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IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NOS.41,34,37 OF 2024****CRIMINAL APPEAL NO.41 OF 2024**

Joseph Brendon Sequeira,
S/o. Ismael Sequeira,
Aged 30 years,
R/o. House No.62/7, Pintos Vaddo,
Candolim, Bardez, Goa,
Presently in custody
At Central Jail, Colvale, Goa.
Through his next friend
Eleanora DCosta,
d/o Caetano Dcosta,
aged 42 years,
r/o. House No.106, Siolim, Vaddy,
Bardez, Goa – 403 517. ...Appellant

Versus

The State of Goa,
Through the Police Inspector,
Calangute Police Station,
Calangute, Goa. ... Respondent

**WITH
CRIMINAL APPEAL NO.34 OF 2024**

Mr Ceon Bruno Fernandes
S/o. Sebastiao Fernandes,
Age 22 years, Indian National,
Private service, r/o. H.No.1337/1,
Arady, Candolim, Bardez Goa.
Presently in Judicial Custody,
Central Jail Colvale. ...Appellant

Versus

1. State of Goa,
The Police Inspector,
Calangute Police Station,
Calangute Goa.

2. The Public Prosecutor,
Bombay High Court at Goa,
The Bombay High court Building,
Porvorim Goa.

... Respondents

AND
CRIMINAL APPEAL NO.37 OF 2024

Mr Mahesh Rampal,
S/o. Ramesh Rampal,
Aged about 29 years,
R/o. House No.161/109,
Orda Vaddo, Candolim,
Bardez, Goa.
(lodged in Judicial Custody at the
Central Jail, Colvale,
through his next friend,
Mr Rajendra S. Dholi,
aged 41 years, Indian,
CQ Furnished Apartments,
behind Kadamba Depot,
Porvorim, Bardez, Goa.

...Appellant

Versus

The State of Goa,
Through Police Inspector,
Calangute Police Station,
Calangute, Bardez, Goa.

... Respondents

Mr Nigel Fernandes, Advocate for the Appellant in CRIA
No.41/2024.

Mr Rohan Desai with Mr P. Manjalikar, Advocates for the

Appellant in CRIA No.34/2024.

Mr Ryan Menezes with Ms Gina Maria Almeida, Advocate for the Appellant in CRIA No.37/2024.

Mr Somnath Karpe, Additional Public Prosecutor with Mr Anand Shirodkar, Ms Riddhi Shirodkar and Ms Sonali Gaonkar, Advocates for the Respondents - State.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

**Reserved on : 7th OCTOBER 2025
Pronounced on : 10th DECEMBER 2025**

JUDGMENT : (Per Ashish S. Chavan, J.)

1. The Appellants, Joseph Brandon Sequeira (CRIA No.41/2024), Ceon Bruno Fernandes (CRIA No.34/2024) and Mahesh Rampal (CRIA No.37/2024), Accused Nos.1, 2 and 3, respectively, have questioned the common judgment and order dated 30.05.2023 passed by the learned Additional Sessions Judge, North Goa, Mapusa, *inter alia*, holding the accused guilty for offence punishable under Section 302 r/w Section 34 of IPC and sentencing them to undergo imprisonment for life and to pay fine for an amount of Rs.10,000/- each.

2. Aggrieved by a common order and judgment dated 30.05.2023, the Appellants have preferred three separate Appeals arising out of the same impugned judgment and order, which are being disposed of by the present common judgment. For the sake of convenience, the lead Appeal No. CRIA No.41/2024 is taken up first, followed by the other two Appeals, namely CRIA No.34/2024 and CRIA No.37/2024.

3. All the aforesaid Appeals were admitted and are taken for hearing finally.

4. Heard Mr Nigel Fernandes, learned Counsel for the Appellant in CRIA No.41/2024, Mr Rohan Desai, learned Counsel for the Appellant in CRIA No.34/2024 and Mr Ryan Menezes, learned Counsel for the Appellant in CRIA No.37/2024 and Mr Somnath Karpe, the learned Additional Public Prosecutor for the Respondents – State.

5. Perused the record and the judgments relied upon by rival parties.

6. Before adverting to the evidence marshalled by the Prosecution and the rival contentions of the parties, the incident leading to the offence can be summarised as under:

(i) On 24.06.2017, at about 22.30 hrs., the Complainant Dipesh Naik, along with his friend George Denzil Noronha, was having drinks at Calangute fish market. At that time, one Tyron Nazareth came near them and joined their company. At about 23.30 hrs., the complainant, along with his friend George Noronha, went to buy some beers at Vicky Bar. On reaching the entrance of the bar, one Joseph Sequeira (Accused No.1) along with two persons (Accused Nos.2 and 3) came near them on Aactiva Scooter and asked them about the whereabouts of Tyron Nazareth.

(ii) The Complainant told them that he did not know his whereabouts and told them to search. Thereafter, they got down from the scooter and went walking towards Calangute fish market, accosted Tyron Nazareth and started assaulting him with deadly weapons (chopper, knife and sword). Thereafter, all of them left the place on an Activa scooter, leaving behind Tyron Nazareth, who was bleeding from his injuries.

(iii) The Complainant then contacted ambulance services, which came to the spot and took injured Tyron Nazareth to the hospital. The Complainant lodged his complaint against Joseph Sequeira and two unknown persons. The deceased Tyron thereafter succumbed to injuries sustained by him.

7. The FIR came to be registered at the instance of the Complainant by Calangute Police Station on 25.06.2017 as Crime No.113/2017 for offences punishable under Sections 307 r/w 34 of IPC, which was subsequently altered to Section 302 r/w 34 of IPC, after Tyron succumbed to his injuries.

8. All three accused were arrested on 27.06.2017, and since then, they are in custody. After conducting investigation in the matter, chargesheet came to be filed on 20.09.2017. Charges were framed against all the accused on 01.03.2018 for an offence under Section 302 r/w Section 34 of IPC. The accused pleaded not guilty and came to be tried.

9. The Prosecution have examined 19 witnesses to prove their case. Out of these, PW4/Dipesh Naik, PW5/George Noronha and PW7/Sikandar are eyewitnesses. PW1/P. Jaikrishna, PW2/Dr. K. P. Satapathy, PW6/Dr. Andre Fernandes, PW14/Dr. Ritika Verma, PW15/Dr. Rajiv Giroti and PW16/Dr. Pascoal D'Souza are expert witnesses. PW17/Mahesh Naik and PW19/Jivba Dalvi are the Investigating Officers. PW3/Lovejyot Singh, PW8/Jagdeep Nagvekar, PW9/Tejas Shirodkar and PW13/Raghunandan Naik are panch witnesses and PW6/Dr. Andre Fernandes, PW10/Dr. Girish Kamat and PW18/Mrudul Naik are medical witnesses. PW11/Nilesh Naik is the Police Photographer and PW12/Sandeep Gawade is the Mamlatdar, who has conducted the Test Identification Parade.

10. The case of the Prosecution rests on three incriminating aspects which are common to all three accused. The first is the eyewitness account of the incident, the second is the recovery of weapons and clothes at the instance of the accused and the third is the positive identification in the Test Identification Parade (TIP).

11. The Prosecution case unfolds through the evidence of PW4/Dipesh Naik, the complainant, who is also an eyewitness. In his evidence, he states that he and his two friends by name PW7/Sikander and PW5/George Noronha were having drinks sitting at Calangute fish market at around 10.30 p.m. This witness did not support the case of the

Prosecution since he resiled from his earlier statement and hence he was declared hostile.

During cross-examination, he states that the incident took place on 24.06.2017, which was a day of Sao Joao. He states that when they were having drinks, Tyron also joined them. Around 11.30 p.m. he and George went to buy beers at Vicky Bar leaving behind Tyron. Although, he has not supported the Prosecution case in material particulars, he does say that after the assault, he went to the Calangute Police Station to lodge complaint against the accused persons. He also states that he was called to identify accused nos.2 and 3 in the Test Identification Parade and that his statement was recorded by the Police. Although the cross-examination of this witness had commenced on 02.01.2020, unfortunately, he passed away before the cross-examination could be concluded and hence the accused persons did not have the opportunity to cross-examine him completely and his cross-examination has remained incomplete.

12. The evidence of PW5/George Norohna assumes significance since he is also an eyewitness to the incident. He narrates that on the day of the incident at 10.30 p.m., he along with the Complainant, PW4/Dipesh, PW7/Sikander and one Shweta were having drinks at the Calangute fish market. At that time, Tyron came and sat with them. Around 11.00 p.m., he and Dipesh went towards Vicky Bar, which is at a distance of about 100 mtrs. behind the Calangute fish market. They

went to sit at Vicky Bar, but it was closed. When they were at the entrance of the Vicky Bar, three persons came on the Activa scooter. Their names were Joseph Sequeira, Ceon and Mahesh. Joseph asked Dipesh about the whereabouts of Tyron. Dipesh told him that he did not know where Tyron is. The three accused got down from the scooter and went walking towards the market. They then went to Tyron and started assaulting him. Tyron was assaulted by Joseph who was carrying a sword in his hand, by Ceon who was carrying a knife and Mahesh who was carrying a chopper. Tyron sustained injuries on his head, neck, hand and stomach. He further states that he called the ambulance and Tyron was taken to the hospital.

13. PW7/Sikander, the third eyewitness, has stated that on the day of the incident, he was at Calangute fish market having drinks with Shweta, Tyron, PW4/Dipesh (complainant) and PW5/George. At around 11.30 p.m., three persons came rushing towards Tyron. They had weapons in their hands and these persons were Joseph Sequeira, Ceon and Mahesh. Joseph carried a sword in his hand, Ceon carried a knife in his hand and Mahesh carried a chopper in his hand. He has identified all the accused in Court. When the three accused started assaulting Tyron, he ran away from the spot. He called the Police and the ambulance. When he came back to the spot, he saw that Tyron was lying in a pool of blood and the accused had gone away. After about 40 minutes, ambulance came to the spot. He helped put Tyron in the ambulance. Thereafter, the Police also came. Next day, in the afternoon,

he came to know that Tyron has expired due to injuries sustained in the incident.

- 14.** The prosecution has relied heavily on the recovery of weapons against the accused to connect them with the crime, and hence, the evidence of PW8, PW9 and PW13 would be relevant.

PW8 is the panch witness, who has proved the disclosure panchanama and recovery of a sword at the instance of accused no.1 in a plastic bag placed in the roots of a banyan tree, 50 mtrs from the tar road near St. Lawrence Church at Aguada.

PW9 is the panch witness, who has proved the disclosure panchanama and recovery of a knife from some folded cloth placed in the roots of a banyan tree near the road leading from Siquerim to Agauada Fort near St. Lawrence Church.

PW13 is the panch witness, who has proved the disclosure panchanama and recovery of the chopper at the instance of accused no.2 from some bushes near the St. Lawrence Church.

- 15.** The recovery of the weapons at the instance of all the accused is from the vicinity of the same place.

- 16.** PW1, PW14, PW15 and PW16 are the expert witnesses.

PW1/P. Jaikrishna is the expert witness from CFSL, who examined the clothes and weapons recovered at the instance of the

accused, however, no grouping was possible, although human blood was detected. No DNA profiling was done and this witness has admitted that the blood detected could not be attributed to a specific accused.

PW14/Dr. Ritika Verma is a Scientific Officer attached to CFSL, who has examined the weapons for cut marks. The opinion is inconclusive, in the sense that some of the exhibits were not sharp enough for the formation of any opinion on the test cut and the others were found beyond comparison for class characteristic.

PW15/Dr. Rajiv Giroti is a Scientific Officer attached to CFSL, who has analysed the blood on the weapons and found it inconclusive for any blood grouping.

PW16/Dr. Pascoal D'Souza has done the blood grouping of the accused.

17. PW6/Dr. Andre Fernandes is the Doctor who has conducted the autopsy of the deceased and proved the same in Court. PW10/Dr. Girish Kamat is the Doctor who has examined the accused for injuries on their body. PW18/Dr. Mrudal Naik is the Doctor who is said to have treated the deceased.

18. PW3/Lovejyot Singh, the panch witness for the scene of offence panchanama, is an important witness since he has described the topography and the surrounding areas of the place where the incident had taken place. He states that the Calangute fish market has shops with

closed shutters. He has mentioned the spot where the incident had taken place. Since the panchanama is conducted just after the incident, he could observe the spot having a pool of blood on the floor. He also states that there is a chapel prior to the spot of the offence but subsequently states that he does not remember whether the chapel was on the right hand side of the fish market and that the fish market is totally surrounded by stalls, shops and other buildings. He states that he does not remember any Vicky Bar at the scene of the offence.

19. The evidence of this witness about the topography of the area assumes significance in the light of the evidence of the eye witnesses, who claim to have seen the incident from their vantage points.

20. The statements of PW8 (panch witness for disclosure panchanama for accused no.1), PW9 (panch witness for disclosure panchanama for accused no.2), PW13 (panch witness for disclosure panchanama for accused no.3) assume significance since they speak about the alleged recoveries of clothes and weapons effected from the accused persons under disclosure panchanama.

PW8/Jagdeep has narrated about the recovery of the clothes and sword at the instance of accused no.1 from a place which was around 50 mtrs from the main road near St. Lawrence Church at Aguada. The sword along with a T-shirt and pant was kept in a plastic bag near the roots of one banyan tree. Under cross-examination, he states that Aguada is a tourist spot and many people pass by the road. It is pertinent

to note that although the sword and the clothes were kept in a plastic bag and the plastic bag itself was in a place which was accessible to the public and not in a secluded or isolated spot.

PW9/Tejas Shirodkar has narrated about the recovery of clothes and a knife at the instance of accused no.2 from a place which was near a children's park opposite St. Lawrence Church, Aguada, around 15 mtrs from the main road. The knife was folded in the pant and T-shirt which were near the roots of a banyan tree. The clothes were not wrapped in anything and they were kept near the roots of the banyan tree. Pertinently, he does not say that the recovery was effected from a place which was hidden from public gaze, the place being near the children's park, can be said to be an open and accessible place.

PW13/Raghunandan Naik has narrated about the recovery of clothes and a chopper at the instance of accused no.3. He deposed that the chopper was wrapped in the T-shirt and pant which were kept near bushes near a children's park opposite St. Lawrence Church, Aguada, around 20 mtrs from the main road. He does not say that the recovery was effected from a place which was hidden from public gaze. This place was very close to the main road and near the children's park and can certainly be said to be an open and accessible place.

21. The accused were arrested on 27.06.2017, however, the TI parade was conducted only on 24.07.2017. It is pertinent to note that PW4/Dipesh, in his written complaint dated 25.06.2017, has mentioned

about accused no.1 Joseph by name as one of the assailants. He has described the other two assailants as unknown male persons. However, in his evidence, he has resiled from his earlier statement. PW5/George and PW7/Sikandar have identified all three assailants with their names in Court. PW5 under cross-examination has stated that he was shown some person at the Police Station on 24.06.2017, i.e. the date of the incident. However, he was not one of the three accused. The Prosecution has not given any cogent reason for the delay of almost a month in carrying out the Test Identification Parade. PW12/Sandeep Gawade is the Joint Mamlatdar, who conducted the Test Identification Parade on 24.07.2017 at the Court room of Joint Mamlatdar-II of Bardez.

22. PW17/PSI Mahesh Naik and PW19/Jivba Dalvi are the Investigating Officers in the case, who have deposed about how they have recorded the various statements, carried out several panchanamas, conducted Test Identification Parade, obtained autopsy reports and other expert opinions and medical reports and finally filed the chargesheet against the accused.

23. The principal submission of all the accused is that the evidence of the eyewitnesses is inherently self-contradictory and also inconsistent to each other. The contradictions brought on record are material in nature and go to the root of the matter.

From an interplay of the testimonies of the eyewitnesses, it is evident that PW5/George could not have seen the incident as narrated

by him and the presence of PW7/Sikandar at the scene of the offence is itself doubtful. PW4/Dipesh has resiled from the material particulars in his evidence and could not be cross-examined due to his unfortunate demise prior to conclusion of the cross-examination. All these aspects, according to the accused, are fatal to the prosecution case. Since the reliability of the eyewitnesses in relation to the incident that they have purportedly seen is doubtful, no credibility can be attached to their evidence.

24. The learned Additional Public Prosecutor, whilst countering this principal submission of the accused, submitted that although the Complainant, PW4/Dipesh, has expired before the conclusion of cross-examination, the evidence of the other eyewitnesses has corroborated the case of the prosecution. He submits that the cumulative effect of the evidence of PW5/George and PW7/Sikandar must be considered and they cannot be examined in isolation. PW5/George has narrated the incident vividly and merely because he was intoxicated would not be sufficient to disbelieve him. He further submitted that the inconsistency, if any, with the topography of the scene of offence cannot outweigh the ocular evidence of PW 5/George. Countering the doubt on the presence of PW7/Sikandar, he would strenuously urge that inconsistencies between the evidence of other eye witnesses, if any, cannot shake the foundation of the dock evidence of PW 7/Sikandar.

25. To test the rival submissions, it would be necessary to minutely analyse the evidence of the eyewitnesses namely, PW4/Dipesh, PW5/George and PW7/Sikandar in juxtaposition to each other.

26. PW4/Dipesh is the Complainant and also an eyewitness. He has not supported the prosecution case and resiled from his complaint. As discussed hereinabove, before the cross-examination could conclude, unfortunately he expired and hence the accused did not have any opportunity to cross-examine him. It is a settled position of law that merely because a particular witness has turned hostile, it does not efface the probative value of his evidence and that part of his evidence which can be safely corroborated with other material particulars can certainly be considered. Even though PW4/Dipesh has not supported the case of the Prosecution and has turned 'hostile', under cross-examination, he says that the incident took place at around 10.30 p.m. at Calangute fish market. He also mentions that it was the day of Sao Joao, a local festival held in Goa. He and PW5/George were having drinks at Calangute fish market and around 11.30 p.m., both of them i.e. he and George, went to buy beer at Vicky Bar, leaving behind Tyron.

27. PW5/George, an eyewitness, is an important witness since he has supported the case of the Prosecution. From his evidence, it is clear that he was consuming alcohol since 8.00 p.m. and the incident took place at around 11.30 p.m. He states that he was drinking near Vicky Bar and he cannot remember how much he drank. This certainly establishes that

PW5/George was certainly intoxicated with alcohol, which would have affected his powers of judgment, his vision and his overall assessment of his surroundings. He states that he was having drinks with one Dipesh, PW7/Sikandar and one Shweta, when Tyron came and sat with them. He further states that Vicky Bar is at a distance of 100 mtrs behind the Calangute fish market and it was 11.00 p.m. when he and Dipesh went to Vicky Bar. Since Vicky Bar was closed, they were at the entrance of the Vicky Bar, when they saw the accused come on an Activa Scooter. However, under cross-examination, he gives a different version saying that he and Dipesh sat at Vicky Bar and started drinking. They brought a carton of beer and started consuming it. He also states that there is a chapel outside the fish market and the Vicky Bar and there is a distance of 100 metres between the fish market and Vicky Bar. He also admits that the Chapel is in between the Vicky Bar and fish market. This assumes significance when the sketch of the scene of offence is taken into account. It depicts that the chapel is outside the fish market. In other words, the chapel would obstruct or impede the line of sight of any person, who is at/near Vicky Bar. The panch witness to the scene of offence panchanama states that the fish market is totally surrounded by stalls, shops and other buildings. He has also deposed that he does not remember any Vicky Bar at the scene of offence. PW5/George corroborated this fact in his evidence.

PW5/George further also states that there were no electric lights in the fish market.

28. From the above discussion, on the ocular evidence of PW5/George, and the relative placement of Vicky Bar, the chapel and the fish market, as can be gathered from the oral evidence and the sketch of the scene of offence, it is evident that from the vantage point of Vicky Bar, it was not possible to see the scene of offence. The fact that PW5/George had been consuming alcohol for 2 - 3 hours prior to the incident, as the Vicky Bar was at a distance of 100 mtrs from the fish market and there were no electric lights in the fish market, makes the ocular evidence of PW5/George extremely unreliable.

29. PW 7/Sikandar Das is also an eyewitness. He has supported the prosecution case. However, his very presence at the scene of offence at the relevant time has been seriously challenged by the defence. PW17/PSI Mahesh Naik, the Investigating Officer, in his evidence states that he came to know about the said incident when PW4/Dipesh, the Complainant, came to Calangute Police Station on 25.06.2017 at 00.20 hours. In the complaint filed by PW4/Dipesh (Exhibit 56), he mentions only PW5/George and himself being present at the scene of offence. He improvises his version during his examination-in-chief and states that PW7/Sikandar was also present. Unfortunately, because he expired before the cross could be concluded, the defence could not confront him with this improvement. PW5/George mentions PW7/Sikandar in his evidence in Court, however, the presence of PW7/Sikandar is a contradiction with his statement before the Police, which was confronted to him and proved through PW19/Jivba Dalvi, the second

Investigating Officer. Thus, the very presence of PW7/Sikandar is under a shadow of doubt cast from the evidence of the eyewitnesses themselves. He has not identified the clothing of the accused and the weapons in Court. Another aspect of the matter which questions the reliability of the witness is his admission that the place where he was sitting was a 'dark place' and that he had been consuming liquor from 8 pm till the time of the incident (nearly 2-3 hours).

30. The respective Counsel for the accused strenuously urged that in the absence of a reliable ocular testimony by the eyewitnesses, the evidence of recovery of weapons and clothes and the Test Identification Parade assumes significance. The recovery of weapons and clothes is from an accessible place open to public and therefore is rendered unreliable. The Test Identification Parade was held after almost a month of the arrest of the accused. There is no cogent reason that the prosecution has advanced for not holding the Test Identification Parade promptly. As discussed earlier, PW5/George has deposed that some person was shown to him prior to the Test Identification Parade. It was also urged on behalf of the accused that a fundamental safeguard to ensure fairness in the Test Identification Parade is the requirement that the dummies participating in the parade must, as far as practicable, resemble the accused in general appearance, build, age, complexion and attire. The Officer conducting the parade is duty-bound to prepare a contemporaneous record, recording the physical attributes of each of the participants. The absence of such a contemporaneous record to

demonstrate that the dummies bore a reasonable resemblance to the accused, vitiates the evidentiary value of the TI Parade. The Memorandum of the Test Identification Parade bears out that there is no contemporaneous record of their physical attributes to demonstrate that they were, in fact, similar in appearance to the accused. It was also urged that PW12/Sandeep Gawade, the Officer conducting the TIP states in his evidence that he had “*not taken precaution to conceal the identity of the accused as accused persons names are mentioned in the summons issued to the identifying witness*”. It was further urged that there is a contradiction between PW12/Sandeep Gawade (Mamlatdar conducting the TIP) and PW19/Jivba Dalvi (Investigating Officer). PW12/Sandeep Gawade states that he had asked the Investigating Officer to arrange 20 identical persons more or less same as the accused persons. Per contra, PW19/Jivba Dalvi states that PW12/Sandeep Gawade had not requested him to arrange dummies for the TIP. These submissions were countered by the learned Additional Public Prosecutor submitting that the disclosure statements were proved in Court the recoveries were not from an open and accessible place. He also submitted that minor discrepancies in conducting the TIP or the delay in holding a TIP cannot ipso facto diminish its credibility.

31. As discussed hereinabove, the evidence of PW8/Jagdeep (panch witness for disclosure panchanama for accused no.1), PW9/Tejas Shirodkar (panch witness for disclosure panchanama for accused no.2), PW13/Raghunandan Naik (panch witness for disclosure panchanama

for accused no.3) does not inspire confidence. The weapons were found folded in the clothes. The recoveries were effected from the vicinity of the same place, which is near a children's park opposite a church, which is near the main road leading to a tourist spot. The recovered items were not hidden but were found in an open and accessible place.

32. It is a settled position of law that where the recovery was effected from a place which was accessible and open to all, it is difficult to hold positively that the accused was in possession of the recovered articles and therefore the fact of discovery cannot be assumed to be reliable. This fact was reiterated by the Hon'ble Supreme Court in the case of *Trimbak V/s. State of M.P.*¹ in paragraph 6, which reads thus:

“6. When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.”

Thus, in the fact situation of the case, no credibility can be attached to the recovery of the weapons and clothes at the instance of the accused under the disclosure panchanamas.

33. In so far as the Test Identification Parade is concerned, the Hon'ble Supreme Court has observed in the case of *Satrughana alias*

¹ (1953) 1 SCC 397

*Satrughana Parida and Ors. V/s. State of Orissa*² in paragraph 2, which reads thus:

“2. We have heard counsel on both sides. The fate of the appellants depends on the probative value to be given to the evidence of PWs 1, 4, 6 and 8 in regard to the identification of the appellants. It may be mentioned that the occurrence in question had taken place at midnight almost 1½ months prior to their identification. One of the appellants, Rabin Kandy was arrested on November 22, 1982, while the other two Rabindra Kumar Sahu and Satrughana were arrested on November 12, 1982. The identification parade was held on December 10, 1982, i.e. more than 15 days after the arrest of Rabin Kandy and almost a month after the arrest of the other two accused. The prosecution has not advanced any reason for not holding the identification parade promptly. In other words the prosecution has not placed on record the reason why it was not possible for it to hold the identification parade with promptitude, i.e. soon after arrest. Where the fate of the accused persons hangs solely on the identification by the witnesses who claim to have seen them almost 1½ months prior to the date of identification, it is the duty of the prosecution to state why the identification parade could not be arranged immediately after the arrest of the accused and without loss of time. Unless there is good reason for the delay, the value regarding the evidence of identification gets adversely affected. This dilution of the evidentiary value of identification by witnesses who claim to have seen the accused at night almost 1½ months back but who did not in their statements before the police or in the first information report reveal any special features for identification, is a matter which weighs against the prosecution. It must be remembered that the accused persons are required to be produced before the court latest within 15 days of their arrest and, therefore, it would be reasonable to infer that they were so produced. There is nothing on the record to show that the prosecution had taken care to ensure that their identity was not revealed when they were taken to court and produced as

² (1995) SUPP (4) SCC 448

required by law. In these circumstances, when the prosecution witnesses had admitted in their oral statements that they had not noticed any special identifying features, it becomes unsafe to place implicit reliance on the evidence regarding identification emanating from the proceedings at the test identification parade. In these circumstances since there is no other corroborative evidence, we find it difficult to place implicit reliance on the identification made at the test identification parade. We are, therefore, of the opinion that the appellants are entitled to benefit of doubt.”

34. In the fact situation of the case, the prosecution has not advanced any reason for not holding the Test Identification Parade promptly. When the fate of the accused persons hangs solely on the identification by the witnesses, it is the duty of the prosecution to state why the Test Identification Parade could not be arranged immediately after the arrest of the accused and without loss of time. Unless there is a good reason for the delay, the probative value of the Test Identification Parade gets adversely affected. Moreover, the discrepancy between the evidence of the Officer holding the TIP and the Officer investigating the case with regard to the arrangement of dummies for the Test Identification Parade also adversely affects the prosecution case. Lack of the contemporaneous record indicating the arrangement of the dummies in consonance with the guidelines set out to regulate the conduct of the Test Identification Parades further weakens the credibility of the identification. This assumes significance in the wake of the fact that the substantive ocular evidence of the identifying witnesses, cited by the prosecution as eyewitnesses, viz. PW4/Dipesh, PW5/George and PW7/Sikandar is also unreliable. Thus, taking a cumulative view of the aforesaid discussion, it

is unsafe to rely on the Test Identification Parade held by the prosecution in this case.

35. In the wake of the aforesaid discussion, it is evident that the prosecution has failed to establish the genesis and the manner of the incident leading to the offence. The ocular evidence of the prosecution, as brought out through the evidence of PW4/Dipesh, PW5/George and PW7/Sikandar, is riddled with inconsistencies and contradictions. From an interplay of their testimonies, it is evident that their reliability in relation to the incident that they have purportedly seen is doubtful and no credibility can be attached to the ocular evidence. The evidence relating to the recoveries effected allegedly at the instance of the accused is also not reliable as can be seen from the discussion above. The prosecution has also failed to establish the incriminating aspect of the positive identification in the Test Identification Parade.

36. The Trial Court has believed the ocular evidence unfolded by PW4/Dipesh, PW5/George and PW7/Sikandar, observing that the inherent inconsistencies between the eyewitnesses about whether they were in a position to witness the assault are minor and do not destroy the credibility of the evidence brought forth by them. She has erred in brushing aside the theory of the defence that considering the topography of the scene of offence, more particularly, the relative placement of Vicky Bar, the chapel and the fish market as can be gathered from juxtaposition of the sketch of the scene of offence and the evidence of the panch

witness that the fish market is surrounded by stalls, shops and other buildings, it was not possible for PW5/George to see the scene of offence, especially in an intoxicated condition and without any electric lights. The Trial Court has also not appreciated the fact that the presence of PW7/Sikandar Das is itself in question, particularly considering inherent contradiction between PW4/Dipesh and PW7/Sikandar. The Trial Court has also disregarded the fact that both the eyewitnesses were consuming liquor, by their own admission, for nearly 2 to 3 hours prior to the incident.

37. The learned Trial Court has believed the incriminating aspect of the recovery of the weapons and the clothes at the instance of the accused, ignoring the settled position of law that no reliability can be accorded to recoveries which are effected from an open and accessible place. The learned Trial Court has not adverted to the evidence of the witnesses PW8/Jagdeep, PW9/Tejas Shirodkar and PW13/Raghunandan Naik, who have described the place from where the recoveries were effected, which clearly seem to be open and accessible areas.

38. The learned Trial Court has erred in not appreciating that the prosecution had not advanced any reason for not holding the Test Identification Parade promptly and disregarded the fact that the discrepancy between the evidence of the Officer holding the TIP and the Officer investigating the case with regard to the arrangement of dummies

for the Test Identification Parade has adversely affected the identification of the accused.

39. The learned Trial Court has erred in not giving any credence to the fact that since the substantive ocular evidence of the identifying witnesses cited by the prosecution as eyewitnesses is fundamentally unreliable, the identification parade needs to be looked at from that perspective also.

40. The learned Trial Court has not appreciated the fact that the prosecution has failed to establish the genesis and the manner of the incident leading to the offence. The Hon'ble Supreme Court in the case of *Pankaj V/s. State of Rajasthan*³ has observed that it is a well-settled principle of law that when the genesis and the manner of the incident are doubtful, the accused cannot be convicted.

41. The three cardinal principles of criminal jurisprudence are well settled and in the case of *Sri Rabindra Kumar Dey V/s. State of Orissa*⁴, they are highlighted as under:

(i) That the onus lies affirmatively on the prosecution to prove its case beyond a reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

(ii) That in a criminal trial, the accused must be presumed to be innocent until proven guilty; and

(iii) That the onus of the prosecution never shifts.

³ (2016) 16 SCC 192

⁴ AIR 1977 SC 170

42. In the wake of the aforesaid facts and circumstances, the reasoning of the learned Trial Court cannot be accepted and the consequent conviction cannot be sustained. The prosecution has failed to prove the guilt of the accused beyond a reasonable doubt. The impugned judgment deserves to be set aside. Hence, we pass the following order:

ORDER

- (i) The Appeals are allowed.
- (ii) The impugned judgment and order dated 30.05.2023 passed by the learned Additional Sessions Judge, North Goa, Mapusa, in Sessions Case (302) No.5/2017 is quashed and set aside.
- (iii) All the three Appellants in all the three Appeals are acquitted of the offences under Section 302 r/w Section 34 of IPC.
- (iv) The Appellants, if not required to be detained in custody in connection with any other case, be released forthwith.
- (v) Connected applications, if any, stand disposed of.
- (vi) Parties to act on an authenticated copy of this order.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.