

(2023) 12 BOM CK 0025
In the Bombay High Court
Case No : Criminal Appeal No. 273 Of 2017

Satish Bansi Lagad And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 324, 374
Code Of Criminal Procedure, 1973 — Section 161, 164, 313

Citation : (2023) 12 BOM CK 0025

Hon'ble Judges : Vibha Kankanwadi, J; Abhay S. Waghware, J

Bench : Division Bench

Advocate : V. D. Sapkal, S. D. Ghayal

Final Decision : Dismissed

Judgement

Abhay S. Waghware, J

1. This appeal takes exception to the judgment and order of conviction passed by learned Sessions Judge, Ahmednagar dated 12-06-2017 in Sessions Case No.148 of 2015 by which present appellants are held guilty for offence under Sections 302 and 324 read with 34 of the Indian Penal Code (IPC) and thereby sentenced to suffer imprisonment for life and simple imprisonment for six months for each of the offences respectively.

Story of Prosecution unfolded is as under :

2. Deceased Dattatraya was working as Ward Boy in Bagirathi Hospital, Ahmednagar whereas his parents stayed at Aathawad, Taluka and District Ahmednagar and his married sisters stayed at Ahmednagar. He used to visit his parents on holidays. Accused were their neighbours. There was love affair between daughter of accused no.2 and deceased Dattatraya. In a marriage of one of the brothers of accused no.1 namely Santosh, Deceased Dattatraya had declared his intention to perform marriage with Sangita. Accused were upset since then and two months prior to the incident in question, they had visited

house of informant i.e. father of deceased Dattatraya and had issued threats to kill Dattatraya if he performs marriage with Sangita. Since then they were on inimical terms.

According to prosecution, on 12-03-2015 deceased Dattatraya had come for a Pooja and therefore, all relatives including married sisters of deceased Dattatraya were called and so they had all gathered. At around 07:00 p.m. deceased Dattatraya returned home after he had been to call some ladies for Pooja programme. At that time, while deceased was parking his motorcycle, accused no.1 initially hit him on head by means of a torch and so he raised shouts, which invited attention of his family members, who came out of the house and they saw accused nos.2 to 4 assaulting Dattatraya. Accused no.2 caught-hold of Dattatraya and accused no.1 stabbed with knife on the back of Dattatraya as a result of which he collapsed. When informant and other family members went to his rescue, it is their version that they were also beaten by rafters. Deceased was shifted to Civil Hospital at Ahmednagar but on examination he was declared dead and therefore, his father PW2 Balasaheb set law into motion by visiting Nagar Taluka Police Station vide report / FIR Exh.43.

3. The above crime was registered by PW15 Wagh, Police Head Constable and thereafter, investigation was carried out by PW17 Adhoo (PSI) and PW18 Chavan (API) at respective times and on completion of the same, accused persons came to be chargesheeted.

4. Case being exclusively triable by Court of Sessions, trial was conducted by learned Sessions Judge, who permitted prosecution to adduce their evidence. Case of prosecution is rested on oral evidence of 18 witnesses and reliance was also placed on several documentary evidence like FIR, various panchanamas, post mortem report, recovery memorandum and panchanamas etc.

Learned Sessions Judge offered opportunity to the accused to answer incriminating material by posing questions under Section 313 of the Cr.P.C. Defence denied to lead any evidence and therefore, on appreciating oral and documentary evidence and on hearing both the sides, learned Sessions Judge held accused guilty as mentioned in operative part of the impugned judgment.

The above judgment and order of conviction is assailed before us on various grounds mentioned in appeal memo.

SUBMISSIONS

On behalf of Appellants :

5. Taking exception to the story of prosecution, Mr. Sapkal, learned Senior Counsel took us through entire evidence adduced by prosecution i.e. substantive evidence of all the witnesses. He criticized the prosecution case by submitting that case has not been proved beyond reasonable doubt as required by law. He pointed out that the genesis of crime is not forthcoming. Moreover, complainant party and accused party being in cross terms, possibility of false implication

cannot be ruled out. He vehemently submitted that it is doubtful whether so called witnesses examined by prosecution, who are family members of deceased, had any occasion to see the incident as the alleged occurrence has taken place in the night and there was no source of light at the spot. He pointed out that prosecution witnesses claim that neighbours and other villagers were present, but no independent witnesses or neighbours are examined by prosecution and even Investigating Officer has admitted to that extent. According to him, prosecution evidence itself shows that information was passed by one Sandesh Karle and even there is station diary entry to that extent but he is not examined and crime / FIR is also not registered on the basis of information passed by him, rather FIR is entertained at later point of time given by father of deceased.

6. He very vociferously submitted that according to prosecution, there was use of knife in stabbing deceased Dattatraya. He requested the Court to examine the weapon seized by prosecution i.e. knife and would submit that it is apparently a weapon with only one of its side to be sharp and the other to be blunt and he further invited our attention to testimony of PW13 Dr.Gosavi, Autopsy Doctor, who in his substantive evidence categorically claimed that injury noticed by him is possible by double edged sharp pointed object and then he would submit that if it is so then the knife seized in the case cannot be applied against accused.

7. The next limb of his argument is that testimonies of so called eye witnesses are also full of material omissions and contradictions. None of them are lending support to each other. Omissions of informant and others got proved through Police Head Constable and Investigating Officers. Different versions are given at the time of statement under Section 161 of the Code of Criminal Procedure (Cr.P.C.), supplementary statement and statements under Section 164 of the Cr.P.C. Therefore, it is his submission that case of prosecution is suspicious and doubtful in nature and ought not to have been readily accepted by learned Sessions Judge.

8. He further submitted that inspite of witnesses claiming deceased suffering bleeding injury, no blood stains are found at the scene of occurrence and even when witnesses claim that while shifting deceased to Hospital, their clothes got blood stained, the same are not handed over to Police thereby rendering the case of prosecution further doubtful.

9. Attacking the recovery discovery part on behalf of prosecution, he pointed out that Investigating Officer has not placed on record extract of lock-up register and moreover, the so called seizure memorandum / panchanamas and paper slips of label over the seizures do not bear signature of accused. That there is no evidence about safe custody of seized muddmal till its despatch and therefore, according to him, there is no evidence about chain of custody so as to apply the recovery evidence against appellants. That possibility of fabricating and manufacturing evidence cannot be ruled out.

10. Lastly, while summing up, he submitted that there is no independent

evidence about alleged motive behind the occurrence. Material and independent witnesses, inspite of being available, are not examined. Only family members, who are interested witnesses, are examined and therefore, it is his submission that case of prosecution ought not to have been accepted. Several fatal lapses are there on the part of investigating machinery. However, learned trial Judge failed to consider and appreciate the same and reached to erroneous conclusion and hence, he prays for interference at the hands of this Court.

On behalf of State :

11. Per contra, learned APP would support the impugned judgment by pointing out that death is shown to be homicidal one and same is not disputed even during trial or before this Appellate Court. That motive is writ large as witnesses have consistently deposed regarding annoyance of accused, who are neighbours, with deceased for intending to marry their daughter. He pointed out that a few days prior to the occurrence in question, accused persons had issued life threats to deceased. They have executed the threat on 12-03-2015 by mounting assault on deceased by use of deadly weapon like knife. All accused persons had come towards house of deceased. It is pointed out that evidence suggests that accused no.2 disabled deceased by holding his hands and accused no.1 stabbing him. Other accused also joined in assaulting witnesses. He emphasized that ocular account finds support from medical evidence. That there is consistent eye witness account. That Panchas to recovery discovery of articles / weapons have supported prosecution. That though there are omissions, he submitted that they are not material and as the core of prosecution case has remained unshaken, he pointed out that learned trial Judge committed no error in accepting prosecution story as proved.

While concluding, he submitted that there is no merit in the appeal and he prays to dismiss the same.

12. Being First Appellate Court, exercising powers under Section 374 of the IPC, we are called upon to re-appreciate, reanalyze and reexamine the entire prosecution evidence to ascertain whether conviction recorded by the learned trial Judge is justified or not or it requires interference. In support of its case, prosecution has examined in all 18 witnesses and their status is as under :

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Jivaji Babasaheb Lagad is the pancha to inquest panchanama Exhibit 40 which he identified while in the witness box.

PW2 Balasaheb Homaji More is the informant and father of deceased Dattatraya. His evidence is at Exh.42.

PW3 Dattatraya Sitaram Todmal acted as pancha to spot panchanama and seizure of torch (article 1) vide Exhibit 45. His evidence is at Exh.44.

PW4 Manohar Baburao Bhosale is pancha to memorandum of disclosure and

seizure of wooden rafters at the instance of accused no.2 Bansi vide Exhibits 47 and 48. His evidence is at Exh.46. His evidence is at Exh.46.

PW5 Rajendra Bhaguji Palve is pancha to seizure of clothes of informant Exhibit 50. His evidence is at Exh.49. His evidence is at Exh.49.

PW6 Umesh Sharad Gawade, Circle Officer, who acted as pancha to memorandum of disclosure and recovery of knife at the instance of accused no.1 Satish vide Exhibits 61 and 62 respectively. His evidence is at Exh.57.

PW7 Popat Asaram More is pancha to memorandum of disclosure and recovery of gun at the instance of accused no. 2 Bansi vide Exhibits 64 and 65 respectively. His evidence is at Exh.63.

PW8 Sambhaji Rambhau Lagad acted as pancha to seizure of clothes of deceased vide panchanama Exhibit 71. His evidence is at Exh.70.

PW9 Megha Balasaheb More is sister of deceased. Her evidence is at Exh.75.

PW10 Gayabai Balasaheb More is mother of deceased. Her evidence is at Exh.77.

PW11 Manisha @ Nandini Machhindra Todmal is married sister of deceased.

Her evidence is at Exh.83.

PW12 Baban Shankar Lagad is maternal uncle of deceased Dattatraya. His evidence is at Exh.85.

PW13 Dr. Amit Balkrishna Gosavi is Autopsy Doctor who conducted postmortem and issued notes Exhibit 96. His evidence is at Exh.95.

PW14 Dr. Ashok Tulshiram Ghule is the Doctor who examined injured Gayabai, Megha and Balasaheb and issued certificates Exhibits 104 to 106. His evidence is at Exh.103.

PW15 Changdeo Kashinath Wagh is Police Head Constable who recorded FIR Exhibit 43 and registered crime. His evidence is at Exh.114.

PW16 Dattatraya Narayan Shirke is Police Head constable and he is carrier of Muddemal.

PW17 Tushar Murlidhar Adhaoo (API) is the Investigating Officer. His evidence is at Exh.120.

PW18 Vinod Dilip Chavan (API) is another Investigating Officer. His evidence is at Exh.133.

HOMICIDAL DEATH

13. Though during appeal no challenge is raised to the manner of death to be homicidal one, we wish to give a brief account of prosecution evidence on the point of homicidal death. For this, we have visited inquest panchanama, post mortem report and Autopsy Doctor's evidence.

14. PW1 Jivaji is Pancha to inquest panchanama and he has identified the same.

15. Doctor who conducted post mortem is PW13 Dr.Gosavi, who in his evidence at Exh.95 deposed about conducting post mortem on the body of Dattatraya on 13-03-2015 and claims to have come across following external and internal injuries :

External Injury :

Stab injury - over right posterior aspect of chest (back) near lower angle of scapula, elliptical with clean margins with pointed ends - 3 cm. long and - 1 cm. wide (due to retracted margins in the middle) and deep where depth is more than 10 cm.- (Probe inserted to calculate depth).

Internal Injury :

Thorax - (a) walls, ribs, cartilages - Right side chest wall was showing elliptical stab injury on posterior aspect with injury to parietal and visceral pleura with injury to right lung.

(b) pleura - Right visceral and parietal pleura showing stab injury. Right pleural cavity filled with large quantity of blood.

(c)

(d) Right Lung - Right lung showing stab injury near medial margin with injury to right pulmonary artery, right pulmonary veins. Right lung is collapsed.

In his opinion, death was due to "hypovolemia and shock due to stab injury to right lung, pulmonary artery and pulmonary veins due to forceful stab with double edged, sharp pointed and elongated object".

He further deposed that injury noticed by him in column 17 are sufficient to cause death in normal circumstances. He deposed that weapon of offence was not shown to him at the time of post mortem, but on 18-03-2015 he received communication Exh.97 and he examined the weapon and issued opinion Exh.98 that knife in possession of Police is capable of causing injuries on the person of deceased Dattatraya. Doctor has been confronted with the article-14 (knife) in the witness box and he further deposed that injury mentioned in column 17 of post mortem report may be possible if forceful stab is given by article-14. He further clarified that if there is bleeding in large quantity in pleura then there are chances of instant death. He further clarified that "stab injury" means one which has been caused when an "elongated weapon is thrust in the body". Regarding injury noted by him in column no.17, he gave clarification in paragraph no.13 of his evidence which is as under :

"13. I have mentioned in Column no.17 of the Postmortem Report that it was "stab injury over right posterior aspect of chest (back) near lower angle of scapula, elliptical with "clean margins with pointed ends", and therefore, I have mentioned in Column no.18-(a) of the Postmortem Report that the injury is "due

to sharp pointed double edged elongated object with forceful stab". The injury was from lateral aspect of the posterior side of back going antero-medially towards base of the heart and Hilum of the Lung. It was not straight injury, but it was angulated injury towards the Hilum of the Lung and that's why it has caused injury to Pulmonary artery and Veins."

Above medico legal expert is subjected to cross-examination initially on the point of propositions laid down in Modi's Text Book of Medical Jurisprudence reflected in page nos.241 to 245. He admitted that the opinion given by him Exh.98 is silent about blood stains on weapon. He is questioned about quantity of blood in a fully nourished and developed body. He is asked about rough sketch map. On confronting weapon article-14 by learned defence Counsel, he has answered that knife has one blunt side and one sharp side. He admitted that in post mortem report it is not mentioned that stab injury was not straight but it was angular in direction and he admitted about stating it for the first time in the Court and that post mortem report is silent about stab injury was up to the base of heart.

16. What can be extracted from above evidence of Autopsy Doctor is that he has noticed elliptical stab injury on posterior aspect with injury to parietal and visceral pleura with injury to right lung. Autopsy Doctor noticed stab injury to the right lung near medial margin with injury to right pulmonary artery, right pulmonary veins and right lung was found to be collapsed. Even large vessels and veins were found to be affected by stab injury. No doubt while in cross-examination Autopsy Doctor has admitted that article-14 (knife) has only single side of the blade sharp and other side to be blunt, however, it is pertinent to note that at the time of post mortem, Autopsy Doctor was not confronted with the weapon and he has deposed to that extent in the examination-in-chief itself. Therefore, there might be some difference between nature of injury and actual weapon but ultimately it is the impact that matters and here veins and pulmonary arteries are said to be affected including lung part. Therefore, the blow must have been with considerable force. Deceased was examined at hospital and declared brought dead.

Therefore, in the totality of such medical evidence, there is no reason to form other opinion then that death to be homicidal one.

17. Now, having held death to be homicidal one, let us further examine whether accused persons are responsible for the same as held by learned trial Judge.

PRINCIPAL GROUNDS IN APPEAL

18. The principal grounds on which prosecution story is questioned as doubtful could be summarized as under :

Firstly, failure of prosecution to establish genesis and motive by adducing cogent evidence.

Secondly, ocular account to be inconsistent and full of material omissions and contradictions.

Thirdly, failure to examine independent witnesses inspite of their availability.

Fourthly, medical evidence contrary to recovery evidence.

Fifthly, absence of blood stains at the spot.

Sixthly, link evidence or chain of custody evidence not proved.

Seventhly, recovery discovery evidence doubtful due to absence of signature of accused over disclosure memorandum.

ANALYSIS OF OCULAR EVIDENCE

19. Before dealing with the evidence of crucial witnesses i.e. informant PW2 Balasaheb (injured), PW9 Megha (injured), PW10 Gayabai (injured) and PW11 Manisha, we deem it fit to spell-out the principles which are expected to be borne in mind while appreciating ocular account. Useful reference could be made to the judgment of Hon'ble Apex Court in the case Balu Sudam Khalde and another v. The State of Maharashtra [Criminal Appeal No. 1910 of 2010], reported in 2023 SCC OnLine SC 355 wherein certain principles are enunciated and we borrow and reproduce the observations made in the above judgment, more particularly in para 25, which run as under:

"25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper

technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful

to contradict that witness.”

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* 1983 Cri LJ 1096 : (AIR 1983 SC 753) *Leela Ram v. State of Haryana* AIR 1995 SC 3717 and *Tahsildar Singh v. State of UP* (AIR 1959 SC 1012)]”

20. Here, PW2 Balasaheb, PW9 Megha, PW10 Gayabai, according to prosecution, are not only eye witnesses but are also injured witnesses. It is fairly settled position that testimony of injured eye witness always remains at higher pedestal and should not be overlooked or discarded unless it is shown to be patently unworthy of credence. Testimony of injured witnesses has its own relevancy and efficacy and hence, on numerous times, testimonies of injured witnesses are accorded special status and are readily accepted. Law on the point of evidentiary value of injured witness is dealt in the celebrated case of *Jarnail Singh v. State of Punjab*; (2009) 9 SCC 179 and *Balraje @ Trimbak v. State of Maharashtra*; (2010) 6 SCC 673;

21. Now, let us see whether there is convincing and legally acceptable direct eye witness account as claimed by prosecution.

22. Going by the story of prosecution, here there is evidence of both parents of deceased Dattatraya, two sisters and a maternal uncle. Admittedly, occurrence has taken place right in-front of house of deceased and therefore, obviously above witnesses are natural witnesses. PW11 Manisha, married sister of deceased and her husband namely Machhindra Todmal were invitees for the programme and therefore, their presence is also natural. It is true as argued before us that these witnesses speak about presence of neighbours and other villagers and they are not examined, but merely for such count the above evidence of natural witnesses cannot be doubted. It is common knowledge that neighbours or villagers do not come forward on their own to become witnesses. Consequently, in absence of their evidence also, evidence of natural witnesses can be gone into. With this view, we proceed to examine evidence of available witnesses.

23. PW2 Balasaheb, informant and father of deceased in his evidence deposed about family and its size. That his deceased son was working at Bhagirathi Hospital at Ahmednagar as Ward Boy and he used to come on holidays. He deposed that accused are his neighbours and he gave details of their family also. According to him, his deceased son, at the time of marriage of brother of accused no.1 namely Santosh, had expressed desire to marry sister of accused no.1 and as such accused persons were unhappy about it. He testified about accused persons issuing threats to kill if at all deceased performs marriage with Sangita i.e. by visiting their house two months back. Regarding occurrence, he has deposed in para 5 as under :

“5. On 12-03-2015 on account of “Pardi Pujan” programme my married daughters – Vaishali, Manisha @ Nandini and son-in-law Deepak Bhosale came to my house about 05:00 p.m. My son Dattatraya went to village about 07:00 p.m.

on motorcycle to invite ladies for "Pardi Pujan" programme. He came back to the house about 07:30 p.m. My son was about to park motorcycle on the stand, when accused no.1 all of a sudden came there. Accused no.1 assaulted on the head of my son Dattatraya by red torch. Due to which my son Dattatraya shouted loudly. Myself, my wife Gayabai, daughter Megha, daughters Nandini, Vaishali and son-in-law Deepak rushed there to intervene in the quarrel. Accused Nos.2 to 4 started assaulting to us by means of sticks and wooden rafters. Accused no.2 caught hold two hands of my son Dattatraya from the front side and accused no.1 gave blow by sharp-edged weapon on the back of Dattatraya. Due to which my son Dattatraya fallen down. There was bleeding from the mouth and back of my son Dattatraya. Even then accused nos.1 to 4 continued beating to us. I sustained muffled injuries on my back, both legs and cheek. We raised hue and cry due to which neighbouring persons rushed to the spot. So also other persons who were present, also rushed to the spot."

24. PW9 Megha, sister of deceased, like her father, gave information about her own family, brother, information about of family of accused, about her deceased brother, at the time of marriage of accused Santosh, disclosing his intention to marry Sangita and since then accused family having grudge against deceased. She also deposed about threats to kill issued by accused two months prior to the occurrence in presence of maternal uncle Baban. Regarding the occurrence, in para 6 she deposed as under :

"6. On 12-03-2015 about 07:00 p.m. my brother Dattatraya took motorcycle of Mahindra Centro Company of our cousin maternal uncle Shahaji Rambhau Lagad and went to the village so as to call the "Pardivalya" ladies ¼ijMhokY;k ck;k½-My brother Dattatraya came back to the house on the very day about 07:30 p.m. and he was about to park motorcycle on its stand in front of our house when accused no.1 all of a sudden came from darkness and assaulted to Dattatraya by means of red colour Torch. Due to which my brother Dattatraya raised hue and cry. In response thereto, myself, my father, mother, sisters Vaishali and Nandini and my brother-in-law Deepak Bhosale rushed to the spot to intervene in the quarrel. Accused nos.2 to 4 who had been there, started assaulting to us by means of wooden rafters / wooden log when we rushed there to intervene in the quarrel. I sustained injuries to my right leg, back, head and on cheek. Those were muffled injuries. Accused nos.2 to 4 were armed with Wooden Rafters / Wooden logs in their hands. Accused no.2 caught hold both hands of my brother Dattatraya from front side, when accused no.1 stabbed by sharp-edged weapon on the back of my brother Dattatraya and inflicted injury. Due to which my brother Dattatraya sustained bleeding injury to his back. Dattatraya fell down and there was bleeding from his mouth, as well as bleeding from his back injury."

25. PW10 Gayabai, mother of deceased, reiterated about her family, family of accused, her deceased son Dattatraya informing accused no.1 Satish that he would marry his sister Sangita and thereafter, accused persons carrying grudge in their minds about deceased. Even she deposed about accused persons issuing

threats to kill Dattatraya by visiting their house. Regarding occurrence, she deposed in para 3 of her substantive evidence, which is as under :

"3. He returned back to the house about 07:30 p.m. and when he was about to park motorcycle on its stand in front of our house, accused no.1 all of a sudden came from darkness and hit the Torch of red colour on his head. Due to which Dattatraya raised hue and cry. In response, myself, my husband, daughters, Megha, Vaishali and Nandini rushed to the spot to intervene in the quarrel. Accused nos.1 to 4 started beating to us by wooden sticks and wooden rafters. I sustained injuries to my right hand, left leg, head and forehead in the incident. Accused nos.2 to 4 were armed with wooden rafters / sticks in their hands. Accused no.2 caught hold both hands of my son Dattatraya from front side. Accused no.1 by some sharp-edged weapon stabbed on the back of Dattatraya. Due to which Dattatraya fallen down and he sustained bleeding injury on his back. There was bleeding from the mouth of Dattatraya."

26. PW11 Manisha, who is a married sister of deceased, deposed that she had come to Aathwada on 12-03-2015 for attending "Paradi Pooja programme" and about reaching house of deceased brother. In paragraph no.3 of her substantive evidence, she deposed that,

"3. It was about 07:30 p.m. and my brother Dattatraya was parking the motorcycle in front of our house when all of a sudden neighbouring person Satsih Banshi Lagad (accused no.1) came there and hit red colour Battery on the head of my brother Dattatraya. Due to which my brother Dattatraya raised hue and cry. Due to hue and cry of my brother Dattatraya, my father, mother sisters - Megha, Vaishali and me alongwith husband of my sister Vaishali rushed to the spot to intervene therein. Ashabai Banshi Lagad/accused no.4 Banshi Kisan Lagad / accused no.2 and Kisan Ganpat Lagad / accused no.3 started beating to my father, mother, sister - Megha and brother Dattatraya by means of wooden rafter. Accused no.2 Banshi Kisan Laga caught hold the hands of my brother Dattatraya from front side and accused no.1 Satish Banshi Lagad inflicted blow by means of sharp-edged weapon on the back of my brother Dattatraya. My brother Dattatraya fallen down. There was bleeding from the back as well as from the mouth of my brother Dattatraya. Even then accused nos.2 to 4 continued their act of beating to my father, mother and sister - Megha. My brother Dattatraya became unconscious."

27. Though apart from family members, prosecution has examined PW12 Baban, maternal uncle of deceased, his evidence clearly shows that he had reached after occurrence of assault was over. Therefore, he cannot be said to be an eye witness. However, his testimony carried information about prior threats given by accused persons in his presence and therefore, his testimony to that extent is of relevance.

28. Defence has cross-examined all above witnesses at length. As regards to PW2 Balasaheb, informant is concerned, initial cross-examination is related to

location, geographical conditions, some alleged spiritual power possessed by deceased. Following omissions are brought in paragraph nos.11 and 13 and the same could be reproduced as under :

- a) One to two months prior to the incident, one day accused nos.1 2 and 4 coming to the house at 11:00 a.m. and issuing threats to kill Dattatraya if he performs marriage with Sangita.
- b) Accused nos.1 and 2 threatening deceased by showing air-gun whenever he come to village.
- c) Accused no.1 using red torch to assault deceased on head.
- d) Accused no.2 catching hold of hands of deceased from front side.
- e) About Dattatraya falling in prone condition.
- f) Dattatraya kept in prone condition on Godhadi.
- g) If sharp edged weapon is shown it can be identified.

Rest is all denial.

PW9 Megha, while facing cross-examination admitted about occupation of her brother to be in employment of hospital and about he possessing divine powers and solving people's problem. She admitted that there was no previous complaint on issuance of life threats issued by accused. After denial to all suggestions, in paragraph no.16 following omissions are brought that :

- a) She sustained injury to right leg and back.
- b) Omission to above extent in supplementary statement in statement under Section 164. She admitted that injury suffered by her are not visible.
- c) She suffering muffled injuries. Rest is all denial.

PW10 Gayabai, mother of deceased, has denied almost all suggestions put to her while facing cross-examination in paragraph nos. 10, 11, 12 and 13. In paragraph no.14 she deposed that she is unable to remember whether while recording her statement and supplementary statement, she has stated about she suffering injury to right hand, left leg and on head. Then all suggestions put in paragraph nos.14, 15 are flatly denied by her. She denied that her injury certificate got managed and prepared from the hospital where her deceased son worked.

PW11 Manisha is married sister of deceased. Her cross-examination commences from paragraph no.9 wherein she is questioned about her statement recorded by Police on 12-03-2015 and she denied about giving statement at the instance of her father for false implication. She is questioned whether she joined in shifting injured to hospital in vehicle, whether her saree got blood stained and whether it was handed over to Police. All suggestions put in paragraph nos.11, 12, 13 are

denied by her.

CONCLUSION OF OCULAR ACCOUNT

29. On critical analysis of above substantive evidence i.e. examination-in-chief as well as cross-examination of above witnesses, it is noticed that PW2 Balasaheb, PW9 Megha, PW10 Gayabai and PW11 Manisha are all consistent about accused party to be their neighbours; about deceased interested in marrying daughter of accused no.2, about he declaring the same to the accused no.1 during marriage of Santosh and since then accused persons to be unhappy. They are all unanimous and unequivocal about accused persons visiting the house two months prior to the occurrence and issuing life threats to deceased. It has come in their evidence that a religious programme was arranged and fixed on 12-03-2015 and therefore, they all had gathered together and deceased had particularly stayed back for the said function. They have all consistently stated about deceased Dattatraya returning home at around 07:00 p.m. from the village after arranging some ladies for Pooja programme and on hearing his shouts, they all rushing out and seeing assault on Dattatraya. They all have corroborated each other about accused no.2 facilitating assault by accused no.1 by knife from the back side. They all are consistent about they too being beaten by means of rafters. Defence could not dislodge the actual occurrence inspite of subjecting above witnesses to searching cross-examination. Deceased was taken to hospital after he had collapsed and on examination he was declared dead and thereafter, PW2 Balasaheb, father of deceased, within 2-3 hours has lodged FIR.

Therefore, here collective evidence of above eye witnesses clearly suggests assault with knife. All are unanimous about stabbing at the back of deceased. Medical evidence i.e. PW13 Dr.Gosawi, Autopsy Doctor confirms same side to be having injury ad-measuring 3cm long, 1 cm. wide and 10 cm. deep. He is categorical about injury by sharp pointed weapon. Consequently, here is a case wherein there is ocular account finding support from medical evidence. Therefore, charge of homicide is clearly brought on record. Above eye witnesses are also victims of assault. Their claim of being beaten by means of rafters is getting fortified from the evidence of PW14 Dr.Ghule, a Doctor who had occasion to examine them and issue medical certificates.

Resultantly, there is injured eye witness account which too has remained unshaken. Presence of all accused is marked, noted and narrated by witnesses in their substantive evidence. They all had come together and therefore, there is no hesitation to hold that they entertained common intention thereby attracting provision under Section 34 of the IPC.

By examining PW4 Manohar, PW6 Umesh, PW7 Popat, who are Panchas to memorandum of disclosure and seizure, recovery of article weapon is also successfully brought on record by prosecution. Nothing damaging is brought in their cross-examination and all these independent panchas have supported prosecution. In the light of above material, both offences punishable under

Sections 302 and 324 r/w 34 of the IPC are successfully brought home.

30. Now let us deal with the principal grounds of challenge raised before us in appeal.

Foremost ground of challenge is that there is no motive as there is no evidence in that regard.

We are not impressed with this argument for the simple reason that all witnesses are very categorical that accused party was annoyed on deceased for his desire and intention to marry Sangita. They had a few months back even issued threats to kill deceased. Therefore, here there is clear motive available on record. Threat issued earlier has been executed in the evening of 12-03-2015.

31. The other objection is that so called direct eye witness account is inconsistent, full of material omissions and contradictions. It is strenuously submitted that evidence of so called all eye witnesses is full of improvements, more particularly that of PW2 Balasaheb.

In the light of above objection, we have minutely gone through the testimony of PW2 Balasaheb i.e. his substantive evidence. He is father of deceased, who has witnessed murderous assault on his young son. He has lodged FIR within few hours of the occurrence. His state of mind should be borne in mind. It is also fairly settled that an FIR is not encyclopedia wherein all details are necessary to be spelt-out. There are bound to be some omissions and additions at the time of substantive evidence. His evidence about accused persons to be annoyed on deceased, issuing life threats and executing the same, which is the core of the case is reflected in the FIR as well as substantive evidence. Similarly, his other daughters and wife, who are natural witnesses, are also lending to support to his testimony as well as each other on the point of occurrence.

We have already reproduced the so called omissions in their testimonies in aforesaid paragraphs. We do not consider the omissions to be material one. None of the omission is going to the root of the prosecution case or rendering it doubtful. Crucial aspect of assault with knife and rafters has remained unshaken. Therefore, when the core of the prosecution case has remained steadfast in the testimonies of above eye witnesses, whose testimonies are finding support from medical evidence, the above submission raised by learned Senior Counsel cannot be entertained.

32. The next ground of attack is that there is no blood stains at the scene of occurrence.

It needs to be noted that witnesses are consistent and categorical about deceased being stabbed on the back of deceased by knife and they are all further consistent about deceased collapsing and falling in prone condition. The wound or injury as well as the weapon used has not penetrated up to the other side of the body and therefore, it is possible that blood may not have fallen on the earth or spot. Witnesses are also consistent about deceased being shifted in prone

condition itself to the vehicle shortly after deceased collapsed. Further it is noticed that clothes of deceased which are seized i.e. shirt as well as banyan are having holes on the back side of such clothes. Such position of clothes further confirms use of sharp weapon. Ocular account is finding support from medical account and Autopsy Doctor has given direction of injury / wound. Taking all circumstances into consideration, mere absence of blood stains at the spot itself is not a good ground to doubt the entire prosecution story.

33. It is also vociferously submitted that only interested witnesses are examined inspite of witnesses themselves confirming presence of other villagers and therefore, there is possibility of false implication.

We have also pondered over the above submission raised before us. We are not ready to accept the above submission for the simple reason that witnesses examined by prosecution, though family members, are the most natural witnesses. It needs to be considered that occurrence has taken place right in-front of their house and therefore, they are bound to be present there. Accused are their neighbours. It is quite settled position that merely because witnesses are relatives, their evidence need not be doubted. Infact in the case in hand, witnesses being natural witnesses, have deposed whatever they have witnessed and their testimonies to the extent of assault has remained unshaken. It is true that witnesses are speaking about other villagers present but when there is direct eye witness account, which is trustworthy, mere failure of prosecution to examine independent witnesses would not be sufficient to doubt their testimonies. After all it is quality of evidence that matters and not quantity. When occurrence is getting unfolded through injured eye witnesses, the best possible evidence comes on record. Even otherwise law is fairly settled that mere witnesses to be close relatives, is not a good ground to reject their testimonies. Only requirement is that their evidence is required to be scanned with complete circumspection, care and caution. Law to this extent has been dealt in various pronouncements time and again and the few noted cases are Bhagwan Jagannath Markad v. State of Maharashtra; (2016) 10 SCC 537 and Ravasaheb @ Ravasahebgouda and Others v. State of Karnataka; (2023) 5 SCC 391. Therefore, we discard the above objection.

34. Learned Senior Counsel also pointed out that there is no signature of accused over the paper seals on muddemal articles 15 and 16 as well as signatures of panchas are not available on muddemal article 7 and therefore, recovery is doubtful. Further according to him, chain of custody is also not cogently proved.

On careful examination of testimony of pancha witness PW4 Manohar, it is revealed that he has admitted in cross-examination about non-availability of signature of accused over paper seal on muddemal article 15 and 16. It needs to be noted that recovery is caused in presence of independent panchas in pursuance to disclosure. Pancha has flatly denied the suggestion that police obtained his signature on paper seal in the Police Station itself and later on pasted it. Even otherwise mere failure on the part of Investigating Officer to

obtain signature of accused on the paper seal, no benefit would accrue to the accused. Law does not require or enjoin duty on the Investigating Officer to obtain signature of accused on each and every papers and law to that extent has been discussed in the case of State of Rajasthan v. Teja Ram and Others; (1999) 3 SCC 507. Further it is noticed that PW5 Rajendra, pancha to seizure of clothes of informant and accused, also admitted that muddemal articles 5 and 7 do not have paper seal bearing signature of pancha witnesses, but subsequently it seems that learned APP took efforts to recall the above witness and it has been brought on record that the paper seal over articles 7 and 8 bears his signature at sr.no.1 but as the paper got torn, half signature is visible. Therefore, above aspect is not of much significance.

As regards to objection of chain of custody of muddemal is concerned, we do not find any infirmity or deviation. Resultantly, the above objection also has no substance.

35. It is also an objection raised before us that here information passed by Sandesh Karle to Police Station was the first information and therefore, crime ought to have been recorded on the same, but investigating machinery has failed to register crime on such information and rather report lodged by PW2 Balasaheb is entertained and crime was registered on the basis of same. He would submit that there cannot be two reports.

It is true that there is station diary entry regarding information being received on telephone regarding incident through Sandesh Karle and he is not examined. After carefully going through the station diary to that extent, it transpires that it is a mere cryptic information without necessary details and therefore, Police machinery has not registered crime on the basis of such information. PW2 Balasaheb has lodged FIR at about 22:45 p.m. i.e. after 2-3 hours of occurrence and on his son being declared dead. Therefore, his report, which carries necessary details, is rightly made the basis of FIR and the procedure so adopted cannot be faulted at.

36. Learned Senior Counsel also pointed out that investigating machinery has seized article 14 (knife). He requested the Court to examine the article and according to him, the knife blade has only one side sharp and other side blunt. At the same moment, he invited our attention to the evidence of PW13 Dr.Gosavi, Autopsy Doctor and would submit that according to medical expert injury was possible by double edged sharp weapon and thus his attack is that weapon before the Court is not the one which was allegedly put to use.

In the light of above objection, we have examined the article knife and carefully sifted testimony of PW13 Dr.Gosavi. It is true that in substantive evidence as well as in post mortem report, Autopsy Doctor has opined about forceful stab with double edged and elongated object and article 14 (knife) apparently has only one sharp side. However, it needs to be noted that in further substantive evidence of Autopsy Doctor, he has deposed in examination-in-chief itself that at the time of

post mortem, weapon was not confronted to him. Therefore, the opinion reflected in the post mortem report cannot be said to be correct one as apparently weapon was not before the Autopsy Doctor at that point of time. Later-on investigating machinery has taken steps to confront knife to the Autopsy Doctor and get opinion wherein Autopsy Doctor has opined that injury mentioned in column no.17 may be possible if article 14 is put to use. Resultantly, even the above objection holds no merit.

37. It is also vehemently submitted that motorcycle on which deceased allegedly came has not been seized and therefore, story of prosecution about he arriving on motorcycle and while he was parking it, he was assaulted is a fabricated story.

We do not wish to give much importance to such lapse on the part of investigating machinery in not causing seizure of the motorcycle or its reference not finding place in the spot panchanama. On account of mere lapse on the part of investigating machinery, benefit would not go to the accused.

SUMMATION

38. Therefore, in the light of above discussion, none of the objections or grounds raised before us has any merit so as to doubt the case of prosecution. Here we reiterate that there is trustworthy, reliable direct eye witness account. Several witnesses, who too are injured, are consistent and lending support to each other on the part of motive and actual assault. Independent panchas to recovery have also supported prosecution. Medical experts have confirmed cause of death and regarding injuries to injured witnesses. Therefore, there is full-proof evidence and as such, we do not hesitate to hold that case of prosecution is proved beyond reasonable doubt.

39. We have gone through the impugned judgment. We have reanalyzed and re-appreciated the entire evidence. The reasoning assigned by the learned Sessions Judge is found to be in consonance with the evidence. There is no perversity or illegality in appreciation of evidence or the conclusion drawn by learned Sessions Judge. Consequently, there is no reason to disturb the said findings. Accordingly, we proceed to pass following order :

ORDER

Criminal Appeal No.273 of 2017 stands dismissed.