

(2019) 07 GUJ CK 0127
In the Gujarat High Court
Case No : R/Criminal Appeal No. 267 Of 2013

Rajendrabhai @ Rajeshbhai Punabhai Machi	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 209, 313, 374
Gujarat Police Act, 1951 — Section 135
Indian Penal Code, 1860 — Section 302
Bombay Police Act, 1951 — Section 135

Citation : (2019) 07 GUJ CK 0127

Hon'ble Judges : R.M.CHHAYA, J;B.N. KARIA, J

Bench : Division Bench

Advocate : Nr Kodekar, Rakesh Patel

Final Decision : Dismissed

Judgement

1. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 29.12.2012 passed by learned 4th Additional Sessions Judge, Panchmahals at Godhara, in Sessions Case No.30/2012, present appeal is directed under Section 374 of the Code of Criminal Procedure (hereinafter referred to as the "Code" for short), whereby the trial Court acquitted the appellant-accused for the offence under Section 135 of the Gujarat Police Act and convicted the appellant-accused for the offence under Section 302 of the Indian Penal Code and sentenced for life imprisonment and also imposed fine of Rs.10,000/- (Rupees then Thousand).

2. The following noteworthy facts emerge from the record of the appeal :

2.1 As per the case of the prosecution, Kanubhai Hirabhai Machhi (hereinafter referred to as "the deceased" for short) was running one provision store at village Junidhari and the appellant - accused used to purchase the grocery items from the shop of the deceased on credit. As the dues were not paid by the appellant, the deceased used to demand the same from the appellant. Record

further indicates that, on 22.11.2011, there was a Lok-Dayra of Chamunda Mataji Temple, wherein the deceased, complainant - Pratapbhai Punabhai Machhi (eye witness) etc. were rendering their services as volunteers at 3 cross roads at village Junidhari, and at that time, at about 11:20 hours in the night, the appellant came with dhariya on his motorcycle bearing registration No.GJ-17-Q-2105 and stopped his bike and proceeded towards the deceased and Pratapbhai Punabhai Machhi, who were standing there and because of enmity with the deceased, inflicted dhariya blows on the neck and forehead of the deceased without saying or uttering anything, because of which, the deceased sustained serious injuries and died on the way when he was taken to hospital;

2.2 It is further the case of the prosecution that, even though the appellant had knowledge that such injuries may result into death, inflicted dhariya blows on the neck and forehead and thus, the appellant committed an offence under Section 302 of the Indian Penal Code;

2.3 Pursuant to the same, FIR was filed, the appellant came to be arrested and after investigation, Chargesheet was submitted to the jurisdictional Magistrate. As the case was exclusively triable by the Court of Sessions, learned Magistrate Court under Section 209 of the Cr.P.C. committed the said case to the Court of learned 4th Additional Sessions Judge, Panchmahals at Godhara, which came to be numbered as Sessions Case No.30/2012. Since, the appellant-accused did not plead guilty and claimed to be tried, he was tried for the offences;

2.4 At the trial, in order to bring home the charges levelled against the appellant-accused, the prosecution examined 12 witnesses and produced 11 documentary evidences;

2.5 No witness was examined by the appellant and the trial Court after appreciating the evidence on record, especially the deposition of two eyewitnesses i.e. PW:3 Pratapbhai Punabhai Machhi, who was examined at Exh:13 and PW:4 Bipinbhai Hirabhai Machhi, who was examined at Exh:14 as well as the medical evidence and serological report at Exh:39, came to the conclusion that the prosecution has been able to prove the offence of Section 302 of Indian Penal Code against the appellant;

2.6 At the end of the trial and after recording the statement of the appellant-accused under Section 313 of Cr.P.C. and upon hearing the arguments on behalf of the prosecution and the defence, the Trial Court convicted him for the offence under Section 302 of the Indian Penal Code vide impugned judgment and order of conviction and sentence dated 29.12.2012 in Sessions Case No.30/2012, as mentioned above;

3. Heard Mr.Nachiket R. Kodekar, learned counsel for the appellant - accused and Mr. Rakesh Patel, learned Addl. Public Prosecutor for the respondent - State.

4. Learned counsel for the appellant has taken this Court through the deposition of the complainant and two eyewitnesses and has also taken this Court through

the relevant documentary evidence adduced by the prosecution as well as the impugned judgment of the trial Court.

5. Learned counsel for the appellant - accused has contended as under:-

(i) That the trial Court has erred in considering the deposition of PW:3-Pratapbhai Punabhai Machhi at Exh:13;

(ii) Even though, there were 50 to 60 volunteers, who were of patrolling the crowd of Lok-Dayra, PW:3 pauses himself to be an eye-witness, did not inform the police deployed at the Lok-Dayra and intimated the brother of the deceased namely Bipinbhai Hirabhai Machhi. That the said witness has deposed that he was not aware whether the police were present at the place of Lok-Dayra or not;

(iii) That, the appellant was an elected member of Gram Panchayat and because of political enmity, name of the appellant has been falsely given by PW:3-Pratapbhai Punabhai Machhi and has wrongly involved in the said alleged offence. It was also contended that the said witness has stated that, one blow was given on the neck of the deceased and thereafter, the deceased fell down on the ground, whereas in medical evidence, it is categorically mentioned that 2 blows were given. Therefore, it was contended that PW:3 Pratapbhai Punabhai Machhi is not an eyewitness and he was not present at the time of occurrence. The said witness was also not aware that, there were more than 50-60 persons to welcome an artist Vikram Thakore in Lok-Dayra and therefore, the said fact falsifies the presence of this witness at the scene of occurrence;

(iv) That, the deposition of PW:8 Prabhatbhai Punabhai Machhi, who is paused to be an eyewitness and who has filed FIR, is also not believable and therefore, the trial Court has wrongly appreciated the evidence of said witness. Even in cross-examination of PW:8 Prabhatbhai Punabhai Machhi has admitted the fact that the appellant was an elected member of Gram Panchayat and the appellant had good relation with the deceased and in fact, used to sit at the shop of the deceased and the said witness has also admitted in his cross-examination that the appellant and the deceased were related to each other. The said witness has also stated in his cross-examination that there was no light on the place of Lok-Dayra and there was darkness;

(v) That, as there was darkness and even the case of the prosecution that the appellant assaulted the deceased without saying or uttering a single word, it cannot be believed that in dark night, the said witness could identify the appellant;

(vi) That, the said witness has also referred about one blow, whereas in the medical evidence, two blows are mentioned and hence, deposition of PW:8 is not believable and the Trial Court has wrongly relied upon the same and the depositions of PW:3 Pratapbhai Punabhai Machhi and PW:8 Prabhatbhai Punabhai Machhi which are made the basis of conviction, are ex facie erroneous;

(vii) That, the trial Court has also not rightly appreciated the evidence of PW:9

Dr. Rameshchandra Kodarji Chauhan at Exh:28, who performed the post mortem of the deceased and has also not appreciated the medical evidence such as P.M. Report at Exh:29 and Serological report at Exh:39. The said witness has categorically stated that there were two injuries, which can be caused by any sharp edged instrument and thus, there is vital discrepancy in the ocular evidence adduced by so called eyewitnesses and the Doctor;

(viii) That, the trial Court has wrongly believed the Panchwitnesses i.e. PW:1 - Jagdishbhai Hirabhai Machhi, who was examined at Exh:7 and PW:2 - Shantibhai Bhikhabhai Machhi, who was examined at Exh:9 and contended that, PW:2 - Shantibhai Bhikhabhai Machhi has categorically stated that inquest panchnama was carried out from 7:00 to 8:00 hours on 23.11.2011, whereas he was called by the police at 9:00 to 9:30 hours and thus, it was contended that the inquest panchnama was kept ready earlier and only signature of the said panchwitnesses were taken;

(ix) That, the trial Court has wrongly appreciated the evidence of PW:4 Bipinbhai Hirabhai Machhi, who happens to be the brother of the deceased. Similarly, the trial Court has also not appreciated the evidence of PW:5 - Ishwarbhai Ranchhodbhai Machhi, who was examined at Exh:16 and PW:6 Rameshbhai Sankarbhai Machhi, who was examined at Exh:19 in its proper perspective;

(x) Even though the said witness has stated that they were panchwitnesses of the inquest (physical) condition of the accused, who was arrested on 23.11.2012 and even though, it is stated that dhariya was recovered from the house of the accused, which contains blood, the same is contrary to the serological report because there was no mention about blood group found on the muddamal dhariya and therefore, trial Court has wrongly believed the evidence of PW:5 and PW:6;

(xx) That the trial Court has wrongly appreciated the evidence of PW:7 Kokilaben Kanubhai Machhi, who was examined at Exh:22 as she was hearsay witness and has not seen the occurrence. The said witness has categorically stated that the appellant was a son of her maternal uncle and he had good relation with the deceased. It was also contended that the trial Court has wrongly appreciated the evidence of PW:10 Laxmanbhai Shankarbhai Parmar, PW:11 Parmabhai Punabha Vanikar and PW:12 Jayantilal Harjivandas Pandya, who are police personnel and the Investigating Officer and the trial Court has overlooked the serological report especially the fact that there was no mention about the blood group which was found on muddamal shirt of the appellant and dhariya. It was also contended that the Investigating Agency has not recorded the statement of other witnesses, who were alleged to have been found from the surrounding place and has only relied upon the confined evidence and on the basis of got up and interested witnesses, trial Court has relied upon the same and held the appellant guilty. Two eyewitnesses are got up and their presence at the scene of occurrence is completely doubtful and therefore, very basis of the conviction is based on wrong appreciation of the evidence on record.

On the above grounds, learned counsel for the appellant has submitted that the appeal deserves to be allowed and the order of conviction and sentence deserves to be quashed.

6. Per contra, Mr. Rakesh Patel, learned APP has supported the impugned judgment and order of conviction and sentence and has contended as under:-

(i) That, the prosecution has been able to prove the guilt of the appellant;

(ii) That, two eyewitnesses cannot be termed as got up or interested witnesses as it is a matter of fact that there was Lok-Dayra on the date of incident and the prosecution has proved the fact that PW:3 Pratapbhai Punabhai Machhi and PW:8 Prabhatbhai Punabhai Machhi were the volunteers to control the crowd of Lok-Dayra;

(iii) That, presence of these two eyewitnesses is natural and as part of duty as volunteers;

(iv) That, the deceased was running a grocery shop and it is also found from the record that the appellant used to purchase grocery on credit. Referring to the evidence of PW:3 and PW:8, learned APP contended that, both eyewitnesses have categorically stated that the appellant came on his motorcycle and without uttering anything, straightway assaulted upon the deceased and gave dhariya blows on neck and forehead of the deceased;

(v) That, there is no discrepancy as far as the injuries sustained by the deceased are concerned. On the contrary, both the eyewitnesses have deposed about the occurrence exactly in a manner in which it has occurred. The appellant cannot get any benefit on the ground that two eyewitnesses have referred to one blow, whereas in the medical evidence, two blows are found;

(vi) That, the conduct of both eyewitnesses is a natural inasmuch when a person attacked with deadly weapon, he/she would like to run away immediately;

(vii) That, PW:3 Pratapbhai Punabhai Machhi immediately went and inform the brother of the deceased. He further contended that all the panchwitnesses have supported the case of the prosecution. Muddamal dhariya has been recovered at the instance of the appellant and in serological report, bloodstained was found. Referring to the serological report, it was contended that the said report clearly indicates that blood was found from shirt of the accused as well as dhariya, however, determination of blood group has remained undecided;

(viii) That, there are no such contradiction in the evidence of any of the witnesses including two eyewitnesses as well as PW:12 Jayantilal Harjivandas Pandya (Investigating Officer), who was examined at Exh:36 which creates no doubt about involvement of the appellant. He also contended that the trial Court has rightly appreciated the evidence on record and has rightly believed the version of two eyewitnesses i.e. PW:3 and PW:8, who has also registered a complaint before the police. It was also contended that there is nothing on

record to show that there is any political enmity between any of the parties, more particularly between the appellant and deceased. Only because the appellant used to sit at the shop of the deceased and they had good relation with each other, it cannot be said that the appellant is not a guilty of the offence;

(ix) That, the trial Court has rightly appreciated the evidence on record and has rightly believed the case of the prosecution. Therefore, it was contended that the appeal being meritless, deserves to be dismissed.

No other or further submissions have been made by learned counsel for the parties.

We have also perused the original record and proceedings.

7. Have considered the submissions and contentions raised by learned counsel for the parties, original record and proceedings as well as the paper-book, it establishes that the prosecution has examined PW:3- Pratapbhai Punabhai Machhi, who was an eyewitness, examined at Exh:13. The said witness has stated in his examination-in-chief that, he along with the deceased and PW:8 Prabhatbhai Punabhai Machhi were standing on 3 cross roads as volunteers as there was Lok-Dayra in village Junidhari. He has narrated the manner in which the appellant came with dhariya on his motorcycle and attacked on the deceased and gave dhariya blows on the neck and forehead of the deceased. He has also stated in his examination-in-chief that as they felt that even they would be assaulted, they ran away and immediately informed the brother of the deceased Bipinbhai about the incident. The said witness has also narrated that after 8-10 people came to the scene of occurrence and the deceased was found severely bleeding. He also narrated that the deceased was taken to Godhara Civil Hospital, however, he died on the way. He has also stated that, on the next day, he came to know that there was some dispute of money between the appellant and the accused. He has also identified the deceased in the Court. In his cross-examination, he has narrated the factum of Lok-Dayra of Vikram Thakor, wherein 5000 to 7000 persons were assembled. He has also stated that charge of ticket was Rs.50/- per head and tickets worth of Rs.2,50,000/- to Rs.3,00,000/- approximately were sold. He has denied that he was not aware whether the appellant was there on the site of Lok-dayra. He has denied other suggestions of defense on a particular question put to the said witness to the effect that when Vikram Thakor came to Lok-Dayra, whether the police piloting or escort was there, to which the said witness has categorically stated that at the relevant point of time, they were at Godhara Civil Hospital. Even to the question whether they found presence of police at Lok-Dayra and whether they informed the police at the place of Lok-dayra or not, the said witness has also stated that he was not aware about the same. He has also stated in his cross-examination that after informing the brother of the deceased, they came back to the scene of occurrence within 10-15 minutes and they went to the place of Lok-Dayra immediately by running. He has denied all other suggestions made by the defence. He has admitted in his cross-examination that the appellant is an

elected member of Gram Panchayat and Lilaben wife of Jagadish Machhi was Sarpanch. He has further denied the suggestions that the panchayat is being managed by said Lilaben being Sarpanch of Junidhari Village. He has also denied the fact that there was political enmity between Jagdishbhai and the appellant. He has denied the other suggestions put forward by the defence. Other vital evidence is in form of deposition of PW:8 Prabhatbhai Punabhai Machhi, who was examined at Exh:24. The said witness in his cross-examination has narrated the incident/occurrence and the fact that the appellant gave blow with dhariya without uttering anything. He has also stated that the manner in which the appellant assaulted upon the deceased and fact that they ran away because they threatened that they would be assaulted. Even in his cross-examination, he stood the test of his testimony and has not admitted any suggestions of the defence. He has stated in his deposition that he gave first information to the police being Exh:25. He has also identified the muddamal dhariya and the appellant - accused.

8. The other vital evidence is a deposition of PW:9 Dr.Rameshchandra Kodarji Chauhan at Exh:28, who performed the Post Mortem of the deceased on 23.11.2011 at about 9:40 a.m. The said witness has narrated the injuries received upon the body of the deceased. He has also stated that injuries sustained by the deceased can be caused by muddamal dhariya. He has also narrated the injuries in the P.M.report, which were found on the body of the deceased at the time of Post Mortem. In his cross- examination also, he has stood the test of his testimony and has denied all suggestions made by the defence. He has also explained that injury No.1 may result into fracture of bone inside the brain and may not. As far as injury No.2 is concerned, if the same is 3/4 deep wound, head would fall down. However, he says that the said injury can be caused with sharp edged weapon or even semi circle sharp cutting weapon. He has stated that photographs are not taken, however, he has denied the suggestions made by the defence that injury Nos.1 and 2 cannot be raised because of muddamal dhariya.

9. The prosecution has also relied upon PW:1 Jagadishbhai Hirabhai Machhi at Exh:7, who has supported the case of the prosecution as panchwitness of scene of occurrence. In his cross-examination, he had stood the test of his testimony and nothing contrary is found from his cross-examination. Similarly, the prosecution has relied upon the deposition of PW:2 - Shantilal Bhikhabhai Machhi at Exh:9, who happens to be panchwitness of Inquest Panchnama. The said witness has also supported the case of the prosecution. In his examination-in-chief, he has stated that he was called at 9:00 to 9:30 hours on 23.11.2011 at civil Hospital, Godhara.

10. The prosecution has also relied upon the depositions of PW:5 Ishwarbhai Ranchhodbhai Machhi, who was examined at Exh:16 and PW:6 Rameshbhai Sankarbhai Machhi at Exh:19, they were panchwitnesses and have fully supported the case of the prosecution. He has stated that he was panchwitness

at the house of the appellant on 23.11.2011, he has also stated that dhariya was brought by the appellant, which was about 3 feet in length and that it was sealed in his presence. He has also narrated that one black shirt, old pent as well as one black colour motorcycle were taken as muddamal. He has denied the suggestions of the defence. In his cross-examination, he stood the test of his testimony.

11. The prosecution has also relied upon PW:11 Parmabhai Pujabhai Parmar, who was examined at Exh:35. The said witness has stated in his cross-examination that, he was serving in the duty as P.S.O at Godhara Taluka Police Station and he has lodged the FIR under Section 302 of Indian Penal Code and Section 135 of the Bombay Police Act. The said witness has further stated that, he has prepared the panchnama of recovery of clothes of the dead body in the presence of panchwitnesses, which was signed by two panchwitnesses.

12. Over and above the same, PW:4 Bipinbhai Hirabhai Machhi, was examined at Exh:14 is a brother of the deceased and he has stated in his deposition that he was informed about the occurrence by PW:3 Pratapbhai Punabhai Machhi, who came by running and informed him that the appellant has inflicted dhariya blows upon the deceased. He has stated that thereafter 4 persons went to the scene of occurrence on motorcycle and found that the deceased was lying there. He has also narrated notes, wherein 2 injuries on the neck and another on the forehead were found and thereafter, he took the deceased in EECO car to Civil Hospital, Godhara, where he died on the spot. In his cross-examination, he has admitted the fact that the appellant and the deceased were brother-in-law and there was friendship between the deceased and the appellant and that they used to go for dinner once or twice in a week and has also narrated about Lok-Dayra, however, has denied other suggestions made by the defence.

13. The prosecution has also examined wife of the deceased PW:7 Kokilaben Kanubhai Machhi at Exh:22. She has stated that the deceased was an elder brother amongst two and that her husband was impaired on left leg and was running a provision store. She has also stated that she came to know about the incident in Lok-Dayra and she came to know afterwards that the appellant had assaulted her husband with dhariya and given dhariya blows on his neck and forehead, because of which, he died at Civil Hospital, Godhara. In her cross-examination, she has admitted the fact that the appellant is a cousin brother of her maternal uncle's son and the deceased and appellant had good relations with each other and they were used to go to Sarvoday Hotel for dinner twice or thrice in a week and the appellant used to sit at the shop of the deceased. She further states that, she came to know about death of her husband from talks of the people. She has further denied the fact that the suggestions put forward by the defence as regards the occurrence and so also presence of police at the site of Lok-Dayra.

14. Other vital evidence which is relied upon by the prosecution is a deposition of PW:12 - Jayantilal Pandya at Exh:36, who happens to be the Investigating Officer of the offence, who has narrated the manner in which the investigation has been

carried out. He has also referred to the serological report received from FSL. He has further denied the suggestions put forward by the defence in his cross-examination and has stood the test of his testimony. In his cross-examination, he has stated that for maintenance of law and order, the police personnel were deployed at the place of Lok-Dayra. However, he has denied the fact that there was piloting vehicle ahead of the vehicle of Vikram Thakor.

15. Over and above the same, the prosecution has relied upon the serological report at Exh:39. Upon reappreciation of the evidence on record, the case of the prosecution is based on deposition of two eyewitnesses in particular. PW:3 Pratapbhai Punabhai Machhi and PW:8 Prabhatbhai Punabhai Machhi have categorically stated in their deposition as to how the deceased was assaulted by the appellant with dhariya on vital parts of the body. Trial Court has rightly believed the deposition of PW:3 Pratapbhai Punabhai Machhi, who was an eyewitness. The conduct of said witness is natural, because when a person is attacked with deadly weapon like dhariya, the victim would run away to save his life cannot be termed as unnatural. The prosecution has been able to prove the business of deceased and PW:3 Pratapbhai Punabhai Machhi and PW:8 prabhatbhai Punabhai Machhi were standing on three cross roads leading towards the site of Lok-Dayra on the date of incident. It has also come on record that the appellant was from same village and was known to PW:3 Pratapbhai Punabhai Machhi and PW:8 prabhatbhai Punabhai Machhi. We find that there is no material contradiction in the deposition of both eyewitnesses as tried to be canvassed by learned counsel for the appellant. Except the fact that the appellant is an elected member of the gram Panchayat, there is nothing on record to show that there was any political enmity with anybody much less the deceased or eyewitness or even any other prosecution witness including PW:4 Bipinbhai Hirabhai Machhi, who is brother of the deceased.

16. Upon considering the deposition of both the eyewitnesses, we find that there is ring of truth in the version of both eyewitnesses and therefore, the trial Court has rightly believed the version of both the eyewitnesses. Post mortem was performed by PW:9 - Dr. Rameshchandra Chauhan at Exh:28, wherein the following injuries were mentioned in the P.M report :

"1 1/4 CMS tapering cut injury both end of wound blood and cloth wound bander reddish and whole

2. Cut wound on back of Neck of skull midl area oblique transversely 3/4 area of neck encircle cut only front area of neck remain size 21 CM long 3 CMS breath up to deep to cut wound separated to 4th cervical (cervical cloumn) bertebral and 5th cervical vertebral, esophagus cut and half circle of Trachea was cut under health vessels Measures and minners vessels all are cut with muscles & nerves between neck area of mind area neck pro fused blood lost, blood and cloths are present one fire wound whole is reddish color."

"Under health injury No.1 left frontal bone skull cut up to brain tissues also cut in

seen blood and cloth + muscle sub cutaneous tissues cut between"

"Internal brain tissues cut size 3 CMS X 1 1/2 X 1 CMS deep blood and cloth + 250 ML inter cranial."

17. The aforesaid injuries even as per the deposition of PW:9 Dr. Rameshchandra Chauhan, can be caused by muddamal dhariya. Only because the eyewitnesses have referred to only one blow on the neck, the same does not create any cloud of doubt on the version of two eyewitnesses as well as PW:9 Dr. Rameshchandra Chaudhary. The evidence shows that on assault being made by the appellant, the eyewitnesses ran away to the site of Lok-Dayra with fear that they would also be assaulted. However, the fact remains that medical evidence clearly proves the fact that the deceased had received two injuries, which can be caused by muddamal dhariya and we, therefore, find that there is contradiction even on the point of injuries received by the deceased.

18. All panchwitnesses have supported the case of the prosecution. Though learned counsel for the appellant tried to canvass that the inquest panchnama was prepared earlier and was kept ready, however, the same would not in any way affect the case of the prosecution. Muddamal dhariya has been recovered at the instance of the appellant himself. Serological report also indicates that bloodstains were found on muddamal dhariya as well as shirt of the accused. Though the serological report shows that blood group has remained undecided, the fact remains that both the mudamal i.e. dhariya as well as shirt of the appellant-accused are found with human blood. Such evidence clearly establishes the fact that the appellant assaulted the deceased with dhariya and gave two blows on the neck and forehead i.e. vital parts of the body. Even the extent of injuries as noted by the doctor in the P.M report clearly indicates that the injuries were such that even a healthy person would succumb the same. Even considering the deposition of PW:12 Investigating Officer at Exh:36, no material contradiction is found. In totality of the facts, the prosecution has established the guilt of the appellant accused. The prosecution has also established the fact that the deceased was running a grocery shop and there was acquaintance between the appellant and deceased and in fact, the appellant was used to sit at the shop of the deceased and used to go out for dinner, would not lead to the fact that the guilt is not established. Only because the appellant was an elected member of Gram Panchayat, there is nothing on record to show that there was any political enmity between any of the prosecution witnesses. Even though the incident has occurred at 21:30 hours, the fact remains that eyewitnesses were of the same village and therefore, they can easily identify the appellant. The prosecution has also brought on record the fact that an artist Vikram Thakor reached at the place of Lok-Dayra after 10:00 hours in the night i.e. after the incident and therefore, we find that there is no contradiction even on that aspect and version of two eyewitnesses is therefore rightly believed by the trial Court.

19. In addition to that, muddamal dhariya as well as motorcycle were also recovered from the appellant, which is supported by the panchwitnesses. The

contention raised by learned counsel for the appellant about veracity of the panchnama, also deserves to be negatived.

20. Considering the facts and circumstances of the case and perusing the judgment of the trial Court, we find that the trial Court has rightly appreciated the evidence on record and hence, no interference of this Court is called for. Resultantly, present appeal fails and is hereby dismissed.