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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.361 OF 2022

1. Santosh s/o Eknath Dambale APPELLANTS
Age - 34 years, Occ - Labour
R/o Sargam Row House No.4,
Gamnimala, Makhmalabad,
Panchavati, Nashik
District - Nashik
2. Kapil s/o Eknath Dambale
Age - 31 years, Occ - Labour
R/o Kumbhar Galli, Makhmalabad
Panchavati, Nashik
District - Nashik
3. Prakash s/o Eknath Dambale
Age - 36 years, Occ - Labour
R/o Mali Galli, Makhmalabad
Panchavati, Nashik
District - Nashik
4. Milind s/o Devidas Kamble **DELETED**

VERSUS

The State of Maharashtra

RESPONDENT

.....
Mr. Sudarshan J. Salunke, Advocate for the Appellants
Mrs. S. N. Deshmukh, APP for Respondent - State
.....

AND
CRIMINAL APPEAL NO.1054 OF 2024

Milind Devidas Kamble APPELLANT
Age - 25 years, Occ - Labour
R/o Shantinagar, Panchavati
District - Nashik
(Present in Aurangabad Central
Prison, Aurangabad)

VERSUS

The State of Maharashtra
(Through Sailu Police Station, Parbhani)

RESPONDENT

.....
Mr. A. H. Bankapur, Advocate for the Appellant
Mrs. S. N. Deshmukh, APP for Respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, &

MANJUSHA DESHPANDE, J. J.]

RESERVED ON : 27th MARCH, 2025

PRONOUNCED ON : 23rd APRIL, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. Appellants Santosh Eknath Dambale, Kapil Eknath Dambale and Milind Devidas Kamble are convicted by the learned Additional Sessions Judge -2, Parbhani in Sessions Case No.76 of 2020 for the offence punishable under section 302 of the Indian Penal Code and are sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.10,000/- each with default clause and Appellant Prakash Eknath Dambale is convicted under sections 302 and 109 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.10,000/- with default clause.

2. Prosecution case is that, on 18th March, 2020 at 10.15 p.m. one Ertiga car bearing Registration No. MH-15 / FT-4240, came in

the police station and three persons came out of the said vehicle. They told the Police Inspector that they have committed murder of Rahul at village Kundi. On inquiry, they disclosed their names. Person having blood stained sickle told his name as Santosh Dambale (A-1), person having dagger told his name as Milind Kamble (A-4) and person having sickle told his name as Kapil Dambale (A-2). They were taken into custody and entry about it was taken in the station diary at 10.24 p.m. Police Inspector proceeded towards the spot of the incident. Thereafter, PW-1 Prayagbai Devidas Dambale lodged Report that, Eknath Dambale had taken Rs.600/- from her son Rahul Devidas Dambale. On 17th March, 2020, at 10.00 a.m. her son Rahul went to the house of Eknath and demanded the money. Eknath gave him Rs.300/-. When Rahul demanded the remaining Rs.300/-, Eknath told him that he did not have money and he would give it afterwards. Therefore, quarrel took place between them. On 18th March, 2020, at 8.00 p.m. when she, along with Rahul, was in front of their house, Accused No.1 Santosh, Accused No. 2 Kapil and one unknown person came in white car and started assaulting Rahul with sickle and knife, by saying that why he assaulted their parents. Accused No.3 Prakash was instigating them by saying '*kill him, he is still not dead*'. As the assailants threatened the neighbours not to intervene in their quarrel, though the

neighbours were watching, nobody intervened. Her son fell in a pool of blood and due to the incident she was in a state of shock and was not understanding anything. Thereafter, the Accused fled from the spot. She went to the police station and narrated the incident. On her report, Crime No. 70 of 2020 was registered with Sailu Police Station for offence punishable under section 302 read with 34 of the Indian Penal Code. After completion of the investigation, charge sheet was filed.

3. The accused were charged for offence punishable under sections 302 and 109 read with 34 of the Indian Penal Code. They denied the charge and claimed to be tried.

4. In support of its case, the Prosecution has examined 11 witnesses. Defense of the accused was that Rahul had bad vices of drinking liquor and playing cards, therefore, he always used to quarrel with the villagers. Rahul had lodged various cases against villagers. Even the villagers had lodged complaints against Rahul. According to them, the villagers have killed Rahul, being fed up with his troublesome nature. On the date of the incident, all the accused had slept after having meals at their house. Around 5.30 to 6.00 a.m., police came to their house and took them to the police station, then they realized that PW-1 Prayagbai had lodged report against them. As PW-1 Prayagbai

and PW-2 Sangita wanted to reside in the village, therefore, they have not given report against the villagers. So also, on the previous day of the incident, Rahul had quarrel with their parents and, therefore, their mother had lodged a police complaint. Keeping grudge of the same, Prayagbai has lodged false report against them.

5. Trial Court, convicted the accused as above. Hence, the present Appeals.

6. Mr. Sudarshan Salunke, learned Advocate for Appellants in Criminal Appeal No. 361 of 2022, assailed the conviction of the Appellants submitting that the evidence of eyewitnesses, PW-1 Prayagbai and PW-2 Sangita, is not reliable. Though, in the FIR, only role attributed to Accused No. 3 Prakash is that he exhorted other accused to kill Rahul, however, the eyewitnesses, in their evidence, have stated that even Accused No.3 Prakash also participated in the assault. Though it is the prosecution case that 3 accused have surrendered in the police station immediately after committing murder, in the station diary entries their names are not mentioned. According to him, there is no evidence against Accused No.3. It is, thus, clear that there is over implication, exaggeration and false implication of Accused No.3 Prakash by both the eyewitnesses. PW-2 Sangita does not state

that Accused No.3 Prakash instigated other accused persons. Hence, there is discrepancy in respect of involvement of Accused No.3 Prakash.

7. According to him, conduct of PW-1 Prayagbai is unnatural and improbable. She did not try to intervene in the assault nor had she made any hue and cry. She did not approach the neighbours or police Patil or Sarpanch. She did not go to her son, therefore, she is not truthful witness. In support of this submissions, he relied on ***“Amar Singh V/s State (NCT of Delhi) AIR 2020 SC 4894.***

8. He submitted that PW-1 Prayagbai has admitted that she was alone at the time of the incident and, therefore, she has not seen PW-2 Sangita. Statement of PW-2 Sangita is recorded after notice was given to her by the Police. She has not disclosed the incident to police immediately after the incident. Therefore, evidence of PW-2 Sangita is also not believable. He relied on the admission given by her that after the police came to her, she came to know as to what happened to Rahul. Therefore, by relying on ***“Musheer Khan @ Badshah Khan and Another V/s State of M.P.” AIR 2010 SC 762; “Rai Sandeep Alias Deepu V/s State of NCT of Delhi AIR 2012 SC 3157; “Jainul Haque V/s State of Bihar” 1974 AIR (SC) 45, “Anand***

Mohan V.s State of Bihar”” 2012 ALL SCR 2062 and “Ramuthai V/s State” 2012 ALL SCR 105 he submitted that the evidence of both the eyewitnesses is not reliable and the same is liable to be discarded.

9. By relying on **“State of U. P. V/s Mohd Iqram and Another” AIR 2011 SC 2296** and **“Sanjay Devaji Ramteke V/s State of Maharashtra” 2020 Supreme (Bom) 371**, he submitted that the CA reports do not help the Prosecution as the articles allegedly recovered from the Accused were not sealed immediately. No question about the CA reports was asked to the Accused and, therefore, the CA reports cannot be used to convict the Accused persons. Similarly, the scientific evidence also cannot be used against them for not putting it to the Accused during recording of their statements under section 313 of the Criminal Procedure Code.

10. He further submitted that Prosecution case that the Accused surrendered in the Police Station is not believable, as in the station diary entry, names of the Accused are not mentioned, the Investigating Officer has failed to produce CCTV footage and, therefore, in view of the ratio in **“Tomaso Bruno V/s State of UP” AIR 2015 SC (Supp) 412**, adverse inference needs to be drawn against the Prosecution and the Prosecution case of

surrender by the Accused is liable to be disbelieved.

11. By relying on the FIR (Exhibit-119/A), given by the mother of the accused against the deceased, which is proved by the Investigating Officer, he submits that, the Accused are falsely implicated in the crime. He, therefore, submitted that the Trial Court has failed to appreciate these serious lacunae in the prosecution case and the prosecution has failed to prove the case against the Accused beyond reasonable doubt. Hence, the accused may be acquitted.

12. Learned Advocate Mr. A. H. Bankapur, appearing for Appellant Milind Kamble (A-4) in Criminal Appeal No. 1054 of 2024, submitted that, Accused No.4 is stated to be identified in Test Identification parade ("TI Parade" for short) conducted by PW-10. It is clear from his evidence that the TI parade was not conducted in consonance with the guidelines given in the Criminal Manual. Even Kapil (Accused No.2) was also there in the TI parade along with Milind (Accused No.4), which shows non application of mind on the part of PW-10. Age of Accused No.4 and the dummies was not the same. Prayagbai (PW-1), while giving information of the incident to the Police, has not given description of Accused No.4. He is not related to Accused No.1 to 3, therefore, he had no motive to kill Rahul. He submitted that at

the first instance, when Police arrived at the spot, Prayagbai (PW-1) was present there. At that time she had not disclosed the incident to police, which makes her presence at the scene of occurrence doubtful. Police have conducted investigation and Panchanamas in the light of mobile torch, therefore, it is clear that there was no sufficient light at the time of the incident and the eyewitnesses could not have seen the incident. It is submitted that Sangita (PW-2) has not given details as to who held Rahul at the time of assault and, therefore, her presence at the time of the incident is also doubtful.

13. PW-2 has identified Accused in the Court, that identification should not be given any weightage. Not a single independent eyewitness is examined by the Prosecution. It is submitted that taking into consideration the omissions in the evidence of PW-1 and PW-2, their evidence is not reliable. No arrest panchanama is conducted when the accused persons allegedly surrendered in the police station. According to him, there is no document to show ownership of Ertiga car, in which the Accused persons allegedly arrived at the scene of offence and at the police station. PW-6 Abhay Shinde, Panch witness does not say that the Articles were blood stained and seals and labels were affixed on the Articles. No question was put to the Accused about the CA reports. Hence, that evidence cannot be relied on. He submitted

that the prosecution has not produced CCTV footage of the Police Station at the time, when the accused allegedly surrendered themselves. He, therefore, submitted that Accused No.4 is entitled for acquittal.

14. Per contra, learned APP supported the impugned judgment and order of conviction. She submitted that though the accused are five brothers, names of only 3 brothers are taken by PW-1. If at all she wanted to falsely implicate, she would have named all the five brothers. According to her, the omissions in the evidence of PW-1 and PW-2 are not material, so as to render their testimony doubtful. She submitted that the Trial Court has rightly relied on the evidence of the two eyewitness and the recovery from the accused persons and has rightly convicted them. There is no merit in the Appeals. Hence, the Appeals may be dismissed.

15. Heard Mr. Sudarshan Salunke and Mr. A. H. Bankapur, learned Advocates for the Appellants and Mrs. S. N. Deshmukh, learned APP for the State at length. With their assistance, we have perused the record.

16. Homicidal death of Rahul is proved by the prosecution in the evidence of PW-7 Dr. Rahul Lokhande. He has proved postmortem report (Exhibit-81). He found following injuries on the dead body

- I. *Chop on forehead with fracture cranium having size 13 X 1.5 X 1.5 cm*
- II. *Laceration on left ear with separation of ear article with visualization of ear canal of size 11 cm X 3 X 3 cm*
- III *Laceration on left parietal bone of size 2.5 X 1.5 X 1 cm*
- IV. *Laceration with fracture of occiput of size 8 X 1.5 X 1.5 cm*
- V. *Complete avulsion of upper lip with nose tip having size 8 X 1 X 1 cm*
- VI. *Chop on neck (a) right side of size 6 X 1 X 2.5 cm with opening of larynx (b) 6.5 X 1 X 1 cm on right side.*
- VII. *Chop with laceration on right shoulder 9 X 4 X 2.5 cm with destruction of shoulder joint.*
- VIII. *Chop with laceration on back on scapula 11 X 3 X 2 cm*
- IX. *Chop on right upper arm of size 8 X 1.5 X 1 cm*

- X. *Chop with laceration on left shoulder deltoid region of size 12 X 4 X 5 cm with destruction of shoulder joint.*
- XI. *Chop with laceration on back of left scapula of size 12 X 3 X 3 cm*
- XII. *Multiple CLW on dorsum of left forearm and left with larger of size 4 X 1 X 1 cm*
- XIII. *Chop below left knee having size 4 X 1 X 1 cm*

17. On internal examination, he found – “*head injury with fracture of forehead and occiput as described above, multiple contusion seen of various sizes with larger 2.5 cm X 1.5 cm on occiput in brain. Larynx was was open below the thyroid cartilage. Ruptured right internal and external carotoid vessels. Blunt trauma on teeth on lower jaw*”. According to him, cause of death was Hypovolumic Shock due to multiple injuries with head injury.

18. Three weapons, Sickle (Article D and E) and Knife (Article-F) were forwarded to him by letter (Exhibit-84) and his opinion was sought as to whether the injuries found on the dead body of Rahul were possible by these weapons. He opined that the injuries on the dead body may be possible by the three weapons.

19. In cross examination, he has stated that he did not mention in the report whether the weapons were sealed or not and that there was blood present on the weapons. He has not explained

age of the injuries and cause of injuries in the Postmortem report.

20. The Accused persons have not disputed the homicidal death of Rahul. On the contrary, it is their case that the villagers have killed him. Therefore, homicidal death of Rahul is proved by the prosecution.

21. While convicting the Accused, the Trial Court has relied on evidence of two eyewitness Prayagbai Dambale (PW-1), mother of deceased Rahul and Sangita Dambale (PW-2), neighbour of the deceased.

22. PW-1 Prayagbai is the mother of the deceased and she is an eyewitness. She deposed that she was staying at village Kundi along with her son Rahul. Rahul was doing centring work. At the time of the incident, his wife Maya had gone to Kolha for delivery. House of Eknath Dambale is near her house. Kondabai is wife of Eknath. Eknath has five sons, Kapil (A-2), Santosh (A-1), Satish, Prakash (A-3) and Sidharth and they all reside at Nashik. Eknath had taken Rs.600/- from Rahul. On 17th March, Rahul demanded money from Eknath in order to go to hospital. Eknath gave Rs.300/- and when he demanded the remaining Rs.300/-, Eknath quarreled with Rahul.

23. The incident happened on 18th March, 2020 at 8.00 p.m. She and Rahul were in front of their house. At that time, Santosh (A-1), Kapil (A-2), Prakash (A-3) and one unknown person came on one white car. They asked Rahul why he quarreled with their parents. Immediately they started assaulting Rahul by sickle and knife. They threatened persons surrounding to that place. Rahul fell in a pool of blood. She was not in a position to understand. Those persons fled by the same car. She was sitting there. Police came there. Police did the Panchanama and took the dead body to Government Hospital, Sailu. She went to Sailu Police Station and lodged report (Exhibit-52). She gave her statement (Exhibit-53) in Sailu Court. One month thereafter, she went to jail to identify fourth person and identified him by touching him. She identified clothes, Blue Colour Jeans Pant (Article-A), White Colour Baniyan (Article-B) and Chocolate colour under wear (Article-C) worn by her son Rahul at the time of the incident. She also identified sickles (Articles D and E) and knife (Article-F) used in the crime.

24. In cross-examination, she admitted that Accused Santosh, Prakash and Kapil reside at Nashik, since their childhood. At the time of the incident, she was working in the house of Digamber Brahman. When accused were assaulting Rahul, only she was present and no one gathered. Due to threatening of accused,

only she had seen the incident and no one came out of their house. At the place of incident, there are houses surrounding it. Police came at 11.00 p.m. They did not enquire with the persons surrounding to the spot. When police came at the spot, at the first time, they did not record her statement in writing. It was raining that time. There is Samaj Mandir at some distance from her lane and there is one hand pump in front of the Samaj Mandir. House of Mogal is there in front of the hand pump. She admitted that there are houses of villagers surrounding the place of incident and that the villagers sit on the platform of Samaj Mandir at noon and evening time. She also went to Government Hospital with dead body of Rahul. Kailash Mogal was Sarpanch and one Baba was Police Patil of village Kundi at the time of the incident. She denied that Police taught her how to depose in the Court. She stated that one Ranoji Dambale had dispute with Rahul about 3 feet lane. Ranoji had lodged report against her sons Siddharth and Rahul. She denied that quarrel took place between Rahul and Mukinda as Mukinda had alleged that Rahul had broken his water tank and caused damage to his vehicle. She admitted that Mukinda had named Rahul for the same. She was not aware about quarrel between Avish and Rahul, Bharat and Rahul and Suman Dambale and Rahul. She admitted that Rahul and Siddharth had lodged atrocity case against

Dnyaneshwar Vinayak Mogal. She denied that due to the atrocity case, relations between Rahul and villagers were not good.

25. Her statement was recorded as per say in the Sailu Court. Omissions, to the effect, Digamber Brahman informed Sarpanch on phone about the incident and thereafter Sarpanch informed to the police and that she did not state in exact word that she was standing near door, are brought on record.

26. Following omissions from her police statement are brought on record in her cross-examination:,

- a. *“accused Santosh, Kapil, Prakash and one unknown came in a white vehicle.”*
- b. *“I cannot assign any reason why name of Prakash is not present in that line”*
- c. *“I was sitting there”*
- d. *“police had taken my son to hospital.”*
- e. *at the time of incident Rahul was having blue jean pant, Baniyan and chocolate colour underpant.”*

27. She denied the defense suggestions that in order to take revenge of the report lodged by father of Accused against Rahul, she has falsely implicated the accused persons and that all the villagers murdered Rahul, as Rahul used to quarrel with them, she has lodged false report against the accused Persons.

28. PW-2 Sangita Dambale deposed that she knows Rahul and Prayagbai. They are her neighbours. She knows Eknath Dambale. He is her cousin in relation, his house is after 5 to 6 houses. Incident with Rahul happened one year back at 8.00 p.m. She was present at her house. After dinner, she was sitting in the house and her husband had gone outside the house. She heard sound in front of her house and hence she came out of the house. She was standing in the courtyard of her house. Kapil, Prakash, Balu and 4th person unknown to her came by running. Name of Balu is changed as Kapil. She could not tell name of Balu. Those 4 persons held Rahul and assaulted him by two sickles and one knife. They assaulted Rahul till he fell down. She was shouting not to beat him. They did not hear and replied that not to stay there and stay inside. Though they heard sound of police van, they were inside the house. Police did not call her, but they came to her house and gave her notice (Exhibit-59) to give statement. Police enquired with her about the incident. She identified all the four accused as assailants.

29. In cross-examination, she has stated that PW-1 Prayagbai and deceased Rahul are in her cousin relation. She admitted that Siddharth Dambale, son of PW-1 is present in the Court and she gave her purse to him to keep till her deposition is recorded.

Police came to her for inquiry after 2 to 3 days of the incident. She did not tell about the incident to anyone till she gave statement to police. When police came to her house, at that time, she came to know what happened with Rahul. She admitted that on the day of the incident, there was rain.

30. She admitted that she did not state to the police that *"house of Eknath is after 5 to 6 houses from my house", "I hear shouting in front of my house", "I was standing in courtyard", "Those persons or persons present in the jail came by running", "those persons Balu, Kapil, Prakash and one unknown person", "those persons held Rahul", "those persons did not hear me", "those persons asked me not to stop there", "I went inside the house and my husband told me not to stop here and stay in the house" , "though we heard sound of police van, we remained in the house"*. She admitted that she could not assign any reason why word 'Balu' is missing from her statement. She did not tell the police that name of Kapil is Balu. She volunteered that now she came to know that name of Kapil is Balu. She denied the suggestion of the defense that she has falsely implicated the accused.

31. PW-3 Police Naik Ram Hatagale was on PSO duty from 8th p.m. of 18th March, 2020 till 8.00 a.m. of 19th March, 2020. He

was in the police station. At 10.15 p.m. one Ertiga No. MH-15/FT-4240 came in the police station and three persons alighted from it. One person was having blood stained sickle, another was having blood stained dagger. Clothes of all the three persons were stained with blood. They told the Police Inspector that they have committed murder of Rahul Dambale of Kundi. He and Police Inspector asked their names. The person having sickle told his name as Santosh Dambale (A-1), person with dagger told his name as Milind Kamble (A-4) and the third person told his name as Kapil Dambale (A-2). Police Inspector handed over those persons into their custody. He took entry about it in the station diary No.33/2020 (Exhibit-61) at 10.24 p.m. Thereafter, Police Inspector proceeded towards the spot. Thereafter, mother of deceased Rahul came to police station and lodged report. PSI Kottirthwale registered crime No. 70 of 2020. Thereafter, Police Inspector sized clothes of the accused persons and the accused were arrested. He identified the accused persons and the weapons sickle (Article-E) and dagger (Article-F).

32. In cross examination, he admitted that, when the accused told about the incident, they did not register the crime. He did not prepare Panchanama of the information given by the accused. He admitted that after getting information, even he could have lodged a report. He stated that, they have to be sure

and, therefore he did not lodge report. Accused did not tell exact place of incident in village Kundi. He denied that Police Inspector proceeded to the spot though she was not knowing the spot. When they receive information about the crime on phone, they take its entry on some occasions. He stated that CCTV is installed in the police station, but he was not aware whether those were working during the period of the incident. It is not his work to see whether CCTV is working or not. It is the work of the Police Inspector. He could not tell that CCTV were working when the accused came in the police station. He denied that purposefully they did not collect the CCTV footage. He admitted that in the station diary entry, it is mentioned that blood was present on the clothes of the accused. He denied that accused did not surrender in the police station.

33. PW-4 Police Naik Balasaheb Kadam went to village Kundi on the date of the incident along with Police Inspector Borgaonkar and three police constables. After reaching Kundi, they saw that Rahul was lying by the side of Buddha Vihar in a pool of blood. There were injuries on his person. Mother of deceased was there. He took photographs of the deceased and the spot in his mobile. Dead body was taken to hospital by them. In the hospital, Police Inspector prepared inquest Panchanama. Medical Officer did Postmortem. Clothes of the deceased were handed over to him

by the Medical Officer. He brought them to police station. Police Inspector recorded Panchanama of seizure of clothes of the deceased (Exhibit-63). The clothes were, one jean pant (Article-A), one baniyan (Article-B) and one underpant (Article-C). Photographs taken by him were marked as Articles-A to H.

34. In cross-examination, he has stated that it took 15 to 20 minutes for them to reach Kundi from the police station. On the spot, Police Inspector did not record complaint. After reaching at Police station, he was there for 15 to 20 minutes and Police Inspector enquired with Prayagbai. He admitted that Prayagbai had come in the hospital and she identified the deceased.

35. PW- 5 Munjaji Dambale turned hostile. He denied having given any statement under section 164 of the Criminal Procedure Code also.

36. PW-6 Abhay Shinde is Panch to the spot Panchanama (Exhibit-72). He deposed that on 18th March, 2020, when he was on duty at fuse call center, Police Inspector came to their office. He went with her to village Kundi. One co-panch, Mogal of the same village was present at the time of panchanama. Spot was near Buddha Vihar. There was road of paver blocks. When they reached there, one old lady was crying and one man was lying there. There was blood surrounding him. Thereafter, they went to

the Government Hospital and police prepared inquest panchanama (Exhibit-73) in his presence. From the hospital, they went to the police station. Police collected clothes of other persons present there. Those were one white colour T-shirt with horizontal strip, one blue colour pant, Police packed the clothes. One sickle and one four wheeler was also seized vide Panchanama (Exhibit-74). Seizure of clothes from second person was recorded vide Panchanama (Exhibit-75) they were green colour shirt with cap (hoodi), blue colour pant, which were packed by the police. By Panchanama Exhibit-76, white shirt with design was recovered from the third person, it was packed by police. From the fourth accused, police seized black colour shirt and pant and one big knife. Police packed the clothes and knife and prepared seizure Panchanama (Exhibit-77). Thereafter, he was again called in the morning and in his presence clothes of deceased, white colour baniyan, blue colour jeans pant and Amul macho under pant, were sized under seizure Panchanama (Exhibit-63). He identified the clothes worn by the accused at the time of the incident.

37. In cross-examination, he stated that police mentioned the situation present surrounding the spot in the spot panchanama and they did not mention in the spot panchanama which was not present on the spot. He denied that police did not mention light

in the Panchanama as light was not present on the spot. He admitted that it was raining at the time of preparing the spot panchanama. Police did not enquire with the villagers in his presence about the incident. He admitted that Articles -G, J and L were not having labels of his signature. He admitted that sickle and knife are available with sugar cane cutter workers. Clothes are available in the market. He denied the suggestion that clothes were already there on the table in the police station and he did not read any panchanama and just put signature on the same.

38. PW-8 Uday Pande is the Pancha to the memorandum statement of Accused No.2 Kapil. He deposed that he was working as clerk in Municipal Council, Sailu. His office instructed him to act as Panch. One P. S. Chobi was another Panch. He and Chobi went to Police Station Sailu. Police took out four different persons out of the lockup. Kapil (A-2) gave a statement that he would show scythe. Police recorded said statement (Exhibit-87). Thereafter, they went to village Kundi by police jeep. Kapil got down from the vehicle and took them to behind Mahadeo temple. He informed that said house belongs to his parents. There was one almond tree and one coconut tree. Some sand heap was there. Kapil took out scythe from the sand. Police prepared seizure Panchanama (Exhibit-88).

39. In cross-examination, he admitted that Kapil did not tell the place where he kept scythe. He did not remember in which material police wrapped the scythe.

40. PW-9 Sunil Wasalwar is carrier of Articles to Forensic Science Laboratory ("FSL" for short). He proved the letter (Exhibit-91) addressed to the Deputy Director of FSL, Nanded, forwarding the seized Articles.

41. PW-10 Prashant Tharkar, Naib Tahildar conducted the TI parade, in which accused No.4 was identified. He conducted the TI parade on 23rd April, 2020 in which PW-1 Prayagbai identified Milind Kamble (A-4). He prepared Panchanama (Exhibit-94) presentee sheet (Exhibit-95) and identification memo (Exhibits-97 and 98). He proved report of TI Parade (Exhibit-99)

42. In cross-examination, he deposed that he did not take entry regarding height, complexion and face-cut of dummy persons and accused. He admitted that age of dummy and accused was not the same. He was not having description of the accused before the TI parade. When Superintendent brought accused, his face was covered.

43. PW-11 Vasundhara Borgaonkar, Police Inspector, is the Investigating Officer. She deposed that on 18th March, 2020, she

was at Police Station, Sailu. At 10.15 p.m. one white colour Ertiga car came in the police station. Three persons got down from it. One person was having scythe and another was having dagger in hand. They informed that they committed murder of Rahul, who ill-treated their parents. She handed over those persons in custody of PSO. Those persons informed that the spot of incident is in village Kundi. Entry of the same was taken in station diary (Exhibit-61). She then proceeded to Kundi. She gave letter to MSEB for providing Panch. Only one Panch was sent by the MSEB. Then they went to village Kundi. There was one Buddha Vihar, where they found the dead body. Mother of the deceased was there on the spot. She identified the dead body. There were many injuries on the dead body and blood was present there. Through street light was available there, they saw the dead body in the torch light. Spot panchanama (Exhibit-72) was conducted by her. Ambulance was called and the dead body was sent to Government Hospital. She took mother of the deceased with her and left her at Police Station. She did inquest Panchanama (Exhibit-73) at Hospital. As mother of the deceased had already identified the dead body at the spot, therefore, her name was mentioned in the inquest panchanama. After inquest, she returned to police station. During that period crime was registered. She took over investigation of the crime. She seized

clothes and weapons from the accused. Sickie was seized from Santosh (A-1). Dagger was seized from Milind (A-4). T-shirt having strips and sky blue colour jeans was seized from Santosh (A-1). Vehicle was seized from Santosh (A-1). Blood and hair were present on the sickie. She took blood sample from vehicle vide Panchanama Exhibit-74. Black colour shirt and pant was seized from A-4 Milind, by drawing seizure Panchanama (Exhibit-77). Shirt having cap attached to it and blue colour jeans was seized from Kapil (A-2) by seizure Panchanama (Exhibit-75). Then she went to spot and Government Hospital. Prakash (A-3) reached at the police station. She seized his clothes i.e. one white colour shirt having blood stains. She identified weapons i.e. sickie (Article-E) and knife (Article-F). She also identified T-shirt (Article-G), jeans pant (Article-H) of Santosh (A-1), Shirt (Article-I), jeans pant (Article-J) of Kapil (A-2) and Black colour shirt (Article-L) and black colour jeans pant (Article-M) of Milind (A-4) and shirt (Article-K) of Prakash (A-3). She then sent the accused persons to Government Hospital and after their medical examination, she arrested them vide Panchanamas (Exhibits-104 to 107), Thereafter, she narrated the investigation done by her and correspondence made with forensic laboratory, disclosure statements made by the accused and recoveries made pursuant to it. She stated that statements of witnesses were recorded

under section 164 of the Criminal Procedure Code and the TI parade conducted by PW-10.

44. In cross-examination, she deposed that police station did not receive any phone call about the incident. She did not know whether Sarpanch informed police that villagers committed murder of deceased and they have suppressed said information purposefully. She stated that during her tenure CCTV were installed in the police station, Sailu. CCTV camera is fixed at the entrance of the police station and also in the lockup. It was duty of the Police Inspector to inform about working condition of the CCTV cameras. CCTV footage was the best evidence, but she did not produce CCTV record. She volunteered that CCTV was not working at that time. She might not have given intimation about non working of CCTV. She denied that accused were arrested from their house at 6.00 a.m. on 19th March, 2020. On a specific question as to what evidence she got regarding offence under section 109 of the Indian Penal Code, she answered that on the spot, accused Prakash instigated other accused by saying “हाणा हाणा खलास करा”.

45. She has not instructed from the spot to police station to seize weapons and clothes from the accused and to arrest them. She did not instruct to record FIR from the spot. She admitted

that before doing inquest panchanama, she was knowing names of the accused and weapons used by them. She did not mention names of accused in the inquest panchanama. She denied that since she was not knowing about accused and weapons, she did not mention it in inquest panchanama. She took accused on two occasions with remand papers to Sailu court. She was present with the accused. She did not mention in the remand applications (Exhibit-118 and 119) on 18th March, 2020 that accused surrendered to police station with weapons and she seized those weapons.

She did not file certificate under section 65-B of the Evidence Act about photographs. Informant or Sangita Dambale did not give description of Milind Kamble (A-4). During investigation PW-1 and PW-2 did not tell her that they saw blood on the clothes of the accused. PSO Ram Hatagale (PW-3) told that blood was present on the clothes of accused. Except police witnesses, no other witness told that blood was present on the clothes of the accused. She did not feel it necessary to mention that blood was present on the clothes of the accused at the time of taking entry in station diary. She did not file any document to show that Prakash (A-3) appeared later in police station. She admitted that in the spot panchanama, she did not mention words "street light". She denied that there was no light available

on the spot and, therefore, spot panchanama was conducted in the light of mobile torch.

46. She did not feel it necessary to register FIR as she had not seen the dead body. She did not record panchanama about information given by the accused as per station diary entry No.33. She denied that she never sealed Muddemal articles. She proved the omissions from the statement of PW-2 Sangita.

47. In assessing the value of evidence of eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situation as would make it possible for them to witness the fact deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence (Vide ***“Shahaja @ Sahahanan Ismail Mohd. Shaikh V/s State of Maharashtra” 2022 ALL MR Cri 3035 (SC)***).

On applying aforesaid principles to the evidence of the eye-

witnesses Prayagbai (PW-1) and Sangita (PW-2), PW-1, being mother of the deceased and PW-2 being neighbor, their presence at the time of occurrence is natural and on careful evaluation of their evidence, we find that they have categorically deposed that the accused assaulted Rahul with sickle and knife. Evidence of both these eye-witnesses is not shaken in the cross-examination. Though, few omissions are brought on record, those are not material so as to render their testimony highly suspicious and doubtful. We find that the evidence of eye-witnesses, PW-1 Prayagbai, PW-2 Sangita, read as a whole, appears to have a ring of truth and the same is rightly believed by the Trial Court.

48. PW-1 and PW-2 both have given graphic details as to the manner in which the incident has taken place. PW-1 mother of the deceased has categorically deposed that Santosh (A-1), Kapil (A-2), Prakash (A-3) and one unknown person came by one white vehicle. They questioned Rahul why he quarreled with their parents and immediately started assaulting Rahul by sickle and knife. Due to the threats given by the accused, nobody came forward. Rahul fell in a pool of blood due to the assault. Due to the said assault, PW-1 was in a shock and she was not in a position to understand as to what was happening. This evidence of PW-1 is not shaken in cross-examination. Though she has given admission that only she was present and no one gathered,

that does not mean that PW-2 Sangita has not witnessed the incident. If at all she wanted to falsely implicate the accused persons, she could have made all the 5 brothers as accused, but she has named only 3, who according to her have actually assaulted Rahul. Since, she was knowing the accused persons very well, she identified them being the assailants of Rahul. Her testimony could not be shaken in her cross-examination on the point of assault by the accused persons. We see no reason to disbelieve her testimony. FIR (Exhibit-52) is promptly lodged by her at 01.05 a.m. in the night between 18th March and 19th March, 2020. Version of PW-1 is corroborated by evidence of PW-2 Sangita. She claims to have seen the incident by coming out from her house on hearing shouts and she has witnessed the incident from courtyard of her house. She has actually seen accused persons Kapil, Prakash and Balu and 4th person assaulting Rahul by 2 sickles and one knife. Though few omissions are brought on record in her cross-examination, those are not so material to create doubt about her testimony.

49. We find no merit in the argument of the accused that conduct of PW-1 is most unnatural as she has not tried to save deceased nor she approached the deceased. PW-1 has categorically stated in her deposition as well as in the FIR that on seeing the incident, she was not in a position to understand

anything. Obviously, when a mother sees murderous assault by the accused persons with deadly weapons on her son, she must have gone into shock and, therefore, she was not in a position to understand anything.

50. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far as removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. (see ***“Rana Pratap and Others V/s State of Haryana” 1983 (3) SCC 327***).

51. In ***“Rammi @ Rameshwar V/s State of M.P.” (1999) 8 SCC 649***, the Apex Court has held that, the post event conduct of witness cannot be predicted. It varies from person to person as different people react differently to what they witness.

52. Considering the above ratio, we find that merely because PW-1 has not reacted in a particular manner, her conduct cannot be termed as unnatural so as to render her testimony unreliable.

53. Evidence of PW-2 Sangita, who is relative of both, accused and the deceased and neighbour of deceased, corroborates evidence of PW-1 Prayagbai. She, being relative of both accused as well as the deceased, has no reason to falsely implicate the accused persons in the crime. Being neighbour, her presence is natural at the time of the incident. Spot Panchanama shows that deceased was lying in front of the house of PW-2. Nothing favourable to the accused is elicited in the cross-examination. Though some omissions are brought on record, they are not so vital so as to render her testimony unworthy of credit.

54. Much stress is given by the learned advocate for Accused No.4 on admission of PW-2 that after police came to her house at that time, she came to know as to what happened with Rahul. We have perused marathi version of the cross-examination of this witness, wherein the admission is “ज्या दिवशी पोलिस माझ्याकडे

चौकशीला आले त्या दिवशी मला कळाल की राहुल बरोबर काय घडल” It means, on the day on which police came to her, on that day she came to know as to what happened with Rahul. We disagree with the interpretation of this admission sought to be propounded on behalf of Accused No.4. This admission can be read to mean that she came to know from the police as to what happened to Rahul after the incident. Her evidence will have to be considered as a whole and a single sentence cannot be taken into consideration, so as to disbelieve her otherwise reliable evidence. It has come in the evidence of PW-1 that accused had given threats to the neighbours to remain inside their houses and therefore, PW-2 has not disclosed the incident to anybody till her statement was recorded by police on 20th March, 2020. Fact remains that she is related to the accused as well as the deceased and, therefore, she has no reason to falsely implicate accused persons. Trial Court, therefore, has rightly believed the evidence of both the eye-witnesses.

55. Immediately after committing murder of Rahul, Santosh (A-1), Kapil (A-2) and Milind (A-4) went to Sailu Police Station at 10.15 p.m. in Ertiga car No. MH-15/FT 4240, along with the murder weapons and surrendered there. On their disclosure, station diary Entry No. 33/2020 (Exhibit-61) is taken at 10.24 p.m. by Police Inspector Vasundhara Borgaonkar. The accused

were handed over in custody of PW-3 PSO Ram Hatagale. Immediately thereafter, PI Borgaonkar rushed to the spot of the incident and conducted spot panchanama (Exhibit-72) in the presence of PW-6 Abhay Shinde. PW-6 Abhay Shinde has corroborated conducting of spot panchanama (Exhibit-72). Perusal of the spot panchanama shows that, PW-2 Sangita is immediate neighbour of the deceased and dead body of Rahul was lying in front of house of Sangita. This panchanama is stated to have been conducted under street light as well as under the light of mobile torch. Merely because it is mentioned in the Panchanama that it was conducted under street light as well as in the light of mobile torch, it cannot be said that there was no light at all on the spot and therefore, PW-1 and PW-2 could not have seen the incident in absence of light. Fact remains that except Accused No.4, all the Accused persons were known to both the eye-witnesses.

56. It appears that on receipt of information from the accused, PW-11 the Investigating Officer went to village Kundi to verify about truthfulness of the information. After visiting the spot and finding dead body, she first conducted spot panchanama, sent the dead body to hospital, where she conducted inquest panchanama and then the report was lodged by PW-1, which was registered at Crime No. 70 of 2020. Merely because at earlier

point of time, the offence was not registered, does not mean that FIR registered at the instance of PW-1 becomes doubtful.

57. Blood stained weapons and clothes of the accused were seized, at the time of arrest of the accused persons at the police station. In CA report (Exhibit-109), it is clearly mentioned that, *“seven sealed packet and Thirteen sealed cloth parcels, seals intact and as per copy sent”*. Blood found on the clothes of the accused and murder weapons is human. Group of blood on other articles could not be determined, as results were inconclusive. Thus, the forensic evidence also supports the prosecution case.

58. Much is argued on non production of CCTV footage by the Investigating Officer. Much stress is also led on the fact that in reply to Right to Information Application, filed with Sailu Police Station, it is informed that CCTV cameras were working during the period from 1st January, 2020 to 31st December, 2020 and, therefore adverse inference needs to be drawn against the prosecution.

59. Evidence of eye-witness PW-1 and PW-2 is found to be cogent and reliable, so also the fact that surrender by accused No.1, 2 and 4 in the police station on 18th March, 2020 at 10.15 p.m. is corroborated by the station diary entry and in the evidence of PW-3 and PW-11. Weapons and clothes of the

accused were stained with human blood at the time when they surrendered in the police station. By this evidence, the prosecution has proved its case beyond reasonable doubt against Santosh (Accused No.1), Kapil (Accused No.2) and Milind (Accused No.4). Therefore, merely because CCTV footage of the police station is not produced on record, the prosecution version that the accused surrendered in the police station cannot be disbelieved. We are supported by the decision of the Apex Court in **“State of U.P. V/s Hari Mohan and Others” AIR 2001 SC 142**, wherein it is held: *“However, the defective investigation cannot be made basis for acquitting the accused, if despite such defects and failure of the investigation, a case is made out against all the accused or anyone of them.”*

60. In the FIR, role attributed to Prakash (A-3) is that, he exhorted accused No.1, 2 and 4 to kill Rahul by saying “हाना हाना त्यास खलास करून टाका आजून मेला नाही”. However, in the substantive evidence, PW-1 has improved her version and stated that Accused No.3 Prakash had taken active part in the assault.

61. In **“Jainul Haque”** (*supra*), the Apex Court has held that :

“8. It would appear from the above that there is a clear discrepancy between the evidence of the witnesses given at the trial and the version given in the first information report regarding the part played by the appellant. The part attributed to the appellant according to the first information report is that he had exhorted the

other accused to assault Leyaquat, while according to the evidence adduced at the trial the appellant actually joined in the assault on Leyaquat. "It has also found that the eyewitnesses were prone to exaggerate things and to involve as many accused as possible. In the circumstances it was, in our opinion, not safe to base the conviction of the appellant on the aforesaid evidence. The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory."

62. One more circumstance compels us to give benefit of doubt to Accused No. 3 Prakash, as per the prosecution case, immediately after committing murder of Rahul, Accused No.1 Santosh, Accused No.2 Kapil and Accused No.4 Milind went to Sailu Police Station at 10.15 p.m. in Irtiga Car No. MH-15/FT-4240 carrying murder weapons and surrendered themselves. On their disclosure, station diary entry No. 33/22 (Exhibit-61) was taken at 10.24 p.m. by PW-11 Police Inspector Vasundhara Borgaonkar. All the three accused were handed over in custody of PW-3 PSO Ram Hatangale, who has confirmed this fact in his evidence. Immediately thereafter PI Borgaonkar rushed to the spot of the incident. PW-11 further states that after she returned from the

hospital then Accused No.3 Prakash surrendered in the police station. This fact is not stated by PW-3 in his evidence. He being the PSO, ought to have stated that Accused No.3 Prakash surrendered subsequently, after PW-11 returned from the hospital. There is no station diary entry taken about surrender of Accused No.3 Prakash in the police station. Therefore, we are not inclined to accept that Accused No.3 - Prakash surrendered subsequently in the police station.

63. In the light of the above ratio and for aforesaid reasons and in view of inconsistency in the FIR and substantive evidence of PW-1 about participation of Accused No.3 - Prakash in the crime, we are of the considered view that Accused No.3 - Prakash is entitled for benefit of doubt.

64. In ***"Amar Singh"*** (*supra*), out of three, two eye-witnesses had turned hostile and the Apex Court found the conduct of the eye-witness either at the time of incident or immediately thereafter was not natural and did not inspire confidence, which made his presence on the spot extremely doubtful. There was material discrepancy between ocular testimony and the medical evidence. Hence, the Appellant was acquitted.

Such are not the facts of the present case. Two eye-witnesses are consistent and corroborate each other, medical

evidence supports their version. Therefore, this ruling does not assist appellants' case.

65. In ***“State of Rajasthan V/s Teja Singh and Others” 2001 ALL MR (Cri) 994***, the Investigating Officer failed to recover blood stained clothes of the eye-witnesses. It was, therefore, held that presence of the eye-witnesses was doubtful.

In the case in hand, merely because PW-1 was in shock due to the assault and murder of her son in front of her eyes, did not go to her son and that is why her clothes were not stained with blood and on that count, her presence cannot be doubted.

66. In ***“Chunthuram V/s State of Chhattisgarh” 1 LR 2020 Chhattisgarh 2348***, since eye-witness failed to report the incident to police or to inform it to any other person was held to be contrary to human nature and his evidence was disbelieved.

67. In ***“Musheer Khan @ Badshah Khan” (supra)***, star witness did not state that he saw other witnesses at the place of incident. Therefore, it was held that presence of other witnesses at the place of occurrence is doubtful.

In the present case, we have come to the conclusion that presence of PW-1 and PW-2 is natural and their testimonies are reliable. Hence, these rulings will not assist the case of the

appellants.

68. In **“Rai Sandeep Alias Deepu”** (supra), it is observed :

“Sterling witness should be of a very high quality and caliber 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 a 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 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 everyone 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.”

Applying the above ratio to the present case, we find that the testimony of PW-1 and PW-2 is consistent with each other, qua accused persons and they have withstood lengthy cross-examination of the defence. Therefore, this ruling will not assist the case of the appellants.

69. In “**Mohd Iqram**” (*supra*), the Apex Court has held that,

“ The Court cannot place reliance on incriminating material against the accused, unless it is put to him during his examination under Section 313 Cr.P.C.

70. We are unable to accept the submission of the Appellants that since CA report was not put to them in their statement recorded under section 313 of the Criminal Procedure Code, the same cannot be relied on for corroboration of the prosecution case. CA report was put to the accused in Question No. 22. While answering Question No.22, Accused No.1 has stated that, he does not know and Accused No.2 to 4 have stated that, it is not true. Therefore, we do not find any merit in the said argument.

71. For the aforesaid reasons, we hold that the prosecution has proved its case against Accused No.1, 2 and 4 beyond reasonable doubt, however, we are inclined to give benefit of doubt to accused No.3 Prakash s/o Eknath Dambale. In the result, following order

ORDER

A. Criminal Appeal No. 361 of 2022 filed by Accused No.1 Santosh Eknath Dambale and Accused No.2 Kapil Eknath Dambale and Criminal Appeal No. 1054 of 2024 filed by Accused No.4 Milind Devidas Kamble are hereby dismissed. Their conviction recorded by the Trial Court is hereby

confirmed.

- B. Criminal Appeal No. 361 of 2022 to the extent of Accused No.3 Prakash s/o Eknath Dambale is allowed. Impugned judgment and order of conviction dated 15th March, 2022 passed by learned Sessions Judge, Parbhani in Sessions Case No. 76 of 2020 thereby convicting Accused No.3 under sections 302 and 109 of the Indian Penal Code is hereby quashed and set aside. Accused No. 3 / Appellant No.3 Prakash s/o Eknath Dambale is acquitted of all the charges.
- C. He be released forthwith, if not required in any other case.
- D. Fine amount, if paid by him, shall be refunded to him.
- E. He shall execute bond of Rs.15,000/- of one or more sureties in terms of section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023.
- F. Muddemal property be dealt with in accordance with law.

[MANJUSHA DESHPANDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE