

Amar Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : May-04-2016

Judge : B.R. Gavai & The Honourable Mrs. Justice Swapna Joshi

Appeal No. : Criminal Appeal Nos. 521 of 2014, 558 of 2014 & 133 of 2015

Appellant : Amar

Respondent : State of Maharashtra

Advocate for Pet/Ap. : Mr. R.K.Tiwari, Mr. Y.B.Mandpe

Judgement :

Swapna Joshi, J.

1. Being aggrieved by the judgment and order of conviction dated 24.9.2014 passed by the learned Additional Sessions Judge Nagpur in S.T. No.612/2011 thereby convicting the appellant (ori. accd.No.1-Sumit s/o Ramesh Chintalwar and appellant Amar @ Chhotu Ramesh Lohkare (ori. accd.No.2), under sections 147, 148, 302 read with Section 149 of the Indian Penal Code and u/s. 4/25 of Arms Act and sentencing them to undergo (i) R.I. for life and to pay a fine of Rs. 2,000/- and, in default, to suffer R.I. for six months u/s. 302 r/w.s. 149 of IPC; (ii) R.I. for six months and to pay a fine of Rs. 500/- and, in default, to suffer R.I. for six months u/s 147 of IPC and; (iii) R.I. for one year and to pay a fine of Rs. 750/- and, in default, to suffer R.I. for two months, under section 148 of IPC and (iv) R.I. for one

year and to pay a fine of Rs. 500/- and, in default, to suffer R.I. for two months, u/s. 4 (25) of Arms Act, the appellant Sumit Chintalwar has preferred the Appeal bearing Criminal Appeal No.558/2014 and Amar Lohkare has preferred an Appeal bearing Criminal Appeal No.521/2014.

Similarly, the appellant/mother of deceased-Smt. Shantabai w/o Maroti Ghongade has preferred an Appeal bearing Criminal Appeal No.133/2015, being aggrieved by the judgment and order of acquittal passed against the respondent Nos.2 to 4 in S.T. No.612/2011 and in Sessions Trial No.147/2012 between the State of Maharashtra and respondent no.5 and in Sessions Trial No.148/2012 between the State of Maharashtra and respondent no.6 and in Sessions Trial No.580/2012 between State of Maharashtra and respondent no.7 and in Sessions Trial No.75/2012 between State of Maharashtra and respondent nos.8 and 9, whereby the learned Additional Sessions Judge acquitted all the respondents and convicted the ori/accd.Nos.1 and 2 in Sessions Trial No.612/2011 dated 24.9.2014 thereby acquitting the respondents for the offence punishable u/s 302 r/ws. 149, 147, 148, 120-B r/ws. 4/25 of the Arms Act.

2. The prosecution case in a nutshell is that, PW 1-Rajesh Ghongade, is serving in Police Department as a Constable. On 10.8.2011 between 10.30 and 10.45 a.m., Rajesh Ghongade (PW 1) and his brother Ganesh @Pinku Ghongade (deceased) were proceeding towards Jadumahal Chowk from Rajkamal Chowk on their respective motorcycles. Sumit Chintalwar (appellant/accd.no.1) and his associates who were 17 to 18 in numbers, were standing in Jadumahal Chowk armed with deadly weapons. When Rajesh (PW 1) and his brother- Pinku (deceased) reached Jadumahal Chowk, the appellant/accd. no.1 Sumit called the deceased by saying "Ye Pinku rook". On hearing this, Pinku (deceased) stopped his motorcycle. Rajesh (PW 1) also stopped his motorcycle at some distance. As soon as Pinku halted his motorcycle, Sumit and Nayan Chintalwar (absconding accused) and their associates apprehended and cordoned him. Pinku, therefore, tried to run away from that spot by leaving his motorcycle. However, the accused persons chased and caught hold of him and started assaulting him by means of small sword, knives, chopper, blade of spear and weapons like Farsha, due to which the deceased fell down in a pool of blood. Amar Lohkare (accused no.2) and Pravin

Murarkar (accused no.11) assaulted Pinku by means of stones on his head. It is the case of the prosecution that by seeing such incident, Rajesh (PW 1) got frightened and fled away from the spot. The accused persons also left the said place on assaulting Pinku. PW 1-Rajesh then proceeded to the Police Station and lodged the complaint against the accused persons (Exh. 112).

3. At the relevant time, Police Inspector Prakash Bada (PW 11) was attached to Ajni Police Station. On receipt of the said information, an offence came to be registered. The printed FIR is at Exh.113. Police Inspector, Prakash Bada (PW 11) then proceeded to the place of the incident along with PSI Paradkar and other police staff. They noticed the deceased lying in a pool of blood and, at some distance, one Bullet motorcycle was also found lying on the ground. P.I. Bada (PW 11) seized two mobiles and big stones and bracelet of white metal as well as Bullet Motorcycle. Samples of plain earth, blood mixed earth and plain earth from the place of the incident were taken in the presence of two panchas. P.I. Bada recorded the spot panchnama (Exh.124). PSI Paradkar sealed all those articles. PI Bada thereafter sent the dead body of Pinku to Government Medical College and Hospital for post-mortem examination. He conducted the inquest panchnama in the mortuary in the presence of two panchas (Exh.193).

4. P.I. Bada (PW 11) tried to get the information from the people about the incident. However, since the people were terrorised to the hilt, he could not get any information from them. PW 1- Rajesh had given the names of appellants as assailants of his brother, in the FIR. Accordingly, those persons were brought to the Police Station on the same day. They were, (1) Girish Wasnik, (2) Sachin Wasnik, (3) Vikas Gedam, (4) Vijay Kamble, (5) Sonu Thaware and (6) Sanjay Waghare. PI Bada along with ACP and DCP interrogated those persons. However on interrogation, they were allowed to go as they were not found to be involved in the alleged offence.

5. P.I. Prakash Bada (PW

11) took charge of the clothes of the deceased vide Exh.127 in the presence of two panchas. On 12.08.2011 PI Bada received secret information that seven accused persons had gathered at Vanjarinagar Durgah. Therefore, he along with

his staff went there and caught hold of them. They were brought to the Police Station and were arrested by the Police vide arrest panchnamas -Exhs. 201 to

207. One of the accused out of seven persons, namely, Chetan Meshram was a juvenile and, as such, he was not kept in the police lock up. PI Bada then produced before the Court six accused

(1) Sumit Chintalwar

(2) Amar Lohkare

(3) Amar Dharmare

(4) Shrikant Ingole

(5) Pravin Kalindi and

(6) Shubham Fulzele. The A.P.I. took charge of the clothes of all those accused in the presence of two panchas vide seizure memo Exh. 157 to

162. On 15.08.2011, accused-Shubham Fulzele made a voluntary statement that he had handed over the pachpan knives to Sumit Chintalwar and, accordingly, P.I. Bada prepared the memoradum panchnama (Exh.117). On the same day, the appellant/accd.no.2Amar Lohkare made a confessional statement and stated that he had handed over the Hattimar knife allegedly used in the offence to app/accd.-Sumeet Chintalwar. The memorandum panchnama was accordingly prepared (Exh.114). On the same day, the app/accd. Sumit Chintalwar made a voluntary statement and showed his willingness to point out the place where he had kept one sword (art.P-3), 2 Pachpan knives (art.P-5 and P-6 respectively) and one big Hattimar knife (art. P-4), in a bag which was kept in Bamboo bushes in the premises of Medical College and Hospital compound. The memorandum panchnama was accordingly prepared vide Exh.

120. At the instance of app/accd.-Sumit Chintalwar, the said grey bag (art. P-9) was taken charge from the bamboo bushes vide panchnama Exh.121. During the course of investigation, P.I. Bada (PW11) recorded the statements of various persons. On 16.8.2011 P.I. Bada took charge of two motorcycles vide seizure

memo Exh.

214. On 23.08.2011, P.I.Bada sent all the seized articles to C.A. Office for its analysis vide requisition letter Exh.217. On 18.10.2011 P.I. Bada sent all those seized weapons to L.M.J. Medical College and Hospital under sealed condition vide requisition letter Exh.191. LMJ Medical College examined those weapons and issued its report (Exh.192). Those sealed weapons were deposited in Malkhana. On 20.10.2011 P.I. Bada sent all those weapons to R.F.S.L. vide requisition letter No.219 for chemical analysis (C.A. Report-Exh. 89 to 102).

6. After completion of investigation, P.I. Bada submitted the charge-sheet against six accused persons before the learned JMFC; three accused Lalit, Nitin and Yogesh were shown as absconding. After filing the charge-sheet against six accused (1) Lalit Thakre, (2) Pravin Murarkar (3) Nishant Sahare (4) Ritesh Selokar (5) Sebastian Anthony were arrested subsequently and a separate charge sheet has been filed against them.

7. In due course, the case was committed to the Court of Sessions. The charge was framed by the learned Addl. Sessions Judge Nagpur. The accused pleaded not guilty to the charges levelled against them and claimed to be tried. The defence was of total denial and false implication. After going through the evidence adduced, the learned Addl. Sessions Judge convicted and sentenced the appellants, as stated above in paragraph no.1. Hence, these Appeals preferred by the appellants against the conviction and sentence. At the same time as the other appellants were acquitted by the learned Addl. Sessions Judge, mother of the deceased preferred Appeal against the said judgment and order, as discussed above in paragraph no.1.

8. Shri S.P.Dharmadhikari, learned senior counsel with C.H.Jaltare in Criminal Appeal No.558/2014 for the appellant vehemently argued that the case set up by the prosecution is false and fabricated and the facts put forth by the prosecution clearly lead to the inference that there was no involvement of the appellant/accused whatsoever. According to him, the alleged eyewitness, who is the brother of the appellant PW 1-Rajesh is a brought up witness, for the simple reason that although he served in Police Department, he did not take pains to

report the matter to the police immediately and allegedly fled away from the place of incident, leaving behind his victim brother to be assaulted by the accused, which is the most unnatural conduct on his part. Shri Dharmadhikari, submitted that there is delay of two-and-a-half hours in lodging of the FIR. Similarly, the alleged eye witness PW 1- Rajesh also appears to be a got up witness as his statement is recorded by the police five days after the incident. Moreover, the recovery of weapons allegedly at the instance of the appellant/accd is not at all reliable as it is from the open space in the compound of the Medical College and Hospital. According to the learned counsel the entire story of the prosecution is under the shadow of doubt.

Mr. R.K.Tiwari, learned counsel for the appellant in Cri. Appeal No.521/2014 adopted the arguments of Mr. S.P. Dharmadhikari.

9. Per contra, it is the contention of the learned APP Shri T.A.Mirza, that the evidence available on record establishes that the deceased was assaulted by several persons with deadly weapons. According to learned APP as PW 1 Rajesh was the real brother of the deceased, he was under mental trauma and scared of the dreadful incident and, therefore, he fled away from the spot to save his own life and there is nothing unnatural on his part. On the point of naming the six persons in the FIR, learned APP contended that PW1- Rajesh must have named them being associates of appellant /accd. No.1- Sumit. However, this fact itself would not falsify his entire evidence and his version cannot be disbelieved.

10. Mr. Y.B.Mandpe, learned counsel for the appellant Smt. Shantabai Ghongade in Criminal Appeal No.133/2015 has adopted the arguments of learned A.P.P.

11. It is well-settled by now that the First Information Report is not a substantive piece of evidence but it can be only used to corroborate and contradict the version of the first informant. Being a vital piece of evidence, it is expected from the informant to lodge the report immediately after the commission of an offence without any delay. The delay no doubt can be explained. However, the inordinate delay without any satisfactory explanation is certainly fatal to the prosecution case. It is also well-settled that reliance can be placed on the solitary testimony of the eye witness, provided it stands test of rigorous cross-examination and found to be

cogent, reliable and trustworthy.

12. As far as the witnesses are concerned, a Bench consisting of Honourable three Judges of the Apex Court in the case of Vadivelu Thevar and another vs. State of Madras, reported in AIR 1957 SC 614, it is observed that it is a sound and well-established rule of law that the Court is concerned with quantity and not with the quantity with the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(i) wholly reliable

(ii) wholly unreliable

(iii) neither wholly reliable nor wholly unreliable.

It is held that in the first category of proof, the court should have no difficulty in coming to its conclusion either way -it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence and subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

Thus, in the light of these guiding principles, we have carefully scrutinized the evidence before the court.

13. We have carefully examined the contentions advanced by both the sides. After hearing them and giving anxious consideration to the facts and circumstances of the case, the judgment delivered by the learned Addl. Sessions Judge and considering the evidence on record, for the reasons stated below, we are of the opinion that the appellant/ori.acc. nos.1 and 2 are not the perpetrators of the alleged crime.

14. It is not seriously disputed by the defence that the deceased Pinku died an homicidal death. P.M. report (Exh.182) reveals as many as 42 injuries on the dead

body of deceased-Pinku. The cause of death is shock and haemorrhage due to multiple chop wounds and stab wounds.

15. The prosecution case mainly rests on direct evidence of the alleged eye witnesses PW 1-Rajesh Ghongade and PW 2-Vivek Masarkar. The prosecution mainly relies upon the evidence of PW 1-Rajesh. According to PW 1-Rajesh at the relevant time, he was serving as a Police Constable at Nagpur. He was required to attend his duty at 9.00 pm. His brother Pinku was at home. He told him that he had to attend the Court case and also to see their younger sister who is residing at Chandramani nagar. Therefore, he himself along with his brother Pinku (deceased) proceeded towards the house of their sister. They both were on their respective CBZ motorcycles. When they were proceeding towards the Jadumahal chowk from Rajkamal chowk at about 10.45 am., the accused/appellant no.1 Sumit Chintalwar called Pinku by saying "Ye Pinku rook". The appellant-Sumit was beside the road near Shraddha Apartment along with 22 to 25 associates. At that time, PW 1-Rajesh was riding his motorcycle side by side. On hearing the call of accused no.1, Pinku stopped his motorcycle. PW 1 had gone little ahead and stopped his motorcycle. As soon as Pinku stopped the motorcycle, appellant/accd. No.1-Sumit, Nayan Chintalwar (absconding accused) and their associates cordoned Pinku. Pinku tried to run away with his vehicle. However, Sumit, Nayan and their associates chased Pinku and caught hold of him. Then Sachin Wasnik dealt a sword blow, Girish Wasnik dealt a blow of Gupti, Sebastian (accused no.7) dealt a blow of chopper, Akshay Waghmare gave of blow of sword and Vikas Gedam also gave a sword blow to Pinku, Yogesh Bhagat, Vijay Kamble, Titya, Michal and Khuntia @ Wakadtondya had given blows to Pinku by means of spear stab and the weapon like Farsha, Nishant @ Gabbar (accused No.9) had also assaulted Pinku. Pinku fell down.

Pravin Murarkar, Amar Lohkare (appellant/ accd. No.2) and one Sanjay Waghade assaulted Pinku by means of stones. According to PW 1-Rajesh, on seeing this, he got frightened and thought that the accused persons would also assault him, hence he fled away. After some time, he returned to the place of the incident. Police had reached at that place. The shop owners had closed their shops at the time of the incident. Ritesh Selokar (accused no.8) had also assaulted Pinku by

means of fists and kicks. When PW 1 came to the spot he saw his brother was lying in the middle of the road in a pool of blood and was dead. His bracelet was lying beside him. His motorcycle was lying near Shraddha Apartment. PW 1 identified accused nos.1 to 4, 7, 9 to 11 before the Court. According to PW 1 his brother Pinku was looking after the business of running taxis of his maternal uncle. Bablu Sahare and Raju Kamble were also doing the same business. Due to the business rivalry, murders took place of Bablu Sahare and Raju Kamble and Pinku was one of the accused in the murders of Bablu and Raju. According to PW 1, Vikas Gedam is the cousin of Bablu Sahare and the accused persons are his friends therefore in order to take revenge of Bablu and Raju, the accused persons had committed the murder of his brother. PW 1-Rajesh proceeded to Ajni Police Station and lodged his complaint (Exh.11). PW 1 identified the stones lying at the place of the incident as articles P-1 and P-2. He also identified the weapon (P-3) sword used by appellant/accused no.1 Sumit Chintalwar and the other weapons.

16. On careful scrutiny of the testimony of PW 1-Rajesh and the FIR Exh.112, it is noticed that the alleged incident had taken place in the broad daylight at about 10.45 am, whereas the incident was reported to the police at 1.30 p.m. It is noticed that the Ajni Police Station was at a distance of about 1 km. from the place of the incident. However, the complainant PW 1-Rajesh did not rush to the Police Station and lodge his complaint. On the contrary, he fled away from the spot leaving his brother at the hands of assailants. Similarly, PW 1 Rajesh did not even try to give a phone call to the Police Station in respect of the alleged incident, although he was serving in the Police Station as a police constable. PW1-Rajesh also failed to contact his sister serving in Police Department and staying just 1/2 k.m. from the place of the incident. PW 1-Rajesh even failed to seek help from the police, immediately after the incident, till he again reached to the spot. This conduct of PW-1 Rajesh appears to be most unnatural one and creates serious doubt about his presence at the place of the incident. Under normal circumstances, if at all PW 1 had witnessed the incident, he being a person from the Police Department, he would have immediately tried to rescue his brother or even if frightened, he would have sought assistance from the police or his sister or from the public, to save his brother. However PW 1-Rajesh failed to do so. The lodging of the FIR after the gap of about two-and-a-half hours is certainly fatal to the prosecution case and

creates a serious doubt about the presence of PW 1-Rajesh at the place of the incident. Thus,PW 1-Rajesh is not found to be a trustworthy and reliable witness and, as such, his testimony cannot be relied upon.

17. The prosecution further placed reliance upon the testimony of Vivek Masarkar (PW 2). PW 2 testified that he was knowing Pinku Ghongade (deceased) as well as Vicky Ghongade, as they used to visit his locality. He was also knowing Sumit Chintalwar (app/accd. No.1) and Amar Lohkare (app/accd.No.2). Although PW 2 said that he was knowing app/accd. No.1 Sumit, however,he pointed out his finger towards accused Lalit Thakre. He however rectified his mistake and thereafter identified the app/acc. no.1 Sumit before the Court. According to PW 2, he was confused while identifying the app/accd. No.1-Sumit. According to PW 2, on 10.8.2011 between 10.30 a.m. and 10.45 a.m, he was present at Jadumahal chowk. He had gone there to purchase kharra from panstall of one Guddu. At that time, Sumit(app/accd. No.1); Amar Lohkare (app/acc no.2); Nayan Chintalwar (absconding accused) and their associates were standing at Jadumahal Chowk. He saw Vicky Ghongade coming to Jadumahal from the side of Rajkamal Chowk on his CBZ Extreme. He was followed by his brother Pinku (deceased) on his bullet motorcycle. Sumit called Vicky Ghongade, therefore he stopped on the road. Pinku also stopped his motorcycle on the road. Sumit Chintalwar and his associates were taking with Vicky. Suddenly, Sumit Chintalwar took out a small sword and assaulted Pinku. Therefore Pinku left his motorcycle and started running away. Sumit, Amar, Nayan and their associates who were 10 to 15 in numbers chased Pinku. They caught hold of him in front of Anjali Medical Stores and started assaulting Pinku with knives of different size, stones and other weapons. Due to the said assault, the shop owners closed their shops and went away. Pinku fell down on the spot. Thereafter the accused persons also fled away. According to PW 2, he was frightened due to the incident and therefore he went to his home and narrated the incident to his mother, who warned him not to venture outside the house and disclose the incident to anybody. On 15.8.2011 the police came to his house made enquiry with him about the incident and recorded his statement.

18. The testimony of PW 2 is indicative of the fact that he had not taken any pains to disclose the incident either to the police or any one in the vicinity. According to him, he disclosed the incident to his mother, however, his mother advised him not to tell the incident to anybody and therefore PW 2 kept mum for five days. When the police visited his house, at that time only, he disclosed the incident to the police and his statement came to be recorded. The entire version of PW 2 is undigestable and unbelievable. Interestingly, the mother of PW 2 has not been examined by the prosecution. Therefore it is difficult to accept that PW 2 narrated the episode of assault to his mother. Even the prosecution failed to examine Guddu who was allegedly at the pan kiosk at the time of the incident. PW 2 fairly admitted in his cross-examination that he had not stated before the Police that he had narrated the incident to his mother who had warned him not to go out of the house and not to tell the incident to anybody. The said version of PW 2 goes to the root of the case and makes his entire testimony doubtful. As such, PW 2 is not found to be a trustworthy and reliable witness.

19. As regards the recovery of weapons, it is well-settled that under section 27 of the Evidence Act, the part of information which is exculpatory in nature, is not to be considered. However only such part of the information which is distinctly related to the discovery of the place where the weapons are allegedly concealed would be admissible. In this regard, the prosecution has examined panch witness PW 3- Rahul Tamgadge. According to PW 3, Shubham Fulzele made a voluntary statement 15.8.2011 that he had handed over the knives (Pachpan chaku) to Sumit (app/accd. No.1). Accordingly, memorandum panchnama was drawn (Exh. 117). The accused Shrikant Ingole confessed that he had handed over the Pachpan Chaku to Sumit (app/acc.no.1). Accordingly, the memorandum Panchanama was prepared at Exh.118. Likewise, the app/acc. no.2 Amar Lohkare made a voluntary statement that he had handed over Hattimar knife to Sumit Chintalwar (app/acc.no.1). The memorandum was recorded at Exh.119. Then the app/acc. no.1 Sumit showed his willingness to show the place where he had kept the bag containing one small sword, two Pachpan chaku and one Hattimar knife given by accused Shubham Fulzele, Shrikant Ingole and Amar Lohkare. The memorandum panchanama was drawn at Exh. 120.

20. According to PW 3, the app/accd.No.1-Sumit took out an ash colour bag from the bushes which was containing four weapons. Those weapons were sword (art.P-3) Hattimar knife(art. P-4), Pachpan knives (art. P-5 ad P6) respectively. Thus, the weapons were taken charge vide panchnama Exh.121.

21. Pertinently, the alleged seizure was from behind the bushes which were in the Medical College and Hospital compound. The said place was accessible to the patients and public at large. We do not find any concealment of such weapons. The said open space must be one cleaned by the sweepers of the Medical College and Hospital, so also said hospital is under the control of the Security Guards. In these circumstances, it is difficult to digest that for five days after the alleged incident, the weapons were lying in the open space without anybody's attention. Thus, the testimony of PW 3 is not worthy of credence. The alleged concealment of the weapons does not appear to be within the distinct exclusive knowledge of the accused.

22. So far as the alleged recovery of clothes of the app/acc.no.1 and app/acc.no.2 is concerned, the prosecution relied upon the testimony of PW 7 Inosh Pande. According to PW 7, on 13.8.2011 the police called him to the Police Station. The bloodstained clothes of the app/acc.no.1 Sumit from his person were seized in his presence. The clothes were black shirt (P-11) and black jeans pant (P-12). The police prepared the seizure Panchnama (Exh. 157). According to PW 7 on the same day, the police took charge of the clothes of app/acc.no.2 Amar Lohkare. PW 7 however failed to recollect those clothes. The police prepared the seizure panchnama (Exh. 158).

23. On careful scrutiny of the testimony of PW 7 and the panchnamas, it did not appeal to our mind that the bloodstained clothes were taken charge three days after the incident from the person of app/acc.nos.1 and 2 and the accused persons were wandering in the town with those alleged bloodstained clothes. The alleged recovery of the clothes does not appear to be convincing and appears to be doubtful. Thus, no reliance can be placed on the recovery of clothes of app/accd.Nos.1 and 2.

24. As far as the investigation is concerned, it is conducted by PW11- Prakash Bada. P.I. Bada has conducted the investigation as discussed above in the prosecution case. Coming to the First Information Report, according to PW 11, Ajni Police Station has received information about the incident at about 11.05 am. It was given by one person. The said information was received by the Duty Officer. PW 11 admitted that such a serious information was required to be entered into the Station Diary. However according to him, the name of the informant of such information was not entered anywhere. He further stated that he has not verified the Station Diary and there is no document to show as to what was the nature of the said information. The said version of PW 11 clearly indicates that PW 11 has failed to verify whether any such entry in respect of the cognizable offence was taken in the Station Diary. At the same time, the concerned Duty Officer failed to make any such entry in the Station diary about the alleged cognizable offence and the name of the assailants. Even the name of the informant has not been entered anywhere in the Station Diary, which is supposed to be maintained by the Police Station. In this context, it may be recollected that according to the complainant, the alleged incident had taken place at about 11.45 a.m; whereas he has reported the said incident to the Police at 1.35 p.m, nearly two and a half hours after the alleged incident. PW 11 prepared the Spot panchnama. However he specifically stated that the brother of the deceased namely Rajesh Ghongade (PW 1) did not meet him at the place of the incident.

According to him, there was tense atmosphere at the place of the incident and, therefore, people were not coming forward to give any information about the incident. PW 11 however admitted that he had not taken entry in the Station Diary regarding the said fact. PW 11 also admitted that the seized articles are to be deposited in the Malkhana immediately. He however admitted that the property seized is deposited in the Malkhana on 19.8.2011. PW 11 even failed to file document on record to show as to where the seized properties were kept till the date of their deposit in the Malkhana. PW 11 admitted that the Rajesh (PW 1) had specifically named (1) Sachin Wasnik (2) Girish Wasnik (3) Akshay Waghmare (4) Yogesh Bhagat (5) Vijay Kamble (6) Sonu Thavare (7) Sanjay Waghade (8) Vikas Gedam, in his report. However, according to PW 11 they could not have been possibly present at the place of the incident, at the time of its occurrence. The said

version of PW 11 indicates that PW 11 has not conducted fair investigation. The investigation appears to be shoddy in nature.

25. As far as the C.A. Report (Exh.90) is concerned, it indicates the blood of deceased as of 'B' Group on the clothes of the app/accd.No.1 as well as appellant no.2, however, in view of the fact that the recovery of the clothes of appellant/accd.No.1 and 2 is doubtful, the C.A. report which is a corroborative piece of evidence and not a substantive one, is of no assistance to the prosecution case.

26. Furthermore, there is an inordinate delay in lodging the FIR which is not explained satisfactorily, although the first informant is in the service of Police Department. Even assuming that the informant was frightened completely due to the alleged incident of attack by a group, on his brother with deadly weapons, he could have contacted the concerned Police station on phone, more so when the Police station is hardly at a distance of 1 km from the place of the incident. Even the sister of PW 1 Rajesh is serving in the Police Department and stays at a distance of 1/2 km from the place of the incident. PW 1 did not contact her or informed her about the said incident. The unexplained delay in lodging of the complaint certainly makes the prosecution case doubtful, as there was ample opportunity and doubt to cook the case as far as the involvement of the appellants/accused is concerned, in the light of the fact that the Investigating agency released few suspects after interrogating them, as they were not found to be involved in the offence.

27. Pertinently, the investigating agency failed to take the Station Diary entry in respect of the incident although, according to PW 11, the duty Officer at Ajni police Station had received the information about the incident at 11.05 a.m. given by one person. The said information was not entered into the register and PW 11 even failed to verify the Station Diary.

28. Thus, there is a delay in lodging of the F.I.R. The alleged eye witnesses are not found to be trustworthy. The recovery of articles is doubtful. On careful scrutiny of the entire evidence on record against all the accused persons, it is noticed that there is no iota of convincing evidence on record against any one of the accused.

The prosecution has miserably failed to prove the charges levelled against them. Hence the following order:-

ORDER

Criminal Appeal Nos.521 of 2014 and 558 of 2014 filed by accused/appellants- Amar s/o Ramesh Lohkare and Sumit Ramesh Chintalwar respectively are allowed. They are acquitted of the offences charged with.

They are directed to be set at liberty, if not required in any other Crime.

Criminal Appeal No.133 of 2015 filed by Smt.Shantabai w/o Maroti Ghongade is dismissed.

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