

Sl. No. 1

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A 694 of 2012
With
CRAN 3 of 2021
Mainuddin Sk and Anr.
Vs.
State of West Bengal

For the Appellant : Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Mr. Firdus Samim
Mr. Santanu Maji

For the State : Mr. Neguive Ahmed, Learned APP
Mr. Zareen N. Khan
Ms. Amita Gaur

Heard on : 11.08.2022

Judgment on : 23.12.2022

Ananya Bandyopadhyay, J.:-

This appeal is preferred against the judgment and order of conviction dated 25.09.2012 and 26.09.2012 passed by the Ld. Additional District and Sessions Judge, FTC, 2, Rampurhat in Sessions Trial No. 01 (Sep)/2009 arising out of Sessions Case No. 65 of 2009 convicting the appellants under Section 302/34

of the Indian Penal Code sentencing them to suffer imprisonment for life and to pay a fine of Rs. 4000/- each in default to undergo imprisonment for another one year each.

The prosecution case emanated from a complaint dated 05.06.2008 wherein the complainant Abul Basar stated on 05.06.2008 at about 8 am his son the deceased Fazlay Rahaman had been to the saloon of Krishno Pramanik at the bus stop of Harishpur at about 8.30 am. While his son was sitting on the chair at the saloon for shaving Fakir Mahammad, son of late Hikmat Sk, Mominur Sk, S/o Monirudding Sk, Mosibul Sk, S/o Moniruddin Sk, Moniruddin Sk, S/o Fakir Mahammad, Sairuddin Sk, S/o Fakir Mahammad, Kulfuddin Sk, S/o Fakir Mahammad of their village had entered the said saloon caught hold of his son forcibly according to their previous plan out of grievance. Mainuddin Sk, S/o Fakir Mahammad and Halimuddin Sk@ Kalu hit the backside of his son with a big sharp knife kept on their head as a result his son sustained bleeding injury.

The above named person left the shop when the local people raised hue and cry, the appellants left the spot brandishing the weapon claiming the victim to be dead. He further stated he had put his signature on the complaint which was drafted under his instruction and the contents thereon was read over to him and knowing it to be true he put his signature. He further prayed for necessary steps to be taken against the aforesaid persons on proper investigation and punished them accordingly.

Based on the written complaint Murarai PS case no. 78/2008 dated 05.06.2008 under Section 302/34 was instituted against the appellants. The formal FIR was registered against 8 accused persons on 05.06.2008 and the investigation was initiated which ended in the submission of chargesheet against all the 8 FIR named accused persons under Section 302/34 of IPC. Charge was framed under Section 302/34 IPC against all the FIR named accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution cited 13 witnesses and exhibited certain documents in order to establish its case.

The Ld. Advocate for the appellant stated that the Ld. Trial Judge failed to consider the infirmities in the prosecution evidence. Majority of the prosecution witnesses had not seen the incident and their evidence was based on hearsay. The sole eyewitness i.e. PW 2 suffered from severe contradictions and embellishments to be discredited. The prosecution witnesses could not establish the essential ingredients to comprise the offence punishable under Section 302/34 IPC. The evidence of the prosecution witnesses was merely speculative, based on hearsay and suspicion. The evidence of the sole eyewitness was not corroborated by the evidence of any other witness. Vital witnesses have not been examined. The Ld. Trial Court had ignored at the antecedents of the deceased and the fact of enmity and rivalry which existed between the appellants and the victim. The Ld. Trial Court believed the concocted story of the prosecution since the FIR was registered on 05.06.2008

and the matter was transmitted to the Ld. Magistrate only on 09.06.2008. The alleged incident took place at a very congested and busy market place and the Investigating Officer without citing any other local people relied on the testimony of the eyewitness believing it to be true from the very inception and did not produce any further corroborative evidence. There had been several lapses on the part of the Investigating Officer who did not produce the Maruti car hired for taking the deadbody of the victim to the hospital or its occupants or driver or owner. Moreover, the earth, hair cuttings, blood stained garments were not collected to identify the place of occurrence. The seizure of the offending weapon was illegal and manufactured since the Investigating Officer obtained the offending weapon not on the first search but after several searches. He did not put forth any independent witness to sign the seizure list apart from the family members of the deceased. Moreover, the family members of the deceased, the post occurrence witnesses, the eye witness supported the prosecution case out of ulterior motive. The seizure list was prepared in a perfunctory manner which did not bear the signature of the accused or the local persons.

The seized offending weapon did not match the weapon exhibited in the Court. The prior antecedent of the victim was not enquired or investigated in the event of enmity between the parties regarding a case of rape pending against the deceased for commission of rape against the wife of the appellant no.1. The evidence of the ocular witness as well as the medical witness did not corroborate. There was no material to substantiate any motive to implicate the

appellants. The other co-accused similarly circumstanced had been acquitted except the present appellants. The appellants too have been falsely implicated and deserve to be acquitted and, therefore, the appeal should be allowed.

The Ld. Advocate for the State submitted that the evidence of the eye-witness Krishno Pramanik was impartial and trustworthy. Moreover, the same corroborated with the medical evidence. Apart from lapses on the part of the Investigating Officer if any, the evidence of the sole eye-witness to have seen the appellants to inflict the injuries upon the deceased elaborately conformed to the nature of injuries detected by the Post Mortem Doctor as described in the post mortem report. There was no reason or occasion for the said eye-witness Krishno Pramanik to falsely implicate the appellants and therefore, his evidence is primary and ultimate for the appellants to get indicted.

A circumspection of the evidence adduced by the prosecution witnesses reveals that PW 1 Abul Basar alias Basiruddin Sk, the father of the deceased stated that the time and the date of his son's murder at the "*hair cutting saloon*" of Krishno Pramanik (PW 2). The deceased Fazle Rahaman had been to the aforesaid saloon for shaving his head and was stabbed by a knife on his back by the appellant Mainuddin being caught by Halinuddin @ Kalu. The said knife which pierced through the chest of the deceased, was big in size with a wooden butt. The appellant Mainuddin Sk. stabbed the deceased on the left side of his chest as well as on his lower abdomen. PW 1 was in the market at Harishpur. Hearing the clamour he came out of the market to know there was

a murder. He saw the appellant Mainuddin running with a knife in his hand accompanied with Halimuddin, uttering to have accomplished his job, followed by Faquir Mohammad, Mominur Sk., Mosibul Sk., Moniruddin Sk., Sairuddin Sk., Nulfuddin Sk. Thereafter he learnt that his son was murdered and he reached the aforesaid saloon of PW 2 and found his injured son who on his query replied that Halimuddin Sk. @ Kalu caught hold of him and Mainuddin Sk. stabbed him with a knife. Accused Mosibul Sk. stood at the entrance of the said saloon. The injured victim was taken to Murarai Rural Hospital by a Maruti car. PW 1 his son Mur Salim Sk, Tauhid Sk., Furu Sk. also reached the Hospital. On examination by the Medical Officer at the said hospital his son was declared dead. Police arrived at the hospital and prepared the inquest report which bore his signature marked as Ext. 1/1. PW 1 thereafter lodged a written complaint written by Md. Jakir Hossain according to his version in his presence. PW 1 identified the handwriting of Md. Jakir Hossain and the written complaint was marked as Ext. 2.

During his cross-examination PW 1 inter alia stated there was no suppression or falsity of fact in the written complaint. He further stated that a police case has been initiated against the deceased Fazle Sk. on accusation of rape.

PW 2 Krishno Pramanik a barber had a "hair cutting saloon" at a rented premise. On the date of the incident at about 8 to 8.30 am he attended the deceased Fazle Rahaman as his customer who was his known co-villager of the

village Nayagram. Mainuddin and Kalu Sk entered his saloon and pushed him aside. Kalu caught hold of Fazle Rahaman while Mainuddin Sk stabbed him on the back of his left shoulder with a knife. Further administered several blows on his chest, near the nose beneath the left eyes and on the lower part of the abdomen with the said knife. The victim Fazle Rahaman fell on the ground and the appellants left the place. Thereafter, the victim's father, brother and other close relatives came to his saloon. The victim did not die instantly. He was taken to Murarai Rural Hospital by his father and other close relatives. Many people gathered at his saloon having learnt about the murder. PW 2 narrated the entire incident to the father, brother and other close relatives of the victim. He also narrated the incident to the Police Officer at the Murarai PS as well as to the Ld. Magistrate at Rampurhat Court. The signature of PW 2 was marked as Ext. 3/1, 3/2 and 3/3 on his statement recorded under Section 164 Cr.P.C by the Ld. Judicial Magistrate in Rampurhat Court. He further identified the offending weapon i.e. the knife with sharp edge and wooden butt produced in Court marked as MAT Ext. I.

During his cross-examination, PW 2 stated to have been "*badly engaged in managing the affairs inside*" his saloon and could not ascertain the direction in which the accused went as he trembled with fear at the site of the crime committed in his presence. PW 2 thereafter, screamed as the victim was bleeding profusely with stab injuries fell on the ground. He further stated the victim lay on the ground of his saloon for 15-20 minutes as the crowd gathered. The "*Ganji*", towel of PW 2 and the wearing apparel of the deceased

were stained with blood. PW 2 further stated the Police Officer had seen the blood line on the ground when he visited at the place of occurrence. PW 2 did not show the blood stained "*Ganji*" and his towel to the Police Officer. He further stated to have seen the offending weapon on the date of the occurrence and which was similar in shape, size and appearance as that of the weapon produced on the date of his deposition.

PW 3 Santipada Pal, a Constable 403 at the Murarai PS identified his signature in carbon impression on the dead body challan marked as ext. 4/1. He also identified his signature on the seizure list showing seizure of the wearing apparels of the deceased marked ext. 5/1. The seized "*check lungi*" was identified by PW 3 marked as MAT Ext. II, however, the printed "*sadow genji*" of the deceased seized by the Police Officer was not produced before the Court.

During his cross-examination he stated a printed "*sadow genji*", a light blue coloured full sleeve shirt was produced before the Court.

PW 4 Md. Zakir Hossain stated to have written the complaint as per the version of Abul Basar on 05.06.2008 which was read over and explained to him and considering the contents of the complaint to be correct, PW 1 signed the same. PW 4 identified his signature along with his father's name on the document marked as Ext. 2/1.

PW 5 Md. Tauhid Sk stated that Fazle Rahaman was murdered on 05.06.2008 at the saloon of PW 2. He was on his motor cycle when he saw several people rushing towards the saloon of PW 2. Reaching the saloon of PW

2 he saw the deadbody of Fazle Rahaman with bleeding injuries in a chamber of a quack doctor. He heard from PW 2 and others that Kalu Sk and Mainuddin Sk murdered Fazle Rahaman. The deadbody of the Fazle Rahaman was taken to the hospital by a Maruti van by him along with Basiruddin, Moorasalim and Furu Sk. After the deadbody was taken to the hospital at Murarai, the attending doctor declared Fazle Rahaman dead. Police arrived at the hospital and prepared an inquest report and the carbon copy of the inquest report bearing the carbon impression of his signature was marked Ext.1/2.

During his cross-examination he stated to have gone to the chamber to the quack doctor situated near the saloon of PW 2 who did not extend or give any medical treatment to the victim. PW 4 could not enter the chamber of the quack doctor being crowded. PW 4 was not examined by the Police Officer in connection with this case. The deceased victim was the son of his maternal aunt. PW 5 stated the facts of the case for the first time before the Court.

PW 6 Furu Sk saw a group of people running all over on the date of the incident. He heard a murder been committed at the saloon of PW 2. He saw Mainuddin and Kalu to run after committing the murder. Mainuddin was running with a knife in his hand. He saw the deadbody of Fazle Rahaman lying inside the saloon of PW 2 which was taken to Murarai Hospital by a Maruti van by Basiruddin, Salimuddin, Tauhid Sk and two to three other persons.

During his cross-examination PW 6 stated the victim was his cousin's son. On the date of the incident he was present at the Bus Stand of Harishpur

at the relevant point of time. He further stated to find the deadbody of the victim in excessive bleeding. PW 6 along with many people carried out the deadbody from the saloon. His hands and wearing apparels were stained with the blood of the victim. The deadbody of Fazle Rahaman was directly taken to the hospital. He further stated nobody dared to chase Mainuddin and Kalu on their way towards Harishpur Hat.

PW 7 Dr. S. Poddar conducted the post mortem examination of the deceased Sk Fazle Rahaman and found the following injuries:

“1. One penetrating injury measuring 1” long into 1/4” wide and 6” deep, placed vertically over posterior auxillary line of left axilla, just 2” below axillary pit with a direction forward, inwards and medially in the muscle plain.

2. Fracture of sterna end of left clavicle with local haemotomae.

3. One lacerated wound 1/2” X 1/2” X bone deep placed obliquely below lower lid.

4. Extravassation of blood measuring 4” X 3” X muscle deep over upper part anterior chest wall.

5. Extravassation of blood measuring 3” X 2” X bone deep placed vertically over left frontal eminence. On repeated wash and clearing, shows a linear crack fracture of frontal bone measuring 3” X hair line X both tables of frontal bones.

6. Subdural intra cranial haemorrhage spread diffusely over both cerebral haemisphere.”

In the PM examination report marked as Ext. 6 PW 7 mentioned the death was due to the effects of above noted injuries which was ante mortem and homicidal in nature.

PW 8 Latif Sk rushed to the saloon of PW 2 hearing an incident of murder and found that Fazle Rahaman was murdered. At that time, Mainuddin armed with a knife along with Kalu were fleeing away. Mainuddin threatened to kill anybody who tried to catch him.

PW 9 Md. Abdul Hakim stated on 13.10.2008 at about 10 pm police officer accompanied by a constable and other members of the force went to the house of Mainuddin along with Mainuddin and Kalu. Mainuddin brought out a knife (chhora) kept under a "Taktposh" of his room situated on the east of his house. Mainuddin handed over the knife to the Police Officer stating to have committed the murder of Fazle Rahaman with the same which was seized under a seizure list at the spot. PW 9 signed the seizure list as a seizure witness and his signature was marked as Ext. 7/1. The seized knife was labelled by the Officer and he identified his signature on the carbon impression of the document marked as Ext. 8/1. He stated Moorselim had also signed the seizure list besides him. Mainuddin and Kalu refused to sign the seizure list. PW 9 identified the knife marked as Mat Ext. I, which was seized by the Officer under the seizure list.

During his cross-examination PW 9 stated on the day of murder of Fazle Rahaman the Police had been to the house of the accused persons who were absent and could not be traced by the police on search.

PW 10 SI Faizel Bin Ahmed stated to have received a written complaint of PW 1 on 05.06.2008 and identified his endorsement of receipt of the FIR under his handwriting. His signature was marked as Ext. 2/2 and the formal FIR was marked as Ext. 9.

PW 11 Moorsalim Sk stated to have heard a commotion near Harishpur Bus Stand. He went to the Place of occurrence i.e. the saloon of PW 2. On his way he saw the accused Mainuddin armed with a big knife (chhora) accused Halimuddin @ Kalu to run followed by six other persons. On reaching the saloon of PW 2 he found the deadbody of Fazle Rahaman. Fazle Rahaman was taken to Murarai Hospital where he was declared to be dead. From PW 2 he heard Mainuddin to inflict the stab injuries on Fazle Rahaman who was caught by Halimuddin @ Kalu. After the FIR was lodged Police came to their village and examined PW 11 and other available witnesses. On 13.10.2008 at about 10 to 10.30 pm police came to their village along with Mainuddin and Halimuddin Sk. Mainuddin brought out a big knife kept under a "Taktposh" inside the room of his house and handed over the same to the Police officer in his presence. He was a signatory to the seizure list depicting the seizure of the knife as a witness and his signature was marked as Ext. 7/2. He further identified the knife seized by Police Officer marked MAT Ext. I. He further

identified his signature as witness in carbon impression on the carbon copy of the inquest report marked Ext. 1/3.

During his cross-examination PW 11 stated the absence of any enmity or grudge between the accused persons prior to the date of occurrence to the incident and they were on visiting terms to each other's house.

PW 12 Tushar Kanti Mondal identified his signature on the seizure list marked as Ext. 5/2 with regard to the seizure of one printed "*sadow ganji*" and one lungi.

PW 13 Mozammel Mondal, the Investigating Officer visited the PO, drew the rough sketch map, recorded the statement of the available witnesses under Section 161 Cr.P.C. The rough sketch map prepared and signed by him along with the index was marked Ext. 10 collectively in two sheets. The wearing apparel of the deceased Fazle Rahaman at the time of his death under a seizure list entirely marked as Ext. 5 on 05.06.2008 in connection with UD Case No. 16/08 dated 05.06.2008. The seizure list concerning the seizure of the offending weapon on 13.10.2008 from the house of Mainuddin Sk was marked as Ext. 7. PW 13 identified the MAT Ext. II as well as MAT Ext. I. He stated to have examined and recorded the statement Md. Tauhid Sk on 05.06.2008 at the time of inquest and that of Mursalin Sk and Md. Abdul Hakim on 13.10.2008 at the time of seizure. He had produced PW 2 before Ld. Magistrate, Rampurhat to record his statement under Section 161 Cr.P.C. He further identified the inquest report prepared in carbon process marked as Ext.

1 and the deadbody challan in carbon process marked as Ext. 4. PW 13 collected the PM Report from the Rampurhat SD Hospital. He tried to arrest the accused persons on several occasions. However, the eight accused persons surrendered before the Ld. Court. On 22.11.2008 he submitted the chargesheet against eight accused persons under Section 302/34 of the Indian Penal Code.

PW 2 Krishno Pramanik is the sole eyewitness in the instant case, in whose presence victim Fazle Rahaman was murdered. Apart from being a sole eyewitness, PW 2 is also an independent and impartial witness. He had seen the appellants Mainuddin and Kalu Sk to enter his saloon and he was pushed aside by them. The appellant Kalu Sk restricted the movement of the victim by holding him and the appellant Mainuddin stabbed the victim by a knife on several parts of his body. The injuries sustained by the victim as described by PW 2 in his evidence corroborate with the nature of injuries stated in the PM report marked Ext. 6 as found by the PW 7 Medical Officer namely Dr. S. Poddar. Being a barber by profession several people including the victim had been his customers. The evidence on record did not reveal any instance whereby PW 2 could have been biased in his deposition. The defence could not establish any inimical relationship, or any grudge to retaliate between PW 2 and the appellants to falsely implicate them into the murder of the victim. The statement of PW 2 recorded under Section 164 Cr. P.C. marked as Ext. 3 corroborates with his deposition before the Court in entirety without an iota of deviation. The defence could not shake his evidence during cross-examination. He further identified the offending weapon i.e. the knife marked as MAT Ext. 1

to be the same weapon with which the appellant Mainuddin had stabbed the victim Fazle Rahaman. The evidence of PW 2 being impartial and independent is of credence to be believed upon. Minor contradictions on the part of PW 2 if any are negligible in view of the scary atmosphere pervading him to have witnessed the murder of a person with a sharp weapon being fearful of his life being endangered. His dreadfulness and trepidation ultimately could not prevent him from appearing before the Court twice and get his statements recorded under Section 164 Cr.P.C. as well as his evidence. His evidence was above reproach, subordination and interestedness.

Section 134 in The Indian Evidence Act, 1872

134. Number of witnesses.—No particular number of witnesses shall in any case be required for the proof of any fact.

In Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, ¹the Supreme Court, while considering the minor contradictions in the statement of the witnesses, held as under:

"5 We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed in the mental screen.

(2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

¹(1983) 3 SCC 217

(3) *The powers of observation defer from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.*

(4) *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.*

(5) *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*

(6) *Ordinarily, a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in short time span. A witness is liable to get confused or mixed up when interrogated later on.*

(7) *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."*

In the case of **Vadivelu Thevar v. State of Madras**², the Hon'ble Supreme Court has observed thus:

".....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.

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

² (1957) SCR 981

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.....”

The principles laid down in **Vadivelu Thevar case (supra)** have stood the test of time and reliance upon the same has been elucidated in many other decisions like,

a. Namdeo vs State Of Maharashtra³;

"It is not seldom that a crime had 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. The Court also stated; 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

³ (2007) 14 SCC 150

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.

b. Shivaji Sahebrao Bobade v. State of Maharashtra⁴,

c. Anil Phukan v. State of Assam⁵,

In my opinion the evidence of PW 2 is wholly reliable based on its truthfulness, unbiasedness and quality. Reliance on such trustworthy evidence will exclusively outweigh any other evidence including lack of corroborative evidence

PW 1, PW 5, PW 6, PW 9 and PW 11 were the relatives of the deceased Fazle Rahaman as well as the post occurrence witnesses. The Ld. Advocate for the appellants submitted the failure on the part of the prosecution to cite a single witness present in the locality on the relevant date and time when the incident took place. The Ld. Advocate for the appellant further submitted that PW 1, PW 5, PW 6, PW 9 and PW 11 as family members, relatives and interested witnesses concocted the entire incident to falsely inculcate the appellants into the offence of murder. In a congested market place apart from these witnesses no one else saw them running away threatening others of their certainty of work. Such fabrication should be discredited which otherwise

⁴ (1973) 2 SCC 793

⁵ (1993) 3 SCC 282 : JT 1993 (2) SC 290

caused prejudice to the appellants. The evidence of the aforesaid persons being interested should be disbelieved and discarded. The victim Fazle Rahaman was accused in a criminal case of committing rape upon the wife of appellant no. 1 and out of revenge of the victim to be falsely implicated in a criminal case of rape, the appellants had been indicted with ulterior motive.

PW 1, PW 5, PW 6, PW 9 and PW 11 in unison had stated post occurrence incident of the present appellants to escape from the place of occurrence and had seen the injured victim being removed from the saloon of PW 2 to the hospital. The defence could not shake the evidence of the aforesaid witnesses during cross-examination and therefore, their evidence cannot be disregarded merely because of being the relatives of the victim. The related witnesses would not allow the real culprit to escape and falsely implicate an innocent person.

In the case of **Rajesh Kumar vs. State of Himachal Pradesh**⁶, the Hon'ble Supreme court observed that,

“18. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard.”

In the case of **State of Uttar Pradesh vs. Kishanpal and others**⁷, the Hon'ble Supreme Court observed that,

⁶ (2008) 15 SCC 705

⁷ (2008) 16 SCC 73

17. The plea of "interested witness" "related witness" has been succinctly explained by this Court in [State of Rajasthan vs. Smt. Kalki & Anr.](#), (1981) 2 SCC 752. The following conclusion in paragraph 7 is relevant:

"7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

From the above it is clear that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. A witness, who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'.....

19) It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected.....

20) It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement....."

In the case of **Anil Rai vs. State of Bihar**⁸ the Hon'ble Supreme Court observed that,

*“The admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinise their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity.
.....*

The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye-witnesses, the deposition of whom is otherwise consistent and convincing.”

Therefore, it is well settled if disputes exists between the parties and if in case, the prosecution witnesses are acrimonious and on inimical terms with the appellants, their evidence need not be discarded. The prosecution witnesses viz. PW 1 Abul Basar did mention the victim to have been implicated in many criminal cases but did not explicitly denote any direct act on his part to infuriate the appellants to subserve their motive of murdering him. If at all there is an existence of enmity between the parties the evidence of PW 1 Abul Basar in support of the continuity of the incident after its occurrence witnessed by PW 2 is worthy of credence.

⁸ (2001) 7 SCC 318

The Ld. Advocate for the appellants argued the Investigating Officer did not investigate the prior antecedents of the deceased Fazle Rahaman and falsely submitted chargesheet against the appellants who were not present at the spot. The evidence of PW 2 cannot be relied upon since the place of occurrence could not be established by the investigating Officer. PW 2 deposed the deceased has fallen on the ground with excessive bleeding and the garments of PW 2 were stained with blood, however, Police did not seize any such garments or collect blood samples from the floor of the hair cutting saloon or any pieces of hair in such a saloon or any other material or even earth to substantiate the place of occurrence.

In **C. Muniappan v. State of Tamil Nadu**⁹, the Hon'ble Supreme Court observed,

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

⁹ **2010 (9) SCC 567**

In **Dayal Singh v State of Uttaranchal**; ¹⁰, while reiterating the principles rendered in *C. Muniappan (supra)*, the Apex Court held thus:

"18. ... Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. ..."

In Gajoo v State of Uttrakhand; 2012 (9) SCC 532, while reiterating the same principle again, the Apex Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttranchal while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36) "27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P., this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab, held: (SCC p. 657, para 5) "5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'

There has been several lapses on the part of the prosecution. The blood samples of the victim were not collected, the wearing apparels or the “*genji*” or towel of PW 2 claimed to have been stained with the blood of the victim were not seized. PW 13 deposed his inability to examine any of the local witnesses under Section 161 Cr.P.C. present at the place of occurrence and solely banked

¹⁰ **2012 (8) SCC 263**

upon the statement of PW 2. The seizure of the offending weapon does not bear the signature of the appellant no. 1 nor any memorandum of arrest mentioning date of arrest of the appellants is on record.

Where the evidence of solitary eye witness was corroborated by medical evidence, conviction of the accused for offence under Section 302/34 IPC was held proper as observed by the Hon'ble Supreme Court in **Parappa Gurubassappa Asangi vs. State of Karnataka.**¹¹

However, the lapses on the part of the prosecution are not fatal in presence creditworthy evidence of the eyewitness i.e. PW 2 which is a piece of the direct evidence fortified by the medical evidence.

The prosecution in view of the above discussion and observation has successfully established its case and the appeal is accordingly dismissed.

Connected applications, if any, also disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

¹¹ (2007)10 SCC 361

The lower court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)