

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

CRIMINAL APPEAL NO. 1094 OF 2013

1. Deoram Dhondu FasaleAppellants/accused
2. Parvatabai Deoram Fasale

Both R/o. Gangamhalungi Shivar,
Tal & Dist : Nashik.

Versus

State of MaharashtraRespondent
(through Public Prosecutor,
High Court of Bombay)

WITH

CRIMINAL APPEAL NO. 1062 OF 2013

Vishnu Deoram FasaleAppellant/accused
R/o. Gangamhalungi Shivar,
Tal & Dist : Nashik.

Versus

State of MaharashtraRespondent
(through Public Prosecutor,
High Court of Bombay)

WITH

CRIMINAL APPEAL NO. 1093 OF 2013

Pandharinath Deoram FasaleAppellant
R/o. Gangamhalungi Shivar,
Tal & Dist : Nashik

Versus

State of MaharashtraRespondent
(through Public Prosecutor,
High Court of Bombay)

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Mr. Harshad E. Palwe a/w Mr. Mayur Thorat, Mr. Sudip Mullick for the
Appellants.

Mr. H. J. Dedhia, APP for the Respondent-State.

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**CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.**

RESERVED ON : 17th JUNE, 2022

PRONOUNCED ON : 19th AUGUST, 2022

JUDGMENT (PER SHRIKANT D. KULKARNI, J) :

1. These Appeals are directed against the impugned Judgment and Order of conviction rendered by the Additional Sessions Judge-2, Nashik in Sessions Case No.113 of 2012.
2. Original Accused No.1 & 5 namely Deoram Dhondur Fasale and Parwatabai Deoram Fasale have preferred Criminal Appeal No.1094 of 2013 and original Accused No.2 Vishnu Deoram Fasale has preferred Criminal Appeal No.1062 of 2013 and original Accused no.3 Pandharinath Deoram Fasale has preferred Criminal Appeal No.1093 of 2013. These Appeals are heard together and disposed of by common Judgment and order.
3. The prosecution case in narrow compass is as under;
 - i) One Sunita Nivrutti Fasale is resident of Gangamhalungi Shivar, Taluka and District Nashik. She was residing alongwith her husband, two daughters and one son, at outskirts of village Gangamhalungi. They have one field in the Gangamhalungi Shivar. They were cultivating jointly. The Appellants / accused

are residing in the adjacent field just across the river. Since long time, the dispute was going on between the family of Sunita on one side and accused on other side on account of cultivation of land of her cousin mother-in-law under a contract.

- ii) The incident took place on 20th September, 2011 about 11.30 am, when Sunita Fasale (first informant) alongwith her husband Nivrutti Chandar Fasale, father-in-law Chandar and mother-in-law Hausabai and brother-in-law Dattu were working in their field. The Appellants/accused after forming an unlawful assembly armed with weapons like iron rods, sickle, axe, and wooden log, rushed into the field of Sunita. The Appellants/accused started abusing them, as to why they had taken field of cousin mother-in-law for cultivation. The Appellants/accused threatened Sunita and her family members with their lives. The Appellant / accused Vishnu assaulted Dattu by means of sickle on his forehead and back side of head and ribs by giving series of blows. He died on the spot. The Appellant/accused Pandharinath also assaulted Nivrutti by means of an axe and caused serious injuries and attempted to kill him. The Appellant/accused Deoram assaulted Chandar by means of sickle and caused grievous injuries. Sunita alongwith her mother-in-law tried to intervene in the quarrel

when Ganesh (juvenile conflict in law) assaulted them by using iron rod and caused injuries. Another accused Parvatibai also assaulted them by using wooden log and threatened to kill them.

- iii) Any how Sunita and her husband Nivrutti escaped from the spot of incident and rushed towards Village. On the way, they met with some villagers and they again came back to the spot of incident with those villagers. The Appellants/accused alleged to have threatened them with dire consequences by showing weapons. Sunita went to the Harsul Police Station and lodged FIR about the incident. On that basis, Crime No.51 of 2011 came to be registered at Harsul Police Station for the offences punishable under Sections 302, 307, 326, 324, 323, 143, 147, 148, 149, 504, 506 read with 149 of Indian Penal Code, and under Section 37(1)(3) read with Section 135 of the Bombay Police Act (Now Maharashtra Police Act).

4. The investigation was entrusted to Mr. Rajendra Patil, API. The investigating officer rushed to the spot of incident and prepared panchanama of the scene of the offence and seized chilli powder and other articles from the spot. Investigating officer Mr. Rajendra Patil recorded statements of witnesses. The accused came to be arrested. The weapons allegedly used in the commission of offence were recovered. The

muddemmal articles were sent to Chemical Analyzer for analysis and report. Autopsy was conducted on dead body of Dhattu Chander Fasale. Investigating Officer found sufficient incriminating evidence against the Appellants/accused and their accomplice. The investigation conducted by API Rajendra Patil culminated in sending charge-sheet against the Appellants/accused and their accomplice for the offences punishable under Sections 302, 307, 326, 324, 323, 143, 147, 148, 149, 504, 506 read with 149 of Indian Penal Code, as well as 37(1)(3) read with 135 of the Bombay Police Act.

5. The case was committed to the Sessions Court at Nashik for trial and it was assigned to the Additional Sessions Judge, Nashik. Learned Additional Sessions Judge framed charges against the Appellants/accused and their accomplice for the aforesaid offences. They denied their complicity in the commission of the above said alleged offences. The trial was commenced before the Additional Sessions Judge at Nashik. The prosecution machinery has examined in all 10 witnesses including four eye witnesses, investigating officer and medical officer, and closed its evidence.

6. Learned Additional Sessions Judge-2, Nashik, after appreciating evidence on record and considering the argument advanced on behalf of the prosecution, and the defence side was pleased to hold the present

Appellants/accused and their accomplice guilty under various penal Sections of Indian Penal Code including offence of murder and accordingly awarded sentence described in the operative order of the impugned judgment.

7. In the above backdrop, original accused No.1 to 3 and 5 have preferred their respective Appeals and questioned the legality and correctness of the conviction order passed by the Additional Sessions Judge-2, Nashik.

8. Heard Mr. Harshad E. Palwe a/w Mr. Mayur Thorat, Mr. Sudip Mullick, learned counsel for the respective Appellants and Mr. H. J. Dedhia, learned APP for the Respondent-State.

9. Perused the original Record and Proceedings of Sessions Case No.113 of 2012 with able assistance of learned counsel for the Appellants and learned APP for the Respondent-State.

10. Mr. Harshad Palwe, learned counsel for the Appellants took us through the evidence of prosecution witnesses. He has been fair enough to admit that the case is based on direct evidence. He is not even disputing the presence of the Appellants/accused at the scene of the offence. He went ahead and admitted that there was rivalry between the family of the first informant and the Appellants/accused on account of land dispute. He vehemently submitted that genesis of the incident is suppressed by the

prosecution Agency. Mr. Palwe relied upon the citation in case of ***Lakshmi Singh and ors Vs. State of Bihar***¹. He submitted that the prosecution has not explained about the injuries sustained by accused-Deoram. It is an important circumstance not explained by the investigation officer. All the witnesses examined by the prosecution Agency are brought up witnesses. The evidence of eyewitnesses is not trust-worthy. They are interested witnesses. They are giving the different time of incident. As such, incident itself, is under cloud. Motive is not proved against the Appellants/accused. Mr. Harshad Palwe submitted that the investigation conducted by API Rajendra Patil is not impartial.

11. Mr. Harshad Palwe invited our attention to the testimony of PW1 Sunita Navrutti Fasale (Exh.23). He pointed out that alleged incident took place at 12.00 noon according to her narration, however, the evidence of other alleged eyewitnesses namely PW5 Chander Fasale, PW6 Nivrutti Fasale, and PW7 Murlidhar Fasale had given different time of incident. As such the incident itself is under serious cloud of suspicion. He submitted that the evidence of the first informant who is posed as an eyewitness is not corroborated with other eyewitnesses. Medical evidence is also not supporting the prosecution case. Mr. Palwe placed his reliance in case of ***Mahadeo Kundalik Vaidya and others Vs. State of Maharashtra***² in support of his submissions.

1 AIR 1976 S.C. 2263

2 2001 CIR. L.J. 4306 (Bombay)

12. He further invited our attention to the evidence of PW3 Nivrutti Fasale, who happened to be a panch witness on disclosure statement given by Vishnu (Accused 2) and the alleged weapon recovered at his instance. He submitted that the said recovery of weapon at the instance of Vishnu (Accused 2) is not reliable. Mr. Harshad Palwe further invited our attention to the testimony of PW7 Murlidhar Fasale who is one more eyewitness. He pointed that according to the prosecution story, the wife of Pandhari alleged to have thrown chilli powder in the eyes of the first informant and other eyewitnesses. But testimony of PW7 Murlidhar Fasale who is an eyewitness, is silent about such throwing of chilli powder in the eyes of the first informant and other eyewitnesses. He further submitted that the prosecution story is highly exaggerated. Mr. Harshad Palwe submitted that the learned Additional Sessions Judge has committed an error while appreciating evidence of prosecution witnesses and arrived at incorrect conclusion holding that the Appellants/accused guilty of offence of murder and other offences under Indian Penal Code. He, therefore, urged to quash and set aside the impugned Judgment and order of conviction passed by the Additional Sessions Judge and prayed for acquittal of the Appellants/accused.

13. Per contra, Mr. H. J. Dedhia, learned APP appearing for the Respondent-State vehemently submitted that the case is based on direct

evidence. There are four eyewitnesses to the incident, out of them PW7 Murlidhar Fasale is an independent eyewitness. He submitted that there may be variation about time of incident, but the prosecution has proved the offence beyond reasonable doubt. The incident had taken place in the field of the first informant around 11.00 in the morning. He pointed out the cross-examination of PW5 Chander Fasale an another eyewitness, and submitted that the Appellant/accused after chasing the deceased came to the field. He submitted that the Appellant/accused formed an unlawful assembly armed with weapons and with common object made attack on deceased Dattu Fasale and the family members of the first informant. Soon after the incident, criminal law was put in motion by filing the FIR with the Police Station.

14. Mr. Dedhia, learned APP invited out attention to the evidence of the first informant and other eyewitnesses namely PW5 Chander Fasale, PW6 Nivrutti Fasale and PW7 Murlidhar Fasale. He pointed that all these eyewitnesses have categorically stated about the incident throwing light on the participation and involvement of the Appellants/accused in committing the murder of Dattu Fasale (since deceased). He also invited our attention to the medical evidence and the cause of death. He submitted that medical evidence is supporting to the prosecution case. The injury certificates of the eyewitnesses which are on record also

established that they sustained injuries in the incident and supporting their respective testimony. Mr. Dedhia, learned APP forcefully submitted that the prosecution has duly proved the charges leveled against the Appellants/accused beyond reasonable doubt by taking aid of the sufficient evidence. There was enmity between the family members of the first informant and the Appellants/accused on account of land and it was the motive to commit the murder of Dattu and causing injuries to the eyewitnesses. He submitted that the learned Additional Sessions Judge has rightly appreciated the evidence of prosecution witnesses and arrived at correct conclusion. He submitted that there is no perversity in the findings recorded by the Additional Sessions Judge. He, therefore, urged to confirm the impugned order of conviction and sentence awarded by the Additional Sessions Judge against respective Appellants/accused. He submitted that there is no merit in the Appeal and same is liable to be dismissed.

15. We have considered the submissions of Mr. Harshad Palwe, learned counsel for the Appellants/accused and Mr. H. J. Dedhia, learned APP for the Respondent-State. We have also gone through the original record and proceedings of the Sessions trial with able assistance of the learned counsel for the Appellants/accused and learned APP for the Respondent-State. The prosecution machinery has examined in all 9

witnesses to bring home the guilt of the accused which can be classified as under;

Sr.	Prosecution Witness	Name	Exhibit
1	PW1	Sunita Fasale (first informant and eye witness)	Exh.22
2	PW2	Shridhar Fasale (panch witness on inquest panchnama)	Exh.24
3	PW3	Nivrutti Fasale (panch witness on seizure of clothes and disclosure statement given by accused- Vishnu Fasale)	Exh.26
4	PW4	Raoji Fasale (panch witness at the scene of offence)	Exh.29
5	PW5	Chander Fasale (injured and eye witness)	Exh.31
6	PW6	Nivrutti Fasale (injured and another eye witness)	Exh.32
7	PW7	Murlidhar Fasale (injured and another eye witness)	Exh.33
8	PW8	Dr. Sandeep Kapse (medical officer, Civil Hospital, Nashik)	Exh.34
9	PW9	Dr. Rajendra Patil (Medical officer who had conducted post mortem on dead body of Dattu Chander Fasale)	Exh.38

Apart from above referred stock of oral evidence, the prosecution agency has pressed into service the following stock of documentary evidence;

1	FIR	Exhibit 23
2	Inquest panch	Exhibit 24
3	Seizure of clothes of deceased	Exhibit 27
4	Disclosure statement of accused Vishnu and recovery of weapon	Exhibit 28
5	Panchanama of the scene of offence	Exhibit 30
6	Injury certificate of PW3 Nivrutti Fasale	Exhibit 35
7	Injury certificate of PW1 Sunita Fasale	Exhibit 36
8	Injury certificate of PW5 Cander Fasale	Exhibit 37
9	Postmortem report	Exhibit 39
10	Cause of death certificate	Exhibit 41

16. It may not be out of place to mention here that though the learned Additional Sessions Judge has shown names of six accused persons in the title page of the judgment, Ganesh Deoram Fasale (no.4) is a juvenile in conflict with law and was not tried before the Additional Sessions Judge, Nashik. According to the charge framed by the Additional Sessions Judge, the following five accused were tried and convicted by the Additional Sessions Judge;

Sr.	Name of the accused
1	Deoram Dhondur Fasale, Age 50 yrs
2	Vishnu Deoram Fasale, Age 22 yrs
3	Pandharinath Deoram Fasale, Age 23 yrs
4	Parwatabai Pnadharnath Fasale, Age 19 yrs
5	Parwatabai Deoram Fasale, Age 46 yrs

Accordingly, serial number/sequence of accused is changed and accordingly referred in the remaining part of the judgment.

17. Accused No.4 Parwatabai Pandharinath Fasale though convicted by the Additional Sessions Judge for the offences punishable under Sections 143, 147, 324, 504, 506 read with Section 149 of the Indian Penal Code. She was released on probation by taking aid of Section 6 of the Probation of Offenders Act, 1958. She has not preferred the Appeal against her conviction.

18. Criminal Appeal No.1062 of 2013 is preferred by the Appellant - Vishnu Deoram Fasale (original accused no.2) who has been convicted under Section 302 of the Indian Penal Code coupled with other offences. Criminal Appeal No.1094 of 2013 has been preferred by the Appellants – Deoram Dhondur Fasale (original accused no.1) and Parvatabai Deoram Fasale (original accused no.5) against their conviction under Sections 143, 147, 325, 504 and 506 read with Section 149 of the Indian Penal Code. Criminal Appeal No.1093 of 2013 has been preferred by the Appellant – Pandharinath Deoram Fasale (original accused no.3) against his conviction under Section 143, 147, 308, 324, 504 and 506 read with Section 149 of the Indian Penal Code.

19. We have carefully gone through the above referred stock of oral and documentary piece of evidence. On going through the evidence of

PW9 Dr. Dusane, it is revealed that following external injuries found on dead body of Dattu Chander Fasale;

1.	Abrasion on right hand 2 X 2 cm.
2.	CLW on left auxillary area 6 X 3 cm.
3.	Extensive CLW on neck behind left ear measuring 2 X 3 cm and 3 X 3 cm.
4.	CLW on occipital region measuring 3 X 3 cm.

Doctor Dusane, on internal examination found that the deceased had lacerated and crushed injury over head cavity evulsion of brain matter with fracture of skull. According Dr. Dusane, death of the deceased Dattu Fasale was due to hemorrhagic shock due to head injury.

20. Mr. Palwe, learned counsel for the Appellants/accused invited our attention to the cross-examination of Dr. Dusane and pointed out Dr. Dusane had admitted that the patient died in the hospital at 11.00 am. According to learned counsel Mr. Palawe, the alleged incident took placed at about 12.00 noon. According to Dr. Dusane, patient Dattu (since deceased) died in the hospital at about 11.00 am. Mr. Palwe, therefore raised doubt about the medical evidence and the cause of death.

21. It is no where brought on record by way of cross-examination of PW9 Dr. Dusane that he was treating the patient. It is no where brought on record that Dattu died in the hospital while taking the treatment. It is evident from the cause of death given by Dr. Dusane that the deceased

died due to hemorrhagic shock due to head injury. Whatever suggestions given by the defence side have been turned down by Dr. Dusane. Dr. Dusane while facing the cross-examination made it clear that the injuries to skull are possible in a case of assault by sickle and particularly by pointed side and in such case, there is possibility of profuse bleeding.

22. Having regard to the careful scrutiny of the medical evidence, coupled with the cause of death given by Dr. Dusane, we do not find any merit in the submissions of Mr. Palwe, learned counsel for the Appellants/accused. It is a case of homicidal death of Dattu Chander Fasale. Dattu Chander Fasale died due to hemorrhagic shock due to head injury. Having regard to the careful scrutiny of the medical evidence (supra) and in view of cause of death, we have no difficulty to arrive at conclusion that Dattu Fasale (since deceased) met with homicidal death.

23. Mr. Palwe, learned counsel for the Appellants vehemently argued that the time of incident disclosed by the first informant and eye witnesses substantially differs. In view of the different time of incident disclosed by the first informant and the respective eye witnesses, it raised serious doubt about the incident. We have gone through the evidence of PW1 Sunita Fasale vide Exhibit 22 (first informant and eye witness), PW5 Chander Fasale vide Exhibit 31 (eye witness), PW6 Nivrutti Fasale vide Exhibit 32 (another eye witness) and PW7 Murlidhar Fasale vide Exhibit

33 (who is an independent eye witness). PW1 Sunita Fasale, the first informant has disclosed that the incident had happened about 12.00 hrs in the noon at her field. Whereas, PW5 Chander Fasale has stated that the incident had taken place about 11.00 hrs in the morning. Whereas, PW6 Nivrutti Fasale has stated that the incident had taken place at about 10.00 hrs in the morning. PW7 Murlidhar Fasale vide Exhibit 33 who is an independent witness disclosed that the incident had taken place between 11.00 to 11.30 hrs in the morning.

24. It is necessary to consider that the above stated witnesses are rustic villagers, obviously, it is not expected that they should disclose exact time of incident and that too without variation in time. After having careful assessment of the above referred witnesses, it is very much clear that even though the first informant -PW1 Sunita Fasale has stated time of incident around 12.00 noon, remaining three eye witnesses made it clear that the incident had taken place between 11.00 to 11.30 am in the morning in the field of the first informant. We, therefore, do not find any merit in the submission of Mr. Palwe, learned counsel for the Appellants. The prosecution has been successful in establishing that the incident had taken place on 20th September, 2011 at about 11.00 am to 11.30 am in the field of the first informant – Sunita Fasale.

25. The prosecution case is mainly rest upon the direct evidence in

the nature of eye witnesses referred above. There are three eye witnesses including the first informant who are from the same family, whereas PW7 Murlidhar Fasale who is also eye witness found to be related to the family of the first informant and the accused, is also an independent witness.

26. At the cost of repetition, we may place on record that the accused have admitted their presence at the crime scene. They have further admitted that they have strained relations with the family of the first informant on account of land dispute.

27. It is well settled position of law that the evidence of a witness is to be assessed as a whole. The evidence of interested witness or related witness cannot be discarded simply because he/she is happened to be related witness. A useful reference can be made in the case of ***Rachamreddi Chenna Reddy v/s State of Andhra Pradesh***³ wherein the Apex Court has made the position clear.

28. The accused were five in number at crime scene. On careful study of the impugned judgment delivered by the Additional Sessions Judge, it is noticed by us that the learned trial Judge has carefully appreciated the evidence of all eye witnesses including the first informant and given due weightage to their testimony. It is evident from the testimony of the first informant and the eye witnesses referred above that the accused had formed an unlawful assembly with common object and

3 AIR 1999 SC 994

started brawl on account of land dispute. The brawl is aggravated into an assault after exchanged of words. It is further evident that the Appellants / accused were armed with weapons likes sickle, axe, sticks. PW1 Sunita Fasale and three eye witnesses referred above have narrated the incident in detail regarding participation and involvement of each accused. Accused no.2 Vishnu Fasale assaulted to Dattu Chander Fasale (since deceased) by using weapon. Though, there is discrepancy about particular weapon, according to PW1 Sunita Fasale, PW5 Chander Fasale, PW7 Murlidhar Fasale, accused no.2 Vishnu Deoram Fasale assaulted Dattu Fasale by means of sickle or axe. PW1 Sunita Fasale stated that accused Vishnu Fasale assaulted Dattu Fasale by axe whereas above referred witnesses stated that accused Vishu Fasale assaulted Dattu by sickle. By taking help of this discrepancy in using particular weapon, learned counsel for the Appellants vehemently submitted that there is wide gap between ocular evidence and medical evidence and thereby raised doubt about use of weapon and assault on Dattu. We are not much impressed by the submission of learned counsel Mr. Palwe for the Appellants. It is well settled position of law that even though there is some discrepancy between the medical evidence and ocular evidence due weightage must be given to the ocular evidence.

29. It is common knowledge that whenever farmers go to their

fields they possess sickle, axe, stick etc which are usually used for day to day agricultural operation and activities. One cannot lost sight that the Appellants/accused have admitted their presence at the crime scene and quarrel on account of land dispute. In this background, the evidence of the first informant and eye witnesses needs to be assessed.

30. As observed earlier, learned trial judge has rightly assessed the evidence of the first informant / eye witness and three eye witnesses in a proper way and accordingly accepted their testimony after exercising careful scrutiny. There is no question of identification of accused since both parties are known to each other. The part played by each accused has been categorically stated by the first informant as well as three eye witnesses in their respective testimony. Their evidence is found to be trustworthy and reliable though subjected to lengthy cross-examination. It is also well settled position of law that minor discrepancy in the evidence of eye witnesses is not sufficient to discard their evidence. It is but natural to have minor discrepancy in the evidence of witnesses. There is slight variation about time of incident between the evidence of the first informant and three eye witnesses on the occurrence. Secondly, if the evidence of PW1 Sunita Fasale is scrutinized carefully, it would reveal that real crime scene, more particularly her examination-in-chief in paragraph 2, of her evidence is found consistent with her FIR vide Exhibit 23. Only

omissions brought on record through the evidence of PW1 Sunita Fasale are to the extent of throwing of chilli powder by wife of Pandharinath / accused no.2 and injury to her hand by sickle. It is natural tendency of a witness to exaggerate something by way of evidence. But that is not any way fatal and that too discard her entire evidence when the rest of her evidence is found trustworthy and reliable. It is well settled position of law that the evidence of a witness is to be assessed as a whole and whatever part of evidence is found trustworthy and reliable needs to be accepted by applying the above said legal position. We do not find any difficulty to accept the evidence of PW1 Sunita Fasale who is an eye witness and the first informant and one of the injured. She has specifically denied that in the quarrel between two parties, she sustained injuries.

31. The evidence of another eye witness PW5 Chander Fasale vide Exhibit 31 who is also one of the injured is found in tune with the evidence of PW1 Sunita Fasale. He has corroborated evidence of PW1 Sunita Fasale by giving all details as to how and what manner an attack was made by the group of accused when they were working in their field about 11.00 am. He has categorically stated that he alongwith his son Dattu, Sunita, Housabai, Nivrutti were working in their field when all accused came there and picked up quarrel on account of land dispute and started assaulting them by weapons axe, sickle, stick, rod etc. Vishnu

Fasale – accused no.2 assaulted by means of sickle on back side of head of Dattu and Dattu collapsed and died on the spot. He was also injured in the attack due to blow of axe on his back side of neck and he was also fallen down. He has further disclosed that accused had also assaulted his daughter-in-law Sunita Fasale and Hausabai and Nivrutti. The details of incident given by this witness Chander Fasale who is an eye witness and injured witness are not in any way shaken by way of cross-examination. His evidence is found trust-worthy and reliable. His evidence is corroborated by another eye witness PW6 Nivrutti Fasale vide Exhibit 32. He has also described the incident and role of each accused in making attack. These three eye witnesses had also sustained injuries in the assault from Accused party. PW 9 Dr. Rajendra has stated in detail about injuries found on their person. It has strengthen the prosecution case. They were at scene of offence and witnessed the incident. Their evidence need to be accepted when found trust worthy and reliable.

32. Apart from the above referred three eye witnesses, the prosecution has examined one more independent eye witness to the incident as PW7 Murlidhar Fasale vide Exhibit 23, who is also related to both parties. His examination-in-chief paragraph 1 throws light on the incident which is in the nature of corroboration. It is found to be in tune with the evidence of earlier three witnesses. The defence side has failed to

bring on record any material by way of cross-examination to dis-believe his testimony. Secondly, this witness is found to be a natural witness and co-incidentally relative of family of the first informant and accused as well. Whatever he had witnessed at crime scene, he had disclosed before the trial Court which is found to be consistent with the evidence of other eye witnesses. He has corroborated the testimony of other three eye witnesses thereby strengthening the prosecution case.

33. Having regard to the assessment of the above referred stock of eye witnesses including the first informant, it is very much clear that the Appellant / accused after forming an unlawful assembly with common object made attack on the family of the first informant armed with weapons like axe, sickle, stick and Vishnu Fasale – accused no.2 gave blow on back side of head of Dattu by sickle and resultantly Dattu died on the spot.

34. Now coming to non-explanation of injuries sustained by accused Deoram appellant. In **Lakshmi Singh and others Vs. State of Bihar**, the Hon'ble Supreme Court has observed that, the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses of where the defence gives a version which competes in probability with that of the prosecution one. By taking

help of above said citation Mr. Palve, learned counsel for the appellants vehemently submitted that genesis of the prosecution case is doubtful. Here facts of the case in hand are slightly different. In the present case, there are three eye witnesses (PW1, PW3 and PW5), who are from the family of the deceased but there is one more independent eye witness who had disclosed the entire scenario of assault. It is not enough in the assault by the appellants/accused PW1, PW 3 and 5 namely Nivrutti Chandar Fasle (PW3), Sunita Nivruti Fasle (PW1) and Chandar Suka Fasale (PW 5) had sustained injuries. Under these circumstances, it is difficult to accept that genesis of the prosecution case is doubtful in this case.

35. Learned counsel for the Appellants attempted to show that recovery of weapon at the instant Appellant / accused no.2 is not reliable. Even for the sake of moment, the recovery of weapon sickle is kept aside, what about the evidence of eye witnesses who have categorically stated about participation and involvement of the Appellants / accused in making attack on the first informant and her family members. The medical evidence is also found consistent with ocular evidence.

36. In this context, useful reference can be made in case of ***Dhuleshwar and another vs. State of Madhya Pradesh***⁴ wherein it is held by the Apex Court that in case of formation of an unlawful assembly and committing an offence of murder, once formation of an unlawful assembly

4 (2020) 11 Supreme Court Cases 440

at the time of committing an offence is established, the question of specific role of independent member of the assembly is rendered secondary. In another words, the prosecution need not prove any specific overt act when there are large number of accused and other witnesses. It will not be sufficient to rely on the testimony of one eye witness to convict each member of an unlawful assembly rather there must be at least other eye witnesses whose testimony about each accused is consistent with the testimony of other eye witnesses and the material particulars must have sufficient corroboration with the remaining evidence. Having regard to the legal position made clear by the Apex Court in ***Dhuleshwar and another vs. State of Madhya Pradesh*** (supra), if evidence of eye witnesses is taken into consideration, the prosecution has been able to succeed beyond reasonable doubt. The deceased Dattu was brutally beaten by sickle who died instantly on the spot. The testimony of the eye witnesses and the nature of incident, the account given by PW1 Sunita Fasale has proved the participation and involvement of the Appellants/accused in forming an unlawful assembly with common object, armed with weapons.

37. Learned counsel for the Appellants Mr. Palwe vehemently submitted that the investigation is not impartial in this case, the injuries sustained by accused no.1 are not explained by the prosecution and thus the prosecution case is highly suspicious. We are not impressed by the

submission of the learned counsel for the Appellants. The Appellants/accused themselves have admitted their presence at crime scene and quarrel between two groups on account of land dispute. As such, though injuries sustained by accused no.1 not explained by the prosecution not fatal to the prosecution case in view of the peculiar facts and circumstances of the case in hand.

38. Having regard to the above reasons and discussion, we have no hesitation to arrive at conclusion that the prosecution agency has proved its case beyond reasonable doubt against the Appellants/accused. We are in agreement with the findings recorded by the learned trial Judge. We do not see any reason to interfere with the findings recorded by the learned trial Judge. The incident had taken place on account of land dispute between two parties. The Appellants/accused have no criminal background. They have no criminal antecedents.

39. So far as sentence part is concerned, accused no.2 – Vishnu Deoram Fasale is convicted for the offences under Section 302 of the Indian Penal Code coupled with other offences and sentenced to undergo life imprisonment and fine of Rs.6000/- and other sentences under respective penal sections, that conviction needs to be maintained.

40. We are of the candid view that if the sentence awarded against the remaining Appellants/accused is modified to the extent of the period

of imprisonment which they have undergone would meet the ends of justice, in view of the peculiar facts and circumstances of the case in hand.

41. Accused no.1 Deoram Dhondur Fasale came to be arrested in this case on 20.09.2011 and released on bail on 06.07.2012, meaning thereby he has undergone sentence for a period of 9 months and 15 days. Accused No.5 Parvatibai Deoram Fasale was arrested on 6.7.2012 and released on bail on 23.7.2012; meaning thereby she has undergone period of sentence of 17 days. Accused No.3 Pandharinath Deoram Fasale came to be arrested on 20.9.2011 and released on bail on 15.11.2013; meaning thereby he has undergone sentence for a period of 2 years, one month and some days.

42. Resultantly Criminal Appeal No.1062 of 2013 preferred by the original accused no.2 Vishnu Deoram Fasale needs to be dismissed by maintaining his conviction and sentence passed by the trial Court. Criminal Appeal No.1094 of 2013 and Criminal Appeal No.1093 of 2013 preferred by the respective Appellants/original accused nos.1, 5 and 3 need to be partly allowed by modifying the quantum of sentence.

43. In the result, we proceed to pass the following order;

:: ORDER ::

- (i) Criminal Appeal No.1062 of 2013 preferred by the Appellant/accused no.2 Vishnu Deoram Fasale is

hereby dismissed.

- (ii) Criminal Appeal No.1094 of 2013 preferred by Appellant/ original accused no.1 – Deoram Dhondu Fasale, and Appellant / original accused no.5 Parvatabai Deoram Fasale stands partly allowed and the sentence is modified to the extent, they have already undergone in prison for respective penal sections of IPC.
- (iii) Criminal Appeal No.1093 of 2013 preferred by Appellant / accused no.3 – Pandharinath Deoram Fasale stands partly allowed and the sentence is modified to the extent, he has already undergone in prison, under respective penal sections of IPC.
- (iv) Accordingly, Appeals stand disposed of.
- (v) Registry to take necessary steps accordingly.
- (vi) Record and proceedings be sent back to the concerned Sessions Court.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)

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