

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

CRIMINAL APPEAL NO. 1436 OF 2011

Santosh Fattesingh Uyike

Aged 23 years, Occ.

R/o. Chinchole Gaon,

Tal. & District Nashik

..Appellant

V/s.

The State of Maharashtra

(Through Ambad Police Station,

Nashik vide C.R. No.559/2008)

..Respondent

Mr. Niteen Pradhan, Senior Advocate a/w. Ms. S. D. Khot & Ms.

Ameeta Kuttikrishnan & Ameya Mahadik for the Appellant.

Ms. Prajakta Shinde, APP for the Respondent / State.

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**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 10 August 2021

Judgment (Per C. V. Bhadang, J.)

. By this Appeal, the Appellant (Accused No.1) is challenging the judgment and order dated 21 September 2011 passed by the learned Sessions Judge at Nashik in Sessions Case No.31/2009. By the impugned judgment, the Appellant has been convicted for the offence punishable under Section 302 of IPC and has been sentenced to suffer imprisonment for life and

to pay a fine of Rs.2,000/- and in default, to suffer Simple Imprisonment (S.I.) for two months.

2. The prosecution case may be briefly stated thus-

Kamlabai (P.W.1) is a resident of Village Pathardi Gaon. She was residing with her husband Fakira, three sons namely Jainath, Ratan (since deceased) and Rahul (P.W.7), daughter-in-law Nanda. Anjali (P.W.8) is the married daughter of Kamlabai. She had come to her maternal place on 26 October 2008 for the festival of Diwali alongwith her sons and daughter Rutuja (P.W.9).

3. The incident in question is alleged to have happened on 29 October 2008 at about 9.30 p.m. at the house of Kamlabai. At that time, Kamlabai alongwith other family members was at her house. It is said that deceased Ratan had gone out. At about 9.30 p.m. Ratan came running to the house and he was followed by the Appellant and the co-accused alongwith four juveniles in conflict with law (JCLs) M. P. and R. (their names are redacted) who trespassed in the house. The Appellant (Accused No.1) was armed with scythe (koyta) while the co-accused Dinesh, Vikas, Sachin, Amol and Sandeep were armed with wooden logs. Accused Vishal was having an iron rod. According to the prosecution, all the Accused accosted Ratan as to why he alongwith his brother had assaulted father of the Appellant on 19

October 2008. Eventually, Ratan was dragged out of the house on a ota and was assaulted by all the Accused. In so far as Appellant is concerned, it is alleged that he assaulted the deceased on the back side of head by scythe. Anjali (P.W. 8) and others made an attempt to intervene, however they were also assaulted. After Ratan fell unconscious, all the Accused fled from the spot. Ratan was taken to the Civil Hospital Nashik where he was declared dead.

4. An offence at Crime No.559/2008 came to be registered with Police Station Ambad on the complaint of Kamlabai under Section 147, 148, 149, 452, 302, 324, 323 and 504 of IPC and under Section 135 of Bombay Police Act. A supplementary statement of Kamlabai came to be recorded. During the course of investigation, a spot panchanama was drawn alongwith inquest panchanama of the dead body. The dead body was sent for post mortem examination which was conducted by Dr. Sharad Dattatray Patil (P.W.11). The Medical Officer found compound fracture on skull bone, right Parieto-occipital region with brain matter and dura protruding out with large subdural Haematoma and contusion corresponding to the fracture. The other injured including Anjali were also medically examined. The Investigating Officer recorded the statement of witnesses and made seizure of the blood stained clothes and weapons presumably on the basis of the confessional statement of the

Accused. Upon completion of investigation, a chargesheet came to be filed.

5. The learned Sessions Judge framed a charge against the Appellant and the co-accused for the offence punishable under Section 143, 144, 147, 149, 452, 302, 326 and 323 of IPC and under Section 135 of the Bombay Police Act. The accused pleaded not guilty and claimed to be tried. The defence of the accused is one of total denial and false implication.

6. At the trial, the prosecution examined in all thirteen witnesses and produced the record of investigation. The learned Sessions Judge while acquitting the Accused Nos.2 to 7, has convicted the Appellant individually for the offence punishable under Section 302 of IPC and he has been sentenced accordingly. Hence, this Appeal.

7. We have heard the learned counsel for the Appellant and the learned APP for the State. With the assistance of the learned counsel for the parties, we have gone through the record.

8. It is submitted by the learned counsel for the Appellant that there is material discrepancy in the evidence of P.W.1 Kamlabai who initially stated that the deceased was at the house. However, subsequently claimed in her supplementary

statement that the deceased Ratan was not at house and had gone out and came running followed by the Appellant and the other assailants. It is submitted that P.W.1 did not inform about the incident to the police constable who was stated to be present at the Civil Hospital. It is pointed out that P.W.1 thereafter went to the Ambad Police Station at 00.30 hours and lodged the complaint, which clearly shows is out of an after thought to falsely implicate the Appellant. The learned counsel pointed out that the P.W.9 Rutuja Nikam (who as per the prosecution case is an injured eye witness) has stated that there was a crowd of about 5 to 50 persons who had gathered in front of the house at the time of incident. However, significantly enough, there is no independent witness examined by the prosecution. It is submitted that the prosecution evidence only consists of the witnesses who are closely related to the deceased and such an interested testimony cannot be the basis for conviction particularly when there were independent witnesses who were available and could be examined. The learned counsel has also submitted that there is no acceptable evidence that there was sufficient light at the spot so as to facilitate identification of the assailants. It is submitted that quite to the contrary, there is evidence to show that there was no power supply. The learned counsel also strenuously urged that looking to the dimension of the house of P.W.1 and the area available, it is highly improbable that the space was sufficient to accommodate the assailants

alongwith the family members. It is submitted that there is no investigation as to whether Jainath the brother of the deceased had indeed gone out. It is submitted that Jainath was suspecting that deceased had illicit relations with his wife (Jainath's wife) and therefore possibility of Jainath being responsible for death of Ratan cannot be ruled out. It is submitted that prior to the incident, the Appellant had lodged a complaint against the deceased which is the reason for false implication. It is also submitted that the medical evidence would not rule out the possibility of the injuries being accidental in nature. It is submitted that once the evidence of the purported eye witnesses has been disbelieved in respect of alleged involvement of as many as six accused (who have been acquitted) it is highly unsafe to rely on the said evidence in order to find the Appellant guilty, individually for the offence punishable under Section 302 of IPC. It is submitted that the learned Sessions Judge had acquitted all the accused in so far as the offence of formation of unlawful assembly armed with deadly weapons, is concerned.

9. The learned APP has supported the impugned judgment. It is submitted that the evidence of the eye witnesses who are the inmates of the house is acceptable. It is pointed out that these witnesses are the natural witnesses and some of those witnesses are injured. The learned APP pointed out that evidence of injured eye witnesses is at a higher pedestal as the sustaining of

injuries corroborates the presence of the witnesses on the spot. It is submitted that there is no prohibition from accepting or placing reliance on the evidence of the witnesses although the evidence may not have been accepted in its entirety. It is submitted that the fact that there were previous complaints lodged by the Appellant against the deceased would itself be suggestive of an enmity which could be the motive for the offence. It is submitted that the absence of any independent evidence would not be material when there is evidence of eye witnesses who are inmates of the house and some of whom were injured.

10. We have carefully considered the prosecution evidence in the context of the defence raised.

Homicidal Death

11. Dr. Sharad Patil (P.W.11) who is a Medical Officer attached to the Civil Hospital, Nashik had conducted the post mortem examination of the dead body of Ratan. P.W.11 found the following injuries on the dead body.

1. Compound fracture on skull bone.

Right Parieto-occipital region with CLW on right parieto-occipital region 6 x 3 c.m. with brain matter and dura protruding out.

2. Scalp Haematoma right parietal region 6 x 4 c.m.
3. Contusion and abrasion forehead
 - (i) 4 x 3 x 0.5 c.m.
 - (ii) 3 x 3 x 0.5 c.m.
 - (iii) 5 x 2 x 0.5 c.m.
4. Blood clots in nose and mouth.
5. Abrasion right hand dorsal aspect.
 - (i) 2 x 1 x 0.5 c.m.
 - (ii) 1 x 1 x 0.5 c.m.

On internal examination, there was compound fracture on the right parieto occipital region with brain matter and dura protruding out with large subdural haematoma with contusion corresponding to the fracture.

12. He accordingly prepared the post mortem report - Exh.82 and issued an advance certificate of cause of death at Exh.83 and certificate of cause of death at Exh.84. According to the Medical Officer, the cause of death is the head injury. He stated that the injuries are possible by any hard and blunt object. He admitted that the external injuries as mentioned in Column No.17 are possible if a person is hit by a running vehicle. Such a bald admission in the absence of any other circumstances or evidence indicating possibility of the deceased being involved in a

vehicular accident are not of any significance. To put it differently, several injuries which are stated to be homicidal in nature can in a given case be accidental. The question is one of fact. Any such admission in the cross examination has to be looked into in the context of the surrounding circumstances. As noticed earlier, it is only if there are independent circumstances and evidence to show the possibility of the deceased being involved in an accident, vehicular or otherwise, that such an admission assumes importance. There are absolutely no circumstances to indicate that the deceased was involved in an accident. The injuries in our considered view clearly establish that Ratan met with homicidal death on account of the injuries sustained.

Spot of incident

13. Tukaram Bharit – P.W.3 is the spot panch, in whose presence the spot panchanama (Exh.59) was drawn alongwith a sketch map (Exh.60). The evidence of P.W.3 alongwith the spot panchanama (Exh.59) and sketch map (Exh.60) indicate that the spot of incident, is the house of the complainant and the deceased. The room is admeasuring about 10 ft x 10 ft, with a attached kitchen room of an equal dimension. There is a plinth (ota) in front of the house admeasuring 20 ft x 10 ft. The spot is situated at Pathardi. There is a public road adjoining the ota. There are adjoining houses and also some houses across the road,

with a temple in front. It can thus be seen that the spot is situated in the thick locality of the village with adjoining houses all around and a public road. The sketch map also shows an electric pole with a street light across the road, near the temple.

Background facts

14. Before proceeding to consider the prosecution evidence, we may note certain facts which have clearly come on record. The deceased was residing alongwith his parents and two brothers namely Jainath @ Gautam and Rahul @ Balu. It has also come on record that Anjali who is the married sister of the deceased, had come to the house of the deceased, three days prior to the incident for the festival of Diwali, with her children including daughter Rutuja. Fakira is the father of the deceased. It has also come on record that first wife of Jainath had committed suicide by consumption of poison. Jainath was married second time which marriage resulted into a divorce and thereafter Jainath married for the third time. According to the defence, Jainath was suspecting that the deceased had illicit relations with Jainath's wife. It has also come on record that P.W.1 was facing prosecution on account of death of her elder daughter-in-law (first wife of Jainath). It has also come on record as admitted by P.W.1 that a complaint was filed, by the Appellant against her sons Rahul alias Balu and deceased Ratan. The cross examination of the prosecution witnesses and in particular the eye

witnesses would indicate that it has been the defence that Jainath on account of his suspicion committed the murder of Ratan.

Eye witness account

15. With this, we would now propose to consider the evidence of eye witnesses.

P.W.1 – Kamlabai Donde, P.W.7- Rahul Donde, P.W.8 – Anjali Nikam and P.W.9 – Rutuja Nikam are the prosecution witnesses whose evidence would be relevant. It may be mentioned that P.W.10 Ashok Jadhav, who is a friend of the deceased had turned hostile and had not supported the prosecution. P.W.1 has stated about the incident of assault on the deceased by the Appellant and the co-accused who had trespassed into their house, armed with deadly weapons. In so far as the present Appellant is concerned, she has stated that he assaulted the deceased on the back side of head by sickle. It is the prosecution evidence that the deceased was accosted by the Appellant as to why he (the deceased) and his brother had assaulted the father of the Appellant on 19 October 2008. The deceased was dragged out of the house on the ota. She stated that Jainath was not at the house at the time of the incident and returned on the following day at about 6.00 a.m. Jainath was working as a driver. She admitted that prior to the incident the Appellant had lodged a report against her sons in pursuance of

which they were arrested. She also admitted that she did not disclose the incident to the police in the Civil Hospital Nashik.

16. P.W.7 – Rahul Dhonde is the brother of the deceased who claims that he had sustained injuries on his head at the time of the incident which was shown to the police. However, he also admitted that he was not referred for medical examination or treatment. He admitted that he did not obtain any medical certificate about his injury and treatment from the Civil Hospital. He admitted that Jainath did not come to the Civil Hospital or to the Police Station on the date of the occurrence of the incident.

17. P.W.8- Anjali Nikam who is the sister of the deceased stated that she intervened in the incident to save her brother when the assailants assaulted her on her back with wooden log / stick and she sustained fracture injury on her left hand whereupon she withdrew herself. She was examined by the Medical Officer P.W.11- Sharad Patil who found the following injuries on her person in respect of which Medical Officer has issued a certificate (Exh.81).

1. CLW at right elbow 1 x 1 x 0.5 c.m. caused by hard and blunt object. Simple in nature.
2. CLW on right forearm 1 x 0.5 x 0.5 c.m. caused by hard and blunt object. Simple in nature.

3. Contusion and abrasion on left wrist 1 x 1 x 0.5 c.m. caused by hard and blunt object. Simple in nature.
4. Fracture of lower end of humerus, grievous in nature.

18. Last is P.W.9-Rutuja Nikam, the niece of the deceased and daughter of Anjali Nikam -P.W.8 who also claims to have intervened in the incident when she sustained injury. She stated that only 4 to 5 persons entered in the house and there was a crowd of 5 to 50 people who had gathered in front of the house at the time of the incident. She also admitted that the Appellant was a friend of the deceased. This is essentially the prosecution evidence on the actual incident of assault.

Findings by the learned Sessions Judge

19. The learned Sessions Judge has disbelieved the prosecution evidence on the aspect of the Appellant and the co-accused being members of an unlawful assembly armed with deadly weapons with the common object of committing the murder of Ratan. Therefore, the learned Sessions Judge has acquitted all the Accused except that the Appellant has been individually convicted for the offence punishable under Section 302 of IPC.

20. The learned Sessions Judge has discarded the evidence of P.W.9 Rutuja, saying that she is a got up witness and no reliance can be placed on her testimony. The learned Sessions Judge has then evaluated the prosecution evidence in the context of the individual defence of the accused. It is the common defence that the Appellant and the other Accused have been falsely implicated on account of enmity and the murder was committed by Jainath, the elder brother of the deceased suspecting that the deceased was having illicit relations with his wife (Jainath's wife). Individually, the Accused No.2 Dinesh had taken a plea of alibi that he was at Nagpur at the house of his maternal uncle Bhola Tukaram from 29 October 2008 to 2 November 2008. Accused Amol Donde (A5) also took a defence that he was with one Gajanan Bhalerao (D.W.2) whose son had fallen in a stone quarry and had gone to help him out. Accused Vishal Donde (A7) also set up a plea in the nature of alibi saying that he was at the birthday party of D.W.1 Sandeep Donde and produced two photographs at Exh.117 and 118. Although the learned Sessions Judge had not recorded a specific finding accepting any such plea in the nature of alibi, the Sessions Judge has generally observed that the defence is probable. The learned Sessions Judge after noticing the discrepancy in the evidence of P.W.1, P.W.7 and P.W.8 has found that their evidence in so far as the involvement of the Accused Nos.2 to 7 cannot be accepted. Lastly, the learned Sessions Judge has found that the evidence of

these witnesses is only consistent with the assault on the deceased by the Appellant. It may be mentioned that the State has not chosen to challenge the acquittal of Accused Nos.2 to 7. Thus, we are only concerned with the issue whether the prosecution evidence is sufficient to establish the involvement of the present Applicant, in the offence. However, we have briefly noted the defence taken by the other Accused including alibi for examining the submission on behalf of the Appellant, that the evidence which was not accepted in so far as the Accused Nos.2 to 7 are concerned, ought not to have been accepted, in so far as the Appellant is concerned. The contention in our view, cannot be accepted, for the reason that the prosecution evidence has been found to be consistent, in so far as the assault attributed to the Appellant is concerned. Secondly, the defence of the other Accused was also to a certain extent distinct from that of the Appellant.

Appreciation of the prosecution evidence in the context of the defence

21. The learned counsel for the Appellant has strenuously urged that there is no evidence to show that there was sufficient light at the spot so as to facilitate identification of the assailants. Secondly, it is submitted that it is highly improbable that the house of the deceased and the ota in front was sufficient to accommodate several assailants in as much as some of the

prosecution witnesses have stated the number of the assailants including the JCL's. Here, again the contention in our view cannot be accepted. This is because, the evidence shows that some of the assailants entered the house and the deceased was dragged outside of the house. We have also noted the dimension of the room with the kitchen and the ota in front which itself admeasures 20 ft x 10 ft. Thus, it is not possible to accept that there was no sufficient space to accommodate the assailants in such number. The Investigating Officer was cross examined as to whether any attempt was made to record the statement of the Electricity Officer. The Investigating Officer stated that he did not record the statement of any such officer although he had obtained the copy of the electricity bill from Fakira Donde during investigation. It was also suggested to the Investigating Officer that there was load shedding at the time of incident and electricity supply was not available which has been denied. It is necessary to note that according to prosecution witnesses including P.W.1 the inmates of the house were watching T.V. when the deceased came running followed by the assailants. Secondly, the spot panchanama also shows the presence of the street light just cross the road in front of the house. It is necessary to note that a part of the incident is alleged to have happened on the ota which is in the open. The Appellant and the other Accused were known to the prosecution witnesses. Thus, the

contention about absence of sufficient light / illumination or the possibility of mistaken identity, in our view cannot be accepted.

22. The evidence of P.W.1 is also criticized on account of her conduct of not disclosing the incident to one Mahendra (who is not examined by the prosecution and who accompanied the family members when the deceased was taken to the hospital) and to the police at the hospital. It is contended that the incident happened around 9.30 to 10.00 p.m. after which the deceased was immediately taken to the Civil Hospital. It is contended that the Ambad Police Station is on the way from the spot of incident to the Civil Hospital. P.W.1 did not lodge the complaint while going to the Civil Hospital nor the incident was disclosed to the police officer on duty. The FIR in this case was lodged at 00.30 hours on 30 October 2008. We are unable to see anything unusual in the conduct of P.W.1. The immediate priority in such a case, is to see that the injured gets appropriate medical aid at the earliest. The FIR lodged around midnight when the incident had happened between 9.30 to 10.00 p.m. cannot by any standards be said to be belated. It was also submitted that it is unusual that there were no blood stains found on the clothes of the complainant. We do not find that the eye witness account which is otherwise natural and cogent can be discarded on any such count. It is true that all the prosecution witnesses are closely related to the deceased being family members. However, this

itself is sufficient to show the natural presence of these witnesses at the spot of incident. It is well settled that the evidence of an interested / related witnesses is no less trustworthy than any other witness. Albeit the Court has to be more cautious and circumspect while evaluating such evidence as held by the Supreme Court in the case of (i) *Hari Obula Reddy and Others Vs. The State of Andhra Pradesh* ¹ and (ii) *State of Haryana Vs. Tek Singh & Ors.* ²

23. We have carefully gone through the evidence of the eye witnesses and in particular the evidence of P.W.1, P.W. 7 and P.W.8 and we find that their evidence is consistent on the point of assault by the Appellant. It is necessary to note that the evidence of an injured witness would carry greater weight and probative value in as much as the injuries would also be a factor which would probabalize the presence of these witnesses at the spot. In the present case, P.W.8 has sustained a fracture which aspect has come on record in the evidence of P.W.11 - Dr. Sharad Patil. Thus, we find that on one hand these witnesses being the close relatives and the inmates of the house, their presence is natural which is further fortified by the fact that these witnesses have sustained injuries.

1 1981(3) SCC 675

2 1994(4) SCC 682

24. It was also contended that P.W.9 has admitted that there were 5 to 50 people who had gathered in front of the house. However, none of them is forthcoming as the prosecution witness. The learned Sessions Judge has dealt with a similar contention saying that if at all it is the lapse of the Investigating Officer, the prosecution cannot suffer. In our view, there is a stray admission at the end of cross examination by P.W.9 who is a child witness about the gathering of people in front of the house. The entire prosecution evidence has to be read as a whole with the attending circumstances. It is not unusual, in a given case, if the people from the locality do not come forward either to intervene or as witnesses. The question always is one of fact. As such, the absence of an independent witness has to be considered in the context of the positive evidence of the eye witnesses. In our considered view, the evidence of P.W.1, P.W.7 and P.W.8 on the point of the involvement of the Appellant as a whole, is reliable and does not suffer from any infirmity. In so far as P.W.1 is concerned, it was contended that in the initial complaint she stated that deceased was at the house when the assailants came. However, in the supplementary statement, she stated that the deceased had gone out and came running followed by the assailants. In the cross examination of P.W.1, certain omissions have been brought on record namely – (i) Ratan was not in house (ii) Ratan pushed the door and entered the house (iii) All accused entered behind him (iv) P.W.1 herself alongwith her husband and

son Rahul and grand daughter were watching T.V. (v) Vikas, Sachin and Rohit lifted the daughter Rutuja and threw her on the ground. These omissions / improvements have rightly been found to be not material by the learned Sessions Judge, sufficient to discard the evidence of P.W.1. At this stage, it is significant to note that the deceased had sustained injuries on the head and the upper part of the body and particularly the injury on the back side of head is attributed by assault by the Appellant by scythe. Thus, the medical evidence also supports the eye witness account of the incident as stated by the prosecution witnesses.

Evidence as to Discovery / Recovery

25. We may now consider one or two circumstances which further lend credence to the prosecution case. The Appellant was arrested on the next date of the incident i.e. on 30 October 2008 and his clothes were seized which were having blood stains. According to the Investigating officer, the Appellant while in custody had given the voluntary statement offering to discover the weapon. According to the prosecution, on 2 March 2008 the Appellant while in custody, had given a voluntary statement offering to produce the weapon. Accordingly, the memorandum (Exh.92) was recorded. The Appellant then led the police and the panchas to his house at Sukhdev Nagar and produced the scythe, iron rod and one wooden log, concealed under the hip of cement sheets behind his house. There were

blood stains on these articles which are Articles C1, C2 and C3 which were accordingly seized under panchanama Exh.93. Although, the panch witnesses P.W.4 Deepak Unawane and P.W.5 Santosh Donde had turned hostile, the memorandum panchanama is deposed to and proved by the Investigating Officer P.W.13 PI Ramakant More. The Investigating Officer had also seized the clothes of Fakira which were having blood stains. All these articles were sent for the report of chemical analyzer. In this case, ABO grouping of the blood sample of the deceased was inconclusive. However, the clothes of Fakira, clothes of the Appellant as well as the scythe were found to be having blood stains with ABO grouping as 'B'. The wooden log was also found to be having blood stains of group 'B' while the ABO grouping of blood stains on the iron rod was inconclusive. Although ABO grouping of the deceased was inconclusive, the fact remains that the blood stains on the clothes of Fakira (father of the deceased), the clothes of the Appellant as well as the scythe were found to be having blood stains of 'B' group.

Defence of the Appellant

26. Coming to the defence of the Appellant, it was generally suggested that the deceased was having illicit relations with the wife of Jainath and this was the reason why Jainath has committed the murder of Ratan. It was also contended that

shortly before the incident i.e. on 19 October 2008, there was an incident in which the father of the Appellant was allegedly assaulted by the deceased and his brother in respect of which the Appellant had lodged a report. It is contended that this is also the reason for false implication. The prosecution witnesses have consistently denied that Jainath was suspecting that deceased had illicit relations with his wife. An attempt is made to create suspicion in this regard saying that Jainath is not shown to be in the picture at any point of time and P.W.1 claimed that he returned following morning at 6.00 a.m. The Investigating Officer was also cross examined in this regard. P.W.13 stated that he had recorded the statement of Jainath on 8 November 2008. It was suggested that it was revealed in the investigation that Jainath was at Nashik at the time of incident and the investigation also revealed that it was Jainath who had committed the murder of Ratan, which is denied by the Investigating Officer. In our considered view, the defence as stated cannot be accepted. In so far as the incident which had happened on 19 October 2008 is concerned, it is trite that enmity is a double edged weapon. Although enmity can give rise to a false implication, it can also be a reason, intention and motive behind the assault.

27. On behalf of the Appellant reliance is placed on the decision in the case of (i) *Sher Singh and others Vs. The State of*

*Uttar Pradesh*¹, (ii) *Labh Singh and Others Vs. State of Punjab*² and (iii) *Lal Mandi Vs. State of W.B.*³ in order to submit that High Court in an Appeal can independently appreciate the evidence and come to its own conclusion. The High Court in a criminal appeal can accept the evidence, rejected by the learned Sessions Judge and reject the evidence accepted by him except where the learned Sessions Judge relies upon his observation about the demeanor of the particular witness. This is because demeanor is something which only the Sessions Court can have the opportunity to see and observe. There is no manner of doubt that in an Appeal, this Court can independently assess, appreciate and weigh the evidence and the probabilities so as to come to its own conclusion upon the prosecution evidence. In the present case, we have carefully gone through the prosecution evidence and we find that the evidence of the eye witnesses on the point of assault by the Appellant is consistent and one inspiring confidence. That is also corroborated by the circumstance about discovery and the medical evidence. In the result, the Appeal is hereby dismissed. The conviction and the sentence awarded to the Appellant stands confirmed.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)

¹ AIR 1967 Supreme Court 1412

² (1976) 1 SCC 181

³ (1995) 3 SCC 603