

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2488 OF 2009

Kuria & Anr.

... Appellants

Versus

State of Rajasthan

... Respondent

J U D G M E N T

Swatanter Kumar, J.

1. At the outset, we may notice that 15 accused persons had faced trial for offences under Sections 302 and 364 read with Section 34 of the Indian Penal Code, 1860 (for short “IPC”) before the Court of the Additional Sessions Judge, Banswara (Rajasthan). Vide its judgment dated 5th September, 2003, learned Trial Court acquitted all the accused persons except Laleng son of Bajeng, Laleng son of Dalji and Kuriya son of Laleng. These three accused were convicted for both these

offences and were directed to undergo rigorous imprisonment for life with a fine of Rs.4,000/- each and in default to further undergo rigorous imprisonment for four months under Section 302/34 IPC and to undergo rigorous imprisonment for ten years with a fine of Rs.1000/- each and in default to undergo further rigorous imprisonment for one month under Section 364/34 IPC.

2. All the three accused persons preferred separate appeals before the High Court, impugning the judgment of the Trial Court. Unfortunately, during the pendency of the appeal before the High Court, Laleng son of Bajeng died. Vide its judgment dated 25th May, 2008, the Division Bench of the High Court of Rajasthan at Jodhpur confirmed the judgment of conviction and order of sentence against the remaining two accused, i.e., Kuria son of Laleng and Laleng son of Dalji.

3. Aggrieved from the judgment of the High Court, both the accused have filed the present appeal. The State did not challenge the acquittal of the 12 accused persons by the Trial Court before the High Court. Thus, in the present appeal, we are only concerned with the appeal of the aforementioned two accused.

4. Now, we may notice the case of the prosecution in brief. Laleng, son of Mogji Patidar went to the Police Station, Garhi on 28th January, 2001 and lodged a written report (Exhibit P3) to the effect that his father had gone to some other place as a guest. At about 5.30 in the evening, he was returning to his house. The informant (who was also going in the same direction), was at some distance behind him. Along with him were two persons, namely, Dhulji and Bapulal. When his father reached near the house of Yatendra, son of Shivaji and was standing on the road, Laleng and Dalji started assaulting his father and on their hands, took him inside their house. According to Laleng, who was examined as PW3, Laleng son of Dalji, the accused, was carrying an axe in his hand. The other accused, Laleng s/o Wajeng, was carrying a 'kash' and Kuriya was carrying a 'lath' in his hands and others were also carrying 'laths'. PW3 and the others with him could not interfere because of the large number of accused and, due to fear, they ran to the village to get help. Once this fact was disclosed, Dhulji son of Gotam, Bajeng son of Pemji and Dalji son of Gotam had also arrived at the place of incident. In their presence, Laleng and his son Kuria, Laleng son of Dalji, Dhulji son of Bajeng, Kuber son of Jasu and Bhemji son of Nathu

were beating his father and while assaulting him, dragged and threw him on the road in front of the house of Laleng, the accused. When the informant and the others came near his father, they saw that he had expired. The body of the deceased was lying at the spot. According to this witness, there was rivalry between these persons and the deceased. PW3, thus, had seen the incident. The FIR was registered under Sections 147, 148, 149 and 302 of the IPC vide Exhibit P/4. The Investigating Officer commenced his investigation, went to the place of occurrence, prepared the site plan (Exhibit P/5) and recorded statement of the witnesses vide *panchnama* (Exhibit P/2). The body of the deceased was taken into custody. The clothes worn by the deceased were also taken into possession vide Exhibit P/7. The body of the deceased was subjected to post mortem which was prepared by Dr. S.K. Bhatnagar, PW6 being Exhibit P/11. From the house of the accused Laleng, blood stained *Dahli* (piece of wood of the door of the house) was taken into possession vide Exhibit P/9. In furtherance to the statement of the accused, the recoveries of iron kash, axe and laths were made and the same were taken into possession vide Exhibits P/13 to P/18. The recovered articles were sent to the Forensic Science Laboratory,

Udaipur (FSL) vide Exhibit P/30 for which permission was granted by the Superintendent of Police vide Exhibit P/29 [Acknowledgment receipt (Exhibit P/31)]. The report of the FSL was received and accepted as Exhibit P/43. Based upon the oral statements and the documentary evidence collected during the course of the trial and the statements recorded during investigation, the Investigating Officer (PW16) completed his investigation and submitted *chalan* under Section 173(3) of the Code of Criminal procedure, 1973 (for short, the Cr.P.C.) to the court of competent jurisdiction.

5. As already noticed, the accused-appellants faced trial before the Trial Court and were convicted. Their conviction and order of sentence was confirmed by the High Court.

6. The prosecution, in order to prove its case, had examined as many as 17 witnesses. PW1, PW3, PW5 and PW15 were projected by the prosecution as eye-witnesses. However, during the course of their examination, PW1 and PW5 were declared hostile as they did not support the case of the prosecution and the case of the prosecution primarily hinges upon the statements of PW3 and PW15 coupled with the post mortem report, the

report of the FSL, statement of PW6 and the attendant circumstances.

7. While impugning the concurrent judgments before this Court, the contentions raised on behalf of the appellants are :

- (1) PW1 is not a reliable eye-witness, inasmuch as from his statement and the attendant circumstances, it is clear that he has not seen the occurrence.
- (2) Presence of PW15 at the place of occurrence is doubtful inasmuch as PW3 in his report to the Police, Exhibit P/3 did not name him. Thus, the presence of PW15 is very doubtful.
- (3) No specific role or use of a particular weapon in causing injuries by the respective accused has been seen by PW3 or any other witness.
- (4) There is clear contradiction between the ocular and medical evidence inasmuch as, according to PW3 and PW15, axe and kash were used for inflicting injuries upon the deceased, while, according to the post mortem report (Exhibit P/11), all the injuries were caused with blunt weapons and there was no bleeding injury. Furthermore,

the question of collecting the blood from the *dahli* of the accused did not arise as the deceased was not bleeding as per the version given by the eye-witnesses. Consequently, there are serious holes in the case of the prosecution.

- (5) The statement of hostile witnesses or unreliable witnesses cannot be used for the purposes of corroboration of other witnesses. A statement which is otherwise untrustworthy cannot be corroborated by another piece of unreliable evidence. Deliberate and unbelievable improvements have been made in the statements of the witnesses between their recording of statement under Section 161 of the Cr.P.C. and statements in the Court. Statements of the witnesses are not sterling worthy and the entire case of the prosecution is based upon suspicion. Lastly, the provisions of Section 34 IPC are not attracted in the present case, as it was not a case of common intention and object.

8. First of all, we may deal with the argument advanced on behalf of the appellant that there is clear conflict between the medical evidence and the ocular evidence in relation to the manner in which injuries were inflicted and the consequences

thereof. Even the cause of death is not evident from the post mortem report and once the cause of death is not proved, the accused would be entitled to an order of acquittal.

9. In order to examine the merit of this contention, it is necessary for us to refer to the post mortem report at the very threshold. The post mortem report had been exhibited as Exhibit P/11 and the relevant part thereof reads as under :

- “1. Bruise 2 x 2 cm above RT eye
2. Bruise 3 x 2 cm on Pissa Rt ear
3. Bruise 9x3 cm near Rt side Nose
4. Bruise 3x2 cm Rt cheek near ear
5. Bruise 25x20 cm in front of chest and extending to the base of left side of Abdomen
6. Bruise 7x2 cm
7. Bruise 5x4 cm Rt lower back
8. Bruise 7x4 cm Rt upper arm
9. Bruise 4x2 cm Left Elbow
10. Bruise 7x2 cm back of left hand
11. Bruise Entire back from lateral bone both side superior border shoulder interior border till lower left of last rib
12. Bruise 4 x 4 cm Rt leg
13. Bruise 5x5 cm left leg

14. Burne 5x5 cm left thigh

15. Burne 4x4 cm left thigh

All are simple except 5&11 only two & all are caused by blunt object & within 24 hrs duration.

dissection at the neck shows Oedema & haemorrhage at the base of neck of muscles & is underlying soft tissue and at the base & antemortem of both ends of hyoid bones.

II. CRANIUM AND SPINAL CORD

Note The Spinal need not be examined unless any indication on disease or injury exist.

Healthy

III THORAX

1. Walls, Ribs and Cartilages Healthy
2. Pleurae Healthy – Pleural cavity both full of blood
3. Tharynx and Trachea Healthy except congestion at Trachea & larynx
4. Right Lung Voluminous cut section shows blood stained
5. Left Lung Voluminous cut section shows blood stained froth
6. Pericardium healthy There are #s of 3rd to 10th ribs
7. Heart Rt side Posteriorly pressing in between tissue causing
8. Large vessel. Lacunation of lung (RT) similarly there is # of V to 10th ribs

posters only causing piefcyr & Lacuratren of in between tissue & Lungs on left side. However nonstravenatic segments of both lungs are voluminous as disabible above Pericardium & large vessels & Heart is Healthy all four chambers of heart are empty.

In abdomen all organs are healthy stomach & intestine formally both contains semidigistel food & Large intestine contains faecial matri

10. Bladder Empty & Healthy

11. Organs and interal Healthy

V. MUSCLES BONES AND JOINT

Healthy

REMARKS AND MEDICAL OFFICER

1. All injuries are within 24 hrs & antemortem in nature.
2. Examinee expired 6-24 hrs of duration
3. Examinee expired due to injury both Lungs causing haemothorax associated pressue on neck causing asphyxia.”

Sd/- A B C D
(Dr. R. Vpaothyarya)”

The above report has been copied from the original Post Mortem report and no corrections have been made thereto.

10. The doctor was examined as PW6. According to the doctor, the deceased was a healthy person and had suffered the

abovestated 15 injuries. When he dissected the body of the deceased, he found that both pleural cavities were full of blood and the trachea and lungs were congested. At the back, ribs three to five were fractured and they had perforated the lungs. Similarly, on the left side as well ribs from five to seven had been fractured and had perforated the lungs even on that side. The cause of death, according to PW6, was as a result of injuries to both the lungs and the pleural cavity being full of blood which caused pressure on the neck, causing the deceased to suffocate. PW6 was subjected to a lengthy cross-examination but nothing material has been found. In his cross examination, he stated that he had prepared Exhibit P/11 immediately after examining the body of the deceased.

11. PW3, the son of the deceased, stated that the accused persons were beating his father. Fearing his own death, he ran to the village for help and when he along with Bajeng, Dhulji and Dalji reached back, they saw that the accused persons threw the body of his late father on the road and by the time they got there, his father had already died. He admitted his signatures on the report, Exhibit P/3 and also stated that the Police had prepared the site plan. Clothes of the deceased were taken in his presence

and he had signed the memo (Ex. P/7). In his cross-examination, he stated that despite his screaming, nobody came to help. PW4 corroborated the statement of PW3 and stated that he had come screaming that the accused people were beating his father. All of them ran towards the house of the accused along with other named persons and saw that the accused persons had thrown the body of the deceased on the road. According to this witness, there were 15-16 injuries on the body of the deceased. There was an injury on the neck. According to him, the neck had been twisted (*marod*) whereupon the deceased died. PW7 is the other witness who has stated that they went to the place of occurrence running and when they reached, they saw that body of the deceased was being dragged by the accused persons and, according to him, there was injury on the neck of the deceased and neck had been broken and his whole body had injuries. PW2 is the other witness who has specifically stated that body of the deceased was lying in front of the house of Laleng, the accused, when he went to the place of occurrence. This witness clearly stated that when he saw the body of the deceased, he noticed that blood was oozing from his body. In answer to a question in his cross-examination, he stated that there were

disputes between Khemji and Kachru relating to agricultural land. The inquest report of the body of the deceased is also a relevant document in this regard. The Investigating Officer noticed as many as 15 injuries on the body of the deceased which completely matched with the post mortem report. He also noticed that on the wrist of the hand and finger (left), there was blood. There were a number of injuries on the right foot of the deceased. There was fresh injury seen on the right foot. The deceased was wearing white tericot *jhabba* which was blood stained. There is complete consistency between the ocular and medical evidence. The mere fact that no injuries on the body of the deceased were found which could have been caused by an axe or *kash* (which are stated to be sharp aged weapons), would not *ex facie* belie the ocular and medical evidence. There were a large number persons (15) who were involved in the commission of the crime. Except two, all were carrying *laths* and all the injuries on the body of the deceased were caused by a blunt weapon. Even an axe or *kash* could be used from the other side, i.e., not the sharp edge to cause such injuries. Even if they were not used, it would not, in any way, cause a dent in the case of the prosecution. All the witnesses have truthfully spoken about

the occurrence. Except PW3, nobody could have actually seen the assault on the deceased by the accused persons. It will be unfair to expect a young boy, whose father is being beaten to death, to watch with precision as to which of the accused was causing which injury and by what weapon. His entire interest would be to somehow save his father. There was so much of fear in his mind that he could not gather the courage of preventing the accused persons from assaulting his father as he thought that accused persons would kill him as well. This conduct of PW3 cannot be said to be abnormal in the facts and circumstances of the present case. He immediately got other persons to help.

12. PW15 stated that at about 5.30 p.m., he was going from the bus stand towards his house, when he heard the screams of the deceased. When he went there, the accused persons were beating the deceased and while continuing to beat him, took the deceased into their house. He also stated that they had brought the body of the deceased outside and threw it near the hand pump in front of their house and when he saw the deceased he was dead and his neck was turned in one direction. He also stated that there was dispute about the agricultural land between

the deceased and the accused persons. In his cross-examination, he admitted that he was alone at the place of occurrence when the deceased was being beaten by the accused persons. He also stated that he had screamed and raised an alarm but nobody came forward to help after which the son of the deceased along with others had come there. In response to a question in his cross-examination, he stated another fact that four accused persons had brought the dead body of the deceased outside their house while dragging it. However, it had not been recorded and the Police has not noticed the same. He reiterated that body of the deceased was dragged and thrown in front of the hand pump.

13. This Court has consistently taken the view that except where it is totally irreconcilable with the medical evidence, oral evidence has primacy. In the case of *Abdul Sayeed v. The State of Madhya Pradesh* [(2010) 10 SCC 259], this Court held as under:

“38. In *State of U.P. v. Hari Chand*, (2009) 13 SCC 542, this Court reiterated the aforementioned position of law and stated that: (SCC p. 545, para 13)

‘... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.’

39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

40. In the instant case as referred to hereinabove, a very large number of assailants attacked one person, thus the witnesses cannot be able to state as how many injuries and in what manner the same had been caused by the accused. In such a fact-situation, discrepancy in medical evidence and ocular evidence is bound to occur. However, it cannot tilt the balance in favour of the appellants.”

14. Similar view was taken by this Court in the case of *Baso Prasad & Ors. v. State of Bihar* [2006 (13) SCC 65] wherein this Court held as under :

“27. In some cases, medical evidence may corroborate the prosecution witnesses; in some it may not. The court, however, cannot apply any universal rule whether ocular evidence would be relied upon or the medical evidence , as the same will depend upon the facts and circumstances of each case.

28. No hard and fast rule can be laid down therefore. It is axiomatic, however, that when

some discrepancies are found in the ocular evidence vis-a-vis medical evidence, the defence should seek for an explanation from the doctor. He should be confronted with the charge that he has committed a mistake. Instances are not unknown where the doctor has rectified the mistake committed by him while writing the post-mortem report.”

15. In the case of *Krishnan v. State* [(2003) 7 SCC 56], this Court held as under:

“18. The evidence of Dr. Muthuswami (PW 7) and Dr Abbas Ali (PW 8) do not run in any way contrary to ocular evidence. In any event, the ocular evidence being cogent, credible and trustworthy, minor variance, if any with the medical evidence is not of any consequence.

20. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitness account which had to be tested independently and not treated as the “variable”, keeping the medical evidence as constant.

21. It is trite that where the eyewitnesses’ account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and years of justice. Hence, the importance and primacy of the quality of trial process. Eyewitnesses’ account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other

evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit worthy; consistency with undisputed facts, the “credit” of the witnesses; their performance in the witness box; their power of observation etc. Then, the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

16. In light of the above principles, we may revert to the evidence in the present case. A large number of persons had attacked one person. These witnesses cannot be expected to explain the role in the inflicting of injuries by each one of them individually and the weapons used. Such conduct would be opposed to the normal conduct of a human being. The fear for his own life and anxiety to save the victim would be so high and bothersome to the witness that it will not only be unfair but also unfortunate to expect such a witness to speak with precision with regard to injuries inflicted on the body of the deceased and the role attributable to each of the accused individually. In the present case, the result of the blunt injuries is evident from the report of the post mortem (Exhibit P/11), the ribs of the deceased were broken and they had punctured the lungs. The pleural

cavities were full of blood and his body was dragged causing injuries on his back. In these circumstances, some blood would but naturally ooze out of the body of the deceased and his clothes would be blood stained. The post mortem report (Exhibit P/11), the inquest report, the statements of PW2, PW3, PW4, PW7 and PW15 are in line with each other and there is no noticeable conflict between them. The injuries on the body of the deceased were so severe that they alone could be the cause of death and the statement of PW6 in relation to cause of death is definite and certain. Thus, we see no merit in this contention raised on behalf of the accused.

17. The other submission on behalf of the appellant relates to contradictions and improvements in the statements of the witnesses. It is contended that Exhibit P/4 does not confine itself to the lodging of the FIR. PW3 has not mentioned the presence of PW15 at the place of occurrence while, according to PW15, he was present at the site. The witnesses had also stated that the neck of the deceased was broken, while according to PW6, it was not so. The witnesses, including PW3, PW7 and PW15 have made definite improvements in their statements before the Court in comparison with their statements recorded

under Section 161 of the Cr.P.C. by the Investigating Officer, with which they were even confronted. The counsel has then argued that the witnesses have to be of 'sterling worth', otherwise the case of the prosecution would fall.

18. 'Sterling worth' is not an expression of absolute rigidity. The use of such an expression in the context of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'. This term, in the context of criminal jurisprudence cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging the worth of the statement of a witness. To our mind, the statements of the witnesses are reliable, trustworthy and deserve credence by the Court. They do not seem to be based on any falsehood.

19. As far as absence of the name of PW15 from the FIR (Exhibit P/4) is concerned, it is clear that PW3 was following his father from behind and the moment the accused persons, who were large in number, started assaulting his father with weapons that

they were carrying, for fear of his own life and to bring people to save his father, he ran from the site. Obviously, PW15 appeared at the scene at that time and PW3 had not seen him at that juncture. Afterwards, when he came to the site along with other witnesses, i.e., PW2, PW4 and PW7, he saw his father's body being thrown near the hand pump in front of the house of the accused. The death of his father would have perturbed him so much that his priorities would be only to take his father to the hospital and inform the police, rather than viewing as to who was there around him besides the persons who had come with him. The presence of PW15, thus, cannot be doubted at the site in question. He was going from the bus stand to his house and had stopped on the way after seeing the incident. This behavior of PW15 is very normal behavior and does not call for the raising of any unnecessary doubts. Similarly, in the post mortem report, no bleeding injury was noticed, which obviously means that there was no open cut injury which was bleeding. In the inquest report, the injuries of the deceased have been noticed and it had also been noticed that blood was coming from the body of the deceased which could be very possible when examined in conjunction with the statement of the witnesses including PW3,

PW7 and PW15 that the clothes of the deceased were blood stained and his body was dragged from inside the house of the accused to the outside near the hand pump. No doubt, the eye witnesses have stated that the neck of the deceased was broken, while according to other witnesses, it was lying in a twisted condition. According to the post mortem report (Exhibit P/11) and statement of PW6, there were bruises on the entire back including shoulders. However, no apparent external injury was noticed on the neck of the deceased. But after dissecting the neck, the doctor came to know that there was swelling in the neck muscles and hard bone edges had fractures which were prior to the death of the deceased. In Exhibit P/2, when the Investigating Officer under Item No.8 examined the neck of the deceased, he also noticed that the neck was not stable and was loosely turning both sides with external aid. This clearly shows that the neck of the deceased was badly injured and even had a fracture. It is obvious that there is also no contradiction between the statement of the witnesses and the medical evidence even in this regard.

20. These cannot be termed as contradictions between the statements of the witnesses. They are explainable variations

which are likely to occur in the normal course and do not, in any way, adversely affect the case of the prosecution. Thus, there are no material contradictions in the statement of the witnesses or the documents, nor can the presence of PW15 be doubted at the place of occurrence.

21. For instance PW15, in his cross-examination, had stated before the Court that Laleng had twisted the neck of the deceased. According to the accused, it was not so recorded in his statement under Section 161, Exhibit D/2 upon which he explained that he had stated before the police the same thing, but he does not know why the police did not take note of the same. Similarly, he also said that he had informed the police that the four named accused had dragged the body of the deceased and thrown it near the hand pump outside their house, but he does not know why it was not so noted in Exhibit D/2. There are some variations or insignificant improvements in the statements of PW3 and PW7. According to the learned counsel appearing for the appellants, these improvements are of such nature that they make the statement of these witnesses unbelievable and unreliable. We are again not impressed with this contention. The witnesses have stated that they had

informed the police of what they stated under oath before the court, but why it was not so recorded in their statements under Section 161 recorded by the Investigating Officer would be a reason best known to the Investigating Officer. Strangely, when the Investigating Officer, PW16, was being cross-examined, no such question was put to him as to why he did not completely record the statements of the witnesses or whether these witnesses had made such afore-mentioned statements. Improvements or variations of the statements of the witnesses should be of such nature that it would create a definite doubt in the mind of the court that the witnesses are trying to state something which is not true and which is not duly corroborated by the statements of the other witnesses. That is not the situation here. These improvements do not create any legal impediment in accepting the statements of PW3, PW4, PW7 and PW15 made under oath. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily

and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur and Another v. State of Gujarat* [(2012) 5 SCC 724], *Narayan Chetanram Chaudhary and Another v. State of Maharashtra* [(2000) 8 SCC 457], *D.P. Chadha v. Triyugi Narain Mishra and Others* [(2001) 2

SCC 205], *Sukhchain Singh v. State of Haryana and Others* [(2002) 5 SCC 100].

22. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during investigation. It is only when exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating truth or not. {Ref. *Sunil Kumar v. State Govt. of NCT of Delhi* [(2003) 11 SCC 367]}

23. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state minute by minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with the medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an

attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to *Ashok Kumar Vs. State of Haryana* [(2010) 12 SCC 350] and *Shivlal and Another v. State of Chhattisgarh* [(2011) 9 SCC 561].

24. Next contention is that the presence of PW3, PW4, PW7 and PW15 at the place of occurrence is doubtful. Secondly, according to the accused, PW15 is the only eye-witness and it is submitted that his statement is not reliable and, therefore, cannot be made the foundation for their conviction. We have already held that the presence of these witnesses at the place of occurrence is neither unnatural nor improbable. In fact, their statements are trustworthy and their presence at the place of occurrence at different timings is plausible and fully fits into the case of the prosecution. The version given by these witnesses is fully corroborated by documentary and medical evidence. PW3 is an eye-witness to the assault on the deceased. He had run away from the site to save his life and call his friends and then it was PW15 who appeared at the scene and saw the victim being assaulted by the accused and being taken into the house of the accused from where, after sometime, they dragged out the body

of the deceased and threw it near the hand pump in the street. The eye account given by these witnesses fully finds support from the statement of the Investigating Officer, the inquest report Exhibit P/2, post-mortem report Exhibit P/11 as well as the recoveries effected from the place of occurrence including the blood stained earth and wood from the door of the house of the accused. PW9 and PW17 are the witnesses to the recovery (of weapons) while PW10 and PW11 are the witnesses to the seizure of the blood stained cloth of the deceased. PW3 was coming from a different place, while his father, the deceased, was coming from a different place. He was just following his father at a distance and after he saw the incident and found his father dead, he lodged an FIR with the police without any delay. Eye account given by these witnesses is trustworthy and is duly corroborated as well. The Court has stated the principle that, as a general rule, the Court can and may act on the testimony of a single eye-witness provided he is wholly reliable and base the conviction on the testimony of such sole eye-witness. There is no legal impediment in convicting a person on the sole testimony of a single witness.

25. The testimony of an eye-witness, if found truthful, cannot be discarded merely because the eye-witness was a relative of the deceased. Where the witness is wholly unreliable, the court may discard the statement of such witness, but where the witness is wholly reliable or neither wholly reliable nor wholly unreliable (if his statement is fully corroborated and supported by other ocular and documentary evidence), the court may base its judgment on the statement of such witness. Of course, in the latter category of witnesses, the court has to be more cautious and see if the statement of the witness is corroborated. Reference in this regard can be made to the case of *Sunil Kumar* (supra), *Brathi alias Sukhdev Singh Vs. State of Punjab* [(1991) 1 SCC 519] and *Alagupandi @ Alagupandian v. State of Tamil Nadu* [2012 (5) SCALE 595].

26. In light of these principles, it can safely be recorded that firstly all these witnesses were present at the place of occurrence and their statements are reliable. In the alternative, if we rely upon the statement of PW15 (according to the accused, the sole eye witness) whose statement, according to the accused, is unreliable, then this Court should have no hesitation in basing the conviction on the statement of PW15, as the statement of that

witness is trustworthy, reliable and is completely corroborated by other ocular and documentary evidence.

27. The learned counsel appearing for the appellants laid emphasis on the fact that PW5 was an eye-witness but had been declared hostile by the court. Thus, the entire case of the prosecution is based on a mere suspicion and falls to the ground. This argument does not impress us at all. No doubt PW5 had been declared hostile by the prosecutor and he was subjected to some cross-examination. In his statement, he stated that at about 5.30 p.m., he was coming from the village Bajawan Bus Stand towards his house. On the way, in the street and lying in front of Laleng's house, he saw the dead body of Mogji. He claimed that he did not see anything else. He denied that he knew who had killed Mogji. From the statement of this witness, it is clear that he saw the dead body of the deceased at the same place where PW3, PW4, PW7 and PW15 had seen. Even his statement to this extent fully corroborates the statement of other eye-witnesses. We fail to understand, much less appreciate, as to what advantage the accused/appellants wish to draw from PW1 and PW5 being declared hostile. Whatever doubt these witnesses could cause to the case of the prosecution stands fully

supplied and erased by the statement of other eye-witnesses and the other medical and expert evidence. Another very material piece of evidence which directly links the accused to the offence is that when the blood stained cloths of the deceased and other articles were recovered, sealed and sent for serological examination to the FSL and the Chemical Analyst had submitted its report Exhibit P/43 after such serological examination, human blood of blood group 'O', which was also the blood group of the deceased, was found on all the three articles namely *jhabba*, *baniyan* and blood stained *dahli*.

28. This clearly shows that the body of the deceased was dragged from inside the house of the accused and then thrown near the hand pump. This scientific report fully corroborates the statement of PW15. Another very important piece of evidence is the statement of DW-1, the sole witness who was examined by the defence. In fact, it was Kuria himself who stepped into the witness box. According to him, there were serious disputes in relation to the agricultural land between the deceased's family and the family of the accused. Such disputes were there for nearly two years. According to this witness, there was animosity between the parties regarding this issue. There were cases

pending in the court. Though he denied the suggestion that they had murdered Mogji due to this reason, but he does provide a motive for the accused persons to commit the offence. In all likelihood, that was the cause for murdering the deceased. In face of this unimpeachable evidence, ocular and documentary, the question of corroboration by unreliable evidence does not arise in the present case. The reliance placed by the accused on the judgment of this Court in the case of *State of Punjab v. Parveen Kumar* [(2005) 9 SCC 769] is completely misplaced on facts and in law both.

29. In these circumstances, the cumulative effect of the prosecution evidence is that the prosecution has been able to prove its case beyond reasonable doubt.

30. Lastly, it was contended that the provisions of Section 34, IPC are not attracted in the present case. It is contended on behalf of the appellant that they had no common intention to kill the deceased and it was not a case of pre-meditated murder. This argument is noticed only to be rejected.

31. It has come in evidence that all the accused persons had come with weapons, assaulted the deceased and taken him inside the house where he was again assaulted by the accused

persons and after sometime, his body was dragged by the accused persons, including the appellant and thrown near the hand pump. If this is not a case of common intention and object, it is really doubtful as to which cases can fit into that category. There was motive for the accused persons to kill the deceased, they had come out with common intention and object to assault and kill the deceased in which they succeeded. In the cases where it is not possible to attribute a specific role to a particular accused, like the present case, recourse to this provision is appropriately made by the prosecution.

32. According to PW3, Kuria was carrying *lath* while accused Laleng, son of Bajeng was carrying axe (*kulhari*) which as appeared from the statements of the witnesses, could have been used from the other end. In relation to dragging the body, the question of use of any weapon would not arise. It was a communal intended act, in which the accused persons participated accused with the object of killing deceased Mogji. The soul of section 34, IPC is the joint liability in doing a criminal act. The section is a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for

an offence committed by the other in the course of criminal act perpetrates to all other persons, under Section 34 IPC, if such criminal act is done in furtherance of the common intention of the person who joins in committing the crime. The Court has to examine the prosecution evidence in regard to application of Section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together. The provisions of Section 34 IPC come to the aid of law while dealing with the cases of criminal act and common intention. Its basic essentials are : that the criminal act is committed by several persons, such act is done in furtherance of common intention of all and each of such persons is liable for that act in the same manner as if it were done by him alone. Reference in this regard can be made to the cases of *Shyamal Ghosh v. State of West Bengal* [2012 (6) SCALE 381], *Hemchand Jhas alias Hemchandra Jha v. State of Bihar* [(2008)

11 SCC 303] and *Nand Kishore v. State of Madhya Pradesh* [(2011) 12 SCC 120].

33. The above-stated ingredients are fully satisfied in the present case. Undoubtedly, all the accused had committed criminal acts punishable under the provisions of the IPC. They had done so with common intention, as is evident from the statement of the witnesses and the documents on record. And lastly, each one of them, whether he actually made any assault on the body of the deceased or not, dragged him and threw his body in the gully or not, shall all be deemed to have committed the said offences with the aid of Section 34 IPC. Thus, this contention also has no merit and is rejected.

34. For the reasons afore-recorded, the appeal is dismissed.

.....J.
(Swatanter Kumar)

.....J.
(Fakkir Mohamed Ibrahim Kalifulla)

New Delhi,
September 13, 2012