

(2014) 04 GUJ CK 0067
In the Gujarat High Court
Case No : Criminal Appeal No. 644 of 2009

Manglu Jivabhai Jalsaniya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 3 GLH 42

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Meenu Kumar, Advocate for the Appellant; K.P. Raval, APP, Advocate for the Respondent

Judgement

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J.B. Pardiwala, J.—The present appeal is at the instance of a convict-accused of the offence under Section 302 of the Indian Penal Code and is directed against an order of conviction and sentence dated 2nd July 2008 passed by the learned Additional Session Judge, 2nd Fast Track Court, Amreli, in Sessions Case No. 20 of 2007. By the aforesaid order, the learned Additional Sessions Judge found the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code and consequently sentenced him to suffer life imprisonment and fine of Rs. 1,000/-. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for four months. Case of the Prosecution:-

1.1 The accused was in the habit of committing theft. A month and a half before the date of the incident, the accused had come to the agricultural field of the deceased and at the point of time the deceased had driven him out by rebuking him. The accused felt bad and with a view to seek revenge, on the day of the incident at around 1:30 in the afternoon inflicted a single injury on the chest of the deceased with a knife near the gate of the Middle School situated at Bagasara town.

1.2 It appears that the PW-2, Hasmukhbhai Govindbhai Trapasiya, the elder brother of the deceased, lodged a First Information Report, Exh. 18, at the Bagasara police Station, stating that the deceased was his younger brother. The PW-2 stated in the F.I.R. that on 22nd November 2006 in the afternoon hours while he was at his home, one Ghanshyam Lakhani and Chandubhai Suhagia came running and informed him that his brother Vitthal, the deceased, had been stabbed near the Middle School by the accused with a knife. On learning about the same, the PW-1 and others reached near the Middle School and at that point of time, the PW-3, Kalubhai, and the PW-4, Mukeshbhai were putting the deceased in a rickshaw, in a bleeding condition. He has further stated in the F.I.R. that at that point of time he inquired with his brother and his brother replied that the accused had inflicted injury with a knife. Thereafter, the deceased did not utter anything. He has further stated that the PW-3, Kalubhai Mohanbhai and the PW-4, Mukeshbhai conveyed to him that they witnessed the accused inflicting injury on the deceased with a knife while they were passing through the road. He has further stated that thereafter the deceased was taken to Bagasara Government Hospital in an auto-rickshaw of Haribhai Sodhvia and upon examination by the doctor his brother was declared "brought dead". He has further stated that while at the hospital a person named Haribhai Sodhvia conveyed him that the accused after inflicting injury rushed towards him in anger and threatened to kill him by showing a knife.

1.3 On the complaint being lodged by the brother of the deceased, the investigation had commenced. The inquest panchnama of the dead body of the deceased was drawn, Exh. 27, in presence of the panch witnesses. The scene of offence panchnama, Exh. 25, was drawn in presence of the panch witnesses. The clothes worn by the deceased at the time of the incident were collected by drawing a panchnama, Exh. 29. The dead body of the deceased was sent for postmortem examination and the postmortem report, Exh. 11, revealed that the deceased had sustained a stab injury on his chest and the cause of death assigned in the postmortem report was respiratory failure due to shock as a result of injury to the major vessels. The election card recovered from the pocket of the deceased was collected by drawing a panchnama, Exh. 31. The accused was arrested and the arrest panchnama, Exh. 34, was drawn in presence of the panch witnesses. After the arrest of the accused, the blood sample of the accused as well as the deceased was collected by drawing a panchnama, Exh. 36. The muddamal articles collected in the course of investigation were sent to the Forensic Science Laboratory for chemical analysis. The serological test report, Exh. 45, revealed that human blood was detected on the pant of the accused of the blood group "B" matching with the blood group of the deceased. The weapon of offence i.e. the knife, collected at the time of arrest of the accused, was also detected with human blood of blood group "B" matching with the blood group of the deceased. The statements of various witnesses were recorded.

1.4 Finally, the charge sheet was filed against the accused-appellant in the Court of learned Judicial Magistrate, First Class, Bagasara. As the case was exclusively

triable by the Sessions Court, the learned Judicial Magistrate, First Class, Bagasara, committed the case to the Sessions Court under Section 209 of the Criminal Procedure Code. The Sessions Court framed charge against the accused, Exh. 6, and statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

1.5 The prosecution adduced the following oral evidence in support of its case.

1.6 The following pieces of documentary evidence were adduced by the prosecution.

1.7 After completion of oral as well as documentary evidence of the prosecution, the statement of the accused under Section 313 of the Criminal Procedure Code was recorded, in which the accused stated that the complaint was a false one and he was innocent.

1.8 At the conclusion of the trial, the learned trial Judge convicted the accused for the offence punishable under Section 302 of the Indian Penal Code and sentenced him as stated herein before.

1.9 Being dissatisfied, the accused-appellant has come up with this appeal.

2. SUBMISSIONS ON BEHALF OF THE ACCUSED-APPELLANT:-

2.1 Ms. Meenu Kumar, the learned Advocate appearing for the accused-appellant vehemently submitted that the trial Court committed serious error in holding the accused guilty of the offence of murder by placing reliance on the evidence of the two eye-witnesses i.e. the PW-3, Kalubhai Savaliya, Exh. 20 and the PW-4, Mukeshbhai, Exh. 21. Ms. Meenu Kumar submitted that from the evidence of the two eye-witnesses it is apparent that they had not actually witnessed the accused inflicting injury with knife on the chest of the deceased. It is submitted that both the eyewitnesses could be termed as chance witnesses because according to both the eye-witnesses they happened to pass by the road where the incident occurred. Ms. Meenu Kumar submitted that there is no ring of truth worth the name, if the entire evidence of both the eye-witnesses is read closely and carefully.

2.2 Ms. Meenu Kumar submitted that no reliance could have been placed by the trial Court even on the evidence of the PW-2, Hasmukhbhai, the brother of the deceased. Ms. Meenu Kumar submitted that although the PW-2, Hasmukhbhai, the brother of the deceased is not an eye-witness to the incident but has falsely introduced the story of the oral dying declaration alleged to have been made by the deceased as well as the version that he was conveyed by Kanjibhai Sodhvia that the accused had come running towards him after inflicting the injury on the deceased and had threatened to kill Kanjibhai Sodhvia.

2.3 Ms. Meenu Kumar submitted that once the evidence of the two eyewitnesses and the evidence of the PW-2, the brother of the deceased, is eschewed from consideration then nothing remains in the case of the prosecution. Ms. Meenu

Kumar submitted that all other witnesses failed to support the case of the prosecution and were declared as hostile witnesses.

2.4 In such circumstances, referred to above, Ms. Meenu Kumar submitted that there being merit in this appeal the same may be allowed and the order of conviction and sentenced be set aside.

3. SUBMISSIONS ON BEHALF OF THE STATE:-

3.1 Mr. K.P. Raval, the learned Additional Public Prosecutor appearing for the State has vehemently opposed this appeal and submitted that the trial Court committed no error in holding the accused guilty of the offence of murder punishable under Section 302 of the Indian Penal Code. Mr. Raval submitted that there may be some improvement or embellishment in the evidence of the two eye-witnesses but that, by itself, would not be sufficient to reject the entire testimony of both the eyewitnesses. Mr. Raval submitted that there is no reason to even disbelieve the evidence of the PW-2, Hasmukhbhai, the brother of the deceased so far as the say of the PW-2 that the deceased had made the oral dying declaration before him and the other witnesses that it was the accused, who had inflicted the injury with a knife on his chest.

3.2 In such circumstances, referred to above, Mr. Raval prays that there being no merit in this appeal, the same may be dismissed.

4. ORAL EVIDENCE ON RECORD

4.1 The PW-1, Dr. Kishorbhai Rathod, has been examined by the prosecution as an expert witness to prove the postmortem report, Exh. 21. The PW-1, in his evidence, Exh. 8, has deposed that on 23rd November 2006 while he was on duty as a medical officer at the Community Health Center, Bagasara, a patient viz. Vitthalbhai Govindbhai Trapasiya was brought by his relatives and upon examination of his pulse and heart-beats, he was declared as "brought dead". The PW-1 has deposed that after declaring the patient as brought dead a written yadi was sent to the police for postmortem and the police was also informed telephonically. The PW-1 produced the written yadi, Exh. 10. The PW-1 has deposed that the postmortem examination revealed that there was a single stab wound on left supra calvicular region 3 C.m. X ? c.m. X 10 c.m. deep. He has deposed that there was active bleeding. He further deposed that the age of the injury was around two and a half hours before the commencement of the postmortem. He has further deposed that the left lung was punctured and had collapsed, the whole of the left cavity was filled with blood. He has further deposed that the cause of death was cardio-respiratory failure due to hypovolomic shock as a result of injury to the major blood vessels. He has also deposed that the internal examination did not reveal any fracture of skull. The brain had become pale. There was no fracture in any of the ribs of the chest.

4.2 In his cross-examination on behalf of the accused, he deposed that if there is loss of blood due to fast bleeding on account of the injury then the body would

get cold very fast. He has deposed that if one to two liters of blood is lost due to injury then the body would get cold immediately. He has also deposed that if there is a loss of one liter of blood due to profuse bleeding then the person would immediately become unconscious. He has deposed that considering the nature of the injury sustained by the deceased, almost one to two liters of blood must have been lost due to profuse bleeding in a span of ten minutes.

4.3 The PW-2, Hasmukhbhai Govindbhai, the brother of the deceased, in his evidence, Exh. 17, has deposed that he has three brothers. He himself was the eldest, thereafter Dinesh, and the youngest was the deceased. He has deposed that on the date of the incident he was at his house and at around 1:30 in the afternoon, Chandu, the son of Ratnabhai Suhagiya came and informed him that his brother Vitthal had been stabbed by the accused with a knife near the Middle School. He has deposed that thereafter everyone ran at the place of the incident i.e. the Middle School. He has deposed that when he reached the place of occurrence, the PW-3, Kalubhai and the PW-4, Mukeshbhai were putting the deceased in a rickshaw for being taken to the hospital. He has deposed that at that point of time, he also reached and inquired with his brother as to what had happened. His brother, the deceased, replied that the accused hit a blow with a knife, thereafter, his brother did not utter anything and the PW-1 was informed by the PW-3, Kalubhai and the PW-4, Mukeshbhai that while they were passing through the road they witnessed the accused inflicting injury on the body of the deceased with a knife. He has deposed that thereafter his brother Vitthal was taken to the hospital, where he was declared by the doctor as "brought dead". He has further deposed that while at the dispensary he was informed by one Kanjibhai, that after the assault on his brother, the accused came rushing towards Kanjibhai Sodhvadia and with anger on his face threatened to kill Kanjibhai Sodhvadia. It was conveyed by Kanjibhai Sodhvadiya to the PW-2 that thereafter the accused went away. The PW-2 has deposed that the motive behind the commission of the crime was that the accused was in the habit of committing theft and a month and a half before the date of the incident, the accused had come to their agricultural field and at that point of time the deceased had driven him out. Keeping such spite in mind and with a view to seek revenge the accused hit a blow on the chest of the deceased with a knife.

4.4 In his cross-examination, he has deposed that Chandubhai Suhagiya, the son of Ratnabhai Suhagiya had come to his house and had conveyed to him that his brother Vitthal had injured himself with a knife. Immediately, thereafter the PW-2 clarified that Chandubhai had conveyed to him that it was the accused who inflicted injury with a knife on the deceased near the Middle School. A contradiction in the form of material omission was brought in the evidence of the PW-2 wherein the PW-2 admitted that he had not stated in his complaint that Ghanshyambhai Lakhani and Chandubhai Ratnabhai Suhagiya had come running to his house. He denied the suggestion that he had not gone to the place of occurrence.

4.5 The PW-3, Kalubhai Savaliya has been examined by the prosecution as one of the eye-witnesses to the incident. The PW-3, in his evidence, Exh. 20, has deposed that on the day of the incident he was going towards to the village from his house. He has deposed that on reaching near the Middle School, he saw the accused hitting a blow with a knife on the deceased as a result of which the deceased fell down. He has further deposed that thereafter he helped the deceased in getting up. He has deposed that thereafter the PW-4, Mukeshbhai, who was following the PW-3 also reached the place of occurrence. He has deposed that at that point of time Hari Kanji was passing through in his rickshaw and he was asked to stop. While the deceased was being put in the rickshaw, his elder brother, the PW-2, Hasmukhbhai also came and asked the deceased what had happened. In reply, the deceased conveyed to his brother, the PW-2, Hasmukhbhai, that the accused had hit a knife blow on the chest. The PW-3 has further deposed that the brother of the deceased, the PW-2, Hasmukhbhai and the PW-4, Mukeshbhai together took the deceased to the hospital whereas he reached the hospital at a later point of time. When the PW-3 reached at the hospital, the brother of the PW-2, Hasmukhbhai, was already declared dead.

4.6 In his cross-examination, he has deposed that at the time of helping the deceased in getting up and putting him in the rickshaw his clothes had not got stained with blood, his hands and legs were also not stained with blood. He has also deposed that while he was at the place of occurrence, the police had also arrived. He has deposed that it would take around ten minutes to reach the Middle School from his house walking. He has deposed that while taking a turn on the road, he had seen the deceased inside the Middle School. Thereafter, he changed his version and stated that he had seen the deceased outside the Middle School. He has further deposed that it was true that he had not seen the deceased before the knife was hit on the body of the deceased. He also deposed that after the blow was hit with a knife he had no idea towards which direction the accused went away. He has also deposed that they had to stand holding the deceased at the place of occurrence for a minute or two. He has deposed that during that period of time, the PW-4, Mukeshbhai had not placed a handkerchief on the wound of the deceased to arrest bleeding. He denied the suggestion that he had not seen the actual assault. He also denied the suggestion that he had not helped the deceased in any manner. He also denied the suggestion that he had not stopped the rickshaw of Hari Kanji and had put the deceased inside the rickshaw.

4.7 The PW-4, Mukeshbhai Trapasiya, has been examined as one of the eye-witnesses to the incident. The PW-4, in his evidence, Exh. 21, has deposed that the deceased happened to be his cousin brother. On the day of the incident at around 1:30 in the afternoon, he was heading towards the Middle School from his house and at that point of time the incident occurred. He has deposed that the accused hit a knife blow on the deceased at that point of time. He has deposed that the PW-3, Kalubhai Savaliya, was also following him. He has deposed that after inflicting injury with a knife on the deceased, the accused ran

away. He has deposed that the PW-3, Kalubhai, was near the accused and he was behind Kalubhai. He has also deposed that he helped the deceased in getting up as he had fallen down on sustaining the injury. In the meantime, Haribhai Kanjibhai was passing through in his rickshaw and he was asked to stop. He has also deposed that by that time, the PW-2, Hasmukhbhai, the brother of the deceased also arrived and altogether put the deceased in a rickshaw. He has also deposed that PW-2, Hasmukhbhai asked his brother as to what had happened and the deceased in reply stated that it was the accused, who had hit a knife blow. He has deposed that he himself and the PW-2, Hasmukhbhai, took the deceased to the Government Hospital where he was declared as brought dead.

4.8 In his cross-examination, he has deposed that when he saw the accused and the deceased on the road near the Middle School, he had not seen any other person walking through the road. He has deposed that after the incident, within two to three minutes, the rickshaw arrived and till then the deceased was made to stand by holding him. He has deposed that he had not made any attempt to arrest the bleeding from the wound sustained by the deceased. He has also deposed that his hands and clothes were not stained with blood. He has also deposed that no blood was to be seen on the road or near the school. He has deposed that Chandubhai had gone to inform the PW-2, Hasmukhbhai. He has deposed that he had not sent Chandubhai to the house of the PW-2 to convey him the message but Chandubhai on his own might have gone to the house of the PW-2, Hasmukhbhai. He has deposed that at the time of the incident he had no idea as to where Chandubhai was and when he arrived at the place of occurrence. He denied the suggestion that he had not seen the assault by the accused on the deceased.

4.9 The PW-5, Pravinbhai Panchabhai has been examined as one of the panch witnesses to the scene of offence panchnama, Exh. 25. He has deposed about a puddle of blood at Jamka Road near the Middle School. It appears from the overall deposition of the PW-5 that he had put his signature on a readymade panchnama. In any view of the matter, he has not proved the contents of the panchnama and without proving the contents of the panchnama the panchnama was exhibited as Exh. 25.

4.10 The PW-6, Bavjibhai Madhabhai, has been examined as one of the panch witnesses to the inquest panchnama. The PW-6, in his evidence Exh. 26, has deposed that he had been called to the hospital and was shown a dead body. He has deposed that thereafter he was asked to put his signature on the panchnama.

4.11 The PW-7 is examined as one of the panch witnesses to the panchnama of the clothes of the deceased, Exh. 29.

4.12 The PW-8, Dipakbhai Shantilal, has been examined as one of the panch witnesses. The PW-7, in his evidence, Exh. 30 failed to support the case of the prosecution and was declared as hostile witness.

4.13 The PW-9, Dhirubhai Makwana, has also been examined as one of the

panch witnesses but this witness also, in his evidence, Exh. 32, failed to support the case of the prosecution and was declared as hostile witness.

4.14 The PW-10, Manubhai Mohanbhai has been examined as one of the panch witnesses to the discovery panchnama of the weapon of offence, knife. This witness, in his evidence, Exh. 33 failed to support the case of the prosecution and was declared as hostile witness.

4.15 The PW-11, Dalsukhbhai Govindbhai has also been examined as one of the panch witnesses to the discovery panchnama and the weapon of offence. The PW-11 was shown the discovery panchnama, Exh. 34, and without reading the contents of the same before him, said panchnama was exhibited and admitted in the evidence only upon the PW-11 identifying his signature on the same. Thus, the panchnama, Exh. 34, could not be said to have been proved in accordance with law.

4.16 The PW-12, Shardaben, has been examined as a police witness. The PW-12, in her evidence Exh. 37, has deposed about the collection of clothes of the deceased in presence of the two panch witnesses. Through the evidence of the PW-12, the panchnama Exh. 12 was admitted in the evidence.

4.17 The PW-13, Lalkumar Mohanbhai Patel, has been examined as the investigating officer. The PW-13, in his evidence, Exh. 38 has deposed regarding the various stages of the investigation. He has deposed regarding drawing of the panchnamas like the inquest panchnama, the scene of offence panchnama, the discovery panchnama of the weapon of offence, the panchnama of collection of clothes of the deceased, the arrest panchnama of the accused. In his cross-examination, he has deposed that during the course of investigation it was revealed that the fight between the accused and the deceased had lasted for around five minutes. He has also deposed that the place from where the accused was arrested is a public place. He has deposed that nearby the place of occurrence there are shops and residential houses. He has deposed that in the course of investigation, he had recorded the statement of one Navalsinh Parmar, who had come at the school for photography and in his statement he has stated that he had not seen any such incident. He has also deposed that it is true that one Girishbhai Parmar had also met the complainant on the way but he had not witnessed the incident.

5. Having heard the learned Counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this appeal is whether the trial Court committed any error in holding the accused guilty of the offence of murder.

6. On overall appreciation and evaluation of the evidence on record, it appears that the trial Court placed reliance on the evidence of the two eyewitnesses, the PW-3, Kalubhai, Exh. 20 and the PW-4, Mukeshbhai, Exh. 21 in convicting the accused of the offence of murder. It also appears that the trial Court relied on the evidence of the PW-2, Hasmukhbhai, the brother of the deceased for the purpose

of convicting the accused as the PW-2 has deposed about the oral dying declaration said to have been made by the deceased before his brother, the PW-2.

7. Before we consider the evidence of the two eye-witnesses, we propose to consider the evidence of the PW-2, Hasmukhbhai, the brother of the deceased. In our opinion, the PW-2, Hasmukhbhai, the brother of the deceased is not a truthful witness. The PW-2 claims to have been conveyed regarding the incident by one Chandu, the son of Ratnabhai Suhagiya, while he was at his house. According to the PW-2, he reached the place of occurrence, no sooner he was conveyed about the assault on his brother. The identity of Chandu remains a mystery. How Chandu happened to be at the place of occurrence is not established. The PW-3 and the PW-4, the two eyewitnesses have not said a word about Chandu. On the contrary, the PW-4, Mukeshbhai has deposed that he had not sent Chandu at the house of the PW-2 to convey him the information but Chandu had gone on his own. The PW-4 has also deposed that he has no idea as to where Chandu was at the time of the incident and when he arrived.

8. The version of the PW-2 that after reaching the place of occurrence he had inquired with his brother regarding the incident and his brother is said to have made an oral dying declaration that it was the accused who had inflicted the injury with a knife deserves to be rejected outright. It is not in dispute that at the time of the incident the PW-2, Hasmukhbhai was at his house. Let us assume for the time being that a person named Chandu was present at the place of occurrence and might have ran to the house of the PW-2 and pursuant to the information conveyed by Chandu, the PW-2 reached the place of occurrence. According to the PW-3 and the PW-4, the rickshaw arrived within two minutes and they left for the hospital from the place of occurrence within two to three minutes. It is very difficult to believe that by the time the deceased was put in a rickshaw for being taken to the hospital his brother could reach the place of occurrence by that period of time. The PW-2 has also introduced a story of one Kanjibhai Sodhvadiya. According to the PW-2, he was conveyed by Kanjibhai Sodhvadiya that the accused after the assault had rushed towards him and with lot of anger on his face he threatened Kanjibhai to kill him. This is absolutely a new story advanced by the PW-2 which has not been deposed either by the PW-3 or the PW-4, who claim to have been with the deceased althroughout. The identity of Kanjibhai Sodhvadiya also remains a mystery.

9. There is one more reason why we are not persuaded to believe the testimony of the PW-2, Hasmukhbhai. If Hasmukhbhai had learnt through the deceased that it was the accused, who had inflicted the injury with a knife on his chest and the PW-3 and the PW-4 also claim to be the eye-witnesses to the incident then before the doctor at the time of giving history of assault they would not have told the doctor that the assault was by someone. If the PW-2 and the two eye-witnesses knew as to who the assailant was then it was expected of them to have disclosed the name of the assailant before the doctor while giving the history. This fact is apparent from Exh. 10.

10. The PW-2, at the time of lodging of the First Information Report also stated that along with Chandubhai Suhagiya one other person viz. Ghanshyam Ravjibhai Lakhani had also come to his house in the afternoon hours to convey regarding the assault by the accused on his brother. In the entire examination-in-chief of the PW-2, there is no reference of Ghanshyambhai Ravjibhai Lakhani. On the contrary, it appears from the cross-examination of the PW-2 that he does not know any person named Ghanshyambhai Ravjibhai Lakhani. The PW-2 has also deposed that he has no information worth the name regarding Ghanshyambhai Ravjibhai Lakhani. According to the PW-2, Chandubhai alone had come to his house. The PW-2 has gone to the extent of deposing that he had not stated the name of Ghanshyambhai Ravjibhai Lakhani in the First Information Report. However, when the PW-2 was confronted with the First Information Report, Exh. 18, he admitted that he did state in the First Information Report that Ghanshyambhai Ravjibhai Lakhani had come to his house to convey him the information. He has gone to the extent of deposing that if he had disclosed the name of Ghanshyambhai Ravjibhai Lakhani as the person who had come to his house to convey the information regarding the assault on his brother then the same was not true. Having regard to the manner in which the PW-2 has deposed, it casts considerable doubt on the veracity of this witness. It appears to us that the version of the PW-2 that while he was at his house he was conveyed regarding the assault and therefore he rushed to the place of occurrence where he could speak to his brother appears to be highly doubtful. We may not only say doubtful but it appears to be absolutely a concocted story only with a view to bring in the evidence of the oral dying declaration against the accused.

11. There is one more reason why we are not inclined to accept the version of the PW-2. From the materials on record, more particularly, from the evidence of the PW-3 and the PW-4, it must not have taken more than five to seven minutes by the time the deceased was put in a rickshaw and taken to the hospital. We shall discuss the evidence of the PW-3 and the PW-4 at a little later stage but we are referring to the evidence of these two eye-witnesses with a view to examine whether there is any ring of truth in the evidence of the PW-2.

12. It is not in dispute that no sooner had the deceased been brought at the hospital than he was declared by the doctor as "brought dead". According to the PW-1, Dr. Kishorbhai Rathod, having regard to the nature of injury which was sustained by the deceased that within 10 to 15 minutes there would be tremendous loss of blood due to profuse bleeding and the body would become cold. The PW-1 has also deposed that if there is loss of around 1 to 2 liters of blood and if no treatment is given immediately then the patient would not regain consciousness. In the present case, according to the PW-1, Dr. Rathod, the injury which he had noticed was around one hour old, whereas in the postmortem report, Exh. 11, the age of the injury has been stated to be two and a half hours before the commencement of the postmortem. The PW-1, in his cross-examination, has deposed that in the postmortem, Exh. 11, it has been stated that the age of the injury was two and a half hours. Let us assume that the

injury, as stated by the doctor, was inflicted one hour before the deceased was brought to the hospital, then, in such circumstances, the entire version put forward by the PW-2 that he reached the place of occurrence and at that point of time an oral dying declaration was made by his brother and thereafter the deceased was taken to the hospital deserves to be discarded. If the age of the injury was one hour old, in such circumstances, it could necessarily be inferred that the deceased had died on the road itself and it is only after his body was spotted that people learnt about the incident. If the PW-2 claims that he had accompanied the deceased in a rickshaw then at least his clothes would have got soiled with blood but that is also not the case. There is no evidence in this regard or even deposed by the investigating officer. The owner of the rickshaw viz., Haribhai Kanjibhai Sodhvadiya has also not been examined. The version as narrated by the PW-2, Hasmukhbhai that one Kanjibhai Sodhvadiya had told him that after inflicting injury on the body of the deceased the accused came running towards him and threatened him with anger to kill him also proves to be false. This part of the version of the PW-2 has not been deposed by the PW-3 and the PW-4 who claim to be the actual eyewitnesses to the incident. There is no reference of such a person in the entire deposition of the PW-3 as well as the PW-4.

13. Thus, in the overall evaluation and appreciation of the evidence of the PW-2, we have reached to the conclusion that no reliance can be placed on the evidence of such a witness.

14. The above takes us to consider whether the PW-3, Kalubhai Savaliya could be termed as a truthful witness as he claims himself to have witnessed the accused inflicting a stab injury with a knife on the body of the deceased.

15. While assessing and evaluating the evidence of eye-witnesses the Court must adhere to two principles, i.e. whether in the circumstances of the case it was possible for the eye-witness to be present at the scene and whether there is anything inherently improbable or unreliable. Credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what impression is created by his evidence taken in other context of the case and not by entering into the realm of conjecture and speculation. While appreciating the evidence of an eye-witness, the approach must be whether the evidence of the eye-witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence, more particularly, keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and where earlier evaluation of the evidence is shaken as to render it unworthy of belief.

16. Bearing the aforesaid principles of law in mind, we proceed to assess the evidence of the PW-3 and the PW-4.

17. The PW-3 and the PW-4 could be termed as chance witnesses. Who is a chance witness? As observed by the Supreme Court in Bahal Singh Vs. The State of Haryana, , if by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. It all depends upon the facts and circumstances of a case to depict a witness a chance witness. One may be a chance witness even in his own house if, for instance, he should at that time have been in his office.

18. We are not impressed by the submission of Ms. Meenu Kumar, the learned Advocate appearing for the accused-appellant that the evidence of the PW-3 and the PW-4 deserves to be outright rejected solely on the ground that both these witnesses are chance witnesses. It is difficult for us to accept such submission canvassed by Ms. Meenu Kumar as a proposition of law. If the presence of a witness at the place of occurrence is natural, his evidence cannot be brushed aside merely by describing him as a chance witness. His evidence may require a close scrutiny at the most. Wholesale condemnation of the evidence of a witness on the ground that he is a chance witness without analyzing it cannot be justified. There cannot be any controversy regarding the competency of a pedestrian being a natural witness to an incident happening on the road. Merely because some shops are there at the place of occurrence it cannot be assumed that if the shop owners are not examined the evidence of pedestrians is open to suspicion. Trust-worthiness of a chance witness is dependent upon the intrinsic quality of his evidence and so a sweeping generalization that such evidence is per se inferior cannot be made.

19. In Rana Partap and Others Vs. State of Haryana, , the Supreme Court had occasion to consider the nature of such evidence and observed that the rejection of the evidence of street hawkers and street vendors on the ground that they are "chance witnesses" even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence. The Supreme Court observed thus (at page 1274 of Criminal Law Journal):-

"Murders are not committed with previous notice to witnesses: soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passers by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses"."

20. However, the moot question that falls for our consideration is that to what extent the PW-3 should be believed and whether the PW-3 could be termed as an eye-witness to the incident. The PW-3 has deposed that at the time of the incident he was going towards the village from his house. He reached the Middle School and at that point of time he claims to have witnessed the accused inflicting the injury on the deceased with a knife. According to this witness, the PW-4 was also just behind him and both together helped the deceased in getting up from the ground. The PW-3 has further deposed that thereafter on raising

shouts many people gathered at the place of the occurrence. According to him, within two to three minutes, Haribhai Kanjibhai came over there with his rickshaw. The rickshaw was asked to stop and the deceased was put inside the rickshaw for being taken to the hospital. According to the PW-3, by that time, the PW-2, the brother of the deceased also arrived.

21. We have gone through the entire evidence of the PW-3 threadbare and we find number of contradictions in the form of material omissions proved through the evidence of the investigating officer. The PW-3, in his evidence, has deposed that before the injury was inflicted with the knife on the deceased, he had not seen the accused. He has also deposed that after the injury was sustained by the deceased he had no idea in which direction the accused slipped away. We have no hesitation in rejecting the evidence of the PW-3 on the same reasoning as that on which we have rejected the evidence of the PW-2. The PW-3, in his evidence, has deposed that it took one hour in a rickshaw to reach the hospital, which is unbelievable. The incident occurred in a small town named Bagasara. The Community Health Center is also situated at Bagasara. According to all the witnesses, the incident occurred in the afternoon between 1:30 to 2 O'clock. It appears from the yadi, Exh. 9, issued by the medical officer of the Community Health Center, Bagasara, to the PSI of the police Station, Bagasara, that the deceased was brought at the Community Health Center at 2 p.m. and according to the doctor, if the age of the injury was around two and a half hours, then the version of the PW-3 cannot be accepted. We do not find any ring of truth in the entire evidence of the PW-3 and it appears that he deposed only with a view to help the PW-2. The PW-2 also does not appear to be an ordinary person but, at the relevant point of time, was member of the Nagar Palika and had political contacts. The PW-3 has deposed that he had not accompanied the PW-2 and the PW-4 in the rickshaw while the deceased was being taken to the hospital. He has deposed that after the rickshaw left he started walking and all of a sudden a motor-cyclist came and told him that he was going to the hospital and he could accompany him on the motorcycle. A suggestion was put to him that the distance from the Middle School to the Community Health Center is 1 km. to which the PW-3 pleaded complete ignorance. The PW-3 has further deposed that the deceased, Vitthalbhai, had not stated before him that he had sustained a knife injury. He has also deposed that he had no talks with the PW-2, Hasmukhbhai at the place of occurrence. This witness has further deposed that when he reached the place of occurrence the police had not arrived but when the police arrived he was present at the place of occurrence. How could the police arrive at that point of time. The arrival of police according to the PW-3 also is doubtful. In his evidence, the PW-3 has also deposed that at the place of occurrence he had no talks with the deceased Vitthalbhai.

22. Thus, from the overall appreciation of the evidence of the PW-3, we have reached to the conclusion that his evidence does not inspire confidence worth the name and we find it very risky to believe him to be the true eye-witness to the incident.

23. The evidence of the PW-4 is equally vulnerable and doubtful. The PW-4 has deposed that the incident occurred at around 11:30 in the afternoon and he was heading towards the road leading to the Middle School from his house. He has deposed that he witnessed the accused inflicting an injury on the deceased with a knife and thereafter running away. If we believe this part of the evidence of the PW-4 then the entire evidence of the PW-2, Hasmukhbhai, has to be outright rejected. This witness has deposed that he had joined the PW-2 in the rickshaw while taking the deceased to the hospital. However, his clothes nor his hands were soiled with blood. No attempts were made to stop the bleeding from the injury. The PW-4 has not explained as to what had necessitated him on that day in the afternoon to go towards the road leading to the Middle School. The PW-4 also happens to be the cousin brother of the deceased. As discussed earlier if by a coincidence or by chance someone happens to be at a crime scene at the time it takes place, he is called a "chance witness" and if he happens to be a relative or friend of the victim or is inimically disposed towards the accused then his being a chance witness is viewed with suspicion.

24. Thus, in the overall evaluation and appreciation of the evidence of the PW-4, we have reached to the conclusion that his evidence also does not inspire confidence and has suppressed the true origin of the occurrence.

25. We have noticed that most of the panch witnesses failed to support the case of the prosecution and were declared as hostile witnesses. However, the prosecution has placed reliance on the evidence of the PW-11, Dalsukhbhai Govindbhai, who is one of the panch witnesses to the recovery panchnama, Exh. 34, of the weapon of offence, the knife and the arrest panchnama of the accused.

26. We have gone through the evidence of the PW-11, Dalsukhbhai, Exh. 35, and on perusal of the same it appears that Exh. 34 is not a discovery panchnama but the same is arrest panchnama of the accused drawn on 22nd November 2006. According to the prosecution, the accused was arrested from a Madh of a temple situated at Kolivad while he was sleeping. The PW-11 has deposed that he was called by the police for obtaining signature on the panchnama. He has deposed that at that point of time one person was sleeping in the Madh and was woken up by the police. On examination of the accused, a knife was recovered from his pocket. From the evidence of the PW-11, Dalsukhbhai, it is sought to be argued by the prosecution that the accused at the time of his arrest was found to be in possession of a knife which is the weapon of offence.

27. We are afraid it is difficult for us to accept the evidence of the PW-11, Dalsukhbhai, for the simple reason that the panchnama, Exh. 34, could not be said to have been proved in accordance with law. It appears that the panchnama, Exh. 34, was shown to the PW-11, Dalsukhbhai, the panch witness and he admitted his signature and, therefore, it was exhibited as Exh. 34. The examination-in-chief of the PW-11, Dalsukhbhai, does not show that he was read over the panchnama before it was exhibited. This Court has time and again impressed upon the necessity of reading over the panchnama, which can be used

as a piece of corroborative evidence. In spite of this, we state with regret that the trial Court did not take the pains to see that the panchnama was read over to the panch before it was exhibited. A panchnama which can be used only to corroborate the panch has to be read over to the panch and only thereafter it can be exhibited. If the panch has omitted to state something which is found in the panchnama, then, after reading over the panchnama, the panch has to be asked whether that part of the panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in the affirmative, then only that part of the panchnama can be read to corroborate the substantive evidence of the panch. If he replies in negative, then that part of the panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, necessary that due care is taken by the Public Prosecutor, who conducts trial to see that such a procedure is followed while examining the panch as a witness. It is also necessary that the trial Judge ensures that the panchnama is read over to the panch witness and thereafter panchnama is exhibited after following the procedure, as indicated above. Thus, the circumstance of recovery of weapon of offence, the knife, is also hardly of any consequence in the background in which the same was recovered.

28. In the overall view of the matter, we hold that the trial Court committed a serious error by placing reliance on the evidence of the PW-2, the PW-3 and the PW-4 in finding the accused guilty of the offence of murder. Resultantly, this appeal succeeds and is hereby allowed. The order of conviction and sentence are hereby set aside. The accused-appellant is ordered to be released forthwith, if not required in any other case.