

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.92 OF 2016**

- 1) Anil Nana Yelmame,  
Age-39 years, Occupation:Agriculture,
- 2) Nandu Nana Yelmame,  
Age-45 years, Occupation:Agriculture,
- 3) Ramesh Nana Yelmame,  
Age-35 years, Occupation:Agriculture,
- 4) Raju @ Rajendra Nana Yelmame,  
Age-42 years, Occupation:Agriculture,

All R/o-Mirpur, Taluka-Sangamner,  
District-Ahmednagar.

**...APPELLANTS  
(Orig. Accused Nos. 1 to 4)**

**VERSUS**

The State of Maharashtra

**...RESPONDENT  
(Orig. Respondent)**

...  
Mr. Joydeep Chatterji Advocate for Appellants.  
Mr. S.D. Ghayal, A.P.P. for Respondent-State.  
...

**CORAM: SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.**

**DATE OF RESERVING JUDGMENT : 06<sup>th</sup> JULY 2023**

**DATE OF PRONOUNCING JUDGMENT : 31<sup>st</sup> AUGUST 2023**

**JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :**

1. Present Appeal has been filed by original accused Nos. 1 to 4 challenging their conviction by the learned Additional Sessions Judge, Sangamner, District-Ahmednagar in Sessions Case No. 12 of 2004, on 30<sup>th</sup> January 2016.

2. The prosecution story, in short, is that deceased Santu Jayram Ranmale was residing with his wife, two sons and daughter-in-laws. Santu and his wife used to run a small hotel / tea stall near the temple of Haujinath Baba in village Mirpur Lohare, Taluka-Sangamner, District-Ahmednagar. His son Dattu – informant is a tempo driver. There was dispute between Santu's family and the family of one Nana Sakharam Yelmame on account of hotel premises. The civil suit was pending. Quarrel had taken place on 1<sup>st</sup> October 2003 on account of the said dispute and the reports were lodged with the police station. On 8<sup>th</sup> October 2003, around 7.30 a.m., PW-2 Dattu was cleaning his tempo in front of his house. His mother and father were looking after the affairs of the hotel. At that time accused No.1 Anil, who is the son of Nana Yelmame, with whom the said civil dispute was pending, passed from the hotel in a Maruti Van. But after

going some distance, Anil returned, stopped his Van in front of the hotel. The said Van was bearing No. MH-15-AS-2891. After getting down from the Van with sword in his hand, accused No.1 went towards Santu in the hotel and gave blow of sword on the head of Santu and second blow was given on his hand. Santu fell down and then immediately accused No.1 went in the said Maruti Van towards his house. Informant Dattu and his brother Balasaheb went running towards their father. It was around 8.00 a.m. at that time. Both the brothers and their mother frightened. Some people gathered there. At that time, from the field the accused persons including Nana Yelmame (now deceased) came armed. They assaulted informant, his brother and other persons. Then the brothers managed to take Santu to Hospital. Santu was admitted to Government Hospital, Sangamner, but upon examination, he was declared dead by the medical officer. PW-2 Dattu went to the Police Station and lodged the report.

3. Upon the said First Information Report (fort short "the FIR"), Police went to the spot and carried out the spot panchnama. Prior to that, when Santu was declared dead, the fact was informed to Sangamner Police Station and inquest panchnama was executed. The dead body was sent for

postmortem. The injured persons were also referred for medical examination and their medical examination was got done at Government Hospital, Sangamner. Statements of witnesses came to be recorded. The Van used in the commission of crime was seized. The other papers were collected and after completion of the investigation, charge-sheet was filed against in all 15 accused persons.

4. After committal of the case, charge was framed. All the accused pleaded not guilty. Trial was conducted. Prosecution has examined in all 11 witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides, the learned trial Judge held accused No.1 Anil guilty of committing offence under Section 302 of the Indian Penal Code and he has been sentenced to suffer imprisonment for life and pay fine of Rs.5000/-, in default to suffer rigorous imprisonment for six months. Accused Nos. 1 to 4 have been convicted for the offence punishable under Section 325 read with Section 34 of the Indian Penal Code and they have been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each, in default, to suffer further rigorous imprisonment for three months. Further accused Nos. 1 to 4

have been held guilty of committing offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/- each, in default, to suffer further rigorous imprisonment for fifteen days. All the substantive sentences were directed to run concurrently. Set off was granted to those accused persons under Section 428 of the Code of Criminal Procedure. All the accused persons i.e. accused Nos. 1 to 15 came to be acquitted of the offences punishable under Sections 143, 147, 148, 325, 324, read with Section 149 of the Indian Penal Code and Sections 3 and 5 punishable under Section 25 of the Indian Arms Act. Though it has not been stated in specific words, accused Nos.5 to 15 have been acquitted of the offence punishable under Sections 302, 325, 323 read with Section 34 of the Indian Penal Code. Therefore, original accused Nos. 1 to 4 had challenged their conviction in this Appeal.

5. Heard learned Advocate Mr. Joydeep Chatterji appearing for the appellants and learned APP Mr. Ghayal, appearing for the respondent – State.

6. It has been vehemently submitted on behalf of the appellants that the learned trial Judge has not considered the

evidence properly. PW-2 Dattu, PW-3 Hirabai, PW-4 Balasaheb, are the close relatives of deceased Santu and therefore, it can certainly be said that they are interested witnesses. They are also accepting the fact that there were disputes between their family and the family of the accused on account of the land beneath the hotel. If the intention was same as against all the accused persons, then on the ground of parity the appellants – original accused Nos. 1 to 4 deserve to be acquitted. The learned trial Judge has not taken into consideration various contradictions and omissions in the testimony of these three witnesses. Those contradictions and omissions are going to the root of the case. The learned Advocate appearing for the appellants has taken us through the testimony of these three witnesses and pointed out the contradictions and omissions. PW-5 Machindra is another eye witness and injured. PW-6 Jalindar is also one of the injured eye witnesses. However, careful scrutiny of their testimony would reveal that some of them were not at all present at the spot when the exact incident took place. PW-2 to PW-4 have tried to paint the picture that the incident had happened suddenly. At that time accused No.1 is the only person who had assaulted deceased Santu. Even according to these prosecution witnesses, the other accused

persons came later on. If PW-5 Machindra and PW-6 Jalindar would not have been interested, they would not have been assaulted. According to PW-8 Ashok, alleged injured eye witness, as it is revealed from his cross-examination that after Santu was shifted to hospital by tempo, the accused persons came to the spot of incident and thereafter the incident of beating by accused to him and others took place for about 5 to 6 minutes. That means the other accused persons were not present when still Santu was alleged to be lying on the ground in his hotel. Under such circumstance, Section 34 of the Indian Penal Code cannot be made applicable. According to the prosecution, the murder weapon is sword and for causing injuries to other persons it is alleged that iron rod and sticks were used. Neither the sword nor the iron rod nor any other weapon has been seized in this matter.

7. Learned Advocate for the appellants has further submitted that the defence of the accused is that there was quarrel between both the families on 1<sup>st</sup> October 2003 on account of the land used for the hotel. But then on 8<sup>th</sup> October 2003 around 7.00 to 7.30 a.m., PW-2 Dattu, PW-4 Balu, PW-5 Machindra, PW-6 Jalindar, PW-8 Ashok and other persons had formed unlawful assembly and they attacked deceased Nana Yelmame,

they went to the residence of Nana armed with sticks, iron bars etc. and attacked Nana Yelmame, Nandu Nana Yelmame, Rajendra, Ramesh, Anil, Baby and Santosh. Later on Nana succumbed to the injuries. On the basis of FIR lodged, investigation was carried out and the above witnesses are the accused persons in Sessions Case No. 11 of 2004. Therefore, it was necessary for the learned trial Judge to see as to who was the aggressor. There was reason to implicate the accused persons. The segregation of role to each and every accused in the manner done by the trial Judge was prejudicial to the accused. The medical evidence is also not supporting to the prosecution. PW-9 Dr. Sandip Kachoriya is the medical officer who had examined the injured witnesses as well as conducted autopsy. As regards injuries to the witnesses are concerned, he has admitted that those injuries are possible by fall on hard surface. As regards death of Santu is concerned, the medical officer states that injury No. 2 mentioned in Column No.17 of the postmortem report Exhibit-189 can be caused due to fall on stone. Similar is the case about the injuries in respect of other witnesses. It cannot be, therefore, said that the prosecution had proved that death of Santu was homicidal in nature. With so

many lacunas, the learned trial Judge ought to have acquitted all the accused persons.

8. Per contra, the learned APP strongly supported the reasons given by the learned trial Judge and submitted that the offence has been properly proved beyond reasonable doubt. No doubt the weapons have not been seized in this matter but that does not mean that death of Santu was natural. There were injuries on the person of deceased and expert had opined that those injuries are possible by sword, iron rod etc. That possibility is sufficient. In all there are six eye witnesses to the incident, i.e. PW-2 to PW-4, PW-5, PW-6 and PW-8. The injuries sustained to them speak for itself for their presence at the spot at the relevant time. Further, it can also be seen that all of them are consistent in saying that accused No.1 had come armed with weapon like sword, therefore, intention is clear. After assaulting Santu, he went and within few minutes the other accused persons came to the spot. They assaulted the witnesses, yet some how both the brothers i.e. PW-2 Dattu and PW-4 Balasaheb had managed to take their father to the Rural Hospital, however he was declared dead. Nature of the injuries noted in Column No.17, which were proved by the prosecution

by examining PW-9, would show that injury Nos.2 and 3 were fatal.

9. The learned APP has further submitted that the learned trial Judge has approached to the case with balanced view. It is clearly stated as to why the other Sections are not getting attracted. Role has been played by accused Nos. 1 to 4 and therefore, they are required to be dealt with as per their role. When the ocular evidence is supporting to the medical evidence, then the learned trial Judge need not consider the non production or non seizure of the murder weapon. Though the defence has been taken by the accused persons that they sustained injuries and one of them i.e. Nana Yelmame expired due to the alleged assault by the present witnesses, but the defence has not adduced any cogent evidence. As there is no merit in the present Appeal, it deserves to be dismissed.

10. At the outset, we would like to say that the prosecution or the original victim has not filed any appeal either under Section 378(1) or 372 of the Code of Criminal Procedure to challenge the acquittal of accused Nos. 1 to 15 from the offences punishable under Sections 143, 147, 148, 325, 324, read with Section 149 of the Indian Penal Code and Sections 3 and 5 punishable under

Section 25 of the Indian Arms Act. Therefore, we are restricting ourselves to the challenge that is given to their conviction by accused Nos. 1 to 4. Prosecution has examined in all 11 witnesses and out of them PW-2 Dattu – son of the deceased and eye witness, PW-3 Hirabai – widow of the deceased Santu – eye witness, PW-4 Balasaheb – another son of the deceased cum eye witness, PW-5 Machindra – eye witness, PW-6 Jalindar – eye witness cum injured, PW-8 Ashok – eye witness cum injured, have supported the prosecution story. All of them have stated that the incident has taken place around 7.30 a.m. on 8<sup>th</sup> October 2003 in the hotel and in front of the hotel owned by the deceased Santu which was abutting Talegaon-Loni road. Here itself we would like to take note of the fact that the defence that has been put and all these witnesses have admitted that Sessions Case No.11 of 2004 is filed against PW-2 Dattu, PW-6 Jalinder and some others for the incident alleged to have taken place at a different place. The suggestion to these witnesses about the place of said incident is not clear. But according to the accused persons, these witnesses along with other many accused, had attacked deceased Nana Yelmame, Nandu, Rajendra, Ramesh, Anil, Baby and Santosh. It is suggested to these witnesses that these witnesses had gone to the residential

house of the deceased Nana and then assault had taken place. In the cross-examination of Dattu, he denied the suggestion that the residential house of the accused is at a distance of approximately 2 Kms. from the spot of the incident but then he says that residential house of Nana is about ½ Kms. away from the spot. He admits that the residential house of the accused is situated near about ½ Kms. inner side of Nimgaon-Jali road. Thus, from these suggestions, it can be certainly said that two places are different and therefore the cross-examination ought to have thrown more light as to which offence took place earlier, because two persons cannot be at the different place at the same time. The incidents have to take place one after another, but that clarity is missing in the cross-examination and it cannot be so gathered from those suggestions made on behalf of the accused. Under the said circumstance, the fact that has been proved by all these eye witnesses and the injured is that accused No.1 alone had come around 7.30 a.m. on 8<sup>th</sup> October 2003 in a Van, went ahead of the hotel of the deceased and then stopped vehicle at a distance, he stepped out of the Van armed with sword. Accused No.1 went towards deceased Santu and gave a blow of the sword on the head of Santu. Another blow of the sword is stated to have been given on the right hand of Santu.

Thereafter accused No.1 went away in his Van. As a result of blows, deceased Santu received severe injuries and he fell down on the ground. There is total corroboration amongst these witnesses on this point. Since the two other witnesses have received injuries, the accused cannot say or doubt their presence at the spot. In the cross-examination, the witnesses have stated that they are distantly related to deceased. Every relative of the informant who is supporting the prosecution, cannot be branded as 'interested witness'. As aforesaid, though they have also been made as accused in other case, we cannot have a doubt on their testimony. It cannot be said that they can get themselves saved by giving deposition against the accused persons. Each case has its own merits and therefore, the core of the testimony is required to be considered.

11. On the point that the above mentioned witnesses i.e. PW-2 Dattu, PW-3 Hirabai, PW-4 Balasaheb, PW-5 Machindra, PW-6 Jalindar and PW-8 Ashok cannot be considered as interested witnesses, we would like to rely on the observations of the Hon'ble Supreme Court in ***Raju Alias Balchandran and others Vs. State of Tamil Nadu [(2012) 12 SCC 701]***, wherein taking into consideration the facts of the said case the

Hon'ble Supreme Court envisaged four category of witnesses, "(i) a third-party disinterested and unrelated witness (such as a bystander or passersby); (ii) a third party interested witness (such as a trap witness); (iii) a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; (iv) a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused." Under the said circumstance, the Hon'ble Supreme Court further observed that "a Court should examine the evidence of a related interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third-party disinterested and unrelated witness. Therefore, the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law".

12. Further, reliance can be placed on the decision in ***Shahbuddin and another Vs. State of Assam, [(2012) 13 SCC 213]***, it has been observed that :-

"17. An interested witness is the one who is desirous of falsely implicating the accused with an intention of ensuring their conviction. Merely being a relative would not make the statement of such witness equivalent to that of an interested witness. The statement of a related witness can safely be relied upon by the Court, as long as it is trustworthy, truthful and duly corroborated by other prosecution evidence.

18. At this stage, we may refer to the judgment of this Court in the case of ***Gajoo v. State of Uttarakhand [(2012) 9 SCC 532 : (2012) 3 SCC (Cri.) 1200]***, where the Court while referring to various previous judgments of this Court, held as under :-

"12. We are not impressed with this argument. The appreciation of evidence of such related witnesses has been discussed by this Court in its various judgments. In ***Dalip Singh v. State of Punjab [AIR 1953 SC 364]***, while rejecting the argument that witnesses who are close relatives of the victim should not be relied upon, the Court held as under:-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close [relative] would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to

drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.'

13. Similar view was taken by this Court in the case of ***State of A.P. v. S. Rayappa and Others [(2006) 4 SCC 512]***. The court observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years. The Court also stated the principle that :

'6. ... By now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.'

14. This Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called 'interested' only when he or she derives some benefit from the result of litigation; in the

decree in a civil case, or in seeing an accused person punished. (Ref. *State of U. P. v. Kishanpal and Others* [(2008) 16 SCC 73]). In *Darya Singh & Ors. v. State of Punjab* [AIR 1965 SC 328], the Court held as under:-

'6. ... On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.'

15. Once, the presence of PW2 and PW3 is shown to be natural, then to doubt their statement would not be a correct approach in law. It has unequivocally come on record through various witnesses including PW4 that there was a '*Satyanarayan Katha*' at the house of Chetu Ram which was attended by various villagers. It was on their way back at midnight when PW2 and PW3 had seen the occurrence in dark with the help of the torches that they were carrying. The mere fact that PW2 happens to be related to PW1 and to the deceased, would not result in doubting the statement of these witnesses which otherwise have credence, are reliable and are duly corroborated by other evidence. In such cases, it is only the members of the family who come forward to depose. Once it is established that their depositions do not suffer from material contradictions, are trustworthy and in consonance with the above-stated principles, the Court would not be justified in overlooking such valuable piece of evidence."

13. Further, reliance can be placed on the decision in ***Shio Shankar Dubey and others Vs. State of Bihar, [AIR 2019 SC 2275]***, wherein it has been observed that when similar type of submissions were made, i.e. the witness, who is the brother of

the deceased, is an interested witness, after taking into consideration the law on the same point from the various decisions in past it has been observed that the submission of the appellant, that witnesses P.W.11 and P.W.13 (in that case) being related to the deceased their evidence cannot be relied, was rejected. Reliance was placed on the decisions in ***Kartik Malhar Vs. State of Bihar, [(1996) 1 SCC 614]***, ***Dalip Singh Vs. State of Punjab, [AIR 1953 SC 364]***, ***Namdeo Vs. State of Maharashtra, [(2007) 14 SCC 150]***. Out of these, we would like to refer to ***Dalip Singh (Supra)***, wherein referring to earlier decision in ***Rameshvar Kalyan Singh Vs. State of Rajasthan, [AIR 1952 SC 54]***, it was observed that "it was a fallacy common to many criminal cases and in spite of endeavours to dispel, it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel." It was further observed that "close relationship of witness with the deceased or victim is no ground to reject his evidence."

14. Further reliance can be placed on the decision in ***State of Rajasthan vs Smt. Kalki and another, 1981 (2) SCC 752***, wherein it has been held that:-

"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 eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents."

15. The next question that has been raised is, as to why both the sons of the deceased had then not tried to rescue the father. PW-2 Dattu says that on the day of incident he was cleaning his tempo in front of his house and his parents were looking after the business of the hotel. Certainly, he would be busy in his activity and before he could reach, the two blows appears to have been given. The person unaware about the another person coming towards him or her, unless there is reason to look at that person, cannot get idea as to for what purpose that another person is coming. Of course, if that person watches another person coming with a weapon then definitely he can gather the intention of the said person. But here that much serious attention appears to have not been given by these witnesses till accused No.1 reached the hotel. PW-4 Balasaheb says that he

was taking tea at the home at the relevant time. PW-3 Hirabai was in fact with the deceased at the relevant time and therefore, she had seen the alleged assault from a very near distance. PW-5 Machindra has stated that since he and his father were going to attend weekly market at Loni at 7.30 a.m. he could see the mob gathered in front of hotel of Santu. Of course PW-5 Machindra appears to be not the direct eye witness to the assault on Santu but then he had gone to the spot and then received the injuries. He has specifically stated that accused Ramesh had assaulted him on his head and chest by means of iron bar. Now the accused persons want to make capital out of non-seizure of the said iron rod. On this point, we would like to say that it is not necessary that the weapon should be seized in every offence wherein it is shown to have assaulted by it to somebody. Of course police are required to make thorough investigation and interrogation with the accused as he would be the appropriate person who can either throw light on the fact as to whether he or she has disposed of the weapon. But as it is expected that the discovery as contemplated under Section 27 of the Indian Evidence Act should be voluntary, and if voluntariness is not shown by the accused, then it is not possible for the Police to recover the weapon and therefore, non-seizure of the weapon of

assault is not always fatal if it is found that the injury sustained by the witness is then possible by use of such weapon.

16. It has been tried to be contended that taking into consideration the time gap between accused No.1 going from hotel of the deceased after the alleged assault on deceased Santu and accused No.1 allegedly coming with other accused persons, is long enough as PW-2 Dattu and PW-4 Balasaheb – both the sons of the deceased would have definitely made immediate arrangements for shifting deceased to hospital. If that would have taken place before the other accused persons came to the spot, then the second incident i.e. assault to the witnesses would not have taken place. On this point, we would like to say that in the ideal situation this argument can be accepted, however, whether the situation at the spot was ideal or not has to be considered. If Santu was allegedly assaulted, it is said that primary responsibility of the sons was to shift him to the hospital. But definitely they would have required to make arrangements for a vehicle. No doubt PW-2 Dattu runs a tempo and the same could have been utilized for transportation. But on that count it cannot be said that non shifting of deceased immediately after the alleged incident has resulted in the second

incident i.e. assault to other witnesses. It is not suggested to these witnesses on behalf of the accused persons that they had sustained the injuries at the place where accused Nana was assaulted, that means near the house of accused No.1. As aforesaid, their presence has not even denied by the accused persons. Due weightage will have to be given to the testimony of these witnesses.

17. No doubt, cross-examination of PW-8 Ashok brings a slight different picture. In his cross-examination he has stated that when the accused persons came at the spot of incident, no villagers were there. Santu was shifted to the hospital by tempo and at that time PW-2 Dattu and PW-4 Balu accompanied Santu. Ashok says that after Santu was shifted to the hospital by tempo, accused persons came at the spot and thereafter incident of accused beating to him and other witnesses took place for about 5 to 6 minutes. This appears to be some what contrary to his examination-in-chief, because in the examination-in-chief he has stated that when he came to village for going to weekly market, he saw mob gathered at the hotel of his uncle Santu so he went there. He saw Santu lying in unconscious condition. He states about the presence of other witnesses there. He then says

that he asked Dattu to shift Santu to hospital and at that time accused persons came and assaulted them. In the examination-in-chief he has not stated when the assault was going on how PW-2 Dattu and PW-4 Balasaheb could have managed to shift Santu in tempo to hospital. Even if for the sake of arguments we keep the testimony of this witness aside, as it is creating confusion about the sequence, yet the other witnesses have given the sequence. No advantage can be given to the accused only on the basis of those admissions or situation that was brought on record in the cross-examination of PW-8 Ashok, because he has found to be firm in saying that the accused persons had assaulted him also.

18. The said ocular evidence is then corroborated by medical evidence. PW-9 Dr. Sandip deposed that he had examined witness Machindra, Pandharinath, Balu (PW-4), Jalindar, Ashok, Dilip and issued certificates Exhibit-183 to 188. The injuries sustained by all of them were within six hours. Some of them have sustained grievous hurt and some have sustained simple injuries. The injuries sustained by them were possible by hard and blunt object.

19. Thereafter the said medical officer PW-9 Sandip had also conducted the autopsy on the dead body of Santu between 12.10 p.m. to 1.30 p.m. on 8<sup>th</sup> October 2003. He had found three external injuries, which were as follows:-

“(1) Contusion over left occipital region behind left ear with bleeding through left ear.

(2) Incised wound over left parieto-occipital junction region. Transversely going wound bone deep wound exposing underlying bone of skull, signs of bleeding noted. Size 10 X 3 c.m.

(3) Incised wound over right palm at first web, Size 6 X 3 X 3 cm.”

20. PW-9 Dr. Sandip further deposed that in the internal examination of the head, he found fracture of skull vault at left occipital bone extending up to posterior cranial Fossa. There was bleeding inside brain. Therefore, he has given the probable cause of death as “due to head injury”. Definitely this was the fatal injury. In the cross-examination he stated that injury Nos. 1 and 2 in column No.18 of postmortem report Exhibit-189 cannot be caused by single blow of sword. But then he denies that injury No.2 is possible due to fall on the sharp edge of the long stone. At no point of time such kind of suggestion was given to the eye witnesses that Santu had fallen on a long stone from the

*bandh* of the field. Merely because this medical officer had gone through the inquest panchnama, it cannot be said that his opinion was tainted. Thus, it can be seen that the ocular evidence together with the medical evidence proves the fact of homicidal death.

21. PW-2 Dattu has given that his parents were running a hotel near Haujinath Baba temple and on the point of land of the said hotel, there was dispute between his family and Nana Yelmame (the person who expired in the alleged assault by the witnesses in this case). He has also stated that the civil suit was pending in the Court. Thereafter a quarrel had taken place on 1<sup>st</sup> October 2003 between their family and Nana and according to him, they had lodged report with the Police Station in respect of the said quarrel. That appears to be the motive behind the incident. When there are eye witnesses, then the motive does not play a vital role. This fact has also been stated by PW-3 Hirabai and PW-4 Balasaheb. The fact of pendency of the suit and the dispute is not denied in the cross-examination.

22. In this case one Maruti Van has been seized by drawing panchnama Exhibit-177. No doubt it does not mention from

whom the Van was seized, but the said panchnama has been admitted by the accused. PW-10 Police Head Constable Rajesh Gaikwad was attached to Sangamner Taluka Police Station and he was working as writer with Police Inspector Tulshiram Pawar at the time of incident. The investigation of the case, to much extent has been carried out by Tulshiram Pawar, however, when the matter was about to conclude, before that said Tulshiram Pawar expired and therefore his writer has been examined, who had scribed the statements under Section 161 of the Code of Criminal Procedure and also scribed the panchnamas to prove the contents thereof. PW-11 Police Inspector Dipak Tanpure was then attached to the Police Station who had taken down the FIR as narrated by PW-2 Dattu. But except suggestions and its denials, there is nothing.

23. Thus, it is to be noted that the evidence of the above said eye witnesses and injured proves the incident. Accused No.1 was alone when he had assaulted deceased Santu with sword, but thereafter the other accused persons came i.e. accused Nos. 2 to 4 to whom the role has been assigned and then they assaulted the witnesses. The role of the other accused persons and accused No.1 has been properly segregated by the learned

trial Judge and he has rightly convicted those accused persons. As aforesaid, though there is a criminal case against the witnesses, yet that place of incident is different and the accused then have not brought on record the exact time of the incident in front of the house of Nana. It cannot be said that who was the aggressor, who triggered the point of dispute again in the morning, as there was already dispute / quarrel that had taken place earlier night. The motive has also been proved. Under the said circumstance, the conviction is just and proper. There is no merit in the present Appeal and it deserves to be dismissed.

24. Accordingly, the Appeal stands dismissed.

**[ABHAY S. WAGHWASE]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**

asb/AUG23