
(2019) 07 GUJ CK 0129
In the Gujarat High Court
Case No : R/Criminal Appeal No. 468 Of 1995

State Of Gujarat	Vs	APPELLANT
Koli Mansukh Lalji		RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302
Bombay Police Act, 1951 — Section 135
Code Of Criminal Procedure, 1973 — Section 313, 428
Evidence Act, 1872 — Section 118, 134

Citation : (2019) 07 GUJ CK 0129

Hon'ble Judges : Anant S. Dave, J; Biren Vaishnav, J

Bench : Division Bench

Advocate : Nisha Thakore, Hardik K Raval

Final Decision : Allowed

Judgement

1. The State is in appeal under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgement and order of acquittal dated 30.12.1994 passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No. 100 of 1993. By the judgement under challenge, the respondent who was tried for offences under Section 302, IPC and Section 135 of the Bombay Police Act, 1951 was acquitted.

2. As per the prosecution case, the incident in question has been narrated by the complainant - Kantaben, who is the mother of the deceased Rasila, aged 10, alleged to have been done to death by the accused - Mansukh by inflicting two blows on her head with a sword. The case as per the prosecution is that when Chakuben - daughter of complainant, on the previous day of the alleged incident, had gone to fetch water from the hand pump at the panchayat, the accused Mansukh teased her near his house which was near the hand pump. On the day of the incident Chaku narrated the same to Kantaben, who thereafter went to the accused Mansukh's house and admonished him to keep off from teasing her

daughter Chaku. Mansukh was present at his house with his mother and reportedly at being reprimanded by Kantaben, he became agitated. It is further the case of the prosecution that thereafter on the complainant's returning home, her younger daughter Rasila went to her relative's place to sit on the swing and Chaku and the complainant had resumed their household chores. It is the case of the prosecution that at around 10.30 am the complainant heard Rasila scream and therefore she and Chaku went towards Savji Jivan's house where she saw Mansukh running away with a blood stained sword. Rasila was lying on the floor in a pool of blood. The deceased was taken to hospital but could not be saved and succumbed to her injuries.

2.1 The accused was arrested. After the investigation was completed, charge-sheet was filed against the accused charging the accused for commission of offence under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, 1951. Thereafter, as the case was exclusively triable by the Sessions Court, the same was committed to the Sessions Court, Bhavnagar. The prosecution sought to prove its case on the basis of ocular and documentary evidences, mainly, which were as under:

P.W.

Name of Witness

Exhibit

No.

No.

1

Maganbhai Somabhai

16

2

Naranbhai Arjanbhai

18

3

Ratnabhai Karshanbhai

19

4

Ramjibhai Ukabhai

20

5

Laxmiben Lavjibhai

22

6

Hirjibhai Savjibhai

21

7

Dhirubhai Chhanabhai

23

8

Champaben Manubhai

24

9

Kantaben Ramjibhai

25

10

Jamnaben Valjibhai

26

11

Chakuben Ramjibhai

27

12

Diwaliben Bhavanbhai

28

13

Dr. Dhirajbhai Maganbhai

29

Bhatt

14

PSI Keshubhai Rambhai Bhuva

31

2.2 The documentary evidence for substantiating the version of the witnesses have been filed which were as follows:

Sr.

Name of Document

Exhibit

No.

No.

1

Inquest panchnama

7

2

Panchnama of clothes and

10

blood sample of deceased

3

Map of scene of offence

13

4

Discovery panchnama of

19

muddamal weapon

5

Panchnama of local place

17

6

Arrest panchnama

23

7

P.M. Report

30

8

Complaint

32

9

Yadi sent to police station by

33

Savarkundla hospital

10

FSL report

36

11

Serological report

37

12

Notification of weapon

38

prohibition

2.3 After recording the evidence of prosecution witnesses and after recording the statement of the accused under section 313 of Cr.P.C., and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge acquitted the respondent of all the charges leveled against him by judgement and order dated 30.12.1994. Being aggrieved by and dissatisfied with the aforesaid judgement and order passed by the Sessions Court the appellant State has preferred the present appeal.

3. Ms. Nisha Thakore, learned APP appearing for respondent State after having taken this court through the oral as well as the entire documentary evidence submitted that the trial court committed an error in acquitting the respondent - accused. It was contended by Ms. Thakore, that the Sessions Court has not properly considered the evidence led by the prosecution. She submitted that the trial court ought to have considered that there was a motive for the alleged offence committed by the accused and that the trial court has erred in discarding the evidence of Prosecution

Witnesses merely on the ground of minor variations and also in not believing the child witness.

3.1 Ms. Thakore has taken this Court to the evidences of Kantaben and Chaku in detail and pointed out that the same corroborate with the medical evidence. She submitted that in view of the decision of the Apex Court rendered in *Munishamappa and Others vs. State of Karnataka* [(2019) 3 SCC 393, if the Court finds that the conclusions arrived at by the trial court are without evidence that the High Court may reverse an order of acquittal. She submitted that the defence has not pointed out any material contradictions in the evidences of these witnesses so as to discredit their testimonies.

4. Mr. Hardik Raval, learned advocate for the respondent - accused has supported the impugned judgement and order passed by the trial Court. He submitted that the trial Court has gone into the evidence in detail and come to the conclusion that the accused is not guilty of the offence so charged against him. He has submitted that no interference is called for.

4.1 Mr. Hardik Raval, learned advocate for the respondent - original accused would contend that the complainant Kantaben's version ought not to be believed. There was a serious discrepancy or improvement in what she had stated in the complaint and before the Court regarding the time of the incident. There were contradictions in her testimony when co related with disclosing the incident of her daughter being teased. Chaku had testified that she told her mother on the morning of the incident whereas the mother's testimony revealed that she had gone to the accused's house the previous evening on Chaku telling her about the incident. These, in Mr. Raval's submission were serious embellishments and contradictions which rendered the witness not a reliable one.

4.2 Mr. Raval has further submitted that the child witness Chaku's evidence is rightly not accepted by the trial Court as the same is tutored. He submitted that she was not an eye witness to the incident. He submitted that evidence of such child witness should be considered with caution.

5. At the outset, it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. It is a well settled position of law that in the event the High Court is entertaining an appeal treating to be an appeal against acquittal, it is in fact exercising the revisional jurisdiction. In an appeal against acquittal filed under Section 378 of the Code, 1973, as such there is no limitation on the Appellate Court to review the evidence but at the same time, if on fact as well as on law, the conclusion drawn by the trial Court based on appreciation of evidence unless there are compelling, cogent and substantial reasons for interference and when findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable, acquittal is not to be reversed or disturbed.

5.1 In cases of present nature wherein the appeal is against acquittal, the appellate court is entitled to reappraise the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or

perverse. It is true that it is a settled position of law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented.

5.2 If the Appellate Court finds that the appreciation of evidence by the Trial Court is capricious or against the interest of justice, then only the Appellate Court would venture to reverse the order of acquittal. If after appreciation of the evidence, the Appellate Court independently finds that order of acquittal is not in accordance with law and the conclusion arrived at by the trial Court are not based on the correct appreciation of the evidence on record, and the incident cannot be explained except with the guilt of the accused and is totally inconsistent with the innocence of the accused, in such cases only the Appellate Court would reverse the order of acquittal. In this regard, the Apex Court has made observations in para 16 of the judgement rendered in *Munishamappa and Others vs. State of Karnataka* [(2019) 3 SCC 393, which are as under:

"16. The High Court in the present case was dealing with an appeal against acquittal. In such a case, it is well settled that the High Court will not interfere with an order of acquittal merely because it opines that a different view is possible or even preferable. The High Court, in other words, should not interfere with an order of acquittal merely because two views are possible. The interference of the High Court in such cases is governed by well established principles. According to these principles, it is only where the appreciation of evidence by the trial Court is capricious or its conclusions are without evidence that the High Court may reverse an order of acquittal. The High Court may be justified in interfering where it finds that the order of acquittal is not in accordance with law and that the approach of the trial Court has led to a miscarriage of justice. The High Court, however, must be satisfied that the incident cannot be explained except on the basis of the guilt of the accused and is inconsistent with their innocence."

5.3 In the present case, going by the records of the case and the evidence of the witnesses, we do not find that the view taken by the trial Court is just and proper. We have analysed the evidence in great detail to find that the prosecution version is cogent and credible. Even in an acquittal appeal the touch stone is that whether there is an iota of evidence which would permit the appellate court to take a different view. In the present case, there are clinching reasons to take a view different from the one taken by the trial Court. The same are discussed hereinafter.

6. Essentially, the case of the prosecution hinged on the testimonies of the complainant Kantaben and child witness Chaku. Kantaben, the mother of the deceased and the complainant was examined as P.W. 9 at Ex. 25. In her testimony, she has stated that she had two daughters, Chaku and Rasila. Chaku was the elder daughter. The incident occurred at around 9 am. At the time of the

incident, Rasila had gone to play at Champaben's house. When she heard screams of Champaben she immediately rushed and found Rasila lying on the ground. She had seen Mansukh run away with a sword. When she asked Rasila, what had happened, Rasila informed her that Mansukh had hit her with a sword. She further stated that she found Rasila had two injuries, one on the head and the other under the ear. She further stated that when she went to Champaben's residence, she saw that Diwaliben and Sakarben were already there. Rasila was brought back to her house. As per the narrative in the testimony, Kantaben attributes the motive inasmuch as the reference is made to the incident of the previous day when Chaku was teased by the accused and she had reprimanded him by going to his house.

6.1 Kantaben was cross examined. It comes out that the house where the incident occurred, that of Savji and Champaben both are related to her. In her cross examination, she denies any past incident between her and Mansukh to dislodge a suggestion that she had wrongly framed the accused. She stands by her version as far as the teasing of Chaku on the day previous to the incident. She states that accused Mansukh knew both Rasila and Chaku. She admits that she was doing her household chores when she heard the screams. That Champaben's house where the incident occurred is at a walking distance of two to three minutes. When she went on hearing Rasila's screams, Rasila was lying in the verandah in a pool of blood. She denies the suggestion that she had not seen the accused with a sword in hand. She denies that when she went to the scene of offence, Rasila was unconscious. She states that when she took Rasila home, Jamnaben, Saakarben and Diwaliben were with her. According to the cross examination, Mansukh's house is after three to four houses and while going to Champaben, her house is next door. The accused's house can be seen from her house. She states that Diwaliben is her mother-in-law.

7. The next material witness is Chaku, who is a child witness as she was aged 10 years at the time of deposition. She has been examined as P.W. 11. According to Chaku, the child witness, who was examined after necessary formalities states that Mansukh whose house is close to the Panchayat's hand pump where she had gone to fetch water, accosted her at that time and made uncharitable remarks. The witness was then examined in-camera by asking the Court room to be vacated. According to her that evening she narrated the incident to her mother and nobody was present when it was so narrated. The accused was reprimanded and he started abusing her mother. After their return from the accused's house, her younger sister went to Champaben's house to sit on the swing. The time was in the morning hours. Champaben started shouting and therefore she along with her mother Kantaben and Diwaliben rushed to Champaben's house. Rasila was lying in a pool of blood. Rasila told them that Mansukh had hit her twice with a sword. Rasila was taken to the hospital. She was alive when so taken.

7.1 In her cross examination, Chaku states that there are two routes to go to the panchayat hand pump. One of the route passes by Mansukh's house. That

morning when she went to fetch water, there were no other ladies. She denies the suggestion made in the cross that Mansukh was not present. She admits that she did not speak about the incident to her father and that her mother had gone to Mansukh's house the next day and reprimanded him. She denies a suggestion that she has been tutored by her parents to name the accused. She admits to have gone to the office of the Public Prosecutor. In her cross examination, she states that on the date of the incident Mansukh was staying in his house at Vadi and had come to the shop in the morning. She denies a suggestion that Mansukh was being wrongly framed. She states that Champaben's shouts were heard at 9 in the morning and that in her police statement she had given the time as 10.30 in the morning. Rasila was lying unconscious. The incident happened half an hour after they returned on reprimanding the accused. She denies a suggestion that Rasila sustained injuries due to sharp weapon such as spade etc lying on the floor on which she fell while swinging.

7.2 Kantaben and Chaku have briefly named two other ladies who were present and whom the prosecution has examined. This is in addition to Champaben, the occupant of the house where the incident occurred. In sequence therefore, we shall appreciate the testimonies of Champaben, Diwaliben and Jamnaben in that order.

8. Champaben has been examined as P.W. 8 at Ex. 24. In her examination-in-chief, she states that at the time of the incident Rasila was at the swing in her verandah. This witness was sweeping the backyard. The swing is not visible from where she was sweeping. She heard Rasila scream and seeing her lying on the floor she also started shouting. As a result of hearing her scream, Kantaben came immediately.

She denies knowledge of how Rasila had sustained injuries. Rasila was her relative. She testifies that she has not seen anybody assaulting Rasila.

8.1 Champaben in her cross examination has stated that the accused also has a shop in the place where she stays. She denies seeing Mansukh near the madh. She denies having said in the police statement that she had seen the accused with a sword. She states that thereafter Jamnaben also came on to the scene.

9. Diwaliben, the grandmother of the deceased Rasilaben is examined as P.W. 12 at Ex. 28. She in her examination-in-chief suggests that the incident occurred at around 10 am and 10.30 am. She was sitting in the verandah of Somvat Bhikha. The house of Somvat Bhikha is on the opposite side of Champaben's house. Hearing Rasila scream, she went towards Rasila. She was lying on the floor. When asked she said that she had been assaulted with a sword at the hands of Mansukh. This witness states that when Rasila screamed, she looked back and saw Mansukh running away.

9.1 In her cross examination this witness suggests that she reached before Kantaben. She denies that she had not stated in the police statement of seeing Mansukh inflicting blows.

10. Jamnaben has been examined as P.W. 10 at Ex. 26. She states in her chief examination that she had gone in the vicinity to extend some invitations. She heard Rasila's screams. She saw Rasila lying in a pool of blood. Rasila had sustained injuries on the head and below her ear. She denies having seen Mansukh passing through the Vada.

11. Dr. Dhirajlal Bhatt is the Medical Officer at Sir T. Hospital who carried out the post mortem. He is examined as PW 13 at Ex. 29. He, in his examination-in-chief, testifies that Rasila was brought in a critical condition with the history of having sustained injuries by a sword. She succumbed to her injuries at 11.20 am. The post mortem was carried out and the report is at Ex. 30. Column no. 17 depicting the injuries sustained by the deceased read as under:

"

1) Oblique Incised wd of 12cm x 3 cm x bone deep & fracture skull & brain matter protruding through wd. on parieto - occipital In.

2) Transverse I x w of 3cm x 1cm x muscle deep on Rt. posterior triangle of neck with superficial vein cut."

11.1 The fracture at injury no. 1 was visible. The corresponding internal injuries were as under:

"Oblique fracture of Rt. Parietal occipital and Lt. Parietal bone of 13cm x ½ cm x brain matter protruding through wd."

11.2 In the opinion of the doctor, the injury no. 1 was sufficient in the ordinary course of nature to cause death. The injury could be sustained by a sharp edged weapon.

11.3 In his cross examination he suggests that Rasila was unconscious. To a question that whether the injuries were possible if attacked by a sword from the back, the doctor testified that it depends how the sword is used at the time. There is suggestion which is not denied that such injuries are possible if there is a fall from the swing and the head comes into contact with a sharp edged instrument lying on the ground. He testifies that the injured was brought to the hospital and she succumbed within 20 minutes.

12. These are set of evidences which need to be reassessed in light of the acquittal handed out by the learned Sessions Judge on the basis of these circumstances. Before we assess the evidence independently we are also conscious of the benefit that the accused's acquittal which he has gained signifies.

13. The discovery panchnama is on record at Ex. 19. The panch has however turned hostile. The prosecution has though relied on the testimony of the Investigating Officer Keshubhai Rambhai Bhuvra at Ex. 31 who is examined as PW

14. He confirms Ex. 19 panchnama and in his testimony he states that the accused at his own free will guided the investigating party to the place where the

sword was lying. The sword was discovered from a room in a vadi adjacent to a crematorium. The FSL report is also on record. The blood group on the sword is AB which matches the blood group of the deceased.

14. The learned Sessions judge in his judgement has discussed the testimonies of the witnesses. A fleeting review of the reasons that weighed with the learned Sessions Judge in believing the prosecution story is as under:

(I) Appreciating the testimony of child witness Chaku P.W. 11 together with the testimony of her father P.W. 4 and her mother - complainant Kantaben P.W. 9, the learned Sessions Judge disbelieves the version on the narration of Chaku's explanation to the mother regarding accused having harassed her. The story of such motive is not believed by the Sessions Court on the ground that there is discrepancy in the evidence as to the time on which Chaku disclosed that she was harassed. According to the trial Court, Chaku's evidence when read together with her mother Kantaben's evidence, Chaku disclosed the happening of the incident to her mother the previous evening whereas on appreciating the evidence of P.W. 4 - father, the trial Court comes to the conclusion that she has disclosed it in the morning. This minor variance in the pre-execution of the offence is not believed by the trial Court.

(II) The trial Court has discredited the witnesses namely Kantaben, Champaben and Chaku on the ground that they cannot be said to be eye witnesses to the incident. Kantaben's version is mainly disbelieved on the ground that there is variance in the time that she has disclosed regarding committing of the offence. In the complaint, it is the version of Kantaben that the incident occurred at around 09.30 or 10 am. In the testimony of Kantaben, she makes out a case that the incident happened at around 10 am. Evidence of Diwaliben when read together with that of Medical Officer, the time that varies is between 9 am to 10.30 am. This, the learned Sessions Judge has taken it to be a major discrepancy in the story of the prosecution.

(III) Assessing the evidence, the trial Court has further discredited the witnesses Kantaben and Chaku. Chaku has been discredited on the ground that she has been tutored as a child witness. Kantaben and Champaben - the occupant of the house in which the incident had occurred have also not been believed on the ground that they have not categorically been consistent in their testimonies with regard to the order in which Diwaliben, Champaben and Jamnaben arrived at the scene.

14.1 Essentially the trial Court has not believed the versions of Kantaben and Chaku as eye witnesses and it is in this context that we need to appreciate the testimonies of these two witnesses in juxtaposition with the evidence of the witness Diwaliben - grandmother of the deceased to come to the conclusion as to whether the trial Court has committed an error in acquitting the accused.

14.2 When Kantaben's testimony is seen in context of the complaint she has filed, it is evident that she has stood by the version narrated in her complaint.

Her testimony cannot be discarded merely because she happens to be a relative. She testifies that the incident happened at 9 am in the morning. In the complaint before the police she said that the time of incident was 10.30 am. Otherwise there is consistency in the evidence of this witness inasmuch as :

- (a) She said that she rushed to Champaben's house on hearing her shouts.
- (b) Rasila was lying on the floor when she went to the verandah. She was bleeding.
- (c) Rasila had sustained two blows with the sword, one under the head and the other below the ear.
- (d) Rasila told her that it was Mansukh - the accused who had assaulted her with the sword.
- (e) When she went to the scene of offence, Diwaliben and Saakarben were present.
- (f) Clear motive behind the assault was evident from her testimony. She also confirms having seen Mansukh run away with a sword.
- (g) She denied the suggestion of the defence that Rasila was unconscious when she reached.
- (h) The proximity of the accused and Champaben's house was confirmed by her in her cross examination.

14.3 Assessing Chaku, the child witness's evidence also indicates that she had told her mother of the incident the previous evening. On hearing Champaben shout, she alongwith her mother Kantaben and grandmother Diwaliben rushed to the scene of offence. Rasila told her that it was Mansukh who had inflicted the sword blows. She denied the suggestion in the cross examination that the injuries sustained by Rasila could have been as a result of a fall and her injuries resulted by such a fall on a sharp edged tool. In her cross examination she expressly denied a suggestion by the defence that she named Mansukh at her parents' suggestion. She also confirms that it was 9 am when Champaben shouted.

14.4 Mr. Raval, learned advocate for the respondent would support the reasoning of the trial Court who held that Chaku could not be believed as she appeared to be tutored. We are aware of the fact that the evidence of a child witness must be scrutinized and assessed with utmost care and caution. In fact there is no particular age for treating a witness to be a competent one. The child witness must be able to understand the general questions put to him/her and able to give rationale answers. But considering the tender age of such witnesses, courts have to scrutinize their evidence with great caution and be convinced of the veracity thereof. Therefore, the evidence of a child is required to be evaluated carefully because he/she can be an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony

14.5 In the case of *Shamim vs. State (GNCT of Delhi)* [AIR 2018 SC 4529], the Apex Court has held that when a child of tender age witnesses gruesome murder of his father, mother, brothers etc. he is not likely to forget the incident for his whole life and would certainly recapitulate the facts in his memory when asked about the same at any point of time notwithstanding the gap of about ten years between the incident and recording of his evidence.

14.6 Similarly, in the case of *Virendra @ Buddhu vs. State of Uttar Pradesh* [(2008) 16 SCC 582], the Apex Court has very clearly held as under:

"8. The Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. In *Dattu Ramrao Sakhare v. State of Maharashtra* [(1997) 5 SCC 341] it was held as follows: (SCC p. 343, para 5)

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

Subsequently, in the case of *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*, [(2004) 1 SCC 64] wherein one of us (Dr. Arijit Pasayat) was a member the bench held that though the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath but the decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. The bench further held as under: (SCC p. 67, para 7)

"This precaution is necessary because child witnesses are amenable to tutoring

and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.""

Therefore, merely because Chaku is a child witness, her evidence cannot be brushed aside by the Court if found corroborated by other evidences.

14.7 Diwaliben's testimony may not be material in terms of her being an eye witness to the incident but her version is certainly the one which corroborates the sequence of events that are narrated both by Chaku and Kantaben. The credibility and consistency of the testimonies of Kantaben and Chaku have the ring of truthfulness when appreciated in conjunction with the testimony of Diwaliben. She was sitting at a place opposite to where the incident happened. Her evidence to the extent that she saw Mansukh when she turned around may have an iota of improvement or an exaggeration but she confirms the presence of both Kantaben and Chakuben at the scene of offence. From her testimony what is evident too is that Rasila was conscious when both Kantaben and Chaku were there. She corroborates by saying that Rasila told her that it was Mansukh who had inflicted the blows.

14.8 More importantly, all the three witnesses Kantaben, Chaku and Diwaliben confirm that Rasila specifically named Mansukh as the perpetrator of the crime. The defence had stressed on the contradictions of Rasila's state of consciousness by submitting that she was unconscious. Reliance is placed on the cross examination where Chaku says she was unconscious. When the proximity of the scene of offence is appreciated in context of the time frame Kantaben has suggested that it takes 3 to 4 minutes. Chaku, Diwaliben and Kantaben reached immediately.

15. At this stage it would be relevant to consider the argument of learned advocate for the respondent - accused that the witnesses are related witnesses and that no independent witness has been examined. In this regard it is pertinent to note that the incident happened at a place and time where the presence of the such witnesses was natural. It is not the case of the prosecution that the incident happened in a market or at a public place. The place of offence is a house of the complainant's relative and the defence does not dispute the scene of offence. The houses of the complainant and the relatives are nearby and therefore their presence at the scene of offence after hearing the shouts of the deceased was very natural.

15.1 Section 134 of the Evidence Act states that no particular number of witnesses shall in any case be required for the proof of any fact. What is required for proving of the fact, therefore, is not a particular number of witnesses to be examined in any case, but, the quality of the evidence. Examination of more

number of witnesses is not desirable, however, the quality of their evidence would surely matter in the appreciation of evidence.

15.2 The Apex Court in case of *Gulam Sarbar v. State of Bihar* [Now Jharkhand] reported in (2014) 3 SCC 401 has held that there is no requirement under the Law of Evidence that any particular number of witness is to be examined to prove/disprove a fact. In the words of the Bench, "...In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value proved by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence."

15.3 In case of *Rai Sandeep alias Deepu v. State* [NCT of Delhi] [(2012) 8 SCC 21], the Apex Court has considered as to who could be stated to be sterling witness whose version can be accepted by the Court without any corroboration.

"15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only

if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

16. Now if we compare the ocular evidence of these material witnesses with that of the Medical Officer, he in his evidence has clearly testified that Rasila was critical when brought. The time lapse from the infliction of the injury to the time when she was brought to the hospital was around half an hour as compared to the reaction time by Kantaben to reach along with Chaku. The veracity of the dying declaration gains significance and Mansukh was clearly named by the deceased. This is in addition to Kantaben saying that she had seen Mansukh running away.

16.1 The defence theory that the deceased Rasila could have sustained injuries as a result of fall from the injuries and had come in contact with a sharp instrument lying on the floor is also found to be unbelievable. Though the Medical Officer in the cross examination did opine to the possibility of such an injury being caused due to such a fall, it comes out specifically from his examination in chief that injury no. 1 could be caused as a result of the muddamal sword that was shown to him. Chaku in her cross examination also denies the suggestion that the injury was sustained because of a dharia or a spade lying on the floor which came in contact with the body of the deceased when she fell from the swing.

16.2 The ocular evidence in the shape of statements of the witnesses is completely corroborated from the medical evidence as PW.13 Dr. Dhirajlal Bhatt has described the location of injuries sustained by the deceased, their nature and dimensions fortifying the testimony of the witnesses. The reason behind the alleged act by the accused is also borne out from the testimonies of these witnesses.

17. When this ocular evidence is also seen in context of FSL report, the sword had blood marks which was of the group of the deceased. Even the sword has been discovered as is evident from the evidence of the discovery panchnama. Though Mr. Raval would contend that the panch witness has turned hostile and the panchnama could not be proved by placing reliance on the decision of this Court in the case of Bharatbhai Meghabhai Koli 2019(1) GLH 584, para 46, however, the panchnama has been proved through the testimony of the Investigating Officer PW 14 at Ex. 31 namely Keshubhai Bhuvu. In the judgement in the case of Bharatbhai Meghabhai Koli (supra), this Court in para 44 of the judgement while referring to the decision in the case of Syed Akbar vs.

State of Karnataka AIR 1979 SC 1848 specifically observed that it is a well settled principle of law that simply because a witness has turned hostile his statement is not to be discarded in toto and is not needed to be washed off the record.

18. Having viewed the incident in the conspectus of the evidence which has come on record of Kantaben and Chaku who though are related witnesses merely because of their relationship with the deceased, their testimonies cannot be discarded as a whole when there is a ring of truth in it. Merely because the entire sequence of event as to who came in first whether it was Diwaliben or Jamnaben or Champaben, that Kantaben was at the scene of the offence immediately on hearing Champaben and Rasilaben's screams and that Rasila at first point of time confided in her of she sustaining injuries at the hands of Mansukh, the embellishments and discrepancies in the evidence cannot discredit her version. It should be borne in mind that contradictions in matters of detail cannot be a ground to disbelieve a witness if his/her testimony is corroborated in material particulars. In our opinion, the contradictions sought to be pointed out by learned counsel for the respondent are not so material as to dilute the entire prosecution case. The testimony of a witness cannot be discarded in toto merely due to the presence of embellishments or exaggerations. When the broad facts constitute an offence and the integrity of the witnesses is above board, minor omissions, additions, alterations etc are not the material facts. In the case of Sunil Kumar Sambhudayal Gupta (Dr.) and Others vs. State of Maharashtra reported in (2010) 13 SCC 657, the Honourable Supreme Court pointed out that only material contradictions shall discredit the witnesses.

18.1 In the case of State (Delhi Administration) and Ors. vs. Laxman Kumar and Ors. Reported as AIR 1986 SC 250, referring to the contradictions in the deposition of witnesses, the Supreme Court had observed as below:-

"43.It is common human experience that different persons admittedly seeing an event, give varying accounts of the same. That is because the perceptiveness varies and a recount of the same incident is usually at variance to a considerable extent. Ordinarily, if several persons give the same account of an event, even with reference to minor details, the evidence is branded as parrot like and is considered to be the outcome of tutoring. Having read the evidence of these witnesses with great care, we are of the view that the same has the touch of intrinsic truth and the variations are within reasonable limits and the variations instead of providing the ground for rejection, add to the quality of being near to truth."

18.3 It is no doubt a well settled rule of prudence that the evidence of a related or interested witness should be examined meticulously, but once the Court is satisfied that his/her testimony is credible, then the said evidence can be relied upon even without corroboration. Further, unless it is proved that such a witness harbours some enmity against the accused or he wished to implicate him falsely, for all effects and purposes, he can be treated as an independent witness. In

Seeman alias Veeranam vs. State reported as (2005) 11 SCC 142, the Supreme Court has held as under:-

"4. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness.

Caution is to be applied by the Court while scrutinizing the evidence of the interested sole witness. The prosecution's non-production of one independent witness who has been named in the FIR by itself cannot be taken to be a circumstance to discredit the evidence of the interested witness and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement."

19. The learned trial judge was not right in wholly disbelieving the version when there was credibility in the testimony of Kantaben and Chaku. Both Kantaben and Chaku testified to the fact that Rasila had told her of being injured at the hands of Mansukh. Variations in context of Rasila's condition at the time of having sustained injuries merely because as suggested by Chaku that she was unconscious when appreciated in the context of the doctor suggests that Rasila had sustained serious injuries and with passage of time when she was shifted from the scene of offence to the hospital she could have fallen unconscious but looking to the time gap within which Kantaben and Chaku reached the place of offence, the veracity of the dying declaration Rasila before the mother and the sister cannot be brushed aside. Because they were relatives their act was natural. The Apex Court in plethora of judgements has distinguished between related witness and interested witness and has held that merely because the witnesses were close relatives then their presence at the scene of offence is natural.

20. Moreover, there is nothing on record so as to hold that the witnesses have shook from their testimonies in their cross- examination. Their testimonies stand duly corroborated in all material particulars. Further, there is sufficient medical and forensic evidence placed on record by the prosecution to bring home the guilt of the appellant. Moreover, there is no point in concluding that the witnesses would shield the real culprit and rope the accused.

21. In view of the above discussion, we are of the opinion that the testimonies of the witness account for the incident in a truthful manner and the circumstances leading to the death of the victim. There is no room for any doubt regarding the

veracity of the testimonies and the manner in which the victim was done to death by the accused. Thus, we are of the opinion that the trial court committed an error in acquitting the respondent - accused. The respondent - accused is required to be held guilty for the offence punishable under section 302 of Indian Penal Code and therefore we are inclined to allow this appeal filed by the State.

22. Accordingly, the judgment and order dated 30.12.1994 passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No. 100 of 1993 is hereby quashed and set aside. The respondent accused is convicted of the offence charged against him under Section 302 of Indian Penal Code. The Court does not find that any ground is made out for imposing the sentence less than the minimum prescribed and therefore having taken into consideration all the relevant facts, this Court deems it proper to award minimum sentence to the accused for the offence under section 302 of Indian Penal Code. As the judgment and order of acquittal dated 30.12.1994 passed by the learned Additional Sessions Judge, Bhavnagar in Sessions Case No. 100 of 1993 is quashed and set aside, the accused is directed to undergo rigorous imprisonment for life under Section 302 of Indian Penal Code. The period already undergone by the accused during trial be given set off as per Section 428 of the Code of Criminal Procedure. The accused is directed to surrender before the authorities within a period of eight weeks from the date of receipt of the writ of the order of this court. The appeal stands allowed accordingly.