



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

CRIMINAL APPEAL NO. 235 OF 2020

Mehatab Esmile Fakir
Age: 27 years, Occu.: Labour,
R/o Dabka, Tq. Omerga,
Dist. Osmanabad

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.J. Salunke, Advocate for appellant
Mr. A.R. Kale, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 29th JULY, 2024
PRONOUNCED ON : 22nd AUGUST, 2024

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

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence imposed against the petitioner, dated 30th November, 2019 passed by Additional Sessions Judge, Omerga ('trial Court') in Sessions Case No. 16 of 2018. Details of the same are as below :-

Section (I.P.C.)	Sentence	Fine	In Default
302	Life Imprisonment	Rs.5,000/-	S.I. for 2 months
447	R.I. for 3 months	Rs.500/-	S.I. for 2 weeks
506	R.I. for 2 years	Rs.2,000/-	S.I. for one month

He is, therefore, in this appeal before this Court challenging the same.

2. Along with the appellant, two others were charged and prosecuted for the same offences read with Section 34 of the I.P.C. They have, however been acquitted by the trial Court. Neither the State nor the victim preferred appeal against their acquittal.

3. Case of the prosecution, in short, was as follows :-

Abhijit (deceased) was the son of P.W.2 – Ram (informant). He was an agriculturist by profession, residing at village Dabka, Tq, Omerga, Dist. Osmanabad. The informant was a driver by profession. He was employed as such on the truck of one Shaukat Patel. Whenever the informant was required to travel long distance, he would always take services of an additional driver. 8-10 days before the incident dated 21st April, 2018, he had been to town Kakinada in State of Andhra Pradesh. Mehatab (appellant) had accompanied him to Kakinada. They unloaded rope bundles there. The truck was then loaded with other goods and started for return journey to Khopoli. While the vehicle was at Omerga, the appellant told the informant that he would not accompany him for further journey. They, therefore, halted a while at Omerga. The informant bought a bottle of wine from the shop. Both, the appellant and the informant, consumed the wine. The informant paid the appellant Rs.1,000/- for having accompanied him to Andhra Pradesh. The informant then went to Khopoli. He received a phone call of his wife – Kavita informing that there was a quarrel between the appellant and Abhijit (deceased) over he (appellant) consumed liquor alongwith his father (informant).

4. It was also the case of the prosecution that two days before the incident, he returned to village from Hyderabad. He was to travel further to Pune. The appellant happened to cross his path. The appellant told him (informant) that he would not allow him (informant) to travel beyond Indapur. It was an implied threat as to he would commit something amiss. The informant, however ignored the same. He (informant) started for Pune. At about 01:30 a.m. when he was at Indapur Toll Plaza, his villager Tanaji Gaikwad called him on his cell phone and informed Abhijit to have been assaulted with a knife. He asked the informant to return immediately. The informant, therefore, came back to Dabka in a private vehicle. On having reached the village, he realised Abhijit to have passed away. His mortal remains were shifted to Government Hospital at Omerga for postmortem. He, therefore, went there. His wife – Kavita informed him that Abhijit and his friend, P.W.5 – Fakir went to their field to sleep overnight after attending a *Kanduri/Gondhal* function at the house of one Tukaram Jamdar. In the midnight, P.W.5 – Fakir came home and informed Abhijit to have been knifed by the appellant and two others viz. Mehboob and Maqsood. She, therefore, went to the field alongwith some of the villagers to find Abhijit was dead. He had suffered multiple injuries. They had seen the appellant and those two (acquitted) fleeing away.

5. It was also the case of prosecution that the village Sarpanch had informed the concerned police station. P.W.7 – Jadhav, Police Officer reached the village. He drew inquest panchanama (Exh.53) and shifted the

dead body to Government Hospital, Omerga for postmortem. After the postmortem was over, the dead body was handed over to the informant. After the funeral was over, the informant lodged F.I.R. (Exh.47) against the appellant and those two others.

6. Crime, vide C.R. No. 105 of 2018 was registered. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The appellant and two others were arrested. The appellant made a disclosure statement pursuant to which a knife came to be seized. Clothes on the person of the deceased were taken charge of. From the crime scene, two pairs of footwear were seized besides earth and blood mixed earth. All the seized articles were sent to Regional Forensic Science Laboratory, Aurangabad ('R.F.S.L.'). Upon completion of investigation, charge-sheet was filed.

7. The trial Court framed charge (Exh.17). All the three pleaded not guilty. Their defence was of false implication. The prosecution, to bring home the charge, examined seven witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court convicted the appellant and acquitted two others, as stated above.

8. Learned counsel for the appellant would submit that two more persons were prosecuted alongwith the appellant. However, they have been acquitted. The State did not prefer appeal against their acquittal. The case was solely based on testimony of P.W.5 – Irfan. He did not lodge report of

the incident. As such, there is a delay in lodging of the F.I.R. There is great variance inter se evidence of the prosecution witnesses. The trial Court ought not to have relied on the sole testimony of P.W.5 – Irfan because admittedly, relationship between the appellant and Irfan was not good. There was a dispute between them over partition of the family property. He, therefore, could not be termed to be a witness of sterling quality. Although two pairs of footwear were found at the crime scene, Investigating Officer did not take pains to hold identification of the other pair to be that of P.W.5 – Irfan. Kavita, mother of the deceased, to whom the incident was allegedly reported by Irfan, has not been examined. He would further submit that according to Irfan, crime took place under a mango tree in the field, whereas the crime scene panchanama indicates no mango tree in the near by.

9. According to learned counsel, the prosecution did not prove actual time of death of the deceased. He adverted our attention to the cross-examination of the medical officer to submit that the crime must have taken place twelve hours before the postmortem examination was conducted and not within six hours. According to learned counsel, the prosecution has failed on all fronts, and therefore, the appeal deserves to be allowed.

10. Learned A.P.P. would, on the other hand, submit and even concede that the State has not preferred appeal against acquittal of the two others, who were prosecuted alongwith the appellant. According to him, that will be of little consequence. He took us through the reasons given by trial Court for convicting the appellant. According to him, the trial Court relied on

the evidence of P.W.5 – Irfan and discarded the evidence of other witnesses. P.W.5 – Irfan identified the pairs of footwear before the Court. The same were seized from the crime scene. It indicates that Irfan was in the company of the deceased while the incident took place. He relied on paragraph nos. 19 and 22 of the judgment in case of ***Lal Bahadur & Ors. Vs. State (NCT of Delhi), (2013) 4 SCC 557***. According to him, inconsistency in the prosecution evidence and contradictions and omissions in the evidence of the particular witness which do not go to the root of the matter, are necessarily required to be ignored.

11. Learned A.P.P. took us through the reasons given by the trial Court in support of the impugned order of conviction and consequential sentence. He ultimately urged for dismissal of the appeal.

12. Considered the submissions advanced. Perused the impugned judgment and the authorities relied on. Let us advert to the evidence in the case and appreciate the same.

13. Postmortem report (Exh.35) indicates Abhijit died of cardio respiratory arrest due to haemorrhagic shock due to multiple injuries. The antemortem injuries noticed on his person were as under :-

“2. On the person of dead body I found following injuries:

1) Chop lacerated wound on left neck side:

i. 2x1x0.5 c.m.

ii. 3x1x0.5 c.m.

both wound were near thyroid cartilage left side and horizontal.

iii. 6x1x 3c.m. near cricoid cartilage left side horizontal.

Underlying muscles are divided, left carotid artery and jugular vein

of neck were cut.

iv. 1x1x0.5 c.m. near cricoid cartilage horizontal.

2) Chop lacerated wound on left wrists joint:

i. 2x0.5x0.5 c.m. oblique.

3) Chop lacerated wound on left web of index finger and middle finger 1x0.5x 0.5 c.m.

4) Chop lacerated wound below sternum 4x1x0.5 c.m. oblique towards right directed from above downward.

5) Chop lacerated wound on left side of upper quadrant of abdomen.

i. 1.2x1x 0.5 c.m. towards right directed from above downwards.

ii. 3x1x 0.5.c.m. near naval towards right directed from above downwards.

iii. 3x1x 0.5 c.m. towards left directed from above downwards.

iv. 4x1x0.5 c.m. towards right directed from above downwards.

6) Chop lacerated wound on left side of lower quadrant of abdomen. 8x1x1 c.m. towards right directed from above downwards.

7) Chop lacerated wound on right side of upper quadrant of abdomen near naval. 2x1xup to peritoneal cavity omentum was protruding out of walls.

All those injuries are mentioned by me in a para 17 of the postmortem report.

All those injuries are caused due to sharp object and within 6 hours.”

14. P.W.1 – Dr. Basavraj had conducted postmortem examination. According to him, the injuries noticed on the person of the deceased were caused by sharp object within six hours next before he conducted the postmortem examination between 05:30 a.m. to 07:00 a.m. on 23rd April, 2018.

15. During his cross-examination, it was brought on record that rigor mortis was fully developed from top to bottom. Rigor mortis starts from 2-3 hours after death. His attention was drawn to certain exceptions from the book of Medical Jurisprudence and Toxicology of Mr. C.K. Parikh. He

agreed that those propositions, particularly that it takes about twelve hours for developing rigor mortis entirely. In his opinion, the same however depends on the environment. After death, rigor mortis remains for twelve hours and thereafter starts phasing off. According to him, age, condition of body, manner of death and some other facts as well influence time of setting of rigor mortis. According to him, food taken by the deceased before his death was unidentified.

16. P.W.1 – Dr. Basavraj, being an uninterested witness and nothing could be elicited from his cross-examination, either to disbelieve his version, we find the deceased to have died of CRA due to hemorrhagic shock due to multiple injuries and within the time specified by him.

17. The question is whether the appellant was the author of homicidal death of Abhijit. True, it is an unfortunate incident. A young son of P.W.2 – Ram (informant) met with a homicidal death. The F.I.R. (Exh.47) was lodged by P.W.2 – Ram on 23rd April, 2018 at 02:46 p.m. i.e. about sixteen hours after the alleged incident. Admittedly, P.W.2 – Ram was not an eye witness. Based on his F.I.R. the criminal law was simply set in motion. Whatever has been deposed to by him in relation to the names of the culprits and other aspects as to the incident, was based on hearsay. Admittedly, he was serving as a driver on a heavy transport vehicle (truck). About 8-10 days before the incident, he had been to Andhra Pradesh to unload some goods. His evidence would indicate that for long distance drive, he used to take with

him an additional driver. It is further in his evidence that the appellant had accompanied him to Andhra Pradesh. On their return journey, they were proceeding to Khopoli for unloading of Dalda (ghee). While the vehicle was at Omerga, the appellant told him that he would not accompany him further. Both of them consumed liquor at Omerga. The informant then gave the appellant a sum of Rs.1,000/- as consideration for accompanying him to Andhra Pradesh. It is further in his evidence that the appellant then went back to his village Dabka. While the informant was on his way to Khopoli, his wife, Kavita informed him on cell phone that a quarrel to have taken place between the appellant and Abhijit on account of the appellant to have consumed liquor alongwith him (informant). This incident is stated to be a motive for the appellant to commit murder of Abhijit. In our considered view, the same appears to be scanty. True, in case of direct evidence, failure to prove motive is of no consequence.

18. It is further in the evidence of P.W.2 – Ram (informant) that from Khopoli he again went to Hyderabad. Two days before the incident, he came to village Dabka. The appellant crossed his path. The appellant impliedly threatened him. The appellant told him that before he left Indapur, something amiss would happen. He (informant) ignored the same and started his onward journey. It is further in his evidence that while he was at Indapur toll plaza, Tanaji Gaikwad made him a call on his cell phone and informed Abhijit to have been assaulted. He asked him to return to the village immediately. The informant, therefore, came back to the village. He

learnt Abhijit to have passed away. The dead body was shifted to Government Hospital, Omerga. He, therefore, went to the hospital. His wife, Kavita related him that on the previous night Abhijit and P.W.5 – Irfan had been to the house of Tukaram Jamdar for attending *Kanduri/Gondhal* function, wherein a goat is sacrificed and non-vegetarian food is served to the invitees. She further related him that Abhijit had informed her that after taking dinner at the house of Tukaram, he was going to sleep in the field overnight.

19. It is further in his evidence that Kavita further related him that P.W.5 – Irfan had come home by 01:00 a.m. and informed her, Abhijit to have been assaulted by the appellant and two others, Maqsood and Mehboob (since acquitted) with knife. He, therefore, alongwith some villagers viz. Haridas Pawar, Shesherao Pawar, Mahadeo Patil and some others went to the field. She saw dead body of Abhijit lying in a pool of blood in the adjoining field belonging to Vitthal Pawar. Kavita had further informed him that they had seen the appellant and those two others fleeing after dropping Abhijit behind. According to him, there was an old dispute between Abhijit on one hand and Maqsood and Mehboob on the other. According to him, Abhijit was, therefore, murdered by the trio.

20. We do not propose even to refer to his cross-examination because whatever has been deposed by him is admittedly hearsay. It has to be noted here itself that Kavita has not been examined. He was confronted

with his F.I.R., which is silent to record therein that his wife had related him to have seen the trio fled leaving Abhijit behind. (The omission was only to the extent of the word 'dropping' (ढकल)). He admitted that Haridas Pawar, Shesherao Pawar and Shivaji Pawar were his relatives.

21. P.W.3 – Madhav Patil was an eye witness on the point of allegedly last seen the deceased and P.W.5 – Irfan together. It is in his evidence that Abhijit and Irfan had attended *Kanduri/Gondhal* function at the house of Tukaram Jamadar. He did attend the same. It is further in his evidence that after his dinner was over, he was sitting on the bridge in the village. He saw Abhijit and Irfan proceeding together towards the field. After a while, Irfan and Rohit Deshmukh came to him. They told him Mehatab Fakir (appellant) to have knifed Abhijit in the field. They requested him to come alongwith them to see what the matter was. It is further in his evidence that he, therefore, alongwith Rohit and Irfan went to the field. They did not find Abhijit there. Irfan, therefore, made a call on cell phone of Abhijit. Abhijit's cell phone was found under a mango tree. They then returned to the village taking the cell phone with them. Then they went to the house of Abhijit. Irfan woke up Kavita, mother of the deceased, and related her about the incident. It is further in his evidence that at the request of Kavita, he accompanied her to the field. Shesherao Pawar and Hari Pawar were also with them. They could not locate Abhijit. They had torch with them. It is further in his evidence that they saw the appellant and two others fleeing away after dropping Abhijit behind. Then he went close to Abhijit. Abhijit

was lying in the pool of blood in the field of Vitthal Pawar. Then he returned to the village. He related the same to Balbhim Mane, village Sarpanch, who in turn, made a phone call to Omerga Police Station. It was about 12:30 midnight.

22. During his cross-examination it was revealed that since he related the incident to village Sarpanch, he did not find it necessary to relate to the police. He was confronted with his police statement. His statement was found to be silent to record therein that he was sitting on the bridge, he saw deceased and the appellant proceeding towards the field and saw Abhijit was dropped by the culprits. His evidence indicates that police had reached the village at 02:00 in the midnight in response to a call made by the village Sarpanch. He was present while the police arrived. He did not relate the police anything about the incident. According to him, the police had recorded his statement six days after the incident.

23. Conduct of this witness in not reporting to the police what he had seen on the fateful night and the fact that his statement was recorded by the Investigating Officer six days after the incident lead us to disbelieve his evidence. The trial Court also not relied on the evidence of this witness.

24. P.W.4 – Haridas was a witness to the various panchanamas. The first panchanama is of the crime scene (Exh.52). It was drawn in his presence. According to him, police seized two pairs of footwear (*sandles*) besides plain and blood stained earth. Then he was a witness to inquest

panchanama (Exh.53). Another panchanama to which he was a witness is in relation to seizure of the clothes of the deceased (Exh.54). According to him, the police did not record his statement. He admitted that the deceased was his relative.

25. Appreciation of evidence of this witness indicates that the panchanamas referred to hereinabove were drawn in his presence. When we referred to the evidence of P.W.3 – Madhav, who had claimed to have accompanied Kavita and others to the field and seen the assailants fleeing away, this witness (P.W.4) was with them. He (P.W.4), however was silent to speak anything in that regard. Although his statement was not recorded by the Investigating Officer, it ought to have been natural on his part to relate to the police what he had seen while he accompanied Kavita and others to the field on having learnt about the incident. Be that as it may.

26. P.W.5 – Irfan is a witness, on the basis of whose evidence the appellant has been convicted. It is in his evidence that on the night of 22nd April, 2018 he had attended *Kanduri* function at the house of Tukaram Jamadar. Abhijit (deceased) was in his company. After taking dinner, both of them went to the field of Abhijit to sleep overnight. It was about 11:30 p.m. Within 10-15 minutes his uncle, Mehtab (appellant) came there. The appellant rake up the past quarrel with the deceased. Abhijit enquired with the appellant as to whether he was going to assault him. The appellant thereupon fished out a knife (*suri*) and stabbed on the stomach of Abhijit. He (Irfan) took to his heels and came to the village leaving behind his footwear.

According to him, he met Rajesh Deshmukh on the way. He told Rajesh the appellant to have assaulted Abhijit with a knife. He then met with Mahadeo Patil and Rohan Bhosale. They too were informed. He then went to the house of Abhijit. He woke up his mother, Kavita and related her the appellant to have assaulted Abhijit with a knife.

27. He was shown two pairs of chapples (sandals). He identified one of the pairs as that of his and the other to be of the deceased.

28. He was subjected to a searching cross-examination. It is in his evidence that he did not accompany Mahadeo Patil or Rohit to the field of Abhijit nor did he ask Mahadeo to go to the house of Abhijit and tell his mother about the incident. According to him, he did not find Abhijit's cell phone. According to him, the incident took place under a mango tree. On the fateful night he did not go back his home. According to him, the houses of his uncles and that of his parents are adjoining to each other. He gave a vital admission to the effect that there were disputes between him and his family on one hand and the appellant on the other. He was suggested that he was fast asleep. This suggestion could not be taken to be an implied admission suggesting him to have been in the company of Abhijit and was fast asleep in the filed, since the suggestion is not to that effect. At the cost of repetition it is stated that it was simply suggested that he was fast asleep. He even testified to have not even related Kavita (Abhijit's mother) that the assailants were the appellant and two others viz. Maqsood and Mehboob.

29. P.W.6 – Deepak is a witness to the two panchanamas relating to two disclosure statements made by the appellant. The first one, dated 29th April, 2018, pertains to the disclosure statement (Exh.66) made by the appellant in relation to have dropped the knife (*suri*) in a well and he would take the police and panchas to that place to take it out. The appellant accordingly took the police and panchas to a well at Lamjana area. Entire water was removed out of the well with the electric motor pump. One Rajendra Kamble entered into the well. He found the knife. A panchanama of seizure of the knife was drawn vide Exhibit 67.

30. It is further in his evidence that again on 03rd May, 2018 he was summoned to the police station. The appellant again made a disclosure statement that he would take the police and panchas to a place whereat he had thrown the clothes which were on his person at the material time. The statement was recorded at Exhibit 68. The appellant again took all of them to Lamjana and particularly at a place nearby one hotel. Nothing was found there. Panchanama (Exh.69) to that effect was, therefore, drawn.

31. Appreciation of the evidence of this witness would lead us to infer the same to have been of no assistance to the prosecution. Pursuant to the so called disclosure statement (Exh.68), no clothes of the appellant were found at the particular place. So far as seizure of knife (*suri*) pursuant to disclosure statement (Exh.66) is concerned, it is to be stated that C.A.

reports relating thereto indicate that no blood stain was found thereon. As such, nothing could be said to have been discovered pursuant to the statement made by the appellant and the seizure of knife. Same is, therefore, not relevant under Section 27 of the Evidence Act.

32. Then there is evidence of P.W.7 – Jadhav, Investigating Officer. After having been informed by the Police Station Officer about the receipt of information from the village Sarpanch, he first talked with village Sarpanch on cell phone and verified about the incident and then went to village Dabka. The villagers had already gathered in the village. The villagers took him to the field of Vitthal Pawar wherein the dead body of Abhijit was located. He drew the spot panchanama (Exh.52), seized two pairs of footwear besides blood stained earth, etc. His evidence further indicates that he conducted inquest and then sent the mortal remains to Government Hospital, Omerga for postmortem examination. According to him, he arrested the appellant in Navi Mumbai, while the others two were arrested in the village.

33. Arrest panchanama of the appellant (Exh.75) indicates that he was arrested at Omerga. There is, therefore, nothing to indicate that the appellant to have been absconding post incident. This witness did not testify to have made any search for the appellant. According to him, the appellant was found in Navi Mumbai. He was overpowered by other police officials and brought to the village. The police officials, who allegedly arrested the appellant in Navi Mumbai, were not examined as witness. It is reiterated that

the arrest panchanama (Exh.75) indicates the appellant to have been arrested at Omerga on 26th April, 2018 i.e. within two days of the incident.

34. Aforesaid is the evidence adduced by the prosecution. At the cost of repetition it is to be stated that two others viz. Maqsood and Mehboob, charged and prosecuted alongwith the appellant, have been acquitted. The State did not prefer appeal against their acquittal. For better appreciation, the charge for offence punishable under Section 302 read with Section 34 of the I.P.C. framed against the trio reads thus :-

“That, on 24.04.2018 in the midnight at about 12.30 to 1.00 a.m. in the field of Abhijeet Pawar you accused infurtherance of your common intention, committed murder intentionally or knowingly causing the death of Abhijeet Ram Pawar, R/o Dabka, Tq. Omerga and thereby committed an offence punishable u/sec. 302 r/w. 34 of the Indian Penal Code and within my cognizance.”

35. On the acquittal of other two, conviction of the appellant with the aid of Section 34 of the I.P.C. goes. The crime was registered against the three post F.I.R. lodged by father of the deceased. The informant (P.W.2 – Ram) had testified that his wife – Kavita had related him that P.W.5 – Irfan had related her Abhijit was assaulted by the trio. Kavita was not examined as a witness, for the reasons best known to the prosecution. There are major inconsistencies in the evidence of prosecution witnesses. P.W.3 – Madhav had claimed to have seen Abhijit and Irfan proceeding towards the field. He claimed that Irfan and Rohit had informed him about the incident. P.W.5 – Irfan, on the other hand, deposed the same. P.W.3 – Madhav

testified that he alongwith Irfan and Rohit had been to the field again. Irfan found cell phone of the deceased. This fact too has been denied by Irfan. He specifically denied accompanying Madhav to the field again and found the cell phone. According to Irfan, the incident took place under a mango tree, while the crime scene panchanama (Exh.52) indicates it was a field of Vitthal Pawar. There was jawar crop in the said field. No mango tree was in the nearby. Admittedly, police had reached the village within hours of the incident. Irfan, the so-called eye witness, did not explain where was he after the incident and why did he not inform the police immediately, when he relates the incident to Kavita, mother of the deceased. The appellant is the uncle of Irfan. Admittedly, relationship between the appellant's family and the family of Irfan, on the basis of whose evidence the trial Court imposed life imprisonment, were not good. There was dispute between them over partition of family property. This could be said to be a ground for him to grind an axe against the appellant. So far as his evidence relating to identification of the footwear before the Court is concerned, the same is of little relevance, since the Investigating Officer took no efforts to find the said footwear, really belonged to this witness. No test identification has been done. There was also nothing to indicate the footwear were of the size of his feet. P.W.4 – Haridas, who was a witness to various panchanamas, had also been said to have accompanied P.W.3 – Madhav and Kavita to the field and witnessed the trio fleeing away, dropping injured – Abhijit behind. He simply became witness to the panchanamas. He did not state anything to police. As such, there is a big question as to whose evidence was to be believed. The

prosecution came with a case that the appellant and two others killed Abhijit. Even the prosecution introduced an eye witness in the nature of P.W.3 – Madhav in that regard. According to prosecution, Kavita - mother of the deceased, had also accompanied P.W.3 – Madhav and seen the trio fleeing away from the field. However, she was not examined. According to P.W.3 – Madhav, P.W.5 – Irfan had accompanied him and Rohit to the field and even Irfan found Abhijit's cell phone. Irfan was, however not in agreement with this prosecution witness. When the police had reached village within two hours of the incident, no F.I.R. was lodged by mother of the deceased or the so-called eye witness, Irfan or others as well, who had accompanied Kavita to the field and witnessed the trio fleeing away.

36. It is true that in view of Section 134 of the Evidence Act, no particular number of witnesses required to prove the fact. The conviction can be based on testimony of sole eye witness. Such a witness has to be of sterling quality. The Apex Court in case of **Narendrasinh Keshubhai Zala Vs. State of Gujarat, [2023] 2 SCR 746** has observed thus :-

“8. It is a settled principle of law that doubt cannot replace proof. Suspicion, howsoever great it may be, is no substitute of proof in criminal jurisprudence [Jagga Singh v. State of Punjab, 1994 Supp (3) SCC 463]. Only such evidence is admissible and acceptable as is permissible in accordance with law. In the case of a sole eye witness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. Unnatural conduct and unexplained circumstances can be a ground for disbelieving the witness. This Court in the case of Anil Phukan v. State of Assam, (1993) 3 SCC 282 has held that:

“3.... So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony

alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect...”

9. The same principle has been enunciated in: Amar Singh v. State (NCT of Delhi), (2020) 19 SCC 165.”

37. It is true that it is the quality of the evidence that matters and not the quantity. There can be no two views what has been observed in the judgment in case of Lal Bahadur (supra) relied on by learned A.P.P. We have carefully perused paragraph no.22 of the said judgment. One has ultimately to decide the case on the basis of evidence appearing therein. At the cost of repetition it is stated that there are major inconsistencies in the evidence of prosecution witnesses. P.W.5 – Irfan could not be termed to be wholly reliable witness, for the reason he found to have been inimical with the appellant on account of a dispute over partition of the family property. The prosecution case before the trial Court was altogether different. According to prosecution, the culprits were three in number. Two of them have been acquitted. In the peculiar facts and circumstances of the case and for the reasons stated hereinabove, we find the trial Court to have erred in relying on the sole testimony of P.W.5 – Irfan. We are not at one with the findings recorded by trial Court. Interference with the impugned judgment of conviction and order of consequential sentence is, therefore, warranted.

38. In the result appeal succeeds. Hence, the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned judgment and order of conviction and consequential sentence imposed against the petitioner for the offences punishable under Sections 302, 447 and 506 of the Indian Penal Code, dated 30th November, 2019 passed by Additional Sessions Judge, Omerga ('trial Court') in Sessions Case No. 16 of 2018 is hereby set aside. The appellant is acquitted thereof.
- (III) The appellant be released forthwith, if not required in any other case.
- (IV) Fine amount paid, if any, be refunded to him.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)