
(1999) 04 BOM CK 0025

In the Bombay High Court

Case No : Criminal Appeal No's. 706 and 712 of 1997

Rajesh @ Raju Vasant Dali and others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 235, 313, 378(1)

Evidence Act, 1872 — Section 148, 3, 45, 59, 9

Penal Code, 1860 (IPC) — Section 147, 149, 302, 323, 34

Citation : (1999) 5 BomCR 656 : (1999) 2 BOMLR 849

Hon'ble Judges : Vishnu Sahai, J;Smt. Ranjana Desai, J

Bench : Division Bench

Advocate : N.N. Gawankar, for the Appellant; I.S. Thakur, Assistant Public Prosecutor, for the Respondent

Judgement

Vishnu Sahai, J.—Since these connected Criminal Appeals arise out of same set of facts and a common impugned judgement, we are disposing them off by one judgment.

2. Through these appeals, the appellants challenge the judgment and order dated 23-10-1997 passed by the Joint District Judge and Additional Sessions Judge, Ratnagiri, in Sessions Case No. 6 of 1995, whereby they have been convicted and sentenced in the manner stated hereinafter-

(i) u/s 147 I.P.C. to suffer R.I. for one year;

(ii) u/s 148 I.P.C. to suffer R.I. for one year;

(iii) u/s 302 r/w 149 I.P.C. to suffer imprisonment for life and:

(iv) u/s 323 r/w 149 I.P.C. to suffer R.I. for a period of three months.

The sentences of the appellants were ordered to run concurrently.

The learned trial Judge also directed each of them to pay a compensation of Rs. 25,000/- and also directed that the total amount of Rs. 1,00,000/ - would be

paid as compensation to the widow of the deceased Pratap Salvi.

It is pertinent to mention that along with the appellants were tried, five others namely Ushakant Pandurang Mahajan, Sugandh Shankar Chavande, Prasanna Dattaram Bhole, Nandkumar Prabhakar Patil and Deepak Dhondu Bhole but, they have been acquitted vide impugned Judgment and the State of Maharashtra has not challenged their acquittal by preferring an appeal u/s 378(1) Cr.P.C.

3. In short, the prosecution case runs as under:-

On 10-7-1994, at about 9 a.m. the deceased Pratap Salvi asked the informant Shashikant Desai P.W. 1 to accompany him to the fish market. Consequently, Shashikant Desai seated Pratap Salvi on the pillion seat of his scooter and proceeded to the fish market situated in Ratnagiri city. After purchasing fish, they proceeded to the adjoining mutton market where Pratap Salvi purchased mutton. Thereafter, they started returning for their homes. At about 10.30 a.m. when they had reached Patwardhan Hotel, Pratap Salvi asked the informant to stop his scooter. He stopped the same. Pratap Salvi went inside the hotel and purchased bread.

Thereafter, when the informant was about to start his scooter, a blue coloured Maruti van came from the opposite side and banged against his scooter. The appellant Liladhar Nagavekar was driving it. Thereafter, five persons and the absconding accused Ulhas Mandavkar came out from the said van. They were armed with weapons like swords and guptis. Pratap Salvi on seeing them, started running towards Ghanekar Ally. Leaving his scooter behind, the informant started running towards Savarkar statue while the appellant Rajesh @ Raju Dali and an unknown person chased the informant, the appellants Pratap @ Paratu Madhukar Shirdhankar, Govardhan Shamrao Rao, Liladhar Nagavekar and Ulhas Mandavkar chased Pratap Salvi. It is alleged that the appellant-Rajesh @ Raju Dali who was holding a gupti in one hand and a sword in the other, tried to assault the informant with both the weapons but, he caught them by his hands.

It is also alleged that appellants Liladhar Nagavekar, the absconding accused Ulhas Mandavkar and an unknown person whom the eye-witnesses Vikas Pawar P.W. 2 and Sanjay Patil P.W. 4 identified-in Court as Govardhan Shamrao Rao with sword assaulted Pratap Salvi in Ghanekar Alley. As a consequence of the assault, Pratap Salvi fell down.

After sometime, Shashikant Desai along with some others came to Ghanekar Alley to see as to what "had happened to Pratap Salvi, He found spots of blood on the ground but, did not find Pratap Salvi. Consequently, along with others, he went to the Civil Hospital Ratnagiri, where he found Pratap salvi lying on a stretcher.

4. The injuries of Shashikant Desai were medically examined within 40 minutes of the incident taking place (at 11.10a.m.) at Ratnagiri Civil Hospital by Dr. M.S. Dange P.W. 10; who found on his person, three incised wounds situated on his

fingers and thumb. They were caused within 12 hours and per statement of Dr. Dange, in the trial Court, were possible, if a person held a sharp cutting weapon like a sword, knife etc.

Evidence of Dr. Dange shows that before Pratap Salvi could be medically examined he had succumbed to his injuries.

5. The F.I.R. of the incident was recorded the same day at 11.55 a.m. in Ratnagiri Civil Hospital by S.I; Suryakant Patil on the information given by Shashikant Desai P.W. 1. In the said F.I.R., the appellants-Pratap @ Paratu Shirdhankar, Raju Dail, Liladhar Nagavekar and Ulhas Mandavkar are named. There is also a reference to some unknown persons.

6. The autopsy on the corpse of the deceased Pratap Salvi was conducted the same day between 3 p.m. to 4. p.m. by Dr. M.S. Dange P.W. 10 who found on it, the following ante-mortem injuries:-

(1) Injury No. 1: There was clean incised wound extending from right eye-ball crossing midline posteriorly 2.5 inches opposite the right ear. Measuring 10.5 inch x 2.5 "inch muscle deep:

(2) Injury No. 2: Clean incised wound extending from right cheek to posterior aspect of neck, ear lobe (right) is cut. Measuring 5 inch x 1/2 inch with muscle deep up to paraspindal muscle.

(3) injury: There was complete cut of carotid artery and internal jugular vein right side.

(4) Injury No. 3 : Atlas and axis cervical vertebrae are separated.

Injury No. 4: Clean and incised wound on occipital region measuring 6.5 inch x 1/2 inch into bone deep.

Injury No. 5 : Occipital bone fracture.

Injury No. 6: Clean and incised inverted V shape of occipital region 2 inch x 2 x 1/2 inch bone deep.

Injury No. 7: Traumatic amputation of distal of right ring finger, skin tinges hanging.

Injury No. 8: Clean and incised wound on dorsal aspect of left hand running obliquely measuring 4 inch x 1 inch x tender deep. Extensor tender are cut intro-souse muscles expose.

Injury No. 9: Clean and incised wound on midline lumber area I and 1/2 inch x 1/2 cm. x revertible deep.

Injury No. 10; Clean and incised wound on root of neck on back side 5 inch x 1/2 inch muscle deep.

Injury No. 11: Complete perforation of right eye ball with scleral perforation

vitreous humor is exposed- Optic nerve cut.

Injury No. 12: Scratch injury on left side of scapula 4 inch x 1/2 inch.

Injury No. 13: Scratch injury running horizontally on lower back 5 inch x 1/2 cm.

Injury No. 14: Scratch injury on right side of back 5 inch x 1/2 inch.

On internal examination, Dr. Dange found fractures of occipital bone and zygoma right side.

In the opinion of Dr. Dange, the deceased died on account of shock and hemorrhage due to rupture of carotid artery and fracture of occipital bone with subdural haematoma with cervical cord injury.

In his opinion, "injury Nos. 2, 5 and 6- were sufficient to cause death in the ordinary course of nature.

7. The investigation was conducted in the usual manner by P.S.I. Ramesh Patil P.W. 9.

On 11-7-1994, at 5 p.m. pursuant to his arrest, the Appellant-Govardhan Shamrao Kao expressed" a desire that he could have the blood-stained clothes recovered. Consequently public pancha Pramod Narwankar P.W. 8 was called and the said information was recorded under, a panchanama. Thereafter, the appellant Pramod Narwankar and the police personnel proceeded in a police vehicle; When the same reached near Raymond Rest House, the appellant directed that it be stopped. Thereafter, he led them inside the house of one Anandibai from the padvi of which, he brought a rexine bag which contained his blood-stained shirt and pant. The said recovery was effected under a panchanama.

On 12-7-1994; during the course of interrogation, the appellant indicated that he could have the blood-stained dagger recovered. Consequently, public panch Pramod Narwankar P.W. 8 was Called and the said information was recorded under a panchanama. Thereafter, the appellant led "them in a police vehicle to an area known as Pandhm Samudra near Raymond Rest House and directed that the vehicle be stopped. Thereafter, he went inside the house of Sunanda Bhole and from the padvi of her house, he produced a blood-stained dagger. The said recovery was effected under a panchanma.

During the course of investigation, P.S.I. Patil sent the blood-stained clothes of the said appellant, the blood-stained dagger, blood-stained clothes" of the deceased, blood recovered from the place of the incident and "sample of blood of the deceased etc. to the Chemical Analyst.

It is significant to point out that the Chemical Analyst found the blood of the deceased- to be of "B" group and blood of the said group on the clothes of the appellant and the blood-stained dagger.

After completing the investigation, P.S.I. Patil submitted a .charge sheet against

the appellants and the acquitted accused. In the said charge sheet, the accused: Ulhas Mandavkar was shown as absconding.

8. The case was committed to the Court of Sessions in the usual manner where the appellants were charged on a number of counts to which, they pleaded not guilty and claimed- to be tried. Their defence was of denial.

During trial, in all, the prosecution examined nine witnesses, three of them namely Shashikant Desai, Vikas Pawar and Sanjay Patil were examined as eye-witnesses. The learned trial Judge concluded that the prosecution had proved its case beyond reasonable doubt against the appellants and convicted and sentenced them in the manner stated above. He acquitted the accused Ushakant Pandurang Mahajan, Sugandh Shankar Chavande, Prasanna Dattaram Bhole, Nandkumar Prabhakar Patil, and Deepak Dhondu Bhole on all the counts. But, as mentioned earlier, the State of Maharashtra has not impugned their acquittal by preferring an appeal u/s 378(1) Cr. P.C.

Hence these appeals.

9. We have heard Mr. N.N. Gavankar for the appellants and Mr. I S. Thakur Additional Public Prosecutor for the State of Maharashtra respondent. We have also perused the depositions of the prosecution witnesses; the material Exhibits tendered and proved by the prosecution; the statements of the appellants recorded u/s 313 Cr. P.C. and the impugned judgment. We feel that these appeals deserve to be partly allowed, in view of a technical infirmity in the impugned order to which we would advert to later.

10. The main plank of the prosecution evidence on which the conviction of the appellants is founded comprises of the ocular testimony of Shashikant Desai P.W. 1, Vikas Pawar P.W. 2 and Sanjay Patil P.W. 4. It is on the basis of the recitals contained in their examination-in-chief, that we have set out the prosecution story in the earlier part of the judgment. To put it briefly, their evidence shows that on the date of the incident, at about 9 a.m. Pratap Salvi expressed a desire to the informant Shashikant Desai to purchase fish. Consequently, on the scooter of the latter driven by the latter both of them left for the fish market in Ratnagiri town. After purchasing fish, they went to the adjoining mutton market because, Pratap Salvi wanted to purchase mutton. Thereafter, on the scooter, both of them started returning for their houses. At about 10.30 a.m. when the scooter had reached near Patwardhan Hotel, Pratap Salvi got down to purchase bread. After he had purchased the same, Shashikant Desai tried to start his scooter. At that time, a blue coloured maruti van driven by the appellant Liladhar Nagavekar dashed against his scooter. From the said van, the appellant Liladhar Nagavekar along with the appellants Rajesh, Pratap, Govardhan, the absconding accused Ulhas Mandavkar and an unknown accused armed with swords and guptis emerged. Seeing them, Shashikant Desai ran toward Savarkar statue and Pratap Salvi towards Ghanekar Alley. The appellant-Rajesh and an unknown person chased Shashikant Desai. The former who was carrying a sword in one hand and

a gupti on the other tried to pierce him with the said weapons but, he caught them by his hand and sustained injuries.

Pratap Salvi who ran towards Ghanekar Alley was assaulted in the said Alley by the appellants-Liladhar Nagavekar, Ulhas Mandavkar and an unknown accused whom witnesses Vikas Pawar P;W. 2 and Sanjay Patil P.W. 4 identified in Court as Govardhan Shamrao Rao, by swords. As a consequence of the assault, he fell down.

After sometime, the informant Shashikant Desai came to Ghanekar Alley, found blood lying there; but, did not find Pratap Salvi. He then rushed to the Civil Hospital.

11. We have gone through the evidence of the three eye-witnesses and in our view, the same inspires confidence.

We would first take up the evidence of Shashikant Desai P.W. 1.

As mentioned earlier, this witness was with the deceased Pratap Salvi at the time of the incident. We have earlier referred to the circumstances in which they were, together and to prevent the bulk of our judgment from swelling, we do not intend adverting to them again. His evidence that the appellant-Rajesh who was holding a sword in one hand and a gupti in the other, tried to pierce him with the said weapons and he caught hold of them by his hand, is corroborated by the three incised wounds, which he has received on his fingers and thumb.

Corroboration to his evidence is also forthcoming by the circumstance that the F.I.R. of the incident wherein the appellant Rajesh, Pratap, and Liladhar and absconding accused Ulhas Mandavkar are named, was recorded at 11.55. a.m. same day in Civil Hospital by P.S.I. Suryakant Patil. In the said F.I.R. there is a reference also to the participation of unknown accused persons out of whom, the appellant Govardhan Shamrao Rao is one.

Assurance to his evidence is also lent by the circumstance that on the place of the incident, the Investigating officer found bread. According to him (Shashikant Desai) after he and the deceased were returning from purchasing fish and mutton, the deceased purchased bread from Patwardhan Hotel.

12. It should be borne in mind that Shashikant Desai P.W. 1 is a wholly independent witness having no axe to grind against the appellants. For that reason, in our view, he would not have falsely implicated the appellants. We wish to emphasise that he is a injured witness, whose injuries were examined promptly and are corroborated by the medical evidence. Criminal Courts give great weightage to the evidence of an injured witness because, injuries ensure his presence, and once his presence is ensured, the only question which remains is that of his credibility. In the instant case, we find him to be a wholly credible witness. In our view, the learned trial Judge acted correctly in accepting his evidence.

13. We now take up the evidence of Vikas Pawar P.W. 2. He is a rickshaw driver. His evidence show that at about 10.30 a.m., after dropping a passenger at Bhosale Saloon near Savarkar statute, he saw Pratap Salvi and Shashikant Desai sitting on the scooter of the latter. His evidence further shows:- that a van came from the opposite side of Savarkar statue, it banged against the scooter driven by Shashikant Desai, from it, appellants-Rajesh @ Raju, Pratap, Liladhar Nagavekar, Ulhas Mandavkar and two unknown persons emerged; Shashikant Desai ran towards Savarkar statute and Pratap Salvi towards Ghanekar Alley; Rajesh who had a sword in one hand and a gupti in the other and an unknown person chased Shashikant Desai. Appellant Rajesh alias, Raju tried to pierce Shashikant Desai with the said weapons who in trying to save himself, caught them and sustained injuries on his fingers and thumb; Liladhar, Ulhas Mandavkar and an unknown person who he identified in Court as Govardhan Shamrao Rao, with swords, assaulted Pratap Salvi and thereafter the appellants and others ran away.

The manner of assault deposed to by him is corroborated by the nature of injuries found on the person of Shashikant Desai and the deceased Pratap Salvi, by Dr. M.S. Dange. On the former, he found three incised wounds. On the latter, he found a large number of injuries attributable to sharp cutting weapon which we have reproduced earlier.

We also find that he has explained his presence on the place of the incident.

Finally, it should be borne in mind that he also like Shashikant Desai had no rancour or grudge against the appellants and in our view, in the absence of the same, would not have falsely implicated them.

We feel that the learned trial Judge was wholly justified In accepting his evidence.

14. We now come to the evidence of the third eye-witness Sanjay Patil P.W. 4. He has explained his presence on the place of the incident by saying that while he was proceeding to see his maternal uncle Raghunath Bhuvad and was passing by Savarkar square from Gokhale naka, he saw Shashikant Desai and Pratap Salvi coming on one scooter. He thereafter, describes the incident (including assault on Shashikant Desai and Pratap Salvi) in the same manner as Vikas Pawar. To prevent the bulk of our judgment from swelling we are not adverting to the details.

Again, like Vikas Pawar P.W. 2 the manner of assault both on Shashikant Desai and Pratap Salvi as deposed to by him, is corroborated by the medical evidence.

Again like, Vikas Pawar, he is a wholly independent witness who had no ill will or animus against the appellants and in our view, like him, would not have falsely implicated them.

15. We make no bones in observing that in our view, the learned trial Judge was unjustified in rejecting the testimony of Sanjay Patil. The sole reason given by him is that he has stated after purchasing mutton from the mutton market, he

was going to his maternal uncle Raghunath Bhuvad "who lived in Teli Ali and savarkar square where the incident took place would not fall on the way. In our view, this sole reason was not sufficient to reject his testimony. It should be borne in mind that the incident took place on a Sunday and it may be that after purchasing mutton, the witness decided to proceed leisurely choosing a longer way for his maternal uncle's place.

At any rate, on this sole ground his evidence could not be rejected. We wish to emphasise that the learned trial Judge was wholly oblivious to the fact that no suggestion during cross-examination was given to him in terms that he was not present on the place of the incident.

16. It is pertinent to point out that the ocular account of the three eyewitnesses establishes beyond reasonable doubt the involvement of the appellant Rajesh @ Raju, Pratap and Liladhar in the incident.

16A. It is true that the evidence of Vikas Pawar and Sanjay Patil shows that appellant Pratap only chased the deceased and, did not assault him but, that would not vitiate his conviction either for the offence u/s 302/149 or for other offences because, all the offences were committed by him in prosecution of the common object of the unlawful assembly and since his membership and sharing of common object of unlawful assembly armed with deadly, weapon like sword or gupti and chasing of deceased is established, it is immaterial whether he actually attacked or caused injuries to any victims. In this connection, it would be pertinent to peruse a part of para 10 of the decision of Supreme Court rendered in the case of Amarjit Singh and others v. State of Punjab, with Amarjit Singh and others Vs. State of Punjab, which reads thus :--

"In inferring the common object of unlawful assembly, various factors depending upon the facts and circumstances of each case have to be taken into consideration. In the instant case, these appellants were found to be armed with fire-arms as well as other deadly weapons. They went in a body and participated in the occurrence. In such a situation even section 34 I.P.C. is attracted particularly having regard to the fact that four persons were killed and several others received injuries at the hands of the members of the unlawful assembly. The participation of each of these appellants is established. Therefore, all of them shared the common object and section 149 is squarely attracted. In this context we are also not prepared to accept the" submission of the learned Counsel that the case of A-2, A-4 and A-6 stands on a different footing namely that though they were armed with fire-arms it is not established that they used them. The prosecution witnesses have consistently deposed that they were members of the unlawful assembly and we have already held that the common object of the unlawful assembly was to commit the murder. In such a situation, these three accused who were members of the unlawful assembly armed with fire-arms cannot get absolved."

The said decision squarely applies to the facts of this case and was cited by Mr.

Thakur learned Additional Public Prosecutor.

17. As regards the appellant-Govardhan Rao, we have the evidence of two eye-witnesses namely Vikas Pawar P.W.2 and Sanjay Patil P.W. 4 who identified him in the Court as one of the participants in the incident who assaulted the deceased with sword.

In addition, we have the clinching circumstantial evidence against the said appellant. In para 7, we have mentioned that pursuant to his arrest, on 11-7-1994 and 12-7-1994, in the presence of public panch Pramod Narwankar P.W. 8 on his pointing out; his blood-stained clothes (shirt and pant) and blood-stained dagger respectively were recovered under two separate pan-hanamas.

We have gone through the evidence of the recovery witnesses namely P.S.I. Ramesh Patil (the Investigating Officer) and the public panch Pramod Narwankar P.W. 8 and we find the same to be implicitly reliable. During cross-examination , the evidence in respect of the said recoveries could not be shaken in any manner. It is pertinent to point out that the places from where the recoveries were made, were in the exclusive knowledge of the appellant. It is also significant to point out that the blood-stained clothes of the appellant and the blood-stained dagger were sent to the Chemical Analyst who found on them blood of "B" group, the blood-group of the deceased.

It is also significant to point out that it is common knowledge that incised wounds can be caused by dagger and the Autopsy Surgeon categorically stated that ante-mortem injury No. 9 suffered by the deceased was attributable to a weapon like dagger.

In our view, the said recoveries which were effected within 48 hours of the incident, coupled with the presence of dagger injuries on the corpse of the deceased, provide incriminating circumstantial evidence which irritably leads to the inference that the said appellant committed the murder of the deceased. As mentioned above, assurance to the said circumstantial evidence is lent by the circumstance that during the trial, two of the eye-witnesses namely Vikas Pawar P.W. 2 and Sanjay Patil p.W. 4 identified him as one of the assailants of the deceased Pratap Salvi.

In our view, the learned trial Judge acted correctly in finding the appellant guilty for the various offences.

18. But, we find one flaw in the judgment of the learned trial Judge namely his direction that if one or some of the appellants are not able to pay their share of compensation, then the other appellant/appellants, as the case may be, would be liable to pay the same. In our view, this cannot be done in law.

19. We would be failing in our fairness, if we do not advert to the manifold submissions canvassed by Mr. Gavankar learned Counsel for the appellants who has argued these appeals with great tenacity.

Firstly, Mr. Gavankar urged that the F.I.R. was an ante-timed document. He pointed out that the F.I.R. according to the prosecution was lodged at 11.55 a.m. on the date of the incident and in it, there is a categorical mention about the death of Pratap Salvi. He urged that this was not possible had it been lodged at 11.55 a.m. In this connection, he invited our attention to the evidence of the informant Shashikant Desai who during his cross-examination, in para 13, admitted that he learnt of the death of Pratap Salvi at about 12.30 noon. We have reflected over his submission. It is a trite that some witnesses do not have a chronometric sense of time. At any rate, Shashikant Desai stated that it was about 12.30 noon when he learnt of Pratap Salvi's death. In our view, about 12.30 noon, would also include 11.55 noon. Hence merely on this circumstance it cannot be concluded that the F.I.R. was not lodged at 11.55 a.m.

Mr. Gavankar also urged that P.S.I. Sanjay Patil who recorded the F.I.R. was an essential witness and we should draw an adverse inference against the prosecution for not examining him. We do not find any merit in his submission. The F.I.R. recorded by him has been proved by P.S.I. Ramesh Patil who was familiar with his hand-writing.

20. Mr. Gavankar made a scratching attack against the ocular account. He candidly urged that the injuries of Shashikant Desai P.W. I appear to be manufactured. He urged that Dr. Dange P.W. 10 who medically examined them admitted that they could be manufactured. He also urged that Dr. Dange P.W, 10 in cross-examination categorically stated that the injuries sustained by Shashikant Desai could not have been sustained while holding a gupti, as it is a double-edged weapon. We regret that we are not able to accept the evidence of Dr. Dange. It is self-contradictory because, in his ex-amination-in-chief, he categorically stated that these injuries were possible by a sharp cutting weapon like a sword, knife etc.

21. In this connection, it would be pertinent to refer to the decision of the Supreme Court reported in Solanki Chimanbhai Ukabhai Vs. State of Gujarat, , respondents, where in para 12, the Supreme Court observed thus :--

"Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence, is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses; the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

If the said norms are borne in mind in considering the question of genuineness of Shashikant Desai's injuries, it is crystal clear that they inspire confidence.

It should also be borne in mind that the evidence of Shashikant Desai shows that

in one hand Rajesh @ Raju (who caused him these injuries) was holding a sword and in the other, A gupti. It may be that the said injuries were caused by a sword.

For the said reasons, we reject Mr. Gavankar's submission that the injuries of Shashikant Desai were manufactured.

22. Mr. Gavankar also strenuously urged that since in the injury report of Shashikant Desai, time of examination is not mentioned, it appears to be a suspicious document. We regret that we cannot accede to his contention because on the very date on which Dr. Dange had examined the injuries of Shashikant Desai, in reference to a query, by the Investigating Officer, he gave a certificate that he had examined Shashikant Desai at 11.10 a.m. In our view, by an oversight, Dr. Dange failed to initially mention in the injury report the time when he medically examined Shashikant Desai.

23. Mr. Gavankar also made a grievance that the story given out by Shashikant Desai that he and the deceased" had purchased fish and mutton and a maruti van banged against his scooter is rendered doubtful by the circumstance that the Investigating Officer recovered no fish or mutton from the place of the incident nor saw the scooter having dent marks during the course of investigation. In our view, it is most likely that someone may have picked up the fish and mutton from the place of the incident and for failure of the Investigating Officer to recover them and to ascertain the dent marks on the scooter, the prosecution case cannot be thrown out.

24. Mr. Gavankar strenuously urged that we should not accept the evidence of Vikas Pawar P.W. 2 for the following reasons :--

- (a) He is a chance witness
- (b) He could not have seen the incident .
- (c) He is not a truthful witness.

To substantiate submission (a) he urged that he is a auto-rickshaw driver and as a unhappy coincidence would have it, just at the nick of time, happened to be in proximity of the place of the incident. To substantiate his submission, he cited the decision of the Supreme Court reported in Guli Chand and Others Vs. State of Rajasthan, , respondent, wherein in para 11, the Supreme Court has held that although a chance witness is not necessarily a false witness but it is proverbially unsafe to rely on his evidence.

We have perused the said decision, which was on its peculiar facts, and in our view, there was nothing un-natural for this witness, who was a auto-rickshaw driver, to have left a passenger on the place of the incident when the incident took place.

Coming to (b), Mr. Gavankar invited our attention, to para 9 of "the cross-examination of Vikas Pawar P.W. 2 wherein he stated that if a person stands in Savarkar square, he cannot see what is happening inside Ghanekar Alley where

Pratap Salvi was assaulted. He urged that the claim of this witness that he saw the incident from Bhosale Saloon where he had dropped a passenger, should not be believed because, in his statement recorded u/s 161 Cr.P.C. with which he was confronted he stated that he had left the passenger in Savarkar square. In our view, nothing would turn on this. This witness in para 8 stated that the distance between Savarkar square and Bhosale saloon, is 70 to 80 feet. It may be Bhosale saloon is situated in Savarkar square and the witness, in a loose manner, in his statement u/s 161 Cr.P.C. stated that he had dropped a passenger in Savarkar square.

Coming to (c) we find that it is true that initially, this witness during his cross-examination denied that he had executed an affidavit Exhibit 112, in favour of the deceased's -group but, later-on admitted it. In our view, on this circumstance, his testimony cannot be thrown out. At the most, it requires to be scrutinised with caution and even after doing so, we find it to be reliable.

25. With regard to the evidence of Sanjay Patil P.W. 4, Mr. Gavankar urged that the learned trial Judge has rejected his evidence for "plausible" reasons. We have already given our reasons in para 15 as to why in our view, the said reasons were perfunctory and not plausible.

26. "Mr. Gavankar urged "that the appellant Govardhan Shamrao Rao deserves benefit of doubt because, there are no dearth of Apex Court decisions wherein, it has been held that identification for the first time in Court should not. be accepted and the circumstantial evidence against the said appellant does not conclusively establish his involvement in the incident. We do not find any merit in this submission. For the reasons stated in para 17, we have found the circumstantial evidence against this appellant to be clinching in " nature We make no bones in reiterating that we have sustained the conviction of this appellant primarily on clinching circumstantial evidence and have only sought an assurance to it from the identification of this appellant by witnesses Vikas Pawar P.W. 2 and. Sanjay Patil P. W. 4, in the Court.

27. Mr. Gavankar finally urged that two essential witnesses namely Mukund Patwardhan from whose hotel the deceased Pratap Salvi had purchased bread and Sachin Chavan the owner of Bhosale saloon where Vikas Pawar P.W. 2 had dropped the passenger from his auto-rickshaw have not been examined by the prosecution and therefore, we should draw an adverse inference against the prosecution. In our view, their evidence was not essential and essential evidence has been adduced by the prosecution in the instant case on the basis of which the involvement of the appellants in the crime has been squarely proved.

28. For the said reasons, in our view, convictions of the appellants for offences under sections 147, 148, 302 r/w 149 I.P.C. and 323 r/w 149 I.P.C. are well-founded and suffer from no infirmity.

29. For the said reasons, these appeals are partly allowed. Although we maintain the convictions and the substantive sentences of all the appellants on various

counts, as also the order of the trial Judge directing each of the appellants to pay Rs. 25,000/- as compensation to the widow of the deceased but, we set aside the direction that if one or some of the appellants are not able to pay their quota of Rs. 25,000/- other or others, as the case may be, would pay. We make it clear that each of the appellants would only be liable for making payment of Rs. 25,000/-.

30. Appellant Rajesh @ Raju Vasant Dali is on bail. His bail-bonds stand cancelled. He shall be taken into custody forthwith to serve out his sentence. Appellants-Govardhan Shamrao Rap, Pratap @ Paratu Madhukar Shirdhankar and Liladhar Dattaram Nagavekar are in jail and shall be detained there in till they serve out their sentences.

31. Certified copy is expedited.

32. Appeals partly allowed.