



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

CRIMINAL APPEAL NO.143 of 2020

1. Pravin @ Bhangarya Bhimrao Patil,
Age : 30 years, Occ. Labour,
r/o. Govind Nagar, Pachora,
Tq. Pachora, Dist. Jalgaon
 2. Ravindra Adhar Sonwane,
Age : 26 years, Occ. Labour,
r/o. Trymbak Nagar, Pachora,
Tq. Pachora, Dist. Jalgaon
- ..Appellants

Vs.

The State of Maharashtra

..Respondent

Mr.Vikram R. Dhorde, Advocate for appellants
Mrs.S.N.Deshmukh, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : APRIL 18, 2024
PRONOUNCED ON : MAY 06, 2024

JUDGMENT (PER R.G.AVACHAT, J.) :-

The challenge in this appeal is to the judgment of conviction and consequential order of sentence dated 24.12.2019, passed by learned Addl. Sessions Judge, Jalgaon, in Sessions Case No.64 of 2017. Vide the impugned order, the appellants have been convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and therefore, sentenced to suffer

imprisonment for life and pay fine of R.7,000/- each with default stipulation. Appellant no.1 (`A1') is in jail since the date of his arrest, while appellant no.2 (`A2') is on bail.

2. The facts giving rise to the present appeal are as follows:-

First Information Report (Exh.48) was lodged by PW 1 - Vishal on 25.02.2017 at 01.05 a.m. (midnight). It is the case of prosecution that Kisan @ Vitthal (deceased) was cousin of PW 1 - Vishal (informant). PW 1 - Vishal is resident of Srikrushna Nagar, Pachora, Dist. Jalgaon. Kisan would reside with the informant and his family members until he attained majority. He, thereafter, shifted to Silvassa. He (Kisan) was driver by profession. Three months before the incident dated 24.02.2017, he had shifted to Dhule.

3. On 24.02.2017 by 08.00 p.m., Kisan informed PW 1 - Vishal on cellphone that he had come to Pachora for delivery of mineral water bottles of Bisleri brand. After unloading of the bottles, he would visit him (PW 1 - Vishal) at his residence by 10.00 p.m. PW 1 - Vishal and his another cousin PW 2 - Ransing, therefore, went to Jalgaon square for awaiting arrival of Kisan. By 10.00 p.m., he arrived in his Eicher vehicle. He stopped having seen PW 1 - Vishal.

There was a closed Egg-Omelette-vending cart. Kisan went behind thereof to ease himself (urinating). Both the appellants were present at the public lamp-post in the nearby. When Kisan was returning, he dashed with A1. Quarrel, therefore, ensued between both of them. A2 gripped Kisan at his waist from behind. A1 knifed on the stomach of Kisan. Kisan tried to get rescued himself. He, therefore, turned. A1 then stabbed in his back. PW 1 – Vishal and some others named in the FIR, rushed Kisan to Rural Hospital, Pachora, in auto-rickshaw. Kisan, unfortunately, succumbed to the injuries during treatment.

4. Based on the FIR (Exh.48), crime vide C.R. No.36 of 2017, came to be registered with Pachora Police Station for the offences punishable under Sections 302, 504 read with Section 34 of Indian Penal Code. PW 8 – Navnath was entrusted with the investigation. He drew inquest panchnama (Exh.68) in the presence of panchas. Scene of offence panchnama (Exh.65) was drawn. The appellants were arrested. Clothes on the person of the appellants were seized. During investigation, both the appellants gave disclosure statements, pursuant to which a knife and motorcycle came to be recovered, respectively. All the seized articles except motorcycle were sent to C.F.S.L. Statements of the persons acquainted with the with the facts and circumstances of the case were recorded. Upon

completion of the investigation, charge sheet was filed against the appellants in the court of Judicial Magistrate, First Class, Pachora. Learned Magistrate committed the case to the Sessions Court, Jalgaon. Learned Sessions Judge assigned the case to the court of Addl. Sessions Judge, Jalgaon (trial court) for trial in accordance with law.

5. The trial court framed charge (Exh.12). The appellants pleaded not guilty. Their defence is of false implication. The prosecution, to bring home the Charge, examined eight witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case before it, convicted the appellants and consequentially, sentenced as stated above.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant would submit that the case is based on the evidence of sole eye-witness, PW 1 - Vishal. According to him, PW 1 - Vishal is not a witness of sterling quality. As per the case of prosecution, the deceased had informed PW 1 - Vishal that he would be visiting him at his residence by 10.00 p.m. PW 1 - Vishal, therefore, had no reason to be at Jalgaon square. Learned counsel referred to the relevant evidence of PW 1 - Vishal,

to indicate that post cellphone call at 08.00 p.m. between the two, there was no further call between them so as to change the plan. According to learned counsel, PW 1 - Vishal claimed to have shifted Kisan to the hospital. It is, however, strange that neither his hands nor the clothes on his person were stained with blood of the deceased. According to learned counsel, the FIR was lodged three hours after the incident. He would submit that even an hour's delay in the facts and circumstances of the case may prove fatal to the prosecution. He would further submit that the conduct of PW 1 - Vishal indicates him to have not witnessed the incident. He did not intervene to save his cousin (deceased) nor did he raise shout. Learned counsel would further submit that PW 2 -Ransing, another so-called eye-witness, did not stand by the prosecution. There are glaring inconsistencies between the evidence of PW 1 and PW 2.

8. As regards the disclosure statement made by A1 and seizure of knife, pursuant thereto, is concerned, learned counsel would submit that the C.A. report thereof simply indicates that there was human blood. As such, the C.A. report does not support the prosecution in its entirety. According to learned counsel, neither auto-rickshaw driver nor the persons who have been named in the FIR, have been examined as prosecution witnesses. PW 1 - Vishal

was an interested witness. Learned counsel would further submit that the questions put to the appellants in their examination under Section 313 of Cr.P.C. were composite. No contents of the C.A. reports were put to the witnesses. Same cause material prejudice to them in their defence. According to him, the knife was seized from under heap of saw-dust. The Investigating Officer, while forwarding knife to C.F.S.L., did not solicit opinion as regards, whether particles of saw-dust were found thereon. As regards disclosure statement relating to motorcycle is concerned, learned counsel would submit that the FIR is silent to describe on what kind of motorcycle, the assailants had fled. Recovery of motorcycle from an open place, i.e. from in front of house of A2 would, therefore, be irrelevant under Section 27 of the Evidence Act. Learned counsel relied on the following authorities, to ultimately urge for allowing the appeal:-

- “(i) Asraf Ali Vs. State of Assam, 2008 Cri. L.J. 4338;
- (ii) Kalyan s/o. Deorao Sawase Vs. State of Maharashtra, 2021(6)Mh.L.J. (Cri.) 321;
- (iii) Jai Prakash Tiwari Vs. State of Madhya Pradesh, AIR 2022 SC 3601;
- (iv) Amar Singh Vs. State of (NCT of Delhi), AIR 2020 SC 4894;
- (v) Mallappa and ors. vs. State of Karnataka, 2024 DGLS (SC) 78

In the second breathe, learned counsel for the appellants, submits that at the most, it can be a case of offence under Section 304 Part II of Indian Penal Code.

9. Learned APP would, on the other hand, submit that it is the quality and not quantity of evidence that matters. She meant to say that the conviction can be based even on the testimony of sole witness. According to her, the evidence of the informant is consistent with his FIR. Same suggests, his evidence before the court has been corroborated by his previous statement in the nature of FIR. In relation to the memorandum of recovery statement, she would submit that the knife was recovered from below the heap of saw-dust. According to her, though it was an open space, the knife was not noticeable to anyone other than the person, who had hidden it at that place. According to learned APP, recovery of any incriminating article from a place which is open or accessible to others, shall not vitiate the evidence under [Section 27](#) of the Evidence Act. She relied on the judgment in the case of **State of H.P. Vs. Jeet Singh, AIR 1999 SC 1293**. On the question of inconsistencies *interse* prosecution evidence, she would submit that no much importance could be given to minor discrepancies which do not go to the root of the matter and shake the basic version of the

witnesses. She relied on another judgment of Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, 1983 Cri. L.J. 1096**, to ultimately urge for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein.

11. Let us advert to the evidence on record and appreciate the same. Admittedly, Kisan was assaulted at a place near Jalgaon square at Pachora town, by 10.00 p.m. on 24.02.2017. He succumbed to the injuries while under treatment. He was cousin of informant (PW 1 – Vishal). Deceased Kisan was professional driver. On the fateful day, he had come to Pachora to deliver mineral water bottles of Bisleri brand. Admittedly, he had informed PW 1 – Vishal on phone by 08.00 p.m. in the evening of the very day that after unloading of the water-bottles at a place near Railway Station, he would visit his (PW 1 – Vishal) residence by 10.00 p.m.

12. PW 7 – Dr. Mandar conducted postmortem on the mortal remains of Kisan. Following injuries were noticed on his person:-

“(i) Large 6x2 cm. incise round purporting type, involving all layers of abdomen and intestine was jetting out of the defect in left lateral part of the abdomen.

(ii) Large 5x2.5 cm. incise purporting wound in right iliac fossa obliquely placed involving all layers of abdomen.

(iii) Small 3x1.5 cm. purporting incise wound on left side of chest in axilla at T-5 T-6 rib level and bone deep and it was found in thorax.

(iv) Small 3x1x2.5 cm. deep purporting incise wound on left side just lateral to vertebral column on back.

The post mortem report (Exh.95) indicates, "*death due to terminal cardio-respiratory arrest due to hypovolumic shock (hemorrhagic shock)*". PW 7 was shown the knife seized pursuant to the disclosure statement made by A1. According to him, all the injuries noticed on the person of the deceased were possible by such knife. During his cross-examination, he testified that all the injuries might be possible with different weapons used for different injuries. He admitted to have not mentioned time of death in the post mortem report.

13. PW 4 - Yuvraj is witness to inquest panchnama (Exh.68). He was nephew of the deceased. It was suggested to the Investigating Officer (PW 8) that all the witnesses were either related to the deceased or belonged to his community. Learned APP adverted to the inquest panchnama (Exh.68), indicating that the dead body was identified by PW 1. According to her, the inquest panchnama corroborates PW 1's evidence. Close reading of the

inquest panchnama (Exh.68) would indicate that there were two injuries on the stomach of the deceased. His intestine had come out. The description of the clothes on the person of the deceased has also been given therein. There is last column titled as “Abhipray”. The matter appearing therein is reproduced in verbatim below:-

अभिप्राय :- आम्हा व पंचाचे मते किसन उर्फ विठ्ठल जोरसिंग राठोड यास धारदार चाकूने झालेल्या जबर वाराच्या जखमामुळे मरण आले असावे. तरीपण मयताचे निश्चित कारण समजून येणे कामी प्रेत पोस्टमॉर्टम साठी पाठविले आहे. तरी प्रेतावर पोस्टमॉर्टम होऊन ऍडव्हान्स सर्टिफिकेट मिळणेस विनंती आहे.

टीप :- मयताचा रक्त नमुना काढून सिलबंद मिळणेस विनंती आहे.

The dead body was identified by PW 1 for inquest. It was drawn at 09.00 in the morning on the following day. He did not name the names of the assailants (appellants), in the inquest. Be that as it may.

14. The fact remains that the deceased met with homicidal death. The question is whether the appellants are authors thereof? Since the incident took place at 10.00 in the night, a question was raised as to whether electricity/light was there. Learned APP adverted our attention to the scene of offence panchnama (Exh.65), wherein existence of a lamp-post was shown in the vicinity. She meant to say that there was sufficient light to identify the assailants.

She then adverted our attention to the evidence of the Investigating Officer, who had collected information from Municipal Council, indicating that public electric supply was not disrupted at the material time.

15. PW 1 – Vishal (informant) gave his evidence consistent with his FIR. It is in his evidence that deceased Kisan was his cousin. Kisan had called him by 08.00 p.m. on 24.02.2017, informing to have come to Pachora to deliver mineral water bottles of Bisleri brand. It is further in his evidence that Kisan had informed him that after unloading of the bottles at a godown near Railway Station, Pachora, he would come to his (PW 1 – Kisan) house by 10.00 p.m. It is further in his evidence that he along with his cousin PW 2 – Ransing were waiting for Kisan at Jalgaon square. It was about 10.00 p.m. Kisan came in Eicher vehicle and met him. Kisan left for urinating near an Omelette-cart (closed). When Kisan was returning, both the appellants were standing at the public lamp-post. Kisan dashed with A1. Quarrel, therefore, ensued between the two. A1 abused him and even started beating. It is further in his evidence that A2 gripped his waist from behind. PW 1 – Vishal meant to say that it was to facilitate A1 to give blow on the stomach of the deceased with knife. It is further in his evidence that A1 gave two blows on the stomach of

Kisan. Kisan made effort to get rescued. In that process, A1 stabbed in his back. Kisan thereby fell on the ground. Both the appellants then fled on motorcycle towards Warkheddi road. It is further in his evidence that at that time, PW 2 and three-four others namely, Santosh Hatkar, Anil Pawar, Bapu Hatkar, Shriram Hatkar and Laxman Shinde were present. An auto-rickshaw was hired. Kisan was taken to rural hospital, Pachora. He accompanied Kisan in the auto-rickshaw to the hospital. PW 1 - Kisan identified the clothes of the deceased and knife shown to him before the court.

16. PW 1 - Vishal was subjected to a searching cross-examination. He was first confronted with his FIR. Admittedly, he did not give description and colour of the clothes deceased was clad in nor did he give description of the knife with which Kisan was assaulted. In our view, PW 1 necessarily came to know about these things during investigation and his evidence in examination-in-chief in this regard, would, therefore, be of not much assistance for the prosecution.

17. It is further in the cross-examination of PW 1 - Vishal that at the time when the deceased was assaulted by knife and he fell on the ground, no blood spilled from his body. He denied that after Kisan fell on the ground he was again assaulted. At the time when

Kisan was assaulted by knife he was not standing but had fallen on the ground. PW 1 admitted that the spot of incident was dirty place. When Kisan fell on the ground at the spot of incident, his clothes became muddy. There were no blood stains on his pant. It is further in the evidence of PW 1 that his (PW1) hands or clothes were not stained with blood during he lifted Kisan from the spot and placed him in the auto-rickshaw and accompanied him to admit him to the hospital. Even the clothes and body parts of other persons were not stained with blood. There were no blood stains in the auto-rickshaw in which he was taken to hospital. He denied that he stated the name of auto-rickshaw driver to the police or they inquired him. He did not not know whether said rickshaw driver was witness in the present case or not. He denied that said rickshaw-driver was known to him. It is further in his evidence that he did not shout for help. The police did not find blood stains on the spot of the incident during preparation of spot panchnama. There were no marks of struggle on the spot of the incident. Existence of electric poles at and around the scene of offence has been brought on record through the suggestion in the nature of admission given on behalf of A2. It was only suggested to him as to whether he knew, the lamps on those poles were glowing.

18. It is further in the evidence of PW 1 - Vishal that prior to the incident, he received deceased's phone call on his cell phone no.7507737141. He was unable to say as to from which mobile number of the deceased he had received phone call. He did not know whether he had made any call from his cellphone number after he received call of the deceased at 08.00 p.m. to the time he lodged FIR. This witness voluntarily stated that he did not know means he did not remember. It is further in his evidence that he had not given his mobile handset to the police for checking it at the time of lodging the FIR. He did not know as to whether deceased was having his mobile handset with him (deceased) when he died. It is further in his evidence that he was present at the time of preparation of inquest panchnama. He did not remember as to whether mobile handset was on the person of deceased while inquest panchnama was drawn. It is further in his evidence that he did not remember whether he had asked to the police to see the mobile of the deceased. The police had not read over the contents of inquest panchnama. The police had not inquired with him regarding the mobile handset of deceased at any point of time nor did they record statement in that regard. He admitted that he had no other evidence to show except his words that he received phone call of the deceased prior to the incident. It is further in his evidence that when the deceased made phone call to

him he (deceased) stated that he would be coming to his home by 10.00 p.m. It did not happen that he waited at his home till 10.00 pm. for deceased. Deceased had stated him that he would meet him at his home and not any other place. It is further in his evidence that he was unable to say as to whether his house was situated between the spot of incident and Pachora Railway Station. He denied that if proceeded from Pachora Railway Station, first his house comes and thereafter the spot of incident. It did not happen that prior to the incident, he made phone call to his cousin brother Ransing (PW 2) and called him. It is further in his evidence that he did not remember whether he had stated to the police regarding how Ransing came at the spot of incident. He denied to have not stated to police as to how Ransing arrived at the spot of incident and therefore, it was not mentioned in his report. He denied that Ransing and other witnesses were not present at the spot of incident.

19. It is further in the evidence of PW 1 - Vishal that he denied that the witnesses arrived at the spot after the incident. He was unable to say whether he was aware or not regarding what quarrel occurred between the deceased and the appellants while he lodged the report. According to him, said quarrel occurred for two minutes. During the quarrel, he did not intervene nor did he feel to

intervene. He did not remember at what place Eicher vehicle was parked at that time. He did not remember whether the Eicher vehicle was parked on the left side while coming from Pachora. He denied that Eicher vehicle was parked near him. He was unable to say whether Eicher vehicle was parked on proper side of the road. It did happen that he went to Kisan (deceased) after the appellants assaulted him (deceased). He did not remember as to how many stabs were given to Kisan after he was fallen down by A1. He was unable to say as to what A2 was doing and he was at what distance when Kisan fell on the ground. He admitted that there was no earlier dispute between the appellants and the deceased. It is further in his evidence that he did not know that Kisan (deceased) was going to stop at Jalgaon square. According to him, no third person was present at the spot of the incident, except he himself and the witnesses named in the FIR.

20. It is further in the evidence that he did not know whether there was Cleaner in the vehicle. According to him, the spot of incident was dirty and muddy place. As a result of fall of Kisan, the clothes on his person were stained with mud. Neither he nor PW 2 intervened. He was at a distance of about 30 ft. away while the assault was going on. He even did not remember whether he helped

while shifting the deceased in the auto-rickshaw. He even did not remember which place he occupied in the auto-rickshaw. The police did not seize his clothes during investigation. He did not remember whether the Medical Officer, Pachora, inquired with him about the incident. According to him, the Doctor told him Kisan to have passed away.

21. PW 2 – Ransing is said to be another eye-witness. He too was cousin of deceased. It is in his evidence that by 9.30 p.m. on 24.02.2017, he received phone call of Kisan (deceased) informing him to have come to Jalgaon square. He (Kisan) asked him (PW 2) to meet him there. PW 2, therefore, went to Jalgaon square. It is further in his evidence that Kisan had parked Eicher vehicle near omelette-cart at Jalgaon square. It is further in his evidence that he saw the beating was on. Kisan @ Vitthal was present. According to him, he learnt that there was quarrel between A1 and Kisan. A2 was also in the company of A1. When he reached that place, Kisan was lying on the road and he was being carried to hospital. It is further in his evidence that he heard that somebody had assaulted Kisan with knife. It is further in his evidence that in the hospital, he saw Kisan to have been assaulted on his abdomen. It is further in his evidence that he had seen crowd at the scene of offence. He heard that both the appellants ran away.

22. Since PW 2 did not stand by the prosecution, learned APP cross-examined him in extenso. Material portion from his cross-examination is reproduced below:-

“5. I went at Jalgaon square as I had received phone call of Vitthal. It is not true to say that when I reached there, at that time, there was talk between Bhangrya and Vitthal. It is true to say that at that time, friend of Bhangrya namely, Ravindra was present there. At that place there was one closed Egg Pav cart near Eicher vehicle. It is not true to say that at that time Ravindra had caught hold Vitthal from back side and Bhangrya was assaulting Vitthal by knife. One road goes towards Warkhedi from the spot of incident. It is true to say that some of the persons had gone there to rescue Vitthal. It is not true to say that I was also among them. I do not know that when those people had gone to rescue Vitthal at that time, Bhangrya and Ravindra went away on motorcycle towards Warkhedi. It is true to say that at that time, it was 10.00 pm. It is true to say that at that time, people gathered there had carried Vitthal in auto rickshaw. It is true to say that due to assault given to Vitthal in the said incident, the intestine of Vitthal had come out of his abdomen. It is true to say that Shriram Hatkar had rapped handkerchief on the intestine of Vitthal. It is true to say that Bapu Hatkar, Shriram Hatkar and Lakshman Shinde had carried Vitthal in auto rickshaw to Government Hospital. It is true to say that while they were carrying in auto rickshaw I was present there. It is true to say that due to said incident, Vitthal had died. It is true to say that Vishal Amarsing Rajput had lodged report in regard to said incident. It is true to say that 3 to 4 assaults were given to Vitthal by knife on his abdomen and back. It is true to say that I came to know that those assaults were given by Pravin Bhangrya. It is true to say that I was at Jalgaon square during 09.30 to 10.00 pm. It is true to say that the incident of assault to Vitthal occurred during said period.”

23. It was suggested by learned APP to PW 2 that his statement was recorded on 04.03.2017, i.e. seven days after the incident. It was even suggested to him that he gave information to the police as per the incident occurred. His attention was drawn to portion marked as "A" appearing in his statement dated 04.03.2017. He was further suggested that his statement under Section 164 of Cr.P.C. was recorded on 14.06.2017. It was further suggested to him that he narrated the incident as occurred. The statement under Section 164 of Cr.P.C. of PW 2 is at Exh.154. It is the prosecution which relies on it with a view to contradict PW 2.

24. In the cross-examination undertaken by defence, PW 2 testified that police had threatened to make him an accused in the case. He was even detained for two days. The police accompanied him to Pachora Court for recording his statement. It was dark. He did not notice presence of PW 1 - Vishal at Jalgaon square. He claimed ignorance about the quarrel between the appellants and the deceased. He admitted that his information about the incident was hearsay. He went on to state that PW 1 was not present at the scene of offence and therefore, he did not state his presence at the scene of offence in his statement under Section 164 of Cr.P.C.

25. If we appreciate the evidence of both these witnesses who are said to be eye-witnesses to the incident, both contradict each other. According to PW 1, he along with PW 2 was waiting at Jalgaon square for arrival of Kisan (deceased). PW 1, however, admitted in his evidence that he had not contacted PW 2 and asked him to come to Jalgaon square to join him to receive Kisan (deceased). PW 2's statement under Section 164 of Cr.P.C. was relied on by the prosecution, wherein he did not mention presence of PW 1 at Jalgaon square at the material time. His statement even rules out presence of PW 1 at the scene of offence. Admittedly, his statement was recorded seven days after the incident. His attention was also adverted to portion marked as "A" appearing in his police statement dated 04.03.2017. Attention was drawn by none other than the prosecution. In the statement, to which his attention was drawn, there was no mention of presence of PW 1. Learned APP in the cross-examination of PW 2 did not suggest him that PW 1 was present at Jalgaon square.

26. The cross-examination of PW 1 would indicate that at one point of time, he says that the deceased was in standing position, while he was assaulted and A2 had held him from behind. In the second breathe, he testified that the deceased was lying on the

ground and then, he was stabbed. Admittedly, PW 1 neither raised shout for help nor intervened to save his cousin Kisan. His conduct appears to be unnatural. Moreover, the presence of PW 1 in the nearby of the crime scene is doubtful since as per the plan between him and the deceased, the deceased was to visit his residence by 10.00 p.m. It was so decided between them during telephonic conversation that took place at 08.00 p.m. Admittedly, there was no phone call between the two after the phone call of 08.00 p.m. Therefore, there was no question of duo changing the plan and deciding to meet at Jalgaon square. It is not that the deceased did not know house of PW 1, since, according to the prosecution, the deceased was residing with PW 1 in his house for many years. There is nothing to suggest any reasonable ground for PW 1 to change his mind and to go to Jalgaon square to receive Kisan. According to PW 1, he did not contact PW 2 and asked him to come to Jalgaon square. It has already been observed that PW 2, in his statement to the Magistrate, did not mention presence of PW 1 at Jalgaon square. Said statement has been relied on by the prosecution while cross-examining PW 2. Similar is the case about his police statement. According to PW 1, neither his hands nor his clothes were stained with blood in the process of lifting Kisan and shifting him to hospital at Pachora. PW 8 – Investigating Officer

admitted that he did not notice blood stains on the clothes of PW 1. This makes presence of PW 1 doubtful at Jalgaon square at the relevant time. If PW 1 had really accompanied Kisan to the hospital at Pachora, his name would have figured in the medical papers. M.L.C. papers have not been placed on record.

27. It is in the evidence of Medical Officer (PW 7 - Dr. Mandar) that the dead body of Kisan was brought by police constable for postmortem examination. Admittedly, the incident took place at a dirty and muddy place. According to PW 1, the clothes on the person of Kisan were soiled with mud. The Investigating Officer (PW 8) however testified that he did not notice any mud on the clothes of the deceased.

28. We are conscious of the fact that for proving a fact, no particular number of witnesses is required (Section 134 of Evidence Act). In short, conviction can be based on the sole testimony of a witness, provided it inspires confidence.

29. For sustenance of conviction on sole testimony of a witness, such witness has to be of sterling quality in view of the Apex Court judgment in the case of **Santosh Prasad @ Santosh Kumar Vs. The State of Bihar (Criminal Appeal No.264/2020, decided on 14/2/2020)**, wherein it has been observed thus :

“5.4.2 In the case of Rai Sandeep alias Deepu (supra), this Court had an occasion to consider who can be said to be a “sterling witness”. In paragraph 22, it is observed and held as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every

other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

30. When PW 1 was expected to be at his home to receive Kisan by 10.00 p.m., and there being no conversation between the two post cellphone call of 08.00 p.m. changing the plan, PW 1 had no reason to go to Jalgaon square to receive Kisan. His conduct in not intervening to save Kisan or raising shout for help is unnatural. When according to him, the incident took place at a dirty and muddy place and the clothes of deceased were soiled with mud, the Investigating

Officer found the clothes of the deceased were not soiled. When PW 1 claimed to have lifted Kisan, placed him in auto-rickshaw and admitted him to the hospital, it is strange that neither his hands nor clothes on his person were stained with blood of the deceased. To many of the questions, PW 1 either claimed ignorance or testified to have not been remembering. In one breathe, he says that the deceased was standing while he was assaulted, in the next breathe, he testified that while the deceased was fallen on the ground, he was stabbed. Moreover, PW 2 on whose evidence the prosecution relies was even not suggested about presence of PW 1. It was the prosecution which had confronted PW 2 with his statements under Sections 161 and 164 of Cr.P.C., wherein presence of PW 1 has not been made out. For all these reasons, we do not find evidence of PW 1 to have been inspiring confidence.

31. So far as recovery of motorcycle pursuant to the disclosure statement made by A2 is concerned, there is no description of the vehicle given in the FIR, on which the assailants fled. The vehicle was seized while it was in parked position in front of house of A2. Said recovery and disclosure statement made by A2 are, therefore, not relevant under Section 27 of Evidence Act. So far as recovery of knife is concerned, even if we rely on said evidence as

it is, the C.A. report indicates that it was stained with human blood. The test relating to ascertaining blood group of deceased was found to be inconclusive. The seized Muddemal namely, the articles, i.e. clothes of the deceased, knife, clothes of PW 1 indicate that the blood group of the blood found thereon could not be determined. The prosecution case, therefore, could not be said to have been furthered by the C.A. reports.

32. There is another aspect of the matter. The Investigating Officer had immediately paid visit to the crime scene pursuant to the station-diary entry made by Police Station Officer Kulkarni. Shri.Kulkarni had informed him that a message was received that some altercation took place at Jalgaon square. When he went there, he saw crowd of people. PSO Kulkarni has not been examined. While PW 8 Navnath, Investigating Officer had paid visit to the crime scene immediately, i.e. before registration of FIR, he admitted to have learnt names of the assailants. He did not name them nor did he record statements of the persons who were present there from whom he learnt names of the assailants. The prosecution did not examine any of the independent witnesses named in the FIR or who were found present at the crime scene. While PW 8 had paid visit soon after PSO informed him, he did not notice blood stains or marks of

struggle at the crime scene. The crime scene was pointed out by PW 1 on the following day for drawing the crime scene panchnama. Whether the incident really took place at the place pointed by PW 1 is best known to him. The crime scene panchnama is not relevant in view of Section 7 of Evidence Act since neither blood of the deceased nor marks of struggle were noticed thereat. PW 8 Investigating Officer testified that the spot of incident was not dirty place and he did not notice any dirt or mud on the clothes of the deceased. This piece of evidence is grossly inconsistent with the evidence of PW 1 and it is, therefore, reiterated that presence of PW 1 at the crime scene is doubtful. Based on such evidence, the trial court ought not to have convicted the appellants.

33. For the reasons stated herein above we are not at one with the findings recorded by the trial court. Interference with the impugned order of conviction and consequential sentence is, therefore, warranted. The appeal, thus, succeeds.

(i) The appeal is allowed.

(ii) The order of conviction and consequential sentence dated 24.12.2019, passed by learned Addl. Sessions Judge, Jalgaon, in Sessions Case No.64 of 2017, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, is set aside. The appellants stand acquitted thereof.

- (iii) Appellant no.1 - Pravin @ Bhangarya Bhimrao Patil is in jail. He be released forthwith, if not required in any other case.
- (iv) Appellant no.2 - Ravindra Adhar Sonwane has already been released on bail. His bail bond stands cancelled.
- (v) Fine amount deposited by the appellants, if any, be refunded to them.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP