. He fell down in the creek. She raised shouts, but the Appellants rushed towards her and she was also assaulted by original Accused No.5 by iron rod. Thereafter, she was taken to the Santacruz Police Station and thereafter admitted in the hospital.

14. It is also come in the evidence of PW-9 - PSI- Mr. Pathan, PSI that he recorded the FIR of PW-6 Molli in the hospital. Thereafter, he rushed to the spot, but he did not found dead body of Sampat in the creek. It is come in his evidence that on 20.04.1984 at about 7.40 a.m. dead body of Sampat was found

floating in the creek water. The Inquest of dead body was drawn by him and dead body was sent to the hospital for postmortem examination.

15. On 20.04.1984 at about 5.45 p.m. Dr. Krishna Gore – PW-7 completed the postmortem examination of the dead body of Deceased – Sampat. He found external injury on the dead body, which he noted in Column No.17 of PM report.

16. Injury Nos.1 to 5, 7 and 8 are incised wounds caused by sharp edged weapons like knife, straight sickle, small sword. Injury No.6 was CLW. Injury No.9 was transverse wheel mark which could be caused by bamboo sticks. The Medical Officer has opined that the external Injury Nos.3 and 4 were sufficient in ordinary course of nature to cause death. He also opined that all the incise wounds mentioned in the postmortem notes are serious and of grave in nature. It is also opined that the death of Sampat caused due to shock and hemorrhage due to multiple incised wounds with skull fracture and sub arachnid hemorrhage (unnatural).

17. PW-7 – Dr. Gore was cross examined by the defence, but it appears that the defence has not denied the homicidal death of Sampat. Therefore, the evidence of PW-7 is sufficient to prove the homicidal death of the Deceased – Sampat. Hence, the trial court has rightly appreciated the evidence of PW-7 and come to the correct conclusion regarding homicidal death of the Deceased

– Sampat.

18. As far as the involvement of the Appellants in the crime is concerned, the prosecution has heavily relied on the evidence of sole eye-witness PW-6 Molli Pilley. She narrated the four incidents. First incident alleged to have been occurred in the morning of 17.04.1984, second incident is in the evening of 17.04.1984 wherein original Accused Nos.5 to 6 assaulted her husband, third incident is dated 19.08.1984 in her hut and the fourth incident had occurred where she alleged that her husband was assaulted and killed at creek. As far as the first incident is concerned, she deposed that in the morning of 17.04.1984, she was going for toilet at Juhu Airport ground. On the way she was followed by original Accused No.5 Anil and two Bhaiyas, namely, original Accused Nos.6 and 7. She further deposed that the said three accused-persons laugh at her and teased her. At that time, her husband was passing by the road. He scolded by the original Accused Nos.5 to 6.

19. She further deposed that in the evening of 17.04.1984, the original Accused Nos.5 to 7 had assaulted her husband. Hence, he left the house and did not return home till 19.04.1984. She further deposed that on evening of 19.04.1984, her husband returned home. Before arrival of her husband, some persons had come to her house. They had knocked the door of the house, but due to fear she did not open the door. This part of evidence is come on record as an omission.

20. She further deposed that at about 10.30 p.m. on 19.04.1984 she heard noise outside her house. 2-3 assailants entered into her house and thereafter remaining assailants entered in the house. She identified original Accused No.4 who was armed with knife. Appellant No.3 was having sword and others assailants were having iron rod and knife. She further deposed that on seeing the Appellants and co-accused, her husband ran away towards the rear side of the hut. The original Accused No.4 assaulted her brother Mohan Shetty by knife on his neck and other accused-persons also assaulted him by bamboo sticks and iron rod. Mohan also tried to escape from the spot and ran away. The appellants and co-accused chased Mohan and her husband. She also followed Mohan and the Appellants. She saw her husband Sampat at creek. The Appellants and original Accused Nos.4 to 6 were assaulting her husband by sword, iron rod. When she reached near the spot, she shouted for help, but Appellant No.1 and original Accused No.5 assaulted her. She was assaulted on her right leg. She became semi-conscious. Thereafter, the Appellants ran away from the spot. The neighbors, Dattaram More and his wife Smt. Leela More took her to the hut and thereafter brought her to the Santacruz Police Station where she disclosed the incident to the PSI Mr. Pathan. Subsequently, her statement was recorded in the Cooper hospital which was treated as FIR.

21. She further deposed that she knew the original Accused Nos.1 to 3 and original Accused Nos.4 and 5. She was knowing Appellant No.3 as Arun. She

knew original Accused Nos.6 and 7 by their face, but was not knowing their names. It has also come in her evidence that as her husband had scolded original Accused Nos.5 and 6, therefore, the Appellants and co-accused assaulted her husband and killed him. In her cross-examination, she has admitted that she has not stated before the police that on 19.04.1984 before arrival of her husband in the hut some persons had come outside her hut and they had knocked the door, but due to fear she did not open the door.

22. On the basis of said omission, learned counsel for the Appellants has vehemently submitted that Molli (PW-6) has improved her case to justify the motive for the offence. On the other hand, learned AGP submits that the witness was under tremendous mental and physical stress. Therefore, the said fact may not have deposed by her before the police in her statement u/s.161 of Cr.P.C., but even if the said fact is ignored, her evidence can be brushed aside. Molli (PW-6) has described the incident occurred on 17.04.1984 whereby she has categorically deposed that she was teased by original Accused Nos.5 to 7 and her husband had scolded original Accused Nos.6 to 7.

23. On going through the above evidence of Molli (PW-6), it can be said that the prosecution has established the motive for the incident. Generally, the motive is significant when the case is based on circumstantial evidence and it is insignificant in the case based on ocular evidence. The prosecution has relied on the ratio laid down in the case of *S.G. Gundeqauda @ Moganna vs State By*

Yealur Police, Hassan, reported in 1996 Cri.L.J.852; wherein it is held as under.....

“When the case of the prosecution is based on the evidence of eye witnesses, the existence or non-existence of motive, sufficiency or insufficiency of motive will not play such a major role as in the case which is based on circumstantial evidence. If the prosecution is able to prove its case on motive it will be a corroborative place at evidence. But even if the prosecution has not been able to prove the case on motive that will not be a ground to throw over board the prosecution case because in a case where there are eye witnesses the prosecution case will have to be decided on the basis of the merits of the evidence of such witnesses.”

24. The above ratio is applicable to the facts of the present case as the evidence of PW-6 – Molli has proved the incident of her teasing by original Accused Nos.5 to 7.

25. PW-6 - Molli has admitted that there was no electricity in her hut and the huts in her neighborhood. She further admitted that she doesn't remember whether there were street lights on the road nearby creek where the alleged incident had occurred. On the basis of said evidence, learned Counsel for the Appellants submitted that there was no sufficient light available at the spot, therefore, it is impossible for PW-6 – Molli to witness the alleged incident. On the other hand, learned AGP submitted that the Investigating Officer Mr. Pathan (PW-9) had visited the spot and prepared the scene of offence Panchnama (Exh.31), wherein it is mentioned that there was electrical bulb fixed outside the hut. Similarly, there was electric light on the road near the creek. Therefore, it is established that there were sufficient lights available at the spot

whereby PW-6 – Molli had an opportunity to witness the incident of assault on her husband.

26. On the other hand, learned Counsel for the Appellants submitted that Mr. Pathan (PW-9) is examined by the prosecution, but the panch-witnesses have not been examined to prove the contents of the spot panchnama so contents of panchnama cannot be relied upon. To substantiate the point, the prosecution has relied on the ratio laid down in the case of *Anil @ Andya Sadashiv Nandoskar Vs. State of Maharashtra, reported in 1996 SCC (Cri.) 356*, wherein the Supreme Court held that non-examination of the panchas who were joined at the time of search and seizure and despite diligent efforts whose whereabouts could not be traced out is not fatal to the prosecution case.

27. In the present case, the panch-witnesses were not traceable, therefore, they are not examined by the prosecution, but Mr. Pathan (PW-9) has proved the execution of the scene of offence panchnama. In the Panchnama (Exh.1) the factual aspect of the spot is described and it is specifically mentioned that there was sufficient light at the relevant time at the spot of the incident.

28. The panchnama (Exh.31) gives the factual aspect of the spot. Therefore, there is no reason for discarding the contents of panchnama which shows that there were sufficient lights at the spot of the incident.

29. We must mention here that Smt. Molli (PW-6) has categorically stated

that there was a lamp in her hut, so she had an opportunity to see the faces of the Appellants. Thereafter she chased them upto the spot. She knew the Appellants and original Accused Nos.4 and 5 prior to the incident, therefore, she had a sufficient opportunity to identify the Appellants.

30. Molli (PW-6) has admitted that she was knowing Appellant No.3 as Arun. In her cross-examination, she admitted that people in the locality knew him as Arun, so she knew him as Arun. She has not stated in the complaint that she was knowing Appellant No.3 as Arun. On the basis of above evidence, learned Counsel for the Appellants has submitted that Appellant No.3 is Harisingh Rajput. He was never known as Arun. Therefore, the prosecution has not proved the identity of Appellant No.3 in the incident. On the other hand, learned AGP submitted that the evidence of Molli (PW-6) is very cogent on the point of identity of Appellant No.3. She has stated in her evidence that she knew him as Arun and the said fact is brought on record in the cross-examination also. Appellant No.3 was residing nearby hut of Molli (PW-6). Similarly, Molli (PW-6) had an opportunity to see Appellant No.3 in the locality. She has described the act of Appellant No.3 in her complaint. Therefore, there is no ambiguity in regard to the identity of Appellant No.3. It is true that Molli (PW-6) has stated that she knew Appellant No.3 as Arun, but the said fact is not mentioned in the FIR, but it is stated by Molli (PW-6) that she knew Appellant Nos.1 to 3 and original Accused Nos.4 and 5 as Dhobis as

they were her neighbors. On the basis of said evidence, it can be said that the prosecution has proved the identity of the Appellants as assailants of the Deceased – Sampat.

31. Learned Counsel for the Appellants submitted that the statement at Exh.25 is not FIR at all. The prosecution has suppressed the original FIR, which Molli (PW-6) had given to the police in the police station. On this point, the evidence of Molli (PW-6) is required to be seen. She has stated that after the incident Mr. Dattaram More and his wife Smt. Lilla More took her to Santacruz Police Station. She was not in a position to stand, her saree was in torn condition. The Police person recorded her statement at Santacruz Police Station and she was sent to Copper Hospital where she was admitted. She further deposed that Mr. Pathan – PSI (PW-9) came to the Copper Hospital and recorded her complaint and she signed the same in the Hospital (Exh.25). She also stated that contents of the complaint were however explained to her and then she signed the same.

32. On careful going through the evidence of Molli (PW-6), it reveals that she did not sign the complaint at Santacruz Police Station in the night of 19.04.1984. It appears that PW-6 Molli disclosed the incident to PSI Mr. Pathan, then she was referred to medical treatment. Mr. Pathan, PSI (PW-9) came at Copper Hospital and recorded her complaint. She signed the same. The evidence of Mr. Pathan (PW-9) also corroborates the version given by

Molli (PW-6). Therefore, it can be said that Molli (PW-6) had narrated the incident to the PSI, Mr. Pathan (PW-9) when she reached to the Police Station, but her statement was recorded in the hospital, it was read over to her, thereafter she signed the same. Therefore, there is no ambiguity in the evidence of Molli (PW-6) that her statement was recorded at Copper Hospital and not at Police Station. So there is no question of having two complaints and suppression of the alleged first statement of Molli (PW-6).

33. It has come in the evidence of Molli (PW-6) that when she reached near the spot, she was assaulted by the original Accused No.4 (Deceased) by stick and other accused-persons also assaulted by iron rods and he sustained injury on his right leg. In the cross-examination, it was suggested that she was given forceful blows of iron rods on her leg. She admitted the said fact. On the basis of said evidence, learned Counsel for the Appellants submitted that if forceful blow of iron rod had been given to leg, then she could have caused grievous injury. But she sustained CLW. So her evidence is contrary to medical evidence.

34. It is true that to prove the injuries sustained to Molli (PW-6), the prosecution has relied on the evidence of Dr. Suresh Mehta (PW-1). He deposed that on 19.04.1984 he examined Molli (PW-6) and found two injuries on her person. He advised X-Ray examination of her right leg. He produced the medical certificate of Molli (PW-6) at Exh.14A. He admitted that if iron rod

or stick is used for assaulting a person, it would cause wheel marks. If the iron bar is used with greater force for assaulting a person, there is a possibility of causing fracture to the said person.

35. On the basis of said admission, learned Counsel for the Appellants submitted that there is no wheel mark on the right leg of Molli (PW-6) and she sustained lesser injury, it was not a grievous injury, therefore, the evidence of Molli (PW-6) that she was assaulted forcefully by the Appellants is an exaggeration. He has also submitted that the injury sustained to Molli (PW-6) could be possible by falling on the hard surface. It is true that Molli (PW-6) has admitted that she was given blow by force, but she sustained CLW on right leg, there was no grievous injury caused to her, but that doesn't mean that she was not assaulted at all. She has categorically stated that she followed the Appellants upto the creek as the Appellants were chasing her husband. She also stated that she raised shouts, therefore, she was assaulted.

36. In view of the said evidence, it can be said that Molli (PW-6) was assaulted in the alleged incident. The evidence of Molli (PW-6) is also supported by Smt. Leela More (PW-8). According to her, she was sleeping in the house on the day of incident. Her husband raised shouts, hence, she woke up. She alongwith her husband came to the creek side where people were gathered. She came to know that Sampat was murdered. She saw that the wife of Sampat (Malli-PW-6) was in injured condition. Some people helped her and

took her to the hospital. Though witness Leela More has not supported the case of prosecution, but partly she has corroborated the evidence of Molli (PW-6). She saw Molli (PW-6) in the injured condition immediately after the incident at creek side. Therefore, it is established from the evidence of Molli (PW-6) that she had been to creek side where she was assaulted and lying in injured condition and the said fact was witnessed by Leela More (PW-8).

37. The prosecution has also examined Mr. Gopi Pall Swamy (PW-2). He was cited as eye-witness to the incident, but has not supported the case of prosecution though prosecution has cross examined him, but nothing worth has come on record to believe his testimony as eye-witness.

38. Learned Counsel for the Appellants submits that the charge u/s.144, 148, 149 is not established against the Appellants. He also submits that the trial Court has acquitted the original Accused Nos.6 and 7 for want of identification. On the other hand, learned AGP submits that the evidence on record established that in all seven persons had participated in the crime. The original Accused Nos.6 and 7 were acquitted because their identity is not established beyond the shadow of reasonable doubt. On going through the evidence on record, it is clearly established that Appellant Nos.1 to 3 and original Accused Nos.4 to 7 were involved in the crime. The trial Court has held that the identity of original Accused Nos.6 and 7 was not established by the prosecution. The trial Court has not relied on the evidence of S.K. Sinha (PW-5). According to

the prosecution, S.K. Sinha (PW-5) held the Test Identification Parade to prove the identity of original Accused Nos.6 and 7. S.K. Sinha (PW-5) has categorically admitted that he had not gone through the instructions given in the criminal manual for holding Test Identification Parade. He has also admitted that he doesn't remember in which room of the police station the parade was held. It appears from the evidence of S.K. Sinha (PW-5) that there are major lacunas while holding the Test Identification Parade. Therefore, the identity of Appellant Nos.6 and 7 was not proved by the prosecution. The prosecution has not challenged the acquittal of original Accused Nos.6 and 7, but the fact remains on record that there were in all seven accused-persons involved in the crime. They had common object to kill the deceased Sampat. Therefore, it cannot be said that charge u/s.144, 148 and 149 is not proved against the Appellants.

39. The prosecution case revolves around the evidence of Molli (PW-6). Learned Counsel for the Appellants submitted that the sole eye evidence of Molli (PW-6) is not reliable, it is full of omission and contradictions. To substantiate the point, learned Counsel for the Appellants has relied on the ratio laid down in the following cases :-

1. ***Amar Singh vs. The State (NCT of Delhi) reported in AIR 2020 SC 4894***, wherein it is held that.....

“As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. 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 Evidence Act, 1872. But if there are doubts about the testimony Court will insist on corroborations. It is not the number, the quality that is material. The time honoured principle is that evidence has to be weighted 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.”

2. ***Purvat Singh & Ors. vs. State of Madhya Pradesh, reported in 2020(4) SCC 33***, wherein it is held that.....

“It cannot be disputed that there can be conviction relying upon the evidence/deposition of the sole witness. However, at the same time, the evidence/deposition of the sole witness can be relied upon, provided it is found to be trustworthy and reliable and there are no material contradictions and/or omissions and/or improvements in the case of the prosecution”.

3. ***Joseph Vs. State of Kerala, reported in 2002 DGLS(SC) 1047***, wherein it is held that....

“In a case of this nature when there is a sole witness to the incident his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by other witnesses or evidence as recorded.”

4. ***State of Haryana Vs. Inder Singh, reported in 2002 DGLS (SC) 123***, wherein it is held that.....

“There is no denial of the fact that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused in the criminal cases. However, it is equally true that when a case is based upon the testimony of the only witness, his statement must be confident and inspiring, leaving no doubt in the mind of the Court being above from all suspicions, particularly, when one of the courts on facts has held that his testimony is not reliable.”

40. The sole eye witness Molli (PW-6) was wife of the Deceased – Sampat. She was present in the hut when the Appellants and co-accused entered into it. Thereafter, she followed the Appellants. She herself sustained injuries at the

time of incident. She disclosed the incident to police immediately after the incident. Thereafter her statement was recorded in the hospital. She has described the incident leading to the death of her husband. She has fully corroborated the contents of her complaint. Her evidence is also supported by the medical evidence. Though she was cross examined at length, but nothing worth has come on record to discard her evidence. No doubt, there are some omissions brought on record, but those are not crucial to disbelieve the witness. The injuries found on the person of witness lend assurance to her presence at the time of occurrence.

41. One can understand the stress of a woman whose husband was brutally assaulted and killed. To find fault with her evidence on the basis of minor inconsistency it would be to a higher technical view in assessment of the evidence. She has categorically deposed that the Appellants had entered into her hut, by seeing them her husband ran away. The Appellants co-accused assaulted Mohan. After assault to Mohan he ran away. Thereafter, the Appellants chased the Deceased – Sampat. Witness Molli (PW-6) followed them and saw that her husband being assaulted by the Appellants and co-accused at creek. The said story is supported by the medical evidence, therefore, it can be said that the evidence of Molli (PW-6) is cogent, correct, reliable, convincing and it inspires the confidence, then it becomes duty of the Court to act on such testimony. It is well settled law that the evidence of

witnesses has to be weighed and not to be counted having regard to the searching testimony of wife of the deceased. The injuries found on the person of said witness lend assurance of her presence at the time of occurrence, therefore, her evidence is required to be believed.

42. On going through the rulings cited by the learned Counsel for the Appellants and going through the evidence of Molli (PW-6), it can be held that her evidence is cogent, credible and trustworthy, therefore, it is required to be believed.

43. On going through the evidence, we hold that the prosecution has proved that the Appellants had assaulted and killed the deceased Sampat at the creek, Indira Nagar, Juhu in prosecution of common object of unlawful assembly.

44. The learned trial Court has rightly held the Appellants guilty for the offence punishable under 144, 148, 302, 324, 449 r/w. Section 149 of the Indian Penal Code. Therefore, there is no need to interfere with the findings of the learned trial Court. The appeal, as such, is devoid of substance and the same is dismissed. Hence the, following order.

ORDER

- (a) Appeal preferred by the Appellants/original Accused Nos.1 to 3 is hereby dismissed.
- (b) The Appellants to surrender bail bonds.
- (c) The Appellants are directed to appear before the trial Court on 26.07.2021 to undergo sentence, in default, the trial Court is directed to take necessary steps for securing the presence of the Appellants/original Accused Nos.1 to 3 for undergoing sentence.

[SURENDRA P. TAVADE, J.]

[PRASANNA B. VARALE, J.]