
(2014) 10 BOM CK 0169

In the Bombay High Court

Case No : Criminal Appeal Nos. 435, 466 and 485 of 2012

Rupesh Lahuji Nitnaware

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 164, 302, 323, 324, 326

Citation : (2015) ALLMR(Cri) 2278

Hon'ble Judges : B.R. Gavai, J; V.M. Deshpande, J.

Bench : Division Bench

Advocate : Sumit Joshi, Advocate, for the Appellant; R.S. Nayak, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J. These three Appeals arise out of the judgment and order of conviction dated 20.9.2012 passed by learned Ad-hoc Additional Sessions Judge-1, Nagpur in Sessions Trial No. 333/2011. These three Appeals were taken up for hearing simultaneously since the evidence and the judgment was common. These three Appeals are decided by this common judgment. Criminal Appeal No. 435/2012 is filed by Rupesh Nitnaware, who was accused No. 5 before the Court below. Criminal Appeal No. 466/2012 is filed by Nilesh Kaware, who was accused No. 2 before the Court below; whereas Criminal Appeal No. 485/2012 is filed by Swapnil Meshram, who was accused No. 1 in the trial Court.

The learned Court below has convicted these appellants for the offence punishable under Sections 302, 324 and 452 read with Section 34 of the Indian Penal Code and, on that count, they are convicted to suffer imprisonment for life and to pay a fine of Rs. 2,000/- each and, in default, three months R.I. and payment of fine of Rs. 1,000/- and in default R.I. for one month and R.I. for four years and payment of fine of Rs. 2,000/- and in default R.I. for three months respectively, on the aforesaid count.

2. In Sessions Trial No. 333/2011 the learned trial Court framed the charge against the appellants and Dhiraj Bambole (accused No. 3); Prakash Dongre, (accused No. 4) and accused Vinod Thool (accused No. 6) for the offence punishable u/ss. 302, 324, 452 I.P.C. for committing murder of Ritesh Mankar. Accused No. 1 - Swapnil, accused No. 2 Nilesh and accused No. 5 Rupesh, in addition to the said charge, were also charged for offence punishable u/ss. 323, 324 & 506 I.P.C. for causing injuries to Geetabai and Jeejabai.

3. At the time of hearing of the Appeals, Shri S.G. Joshi learned counsel in Criminal Appeal No. 435/2012 appeared. However, the respective counsel in other Appeals chose not to remain present before the Court. The appellants are languishing in jail. This Court is taking the Jail Appeals peremptorily according to their seniority.

In K.S. Panduranga vs. State of Karnataka which is an authoritative pronouncement of the Hon"ble Apex Court reported in K.S. Panduranga Vs. State of Karnataka, , has ruled that it is not obligatory on the part of the Appellate court in all circumstances to engage amicus curiae in Criminal Appeal to argue on behalf of the accused when it is noticed that without there being any excuse, the counsel are not appearing.

4. We have heard Shri S.G. Joshi, learned counsel and Shri R.S. Nayak, learned Additional Public Prosecutor in extenso. Both the learned counsel took us in detail in respect of the evidence of all the prosecution witnesses and also various proved documents. It is to be noted that though Shri S.G. Joshi was appearing for original accused No. 5 Rupesh Nitnaware in Criminal Appeal No. 435/2012, he has extensively argued covering the entire prosecution case. We on ourselves also, of course with the assistance of the learned counsel, in order to reappraise the prosecution case, has minutely scanned and scrutinized the entire record and proceedings.

5. In short, the prosecution case can be summarized here-under:

Guddu Bhendarkar (PW 15), r/o of Jaitala, Nagpur resides in a house which is situated in front of the house of deceased Ritesh. On the day of the incident at about 9.30 p.m. when he was taking dinner, he heard shouts from outside, due to which he peeped through the window of his house to notice that an attack was made. He immediately rang No. 100. Though he was not successful in his first attempt, on second attempt, his phone was materialized. He made a call from his Mobile having No. 888803966. He immediately received the phone call from Police Department and, upon inquiry, he disclosed about his name and location and informed about incident.

Upon getting information Satish Jadhav (PW 2) who was attached to Police Station MIDC, Nagpur, as a Day Officer, after taking necessary entry in the Station Diary, immediately proceeded towards the spot. When he reached to the spot, he found Ritesh Mankar was already dead. He immediately prepared the Spot Panchnama (Exh. 57). After the preparation of Spot Panchnama, he came

back to Police Station and handed over further investigation to Shri Sitaram Mhetre (PW 20).

Sitaram Mhetre (PW 20) to whom the investigation was entrusted by Satish Jadhav (PW 2), found that PSI Jadhav has already referred the injured person for first aid to Medical College. PW 8-Geetabai Mankar, the mother of deceased Ritesh; and Jeejabai (PW 14) maternal grandmother of deceased Ritesh, came to the Police Station on 15.4.2011 at 23.50 hours. Geetabai lodged her oral report which is at Exh. 89. The present appellants were specifically named in the first information report. Sitaram Mhetre (PW 20) registered a crime u/s. 302 I.P.C. vide FIR No. 48/2011 for the offence punishable u/ss. 302, 452, 324, 323, 506 r/w. 34 I.P.C. PW 20 Sitaram Mhetre conducted detailed investigation and filed chargesheet in the Court of law. The learned Judicial Magistrate, First Class, Court No. 9, Nagpur in whose Court the charge sheet was presented, found that the offence is exclusively triable by the Court of Sessions. The learned Magistrate, therefore, passed committal order on 25.7.2011 and committed the case to the Court of Sessions.

6. During the course of trial, the prosecution has examined in all twenty witnesses and also relied upon various documents which were proved during the course of trial. The learned Court which tried the Sessions case, found that the prosecution could prove the guilt only against the appellants and, therefore, he acquitted the original accused Nos. 3, 4 and 6. However since upon scrutiny of the prosecution case, the Court below recorded a finding of guilt and, accordingly, they were sentenced as observed in the preceding paragraph of this judgment.

7. The submissions of learned counsel Shri Joshi in respect of the criticism of the prosecution case, in summary, are detailed below:

(i) Only interested witnesses are examined by the prosecution, casting serious doubt about the truthfulness of the prosecution case.

(ii) It is highly improbable that PW 8 - Geetabai and PW 14 Jeejabai have witnessed the actual assault on Ritesh and, therefore, according to him, they are not the eye witnesses as claimed by the prosecution.

(iii) There was no source of light available outside the house of Ritesh when his dead body was found and, therefore, it is really hard to believe that those two ladies have seen the actual assault assuming they are the eye witnesses.

(iv) According to him, from the evidence of PW 8 - Geetabai, it is clear that there was animosity of Geetabai towards the family members of Rupesh, therefore, false implication cannot be ruled out.

(v) According to him, in view of the fact that statement of Jeejabai was recorded u/s. 164 Cr.P.C. and, as such, she is bound to depose on the lines of the said statement. Hence, he submitted that her evidence should be kept aside while evaluating the prosecution case.

(vi) He submitted that if the evidence of PW 8 is scanned in its true perspective, then it is clear that she has stated that some persons entered into the house by covering their faces by handkerchief. Therefore, without there being a proper identification, it would be unsafe to record conviction against any of the appellants. According to him, there are omissions and contradictions as appearing in the evidence of Geetabai and Jeejabai rendering their evidence highly suspicious.

(vii) According to him, the injuries found on Geetabai can be caused by bangles.

(viii) He submitted that no blood was found on the wall rendering the version of the so called eye witness as untruthful.

Hence Shri Joshi submitted that, in fact, all the appellants are entitled for benefit of doubt.

Per contra, learned Additional Public Prosecutor with vehemence, submitted that Ritesh was brutally murdered by the appellants. He submitted that when Geetabai, mother and Jeejabai grandmother, tried to intervene to save Ritesh, they too were not only obstructed but also were attacked by the appellants. He submitted that the prosecution case has to be taken in whole and not by pieces as sought to be argued by the learned counsel Shri Joshi. He submitted that the version of Geetabai and Jeejabai is duly corroborated by the contemporaneous documents and also by the scientific evidence. He submitted that the Court below has considered the prosecution case in right perspective and has reached to the conclusion warranting no interference at the hands of this Court. Accordingly, he submitted that the Appeal be dismissed.

8. What was the nature of the unnatural death of Ritesh is the first question to be decided by this Court.

The Inquest Panchnama is at Exh. 80. When Dr. Rushikesh Pathak (PW 7), Assistant Professor in Department of Forensic Medicine. Government Medical College, Nagpur was working on 16.4.2011, he received a requisition from Police Station MIDC, Nagpur to conduct autopsy over the dead body of Ritesh Mankar. Accordingly, he performed the postmortem. On his examination, he found the following antemortem injuries:

"1) Incised wound present over left forehead 2.5 c.m. from midline and 4 c.m. above left eyebrow 4 c.m. x 1 c.m., vertical;

2) Abrasion present over left forehead, 3 c.m. below injury No. 1, 2.5 c.m. x 2 c.m., reddish;

3) Abrasion present 3 c.m. lateral to injury No. 2. 2 c.m. x 1.5 reddish;

4) Abrasion present over left zygomatic region 2 c.m. x 2 c.m. reddish;

5) Abrasion present 1.5 c.m. lateral to injury No. 4, 2.5 c.m. x 1.5 c.m. reddish;

6) Incised wound present over upper lip involving midline and either side, 5 c.m.

- x 1 c.m. x bone deep with evidence of tailing for 4 c.m. towards left;
- 7) Abrasion present over chin in midline, 0.5. c.m. x 0.5 cm, reddish;
- 8) Chop wound present of right temporal region, 6 c.m. above tragus, 5 c.m. x 1.5 c.m. x bone deep with evidence of fragmentation of underlining cranium ;
- 8.1) Evidence of multiple attempts of chopping present on right temporal region, right ear and right preauricular region with complete transection of right ear at the level of tragus 9 c.m. x 3 c.m. x bone deep with evidence of fragmentation of underlining cranium;
- 9) Chop wound present 2 c.m. below injury No. 8.5 c.m. x 3 c.m. x bone deep, underlying bone bone fractured;
- 10) Incised wound present over right preauricular region and adjacent zygomatic region 5 c.m. x 1.5. c.m. x muscle deep with evidence of bevelling present, horizontal;
- 11) Lacerated wound present 0.5 c.m. behind injury No. 10 2 c.m. x 0.9 c.m. x muscle deep;
- 12) Incised wound present over occipital region, 5 c.m. x 2 c.m. x bone deep, horizontal at the level of occipital protuberance;
- 13) Incised wound present over right anterolateral aspect of neck, 3 c.m. below chin and 2 c.m. from midline, 9 c.m. x 2 c.m. x muscle deep, horizontal;
- 14) Incised wound present over anterior aspect of neck on right side, 2.5 c.m. below injury No. 13, 6 c.m. x 1 c.m. x muscle deep, with evidence of tailing on left side for 5 c.m. horizontal;
- 15) Incised wound present over anterior aspect of neck on either side of midline 1 c.m. below Injury No. 14, 9 c.m. x 0.5 x muscle deep horizontal;
- 16) Incised wound present over right side of neck, 1 c.m. below Injury No. 16, 5 c.m. x 1 c.m. x muscle deep, oblique;
- 17) Chop wound present over anterolateral aspect of neck on either side 5 c.m. below injury No. 16, 10 c.m. x 5 c.m. x spine deep with underlying spine fractured with complete transection of trachea, oesophagus, vessels, muscles of the involved area with cut ends retracted;
- 18) Incised wound present over left anterior aspect of neck 3 c.m. from midline and 1 c.m. above injury No. 14, 3 c.m. x 0.5 c.m. x muscle deep, horizontal.
- 19) Incised wound present over right lateral aspect of neck, starting from right lateral end of Injury No. 17, 5 c.m. x 0.5 c.m. x muscle deep, horizontal.
- 20) Incised wound present over left clavicular region, 3 c.m. from midline, 4 c.m. x 2.5 c.m. x bone deep, horizontal with evidence of tailing on right side for 4 c.m.

- 21) Incised wound present over anterior aspect of left shoulder and adjacent infraclavicular region, 7 c.m. x 3 c.m. x muscle deep;
- 22) Incised wound present over anterior aspect of left forearm, middle 1/3rd 8 c.m. x 0.3 c.m. x muscle deep, vertical.
- 23) Incised wound present over middle 1/3rd of left index finger, palmer aspect, 2 c.m. x 0.2 c.m. x bone deep horizontal;
- 24) Incised wound present over anterior aspect of right forearm, middle 1/3rd 1 c.m. x 0.5 c.m. x muscle deep horizontal;
- 25) Incised wound present over anterior aspect of right forearm, middle 1/3rd 1 c.m. x 0.5 c.m. x muscle deep, horizontal;
- 26) Incised present 5 c.m. below injury No. 26, 2.5 c.m. x 0.2 c.m. x muscle deep, horizontal.
- 27) Incised wound present 1 c.m. below Injury No. 26, 2.5 c.m. x 0.2 c.m. x 0.2 c.m. x bone deep, horizontal.
- 28) Incised wound present over upper 1/3rd of right forearm, posterior aspect, 5 c.m. below tip of olecranon, 3 c.m. x 0.5 c.m. x bone deep, horizontal.
- 29) Incised wound present 4 c.m. below injury No. 28, 2.5 c.m. x 1 c.m. x bone deep, horizontally oblique.
- 30) Abrasion present 2.5 c.m. below injury No. 29, 2.5 c.m. x 0.5 c.m. horizontally oblique, reddish;
- 31) Abrasion present over posterior aspect of right wrist, radially 2 c.m. x 1.5 c.m. reddish;
- 32) Abrasion present 2 c.m. medial to injury No. 31, 2.5 c.m. x 2 c.m. reddish;
- 33) Abrasion present over posterior aspect of left forearm, 5 c.m. above, lower end of left radius, 2 c.m. x 2 c.m., reddish.
- 34) Incised wound present over upper 1/3rd part of left middle finger, dorsal aspect, 2 c.m. x 0.2 c.m. x bone deep horizontal.
- 35) Incised wound present over middle 1/3rd part of left index finger, dorsal aspect, 2 c.m. x 0.2 c.m. x bone deep, horizontal;
- 36) Incised wound present over lower 1/3rd part of right palm, medially, 3 c.m. x 0.5 c.m. x bone deep horizontal.
- 37) Contused abrasion present over posterior aspect of trunk at the level of First lumbar vertebra, 13 c.m. x 0.3 c.m. horizontal;
- 38) Incised wound present over posterior aspect of right shoulder, 6 c.m. x 0.3 c.m. x muscle deep, horizontally oblique.

- 39) Incised wound present 5 c.m. below injury No. 38, 4 c.m. x 0.2 c.m. muscle deep, horizontally oblique.
- 40) Incised wound present over posterior aspect of right arm, upper 1/3rd, 10 c.m. x 0.5 c.m. x muscle deep vertical;
- 41) Incised wound present over posterior aspect of right arm, middle 1/3rd, 5 c.m. x 0.3 c.m. x muscle deep, vertical.
- 42) Abrasion present 3 c.m. below injury No. 41, 3 c.m. x 0.2 c.m. vertical, reddish;
- 43) Contusion present over anterior aspect of right shoulder, 4 c.m. x 1.5 c.m., vertical reddish.
- 44) Contused abrasion present over lateral aspect of trunk on right side at the level of nipple, reddish 8 c.m. x 0.2 c.m. horizontally oblique;
- 45) Contused abrasion present 3.5 c.m. below injury No. 44 over anterolateral aspect, 9 c.m. x 0.2 c.m. horizontally oblique, reddish;
- 46) Contused abrasion present 2 c.m. below Injury No. 45 over lateral aspect 4 c.m. x 0.2 c.m., horizontal, reddish;
- 47) Contused abrasion present 2 c.m. below Injury No. 46, 10 c.m. x 0.2 c.m., horizontal, reddish;
- 48) Abrasion present over anterior aspect of left thigh, middle 1/3rd, 2 c.m. x 0.5 c.m. reddish, vertical;
- 49) Abrasion present 2 c.m. below injury No. 48, 3 c.m. x 0.2 c.m. reddish, vertical.
- 50) Abrasion present 4 c.m. lateral to injury No. 49, 0.5 c.m. x 0.1 c.m., vertical reddish;
- 51) Abrasion present 5 c.m. below injury No. 49, 0.2 c.m. x 0.2 c.m. reddish;
- 52) Abrasion present over lateral aspect of left knee, 0.5 c.m. x 0.1 vertical, reddish;
- 53) Abrasion present over lateral aspect of left leg, upper 1/3rd, 3 c.m. below injury No. 52, 3 c.m. x 0.2 c.m., vertical, reddish;
- 54) Abrasion present over anterior aspect of right knee, 0.5 c.m. x 0.5 c.m., reddish;
- 55) Abrasion present 3 c.m. below injury No. 54, 1 c.m. x 0.5 c.m., reddish"

According to the Doctor, upon internal examination, he noticed comminuted fracture of vault over temporal region on right side. According to the Doctor, the cause of death was "multiple sharp forced injuries to head and neck". The post mortem notes are at Exh. 82.

During the course of investigation the weapons - sword, knife and bamboo sticks were referred to Dr. Rushikesh Pathak. Upon examination of those weapons, the Doctor has noticed that the injuries found and mentioned by him in Exh. 82 can be caused by such weapons. In view of the nature of injuries as mentioned in the post-mortem report (Exh. 82) supra, we have no hesitation to record our finding that deceased-Ritesh Mankar died homicidal death.

Consequent upon recording of finding that Ritesh died homicidal death, the other question that this Court is required to answer is whether the appellants could be held guilty for death of Ritesh.

9. The submissions of learned counsel that in the present case the prosecution has only examined the close relatives of deceased Ritesh, is not in conformity with the record.

10. Guddu Bhendarkar (PW 15) who has given intimation to the police about the assault has supported the prosecution to the said extent. His said version is duly corroborated by PW 10 Vaishali Kodape, a lady police constable in Control Room, who received the phone call from Guddu Bhendarkar at 21.15 hours to the effect that a quarrel was going on at Mata Mauli Mandir, SRPF Road, within the jurisdiction of MIDC Police Station, who immediately transmitted the said through wireless to MIDC Police Station. She has produced the entry to that effect. The same is at Exh. 107. Perusal of document (Exh. 107) concerned with Nagpur City Control Room reveals that on 15th April, 2011 at 21.53.03 hours a phone call is received from Phone No. 8888803966. The computerized system of Police Department reveals the said Number. PW 15 - Guddu Bhendarkar has admitted in his evidence that Cellphone No. 8888803966 belonged to him. Not only that, he has admitted that he has made a phone call. Thus, it is crystal clear that on 15.4.2011 at about 21.15 he made those calls to police after witnessing the same incident.

The house of Guddu is situated just in front of the house of Ritesh. His evidence discloses that he has intimated the attack by means of knife. It appears that this witness is won over by the appellants and, therefore, he refused to support the prosecution that he has actually seen the assault.

11. The other witness about the assault who was examined by the prosecution, was Deochand Thakre (PW 19). This witness was a tenant in the house of PW 8-Geetabai. Though he has admitted that he has seen the assault on Ritesh, he refused to support the prosecution in respect of the role attributed to the appellants and also denied to know any of the accused.

Tendency is developing in our society, may be on account of fear, not to depose against a particular person from the witness box though has actually seen the assault by such a person. The evidence of PW 15-Guddu and PW 19 - Deochand is a classic example of such mentality prevailing in the society. These two witnesses have boldly stated about the assault on Ritesh. However, at the same time, has shown cowardness to name the actual assailant/s. This cowardness

may be of fear. Such fear may be hovering in their mind when they depose from the witness box, may be on account of various factors.

According to us, these two persons ought not to have disclosed before the Court only the half-truth. It is expected from a citizen to give full and correct account of the incident which he has noticed since it would be helpful to a very great extent to the Courts in administration of criminal justice.

12. PW 16-Vijay Thabhane on 15.4.2011 at about 9.30 pm was proceeding from Mauli Mata Mandir towards Jaitala. While proceeding, he witnessed the incident. In his evidence he has given a detailed account of assault by the appellants on deceased Ritesh.

The criticism to the evidence of this witness is that though he has seen the incident, his statement is recorded on third day. According to the learned counsel though this man has attended the funeral of Ritesh and had been to the hospital to collect the dead body of Ritesh, recording of his statement on third day creates doubt as to whether really this witness has seen the incident.

True it is, that his statement was recorded on the third day of the incident but that, by itself, his evidence does not become worthless. In the cross-examination, it is brought on record that he was called by Police on third day. It is established through his cross-examination that he has attended the funeral of Ritesh, not only that he was there to bring the body of Ritesh from hospital. These facts would reveal that this witness must be having acquaintance with the family of the deceased. There is nothing on record to show that this witness was a close relative of the deceased. However, his presence at hospital and funeral ground shows that he was associated with deceased's family. Witnessing murderous assault, accompanying the dead body till burial ground, must have its own impact on the mind of this witness. Different persons may react differently to the same situation. Further, a person can also labour under the impression that he has to disclose about the incident only when he is enquired about it by the police. Therefore, merely because his statement was recorded on the third day of the incident that, by itself, his evidence would not render as worthless, especially when his evidence of assault on Ritesh at the hands of the present appellants has remained unshaken during his searching cross-examination.

In view of the aforesaid evaluation of these three eye witnesses, the submission of the learned counsel that the prosecution case has to be discarded only because they have examined close relatives needs rejection.

13. Merely because a witness is close relative or having thick acquaintance with the deceased cannot be a reason to discard the testimony of such witness. By now, it is established principle of law that while considering the evidence of such witnesses, a duty is cast upon the Court to evaluate their evidence with an extra care and caution. However if on scrutiny of the evidence of such a witnesses, if the evidence of such close relative may be interested witnesses, inspires confidence, then surely their evidence can be considered.

PW 8 is Geetabai Naresh Mankar. She is the mother of deceased Ritesh. She used to reside at Jaitala within the jurisdiction of MIDC Police Station along with her husband Naresh, son deceased Ritesh and her mother Jeejabai (PW 14).

Deceased Ritesh was serving at in-Cable at Dhantoli.

Criminal Law was set into motion by Geetabai by lodging report Exh. 89 with Police Station MIDC. The printed FIR is at Exh. 90. By lodging the report, it was reported that on 15.4.2011 Ritesh came to the house in the evening after finishing his work and he has engaged himself in watching Television. At about 9.30 in the night, when he was taking meals in his house, she and her mother Jeejabai were also seated in the room. That time, accused No. 2 Nilesh and accused No. 1 Swapnil suddenly forced their entry in the house from the open door. That time, they were armed with deadly weapons like sword. Firstly, Nilesh gave a sword blow on Ritesh. Thereafter, both of them dragged Ritesh outside the house on road and again started attacking him. That time, Geetabai caught hold the hair of Nilesh in order to save her son. However, Nilesh uttered, . That time, she was also assaulted by Swapnil. Swapnil also gave sword blow on Ritesh on his neck. That time, accused No. 5 Rupesh pushed away the first informant Geetabai by means of bamboo stick and fell her on the ground by holding her hair. Thereafter he also assaulted upon Ritesh.

As seen in the preceding paragraphs, the information about the assault was immediately transmitted to the police and PW 2 PSI Satish Jadhav immediately reached to the spot. He referred the injured to the hospital. The first information is registered on 16.4.2011 at 00.15 hours. Thus, it is clear that the first information report was immediately recorded wherein the names of the appellants were disclosed as assailants and responsible for the death of Ritesh. Immediate information to police and recording of prompt first information report against named persons in such FIR clearly rules out the possibility of fabrication and false implication of such persons.

Jeejabai (PW 14) has corroborated Geetabai in respect of assault on Ritesh, her grandson and also bashing to Geetabai by the appellants. There is a corroboration to each other by these two witnesses on material aspects.

The presence of these two ladies in the night hours at their house is most natural. There is no dispute about the time of assault and the place of occurrence. Therefore, the presence of these two ladies at their place cannot be ruled out.

Geetabai and Jeejabai were referred to the Medical Officer since there were injuries on their persons. PW 6 Dr. Archana Zode to whom these two ladies were referred, examined them. Dr. Archana Zode noticed the following injuries on PW 8 - Geetabai:

- 1) Linear abrasion 1 c.m. over left index finger;
- 2) Linear abrasion of 1 c.m. over left elbow;

- 3) Linear abrasion over 1 c.m. over right forearm, upper 1/3rd and dorsal aspect.
- 4) Plain abrasion 1 x 1 c.m. over both knees.

Dr. Archana Zode has proved the injury certificate (Exh. 76) in respect of Geetabai. Geetabai, it appears, has been examined by Dr. Archana Zode on 16.4.2011 at 2.15 am; whereas Jeejabai was examined by Dr. Archana Zode, as can be seen from Exh. 78 her injury certificate, at 2.25 am on 16.4.2011 itself. Dr. Zode also noticed the following two injuries on Jeejabai:

- 1) Linear abrasion 5 c.m. over the right arterial wall of abdomen;
- 2) Linear abrasion 3 c.m. over left wrist ventral aspect.

Dr. Archana Zode (PW 6) found that the injuries on these two ladies were fresh and was caused due to hard and sharp object. In the cross-examination at the hands of the accused No. 1 Swapnil, it is brought on record that the linear abrasion can be caused by tip of sword.

The submission of the learned counsel that these injuries are possible by bangles as argued by him in order to rule out the presence of these eye witness, has to be rejected. As a definite answer was given by Dr. Archana Zode in her evidence that this linear abrasion can be caused by tip of sword.

We cannot forget the fact that these two ladies were referred to the hospital by the police in the early hours of 16.4.2011. Looking to the fact that they were referred to the Doctor immediately and Doctor noticing the fresh injuries on their person clearly corroborates their respective versions. Therefore, though they are close relatives of deceased Ritesh, their evidence is duly corroborated by the medical evidence of Dr. Archana Zode (PW 6). The injuries on their persons lends credence to their testimonies from the witness box.

14. Another contemporary document which tends to support the version of PW 8-Geetabai and PW 14 Jeejabai is the spot Panchnama (Exh. 57). According to these two eye witnesses Ritesh was taking meals inside the house and these two ladies were also sitting around him when appellants-Nilesh and Swapnil barged with deadly weapons on Ritesh. According to the eye account, the first assault was made on the neck of Ritesh inside the house. Even that fact is mentioned in the first information report. If we peruse Exh. 57 minutely then we will notice following recitals:

Mr. Joshi, learned counsel submitted that in view of the omission that is occurring in the evidence of PW 8-Geetabai about the noticing of the bloodstains on wall shows that the attack was not made inside the house and, therefore, they are not the eye witnesses. We cannot attach much importance to such omission because it is minor in nature. Further, the contemporaneous document clearly shows that noticing of blood on the floor of that room. The presence of blood on the floor inside the house clearly supports the claim of PW 8 Geetabai and PW 14 Jeejabai that Ritesh was attacked inside the house.

Further, in the cross-examination of Sitaram Mehtre (PW 20), the Investigating officer, conducted on behalf of accused No. 1 Swapnil following is brought:-

"I have noticed bloodstains on the walls in the house of the deceased"

Through the cross-examination of Sitaram Mhetre, it is brought on record that when he reached the spot, PW 2 - Jadhav was preparing spot Panchnama. It is further brought on record by accused No. 1 Swapnil that during his presence, PSI Jadhav has not taken scrapping of wall where the bloodstains were noticed. This evidence has its own importance. It is, thus, clearly established that there were bloodstains on the wall. Only because the scrapping was not done by the concerned Police Sub Inspector that was not the fault of eye witnesses Geetabai and Jeejbai. However, it is crystal clear that Ritesh was attacked firstly inside the house resulting into spreading of blood, not only on the floor but also on the walls. Therefore, only the inmates of the house namely, PW 8 - Geetabai and PW 14-Jeejabai, will be the only persons who could have seen the murderous assault, since at the relative time, father of Ritesh did not return from his work. In that view of the matter, we see no force in the arguments of learned counsel that Geetabai and Jeejabai are not the eye witnesses to the incident.

In order to buttress his submission that there was a dark outside the house and, therefore, it was not possible for Geetabai and Jeejabai to see the assault outside the house, in that behalf, he tried to take the advantage of a stray sentence from the evidence of PW 1 Avinash Naik. This prosecution witness is a Panch to the spot Panchnama (Exh. 57). No doubt true, at the far end of his cross-examination, it is appearing in his evidence that there was no light at the time of preparation of Exh. 57 and the Panchnama was prepared in the light of police jeep.

As observed, there is no dispute about the time of the assault i.e. 21.15 hours. Firstly, the assault was made inside the house and then it was outside the house. The spot Panchnama was started at 22.30 hours and it was completed at 23.30 hours. The stray sentence in the evidence of PW 1 Avinash that there was no light at the time of preparation of Exh. 57 is contrary to the contemporaneous document Exh. 57 i.e. the spot Panchnama, which shows that at the time of preparation of spot Panchnama the street light of electric pole No. AKF 3320 was emitting light and the spot Panchnama was done in the light of the police jeep so also in the street light.

Further, there is no cross-examination to PW 8 that she was unable to notice the assault outside the house in absence of any light. Therefore, the contention of the learned counsel to attack the character of Geetabai as eye witness, is wholly misplaced and, accordingly, it is rejected.

15. Insofar as attack on PW 14-Jeejabai's evidence is concerned, the learned counsel submitted that in view of her admission that there was cataract in her both eyes and looking to her age that she is 75 year old and she cannot move outside the house in the night time unless she takes escort of somebody, shows

that this witness cannot be the eye witness as claimed in the prosecution's case.

Though at the first blush, the submission made by the learned counsel Shri Joshi is attractive one, however, on closer scrutiny of the evidence of PW 14 Jeejabai, the submission needs rejection. There is nothing on record to show that her presence in the house of her daughter-Geetabai is unnatural. Long back her husband died and she was not having any son, therefore, if she resides with her daughter namely PW 8-Geetabai.

Her evidence would reveal that she has corroborated her daughter PW 8-Geetabai in respect of the assault made on Ritesh, firstly inside the room. Further, she has also corroborated about the dragging of Ritesh outside the house. This lady has also suffered injuries on her person as observed hereinabove. Now so far as the cataract is concerned let us see what she has stated in her cross-examination. It will be useful to refer the same hereunder:

" 1) It is not true to say that on account of cataract I am unable to see the faces clearly".

"2) It is true to say that on account of cataract I used to take escort of somebody else while moving outside the house in the nighttime".

Thus, it is very clear that she has stoutly denied that she is unable to see the face clearly on account of cataract. Cataract is a developing ailment in the eyes. Unless it is fully developed it cannot be operated. In absence of anything on record in respect of the degree of cataract which was in the eyes of Jeejabai, we have no reason to disbelieve her version that she is able to see face clearly.

Further, moving outside the house in the night time clearly implies that if she wishes to go outside the house in the night she will require escort, that does not mean that for stepping out of her house she requires any escort. Therefore, it was not at all unnatural on her part to step outside her house along with her daughter Geetabai when her grandson Ritesh was dragged in the process of assault.

Further, as per the version of these two ladies when appellant No. 1 Swapnil and accused No. 2 Nilesh entered with deadly weapons in their house, that time Ritesh was taking his meals. This aspect is also corroborated by the contemporaneous document i.e. spot Panchnama which shows the presence of dining plate on the cot in the room where, as per the claim of Geetabai and Jeejabai, Ritesh was taking his meals. Further, from the cross-examination of Dr. Rushikhesh Pathak (PW 7) who has conducted the postmortem, it is brought on record that he found "whitish partially digested food material".

On the aforesaid evaluation of the evidence of PW 8-Geetabai and PW 14-Jeejabai, it is clear that

(a) that they were present in their house;

(b) that Ritesh was firstly attacked inside the house when he was taking meals;

(c) that when these two ladies tried to intervene they too were attacked and during their medical examination they were found to be having the injuries as mentioned in their injury certificates.

Further, in the first information report and also from their evidence, it is established that there was a long standing dispute in between Nilesh Kaware (accused No. 2) and family of deceased.

Exh. 167 is the extract of crime registered at Police Station MIDC Nagpur. It shows that on 2.5.2010 deceased Ritesh lodged a report against the accused No. 2 Nilesh in respect of the assault on him. Exh. 167 shows that the said case against Nilesh is pending in the court of Judicial Magistrate, First Class vide Criminal Case No. 3033/2010 for the offence punishable u/ss. 324 and 506 IPC. Also it shows that Nilesh lodged a FIR against deceased Ritesh for the offence punishable u/s. 326 IPC. Further, in the cross-examination of PW 14-Jeejabai, it is brought on record that Rupesh who is residing in front of the house of Geetabai, was not on visiting terms due to some monetary dispute.

Thus, it is clear that the appellants were keeping a grudge against the deceased in view of their long standing enmity.

Mr. Joshi, learned counsel tried to argue that the identity of the appellants is not established properly in view of the admission given by PW 8 in her cross-examination that some persons have entered in the house on the day of the incident by covering their faces by handkerchiefs.

It is to be noted that the first information report was lodged immediately in which the names of the present appellants were disclosed as assailants of her son deceased Ritesh, by PW 8-Geetabai. Further, it will be useful to notice the vernacular version of PW 8 - Geetabai which is reproduced hereinbelow

If such statement has to be considered in its true perspective, one has to reach to the conclusion that it is not established on record that at the time of incident some persons entered in her house by putting handkerchiefs on their faces. Therefore, in absence of the further cross-examination on the part of the accused on the aspect that at the time of actual assault some persons entered by putting handkerchiefs, the argument of the learned counsel to that effect loses its importance especially when PW 8-Geetabai has specifically mentioned the names of assailant in the first information report.

The aforesaid evaluation of these two witnesses, therefore, leads us to record a finding that these two witnesses are witnesses to the truth and they have given the correct account of the incident which was occurred in their presence. According to us, their version inspires confidence since their presence is supported by contemporaneous documents on vital aspect. Hence, the conviction of the appellants can be secured on the evidence of these two eye witnesses.

Further, during the course of investigation, the accused No. 2 Nilesh was arrested on 16.4.2011. At the time of his arrest, it was noticed that he was having injuries

on his fingers; therefore, he was referred to Dr. Leena Shema. Her evidence would reveal that accused No. 2 Nilesh was brought to her and she noticed the following injuries on his persons:

"1) Lacerated wound present over the right index finger approximately 3 x .05 x 0.5 c.m.;

2) injury over middle finger of right hand of same dimension;

3) over index finger of left hand 2 x 0.5 x .05 c.m.

4) abrasion on ring finger of right hand 0.5 x 1 c.m.

The Doctor noticed that all these injuries must have been caused between 22 to 24 hours. Those injuries were found to be simple in nature.

In absence of any explanation from Nilesh about those injuries, we can safely presume that those injuries must have been caused while handling the sharp weapon sword while making attack on deceased Ritesh.

The corroborative scientific evidence is on record vide Exh. 173 and 180. Exh. 173 the C.A. report shows that the sword which was recovered at the instance of appellant Nilesh and his clothes were stained with human blood. Though the blood group of the said blood is not determined, however, appearance of human blood on the weapon discovered at this instance and on his clothes, in absence of any explanation from appellant Nilesh, is definitely an incriminating circumstance against him.

Further, Exh. 181 shows that blood group of appellant Rupesh is "A". Exh. 180 the C.A. report in respect of bamboo stick recovered at the instance of appellant Rupesh and his clothes shows that they were stained with human blood (Blood Group "B"). This will be an incriminating circumstance against him.

Therefore, according to us, in view of the clinching eye account in the nature of evidence of PW 8-Geetabai and PW 14-Jeejabai coupled with the discoveries of weapons at the instance of the appellants and the human blood noticing on their clothes and the weapons established that the prosecution has proved its case against the present appellants. Hence, on the overall survey of the prosecution case and the evidence appearing against each of the appellants, it is clear that their respective Appeals are merit-less and accordingly, those are dismissed. All the Appeals are dismissed.