

(2003) 06 BOM CK 0079

In the Bombay High Court

Case No : Criminal Appeal No's. 409 of 1998 and 103 of 1999

Dilip Nathuji Madavi and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 218, 313

Evidence Act, 1872 — Section 114, 3

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2003) 06 BOM CK 0079

Hon'ble Judges : R.K. Batta, J;P.S. Brahme, J

Bench : Division Bench

Advocate : Ahirkar, APP in Cri. A. No. 103/1999 and Agnihotri, in Cri.A. No. 409/1998, for the Appellant; Ahirkar, Assistant Public Prosecutor in Cri. A. No. 409/1998 and Brahme in Cri.A. No. 103/1999, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—In regard to an incident which took place on 2nd November, 1996 at night at about 10.30 p.m. in Adivasi Colony within the jurisdiction of Police Station, Wardha, a report was lodged by one Nanibai Vithalrao Sadmak against seven accused persons, which was recorded by the then Police Station Officer Anil Bobde (P.W. 11), the offence was registered vide Crime No. 474 of 1996 for committing murder of Vithalrao, the husband of complainant Nanibai, in prosecution of common object of unlawful assembly. All the seven accused persons including appellant Dilip Madavi (Appellant in Criminal Appeal No. 409 of 1998) and respondent Dinesh Madavi in Criminal Appeal No. 103 of 1999 were tried for committing murder of Vithalrao for the offence under sections 147, 148 and 302 r/w. 149 of the Indian Penal Code in the Court of Additional Sessions Judge, Wardha in Sessions Trial No. 75 of 1997 and the learned Sessions Judge, by his judgment and order passed on 2nd day of November, 1998, acquitted the accused persons including respondent Dinesh Madavi of all the offences they were charged with and convicted appellant Dilip and sentenced him to suffer

rigorous imprisonment for six months, to suffer rigorous imprisonment for one year and imprisonment for life and to pay a fine of Rs. 5,000/- in default to undergo further R/I. for two years for the offences under sections 147, 148 and 302 r/w 149 of the Indian Penal Code respectively. All the sentences were to run concurrently. In these appeals before us, the judgment of conviction of appellant Dilip and that of acquittal of respondent Dinesh is under challenge.

2. Prosecution case, in brief, is that victim Vithal, who was resident of Adivasi Colony, Wardha, was returning from his work place on 22nd November, 1996 in the evening. While he was about to reach his house, at about 7.00 a.m. appellant-original accused No. 1 Dilip dashed him from behind by his bicycle. As a result of that, the victim fell on the ground and there ensued some altercation between him and accused Dilip and as claimed by prosecution, the victim tried to chase accused Dilip, but he could not succeed as accused Dilip escaped from there on his bicycle. That incident ended there as, naturally, the accused escaped from that place and the victim went to his house. At about 10.30 p.m. on that day, while the victim was in his house with his family members including his wife Nanibai (P.W. 2) and daughter Jyoti (P.W. 6) accused Dilip, accompanied by six persons including his brother-respondent Dinesh, at once entered into the house of the victim with a view to grabble him to beat him. Victim Vithal sensing danger to his life, came out of his house by the rear side door and the accused persons also almost dragged him towards the well and assaulted him with weapons they were armed with. It is the prosecution case that accused Dilip assaulted the victim with a weapon like knife giving several blows, while his brother Dinesh assaulted the victim with a hockey stick giving blows. Victim Vithal sustained about 14 injuries and ultimately, collapsed in the pool of blood and the assailants then ran away. He was taken to the General Hospital, Wardha where he was declared dead. As stated earlier, the then P.I. Bobde recorded the complaint (Exh. 86) as per the narration given by Nanibai and on the basis of that, lodged First Information Report and the offence came to be registered. The matter was investigated by P.I. Anil Bobde. During the course of investigating, after the accused were arrested, their clothes were seized, so also, the weapon namely dragger and hockey stick came to be seized on being recovered at the instance of accused Dilip in pursuance of the statement and disclosure made by them while in the custody on interrogation being made by P.I. Anil Bobde. On 13-12-1996, Rupchand Kharwade (P.W. 4), the then Naib Tahsildar at Tahsildar Wardha conducted identification parade for the accused persons and witness Nanibai, who was called for the identification, is said to have identified accused Dilip, respondent Dinesh and other two accused. After completing the investigation, charge-sheet came to be filed against the accused persons on 20th February, 1997 and the learned Magistrate committed the case to the Court of Sessions.

3. Before the Additional Sessions Judge, the accused pleaded not guilty to the charge and claimed to be tried. Their defence is that of total denial. At the trial, prosecution examined in all eleven witnesses including Nanibai (P.W. 2), Indirabai

(P.W. 3), Jyoti (P.W. 6), Rupchand Kharwade (P.W. 4), Dr. Swati Sarode (P.W. 9) who examined appellant Dilip for the injuries which were found on his person and for which medical certificate (Exh. 102) was issued and Dr. Arun Shendre (P.W. 10), who was the then Medical Officer, conducted autopsy on the dead body and prepared P.M. note 105. The weapons seized were also sent to Dr. Shendre for examination and opinion. Accordingly, in his report (Exh. 106), he has opined that the injuries which were found on the body of deceased were possible by the weapons used in the crime.

4. Dr. Shendre, while conducting autopsy on the dead body of the victim, has noted in all 14 injuries which he has categorically mentioned in Col. No. 17 and 19 of the P.M. report (Exh. 105). He found that the injuries were anti-mortem in nature. In his opinion, the cause of death was haemorrhagic shock due to multiple injuries. According to him, injury Nos. 1 and 2 were mainly responsible to cause death. Injury Nos. 3 to 9 also contributed to death. Injury No. 1 was individually sufficient to cause death. Injury Nos. 1 to 9 were cumulatively sufficient to cause death. The learned Sessions Judge, accepting the evidence of witnesses Nanibai, Indirabai, as also, that of Jyoti and the medical evidence came to the conclusion that the victim died homicidal death and his death was on account of assault on him by the members of unlawful assembly in pursuance of the common object of that assembly and on account of that, appellant Dilip was found responsible for homicidal death of the victim and accordingly, he came to be convicted. So far as other accused are concerned, the learned Sessions Judge found that prosecution has failed to prove presence of other accused including respondent Dinesh, as also their participation in commission of assault on the victim and consequently, they came to be acquitted.

5. We have heard Mr. S.B. Ahirkar, the learned A.P.P. for the appellant-State in the appeal challenging acquittal of respondent Dinesh and Mr. Brahme the learned Counsel appearing for respondent Dinesh. We heard Mr. Agnihotri, learned Counsel for appellant Dilip in respect of the appeal preferred by him challenging his conviction.

6. Before going to consider the submissions of the learned Counsel for the parties, it would be appropriate to state the facts and circumstances about which there is no controversy and also those stood proved in our assessment of the evidence. In the first place, it is not disputed that, in the evening of 22nd November, 1996, the incident took place near the house of the victim and the cause for occurrence of that small incident was the dash given to victim Vithal by appellant Dilip while the latter was passing by the road on his bicycle. We are aware about the controversy as to what exactly occurred at the time of incident. We shall deal with that controversy, as also the controversy relating to the time of occurrence of that small incident at appropriate time. As regards the subsequent incident that took place on the same day at about 10.30 outside the house of the victim and somewhere near the well, the victim sustained multiple injuries, severe and serious as they are and admittedly, the victim died of those

injuries. After the occurrence and when the deceased was taken to the hospital where he was declared dead, P.I. Bobde recorded complaint (Exh. 86) lodged by Nanibai and in pursuance of that report, the offence was registered after drawing First information report based on that complaint and then, on the next day i.e. on 23rd of November, 1996, in the morning, P.I. Bobde recorded the statement of witness Nanibai. During the course of investigating, Tahsildar Rupchand Kharwade conducted identification parade and in that, witness Nanibai identified four accused persons including appellant Dilip and respondent Dinesh. Appellant Dilip, after he was arrested, was sent for medical examination and Dr. Swati Sarode (P.W. 9), on examining him, noticed very trifling injuries as abrasions on his person which she categorically stated in the certificate (Exh. 102) issued by her. Appellant Dilip has not disputed the factum of injury sustained by him inasmuch as the evidence of Dr. Swati Sarode had gone unchallenged. But, at the same time, appellant Dilip, in his examination u/s 313 of the Code of Criminal Procedure, when a pertinent question was put to him regarding injuries on his person, in his answer falsely denied the same. The injuries on the person of the appellant Dilip are insignificant and as such, the same are of no consequence directly so far as his involvement in commission of crime is concerned. But, falsity in his statement in denying factum of injuries in the background of the evidence of Medical Officer as to injuries on his person having gone unchallenged, spells out and also provide a missing link in the process of assessment of the evidence against him.

7. In order to prove the prosecution case, prosecution has placed reliance on the evidence of witness Nanibai, Indirabai and Jyoti and also the evidence of Naib-Tahsildar Rupchand (P.W. 4) regarding identification of accused Dilip and Dinesh. The trial Court has totally discarded the evidence of identification of the accused by witnesses Nanibai and Jyoti. The trial Court has also disbelieved the evidence as to recovery of weapons at the instance of the accused finding that the evidence of P.I. Anil Bobde was not sufficient to establish that the weapons were recovered at the instance of appellant Dilip and Dinesh. So far as appellant Dilip is concerned, the evidence of Nanibai has been accepted as regards his presence on the spot and his involvement in assaulting the victim. This is also in the background that the evidence as to identification of appellant Dilip by witness Nanibai at the time of identification parade has been discarded. It has amply come in the evidence of witness Nanibai that she was knowing appellant Dilip and she has recognized him to have taken part in the incident in which her husband came to be assaulted.

8. The learned A.P.P., while assailing acquittal of respondent Dinesh, submitted that the evidence of witness Nanibai on identification has been wrongly discarded by the trial Court. He has placed reliance of the decision of this Court in *The State of Maharashtra Vs. Babu @ Babusya Vithal Rathod and others*, and the decision of the Apex Court in *State of Maharashtra v. Suresh*, reported in 2000(5) Bom.C.R. (S.C.)736 : 2000 All.M.R.(Cri.) 554. The Apex Court has observed that :

"If potholes were to be ferreted out from the proceedings of the Magistrate holding such parades possibly no Test Identification parade can escape from one or two lapses. If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every Test Identification Parade would become unusable. We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held."

9. While considering the evidence as to identification, our High Court has observed that :

"the evidence of identification can be safely accepted, if there is evidence to indicate:-

(a) that in between the arrest of the suspects and the identification they were not shown;

(b) the witnesses came in close contact with the miscreants and thus had the opportunity to identify them during the course of the incident;

(c) there was plenty of time for the witnesses to have recognised the faces of the miscreants;

(d) there was adequate light wherein the witnesses could have recognised the miscreants; and

(e) the test identification was held in accordance with law.

10. Mr. Brahme, the learned Counsel appearing for the respondent, placed reliance on the decision of our High Court in Haresh Mahadeo Kamble and Vs. State of Maharashtra, . It is observed that "so far as identification parade is concerned, the entire evidence of prosecution in that regard has to be rejected outright because for identifying six accused only one parade was held wherein 36 dummies were kept along with this accused and this illegality is going to the root of the matter vitiates the entire parade". In the case before hand, the trial Court has rejected the evidence as to identification parade not on the ground that there was lapses in following the procedure in conducting identification parade. It is very clear from the evidence of witness Nanibai that she was knowing accused Dilip since prior to the incident and she was not knowing other accused prior to the incident. It is also pertinent to note that in the report which she immediately lodged, the names of accused persons except accused Dilip are not disclosed. It

is in this background that the identification of accused including Dinesh by witness Nanibai before the Court was not accepted by the trial Court. That apart, witness Nanibai though claimed in her evidence about the part played by respondent Dinesh at the time of incident, her claim has been totally shattered in the cross-examination. She had no opportunity to see and recognise respondent Dinesh at the time of occurrence. Admittedly, the accused persons were put for identification after about 30 days after their arrest. In the meantime, as it has come in the evidence of the Investigating Officer that the photographs of the accused were taken. The accused were sent to the Court for the purpose of remand. In the background of this, there was sufficient opportunity for the witness to see the accused. Therefore, taking into consideration all these circumstances, the trial Court has rightly rejected the evidence as to identification of respondent Dinesh. There is no other evidence against respondent Dinesh on which prosecution could lay hands. It is true that witness Jyoti had claimed in her evidence as to presence and participation of accused Dilip and respondent Dinesh, but her evidence has been shattered on that count in the cross-examination. It is found by the trial Court that witness Jyoti has made improvements in her statement before the Court while deposing about involvement of respondent Dinesh.

11. We have carefully considered the evidence of witnesses. We have no hesitation in holding that prosecution has utterly failed to establish presence of respondent Dinesh, much less his involvement in commission of the crime. The trial Court has, therefore, rightly acquitted respondent Dinesh as there was absolutely no evidence connecting him with the crime.

12. So far as appellant Dilip is concerned, the trial Court has accepted the evidence of witness Nanibai, though her evidence as to identification of the accused at the time of identification parade has been discarded. The trial Court has also discarded the evidence of recovery of weapons at the instance of appellant Dilip. We do not find that any error has been committed by the trial Court in rejecting the evidence as to recovery of weapon at the instance of appellant Dilip. We are making mention of this fact as we have found that the only evidence on recovery of weapon is that of P.I. Anil Bobde. But, his evidence is totally perfunctory in the sense that he has stated about recording of memorandum as to disclosure made by appellant Dilip. He has not substantiated the same in his evidence. In addition to that, identification of weapon by witness Nanibai was of no consequence when, admittedly, the witnesses were not shown the weapons at any time earlier when they were seized and further the witnesses identified the same only at the time when their evidence was recorded in the Court.

13. The learned Counsel for the appellant vehemently submitted that the trial Court has committed an error in accepting the evidence of Nanibai as to recognising the appellant and also his involvement in commission of the crime. He submitted that the incident has taken place at 10.30 p.m. outside the house

and nothing has been brought by prosecution to show that there was any source of light or illumination for the witnesses to recognise the person involved. He also pointed out the discrepancy in the evidence of witnesses Nanibai as regards the time and nature of earlier incident that has taken place. He also referred to the improvements made by witness Nanibai in her evidence and the consequence of that is that the evidence of witness Nanibai is totally shattered. He submitted that it is unsafe to place reliance on her evidence which is solitary evidence and also of the witness who is highly interested in the matter being the wife of victim.

14. The learned Counsel further submitted that the medical evidence on record as to the injuries sustained by the victim is not consistent and cogent having regard to the size of weapon i.e. dagger that came to be seized during the course of investigation. In this respect, he pointed out the dimensions of injury Nos. 1 and particularly, the breadth of injury vis a vis breadth of the dagger.

15. We have considered the evidence of witness Nanibai in the light of her complaint (Exh. 86), as also her statement recorded subsequently by the Investigating Officer. We have taken into consideration the evidence of witness Indirabai as regards the earlier incident that has taken place. Inconsistency as to the time of occurrence, in our opinion, is inconsequential. It is reflected in the report (Exh. 86) as to when the earlier incident has taken place. It is abundantly clear from the evidence on the record that after occurrence witness Nanibai, in the natural course of events, has gone to the Police Station to lodge report. There was no delay in reporting the matter to police after the occurrence. This apart, witness Indirabai, in her evidence, has categorically stated about the incident that has taken place, as also, the time when it took place. Having regard to her evidence, when her presence at the time of first occurrence sounds natural, we do not find that inconsistency that has occurred in the evidence of witness Nanibai as regards the first incident is so material as to discard her evidence on material particulars on the incident of assault by Dilip.

16. Much has been made by the learned Counsel for the appellant of the discrepancy as regards the actual occurrence that took place initially. It is true that, in the report that has been made, a reference has been made to the fact that, after the dash was given, accused Dilip ran away from the place. He does not make any reference to the altercation between the two. But, if we take into consideration the evidence of witness Indirabai, everything is depicted as per happening at the time of incident. We have no manner of doubt in saying that witness Indirabai is a natural witness and her presence at the place of occurrence was also natural. In her evidence, she has stated about presence of accused Dilip and about the altercation between the appellant and the victim when the latter was dashed down by the appellant. So, accepting that evidence, it is to be said that the incident, as stated by witnesses Indirabai and Nanibai, has taken place earlier on the day of occurrence. It also goes to show that, that incident which took place earlier, provided cause for appellant Dilip to come to the house of victim later on around 10.30 p.m. accompanied by six persons. Occurrence of

the earlier incident was certainly a motive for the appellant to come to the house of the victim. It is in this background that the discrepancy as to what exactly happened at the time of earlier incident is of no consequence. In our opinion, having regard to the nature of the appellant and the victim also, whatever trifle incident that had occurred earlier was sufficient for the latter to come to the house of victim. In other words, we do not agree with the submission of the learned Counsel for the appellant that the happening of trifle incident spells about improbability of occurrence that has taken place later on and particularly, showing involvement of the appellant and going to the extent of the victim being done to death.

17. The evidence of Nanibai clinchingly goes to show that the appellant, accompanied by six persons, had appeared and also entered into the house. Presence of the appellant at the time of occurrence is also spoken about by witness Indirabai and Jyoti. We are aware about the fact that the claim of Jyoti that she witnessed the latter incident has been falsified by her admission that she did not come out of the house as she was afraid of. The learned trial Judge has taken into consideration that admission also. But, at the same time, the trial Court has observed, while rejecting the claim of Jyoti, as to identification of the accused before the Court, recognising appellant Dilip as the same person who was involved in the earlier incident wherein her father was dashed out. So far as witness Nanibai is concerned, it is abundantly clear in her evidence that she was knowing accused Dilip prior to the incident. She had also seen the accused at the time of earlier incident. She had recognised him when he has entered in the house. It is true that her evidence is discrepant as to how many persons entered the house and by which door. In our opinion, that discrepancy is of no consequence. A crystal clear fact is borne out from the evidence on the record that the persons who had entered the house dragged the victim outside the house through the rear door through which the victim himself was trying to escape. Bearing in mind all these factors and particularly the fact that witness Nanibai had seen the appellant, whom she was knowing before, there was no obstacle for her in recognizing him at the time of occurrence. We also agree that her claim that she has seen the appellant giving assault with the weapon might not be that correct in the sense having regard to the situation that prevailed over she might not have clinchingly noticed the action of each and every person. Therefore, her claim as to presence of the appellant and his involvement in assaulting the victim is certainly carrying grain of truth. That is the reason why though the evidence of Nanibai as to identification at the time of identification parade is rejected by the trial Court, her evidence as to involvement of the appellant, as also, his presence at the time of occurrence has been rightly accepted by the trial Court.

18. Much has been made about the discrepancy as to the injury vis a vis dimensions of the weapon namely dagger. This discrepancy, no doubt, is related to injury No. 1 and more particularly, as to the dimension of breadth of the injury. But, we do not find that this discrepancy is of any consequence so as to

discard the entire evidence when the medical evidence as to cause of injury and factum of injury is not disputed by the defence. In this context, we also make mention of the fact that the Medical Officer Dr. Shendre has given opinion emphatically in his report (Exh. 106) that the injuries were possible by dragger and that evidence has gone unchallenged. But, at the same time, having regard to the dimension of the dragger, it is clear that injury No. 1, as noted by the doctor, is not possible. So, the deduction that could follow from this is that the dimension of injury No. 1, more particularly regarding breadth of injury, is incorrectly mentioned. In substance, the discrepancy as pointed out does not bring out any infirmity in the prosecution case.

19. Much has been made by the learned Counsel for the appellant that identification of the appellant at the time of occurrence by the witnesses does not sound natural and truthful when there is no evidence to show that there was any illumination at the place of occurrence. In this context, the learned Counsel has also gone into the niceties of the distances vis a vis pool of blood, as also, electric pole and house of the appellant. There is electric pole at the place of occurrence is a fact which is not disputed. Prosecution witnesses though have not stated about light, nothing is brought or elicited by the defence from the evidence of prosecution witnesses that there was no light. In this situation, presumption would be that there was light and recognition of appellant at the time of occurrence was not only based on sufficiency of light at that time. We have already observed that witness Nanibai in particular had ample opportunity to see the appellant whom she was knowing prior to the incident. Her claim as to identification of appellant is justifying and substantiated by another witness namely Indirabai. If that is so, we do not think that the trial Court has committed any error in accepting the evidence of Nanibai and other witness Indirabai on the point of presence of appellant Dinesh, as also, his involvement in the crime.

20. The learned Counsel placed reliance on the decision of the Apex Court in State of U.P. Vs. Kapildeo Singh and Others, . The matter before the Apex Court was an appeal against acquittal. The Apex Court has confirmed the acquittal ordered by the High Court upholding the observations as to insufficiency of light at the place of occurrence which took place in the premises referred as "Kutiya" of the deceased. On facts, it was found that the lantern was not burning at the time of inspection, though it had kerosene. It was also found that the lantern must have turned off and in the background of that, the claim of witness having identified the assailants was found to be not truthful. It is very difficult to apply the ratio of this case to the case before hand having regard to the fact finding position that has appeared in the case before hand.

21. The learned Counsel then placed reliance on the decision of the Apex Court in State of Punjab and Gurmej Singh Vs. Jit Singh and others, etc., . In this case, the Apex Court observed that "while appreciating the evidence of interested witnesses, the evidence needs to be scrutinized considering the probabilities, past statement and attending circumstances, as also, F.I.R. and deposition of

witness before the Court". On facts, it was found that the version of the eye-witnesses was not reliable. In the case before hand, as we have observed earlier, the evidence of witness Nanibai though she was admittedly an interested witness, was found to be worthy of credit and further other evidence on record lend assurance to her evidence.

22. The learned Counsel further placed reliance on the decision in Ramesh Chand Vs. State of Uttar Pradesh, in which the observations are made regarding appreciation of the circumstantial evidence and it has been observed that the circumstantial evidence relied upon by the prosecution must complete the chain so as to lead to the conclusion that the accused and no other could have been the assailant. On facts of the case, it was found that the circumstances were not sufficient so as to bring home the guilt of the accused. In the case before hand, the case is not resting on the circumstantial evidence alone. In fact, the circumstantial evidence that was relied upon by prosecution has not been accepted by the trial Court. The trial Court has found the other evidence of the witnesses clinchingly pointing out involvement of the appellant. Therefore, absence of circumstantial evidence is of no consequence.

23. The learned Counsel submitted that the appellant was convicted for the offence u/s 302 of the Indian Penal Code but the trial Court has not framed the charge u/s 302 of I.P.C. simplicitor independently. The appellant was charged for the offence u/s 302 r/w. section 149 of the Indian Penal Code. He, therefore, submitted that, in absence of separate charge, conviction of the appellant for the offence u/s 302 of the Indian Penal Code cannot sustain. He placed reliance on the decision in Subran alias Subramanian and Others Vs. State of Kerala, . In this case, the accused therein was charged for the offence u/s 302 r/w 149 of I.P.C. No specific charge was framed against the accused u/s 302 of I.P.C. The Apex Court, therefore, observed that "a person charged for an offence u/s 302 r/w. section 149 of the Indian Penal Code cannot be convicted of the substantive offence u/s 302 of I.P.C. without a specific charge having been framed against him as envisaged by law. Conviction for the substantive offence in such a case is unjustified because an accused might be misled in his defence by the absence of the charge for the substantive offences u/s 302 I.P.C". There is no dispute about the proposition laid down by the Apex Court. But, in the case before hand, the appellant has not been conviction for the substantive offence u/s 302 of the Indian Penal Code by the trial Court. It is very clear from the judgment of the trial Court that the appellant has been convicted for the offence u/s 302 r/w section 149 of the Indian Penal Code. Had he been convicted for the substantive offence u/s 302 of I.P.C., in the absence of specific charge for the substantive offence u/s 302 of I.P.C., his conviction would not have been justified.

24. The learned Counsel for the appellant pointed out the discrepancy so far as seizure of the articles from the place of occurrence is concerned. Witness Nanibai has stated in her evidence that the articles which were found at the place of occurrence came to be seized at mid night when the investigating officer visited

the place of occurrence. As against that, the spot panchanama (Exh. 84) goes to show that it was drawn on 23rd November, 1996 at 9 O'clock. It is true that there is disparity as to the time when the articles were seized if we read the evidence of witness Nanibai and the spot panchanama (Exh. 84). It is, however, in the evidence of P.I. Anil Bobde who visited the place of occurrence on the night of 23-11-96 that the witnesses were noticed lying on the spot and therefore, the place of occurrence was kept under guard at midnight and in the morning, when the spot panchanama was made, the articles came to be seized. Therefore, it is clear that the statement made by witness Nanibai in this regard was obviously in correct. But that does not bring any falsity in the prosecution case and therefore, not so much importance could be given to that disparity.

25. After carefully considering the evidence of witness Nanibai and that of Indirabai coupled with the immediate report lodged by the complainant disclosing involvement of the appellant and also coupled with the motive of the appellant to assault the victim, we have no hesitation in coming to the conclusion that the appellant was amongst the assailants of the victim Vithal. The learned Counsel for the appellant has submitted that there was delay in sending the F.I.R. to the Judicial Magistrate and that is fatal to the prosecution against the accused. We do not agree with this submission. We are fortified with the recent decision of the Apex Court in *Balaram Singh and another v. State of Punjab* AIR 2003 S.C.W. 2656. The Apex Court has observed that "there was no delay in preparing the F.I.R. and therefore, delay in sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case. It is to be judged keeping in mind creditworthiness of ocular evidence". In the case before hand, we have already observed that the matter was reported to the police by witness Nanibai without any loss of time and consequent upon that report, the Police Station Officer has recorded the F.I.R. and registered the crime. There was no delay in recording the F.I.R. The only thing is that the F.I.R. was not sent immediately to the concerned Magistrate. But that delay is not fatal to prosecution when the F.I.R. itself was lodged immediately.

26. We have, in the earlier part of the judgment, referred to the circumstances that the appellant has falsely denied the factum of injuries he sustained. It is, no doubt, true that the prosecution case is depending on the direct evidence, rather eye-witness account of witness Nanibai. But then, if at all any circumstances is to be taken into consideration, in our opinion, the false explanation or false answer given by the appellant, though in respect of very insignificant matter, would provide additional link to establish involvement of the appellant. The trial Court has committed no error in holding the appellant guilty. We do not, therefore, find any substance in the appeal filed by the appellant challenging his conviction and sentence. In the result, we do not find any reason to interfere with the judgment of conviction as also acquittal. Therefore, both these appeals are dismissed.