A NANA KESHAV LAGAD

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1010 of 2008)

JULY 3, 2013

B

[CHANDRAMAULI KR. PRASAD AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 - s.302 r/w s.34 and s.324 r/w s.34 - C *Murder - Common intention - Dispute over land - Leading to assault with cycle chain and stone - Multiple injuries to complainant (PW4) and death of his father - Conviction of accused-appellants - Justification - Held: On facts, justified - The conviction was not based on the solitary statement of* D *PW4 alone - The evidence of PW4, read along with the version of PW5 and medical evidence, as well as the expert opinion, discloses the involvement of the appellants in the crime, apart from their common intention to eliminate the deceased, as well as PW4 - PW4 fortunately escaped though* E *he also suffered multiple injuries, which ultimately happened to be not serious - In the circumstances, it cannot be said that s.34 was not attracted -The medical evidence substantially establishes the intention of the accused to eliminate the deceased and the injuries sustained by the deceased* F *discloses the coordinated vengeance with which the assault was caused by the appellants, in order to ensure that the deceased did not survive.*

Witness - Appreciation of - Credibility - Murder case - G *Number of accused - In his oral evidence before the Court, PW4-complainant fully supported his version, barring the presence of two accused - PW4 admitted that those two accused were not present at the time of the incident and to that extent, his statement in the complaint was incorrect -*

H

Held: However, on that score, it cannot be held that the whole of the evidence of PW4 has to be rejected - Since the evidence of PW4 in every other respect fully supports his version in the complaint and which was also to a very great extent supported by the medical evidence and version of another eyewitness PW5, no reason to disbelieve his version in order to reject the case of the prosecution.

Witness - Panch witness - Appreciation - Held: Merely because the panch witness in question had tendered evidence in another case, it cannot be held that on that score alone his evidence should be rejected - Version of the said witness was truthfully and fully corroborated, and hence, was acceptable.

Evidence - Murder case - Defence plea with reference to bloodstains found on the clothes of the accused that the prosecution failed to satisfactorily establish the same through independent evidence - Held: Not tenable - It was for the accused-appellants to have explained as to how the clothes worn by them contained human blood - In s.313 questioning, no explanation was forthcoming from the appellants - Code of Criminal Proccedure, 1973 - s.313.

The accused party as well as the complainant party were residents of the same village; and owned and possessed agricultural lands adjacent to each other. There were disputes between them, as regards the use of way to their respective lands. It was alleged that on account of the said enmity, the accused persons attacked PW4-complainant and his father with cycle chain and stone, as a result of which the father of PW4 sustained bleeding injuries over his head and other parts of the body, and died. PW4 also was injured in the incident.

The trial court convicted the accused-appellants under Section 302 read with Section 34 and Section 324

A read with Section 34 of I.P.C, and sentenced them to undergo rigorous imprisonment for life. The conviction and sentence was affirmed by the High Court.

In the instant appeal, the appellants challenged their B conviction contending that the same was mainly based on the sole eye-witness, P.W.4 and having regard to the various discrepancies in his evidence, he could not have been present and witnessed the incident. The appellants contended that in the F.I.R., P.W.4 named six persons, C while in his oral evidence, he left out two of the names; and that the evidence of P.W.3, a panch witness for the recovery of cycle chain and stone, was not fully established. It was further contended that the trial Court without any supporting expert evidence concluded that D the shirt of two accused contained human blood, which was not true; and that Section 34 of I.P.C. was not attracted in the facts and circumstances of the case.

Dismissing the appeals, the Court

E HELD: 1. The injuries found on the body of the deceased were noted in the postmortem report Ex.35. There were as many as 19 injuries on the dead body. Apart from the 19 external injuries, Ex.35 has also referred to 4 internal injuries. P.W.4, the injured F eyewitness, suffered as many as 11 injuries, which have been noted by the very same doctor, P.W.6, in the injury certificate marked as Ex.37. The doctor in his evidence has stated that all the injuries on the body of the deceased were ante-mortem in nature; and also that the G injuries on the body of the deceased were caused by hard and blunt objects and that injuries Nos.1, 2, 3, 4 and 16 were possible due to assault by cycle chain, while the other injuries were possible due to pelting of stones. He specifically stated that injuries Nos.18, 19 and 20 were H possible due to assault by a stone, which was marked

before the Court. Ultimately, the doctor stated that the injuries were sufficient in the ordinary course to cause the death of a person. Insofar as the injuries found on the body of P.W.4 is concerned, P.W.6 doctor deposed that these injuries were caused by hard and blunt objects and cycle chain. [Paras 17, 18, 19, 20, 21] [618-C-D; 619-G-H; 620-B-C; 621-C, D-F]

2.1. P.W.4 narrated the enmity that was prevailing between his family, headed by his father, the deceased, and the accused in regard to the right of way to reach their agricultural land and as to what exactly transpired on 04.10.2002 at 7.00 a.m. The material facts stated by him were that, while in the morning when P.W.4 and his father wanted to reach their field for sowing maize seeds, they were obstructed by the first accused, abused and threatened not to use the way and therefore they returned back home. Thereafter, according to him, the deceased father went to attend the Court proceedings, while he had gone to the field along with his cattle. It was further stated that in the evening, he returned back by 5.15 p.m. and that through his neighbor, Bapu Dada Ghadage, his sister informed him about the factum of the appellants, along with other accused waiting at Kolgaon Lagadwadi road, with an intention to assault his father and that he reached the said place in a bicycle and before he could reach the place of occurrence, he noticed all the accused beating his father with cycle chain and stone, while simultaneously abusing him. He stated that he was able to notice the same, while he was about 200 meters away from the actual place of occurrence and that the appellants and the other accused turned towards him and started assaulting him also with cycle chain and stone and that only at the intervention of Raju, he could escape from the assault of the accused and reach his father, but found him having suffered serious bleeding injury on his head, as well as beating marks all over his body and

A was asking for water. Thereafter, according to him, he went back to his village in the bicycle and got a jeep belonging to Rajendra Ujagare, in whose vehicle he took his father to the rural hospital, where the doctor after examining his father, declared him dead. The said statement of the B complainant, PW4, contained relevant factors, which were necessary for the registration of the FIR against the accused. [Paras 23, 24] [621-G-H; 622-A-G]

2.2. In his oral evidence, before the Court, P.W.4 fully C supported his version, barring the presence of two of the accused, namely, Ganesh and Sandeep. P.W.4 fairly admitted that they were not present at the time of the incident and to that extent, his statement in the complaint was incorrect. However, on that score, it cannot be held D that the whole of the evidence of P.W.4 has to be rejected. Since the evidence of P.W.4 in every other respect fully supports his version in the complaint and which was also to a very great extent supported by the medical evidence and version of other eyewitness P.W.5, there is E no reason to disbelieve his version in order to reject the case of the prosecution. [Paras 25, 26] [623-A-B, E-F]

3. The submission relating to the evidence of P.W.3, the panch witness, who supported the recovery of cycle chain etc., covered by Exs.22, 23, 24, 25 and 26, was too F trivial in nature, the said submission being on the footing that he was a stock witness. The Trial Court also rejected the said submission by pointing out that merely because the said witness had tendered evidence in another case, it cannot be held that on that score alone his evidence G should be rejected. The Trial Court found that his version, as regards the recovery was truthfully and fully corroborated, was acceptable and there was no reason to reject the version of the said witness. The detailed reasoning adduced by the Trial Court and accepted by H the High Court, makes it clear that there is no good

ground to interfere with their ultimate conclusion. [Para 28] [623-H; 624-A-C] A

4. Another submission made on behalf of the appellants was with reference to the human blood found in the clothes worn by A1 and A4. It was contended that the prosecution failed to satisfactorily establish through any independent evidence about the bloodstains found in their clothes. However, in fact, as rightly noted by the Trial Court, it was for the appellants to have explained as to how the clothes worn by them contained human blood. In Section 313 questioning, no explanation was forthcoming from the appellants. [Paras 29, 30] [624-D-E; 625-G-H] B C

5. In the case at hand, the conviction was not based on the solitary statement of P.W.4 alone, but was also supported by other eyewitness viz., P.W.5, whose evidence merited acceptance on par with the evidence of P.W.4, apart from the medical evidence fully supporting the case of the prosecution. The evidence of P.W.4, read along with the version of P.W.5 and the other medical evidence, as well as the expert opinion, discloses the involvement of the appellants in the crime, apart from their common intention to eliminate the deceased, as well as P.W.4. P.W.4 fortunately escaped though he also suffered multiple injuries, which ultimately happened to be not serious. In such circumstances, it cannot be said that Section 34 was not attracted to the case on hand. The medical evidence substantially establishes the intention of the accused to eliminate the deceased and the injuries sustained by the deceased discloses the coordinated vengeance with which the assault was caused by the appellants, in order to ensure that the deceased did not survive. [Paras 31, 32 and 33] [626-B-C, D-G] D E F G

Vadivelu Thevar vs. The State of Madras **AIR 1957 SC** H

A **614: 1957 SCR 981;** *Abdul Sayeed vs. State of Madhya Pradesh* **(2010) 10 SCC 259: 2010 (13) SCR 311 - held inapplicable.**

Case Law Reference:

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|---|---|---|
| **1957 SCR 981** | **held inapplicable** | **Paras 12, 31** |
| **2010 (13) SCR 311** | **held inapplicable** | **Para 12 and 32** |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1010 of 2008.

C

From the Judgment & Order dated 16.01.2006 of the High Court of Bombay at Aurangabad in Criminal Appeal No. 611 of 2003.

WITH

D

Criminal Appeal No. 1011 of 2008.

Sushil Karanjkar, M.Y. Deshmukh, Nikilesh Kumar, Shrikand R. Deshmukh, Rameshwar Prasad Goyal for the Appellant.

E

Shankar Chillarge, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. These F two appeals are against the common judgment of the High Court of Bombay at Aurangabad, in Cri.A.No.611 of 2003, dated 16.01.2006.

2. The appellant in Crl.A.No.1010 of 2008 is A4 and the G appellants in Crl.A.No.1011 of 2008 are A2 and A3. In all, four accused were prosecuted and convicted by the learned Sessions Judge. The accused preferred an appeal before the High Court against the conviction and sentence imposed on them by the learned Sessions Judge in Sessions Case No.191 H of 2002, by its judgment dated 21.08.2003.

3. All the accused were convicted for offences under Section 302 read with Section 34 and Section 324 read with Section 34 of I.P.C. They were sentenced to undergo rigorous imprisonment for life, apart from payment of fine of Rs.500/- and in default to undergo further rigorous imprisonment for six months for the offence under Section 302 read with Section 34 of I.P.C. and one year rigorous imprisonment, along with fine of Rs.300/- and in default to undergo one month rigorous imprisonment for the offence under Section 324 read with Section 34 of I.P.C. The appellants stated to have paid the fine amount on 21.08.2003 itself. The High Court having upheld the conviction and sentence imposed against the appellants, they have come forward with these appeals. The first accused-Keshav died and the remaining accused are before us.

4. As the genesis of the case of the prosecution goes, all the accused persons, the complainant Santosh Ramchandra Lagad, who is the son of the deceased Ramachandra Lagad, were all residents of the same village, Lagadwadi. They owned and possessed agricultural lands adjacent to each other. There were disputes, as regards the use of way to their respective lands. The deceased Ramachandra Lagad stated to have filed a suit against the appellants at Shrigonda Court for injunction. They also approached other authorities with regard to protection of their right of way to go to their agricultural lands. It appears that at one stage they resorted to hunger strike for the redressal of their grievances. At that time, the police interfered and the accused were directed to allow the deceased and his family members, including the complainant to use the old way as an access to their land, till a decision was arrived at in the Civil Court.

5. It was alleged that in spite of such direction by the police, there was violation at the instance of the accused persons. On 04.10.2002, at about 7.00 a.m., when the complainant P.W.4 and his deceased father, were proceeding towards their field for sowing maize seeds, the first accused

A stated to have obstructed them from proceeding on the disputed way. He also stated to have abused and threatened the complainant and his deceased father. P.W.4 and his father returned back to their house. Thereafter, the deceased went to Shrigonda Court to attend the hearing of the civil case, while B the complainant P.W.4 went out looking after his cattle.

6. At about 5.15 p.m., on the same day, after the complainant P.W.4 returned to his house after watering onion crops, his sister came to know from one Bapu Dada Ghadage C that the accused persons were waiting at Kolgaon Lagadwadi road for her father, Ramachandra Lagad, to return to his village with an intention to assault him. The complainant was therefore, asked to rush to the spot immediately. The complainant P.W.4, stated to have reached the spot in a bicycle and that according D to him, when he was about to reach the spot i.e., from a distance of about 200 meters from the spot, he saw all the four accused persons along with one Ganesh Sambhaji Lagad and Sandeep Sambhaji Lagad, beating his father Ramachandra Lagad, while at the same time abusing him. It is also claimed E that P.W.4 himself along with his deceased father, Ramachandra Lagad, was attacked with cycle chain and stone. The accused also stated to have threatened the complainant and his father to face dire consequences if they continue to use the disputed pathway. At that time, one Raju came to the rescue F of P.W.4 in his motorcycle, who interfered and separated the complainant from the clutches of the accused. The complainant noted his father having sustained bleeding injuries over his head and other parts of the body, returned back to his village to fetch a jeep taxi, in which he took his father to Shrigonda police G station. As directed by the police, P.W.4 took his father to the rural hospital where, the doctors declared him dead. P.W.4 was also examined by the doctor who gave him first-aid treatment and thereafter, P.W.4 lodged a complaint with the police.

7. The complaint was registered as CR.No.249 of 2002, H against the accused for the offences punishable under Sections

302, 324, 504, 506, 143, 147, 148, 149 of I.P.C., as well as Section 37(a) read with Section 135 of the Bombay Police Act. A

8. P.W.16, A.P.I. Rajendra Narhari Padwal conducted the inquest, visited the spot of the incident, collected his blood stained shirt and soil, recorded the statement of the witnesses and arrested the accused. Based on the admissible portion of the confession statement made by the appellants, cycle chain and stones were seized in the presence of panch witnesses. The clothes of the accused Keshav, which contained blood stains, the clothes of the deceased and the blood mixed soil collected from the spot, the weapons used for the crime and the blood sample, along with the clothes of the deceased were sent for chemical analysis. Charge-sheet came to be filed before the learned Judicial Magistrate First Class, Shrigonda, who committed the case to the Sessions Court. B C D

9. Before the Sessions Court, 16 witnesses were examined in support of the prosecution. P.W.1 and P.W.2 who were panch witnesses, turned hostile. P.W.3 was another panch witness to support the recovery of cycle chain in Exs.22, 23, 24, 25 and 26. P.W.4 is the complainant who is the son of the deceased and injured eyewitness. P.W.5 is another eye-witness. P.W.6 was Dr. Namdeo Sopan Shinde, who conducted the postmortem of the deceased, and who also treated P.W.4. Ex.35 is the postmortem certificate and Ex.37 is the injury certificate of P.W.4. P.W.7 is another panch witness through whom Exs.38 and 39 were marked. P.W.13 is the mother of the complainant. P.W.16 is another witness to prove the inquest report Ex.50 and arrest panchanama Exs.54, 55, 56, 57, 58, 61 and 62. E F G

10. The Trial Court on a detailed analysis of the evidence, as well as the submissions made on behalf of the appellants and other accused, found all the accused guilty of the offence falling under Section 302 read with Section 34 of I.P.C. and for offence punishable under Section 324 read with Section 34 of H

A I.P.C. The High Court having confirmed the conviction and sentence, the appellants are before us.

11. We heard Mr. Sushil Karanjkar, learned counsel for the appellants. We also heard Mr. Shankar Chillarage, learned
B counsel for the respondent State.

12. Mr. Sushil Karanjkar, learned counsel for the appellants in his submissions contended, after making reference to the F.I.R., that in the case on hand the conviction was mainly based on the sole eye-witness, P.W.4 and that having regard to the
C various discrepancies in his evidence, he could not have been present and witnessed the incident. The learned counsel contended that in the F.I.R., P.W.4 did not make any reference as to which weapon was used by which accused and that he named six persons, while in his oral evidence, he left out two
D of the names. The learned counsel for the appellants contended that the injuries on the deceased, as well as P.W.4 and the weapons used, do not correlate with each other. The learned counsel by referring to the evidence of P.W.3, who was a panch witness for the recovery of cycle chain and stone, contended
E that the same was not fully established. The learned counsel pointed out that the Trial Court without any supporting expert evidence concluded that the shirt of the appellant in Crl.A.No.1010 of 2008 and the first accused in Crl.A.No.1011 of 2008, contained human blood, which was not true. It was also
F contended that the whole conviction was based on the evidence of P.W.4, as an injured eyewitness and that the version of the said witnesses was not correlated by any other legally acceptable evidence. Lastly, it was contended that Section 34 of I.P.C. was not attracted and, therefore, on that ground as well
G the conviction was liable to be set aside. The learned counsel relied upon *Vadivelu Thevar vs. The State of Madras* - AIR 1957 SC 614 and *Abdul Sayeed vs. State of Madhya Pradesh* - (2010) 10 SCC 259, in support of his submissions.

H 13. As against the above submissions, the learned counsel

for the State contended that the case squarely fell under Section 300 thirdly, which is duly established by the evidence of the doctor who had made a categorical statement that the injuries caused the death. The learned counsel for the State further contended that apart from the evidence of P.W.4, the evidence of P.W.5 who was another eyewitness, supported the case of the prosecution, apart from the medical evidence and the proof of the weapons used by the accused. The learned counsel therefore contended that the conviction and sentence imposed on the appellants was fully justified and the judgment impugned therefore, does not call for interference.

14. Having heard the learned counsel for the appellants, as well as the learned counsel for the State and having perused the impugned judgment of the High Court, as well as that of the Trial Court and the other material papers placed on record, we find force in the submissions of the learned counsel for the State.

15. When we consider the submissions of the learned counsel for the appellants, the sole contention was that the only evidence of P.W.4, who was examined as an eyewitness to the incident was closely related to the deceased and since there were so many contradictions in his version, in the absence of proper corroboration by any other witnesses or other evidence, the Trial Court as well as the High Court ought not to have relied upon his sole testimony for the purpose of convicting the appellants.

16. We considered the said submission and we find that the said submission does not merit acceptance. We can briefly summarize the case of the prosecution based on the evidence placed before the Trial Court. We must state that the Trial Court has considered the submissions made on behalf of the appellants very minutely and has given justifiable reasons with supporting factors in order to reject each and every one of the submissions made on behalf of the appellants. We also find

A that the Trial Court, as well as the High Court have not only relied upon the sole testimony of P.W.4, but upon very many other supporting materials such as oral, documentary, as well as material objects to support its conclusions. It has also made a detailed reference to the medical evidence and has found that
B the medical evidence fully supported the ocular evidence and therefore, the ultimate conclusion of finding the appellants guilty of the offence, was fully established.

17. In order to appreciate the submissions, as well as the
C conclusions arrived at by the Trial Court, in the foremost, it will be appropriate to refer to the injuries sustained by the deceased, as well as the complainant. The injuries found on the body of the deceased were noted in the postmortem report Ex.35. There were as many as 19 injuries on the dead body of
D Ramachandra Lagad viz.,

"(1) Whole of scapular, inter-scapular and intra-scapular region with linear abrasion like left scapula and 2 in numbers of size 10 cm x 1 cm of 7 cm x 1 cm.

E *(i) Left scapular region 3 in numbers each 12 cm x 10 cm*

(ii) Inter-scapular region 2 in numbers of size 10 cm x 1 cm each.

F *(iii) Intra-scapular region 2 in no. each of 15 cm x 1 cm.*

(2) Contusion on right lumber region of back extending lower region on back with abrasion on surface.

G *(3) Contusion on left lumber region brownish with abrasion on surface.*

(4) Contusion on upper part of left thigh posteriorally 10 cm x ½ cm with abrasion on surface.

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(5) Lenear abrasion on right buttock 4 cm x 2 cm. A

(6) Abrasion on post surface of right thigh 4 in numbers each of 1 cm x 1 cm.

(7) Abrasion on post surface of left knee 5 cm x 1 cm.

B

(8) C.L.W. on upper part of occiput 2 cm x ½ cm by bone deep oozing was present.

(9) Contusion on lateral region of right thigh 7 in no. each of 1 cm x ½ cm

C

(10) C.L.W. on right thigh laterally lower part 2 cm x ½ cm x ½ cm clot present.

(11) Contused abrasion on right calf 5 cm x 1 cm.

(12) Abrasion on post region of right elbow 5 in no. each of 1 cm x 1 cm. D

(13) Abrasion below left knee 2 cm x 1 cm.

(14) Contusion on right arm laterally 1 ½ cm x ½ cm. E

(15) Abrasion on scrotum right side 2 cm x 2 cm.

(16) Contused abrasion right shoulder 6 cm and 1 cm.

(17) Abrasion shin of tibia right leg 16 cm x 1 cm with abrasions on surface. F

(18) Abrasion on upper part of right eye-brow 2 cm x ½ cm.

(19) Abrasion on lateral region of left elbow 3 cm x 1 cm." G

Apart from the 19 external injuries, Ex.35 has also referred to 4 internal injuries, which are as under:

"(1) Fracture of tibio fibula on upper part of left ankle joint.

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A *(2) Fracture of right mandibular angle and left mandibular angle.*

(3) Fracture of right 3rd, 4th and 5th rib anteriorly.

(4) Fracture of left 3rd, 4th, 5th rib anteriorly."

B

18. As far as P.W.4, the injured eyewitness is concerned, he has suffered as many as 11 injuries, which have been noted by the very same doctor, P.W.6, in the injury certificate marked as Ex.37. The injuries were as under :

C *"(1) Contused abrasion on posterior region of left forearm 4 in No. each of 1 ½ cm x 1 cm redness present.*

(2) Contusion on lateral region of left arm 8 cm x 1 cm chain mark seen.

D *(3) Contusion on posterior region of left shoulder extending on back 11 cm x 1 cm redness was present. Chain mark was also present.*

(4) Contusion on anterior region of right shoulder near
E *axilla 3 cm x ½ cm and swelling was present.*

(5) Contused abrasion on lateral region of chest lower part left side 10 cm x 1 cm bleeding was present.

F *(6) Contused abrasion on left suprascapular region 5 in No. each of 12 cm x 1 cm chain mark seen.*

(7) Contusion on lumber region of back right side extending on left lumber region 24 cm x 1 cm. Chain mark present.

G *(8) Contusion abrasion on medial region of right scapula extending obliquely to intrascapular and supra scapular region 2 in no. each of size 20 cm x 1 cm redness was present. Chain mark present.*

H

(9) Contused abrasion on right lumber region vertical 6 cm x 1 cm. chain mark present.

(10) Contused abrasion right scapular 2 in no. each of 2 ½ cm and 2 cm and bleeding was present.

(11) Contusion on middle of right arm posteriorly 6 cm x 1 cm swelling present."

19. The doctor in his evidence has stated that all the injuries on the body of the deceased were ante-mortem in nature; that there was intra cerebral hemorrhage and that the cause of death was shock due to hemorrhage in intra cerebral region and thoracic cavity due to injury through thoracic and head.

20. He also stated that the injuries on the body of the deceased were caused by hard and blunt objects and that injuries Nos.1, 2, 3, 4 and 16 were possible due to assault by cycle chain, while the other injuries were possible due to pelting of stones. He specifically stated that injuries Nos.18, 19 and 20 were possible due to assault by a stone, which was marked before the Court. Ultimately, the doctor stated that the injuries were sufficient in the ordinary course to cause the death of a person.

21. In so far as the injuries found on the body of P.W.4 is concerned, P.W.6 doctor deposed that these injuries were caused by hard and blunt objects and cycle chain.

22. On behalf of the appellants, it was contended that the evidence of P.W.4, does not merit any credence, in as much as there were lot of discrepancies as between his complaint dated 04.10.2002 and his evidence submitted before the Court.

23. To consider the said submission, when we examine the statement found in the complaint of P.W.4, we find that he has narrated the enmity that was prevailing between his family, headed by his father, the deceased, and the accused in regard

A to the right of way to reach their agricultural land and as to what exactly transpired on 04.10.2002 at 7.00 a.m. The material facts stated by him were that, while in the morning when P.W.4 and his father wanted to reach their field for sowing maize seeds, they were obstructed by the first accused, abused and
B threatened not to use the way and therefore they returned back home. Thereafter, according to him, the deceased father went to attend the Court proceedings, while he had gone to the field along with his cattle. It was further stated that in the evening, he returned back by 5.15 p.m. and that through his neighbor,
C Bapu Dada Ghadage, his sister informed him about the factum of the appellants, along with other accused waiting at Kolgaon Lagadwadi road, with an intention to assault his father and that he reached the said place in a bicycle and before he could reach the place of occurrence, he noticed all the accused
D beating his father with cycle chain and stone, while simultaneously abusing him. He stated that he was able to notice the same, while he was about 200 meters away from the actual place of occurrence and that the appellants and the other accused turned towards him and started assaulting him
E also with cycle chain and stone and that only at the intervention of Raju, he could escape from the assault of the accused and reach his father, but found him having suffered serious bleeding injury on his head, as well as beating marks all over his body and was asking for water. Thereafter, according to him, he went
F back to his village in the bicycle and got a jeep belonging to Rajendra Ujagare, in whose vehicle he took his father to the rural hospital, where the doctor after examining his father, declared him dead.

G 24. It is relevant to note that the said statement of the complainant, P.W.4, contained relevant factors, which were necessary for the registration of the F.I.R. against the accused.

25. With this when we examine his oral evidence before the Court, it was pointed out that while in the complaint he had

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named six persons as the assaulting party of his father and himself, per contra, in the oral evidence, he had only referred to four of them. In his oral evidence, before the Court, P.W.4 fully supported his version, barring the presence of two of the accused, namely, Ganesh and Sandeep. P.W.4 fairly admitted that they were not present at the time of the incident and to that extent, his statement in the complaint was incorrect. A B

26. Though, on behalf of the appellants by making reference to certain insignificant statements contained in the evidence of P.W.4, vis-à-vis the complaint, it was sought to be contended that the whole of the evidence of P.W.4 should be eschewed from consideration, we find there is absolutely no substance in the said submission. On a detailed reading of the complaint, as well as the evidence of P.W.4, we find that every one of the statements other than the reference to Ganesh and Sandeep, were fully supported by P.W.4 without any deviation. Even his statement before the Court about Ganesh and Sandeep, should be accepted as a very fair submission, as he did not want to unnecessarily rope in persons who were not involved in the crime. On that score, it cannot be held that the whole of the evidence of P.W.4 has to be rejected. Since the evidence of P.W.4 in every other respect fully supports his version in the complaint and which was also to a very great extent supported by the medical evidence and version of other eyewitness P.W.5, there is no reason to disbelieve his version in order to reject the case of the prosecution. C D E F

27. In this respect, when we look into the judgment of the Trial Court, we find that the Trial Court has analyzed every one of the submissions relating to the evidence of P.W.4 in detail and has found no substance in the contention made on behalf of the appellants. Therefore, based on the said submissions, regarding the evidence of P.W.4, we do not find any scope to interfere with the judgment impugned in these appeals. G

28. The other submissions related to the evidence of H

A P.W.3, the panch witness, who supported the recovery of cycle chain etc., covered by Exs.22, 23, 24, 25 and 26, were too trivial in nature, as we find that the submission was on the footing that he was a stock witness. The Trial Court has also rejected the said submission by pointing out that merely because the said B witness had tendered evidence in another case, it cannot be held that on that score alone his evidence should be rejected. The Trial Court has found that when his version, as regards the recovery was truthfully and fully corroborated, was acceptable and there was no reason to reject the version of the said C witness. Having perused the detailed reasoning adduced by the Trial Court and accepted by the High Court, we do not find any good ground to interfere with the ultimate conclusion on that ground.

D 29. The other submission made on behalf of the appellants was with reference to the human blood found in the clothes worn by A1 and A4. It was contended that the prosecution failed to satisfactorily establish through any independent evidence about the bloodstains found in the clothes of A1, as well as the E appellant in Crl.A.No.1010 of 2008. In that respect instead of reiterating the details, it will be sufficient to refer to the conclusion reached by the Trial Court, while dealing with the said contention, which are found in paragraph 63. The relevant part of it reads as under:

F *"63. In the present case, the evidence of API Padwal in this respect is not seriously challenged or shattered. After all the accused are arrested under Panchanama and at the time of arrest panchanama of accused Nana blood stained clothes were seized. It is not in any way contended* G *or for that matter even whispered that I.O.API Padwal was having any rancor against the accused or he was motivated or interested in one sided investigation with the sole object of implicating the accused. As a matter of fact, the investigation in this case appears to be totally* H *impartial. When it was transpired that two accused by*

name Sandeep and Ganesh, the juvenile delinquent have not taken part in the assault, their names were deleted from the prosecution case by filing report U/s 169 of Cr.P.C. Therefore, here the investigation as proceeded impartially and it is also not even for the sake of it, is suggested to API Padwal that, no such blood stained clothes were recovered from the accused Nana, moreover, as per the settled position of law, there is no presumption in law that a Police Officer acts dishonestly and his evidence cannot be acted upon. Therefore, here the evidence of API Padwal is sufficient to prove the recovery of the blood stained clothes of the accused. His evidence also goes to prove that, all these articles blood stained clothes etc., were sent to C.A. and as per the C.A. report Exh.61 the blood was detected on the clothes of the accused and deceased and this blood was human blood.....In the present case, though the C.A. report, Exh.61 shows that, the said human blood was of group "B", C.A. report Exh.62 about the blood sample of the accused states that, the blood group could not be ascertained as the results were inconclusive, moreover, there is no C.A. of the blood sample of the deceased to prove that, he was having blood group "B". However, the fact remains that, the stains of human blood were found on the clothes of accused Nana and he has not explained how this blood stains were on his clothes and therefore, as observed in this authority, it becomes one more highly incriminating circumstance against the accused."

30. In fact, as rightly noted by the Trial Court, it was for the appellants to have explained as to how the clothes worn by them contained human blood. In Section 313 questioning, no explanation was forthcoming from the appellants. In these circumstances, the said contention also does not merit any consideration.

A 31. The learned counsel for the appellants placed reliance upon Vadivelu Thevar (supra), to support the contention that since the conviction was based on the solitary evidence of P.W.4, without proper corroboration, the same cannot be sustained. As we have found that it was not based on the B solitary statement of P.W.4 alone, but was also supported by other eyewitness viz., P.W.5, whose evidence merited acceptance on par with the evidence of P.W.4, apart from the medical evidence fully supporting the case of the prosecution, the said decision can have no application to the facts of this C case.

32. As far as the reliance placed on the decision in *Abdul Sayeed* (supra), we find that the said decision does not support the case of the appellants, since in the case on hand, the evidence of P.W.4, read along with the version of P.W.5 and D the other medical evidence, as well as the expert opinion, discloses the involvement of the appellants in the crime, apart from their common intention to eliminate the deceased, as well as P.W.4. P.W.4 fortunately escaped though he also suffered multiple injuries, which ultimately happened to be not serious. E In such circumstances, we do not find any substance in the said submission to hold that Section 34 was not attracted to the case on hand. Therefore, the reliance placed upon the said decision also does not help the appellants.

F 33. As rightly contended by the learned counsel for the State, the medical evidence substantially establishes the intention of the accused to eliminate the deceased and the injuries sustained by the deceased discloses the coordinated vengeance with which the assault was caused by the appellants, G in order to ensure that the deceased did not survive.

34. Having regard to our above conclusion, we do not find any merit in these appeals. These appeals fail and the same are dismissed.

H B.B.B. Appeals dismissed.