



Judgment

487 appeals715 and 747.04

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**CRIMINAL APPEAL NO.715 OF 2004  
WITH  
CRIMINAL APPEAL NO.747 OF 2004**

**CRIMINAL APPEAL NO.715 OF 2004**

1. Rajesh s/o Jumman Methiya,  
aged about 30 years, occupation private,  
r/o Zopdi Mohalla, Gondia.

2. Uttam s/o Munnalal Yadav,  
aged about 27 years, occupation  
agriculturist, r/o Krushnapura  
Ward, Gondia.

3. Sunil s/o Shyamlal Dip (**Dead**).  
aged about 22 years, occupation private,  
r/o Zopdi Mohalla, Gondia.

Appeal is abated against  
appellant No.3.

..... **Appellants.**

**:: VERSUS ::**

State of Maharashtra,  
through PSO PS Gondia. .... **Respondent.**

**Shri R.B.Gaikwad, Counsel for the Appellants.**  
**Mrs.Sneha Dhote, Additional Public Prosecutor for the**  
**State.**

**CRIMINAL APPEAL NO.747 OF 2004**

1. Umesh s/o Balchand Manvatkar (Dead),  
aged 30 years.

Appeal is abated against  
appellant No.3.

2. Kalu @ Jariya @ Dilraj Beg s/o Mirza  
Kalam Beg, aged 21 years.

3. Kalu @ Prabhu s/o Rushi Sikka,  
aged 23 years. .... **Appellants.**

**:: VERSUS ::**

State of Maharashtra,  
through PSO Gondia (City). .... **Respondent.**

**Shri R.M.Daga, Counsel for the Appellants.**  
**Mrs.Sneha Dhote, Additional Public Prosecutor for the**  
**State.**

**CORAM : URMILA JOSHI-PHALKE &**  
**NANDESH S.DESHPANDE, JJ.**

**CLOSED ON : 07/10/2025**

**PRONOUNCED ON : 15/10/2025**

**COMMON JUDGMENT ( Per : Urmila Joshi-Phalke)**

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1. By these appeals, appellants (the accused persons) have challenged judgment and order dated 28.9.2004 passed by learned 1<sup>st</sup> Ad hoc Additional Sessions Judge, Gondia (learned Judge of the trial court) in Sessions Trial No.60/2022.

2. By the said judgment impugned in these appeals, the accused persons are convicted for offence under Section 302 read with Section 149 of the IPC and sentenced them to undergo imprisonment for life and to pay fine Rs.500/- by each of them, in default, to undergo simple imprisonment for 10 days only.

They are also convicted for offence under Section 147 of the IPC and sentenced to undergo rigorous imprisonment for 1 year and to pay fine Rs.500/- by each of them, in default, to undergo simple imprisonment for 5 days.

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They are also convicted for offence under Section 148 of the IPC and sentenced to undergo rigorous imprisonment for 1 year and to pay fine Rs.100/- by each of them, in default, to undergo simple imprisonment for 5 days.

3. During the pendency of these appeals, accused Sunil s/o Shyamlal Dip in Criminal Appeal No.715/2004 died and the appeal against him stands abated.

Accused Umesh s/o Balchand Manvatkar in Criminal Appeal No.747/2004 died and the appeal against him also stands abated.

4. Facts of the prosecution case are as under:

Matadin Pal (the deceased) and Sundarlal Yadav who is father of acquitted accused Pankaj Yadav were having cordial relations. Accused Nos.2 to 9 are

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friends of co-accused Pankaj and are residents of Zopdi Mohalla, Gondia. Prior to the incident, the deceased and acquitted Pankaj separated from each other. Both were indulged in various criminal activities together. The deceased was involved in various criminal activities which created unrest between him and co-accused Pankaj. The deceased was convicted under Section 302 of the IPC also. Co-accused Pankaj along with accused No.2 Rajesh and Sundarlal Yadav were prosecuted for the murder of one Laxmichand Baghele on 9.2.1995. One Satu Maganlal Mulchandani was star witness in that case. He was under control of the deceased. Co-accused Pankaj apprehended that the deceased is interested to secure his conviction. There was enmity between both of them as wife of the deceased contested the Municipal Elections and co-accused Pankaj and his mother were also contesting the elections. The mother of co-accused Pankaj

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could not defeat the wife of the deceased and wife of the deceased Shobha was elected. This defeat created rift between co-accused Pankaj and the deceased. Accused No.2 Rajesh was having independent grudge against the deceased. One Nitu, the niece of accused No.2 Rajesh was entangled with one Santosh Chauhan. She has conceived from him. Said Santosh was ready to marry with said Nitu. However, the deceased intervened in the matter, so he refused to marry on which accused Rajesh expressed his displeasure to co-accused Pankaj. As per the prosecution, due to the previous dispute and enmity between co-accused Pankaj and accused Rajesh, they have formed an unlawful assembly and other accused were members of that unlawful assembly and in furtherance of common object, on 15.6.2002, when the deceased was proceeding towards Municipal Office on his two-wheeler, bearing registration No.MH-35/H-738, and reached near

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Bhawani Chowk Gondia. At the relevant time, he was assaulted by all the accused persons by means of deadly weapons like swords, daggers, and guptis due to which the deceased sustained grievous injuries and succumbed to the injuries. The informant, the wife of the deceased, at home. One Suresh Sonwane, who is sweeper, informed her about the incident. She immediately rushed to the spot of the incident. As per the prosecution case, PW5 Shankar Shivankar and other witnesses i.e. PW4 Anup Meshram; PW16 Wasudev Lalwani witnessed the incident. She lodged the report about the said incident to the police and raised her suspicion against the accused persons.

5. On the basis of the said report, the police carried out the investigation. During the investigation, on the basis of statements of the accused persons, incriminating weapons are seized. The blood stained clothes of the accused persons are also seized. The

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articles found on the spot at the time of drawing spot panchanama are also seized and the entire incriminating articles were forwarded to the Forensic Science Laboratory for analysis. After completion of the investigation, chargesheet was filed against all the accused persons.

6. Learned Judge of the trial court has framed charge vide Exh.45. The accused persons pleaded not guilty and claimed to be tried.

7. In support of the prosecution case, the prosecution has examined in all 27 witnesses, they are as follows:

| PW Nos. | Names of Witnesses                                 | Exh. Nos. |
|---------|----------------------------------------------------|-----------|
| 1       | Shobha Pal, the informant and wife of the deceased | 64        |
| 2       | Archana Pal, daughter of the deceased              | 68        |
| 3       | Suresh Sonwane                                     | 69        |

|    |                                                                                                      |     |
|----|------------------------------------------------------------------------------------------------------|-----|
| 4  | Anup Meshram, eyewitness                                                                             | 71  |
| 5  | Shankar Shivankar, eyewitness                                                                        | 72  |
| 6  | Ratan Samshere                                                                                       | 73  |
| 7  | Anand Tiwari, owner of the STD Booth                                                                 | 74  |
| 8  | Dharamdas Chawla                                                                                     | 75  |
| 9  | Nandkishore Baghele                                                                                  | 79  |
| 10 | Jaideep Bramha                                                                                       | 80  |
| 11 | Mahavir Dongre                                                                                       | 82  |
| 12 | Omprakash Chorware                                                                                   | 86  |
| 13 | Fatehasing Chauhan, pancha on spot and inquest panchanamas and seizure memos                         | 100 |
| 14 | Rajkumar Notani                                                                                      | 105 |
| 15 | Santosh Sathawane, pancha on arrest panchanamas                                                      | 107 |
| 16 | Wasudeo Lalwani, eyewitness                                                                          | 119 |
| 17 | Baban Sahare, pancha on spot panchanama as to identification of footwear of accused and seizure memo | 120 |
| 18 | Manojkumar Raut, Medical Officer                                                                     | 125 |
| 19 | Hanifkha, PSI                                                                                        | 141 |
| 20 | Rushi Harchandani, pancha                                                                            | 142 |
| 21 | Noorkhan, pancha                                                                                     | 150 |
| 22 | Tikaram Kore, Police Constable                                                                       | 151 |
| 23 | Kaushik Gosavi                                                                                       | 153 |

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|    |                                        |     |
|----|----------------------------------------|-----|
| 24 | Dhanraj Malik                          | 159 |
| 25 | Laxman Lalwani                         | 160 |
| 26 | Kundankumar Waghmare                   | 163 |
| 27 | Ramakant Choube, Investigating Officer | 167 |

8. Besides the oral evidence, the prosecution mainly placed reliance on report Exh.65, FIR Exh.66, memorandum statement of accused Rajesh Exh.87, discovery panchanama Exh.88, memorandum Exh.89, discovery panchanama Exh.90, memorandum statement of accused Uttam Exh.91, discovery panchanama Exh.92, memorandum statement of accused Ranya @ Rajendra Meshram Exh.93, discovery panchanama Exh.94, memorandum statement of Shrawandas Exh.95, discovery panchanama Exh.96, seizure memo Exhs.97 and 98, spot panchanama Exh.156, inquest panchanamas Exh.102 and 106, seizure memos Exhs.103, 103A, 125, seizure memo

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Exh.104, 104A, 154, arrest panchanamas of the accused persons Exhs.108 to 116, panchanama as to identification of footwears of accused Exhs.121 to 123, seizure memo Exh.124, requisition to medical officer Exh.126, postmortem report Exh.126, requisition to query Exh.128, opinion of medical officer Exh.129, requisition to medical officer Exh.132, opinion of medical officer Exh.133, requisition to medical officer Exh.134, opinion Exh.134A, requisition to medical officer Exh.135 and opinion Exh.15-A, requisition to medical officer Exh.136 and opinion Exh.136-A, opinion Exh.137-A, requisition to medical officer Exh.138 and opinion Exh.138-A, requisition to medical officer Exh.139 and opinion Exh.139A, requisition to medical officer Exh.140 and opinion Exh.140A, requisition to medical officer Exhs.143 to 144, medical certificate of accused Sunil Exh.145, requisition to Tahsildar Exh.148, dog squad reports

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Exhs.151 to 152, spot panchanamas Exhs.156, 161, compliance report 163, seizure memos Exhs.168 to 174, memorandum statement of accused Umesh Exh.175, and CA Report Exh.189.

9. After hearing both the sides and appreciating the evidence adduced on record, learned Judge of the trial court acquitted accused No.1 Pankaj of offence under Section 120-B and 302 of the IPC; accused No.8 Ranya and accused No.9 Shrawandas of offences under Sections 120-B, 147, 148, 149, and 302 of the IPC. Whereas, accused No.2 Rajesh, accused No.3 Uttam, accused No.4 Sunil, accused No.5 Umesh, accused No.6 Kalu, and accused No.7 Kalu @ Prabhu were held guilty and convicted as the aforesaid.

10. Being aggrieved and dissatisfied with the same, accused No.2 Rajesh, accused No.3 Uttam, accused No.4

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Sunil have preferred Criminal Appeal No.715/2004 and accused No.5 Umesh, accused No.6 Kalu, and accused No.7 Kalu @ Prabhu have preferred Criminal Appeal No.747/2004.

11. Learned counsel Shri R.B.Gaikwad appearing in Criminal Appeal No.715/2004 submitted that the entire case is based on the evidence of sole eyewitness PW5 Shankar Shivankar whose evidence is vague in nature, as far as the assault by the present accused is concerned. His evidence is also not inspiring confidence as he has not disclosed the names of the assailants immediately. His statement is also recorded belatedly though he was present at the spot itself and he has not approached the police station immediately after the incident. His evidence further shows that there was previous enmity between him and the accused persons and, therefore, he is interested witness.

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He further submitted that besides this evidence, admittedly, PW1 Shobha Pal, the informant and wife of the deceased, is not eyewitness of the incident and, therefore, her evidence is not helpful to the prosecution.

As far as previous enmity is concerned, her evidence is not trustworthy and liable to be thrown out. As far as various panchanamas and recovery of articles at the instance of the accused persons are concerned, pancha witness turned hostile and not supported the prosecution case.

He further submitted other two eyewitnesses namely PW4 Anup Meshram and PW16 Wasudev Lalwani have also not supported the prosecution case.

Learned Judge of the trial court has convicted the accused persons merely on the basis of evidence of the

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sole eyewitnesses and, therefore, the evidence is not at all trustworthy and is not sufficient to prove the guilt of the accused persons. In view of that, he submitted that the appeal deserves to be allowed.

In support of his contentions, he placed reliance on the decision of the Hon'ble Apex Court in the case of **Narendrasinh Keshubhai Zala vs. State of Gujarat, reported in 2023 STPL 3403 SC.**

12. Learned counsel Shri R.M.Daga appearing in Criminal Appeal No.747/2004 reiterated the similar submissions and submitted that conviction can be based on the sole eyewitness only when the evidence is inspiring confidence. These witnesses have not disclosed name of assailants immediately though he has witnessed the incident. The accused persons are not known to them. There is no evidence as to forming of unlawful assembly.

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No specific role is attributed to the accused persons. Their identification before the court is also general in nature. Thus, neither the direct evidence nor the circumstantial evidence shows involvement of the accused persons in the alleged incident. In view of that, the appeal deserves to be allowed.

In support of his contentions, he placed reliance on following decisions:

- 1. Baddi Venkata Narasayya and ors vs. State of A.P., reported in (1998)2 SCC 329;**
- 2. Nagesar vs. State of Chhattisgarh, reported in (2014)6 SCC 672, and**
- 3. Babu Sahebagouda Rudragoudar and ors vs. State of Karnataka, reported in (2024)8 SCC 149.**

13. *Per contra*, learned Additional Public Prosecutor Mrs.Sneha Dhote for the State submitted that

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PW5 Shankar Shivankar; PW4 Anup Meshram, and PW16 Wasudev Lalwani are eyewitnesses. However, unfortunately, PW4 Anup Meshram, and PW16 Wasudev Lalwani have not supported the prosecution case. Merely because they have not supported the prosecution case, the prosecution case has not weakened. The evidence of PW5 Shankar Shivankar is corroborated by circumstantial evidence like weapons and recovery at the instance of the accused persons. There is previous enmity between the deceased and the accused persons. There was motive for the accused persons to commit murder of the deceased. The blood stained clothes of the accused were seized at their instance and CA Analysis shows that Blood Group “AB” which is of the deceased was found on the clothes of the accused persons. Therefore, it is not the sole witnesses but other circumstantial evidence sufficiently shows involvement of the accused and learned Judge of

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the trial court has rightly considered the same and convicted the accused persons. In view of that, the appeals being devoid of merits are liable to be dismissed.

14. To prove the death of the deceased is homicidal one, the prosecution placed reliance on the evidence of PW18 Dr. Manojkumar Raut, who has conducted the postmortem on the death body of the deceased. As per his evidence, he has conducted the postmortem on the dead body of the deceased on the request made by investigating officer by police requisition Exh.126. On examining him, he found in all 16 external injuries and internal injuries on the person of the deceased. The injuries found on the person of the deceased are as follows:

1. incised wound over chin of size 10x0.5 cm;
2. incised wound over mandible under lower teeth size 12x3x.5.4 cm;

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3. incised wound over lower lip size 3.5x0.5 cm;

4. incised wound over left cheek size 6x2x2 cm;

5. incised wound over right maxilla size 12x2.5x2 cm;

6. incised wound over right eyebrow of size 4x1x1 cm;

7. incised wound above right pinna of size 7x1.5x0.5 cm;

8. incised wound over right occipital region of size 7x1x1 cm;

9. incised wound over right post auricular region of size 4x0.5x1 cm;

10. incised wound over left occipital parietal region of size 12x3x3.5 cm;

11. transverse incised wound over occipital region 12x2x1 cm;

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12. incised oblique wound over right flank  
5x1x3 cm;

13. stab wound just below right axis of size  
3x2x4 cm;

14. incised wound over right hand ulnar aspect  
of size 7x1x1 cm;

15. incised wound over right M.P. joint ulnar  
aspect 6x2x1 cm,

16. incised wound over right shoulder 2x1x1  
cm.

On internal examination, he found intracranial  
haematoma under the head of injuries under the scalp.  
The deceased has also sustained the fracture of temporo  
parieto occipital region. The injuries are also found on  
left scapula 4x1 cm x 0.5 cm, base of right neck 5x1x5  
cm, oblique incised wound below left scapula 5x1x0.5  
cm, oblique incised wound over right posterior axillary  
border 4x1x0.5 cm, incised wound over right sacroiliac

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region 3x1x0.5x0.5 cm, incised wound over left posterior superior iliac spine 4x2.5x0.5 cm, incised wound over right and left sacrum 2.5x1x0.5 cm each, and oblique incised wound over right posterior superior iliac spine 2.5x1x0.5 cm. All the injuries were antemortem in nature. He opined that the cause of death is due to haemorrhagic shock due to multiple injuries. Accordingly, he prepared the postmortem report, which is at Exh.127.

His further evidence shows that on 29.6.2002, four swords, two knives, one gupti, one dagger were sent to him and query was made under the police requisition Exh.128. He examined all the weapons and opined that the injuries mentioned in postmortem report are possible by the said weapons. The said opinion is at Exh.129. On 27.6.2002, one sword was sent vide requisition Exh.138. After examining the said weapon, he opined that the said

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weapons can cause serious injuries which may lead to death of human being. The opinion is at Exh.131. On 29.6.2002, one sword under requisition Exh.132 was referred to him. On examination of the said sword, he opined that said weapon can cause grievous injuries like life threatening. The opinion is at Exh.133. On 27.6.2002, seven weapons were referred to him under requisition Exhs.134 to 140 and he opined that the weapons can cause life threatening injuries. The said opinions are at Exhs.134-A to 140-A. In all 9 weapons were sent for seeking his opinion. He verified the said weapons. He has identified the said weapons before the court also.

His cross examination shows that all weapons were hard and sharp. Injuries to deceased were caused by the hard and sharp weapons. He further admitted that all requisitions Exhs.128 to 140 are silent that articles

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sent to him were wrapped and sealed, but he voluntarily stated that weapons were wrapped and sealed. He further admitted that his reports also nowhere disclose that he received the weapons in a sealed condition. He further admitted that all injuries mentioned in report were collectively sufficient to cause death. He further admitted that all the injuries were not on the vital part and internal injuries sustained to scalp are mentioned in column No.19. He has not mentioned the corresponding surface injuries. There were no internal injuries to heart, thorax and lungs. There were no injuries to external genital organs. He further admitted that except the brain, there was no damage to internal vital organ. The deceased might have taken meals between 2:00 am to 8:00 am. He further stated that he was not asked to clarify as to which injury was caused by which weapon.

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Thus, on the basis of this cross examination, an attempt was to show that the injuries were not on the vital part of the body and the weapons were not in a sealed condition.

15. Besides the medical evidence, the prosecution also placed reliance on the evidence of pancha witnesses acted as panchas on inquest panchanamas.

16. PW14 Rajkumar Notani, acted as a pancha on inquest panchanama, deposed that the police prepared inquest panchanama on the dead body of the deceased. There were several injuries on his body. The said inquest panchanama is at Exh.106.

As far as his cross examination is concerned, nothing incriminating is brought on record to show that there were no injuries on the person of the deceased.

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17. PW23 Kaushik Gosavi, who has carried out the part investigation, also deposed before the court that he has drawn the inquest panchanama.

18. Thus, As far as the evidence of PW14 Rajkumar Notani, acted as a pancha on inquest panchanama, and PW23 Kaushik Gosavi, who has carried out the part investigation, is concerned, it discloses that there were various injuries on the person of the deceased.

19. The medical officer, though cross examined and it is tried to bring on record some inconsistencies that he has not mentioned whether the weapons were received by him in a sealed condition or not, which he answered that the weapons were received by him in a sealed condition though it is not mentioned in the letter.

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20. A medical witness who performs a postmortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt. Nagindra Bala Mitra and v. Sunil Chandra**, reported in 1960 SCR (3) 1 wherein it has been observed that, "the value of a medical witness is not merely a check upon the testimony of eye witnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. If a person is shot at a close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say

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that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.”

21. Thus, the testimony of the medical witness is very important and it can safely be accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

22. The entire case of the prosecution is based on sole eyewitness i.e. PW5 Shankar Shivankar.

It is not disputed that the alleged incident occurred on 15.6.2002 at about 7:30 am to 8:00 am. Though this incident is witnessed by PW4 Anup Meshram, examined vide Exh.71, and PW16 Wasudev Lalwani, examined vide Exh.119, they have not supported the prosecution case and left loyalty towards the prosecution.

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Therefore the evidence of PW5 Shankar Shivankar is material, which discloses that on the day of the incident, at about 8:00 am, he was proceeding towards market. He reached near Zulelal Temple and witnessed all the accused present were present in the court. They were assaulting the deceased. These accused assaulted him by means of knives, swords, daggers etc.. After the assault, all the accused persons fled away from the spot to different lanes. While leaving the place, they took their respective weapons and fled away. The deceased was lying in front of the Zulelal Temple and he was dead. PW16 Wasudev Lalwani and other persons were present on the spot. After the incident, he proceeded towards his house. The police recorded his statement.

The cross examination of this witness shows that he has stated name of co-accused Panjaj while

recording the police statement. He has also stated the name of accused No.7 Ramya @ Rajendra Gupta. However, the witness clarified that he has not seen accused No.1 Pankaj on the spot while rest of the accused were present. He specifically stated that all the accused persons fled away by different lanes after the incident. He further admitted that the names of accused Pankaj, Rajendra, and Shrawandas are not mentioned in his statement.

His further cross examination shows that a criminal case under Section 307 of the IPC is registered against him on the basis of Pradip Dongre. One another case for causing hurt to Abdul Kadar is also pending against him. A case of criminal intimidation is pending against him on the basis of report lodged by accused Ranya @ Rajendra and external proceeding is also initiated against him. He further stated that he had not

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narrated the incident to anybody, till it was recorded by police. He was very well on the spot and the police recorded his statement at the time of drawing spot panchanama. He denied that he has kept mum, till his statement was recorded since he was unaware about the incident. He stated that neither he went to the police on his own accord nor the police came to him on the date of the incident. He further denied that he was not knowing any of the accused by their names and he stated that he was knowing accused Sunil and Kalu by their names and other accused persons by their faces.

As to the disclosure, he has admitted that he has not disclosed the names of the assailants to the wife of the deceased. He stated that as they were approaching the spot of the incident, he has not disclosed the said names to her as he has not narrated the incident to the family members of the deceased.

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An omission is also brought on record that he has not stated before the police that he was knowing all the accused persons prior to the incident, but voluntarily he has stated that he has simply stated that he knew co-accused and rest of the accused by their faces.

He has further admitted that for the first time he has stated before the court that he knew all the accused persons prior to the incident.

Thus, from the cross examination of this witness, an attempt was made to bring on record that though he is having an opportunity to disclose the incident to the police as well as to the family members of the deceased, he has not narrated the same to the police and he has disclosed names of the assailants at belated stage on the next date when his statement was recorded.

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23. Besides the oral evidence of this sole eyewitness, the prosecution also placed reliance on the evidence of PW1 Shobha Pal, the informant and wife of the deceased, who testified that there was previous enmity between the deceased and co-accused Pankaj on account of contesting elections against them by her. As to the incident, her evidence shows that on 15.6.2002, at about 7:30 am, her husband left the house for municipal office. After some time, sweeper Suresh came and informed her that somebody has killed the deceased and, therefore, she rushed to the spot and found her husband lying in pool of blood. She expressed suspicion that as there was a previous enmity between the deceased and accused Pankaj, the deceased was killed.

As to the enmity, her cross examination shows that there were other lady candidates also who have contested the elections against her.

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As to the incident, her cross examination shows that between 10-15 minutes, after the deceased leaving the house, Suresh informed her about the incident. She admitted that in all five murder cases were registered against the deceased and he was convicted in one of them.

She further stated that no report was given to the police expressing apprehension from the accused.

The omission was brought on record that she has stated to the police that she has seen "Gamcha," footwear of the deceased and one another footwear of brown colour and other articles, however the deceased did not mentioned in the FIR.

24. The evidence of PW2 Archana Pal, daughter of the deceased, is only to the extent that seven days prior to the incident, co-accused Pankaj telephoned on the

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mobile phone of her father. She picked up the call and gave to her mother.

25. PW1 Shobha Pal, identified footwear of the deceased Article-8. She has also identified Article-6 cover of the sword, Article-7 handle of the sword, Article-10 cloth piece, Articles-13 and 14 clothes of the deceased, and Articles-15 and 16 the clothes of the deceased.

26. Though PW6 Ratan Samshere is examined by the prosecution to establish the fact of memorandum statement of the accused and discovery at their hands, the said witness has not supported the prosecution case. PW10 Jaideep Bramha, STD Booth owner, and PW11 Mahavir Dongre, auto-rickshaw driver, have not supported the prosecution case.

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27. The evidence of PW7 Anand Tiwari and PW8 Dharamdas Chawla, is formal in nature. They are owners of the STD Booth.

28. The evidence of PW9 Nandkishore Baghele is only to the extent that he was initially working with his uncle who was medical practitioner and he learnt how to dress the wound and accordingly, some persons came to him prior to two years of his depositions and he has dressed their wounds. It was simple abrasion.

29. To prove the discovery at the hands of the accused persons, the prosecution has examined PW12 Omprakash Chorware, who deposed that on 20.6.2002 he was called at the police station along with another pancha Deepak Patil. Accused No.2 Rajesh, accused No.3 Uttam, accused No.7 Kalu Shikha, and accused No.8 Ranya were present in the police station. These accused

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persons made statements before them that they would show the place where they kept the weapons used in the assault. Their statements were recorded independently and reduced into writing. After recording the statements, accused Rajesh led them towards Lal Pahadi. At one place, he asked to stop the vehicle and, thereafter, he took them and took out one sword and one knife. The sword and knife were sealed on the spot by the police. Article-37 is the same knife and Article-38 is the sword. These weapons were recovered at the instance of accused Rajesh. The admissible portion is at Exh.87.

Another accused Kalu Shikha also led them and produced one Gupti kept under stone. He has identified that article. Accordingly, panchanama was drawn. His memorandum statement is at Exh.89 and panchanama is at Exh.90.

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Similarly, accused Uttam took out dagger from one pit which was near one tree, which was seized. His memorandum statement is at Exh.91 and recovery panchanama is at Exh.92.

Accused Ranya Meshram also took them to his house and took one knife concealed below the heap of bricks which was lying in front of his house. Accordingly, memorandum statement Exh.93 and panchanama at Exh.94 were recorded.

After 2-3 days, again they were called and in their presence, accused Shrawandas made a memorandum statement and led them, as per the memorandum statement, towards his house and produced one sword. Accordingly, panchanama was drawn Exh.96. In his presence, blood samples of the accused were also seized by drawing panchanama Exh.98. His cross

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examination shows that one criminal case is pending against him. It further shows that he knows language Marathi and he can read and write Marathi. He specifically stated that the work of disclosure statement started after his arrival in the police station. The police were interrogating the accused and he did not talk with the accused.

He further admitted that the way leading to Lal Pahadi is narrow, the vehicle carrying the accused was ahead through the way, and minimum distance between the two vehicles was 15-20 feet. The first place was 30 to 40 paces away from the vehicle. He further admitted that disclosure statement and recovery memorandum of accused Rajesh and time of seizing shown between 11:35 to 12:35 is correct. He further admitted that he was shown disclosure statement of accused Uttam, time of recording statement is shown as 12:30 pm at the police

station. He stated that according to him, they all were at Lal Pahadi at 12:30 pm till 2:00 pm. He further clarified that he is unable to say the time when they returned in the police station. However, he specifically denied that he put his signatures on all the documents on the say of the police.

Thus, an attempt was made by the defence to show that all the memorandum statements were prepared at the police station and no such discovery was made at the instance of the accused persons.

30. As to the recovery, the evidence of Investigating Officer PW27 Ramakant Choube is also relevant, which shows that on 20.6.2002, accused Rajesh, accused Umesh, and accused Kalu made a memorandum statement and at their instance, the weapons were seized from various places which were in concealed conditions.

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As per his evidence, at the instance of accused Umesh one sword was recovered, at the instance of accused Kalu knife was recovered, at the instance of accused Sunil sword was recovered, and at the instance of Rajesh and Uttam weapons sword and knife were recovered.

The cross examination of these witnesses, as far as the recovery panchanama is concerned, except denial, nothing is brought on record.

31. Coming to the evidence of PW13 Fatehasing Chauhan, acted as pancha on spot and inquest panchanamas, the said witness has not supported the prosecution case. Similarly, PW15 Santosh Sathawane, acted as pancha on arrest panchanamas of the accused persons, has also not supported the prosecution case.

32. The evidence of PW17 Baban Sahare, acted as pancha on spot panchanama as to identification of

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footwear of accused and seizure memo, shows that accused Sunil, Umesh and Kalu were called to identify their footwears lying at the spot of the incident and seized from the spot of the incident. They identified their footwears. Accordingly, panchanama was drawn. The panchanama of seizure of footwear of accused Sunil is at Exh.121, panchanama as to footwear of accused Umesh is at Exh.122, and panchanama as to footwear of accused Kalu @ Prabhu is at Exh.123. In his presence, the clothes of the deceased were also seized. His cross examination shows that on that day, only three accused persons were called and he came to know their names from the police.

33. The evidence of PSI PW19 Hanifkha, who has registered the crime on basis of the report lodged by PW1 Shobha Pal, the wife of the deceased, is only to that extent. He admitted during the cross examination that

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he registered the offence at 9:15 am. However, he has not aware whether any intimation was received to the police prior to lodging of the report.

34. PW20 Rushi Harchandani, acted as pancha, has not supported the prosecution case. PW21 Noorkhan, acted as pancha, has also not supported the prosecution case.

35. The evidence of PW22 Tikaram Kore, who is Police Constable, shows that footwears were found on the spot of the incident and, therefore, the dog squad was called. He was along with the said dog squad. The smell of footwears was given to the dog and, thereafter, that dog has carried them at various places. Accordingly, he prepared the report, which is at Exh.152.

36. The evidence of PW23 Kaushik Gosavi, who has carried out the part investigation, shows that he has

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drawn the spot panchanama and at the spot, one cloth piece was found, likewise pair of chappals and cover of the sword and one handle of the sword, which were seized by him in presence of the panchas. He also disclosed that he saw the dead body of the deceased at about 8:30 am.

37. PW24 Dhanraj Malik, who is the Sweeper, has not supported the prosecution case. Similarly, PW25 Laxman Lalwani has also not supported the prosecution case.

38. PW26 Kundankumar Waghmare, is the Investigating Officer. His evidence is to the extent that on 16.6.2002, he received order from his superior to arrest the accused persons. Accordingly, he went to Jabalpur and arrested accused Rajesh, Uttam, Sunil,

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Umesh, Kalu @ Jarlya, and Karu Shikha, as per arrest panchanamas.

Though he is cross examined, nothing incriminating is brought on record.

39. PW27 Ramakant Choube, the Investigating Officer, narrated about the investigation carried out by him. His cross examination shows that one Devendra Purohit gave intimation to the the police station about the murder of the deceased. He further admitted that Ganesh Bhute gave information to Devendra about the incident and he has not recorded the statement of Ganesh Bhute. He has recorded the statement of PW5 PW5 Shankar Shivankar on 16.6.2002 who also admitted that he has stated before him that the police arrived at the spot immediately after the incident and he narrated the events to the police. Portion Mark-A is recorded as per his

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narration which is at Exh.202. He has explained that in seizure memo at one space is left blank inadvertently. He specifically stated that recovery from accused No.7 Kalu was made after the recovery of accused Rajesh from Lal Pahadi.

40. It is vehemently submitted by learned counsel appearing for respective accused persons that except the evidence of PW5 Shankar Shivankar, which is general and vague in nature, no other evidence is on record in the nature of direct evidence to show the involvement of the present accused persons in the alleged incident. It is submitted that the evidence of PW5 Shankar Shivankar is not cogent, trustworthy, and inspiring confidence as though he was present at the spot, his statement was not recorded immediately, but it recorded on 16.6.2002. Till recording his statement, he has not disclosed the names of the assailants to any other persons. It is further

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canvassed that he has not disclosed the incident to the wife of the deceased also though he was knowing the names of the assailants.

41. Thus, the entire conduct of PW5 Shankar Shivankar raises suspicion. Admittedly, there was previous enmity between the deceased and the accused as well as between this witness and the accused also and that can be motive for the informant to implicate him in the alleged offence. It is submitted that he is an interested witness and, therefore, his evidence is to be discarded. It is vehemently submitted that though he has witnessed the incident, his evidence is sufficient to show that he has not attributed any specific act to any specific witnesses.

42. Learned counsel Shri R.M.Daga, placed reliance on the decision in the name of **Baddi Venkata**

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**Narasayya and ors *supra*** wherein it has been observed that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident.

He further placed reliance on the decision in the case of **Nagesar vs. State of Chhattisgarh *supra*** wherein it is held that mere presence or association with other members alone does not per se be sufficient to hold everyone of them criminally liable for the offences committed by the others unless there was sufficient evidence on record to show that one such also intended to or knew the likelihood of commission of such an offending act.

He further placed reliance on the decision in the case of **Shahid Khan vs. State of Rajasthan, reported in (2016)4 SCC 96** wherein the Hon'ble Apex Court has considered delay in recording statement and held that delay in recording statement casting the serious doubt about they being eyewitness to occurrence and the evidence of witnesses is unreliable.

43. As far as the evidence of the sole witness is concerned, it is well settled that there is no legal impediment in accepting the evidence of the sole witnesses, if it is found truthful, cogent, and reliable.

44. The Hon'ble Apex Court, in the case of **Jagdish Prasad vs. State of M.P., reported in AIR 1994 SC 1251** held that as a general rule, a court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a

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person on the sole testimony of single witness. That is the logic of Section 134 of the Evidence Act 1872, but, where there are doubts about the testimony, the courts will insist on corroboration. It is for the courts to act upon the testimony of witnesses. It is not the number, quantity, but the quality that is material.

The above position was also highlighted in the case of **Sunil Kumar vs. State of NCT Delhi**, MANU/SC/0815.

45. In the light of the above principle, the evidence of eyewitness PW5 Shankar Shivankar is to be scrutinized.

46. PW5 Shankar Shivankar, is cross examined and he admitted that when the incident occurred, all the accused were present, but he has not narrated the role of each accused. He has also admitted that immediately has

not disclosed the names of the assailants to the wife of the deceased. He also disclosed that other two eyewitness i.e. PW4 Anup Meshram and PW16 Wasudev Lalwani were also present at the spot of the incident.

Learned defence counsel has attacked this evidence on the ground there was no natural conduct of the witnesses as far as disclosure is concerned. It is submitted that as natural conduct of the present witness, he ought to have disclosed the incident to the wife of the deceased. For that purpose, the evidence of PW5 Shankar Shivankar requires to be considered again.

47. The cross examination of PW5 Shankar Shivankar specifically shows that his relations with the deceased and his family were cordial. He did not convey the incident to the family members of the deceased, which he clarified that when he was proceeding towards

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the house of the deceased, the family member approached towards the spot and, therefore, he has not narrated the incident to the family members even after witnessing approaching them towards the spot. He further deposed that he has specifically stated before the police that the accused were armed with dagger and other weapons.

48. The another submission made by the defence counsel is that the statements were recorded belatedly. Admittedly, the incident occurred on 15.6.2002 and the statement was recorded immediately on the next day.

49. Now, it is to be seen, whether there is other corroboration to the evidence of PW5 Shankar Shivankar. To corroborate the version of PW5 Shankar Shivankar, the prosecution placed reliance on the evidence of pancha witness acted on memorandum statement of the accused and recovery of the Articles at their instance.

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50. The evidence of PW12 Omprakash Chorware specifically shows that in his presence and in the presence of other panchas, accused Rajesh made memorandum statement which was reduced into writing, statement of accused Kalu was also recorded and statements of accused Uttam, Ranya, and Shrawandas were recorded and their instance, Articles like swords, knives, and guptis were recovered.

As far as statement of accused Rajesh is concerned, recorded on 20.6.2002, at about 10:10 am and discovery panchanama as to the recovery of knives and swords at the instance of accused Rajesh, was made at 11:35 to 12:35. The statement of accused Kalu @ Prabhu is concerned, it is recorded on 20.6.2002 at about 10:15 am and discovery panchanama showing 13:25 to 14:10 and at his instance gupti was recovered.

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The memorandum statement of accused Uttam was recorded 20.6.2002 at 12:30 and timing of his panchanama is 12:30 to 13:15.

The memorandum statement of Ramya was recorded on 11:07 and his discovery panchanama showing timing as 14:30 to 15:10.

Whereas, memorandum statement of accused Shrawandas was recorded at 9:30 on 24.6.2002 and recovery panchanama was carried out at 10:20 to 11:20.

As far as the timing as to the memorandum statement of accused Uttam is concerned, much stress is given by defence counsel that if panchas were along with accused Rajesh between 11:35 to 12:35, recording of statement of accused Uttam in the police station at about 12:30 is improbable and unacceptable.

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No explanation is sought during the cross examination of the investigating officer as to the timing which is mentioned in the memorandum statement of accused Uttam. However, PW12 Omprakash Chorware has specifically stated that one by one the statements of the accused were recorded. He specifically denied that all papers were signed in the police station at the same time. He specifically stated that the work of disclosure statements started after his arrival in the police station. The police were interrogating the accused and he did not talk with the accused. His further cross examination shows that it was the accused persons who were leading them and at their instance recovery was made. He specifically stated that it did not happen after making first seizure, they all returned to the police station and then recorded statement of accused No.3 Uttam at 12:30 pm. On showing memorandum statement of accused

Rajesh and recovery panchanama, time of seizure was shown as 11:35 to 12:35. He accepted the same as correct. He was also shown disclosure statement of accused Uttam and time of recording of statement is shown as 12:30 pm at the police station. He specifically stated that they all returned from Lal Pahadi after 2:00 pm.

Thus, as far as memorandum statement of accused Uttam is concerned, it is clarified by him that all the accused were along with him when they went. As per the narration of the accused, as the accused led them, the articles were recovered at their instance.

51. Besides the evidence of recovery of the said Articles, the CA Reports show that the weapons which were recovered at the instance of the accused persons and forwarded to the CA, bear the blood stains of the

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Blood Group “AB” which is of the deceased. The chart shows the incriminating articles and blood group reflecting on it. Article-1 is the blood stained earth collected from the spot having Blood Group “AB”. Article-3 four-teeth of the deceased having Blood Group “AB”. Article-4 hairs of the deceased seized from the spot having Blood Group “A”. Article-5 blood stains cloth piece seized from the spot bears Blood Group “AB”. Article-6 clothes of the deceased bears Blood Group “AB”. Article-7 Blood Sample of the deceased determined as Blood Group “A”. Article-8 clothes of accused Uttam bears Blood Group “A”. Article-9 the clothes of accused Rajesh i.e. shirt and pant bears Blood Group “AB”. Article-10 clothes of accused Kalu bears Blood Group “AB”. Article-11 clothes of accused Umesh bears Blood Group “AB”. Article-12 clothes of accused Kalu @ Prabhu bears Blood Group “AB”. Article-13

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clothes of accused Sunil bears Blood Group "AB". Article-14 sword recovered at the instance of accused Sunil bears Blood Group "AB". Article-15 sword at the instance of accused Umesh bears Blood Group "AB". Article-16 knife recovered at the instance of accused Kalu bears Blood Group "AB". Article-17 sword recovered at the instance of accused Rajesh bears Blood Group "AB". Article-18 dagger seized at the instance of accused Utam bears Blood Group "AB". Article-19 gupti seized at the instance of accused Kalu bears Blood Group "AB". Article-20 sword recovered at the instance of accused Shrawandas bears Blood Group "AB". Article-21 clothes of accused Shrawandas and knife seized at the instance of accused Rajendra and Article-22 clothes of accused Rajendra bear Blood Group "AB". Article-24 blood sample of 17 accused Sunil of Blood Group "AB". Article-26 blood samples of accused Rajesh and

Shrawandas and Rajendra and Article-29 blood samples of accused Umesh and Article-30 blood sample of accused Uttam, the Blood Group was not analyzed and result was inconclusive.

52. Thus, on the clothes of accused, Blood Group “AB” of the deceased was found. As per the CA Report, Blood Group of accused Sunil is also determined as “AB”. However, nothing is record to show that he has also sustained the injuries and, therefore, the blood is appearing on his clothes.

53. As to the evidence of PW5 Shankar Shivankar, much stress is canvassed on the aspect that he has not narrated the specific role attributed to each of the accused persons. It is pertinent to note that PW5 Shankar Shivankar is a rustic witness.

The evidence of the said witness requires to be scrutinized and appreciated in the light that 8-9 persons have assaulted the deceased and, therefore, the aspect of his background is not to be ignored. He witnessed the incident that number of assailants armed with deadly weapons assaulting the deceased whether he/she would be in a position to give a very accurate and photogenic version as a whole thing happened in a few minutes, therefore, while appreciating such testimony, the court should give due regard to their background and the whole scenario in which the alleged incident has happened.

Insofar as the testimony of this witness is concerned, it stands corroborated by the aspects i.e. recovery of the weapons at the instance of the accused persons and the blood stains of Blood Group of the deceased was found on the said articles.

54. The above aspect has been considered by the Hon'ble Apex Court in the case of **Annareddy Sambasiva Reddy and ors vs. State of Andhra Pradesh, reported in AIR 2009 SC 2661** wherein it has been observed that it is true that neither PW1 nor PW3 assigned specific injuries or specific overt act attributed to the accused, but looking to the nature of the incident where large number of persons attacked D-1 and D-2, PW1, PW2 and PW3, it would not have been possible for PW1 or PW3 to attribute specific injuries individually to each accused. How could it be possible for any person to recount with meticulous exactitude the various individual acts done by each assailant? Had they stated so, their testimony would have been criticized as highly improbable and unnatural. The testimonies of eyewitness carry with it criticism of being tutored if they give graphic details of the incident and their evidence would be assailed as unspecific, vague,

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and general if they fail to speak with precision. The golden principle is not to weigh such testimony in golden scales, but to view it from the cogent standards that lend assurance about its trustworthiness.

The said aspect is further considered by the Hon'ble Apex Court in the case of **State of Punjab vs. Hakam Singh, reported in AIR 2005 SC 3759** wherein also held that, "after closely going through the statement of PW3, we are of the opinion that PW3 is a truthful witness and unsuccessful attempt of the defence to confront her with different types of fire arms i.e. whether it was a rifle or it was a gun shot injury fired through 12 bore gun or 303 rifle; all this cross-examination was directed against this rustic villager in order to discredit her testimony. This is most unrealistic approach. We fail to appreciate how can a rustic village lady would explain about bore of gun or rifle. P.W.3 whose presence in the

house was quite natural and she having clearly identified the respondent who fired the gun at her husband should be enough to establish the factum of whole prosecution story. To expect from her to give the description in a photogenic manner is asking too much. The High Court instead of entering into split hairing the testimony of this witness with regard to the fire arms used in the occurrence should have concentrated more on the hard truth of the matter instead of finding fault with her testimony. We fail to understand the manner in which the testimony of this witness has been appreciated by the High Court. Sometimes while appreciating the testimony of rustic villagers we are liable to commit mistake by loosing sight of their rural background and try to appreciate testimony from our rational angle. When a lady is confronted with number of intruder in her house armed with deadly weapons and showering bullets she

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can not give a very accurate and photogenic version as whole thing happened in a few minutes. Therefore, while appreciating such testimony Court should give due regard to their rural background and the whole scenario in which the incident happened.

55. In the light of the above observations, if the evidence of PW5 Shankar Shivankar is appreciated, admittedly, he is a layman and, therefore, while appreciating such testimony, due regard to his background and the whole scenario in which the incident happened is required to be considered. When 7-8 persons have attacked the deceased with the various weapons, in that circumstances, it would be very difficult for the witness to state the role of each and every accused. The whole testimony which was not shaken during the cross examination sufficiently shows that the deceased was assaulted by 7-8 persons and he has identified them as

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assailants. He has identified them in the court also. The identification of these accused persons before the court is a substantial evidence.

56. The another ground raised by learned defence counsel is that the conduct of PW5 Shankar Shivankar is not a natural conduct as he has not disclosed the said incident immediately either to the family members of the deceased or to the investigating officer and his statement was recorded on the next date. Thus, much is said about the fact that PW5 Shankar Shivankar did not disclose the incident to the family members or to the police. However, it must be noted that after seeking the accused giving such blows, the witness must have got scared. As a result of the same, he might have left the place of spot. There was absolutely nothing abnormal in such conduct of the said witness and, therefore, it must be noted that merely because the said witness subsequently did not disclose

about the said incident to any other person till the next day, we cannot jump to the conclusion that the witness was not present at the time of the incident. It must be noted that the witness was scared and, therefore, he might have not disclosed the said incident to any person or he might have left the place due to the apprehension.

57. The Hon'ble Apex court in the case of **In Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, reported in AIR 1983 SC 753** has considered this aspect and observed that much importance cannot be attached to minor discrepancies and the reasons are obvious that, (1) by and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; (2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element

of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details; (3) the powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another; (4) by and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder; (5) in regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person; (6) ordinarily a witness

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cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on, and (7) a witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him, perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

58. In case of **Rana Partap vs. State of Haryana**, reported in **AIR 1983 SC 680**, the Hon'ble Apex Court

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observed that every person who witnesses a murder 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 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. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

59. In the case of **Lalu Kamlakar Patil vs. State of Maharashtra, reported in (2013) 6 SCC 417**, the Hon'ble Apex Court has also observed that a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some

become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded.

60. Though we are staying in a civilized society, people are still afraid of involving themselves to be witnesses of such incidents as they are scared of harassment at the hands of the investigating agency.

Admittedly, he has not disclosed the incident on 15.6.2002, but on the next day, his statement was recorded that he narrated the incident. The investigating officer is not cross examined on recording delayed statement. The evidence of PW5 Shankar Shivankar is not totally unnatural. The investigating officer is not cross examined on delayed statement of witness.

61. As far as the evidence, as to the discovery on the basis of memorandum statement, is concerned, it is not shattered during the cross examination. Merely because in one of statements timing was mentioned as 12:30, it is not sufficient to discard the total evidence as to the recovery of the articles at the instance of the accused persons.

62. The doctrine underlined under Section 27 of the Indian Evidence Act is founded on the principle that if

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any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

63. Section 27 of the Indian Evidence Act is interpreted by the Hon'ble Apex Court in the case of **Subramanya vs. The State of Karnataka, reported in 2022 LiveLaw SC 887** and held that the conditions necessary for the applicability of Section 27 of the Act are that (1) Discovery of fact in consequence of an information received from accused; (2) Discovery of such fact to be deposed to; (3) The accused must be in police custody when he gave information; and (4) So much of information as relates distinctly to the fact thereby discovered is admissible. It has been further held that what is admissible is the information and the same has to be proved and the opinion form it by the police officer. It

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has been further held that in other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It is further held by the statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

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64. As far as the evidence of PW12 Omprakash Chorware is concerned, he has specifically stated that in his presence the accused have made memorandum statements and in pursuance of the said memorandum statements, the accused led them towards the spot from which the discovery has to be made. The admission given during the cross examination itself is sufficient to show that earlier the statements of all four accused persons were recorded and, thereafter, along with four accused they proceeded towards places shown by the accused and the accused persons led them towards the said places. Therefore, the recovery at the instance of the accused, merely because the timing was mentioned incorrect, is not sufficient to discard the evidence of these witnesses.

65. Thus, on appreciating the evidence, admittedly, the entire case of the prosecution relied upon the sole

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testimony of PW5 Shankar Shivankar, corroborated by the medical evidence as the medical officer has specifically stated that injuries found on the persons of the deceased are possible by the weapons referred to him and seized at the instance of the accused persons. The blood stained clothes of the accused on which Blood Group of the deceased was found, is another incriminating circumstance, which connect the accused persons with the alleged offence. The circumstance that the weapons seized at the instance of the accused persons bear blood stains which are of Blood Group of the deceased.

66. Thus, as far as the evidence of the sole witness is concerned, it is corroborated by these circumstances.

67. As far as motive is concerned, the motive is primarily known to the accused persons themselves and, therefore, it may not be possible for the prosecution to

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explain what actually prompted or excited the accused to commit a particular crime. In case of circumstantial evidence, the motive may be considered as circumstance which is relevant factor for the purpose of assessing evidence in the event that there is no unambiguous evidence to prove the guilt of the accused. The motive loses all its significance in case of a direct evidence provided by eyewitnesses where the same is available, for the reason that in such case the absence of motive cannot stand in the way of conviction. However, absence of motive in a case of depending entirely on circumstantial evidence is a factor that based in favour of the accused as it often forms the fulcrum of the prosecution story.

68. The evidence on record clearly establishes that there was previous enmity between the accused persons and the deceased. Moreover, the deceased was having

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criminal background as he was involved in various criminal activities.

69. While appreciating the evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/disprove a fact. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, provided by each witness, as opposed to multiplicity or plurality of witnesses. It is thus quality and not quantity which determines the adequacy of the evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires examination of at least one attesting witness, it has been held that the number of witnesses produced over and above does not carry any weight.

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70. It is certain legal proposition that the conviction of a person accused of committing an offence is generally based solely on the evidence i.e. either oral or documentary, but in exceptional circumstances may also be based solely on circumstantial evidence.

71. The prosecution must establish its case beyond reasonable doubt and cannot derive any strength from the weakness in the defence put up by the accused. However, a false defence may be brought to notice only to lead assurance to the court as regards various links in the chain of circumstantial evidence which are in themselves complete. The circumstances on the basis of which conclusion of guilt is to be drawn must be fully established. The same must be of conclusive nature and must exclude all possible hypothesis except the one to be proved.

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72. It is cardinal principles of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. The proof beyond reasonable doubt does not mean proof beyond any doubt. It cannot be considered as if it is mathematical formula. The phrase “beyond reasonable doubt” has been often referred to and is well understood.

73. Learned Author “Glanville Williams” in his book, “The Proof of Guilt” wrote, to say that “the burden of proving a crime is generally on the prosecution does not conclude all questions. What degree of quantum of proof is needed, is likelihood or certainty or something in between these two extremes? This question in term raises a fundamental issue of penal policy”.

74. Thus, the proof beyond reasonable doubt does not mean proof beyond shadow of doubt. If the evidence

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is so strong against a man as to leave only, a remote possibility in his favour, which can be dismissed with sentence “of course is possible”, but not in the least probable, the case is proved beyond reasonable doubt.

75. In the present case, the prosecution has adduced the evidence to show that the accused persons have committed the crime. Thus, the prosecution has proved the circumstances which show that the accused persons have committed. The evidence adduced is cogent, consistent, and does not affect the case of the prosecution.

76. In this view of the matter, as we find no merits in the appeals, the appeals deserve to be dismissed and the same is **dismissed**.

77. The accused persons are directed to surrender before the Superintendent of Jail on or before 3.11.2025 to undergo the jail sentence.

78. The bail bonds of accused stand cancelled. The R&P be sent back to the trial court.

Appeals stand **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!