

Suresh and Another Vs. the State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : Jan-28-2014

Judge : S.S. Shinde & V.M. Deshpande

Appeal No. : Criminal Appeal Nos. 304 of 2011, 654 of 2011 & 655 of 2011

Appellant : Suresh and Another

Respondent : The State of Maharashtra and Others

Judgement :

S.S. Shinde, J.

All these criminal appeals are arising out of the impugned judgment and order dated 08/06/2010 passed by the Sessions Judge, Parbhani in Sessions Trial No. 95 of 2010.

2. Criminal Appeal No. 304 of 2011 is filed by the accused (appellant herein) Suresh s/o Ghanshyam Chopade praying therein, to quash and set aside order of conviction for the offence punishable under section 304(II) of the Indian Penal Code. Criminal Appeal Nos. 654 of 2011 and 655 of 2011 are filed by the State thereby praying for enhancement of the sentence and for setting aside the order of acquittal of the accused and to hold that, the accused is guilty for the offence charged and he be punished accordingly.

3. The facts of the prosecution case, in brief, are as under:

Complainant Shankarrao Salpe is an agriculturist by occupation. He is 40 years of age. He had 4 children. He has two daughters viz. Bhakti and Shraddha and son Vivek and deceased Shashikant was his second son. His house is situated at Parbhani in front of Bilal Masjid and R.K. Hotel on Jijamata road. The incident occurred on 22/07/2009. Complainant Shankarrao was suffering from cold, he was taking rest at his home. At about 830 p.m. his son deceased Shashikant left home for attending M.S. CIT class. Accused Suresh Ghanshyam Chopade is neighbour of complainant. His house is situated on the other side of the road at some distance away on western side of house of complainant. Deceased Shashikant was on bicycle. When he reached in front of house of accused, somebody threw waste water, which fell on the person of Shashikant. Altercation took place on that ground between accused and deceased. It was overheard by the complainant and his family members. He himself, his wife P.W2 and daughter PW3 hurriedly opened the door and proceeded to see what was going on. When complainant reached in front of house of accused he noticed that accused was armed with a piece of wire and he was about to inflict blow of the wire on deceased. Complainant prevented him and inquired with the deceased what had happened. It is stated that, deceased told him that waste water was thrown on his person by the accused and when he was questioned why waste water was thrown by him, he had started assaulting him. When this talk between deceased and complainant was going on, accused pushed aside complainant and had entered in his house. Within a fraction of minute accused returned with a 'Gupti' and pierced it in the stomach of the deceased. The deceased sustained bleeding injury. He fell on the ground. One auto rickshaw was hired by the complainant and his wife. They took the deceased to civil hospital, Parbhani. Immediately after examination of the deceased, doctor declared him dead. PHC on duty in the Police Chowky situated in the civil hospital prepared inquest panchnama. It is stated that, the incident was witnessed by Shafi Saudagar, Ritesh Deshmukh, Khadir Bhai, Baburao Jadhav, Balasaheb Pandalwar, Prasad Bankar and others. It is stated that, a complaint in respect of this incident was lodged by Complainant with Nanalpeth Police at about 9.40 p.m., C.R. No.51/2009 was registered by the police for the offence punishable under Section 302 of Indian Penal Code. Since it was night time, scene of offence panchnama could not be drawn by them. Dead body was handed over

to the doctors in civil hospital for performing autopsy. Dr. Chevale performed autopsy between 10.20 to 11.20 p.m. Dead body was handed over to the complainant and it was cremated at night.

It had rained at night in between 22/07/2009 and 23/07/2009. When scene of offence panchnama was drawn on the next day in the morning between 8.30 a.m. to 9.30 a.m. nothing was found by Investigating Officers at the spot of incident. The accused was arrested on 24/07/2009 at about 11.00 p.m.

Subsequently, complainant realized that, the thing that was pierced by the accused in the stomach of deceased was a 'screwdriver' and not 'Gupti'. His supplementary statement was recorded by the police. Clothes of deceased were seized by the police under seizure panchnama. When the accused was in police custody he expressed his desire to produce 'screwdriver' and his clothes before the police. His memorandum was recorded in the presence of panch witnesses. In consequence of his memorandum, accused produced a 'screwdriver' and his clothes before the police which were seized by them under seizure panchnama. All articles seized during the course of investigation were sent to C.A. Aurangabad for analysis. Reports were received. Statements of material witnesses were recorded. After completion of investigation charge sheet was filed by the police in the Court of Chief Judicial Magistrate. By order dated 16/10/2010 the learned Chief Judicial Magistrate committed case to the Court of Sessions as offence punishable under Section 302 of Indian Penal Code is exclusively triable by the Sessions Court.

4. The learned Sessions Judge has framed the charge at Exhibit-5 on 10/12/2010 against the accused. It was read over and explained to the accused in Marathi and he pleaded not guilty and claimed trial.

The prosecution in support of its case has placed reliance on oral as well as documentary evidence. Oral evidence is consisting of testimonies of complainant Shankarrao who has deposed as PW-1 at Exhibit-10, his wife Surekha PW-2 at Exhibit-12 and his daughter Bhakti PW-3 at Exhibit-13. PW-4 Balasaheb Ghadge is panch on inquest panchnama. He has deposed at Exhibit-14. PW-5 Manohar Ghadge is panch witness on the panchnama of scene of offence. He has deposed

at Exhibit-17. PW-6 Suresh Sakhare, an eye witness to the incident, has deposed at Exhibit-20. He was declared hostile, since he refused to support the prosecution. PW-7 Shivaji Salpe, who has deposed at Exhibit-21, is panch witness on the panchnama of scene of offence. PW-8 Pandurang Chewale is Medical Officer from civil hospital, Parbhani. He has deposed at Exhibit-25. PW-9 Dharmayya Malkaji Narmala is Police Head Constable. He has deposed at Exhibit-28. PW-10 Venkat Gulabrao Salunke is Investigating Officer. He has deposed at Exhibit-31. PW-11 Baliram Parasram Shinde is another Investigating Officer. He has deposed at Exhibit-36. Documentary evidence in the present case is consisting of complaint at Exhibit-11, inquest panchnama at Exhibit-15, seizure of clothes on the person of the deceased at Exhibit-16, memorandum of the accused at Exhibit-18, seizure of 'screwdriver' and clothes of the accused at Exhibit-19, scene of offence panchnama at Exhibit-22. Exhibit-23 is the pursis filed by the prosecution stating that, some prosecution witnesses have turned hostile and prosecution is therefore not inclined to examine them. Exhibit-26 is postmortem note. Exhibit-29 is M.L.C. issued by Medical Officer, Civil Hospital, Parbhani. Exhibit-30 is a form sent to Civil Hospital, Parbhani with the dead body. Exhibits-32 and 33 are C.A. Reports. Exhibit-34 is report given by Deputy Executive Engineer, Maharashtra State Electricity Distribution Company Limited regarding availability of power at the relevant time of occurrence of incident. This is all the evidence available on record.

5. After recording and considering the evidence and after hearing the parties, the Sessions Judge, Parbhani acquitted the accused/appellant of the offence punishable under Section 302 of the Indian Penal Code. However, he is convicted for committing offence punishable under Section 304 (II) of Indian Penal Code and sentenced to suffer Rigorous Imprisonment for the period of five years and to pay fine of Rs.10,000/-, in default of payment of fine; he is directed to undergo further Rigorous Imprisonment for the period of two months. If the amount of fine is recovered, amount of Rs. 8000/- is directed to be paid to the complainant by way of compensation. Set off is also given to the accused for the period in which he was in jail during the period of trial.

6. Learned Counsel appearing for the appellant i.e., original accused, in Criminal Appeal No. 304 of 2011 submits that, all three eye witnesses which are believed by the Sessions Court are interested witnesses, in as much as PW-1, PW-2 and PW-3 are father, mother and sister of the deceased respectively. It is submitted that, though the independent witnesses were available, no any independent witness has been examined by the prosecution. It is submitted that, since alleged eye witnesses and even panch witnesses are interested witnesses, their evidence cannot be believed. It is submitted that, nothing has been recovered from the spot. The spot panchnama is carried out on second day morning of the alleged incident between 8.30 a.m. to 9.00 a.m. It is submitted that, alleged incident did not occur at the spot as stated by the prosecution. It is submitted that, though PW3 named Shafi, however, said Shafi has not been examined by the prosecution. It is submitted that, PW-3 has stated in her evidence that, Shafi informed her about such incident and therefore, if at all, the prosecution story is to be believed, Shafi ought to have been examined by the prosecution. It is further submitted that, there is no single independent witness to support the prosecution case. According to the prosecution, M.L.C. report is lodged by PW-3 at 8.30 p.m, and if the prosecution case is that, the incident occurred at 8.30 p.m. the entire prosecution story is required to be rejected. It is submitted that, according to PW-1 i.e. complainant, he went to lodge report in between 9.00 p.m. to 9.30 p.m. however, inquest panchnama which is carried out between the same period is signed by the PW-1. Therefore, according to learned Counsel appearing for the accused/appellant, the entire prosecution story is concocted and the appellant deserves to be acquitted from all the charges levelled against him.

It is further submitted that, PW-1 in his complaint stated that, the deceased was assaulted by 'Gupti'. However, in his supplementary statement on 24/07/2009, he stated that, deceased was assaulted by the accused by 'screwdriver'. It is submitted that, there is great variance in the description of the weapon and therefore, the evidence of PW-1 ought to have been discarded by the Sessions Court. It is submitted that, mistaken identity of weapon is highly improbable, in as much as 'Gupti' is altogether different weapon as compared to 'screwdriver'. It is submitted that, alleged injury cannot be caused by 'screwdriver' as per Modi's Medical Jurisprudence. It is submitted that, the evidence of Doctor that,

'screwdriver' can cause incise stab injury is contrary to the theory stated in Modi's Medical Jurisprudence. Therefore, the evidence of Doctor is also untrustworthy. It is submitted that, PW-2 and 3 have only adopted supplementary statement of PW-1 which was recorded on 24/07/2009. It is submitted that, when PW-2 and 3 have played role as eye witnesses to the incident, no reason is forthcoming in their statement which recorded belatedly on 24/07/2009 that, why their statements are not recorded immediately when the alleged incident had taken place on 22/07/2009. It is submitted that, the alleged recovery of 'screwdriver' at the instance of appellant is not believable since C.A. report unequivocally indicates that, no blood stains are found on 'screwdriver'. It is submitted that, C.A. report does not support the prosecution case and therefore, alleged recovery of 'screwdriver' is of no avail to the prosecution case.

7. Learned Counsel appearing for the accused/appellant invited our attention to the material placed on record and contended that, report of the Maharashtra State Electricity Board shows that, tube light on the pole which is near the alleged spot of incident was not working and therefore, there was no light at alleged spot of incidence. Learned Counsel further submits that, R.K. Hotel is 90' away from the spot of incident. There was only focus light. It is submitted that, as per Modi's Medical Jurisprudence, at the most by 'screwdriver' lacerated injury can be caused. It is submitted that, the evidence of Doctor that, the said injury would not cause lacerated wound but incise stab injury is contrary to Modi's Medical Jurisprudence and therefore, evidence of Doctor is required to be rejected. It is submitted that, if the prosecution case is considered in its entirety, the evidence of PW-1 to 3 and also panch witnesses is required to be discarded since they are interested witnesses and there is no possibility of witnessing the incident by PW1 to 3 as it is apparent from their evidence before the Court. It is further submitted that, there was no light at the spot. It is further submitted that, nothing has been recovered from the spot. The evidence of Doctor is required to be discarded which is contrary to Modi's Medical Jurisprudence. Timing of the incident, M.L.C. report and timing of lodging complaint and inquest panchnama are not consistent with the prosecution story, and prosecution story suffers from contradictions and omissions and therefore, accused/appellant deserves clean acquittal from all the charges levelled against him.

8. Learned Counsel appearing for the accused/appellant pressed into service exposition of the Supreme Court in the case of **Anil s/o Shamrao Sute and another vs. State of Maharashtra [2013 DGLS (Soft.) 64]** and submits that, in the facts of that case, the Supreme Court upon considering the facts and evidence involved in that case found that, there is great variance in versions of sole eye witness and observed that, it would be risky to convict the accused on the basis of such evidence and therefore, the Supreme Court set aside conviction. Relying upon the said judgment, learned Counsel appearing for the accused/appellant submits that, in the present case also, PW-1, PW-2 and PW-3 are interested witnesses and they have also not witnessed the alleged incident and upon careful consideration of their evidence, there is great variance in versions of these witnesses and therefore, their evidence is required to be discarded. Learned Counsel further invited our attention to the judgment of Bombay High Court in the case of **Dinesh@ Dhebarya Virendra Bhatkar vs. The State of Maharashtra 1[MANU/MH/1005/2013][Criminal Appeal No.941/2008 decided on 24/07/2013]** and submits that, benefit of doubt shall be given to the accused and if the evidence of panch witnesses is not cogent and convincing connecting the accused to the alleged crime, in that case the appellant deserves acquittal. Learned Counsel further invited our attention to the judgment of the Supreme Court in the case of **JavedMasood and another vs. State of Rajasthan [2010(3) SCC 538]** and submits that, in the facts of that case, the Supreme Court found that, eye witnesses are interested witnesses and evidence of the prosecution is not acceptable and therefore, conviction as well as sentence was set aside. Therefore, he submits that, in the facts of the present case also eye witnesses are interested witnesses and therefore, their evidence is required to be discarded. The learned Counsel further invited our attention to the judgment of Bombay High Court in the case of **State of Goa through P.I. vs. Sapana @ Savita Naik [2011(1)Crimes 726]** and submits that, if no incriminating material is found on the scene of occurrence, in that case the accused deserves acquittal. He further submits that, if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court can not disturbed findings of acquittal.

Learned Counsel further invited our attention to the judgment of the Supreme Court in the case of **A. Shankar vs. State of Karnataka 2011(6) SCC 279]** and

submits that, in the facts of that case, the Supreme Court found that, there are discrepancies, contradictions and improvements in the evidence and therefore, such evidence is required to be discarded. Therefore, learned Counsel for the accused/appellant submits that, in the present case also, the prosecution case suffers from discrepancies, contradictions and improvements and therefore, the appellant deserves to be acquitted from all charges. For the same proposition, learned Counsel for the accused/appellant further placed reliance on the Supreme Court judgment in the case of **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan [2013(5) SCC 722]**. Learned Counsel pressed into service exposition of the Supreme Court in the case of **Babuv. State of Kerala [2010(9)SCC 189]** and submits that, when there is appeal against acquittal, the Court has to appreciate the evidence cautiously and unless for good reasons, interference in routine manner where other view is possible should be avoided. For the same proposition, learned Counsel invited our attention to the judgment of the Supreme Court in the case of **Gopalvs. State of Madhya Pradesh [2011(6) SCC 354]**.

Learned Counsel further invited our attention to the judgment of the Supreme Court in the case of **GopalSingh and others. vs. State of Madhya Pradesh [2010 AIR (SCW) 3698]** and submits that, when there are substantial discrepancies in the evidence of prosecution witnesses then benefit should go to the accused. Learned Counsel further invited our attention to the judgment of the Supreme Court in the case of **Ram Ashrit Ram and others vs. State of Bihar [AIR 1981 SC 942]** and submits that, in the facts of that case, the Supreme Court found that, if material witnesses of prosecution are either interrelation or otherwise interested in prosecution and in absence of corroboration of evidence, conviction cannot sustain. Therefore, he submits that, in the facts of the present case also, all the witnesses including panch witnesses are interested witnesses and there is no independent corroboration to the evidence of the prosecution witnesses and therefore, the accused/appellant deserves to be acquitted. He further pressed into service exposition of the Bombay High Court in the case of **Sanjay Laxman Chavan vs. State of Maharashtra [2010(2)Bom.C.R.(Cri.) 134]** and submits that, in the facts of that case, Bombay High Court held that, when there is darkness on the spot and there was no street light, the accused is entitled for acquittal since there was no possibility of witnessing the incident as alleged by the prosecution.

Learned Counsel also relied upon the judgment of the Supreme Court in the case of **PremSingh vs. State of Haryana [2013(11) Scale 65]** and submits that, while considering the case against acquittal, High Court should consider the evidence carefully and cautiously.

9. Learned A.P.P. assisted by Advocate for the original complainant submits that, it has come on record that the distance between complainant's house and spot of incident is 50'. It is submitted that, all the three eye witnesses have witnessed the incident and therefore, their evidence has been rightly believed by the Sessions Court, Parbhani. It is submitted that, there is a corroboration to the evidence of all eye witnesses. It is submitted that, medical evidence unequivocally indicates that, due to injury caused to the deceased on vital part, deceased died. It is submitted that, when the complainant tried to intervene, the accused pushed the complainant. It is submitted that, the accused went inside the house and brought 'screwdriver' and assaulted on the stomach of the deceased and further pierced the said 'screwdriver' in the stomach of the deceased Shashikant. It is submitted that, Dr. Chewale has opined that, deceased Shashikant died due to hemorrhagic shock due to perforating injury to the spleen and stomach with intra abdominal hemorrhage. Learned A.P.P. further submitted that, there was sufficient lights so as to witness the incident. Learned A.P.P. invited our attention to the evidence of eye witnesses, panch witness, C.A. report, medical evidence, deposition of Investigating Officer and all other evidence on record and submits that, there is a convincing evidence on record which would clearly indicate that, the accused had intention to kill deceased Shashikant. Therefore, learned A.P.P. submits that, not only that, the appeal filed by the accused is required to be rejected. However, the appeals filed by the State for enhancement of the sentence and as against acquittal for offence punishable under Section 302 of the Indian Penal Code deserve to be allowed.

10. Learned A.P.P. invited our attention to the decision of the Delhi High Court in the case of **DalipKumar @ Pinki vs. State [1995 CR.L.J. 1742]** and submits that, in the facts of that case, the weapon used by the accused was screwdriver and assault was given on the head of the deceased which resulted into death of the deceased. In the facts of that case, the Delhi High Court held that, the accused

gave a blow of screw driver on head of deceased resulting into his death, would fall under Section 300 of the Indian Penal Code. Learned A.P.P. invited our attention to the decision of the Supreme Court in the case of **Appabhai and another vs. State of Gujarat [AIR 1988 SC 696]** and submits that, the Supreme Court in the facts of that case held that, failure of prosecution to examine independent witnesses, prosecution case cannot be thrown out on that ground alone. It is submitted that, even the Supreme Court held that, contradictions in the evidence of the victim of assault is no ground to reject the entire testimony of the witnesses. Learned A.P.P. further invited our attention to the decision of the Supreme Court in the case of **Varghes Thomas vs. State of Kerala [AIR 1977 SC 701]** and submits that, in the facts of that case, the Supreme Court held that, all the witnesses who have seen the incident need not be called to give evidence. Therefore, he submits that, in the facts of the present case, when there is a convincing evidence of three eye witnesses coupled with medical evidence, accused deserves to be convicted for the offence punishable under Section 302 of the Indian Penal Code.

Learned A.P.P. also pressed into service exposition of the Supreme Court in the case of **Nathuni Yadav and others vs. State of Bihar and another [AIR 1997 SC 1808]** and submits that, in the facts of that case, the Supreme Court held that, the assailants were not strangers to inmates of tragedy and discarded the ground that, there was no sufficient light at the place of incident. Therefore, he submits that, at the spot of incident there was enough light, in as much as there is mercury lamp at the distance of 150' and also nearby there was R.K. Hotel and also adjoining houses having light and the accused is known to PW-1 and 2 for more than 30 years. Learned A.P.P. invited our attention to the decision of the Supreme Court in the case of **Ramanand Yadav vs. Prabhu Nath Jha and others [2004 CRI.L.J. 640]** and submits that, in the facts of that case the Supreme Court held that, non examination of independent witnesses was not fatal to the prosecution case. Therefore, he submits that, in the facts of the present case also when the evidence of PW-1 to PW-3 and also other witnesses brought on record is a convincing and therefore, merely independent witnesses are not examined is no ground to discard a convincing evidence brought on record by the prosecution.

Learned A.P.P. further invited our attention to the decision of Bombay High Court in the case of **State of Maharashtra vs. Raju s/o Bhagwan Kothimbire and others [2011 ALL MR (Cri.) 1800]** and submits that, just because eye witnesses are relatives of the deceased is no ground to discard their evidence. Learned A.P.P. further invited our attention to the decision of Bombay High Court in the case of **Shankar Ganpatrao Nehare vs. The State of Maharashtra [2012 ALL MR (Cri.)2804]** and submits that, though there is a variance about actual time of incident and also time of lodging F.I.R., if same is not of substantial nature, and if the medical evidence has confirmed death, merely because there is a some variance in recording timing is not fatal to the prosecution case. Learned A.P.P. also invited our attention to the decision of Bombay High Court in the case of **BhagwantShetiba Vitkar vs. The State of Maharashtra [2012 ALL MR (Cri.) 1442]** and submits that, in the facts of that case, Bombay High Court held that, presence of the eye witnesses at the spot of incident was natural and therefore, such evidence can be believed. Therefore, he submits that, in the facts of the present case also, presence of PW-1, PW-2 and PW-3 is natural at the spot of incident, in as much as the house of complainant is near about 50' away from the house of the accused. It is submitted that, merely because there is single blow, is no ground to hold that, offence is out of ambit of Section 302 of the Indian Penal Code. It is submitted that, Bombay High Court in the case of **ShivajiBhaguji Bhoi vs. State of Maharashtra [2007(1) Mh.L.J. (Cri.) 958]** has taken a view that, a single blow by itself would not be sufficient to take the offence out of the ambit of Section 302 of the Indian Penal Code.

Therefore, learned A.P.P., relying upon the entire evidence placed on record by the prosecution submits that, the appeal filed by the accused Suresh Ghanshyam Chopade is required to be rejected and appeals filed by the State deserve to be allowed, thereby holding that, offence committed by the accused falls under Section 300 of the Indian Penal Code and he is liable to be convicted for life imprisonment under Section 302 of the Indian Penal Code.

11. We have given careful consideration to the submissions of learned Counsel appearing for the accused and also by learned A.P.P. assisted by learned Counsel appearing for the complainant. With their able assistance perused the grounds

taken in the appeal memo, annexures thereto, impugned judgment and order passed by the Sessions Court, Parbhani and also the entire original record made available for our perusal. In the present case, there is direct evidence of three eye witnesses. PW-1 Shankarrao Sheshrao Salpe, father of the deceased Shashikant, is the complainant. In his evidence, he has specifically stated that, on the date of incident he was in the house as he was suffering from cold. His son Shashikant was proceeding to attend M.S. CIT class. He heard noise of quarrel. Therefore, his wife, daughter and he himself went outside the house and saw that, accused Suresh Chopade was beating Shashikant with the help of wire. When the complainant asked Shashikant what has happened to tell him, he told that, waste water was thrown on his person by the accused, and when Shashikant asked the accused why waste water was thrown on his person, accused Suresh Chopade started beating him. The complainant tried to attempt to separate the quarrel. However, accused Suresh Chopade pushed him aside. It is specifically stated by the complainant that, accused Suresh went inside his house and brought a big screw driver and he pierced it into stomach of his son Shashikant and he sustained a bleeding injury. He became unconscious and fell down on the ground. The incident occurred in front of house of accused Suresh. The complainant and his wife carried out Shashikant in the hospital in auto rickshaw. On examination, Doctor declared him dead. The complaint was shown to the complainant. He identified his signature and stated that, the contents of the said complaint are correct. It is true that, at the time of filing the complaint, the complainant stated that, blow of 'Gupti' was inflicted. However, the Sessions Court found that, length of the said 'screw drier' is about 39 cms. It is also observed that, when the accused went inside his house and brought said 'screw driver' and pierced it in the stomach of the deceased, it must have glittered in the light and in such circumstances, it is quite probable that, the complainant might have mistaken it as 'Gupti'. However, this minor mistake in identifying weapon of assault cannot go to the root of case for simple reason that, except the complainant no other witness has committed mistake in identifying it. PW-2 and PW-3 in their evidence have stated that, the weapon by which accused assaulted the complainant is 'screw driver'. The contention of the Counsel appearing for the accused that, statement of PW-2 and PW-3 is recorded on 24/07/2009 and possibility of adopting the

contents of the statement of the complainant cannot be ruled out is concerned, PW-2 in her evidence has stated that, due to mental shock due to death of son Shashikant, their statement could not be recorded earlier. It is also stated that, though Investigating Officer came to record her statement on 23/07/2009, however since her mental state was not good, no statement was given.

The PW-1 has also stated in his evidence that, the accused resides in front of his house. He identified the accused before the Court. He has also identified article No. 5 i.e., 'screw driver' which was pierced in the stomach of his son. It appears that, PW-1 was cross examined at length by the Counsel for the accused/appellant, however nothing substantial contrary to prosecution case has come out from the said cross examination of PW-1. PW-2 Surekha Shankarrao Salpe, mother of deceased Shashikant, in her evidence before the Court has narrated the incident. It is stated that, PW-1 complainant, she herself and her daughter PW-3 heard noise of quarrel from outside of the house and the complainant, she herself and their daughter went out of the house to see what has happened. She herself alongwith complainant PW-1 and her daughter PW-3 has watched the actual incident of assault by the accused. It is further stated that, the accused went inside the house and brought a big 'screw driver' and pierced it in the stomach of her son Shashikant. PW-2 has narrated the incident and her evidence corroborates with the evidence of complainant PW-1. PW-2 in her evidence has also stated that, bicycle was parked on the road when quarrel was going on. PW-2 noticed that, the accused was holding in his hand a 'screw driver' when he returned from his house. Said 'screw driver' was having green colour handle. The accused was carrying 'screw driver' in his right hand. The complainant, PW-2 and her son Shashikant were close to each other. The accused had pushed aside the complainant before going to his house. It is further stated that, her husband was fallen down on the ground, however, he did not sustain any injury. It is further stated that, very little blood oozed from the injury sustained by the deceased. It is also stated that, 'screw driver' was soaked with blood when it was removed from the stomach of the deceased. It was raining slightly at the time of occurrence. Her daughter brought auto rickshaw. Her clothes or of the complainant were not stained with blood. It is specifically stated that, she was interrogated by the police after two days. On the next day of the incident, the

police had arrived to record her statement. However, she did not tell anything because of mental state was not good.

12. PW-3 has also stated in detail about the occurrence of the incident. Therefore, the evidence of PW-3 is also cogent and convincing. There is evidence of three eye witnesses which is cogent and convincing and therefore, merely because PW-1 is father, PW-2 is mother and PW-3 is sister of deceased Shashikant, their evidence cannot be disbelieved. Their evidence is considered and scrutinized with great caution by the Sessions Court and also by this Court. It is settled position of law that, merely because the witnesses are in relation, their evidence cannot be rejected. However, the evidence of such witnesses is required to be scrutinized minutely with caution and if it inspires confidence and same is reliable, in that case the accused can be convicted on the basis of such evidence. As already observed herein before, the evidence of PW-1, PW-2 and PW-3 inspires confidence and same is trustworthy and reliable. Their presence on the spot is natural, in as much as the distance between the house of the complainant and accused is not too far and their houses are in the same vicinity. It has come in the evidence of PW-1 that, the accused resides in front of the house of the complainant across the road. There is no challenge by the accused to the fact that, the houses of accused and complainant are situated in the same locality. It has come in the evidence of complainant and also in the evidence of PW-2 and PW-3 that, the complainant was suffering from cold and he was in the house. The time of the incident as stated by all the three eye witnesses is in between 8.15 p.m. to 8.30 p.m., and therefore, their presence at their house is natural. It has also come on record that, the relations between the family of the accused and the complainant were cordial and therefore, the Counsel for the accused while making alternate submissions before the Sessions Court has also affirmed the said fact that, relations between the parties were cordial. On the contrary, while advancing alternate submissions before the Sessions Court, the Counsel appearing for the accused argued that, the relations between the parties were cordial. Therefore, there was no reason for the complainant to falsely implicate the accused. It has come on record and as rightly contended by learned A.P.P., there was sufficient light so as to witness the incident. There was mercury light at the distance of 150' and also nearby there was R.K. Hotel and light from the houses. Apart from having sufficient light to

witness the incident, it has come on record that, PW-1 knew the accused for more than 30 years and therefore, there was no possibility of mistaken identity.

13. It is true that, though there may be other persons who witnessed the incident, however, as rightly concluded by the Sessions Court that, people do not want to get involved in criminal litigation and therefore, not examining independent witnesses is not fatal to the prosecution case when evidence of PW-1 to PW-3 is fully reliable and inspires confidence. It has also come on record that, the complainant was confronted with inquest panchnama, post mortem report and the complaint and he has identified his signatures.

The submission of the Counsel appearing for the accused that, spot panchnama was carried out on the next day of incident between 8.30 a.m. to 9.00 a.m., and nothing was recovered from the spot of incident and therefore, the entire story of the prosecution is required to be discarded is concerned, it has come on record that, it was raining during intervening night between 22-07-2009 and 23-07-2009 and therefore, there was no question of recovery of anything from the spot of incident.

14. Apart from the evidence of eye witnesses, there is evidence of the panch witness and also recovery of the 'screw driver' at the instance of the accused/appellant. It is true that, no blood stains are found on the 'screw driver'. However, recovery of the said 'screw driver' is made on 24-07-2009 at the instance of accused, since the accused was absconded from the date of incident till his arrest i.e., 24-07-2009. Thereafter, there is recovery of the 'screw driver' at the instance of the accused/appellant. Exhibit-60 is the seizure panchnama in respect of clothes of the deceased. From the description of the shirt of the deceased, hole was noticed on the shirt by panchas on the same place where the deceased had sustained injury. Shirt was found stains with blood at that place. Similar blood was also noticed on the Banian of the deceased. This description of the clothes is also indicating that, version given by the prosecution witnesses about the incident is correct.

PW-5 is panch witness on memorandum as well as recovery panchnama, who has clearly stated that, the accused expressed his desire to produce his clothes and

screw driver before the police. Therefore, blood is not detected on the screw driver since it was recovered at the instance of the accused after two days of the incident. There is other convincing evidence on record which corroborates the evidence of the eye witnesses.

15. According to the opinion of Dr. Chewale, the deceased Shashikant died due to hemorrhagic shock due to perforating injury to the spleen and stomach with intra abdominal hemorrhage. Said witness was cross examined at length by the Counsel for the accused. In his evidence, not only that he has stated that, injury can be caused by the 'screw driver' but he has further stated that, cause of death of Shashikant is by piercing 'screw driver' in the stomach of the deceased Shashikant. The evidence of Dr. Chewale who has examined the dead body and who is expert on the subject when confronted with muddemal article No.5, clearly stated that, injury caused is due to piercing of 'screw driver' in the stomach of the deceased. The Sessions Court is right in observing that, observations in Modi's Medical Jurisprudence are general in nature, however, practical experience of Dr. Chewale on examining dead body is relevant, in as much as in his evidence, he stated that, nature of injury depends upon circumference of piercing surface of piercing object and the point of the piercing object. He has deposed to above extent on the basis of his experience in clinical practice.

The deceased sustained injury on vital organ of the body. Dr. Chewale in his evidence has stated that, said injury No.1 is corresponding to the internal injuries mentioned in Column No.17. The injury was on vital organ of the body like spleen and stomach and injuries sustained by the deceased were sufficient to cause the death of a human being in normal course and injuries sustained by the deceased were possible by 'screw driver'. Therefore, there is medical evidence which corroborates the evidence of all eye witnesses.

16. PW-10 Mr. Venkat Gulabrao Salunke was the Investigating Officer. He deposed that, on 22/07/2009 he was attached to Nanalpeth police station, Parbhani as Police Inspector and he was holding charge of the Police Station on that day. The incident had taken place in the evening and complaint in respect of that incident was lodged with the P.S.I. Dange at Nanalpeth Police Station. He

took further investigation. In his deposition before the Court he has stated that, scene of offence panchnama was already drawn by P.S.I. Shinde. Inquest panchnama was drawn by P.H.C. Narmala, B.NO. 716. He further deposed that, the accused was arrested by him on 24/07/2009. He could not arrest the accused immediately after occurrence of the incident because the accused was absconding. The accused was in Police Custody Remand between 24/07/2009 to 31/07/2009. On 29/07/2009 the accused expressed his desire to produce certain articles before the police. Memorandum was reduced into writing in the presence of two panch witnesses. The accused told that, screw driver was concealed by him in his house and he is ready to produce it before the police. The accused had concealed his clothes and weapon of assault in his house. He produced these articles before him in presence of panch witnesses. He identified his signature, signature of the accused and signature of two panchas on the memorandum. He further stated that, the accused took them to his house in police jeep with two panch witnesses. He further narrated details. He further deposed that, screw driver was recovered at the instance of the accused. Same was seized. He has in detail stated about other articles seized and also that, seizure panchnama was prepared. He has identified his signature on the seizure panchnama and also he identified seized articles. He specifically identified muddemal article No. 5 i.e., screw driver before the Court. He further stated that, seized articles were sent to C.A. for analysis. He was confronted with C.A. reports dated 26/02/2010. He stated that, said C.A. reports are in respect of muddemal property sent by him to C.A. for analysis. He identified the accused before the Court. He stated that, at the distance of 90' away from the spot of incident there was a mercury lamp provided by Municipal Council, Parbhani. Mercury lamp is fixed on a pole which is approximately 35 to 40' in height. Near Bilal Masjid there were big street light poles with mercury lamps. Therefore, lights which were available near Bilal Masjid were at a distance of about 70 to 80' away from the spot of incident. Therefore, the prosecution has proved through Investigating Officer the seizure panchnama and also the fact that, the seized articles were sent to C.A. for analysis and to that effect, C.A. reports were received from the C.A. Nothing has been brought to the notice of this Court to disbelieve the evidence of the Investigating Officer.

17. Therefore, considering the evidence available on record in its entirety it appears that, the incident occurred at about 8.30 pm. Immediately thereafter the deceased Shashikant was taken to the hospital, Doctor declared him dead and subsequently inquest panchnama was drawn and even post mortem was carried out. During this period, PW.1 has lodged First Information Report. Therefore, sequence of events from the date of occurrence till post mortem is done, if taken into consideration, there is no manner of doubt that, from the date of occurrence till post mortem everything happened within the span of 3 to 4 hours. F.I.R. is also lodged immediately within the said period. The spot of incident is in front of house of the accused as it is evident from the evidence of the eye witnesses and there is no denial by the accused that, his house is situated in nearby vicinity of the house of complainant. It has also come on record that, there was no any previous enmity or the accused has not stated in his statement under Section 313 of the Criminal Procedure Code that, there was any enmity. On the contrary it has come on record that, the relations between the accused and complainant's family were cordial. Therefore, there is no even remote possibility of falsely implicating the accused in commission of offence by the complainant.

As already observed, presence of witnesses in their house is natural since time of the incident was between 8.15 to 8.30 p.m., as stated by PW-1 to PW-3 in their evidence before the Court. There was sufficient light so as to witness the incident and quarrel was visible and overhead by the complainant and PW-2 and PW-3 and immediately they arrived to the spot of incident which is in front of house of the accused. It has come in the evidence of PW-2 that, since her mental condition was not good and therefore, though the police officer came to record her statement on 23-07-2009, she was not able to give her statement. There is evidence of eye witnesses corroborated by medical evidence and also by other evidence brought on record. There was recovery of 'screw driver' at the instance of the accused/appellant. It has also come on record that, during intervening night of 22-07-2009 to 23-07-2009 it was raining and therefore, nothing could be recovered from the spot. Therefore, there is convincing evidence in the nature of eye witnesses and other witnesses and also medical evidence etc., which corroborates the version of eye witnesses and therefore, inevitable conclusion is that, the accused/appellant is liable for conviction. However, it has come on record that,

there was no any motive or pre-mediation to commit such offence. On the contrary, it has come on record that, relations between the accused and family of the complainant were cordial and there was no any previous history of enmity. Quarrel took place on trivial matter on account of throwing waste water on the person of the deceased. Even according to prosecution witnesses, the accused gave single blow on the person of the deceased Shashikant. Therefore, question is what offence the accused has committed in the present case.

18. Considering all aforesaid aspects of the matter, we find that, the accused/appellant cannot be convicted under Section 302 of the Indian Penal Code. Therefore, we are of the view that, the Sessions Court, Parbhani has rightly convicted the accused/appellant for the offence punishable under Section 304 (II) of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for the period of five years and to pay fine of Rs.10,000/-, in default of payment of fine; the accused is directed to undergo further R.I. for the period of two months. In the facts of the present case, the judgment and order dated 08/06/2011 passed by the Sessions Judge, Parbhani in Sessions Trial Case No. 95 of 2010 deserves to be confirmed and accordingly, we confirmed the same.

19. For the reasons aforesaid, the appeal filed by the accused/appellant and the appeals filed by the State are dismissed.

20. Order accordingly.

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