

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRIMINAL APPEAL NO.763/2006**

Narbad Ahirwar and another.....**Appellants**
Versus
 The State of Madhya Pradesh..... **Respondent**

CRIMINAL APPEAL NO.899/2006

Ramma @ Rama and another.....appellants
Versus
 The State of Madhya Pradesh..... Respondent

CRIMINAL APPEAL NO.929/2006

Pancham.....appellant
Versus
 The State of Madhya Pradesh..... Respondent

CRIMINAL APPEAL NO.1144/2006

Veer Singh and four others.....appellants
Versus
 The State of Madhya Pradesh..... Respondent

CRIMINAL APPEAL NO.592/2009

Veer Singh and three ors.....appellants
Versus
 The State of Madhya Pradesh.....Respondent

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 For the appellants : Shri Aseem Dixit, Advocate assisted with Shri
 Shri S. D. Mishra, Advocate appeared as *Amicus
 Curiae (Criminal Appeal Nos.763/2006 &
 Criminal Appeal No.899/2006)*
 Shri A. Usmani, Advocate appeared as *Amicus
 Curiae(Criminal Appeal No.929/2006, Criminal
 Appeal No.1144/2006 & Criminal Appeal
 No.592/2009)*
 For the respondent/State : Shri Manhar Dixit, Panel Lawyer

Present:**HON'BLE MR. JUSTICE ATUL SREEDHARAN
HON'BLE MRS. JUSTICE SUNITA YADAV**

**J U D G M E N T
(25-10-2021)****Per : Sunita Yadav, J.**

The appellants have filed these appeals being aggrieved by the judgment and order dated 12.04.2006 passed in Sessions Trial No.394/2004 by the learned Additional Sessions Judge, Khurai Distt. Sagar (M.P.) whereby each appellant has been convicted for the offence punishable under Sections 302/149 of the Indian Penal Code (three counts) for committing the murder of Shribai, Ram Singh and Pratham Singh and sentenced to undergo life imprisonment and a fine of Rs.1,000/-(three counts), failing to pay fine, additional rigorous imprisonment for one year and also committing the offence under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 1 year and a fine of Rs.500/-, in default of payment of fine, to undergo further six months additional imprisonment.

2. As per letter dated 25.08.2021, the Office Of SHO, Khurai District Sagar and postmortem report dated 09/09/2019 it appears that appellant no.1 Narbad Ahirwar S/o Ganesh Ahirwar (Criminal Appeal No.763/2006) and appellant no.2 Kammod

Ahirwar S/o Munna Ahirwar (Criminal Appeal No.899/2006) have died during the pendency of appeals on 24.10.2014 and 09/9/2019 respectively. Therefore, these appeals so far it relate to appellant no.1 Narbad Ahirwar S/o Ganesh Ahirwar and appellant no.2 Kammod Ahirwar S/o Munna Ahirwar, stand abated.

3. The prosecution case in nutshell is that a civil case regarding the Patta of a piece of land was running between deceased Ram Singh and the accused persons/appellants at Tehsil Court, Khurai. Deceased Shribai was the mother and deceased Pratham Singh was the father of Ram Singh. On 30/06/2004 Ram Singh was returning home after attending the court hearing of the said civil case. The complainant Janki (PW-1) along with her family members was sitting in front of their house and waiting for Ram Singh to come home. At about 9:30 PM the complainant saw her brother coming towards their house. At that very moment accused Veer Singh came and hit Ram Singh with an axe on his neck. Co-accused Bhuvani Singh also gave a blow of axe over Ram Singh's chest. When Ram Singh raised an alarm, his parents Shribai and Pratham Singh rushed to rescue him. Immediately thereafter other accused persons armed with axes and lathis arrived and started hitting Shri Bai, Pratham Singh and Ram Singh. With the blows of lathis and axes injured

Ram Singh, Shri Bai and Pratham Singh fell down dead on the spot.

4. The further story of the prosecution is that one Kunjan Singh (PW-13) went to the Police Station Khurai and informed the SHO J.D. Bhosle (PW-16) about the incident. PW-16 J.D. Bhosle arrived at the place of occurrence and registered the Dehati Nalishi Exhibit-P/1 at the instance of the complainant Janki Bai who is the daughter of Shribai and Pratham Singh and sister of Ram Singh and thereafter registered the FIR Exhibit-P/9 on the basis of Dehati Nalishi. After conclusion of the investigation a charge sheet under Sections 147,148,149,302 of IPC was filed against the appellants.

5. The trial Court framed charges under Sections 148, 302, 302/149 of IPC. The appellants denied the charges and claimed to be tried. Trial was conducted and evidence were led by the parties. Trial Court convicted the appellants for the offences under Sections 302/149 (three counts) and 148 of the IPC and sentenced them as referred therefore.

6. The learned counsel for the appellants submitted that the trial Court grossly erred in holding the appellants guilty for committing the murder of Ram Singh, Shribai and Pratham Singh. Learned trial Court should have seen that the evidence of

prosecution witnesses Janki (PW-1), Savitri bai (PW-2), Onkar (PW-7) and Girwar (PW-10) ought not to have been believed because they are interested witnesses being the family members of the deceased persons. Investigation is faulty and the conviction based on such faulty investigation as well as evidence of interested witnesses is perverse and liable to be set aside. The learned counsel for the appellants further submitted that the trial Court has also erred in relying upon the testimony of Kunjan (PW-13) and Puran Singh (PW-14) as they are not the eye witnesses of the incident.

7. On the contrary, learned Panel Lawyer for the State submitted that the impugned judgment and order is just and proper. Learned trial Court has not erred in holding the appellants guilty for the offences as mentioned above because the evidence of eye witnesses Janki (PW-1), Savitri bai (PW-2), Onkar (PW-7) and Santosh (PW-8) is natural and trustworthy and is also supported by the medical evidence. He further submitted that the prosecution has successfully proved the motive behind the crime and therefore no error is committed by the trial court in convicting the appellants for the offences under Sections 148, 302/149 of the Indian Penal Code.

8. We have heard the counsels for the parties and perused the

record.

9. The first and foremost question for consideration in the case in hand is about the nature of death of deceased persons namely Ram Singh, Pratham Singh and Shri Bai. Postmortem report Exhibit-P/11, P/12 and P/13 coupled with the testimony of Dr. Yatnesh Tripathi indicate that the cause of death was of homicidal in nature because of the injuries sustained by the deceased persons as referred in the report. Now the question for consideration is the involvement of the appellants in murder of the deceased persons.

10. According to the prosecution story, complainant Janki (PW-1), (PW-2) Savitri Bai, (PW-7) Omkar, (PW-8) Santosh, (PW-10) Girwar Singh, (PW-13) Kunjan Singh and (PW-14) Puran Singh are the eye witnesses to the incident.

11. PW-1 Janki has deposed that Ram Singh was her brother, Pratham Singh was her father and Shribai was her mother. Savitri Bai (PW-2) is the wife of Ram Singh. Her father had a piece of land in village Giltora. Patta of the said land was allotted to accused Veer Singh and Hardas, and for the aforesaid land dispute, a case was pending in Khurai. About 8 months ago, his brother Ram Singh went to Khurai to attend the hearing of that case. She along with her parents and other family members was

sitting outside the house and waiting for Ram Singh to come back. At about 9 PM she saw her brother Ram Singh coming toward their house. At that moment Veer Singh inflicted a blow of an axe on the neck of Ram Singh upon which her brother cried for help. After that, all the accused persons namely Pancham, Ramma, Bhuvani, Hardas, Natthau, Narwar, Kammod, Santosh and Gorelal, armed with sticks and axes, arrived and ran behind Ram Singh. When her father and mother rushed towards Ram Singh to save him, all the accused persons started inflicting blows of axes and sticks upon them. Accused Veer Singh hit her mother on her neck with an axe. Her father also received injury on his chest by an axe blow. Her brother, mother and father fell on the ground and died after receiving such injuries. This witness has further stated that her sister-in-law Savitri Bai (PW-2), brothers Onkar (PW-7) and Santosh (PW-8), were also present at the time of incident and saw the entire incident. Girwar (PW-10) and Kunjan (PW-13) arrived on the spot to rescue her brother and parents and saw the whole incident.

12. PW-1 Janki has further deposed that the police arrived on the spot after half an hour and noted down her report and registered Dehati Merg Intimation Ex.P/2 as well as Merg Intimation (inquest report) Ex.P/10 regarding the death of her

brother and parents. Next day, the police prepared spot map Ex.P/3. Patwari has also prepared spot map as per Ex.P/4.

13. PW-16-J. D. Bhosle, the Investigating Officer, has deposed that on 30/06/2004 one Kunjan Singh came to the police station and informed that in village Giltora, Ram Singh, Shribai and Pratham Singh were assaulted by Gajju, Veer Singh, Bhuvani Singh, Narbad, Kammod and Raja etc with the axes. Ram Singh was lying injured on the spot. At about 22:10 PM the said information was registered in Roznamcha Sanha (daily diary) at No.1868. PW-16 J.D. Bhosle has further stated that he immediately informed the SDOP about the intimation he had received and recorded the same in Sanha No.1870. Thereafter he left for village Giltora along with the police force to verify the intimation received. Upon reaching the place of incident, he had registered Dehati Naleshi Ex.P/1 and Merg Intimation on the basis of the report of Janki (PW-1).

14. PW-5 Asharam Chourasiya has corroborated the statement of PW-16-J. D. Bhosle and deposed that on 01/07/2004 he was posted as Head Constable at Police Station Khurai. He received Dehati Naleshi Ex.P/1 and Dehati Merg Intimation Ex.P/2 and on the basis of it, First Information Report Ex.P/9 and Merg Intimation Ex.P/10 were registered.

15. Upon joint perusal of the statements of Janki Bai (PW-1), J D Bhosle (PW-16) and Santosh (PW-8), it is proved that soon after the incident, Merg Intimation, Dehati Nalishi and First Information Report were registered on the basis of the report of Janki Bai (PW-1).

16. After going through the Dehati Nalishi Ex.P/1 which was registered at about 11:30 PM on 30/06/2004 it reveals that the names of all the accused persons are mentioned on it. The time gap between the incident and registration of Dehati Nalishi (Ex.P/1) is too short to concoct a false story against the accused persons, especially when the complainant Janki Bai (PW-1) was just a 16 year old rustic villager at the time of incident. In Dehati Nalishi (Ex.P/1), the involvement of accused persons for inflicting injuries to Ram Singh, Shribai and Pratham Singh is mentioned and names of Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) as eye witnesses is also mentioned. Therefore, the presence of above witnesses on the spot at the time of incident cannot be disbelieved.

17. Savitri Bai (PW-2) has stated in her Court evidence that around 8 months ago, her husband Ram Singh went to Khurai to attend the case regarding Patta of land. She and other family members were at their home in Giltora and were waiting for Ram

Singh to come back. She further stated that her sister-in-law Janki Bai, mother-in-law Shribai, father-in-law Pratham Singh and brothers-in-law Onkar and Santosh were sitting in their courtyard. At about 9 PM, her husband Ram Singh arrived at the door of house shouting that Veer Singh had inflicted an axe on his shoulder. Upon which her mother-in-law reached near Ram Singh who was about 7-8 meter away from the house. Thereafter accused Hardas caught hold of her mother-in-law and accused Veer Singh inflicted an axe blow on her neck. After that, Veer Singh, Hardas, Gajju, Bhuvani, son-in-law of Bhuvani, Pancham, Narbad, Gorelal, Kammod and Rama started beating her husband Ram Singh with axes and sticks. This witness has further stated that when her father-in-law rushed to save Ram Singh all accused persons started hitting her husband Ram Singh, father-in-law (Pratham Singh) and mother-in-law (Shri Bai). Her husband and in-laws fell down dead on account of injuries.

18. Eye witnesses, Onkar (PW-7) and Santosh (PW-8) have also supported the case of the prosecution in their Court statements and deposed in the same line as Janki Bai (PW-1) and Savitri Bai (PW-2) stating that accused persons who were armed with axes and sticks, assaulted Ram Singh, Pratham Singh and Shri Bai who died on the spot.

19. During the cross-examination of above mentioned witnesses nothing significant had transpired that goes to the root of the prosecution story. They all are family members of the deceased Ram Singh, Pratham Singh and Shribai and were residing jointly in the house near the place on incident. Therefore, their presence in the scene of occurrence is normal. Involvement of all the accused persons is also mentioned in promptly registered Dehati Nalishi which corroborates their statements.

20. Puran Singh (PW-14) has not fully supported the case of the prosecution. According to this witness at about 8 PM when he was having dinner at his home, Girwar Singh came to his house and told that Ram Singh and his parents were being assaulted by Veer Singh, Gajju, Hardas and Bhuvani. On arrival at the place of incident, he saw that Ram Singh, Pratham Singh and Shribai were lying dead on the ground. He only saw Veer Singh, Hardas Singh, Bhuvani, Gajju and Narwar on the spot armed with sticks, axes and *ballams*. This witness has further stated that the incident took place near the house of Bhuvani. and the quarrel between the parties was due to some land dispute. He saw the injuries inflicted upon the bodies of dead persons.

21. Girwar Singh (PW-10) has deposed that around one year ago at about 8 PM he was standing near the place of occurrence.

At that moment Veer Singh, Hardas, Gajju who were wielding sticks and axes with them, started assaulting Ram Singh, Pratham Singh and Shribai. Veer Singh inflicted an axe blow on the neck of Ram Singh. Due to darkness, he could not recognize the other persons. Veer Singh, Hardas and Gajju also assaulted Pratham Singh and Shribai with sticks and axes. All the injured persons died on the spot.

22. Kunjan Singh (PW-13) who said to have informed the police about the incident has deposed that about one year ago at about 7:30 PM he was sleeping at his home. Upon hearing some noise he went to the place of occurrence and saw that Pradeep Singh and Gajju Singh were assaulting Ram Singh. Veer Singh was wielding an axe in his hand and Gajju was wielding some sharp cutting weapon which he could not recognize properly. Due to darkness, he could not see who are the other persons. This witness has further stated that parents of Ram Singh were already dead when he arrived. According to this witness there was a land dispute between the two parties.

23. Kunjan Singh (PW-13) was declared as hostile by the prosecution, but during his cross-examination, he did not support the case of the prosecution that along with Pradeep Singh, Veer Singh and Gajju Singh other accused persons were also present

on the spot and participated to commit the crime.

24. Learned counsel for the appellants have challenged the evidence of the prosecution witnesses Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) on the ground that they are interested witnesses being the family members of the deceased and independent witnesses PW-10 Girwar Singh, PW-13 Kunjan Singh and PW-14 Puran Singh, have not completely corroborated the prosecution version.

25. The above argument has no weight because ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested.

26. Learned counsel for the appellants have further argued that the statements of Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are not reliable as there are contradictions and omissions regarding the part played by each one of the appellant. Aforesaid argument again is not well-founded. Where a crowd of several assailants who are members of unlawful assembly proceed to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is

often not possible for witnesses to describe accurately the part played by each one of the assailant or to remember each and every blow delivered to victim. Eye witness namely Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are rustic villagers; therefore, some omissions and contradictions are normal considering the lapse of time, their state of trauma and shock while watching their brother/husband and parents being killed. The above witnesses were natural and most probable and their presence at the place of occurrence is expected being close relatives.

27. The medical evidence adduced by the prosecution has great corroborative value to assess the veracity of prosecution witnesses. In this case the prosecution has examined PW-6 Dr. Yatnesh Tripathi who is the writer of post-mortem report of deceased Shribai, Pratham Singh and Ram Singh to prove its case. This witness has stated that on 01/07/2004 he conducted the post-mortem of deceased Shribai and found following *ante-mortem* injuries on her body.

- “1. A large chop laceration wound present over right side of face and neck, directed downwards and medially size-10cm x 3cm x 5.5cm.
2. Extending from right side mastoid process, anteriorly and forwards and slightly upwards open with clean and sharp massive destruction of underlying tissue seen.
3. From right side mandible showing slice fracture over inferior border extensive bruising seen around the surrounding tissues vessels in neck on right side namely common carotid artery and

external & internal jugular veins are cut.

28. This witness has further stated that the cause of death of Shri Bai is shock due to external hemorrhage as a result of chop lacerated wound which appears to be caused by heavy weapon with sharp cutting edge. Injury is homicidal in nature and duration of death is within 12 to 24 hours from postmortem examination.

29. According to PW-6 Dr. Yatnesh Tripathi while conducting the post-mortem of deceased Pratham Singh following injuries are found on his body.

“1. Lacerated wound size 4.5cm x 1cm bone deep present over posterior aspect of scalp, appears to be caused by hard and blunt object underlying bone intact.

2. Lacerated wound size 5cm x 2 cm seen over from right side temporal region of scalp, bone deep, obliquely placed dried stains of blood is present underlying bone is showing hair line fracture in temporal bone caused by hard and blunt object.

3. A chop laceration wound sized 8cm x 3cm is present transversely over the anterior aspect of chest, over the lower sternum and from right side of chestwall, depth is about 9cm marked destructive of underlying soft tissues. Stain of blood present around the wound with vomiting material seen in wound. Trachea exposed, lacerated with right from branches filled with vomiting.

4. Trachea of body of sternum seen hole body cut fracture split of Rib No.3rd from right side seen dividing Rib to upper and lower portion.

5. Laceration of Ascending Aorta seen complete laceration.

6. Heart intact small amount of blood + in both chambers right lung chopped off. Wound is diverted posteriorly and slightly upward caused by hard and sharp and heavy object homicidal in nature.

30. This witness has further stated that the cause of death of Pratham Singh is due to shock as a result of injury to vital organs of body caused by hard and sharp and heavy object. Injury is homicidal in nature and duration of death is within 12 to 24 hours from time of postmortem examination.

31. According to this witness he has also conducted post-mortem of deceased Ram Singh and found the following injuries on his body.

“1. Chop lacerated wound seen over fronto parietal region of scalp on right side. Size 10cm x 1.5cm x 4cm up to the cranial cavity within brain matter exposed to exterior margins clean and sharp fracture seen over frontal and parietal bones of scalp. Direction of wounds is inferiorly and laterally.

2. Chop laceration wound present over occipital region from right side of scalp transversely placed size 8cm x 2cm x 4cm penetrating x cranial cavity, directed anteriorly and slightly inferiorly brain matter exposed to exterior, fracture seen over right from occipital bone scalp.

3. Chop lacerated wound present over post aspect of neck obliquely blade at lower neck level, size 6.5cm x 3cm x 3cm bone deep. Bone exposed, fracture seen over C5 and C6 pedicles with bone pieces hanging with soft tissue attaching spinal cord visible direction of wound is anteriorly and medially located over from left side of neck.

4. Lacerated wound size 5cm x 2cm x 3cm deep located over upper back 1cm below inferior angle of left scapula longitudinally placed soft tissue deep diverted forwards and laterally margin sharp.

5. Chop lacerated wound present over from left side of face size 4.5cm x 1.5cm x 2cm bone deep margin sharp extending from 1cm below medial canthus of left eye obliquely up to 2cm above and lateral to left corner of mouth. Bones exposed nasal cavity and maxillary sinus visible.

6. Lacerated wound 2cm x 1cm soft tissue deep present over from right forearm, lower 3rd, radial border. No fracture of underlying bone seen.

7. Incised wound 2cm x 1cm is present over left specular region

superficial skin deep.

8. Incised wound 1cm x 1cm skin deep present over post surface of shoulder.

32. The cause of death of Ram Singh is as a result of injury to vital organs of body which are caused by heavy weapon with sharp cutting edge. Injuries are homicidal in nature. Duration of death is within 12 to 24 hours from time of postmortem.

33. The above statement of Dr. Yatnesh Tripathi (PW-6) which remained unchallenged in his cross examination proves the statements of the eye witnesses (PW-1) Janki Bai, (PW-2) Savitri Bai, (PW-7) Onkar, (PW-8) Santosh being truthful that the injuries have been caused in the manner alleged by them and the deaths of deceased persons could have been caused by such injuries.

34. Learned counsel for the appellants further argued that the site plan prepared by the Investigating Officer does not indicate the places where accused persons and eye witnesses were standing and from where the eye witnesses saw the incident, therefore, the statements of eye witnesses cannot be relied upon. But the above argument is not tenable in the light of the principle laid down by Supreme Court in the case of **Tori Singh and Another Vs. State of Uttar Pradesh** reported in **AIR 1962 SC 399** in which it is held that the marking of the spot on the sketch-

map would not be admissible in view of the provisions of Section 162 of the Cr.P.C. The relevant para of the judgment is as below:

“7.....In the second place, the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eye-witness to the incident. He could only have put it there after taking the statements of the eye witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of S. 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the Police during investigation.....”

35. In the case of **Santa Singh Vs. The State of Punjab** as reported in **AIR 1956 SC 526** it was held as under:

The sketch-map in the present case has been prepared by the Sub-inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-inspector are inadmissible under S. 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map.”

36. The same view has been adopted in the case of **Jagdish Narain & Anr. Vs. State of U.P.** reported in **1996 (8) SCC 199.**

In the light of above we do not find that omission of giving the distance or even the place where the witnesses were standing in the site plan would create doubt on the presence of eye witnesses after they have been examined by the prosecution on oath in the Court.

37. Learned counsel for the appellants also argued that the incident occurred at about 9 to 9:30 in the night therefore it was not possible for the witnesses to see the assailants. The said argument does not carry any weight as PW-1 Janki at para 37 of her statement has specifically deposed that a bulb was burning in the house of one Harising Adiwasi near the place of occurrence and they saw the incident in the light of that bulb.

38. The learned counsel for the appellants further argued that the bulb is not shown in the site plan; therefore, the evidence of eye witnesses are not trustworthy that they saw the accused persons assaulting the deceased persons in the light of a bulb. But the above argument again has no substance as in the case of **State of UP Vs. Babu and Ors.** reported in **2003 (11) SCC 280**, the Supreme Court in paragraph 5 has observed that:

“A bare perusal of the High Court's Judgment goes to show that its approach was rather casual and no effort was made to analyse the evidence. It is to be noted that the High Court did not examine the evidence of PWs. 1 and 3 with the required care. Great emphasis was laid by the High Court on the fact that

in the site plan place where gaslight was found had not been indicated. The site plan is not substantive evidence. The High Court seems to have proceeded on the basis that omission to indicate the location gaslight in the site plan was fatal. *This Court in Shakti Patra and another v. State of West Bengal 1981CriLJ645* held that where prosecution witness testified that he had identified the accused in the light of the torch, held by him, the presence of torch would not be said to be not proved on the ground that there was no mention of the torch in the FIR or in the statement of the witness before the police, when there was testimony of other witnesses that when they reached the spot they found the torch burning. To similar effect is the conclusion in *Aher Pitha Vajshi and Ors. v. State of Gujarat 1983 CriLJ 1049*. It would be proper to take note of what was stated by this Court in *George and Ors. v. State of Kerala and Anr. 1998 CriLJ 2034* regarding statements contained in an inquest report. The statements contained in an inquest report, to the extent they relate to what the Investigation Officer saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162 of Code of Criminal Procedure, 1973 (in short 'Cr. P.C.'). The position is no different in case of site plan."

39. Learned counsels for the appellants have further argued that the prosecution story becomes doubtful as the FIR was not registered immediately after receiving the information about the incident. However, the above argument is not acceptable in the light of the statement of Investigating Officer, PW-16 J. D. Bhosle at para 12 where he has deposed that the informer described the state of victims being very critical and he wanted to provide medical aid to the victims at the earliest; therefore, he

considered it proper to leave the police station immediately after receiving the information. Moreover in the case of **Allarakha K. Mansuri Vs. State of Gujarat** reported in [(2002) 3 SCC 57:2002 SCC (Cri) 519], it is observed by the Supreme Court that defective investigation by itself cannot be a ground for disbelieving the eye witnesses and acquitting the accused if their testimony is found trustworthy. In this case, the evidence of eye witnesses is found to be trustworthy and natural, therefore, merely on the ground that there is some defect in investigation, does not create doubt over the statements of eye witnesses.

40. The learned Counsel for the appellants have further argued that since the prosecution has failed to produce the documents of the civil case allegedly pending between the parties; therefore, motive behind the crime is not proved. We don't agree with the above contention because this case is based on ocular evidence and the issue of motive becomes totally irrelevant when there is direct evidence of trustworthy witnesses regarding the commission of the crime. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. In **Shivji Genu Mohite Vs. State of Maharashtra, AIR 1973 SC 55**, the Supreme Court held that in a case where the prosecution is

not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy. In the instant case, the ocular evidence which is also corroborated by the medical evidence is found to be trustworthy; therefore, merely on the ground that the document relating to the civil case has not been produced, the statements of eyewitnesses can not be disbelieved.

41. Learned counsel for the appellants have further argued that the prosecution story is unreliable for the simple reason that one has to cross the jungle and fields to reach Giltora from Khurai and had the accused persons wanted to kill Ram Singh they would have killed him on way while coming back from Khurai to Giltora after attending the hearing in the civil matter. In the light of above submission when we see the prosecution evidence, it reveals that the appellants had a better plan to kill Ram Singh that is why Ram Singh was assaulted near the

houses of appellants in a lane. The appellants waited for the night to fall so they could easily hide in their houses while waiting for the deceased to come and after completing the task.

42. In the light of discussion above, the case of the prosecution is found to be proved beyond reasonable doubts. There is nothing on record to show that the appellants had received any grave or sudden provocation from the victims or that the appellants had lost their power of self control from any action of the victims. Therefore, the impugned judgment and order by which the appellants are convicted for the offences under Sections 148, 302/149 is found to be in accordance with facts and law.

43. Consequently, the appeals are found to be without substance, hence, **dismissed** and appellants' conviction and sentence under Sections 148, 302/149 of the Indian Penal Code is affirmed.

44. As per Jail report dated 28/03/2021 it appears that appellant Veer Singh has completed 24 years, 7 months and 2 days, appellant Gajju has completed 24 years, 4 months and 21 days, appellant Hardas has completed 24 years, 8 months and 28 days and appellant Santosh has completed 25 years and 1 month of imprisonment on the said date and they are still in jail.

45. The appellants Gorelal Ahirwar, Pancham, Ramma @ Rama and Bhuwani are on bail. Their bail bonds stand cancelled. They

are directed to surrender forth with before the trial court on **29/11/2021** and the trial Court shall send them to jail for serving out remaining part of their jail sentence, in accordance with law. The appellants who are on bail are directed to surrender forth with before the trial court on 29/11/2021 and the trial Court shall send them to jail for serving out remaining part of their jail sentence, in accordance with law. In case the appellants do not surrender on the aforesaid date, the trial Court shall take appropriate steps for securing their presence in compliance of this order.

46. However, we make it clear that dismissal of this appeal shall not come in the way of State Government to exercise its discretion for granting remission to the appellants as and when the State feels it just and proper.

47. Before parting with this case, we would like to record our appreciation to Shri Aseem Dixit, Shri S.D. Mishra, and Shri A. Usmani, Advocates, who have appeared as *Amicus Curiae* in these cases and have amply assisted this Court.

(Atul Sreedharan)
Judge

(Sunita Yadav)
Judge