

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 423 OF 2000

1. Sheetal Anil Berlekar	}	
Age :19 years	}	
	}	
2. Babasaheb Gangaram Daingade	}	
Age: 31 years	}	
Both r/at 1248. 'C' Ward,	}	
Kolhapur	}	Appellants

Versus

The State of Maharashtra	}	Respondent
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Mr. Niranjan Mundargi a/w. Ms. Keral Mehta for the appellants.
 Mr. Arfan Sait-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV &
 PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : OCTOBER 1, 2021.

PRONOUNCED ON : FEBRUARY 9, 2022.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The Appellants herein are convicted for the offence punishable under section 302 read with 34 of Indian Penal Code and under section 135 of Bombay Police Act and are sentenced to suffer for life and fine of Rs.2000/- each, in default, simple imprisonment for six months by the 5th Additional Sessions Judge, Kolhapur vide judgment and order dated 12th May 2000 in Sessions Case No. 169

of 1999. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows:-

a) The accused no. 2 happens to be the maternal uncle of accused no.1 and worked as a peon in Shahu Merchants Urban Co-operative Credit Society. The accused no.1- Sheetal had started residing with the accused no.2. He was accompanied by his parents and sister Megha. The house of Parashram Dattatraya Khade is just across the road from the house of the accused no.2. Sachin happens to be the son of the complainant. It is alleged that Megha used to visit the telephone booth of the complainant for making telephone calls and she was insisting upon him to marry her. The complainant and his wife had overheard the said conversation between Sachin and Megha on their intercom.

b) It is further the case of the prosecution that on 9th August 1999 at about 6.30p.m. Sachin was present in the STD booth when he received a call from the accused no.1 calling Sachin near Hotel Suzuki situated at Chandani Chowk. Complainant had overheard the conversation on the intercom. The said invitation by accused no.1 was followed by a threat that Sachin would face dire consequences upon failure to come near Hotel Suzuki.

Sachin defied the caller and asked him to visit the STD booth, if he so desired.

c) Upon inquiry by the complainant Sachin had disclosed that the accused no.1 is under the misconception that Sachin teases Megha i.e. sister of accused no.1 and therefore, had called upon him. It is alleged in the First Information Report lodged by the complainant that at about 8.00p.m. both the accused came near the STD booth and upon being exhorted by accused no.2, accused no.1 had assaulted Sachin with a dagger on his chest and head. The complainant has raised hue and cry. Upon seeing the complainant, both the accused fled away. The people in the vicinity had gathered. The injured was taken to CPR hospital and was declared dead on arrival.

d) PW.1-the complainant i.e. Parashram Khade lodged a report at the Laxmipuri Police Station against the accused persons. On the basis of the said complaint, Crime No. 60 of 1999 was registered for the offence punishable under section 302 read with 34 of Indian Penal Code and under section 135 of the Bombay Police Act. The F.I.R. was registered as 00 number at Laxmipuri Police Station and then forwarded to the concerned police station.

3. At the trial the prosecution has examined as many as 17 witnesses to bring home the guilt of the accused. The case rests on

the evidence of four eye witnesses i.e. PW.1-Parashram Dattatraya Khade, PW.5-Balasaheb Ashok Mudholkar, PW.6-Rashid Aabubakar Pirjade and PW.7-Mangala Nivrutti Gurav. According to the prosecution, it is the case of direct evidence.

4. PW.1- Parashram Khade has deposed before the Court that he had employed a girl to look after the telephone booth. Her duty hours is 11.00a.m. to 5.00p.m. and after 5.00p.m. the STD booth was managed by one of his sons and Sachin happens to be his youngest son. His house is situated in a market place. He was acquainted with the accused ever since their childhood. At the time of incident, the accused no.1 was staying with accused no.2 alongwith his family. That, Raviwar Peth Tarun Mandal is situated just opposite the STD booth and young boys used to gather there. PW.1 had overheard the conversation between the accused no.1 and Sachin. On the day of incident he had also heard his son defying the caller. He had heard the accused no.2 exhorting the accused no.1 to assault Sachin and had also seen the actual incident of assault. PW.1 had shouted for help and with the help of boys at Ravivar Peth Tarun Mandal he had carried Sachin to the hospital. At the hospital he had disclosed to one Pirjade and Mudholkar that Sachin was assaulted by none other than the accused.

5. The cross-examination of the witnesses is pointed towards the direction of demonstrating that indeed PW.1 had not actually seen the incident of assault and was not present at the scene of offence. PW. 1 has expressed doubt that no love affair could have

developed between Sachin and Megha within eight days since accused no.1 had started residing with accused no.2 just eight days prior to the incident.

6. There is a suggestion in the cross-examination that the said allegations are levelled against the accused due to political rivalry since the complainant is a leader of Kolhapur City and has cordial relation with Baburao Jadhav, the leader of the house and at the time of incident the complainant was one of the Director of Co-operative Bank whereas Baburao Jadhav is the Chairman. It is pertinent to note that topography of the booth as suggested by the defence are admitted by PW.1. It is further admitted that one has to climb two steps to enter into the STD booth since it is elevated from the ground. It is also admitted that the accused no.2 Babasaheb resides near the intersection, at the southern east corner formed by the east-west cross road known as the Mahar Galli. It is also further admitted that the incident had taken place on Sunday and many hawkers were selling their goods in front of the STD booth. It appears that the said question was especially asked as, besides PW.1, no eye witness is examined to substantiate the case of the prosecution.

7. It is elicited in the cross-examination that the complainant knew Megha as she used to visit the said telephone booth between 9.00a.m. to 9.30a.m. Sachin used to go for work at about 8.00a.m. That Megha used to call on the STD booth to some other telephone, whenever she received the calls, the call was

disconnected but he could identify her voice. He also overheard the conversation between Megha and Sachin.

8. It is admitted in the cross-examination that he could identify the voice of the caller when the last call was made at about 6.30p.m. on 09/08/1999. He only heard Sachin refusing to go to Suzuki Hotel. Sachin had informed him about the name of the caller and the purpose. There are material omissions in the evidence of PW.1 which go to the very root of the matter. It is also admitted that at the relevant time, PW.1 was chatting with the friend of his son i.e. Manoj Kavale.

9. It is admitted in the cross-examination that when he saw the accused persons coming towards the telephone booth he did not suspect any foul play. At the time of exhorting accused no.1. The accused no.2 had not actually entered the STD booth but his one foot was on the last steps. Whereas PW.1 rushed him and at that juncture he had seen accused no.1 drawing the dagger and assaulting *but at that time he was standing outside the STD booth and therefore he could not see as to whether accused no.1 had drawn the dagger from inside pocket of his clothes or from the waist side*. The accused no. 1 had vertically pulled the dagger at the time when Sachin was sitting on the chair inside the STD booth. The accused no. 1 had mounted the first blow over the chest followed by a blow on the head. Even after hearing the accused no.2 asking the accused no.1 to assault Sachin. There was no reaction from Sachin, there was no time to accost the accused and therefore, he could not

see who chased the accused persons but PW.1 claims to have seen the accused dropping the dagger outside the STD booth.

10. It is also admitted that despite enquiry by the public PW.1 had not disclosed to anyone that Sachin was assaulted by the accused no.1. The omissions to the effect that Manoj Kavale was present at the scene are admitted.

11. The suggestions that there was failure of electricity supply in the said locality at the time of incident has been denied. It is admitted that PW.1 has not only not disclosed the incident to the neighbours but he has not even disclosed about the incident to his elder son.

12. PW.5 - Balasaheb Mudholkar claims to be a social worker in the area of Laxmipuri and Raviwar Peth Tarun Mandal. He alongwith the other members of the community performed 'Aarti' in the temple of Sarvashakshi Ganpati everyday between 7.30p.m. to 8.30p.m.

13. According to him, the STD booth by name Sarvasakshi Doordhwani Kendra is situated in front of Mandal. The witness claims to be knowing the accused no.1 since his childhood.

14. PW.5 claims to be the eye-witness to the incident of assault. He had also heard the father of Sachin shouting by saying '*don't hit*'. He alongwith Lalsing Chavan and Pirjade claims to have rushed to the STD booth upon seeing the incident but the accused

had fled before they could reach and while fleeing the accused had dropped the dagger on the road. When they reached the booth, they saw PW.1 holding his son.

15. In the cross-examination, it is categorically admitted that the said Tarun Mandal is situated opposite Gurav Trading Company and Shiv-prasad Trading Company and Lohar Chawl stands in between the Tarun Mandal and the temple. That they sang five 'Aarties' everyday at the temple. According to the witness, during the night time the activities inside the booth can be seen because of the electricity in the STD booth. However, he could not recollect as to whether there is visibility of the activities inside this STD booth during the day time.

16. It is also admitted that if a person is on the door step of the Ravi Bank, he cannot see inside the STD booth. He was accompanied by Pirjade only till the incident took place. The very fact that people had gathered for performing 'Aarti' is an admitted omission.

17. As far as the topography of the scene of offence and the actual act of assault is concerned, PW.5 has stated that the STD booth is located on an elevation from the ground and one has to climb two steps to reach inside the booth. It is further stated that PW.5 had actually seen the accused no.1 drawing the dagger from his right side of his waist. However, he was not sure as to whether it was stuck in or was concealed in his pocket because the dagger was

lifted vertically. In the very next breath PW.5 has stated that while entering the STD booth the accused no.1 was carrying a dagger in his hand. He has not seen whether PW.1 was present when accused no.2 exhorted the accused no.1 to assault Sachin but as a reaction to the incitement by accused no.2, the accused no.1 just rushed inside the booth and as soon as he entered, inside the booth the father of the deceased rushed towards the booth trying to restrain them. The width of the door is such that only one person can enter at a time. Since the accused no.1 was at the door step, accused no.2 could not enter into the cabin and at the time of assault, Sachin was seated in a chair. In the very next breath it is stated that the deceased was seated on the stool when second blow was given over his head.

18. That PW.1 neither apprehended the accused nor raised shouts. PW.5 has also admitted that he had not made any attempts to catch hold of the accused persons. According to him, the accused no.1 did not deliberately throw the dagger on the road but it fell from his hand. On the way back to the house, PW.1 had disclosed the reason for attack on the deceased. PW.5 had accompanied the injured and his father to the hospital.

19. PW.6- Rashid Pirjade claims to be in the company of PW.3 at the relevant time of incident. According to him, on the day of incident there was a fair of Mahi which was being celebrated in the house of Jairam Khamkar and a Goat was to be sacrificed. PW.6 was present on the steps of Ravi Bank at about 7.45p.m.

20. The witness admits to be short sighted and he uses the glasses of 5.5. Dioptre. It is also admitted that the activities in the STD booth are not visible from the staircase of the said bank and it is admitted that PW.6 and his friend were seated on the staircase of the said bank. There are material omissions in the evidence of PW.6 insofar as the actual incident is concerned. According to him, Sachin did not get up from the chair even after he heard incitement by the accused no.2. Upon hearing the words of the accused no.2 neither the witness nor the father of the deceased had gone near the STD booth. Neither did they intervene upon seeing the accused no.1 drawing the dagger. Sachin did not raise shouts despite being assaulted twice. After being assaulted, Sachin came out of the STD booth and after he came out PW.1 caught hold of him. Hence, no one chased the accused persons. When PW.6 alongwith PW.5 reached in front of the STD booth, Sachin was lying on the platform (pedestal) at the distance of 2 feet there from. PW.6 was not sure as to whether Sachin was unconscious or not at the time when he was being carried to the hospital it was only after returning from CPR hospital that the witness had enquired with PW.1 about reason.

21. PW.7-Mangala Gurav another eye-witness is the proprietor of Gurav Trading Company. Shiv-prasad Trading Company is adjacent to Gurav Trading Company. PW.1 happens to be the owner of both the shops. She claims to be standing in front of the shop at the time of incident. According to her, while stabbing Sachin accused no. 1 had partly entered into booth i.e. his one leg was inside the booth and another was outside the STD booth, whereas

accused no.2 was standing outside the booth. It is admitted that Shiv-prasad Trading Company is situated in between the STD booth and Gurav Trading Company and the activities in the said STD booth are not visible from her shop, yet see claims to have seen the incident .There is a staircase leading to the first floor of the house of Sachin, adjacent to her shop. That, STD booth is diagonally opposite Raviwar Peth Tarun Mandal. That, Sachin was not stabbed but was hit with a dagger. Sachin was brought outside the STD booth by his father.

22. PW.8-Vijaykumar Patil, happens to be a panch. The observation in the panchnama that adjoining to the grocery shop of PW.7 there is a wooden staircase leading to the residential room of the complainant admitted by PW.8.

23. The medical evidence in the present case is brought on record through PW.9- Dr. Atulaya Patil. He has proved the contents of postmortem notes which are marked at 'Exhibit-37'. The witness was shown the dagger i.e. article no.2 and according to him, injury no.1 can be possibly caused by the said weapon. The cause of death was 'haemorrhagic shock due to penetrating injury to heart'. According to PW.9 there must have been profused bleeding from injury no.1 and it would take 3 to 5 minutes to form a clot after the injury is exposed to the external air. It is opined that the cause of death is due to haemorrhagic shock. The register of the hospital shows that the injured was brought dead to the hospital. The fact that the injured was brought dead to the hospital is corroborated by

the evidence of PW.10-Reshma Patil. She had produced the photocopy of the register showing that the injured was brought dead. The same is marked at Exhibit-39. The overwriting in the register is also admitted by the witness. The timing was initially shown as 8.00p.m. and the same was substituted by 8.15p.m. The explanation for overwriting is that the ink of the said pen had got over.

24. It is pertinent to note that PW.12 has categorically admitted that no case papers were prepared at CPR hospital. The identity of the informer at CPR hospital is not mentioned as PW.12. had not noted his name and address and the said informer was not sent the said police station along with police constable or anybody else. The said entries are at 'Exhibit-40'. There appears to be an interpolation in the case history which shows that the incident had occurred in Sarvashakshi booth and the said words are indicated by arrow in the case history. According to the witness the said interpolation is taken place since the said word 'assault' in Sarvashakshi booth could not be written in one stroke for want of report. No serial number was given to the said entry which is recorded at page 820 with an endorsement 'since Sachin Khade is brought to the hospital in an injured condition due to stabbing, intimation is given to the police station'. The information was given to Laxmipuri Police Station. The said information was reduced into writing in the station diary. He had deputed P.S.I. Pardeshi to CPR hospital. The information was given to P.S.I Jadhav. PW.14 on his own had deputed additional police to the spot.

25. The present case rests upon the evidence of eye-witnesses. The topography of the scene of offence is important to determine as to whether the eye-witnesses from their given location could have seen the incident. To substantiate the same the prosecution has examined PW.11-Dattatraya Dikshit who was serving as a maintenance surveyor in the City Survey Office. He has admitted that the map was not drawn according to the scale but it was only a sketch and only the sites mentioned in the spot panchnama are reflected in the said sketch. The said sketch is at Exhibit-42. He had then drawn the second map of the scene of offence showing the distance between the STD booth and Sarvasakshi Ganpati Temple. The distance between STD booth and Raviwar Peth Tarun Mandal. The said map was drawn at the place. The said map is also not drawn as per the scale. The second map is at 'Exhibit-42'. Both the maps were drawn on the same day. It is admitted that Raviwar Peth Tarun Manal and Sarvashakshi Ganpati Mandal do not find place in Exhibit-52. The reason for drawing the second map was that he had received incomplete scene of offence panchnama. The staircase adjacent to Gurav Trading Company is admitted. There are omissions in 'Exhibit-43'. 'Exhibit-42' was produced before the Court at the time of recording of evidence of PW.1.

26. PW.17-Subhash Jadhav happens to be the investigating officer. He has deposed before the Court about the steps taken by him in the case of investigation. He has proved the omissions and contradictions in the evidence of the witnesses. It is admitted in the

cross-examination by PW.17 that he has seen dagger lying outside the STD booth and the same is recorded at the scene of offence panchnama. It is admitted that he has not taken the finger prints on the dagger. There are bloodstain on the tip of the dagger when it was seized and the bloodstain was dried.

27. PW.17 categorically admits that there were bloodstains on the floor (farshi) but he was unable to say as to whether the said bloodstained slab was inside the booth or outside except the table. He had not noticed bloodstain on any other spot inside the STD booth. In the very next breath it is stated that there were no bloodstains outside the STD booth when he visited. The scene of offence there were about 1000 to 1500 people gathered outside the shop. He had need no contents to apprehend the accused in the same night.

28. The accused no.1 was brought by police constable and produced before PW.17. No arrest panchnama was prepared. No enquiry was made by the investigating officer as to whether any fake call was received at the STD booth soon before the incident. The accused have examined three defence witnesses to substantiate that the case has narrated by the witnesses is not truthful.

29. DW.1-Prakash Chavan happens to be the sub-engineer at M.S.E.B. Urban Division Kolhapur and was posted at Central Sub Division and the area of 'C' ward Raviwar Peth, Kolhapur comes under the Central Sub-division of M.S.E.B. According to him, in the

eventuality, that the street lights in any particular area are not working and the name given to that effect was given by the municipal corporation on very next day in writing and the same was recorded in a register title as 'street light fault'. The witness has produced the original register before the Court. Attention of the Court is drawn to the entry dated 09.08.1999 in respect of 'C' ward in Raviwar Peth. The said entry would indicate that the work of maintenance was going on the transformation for 'C' ward. The report which is at 'Exhibit-65' shows that the intimation was given to M.S.E.B. that on 09.08.1999, the street lights in Bhau Galli are not functional.

30. DW.2-Shrikant Dange claims to be in the company of accused no.2 in the office of the political party Shivsena between 6.00 to 6.30p.m. after hearing he alongwith his friend had rushed to the house of PW.1. There were no street lights on the northern side road situated in front of house of PW.1 and the accused no.2 had accompanied him to the scene of offence. They visited the library in the office of the political party everyday. They read the newspaper in the said library.

31. The mother of accused no.1 is also examined as the defence witness. According to her, on the day of incident, she returned from the market at about 7.30p.m. She saw her daughter disturbed. Upon inquiry Megha had divulged to her that she was being stalked by a boy just across the road and therefore, she had no desire to go to the college. Since DW.3 was acquainted with father of

the said boy, she went to the house of PW.1 at about 7.30 to 8.00p.m. The street lights were not functional. After exchanging greetings she informed PW.1 and his wife that her daughter had shifted to Kolhapur since she desired to pursue a course in Cyber College. She disclosed to them that their son was stalking her daughter and that they should warn their son. PW.1 had assured that they would warn him. At that time the son of PW.1 had entered the house with a hand on his chest and fell down in front of his door. He had sustained bleeding injury on his chest. PW.1 enquired with him as to the cause of injury. There was no answer. PW.1 then lifted the said boy and took him to hospital. She was acquainted with PW.1 since childhood but had not visited his house since she was married and therefore she had no hesitation in visiting the house of PW.1 and disclosing about the behaviour of his son.

32. The learned counsel for the appellant has vehemently submitted that although according to the prosecution the case rests on direct evidence in the nature of testimony of the eye-witnesses. It would be necessary to see as to whether the testimony of eye-witnesses is truthful to inspire confidence of the Court. The learned counsel has drawn our attention to various lacunae in the prosecution case. The first and foremost submission is that the topography of the scene of offence as suggested by the defence has been admitted by PW.1 as PW.1 claims to be chatting with Manoj Kavale at the door step of the STD booth when actual incident occurred. However, the prosecution has not examined Manoj Kavale. That, no one had attempted to chase the accused. Moreover, PW.1

has not disclosed about the incident to his elder son also nay any other person.

33. It is further submitted that evidence of PW.5 is not trustworthy. He claims to be an eye-witness who was in fact standing next to the Tarun Mandal. However, it is admitted in the cross-examination that the Tarun Mandal is actually situated opposite Gurav Trading Company and Shivprasad Trading Company. PW.5 has stated that accused was armed with a weapon while entering the shop. He has seen the incident of assault which took place inside the booth but had not seen PW.1 standing outside the booth. Similarly, PW.6 also claims to be present on the staircase of Ravi Bank. He had not noticed anyone near the STD booth but has seen the actual incident of assault. It is admitted that the activities in the STD booth are not visible from the staircase of the bank. PW.7 appears to be got-up witness since it is admitted by her that Shiv-prasad Trading Company is situated between the STD booth and Gurav Trading Company and she is the owner of the shops. Hence, according to learned counsel the accused deserve to be acquitted.

34. Per contra, learned APP has vehemently supported the conviction and sentence awarded by the Sessions Court and has submitted that it is a case of direct evidence and the witnesses are natural witnesses. According to the learned APP apart from the independent eye-witnesses, PW.1– Parasram Khade, the father of the deceased happens to be an natural witness. His presence just outside the booth cannot be doubted for any reason whatsoever. He had also

heard his son refusing to meet the caller at hotel Suzuki. He had identified the voice of the caller. The motive for commission of the offence is also established. Hence, no interference is called for.

35. With the help of learned counsel for the appellant and the learned APP, we have perused the records and proceedings.

36. Upon meticulous appreciation of the evidence of the eye-witnesses what flows from the testimony adduced by the prosecution is as follows:-

i) PW.1 is the father of the deceased. He is the owner of the STD booth as well as Gurav Trading Company and Shiv-prasad Trading Company.

ii) He is the landlord of shop premises i.e. Gurav Trading Company and Shiv-prasad Trading Company. He has failed to establish that he was standing just outside the STD booth chatting with Manoj Kavale when the incident has occurred.

iii) In fact, there was hardly any prelude to the incident except the exhortation by accused no.2. That even after the first blow was given the injured had neither raised a cry nor moved from the chair.

iv) PW.1 had requested them not to assault his son and that the incident had taken place within fraction of second since no prelude is brought before the Court.

v) The evidence of PW.1 has been refuted by PW.5 and PW.6 who have stated that by the time they reached in front of the STD booth Sachin was lying on the platform (Pedestal) of the shop at a distance of 2 feet from there.

vi) It is not the case of PW.5 and PW.6 that they had helped PW.1 to get the injured outside the shop.

vii) The scene of offence panchnama also does not indicate that the injured who had sustained profused bleeding was dragged outside the STD booth. There is no splash of blood in the STD booth and similarly, there were no bloodstains outside the STD booth when he visited the scene of offence.

37. PW.17 has admitted that there were bloodstains on the floor but was unable to state as to whether the said slab of floor was inside the STD booth or outside except the table. He has admitted that there were no bloodstains on any other spot inside the STD booth. Except on the table whereas, it is the case of PW.1 that Sachin was assaulted while he was seated in his chair.

38. PW.1 has denied that the words S.T.D. are inscribed on the glass door with paint. However, the said inscription is recorded in the scene of offence panchnama and has also been corroborated by all witnesses. There is a staircase adjacent to the STD booth which leads to the house of the complainant– PW.1. This aspect would show that by the time the complainant had descended the

steps, the injured had fallen outside the booth and therefore, there is an elaborate cross-examination on the fact that no bloodstain are found on the clothes of either PW.1, PW.5 or PW.6 who had carried the injured to the hospital. PW.1 had not disclosed about the incident to the people who were present at the time of incident. The fact that he was chatting with Manoj Kavale is in the nature of omission.

39. There is an inherent inconsistency in the evidence of PW.5 as he has stated that he had not seen any other person near the STD booth but had seen Sachin in the booth sitting all alone. According to PW.1, the incident had occurred inside the booth.

40. It is the specific case of the witnesses that accused no.2 has exhorted from outside whereas accused no.1 had assaulted the deceased inside the booth. It is stated that after being assaulted Sachin came out of the STD booth and after he came out PW.1 had caught hold of him. At the same time it is also stated that by the time they reached the booth Sachin was lying outside.

41. The testimony of PW.6 would show that PW.5 and PW.6 were seated on the staircase of Ravi Bank. It is admitted by PW.5 that any activity in the STD booth is not visible from the staircase of Ravi Bank.

42. There is no question of PW.7 seeing the incident of assault as Gurav Trading Company is in the same direction as that of the STD booth. Shiv-prasad Trading Company and the staircase

leading to the house of the complainant are adjacent.

43. It is not the quantity of witnesses whose evidence is required for recording the conviction but it is the quality of the testimony which matter. Conviction can also been recorded on the basis of the sole testimony of one eye-witness provided that it is of a sterling quality.

44. It is no doubt true that there is only one eye witness who is also a close relative of the deceased, viz. his father. But it is well-settled that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding the culpability of the accused and the emphasis of Courts is always on quality of evidence.

45. The Apex Court in the case of '**Bhimapa Chandappa Hosamani and Ors. Vs. State of Karnataka**¹' has held as follows :-

“We have undertaken a very close and critical scrutiny of the evidence of PW-1 and the other evidence on record only with a view to assess whether the evidence of PW-1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the

1 (2006) 11 SCC 323

Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness”.

46. The evidence of one witness need not be corroborate with other witnesses but at the same time the testimony must be in consonance with time, place and actual incident of assault. Possibility that the said witness was infact able to see the actual incident of assault must be established beyond reasonable doubt.

47. In the present case the accused have examined defence witnesses. The mother of accused no.1 has also been examined as a defence witness. She has categorically stated that when she was in conversation with PW.1 in the house, his son had entered the house with the injury on his chest and fallen down in front of his door.

48. It is settled principle that the evidence of the defence witnesses need to be weighed in the same scale as that of the prosecution witnesses and the same cannot be brushed aside only because the said witnesses are interested witnesses.

49. The Apex Court in the case of ‘**Dudh Nath Pandey vs. The State of U.P.**² has held as follows :-

² 1981 (2) SCC 166

“We do not want to attribute motives to them merely because they were examined by the defence. Defence witnesses are entitled to equal treatment with those of the prosecution. And, Courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses”.

50. The Apex Court in the case of ‘**Munshi Prasad and Ors. vs. State of Bihar**³’ has held as follows :-

Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution

- a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses.

51. In view of this, the evidence of DW.3 cannot be brushed aside. This has to be decided in the background the evidence of PW.1, the sister of accused no.1 was insisting upon the deceased to marry her has no basis. PW.1 has also stated that it was not possible to develop the love affair within just two weeks since the sister of accused no.1 had started residing in the said locality just two weeks before the incident.

3 2002 (1) SCC 351

52. PW.1 has stated that Sachin used to leave for his work at about 8.00 a.m. whereas Megha used to visit the STD booth in between 9.00 to 9.30 a.m. and he had no knowledge about the name or identity of the person or the principle of which she made calls between 9.00 to 9.30 a.m.

53. As against this, it is the case of the defence witnesses that the deceased used to stalk her daughter and therefore, the life of her daughter had become so miserable. That she did not wish to attend her college.

54. The topography of the incident and the location of the STD booth vis-a-vis the location of eye-witnesses at the relevant time belies prosecution case that they could have been eye-witnesses to the actual incident of assault.

55. Section 3 of the Indian Evidence Act defines proof. The evidence would fall into three categories “PROVED”, “DISPROVED” and “NOT PROVED”. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist and fact is said to be ‘proved’ when, after considering the matter before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case,

to act upon the supposition that it exists. A fact is said not to be proved when it is neither proved nor disproved.

56. According to us, the present case falls under the category of “NOT PROVED”. Hence, in view of the above discussions, the accused are entitled to benefit of doubt.

ORDER

- i) The appeal is allowed.
- ii) The conviction of the appellants for the offences punishable under sections 302 read with 34 of Indian Penal Code and under section 135 of Bombay Police Act passed by 5th Additional Sessions Judge, Kolhapur vide judgment and order dated 12th May 2000 in Sessions Case No. 169 of 1999 is hereby quashed and set aside.
- iii) The Accused/appellants stand acquitted of all the charges levelled against them.
- iv) Their bail bonds stand cancelled.
- v) Fine amount if paid, be refunded to the accused-appellants as per rules.
- vi) The appeal is disposed of accordingly.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)