Ganesh Bhavan Patel & Anr vs State Of Maharashtra on 18 October, 1978

Equivalent citations: 1979 AIR 135, 1979 SCR (2) 94, AIR 1979 SUPREME COURT 135, (1979) 2 SCR 94, 1979 CRI APP R (SC) 26, 1979 SCC(CRI) 1, (1979) SC CR R 116, 1978 (4) SCC 371, 1979 CRI. L. J. 51, (1979) 2 SCR 84 (SC) 1978 CRILR(SC MAH GUJ) 632, 1978 CRILR(SC MAH GUJ) 632

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, Y.V. Chandrachud, O. Chinnappa Reddy

PETITIONER:
GANESH BHAVAN PATEL & ANR.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT18/10/1978

BENCH:
SARKARIA, RANJIT SINGH
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SARKARIA, RANJIT SINGH
CHANDRACHUD, Y.V. ((CJ)
REDDY, O. CHINNAPPA (J)

CITATION:
1979 AIR 135 1979 SCR (2) 94
1978 SCC (4) 371
CITATOR INFO :
R 1981 SC 733 (9)
R 1988 SC1158 (3)
R 1989 SC2004 (30)
RF 1992 SC 891 (24)

ACT:
Indian Penal Code-s. 302-Trial court acquitted the accused but the High Court convicted them-Powers of High Court to re-assess evidence in an appeal from an order of acquittal-If main grounds for acquitting accused are reasonable and plausible High Court should not disturb the acquittal.

HEADNOTE:

The two appellants were charged with the offence of committing the murder of the deceased. The prosecution relied mainly upon the evidence of three witnesses, P.W. 2, P.W. 3 and P.W. 5 who claimed to be eyewitnesses of the occurrence

The trial court disbelieved those witnesses and acquitted both the appellants. On appeal the High Court reexamined the evidence and held that the infirmities noticed by the trial court in the evidence of witnesses did not constitute good grounds for rejecting their evidence, and reversing the order of acquittal, convicted both the accused under s. 302 read with s. 34 I.P.C.

Allowing the appeal,

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HELD: 1. The overall view of the evidence taken by the trial court was reasonable, and the High Court was not, in view of the settled principles on the subject, justified in reversing the same.

2. A long line of decisions, starting from Sheo Swarup v. Kirug Emperor (61 I.A. 398) have firmly established that although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusion, are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence. it should always give proper weight and consideration to such matters as (i) the views of the trial judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt, and (iv) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with The order of acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. [98 F-H]

In the instant case, some of the main reasons given by the trial court could not be effectively and rationally dispelled. One of such reasons, which cast a cloud on the credibility of the prosecution evidence, was that there was inordi

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nate delay of several hours on the part of the police in recording the statement which was treated as F.I.R. and further undue delay in recording the statements of the alleged eye-witnesses by the investigating officer, and no credible explanation of these delays was forthcoming.

Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements were recorded on the following day.

Such delay may not, by themselves, amount to a serious infirmity in the prosecution case. But they may assume such a character if there are circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced. A catena of circumstances which lend such sinister significance to these delays, exists in the instant case, which inevitably lead to the conclusion that the prosecution story was conceived and constructed after a good deal of deliberation, in a shady setting highly redolent of doubt and suspicion.

JUDGMENT:

CRlMINAL APPELLATE JURISDICTION : Criminal Appeal No. 64 of 1974.

From the Judgment and order dated 2nd/4th December 1972 of the Bombay High Court in Criminal Appeal No. 1492/70.

S. S. Javali, Amicus Curiae for Appellant No. 1. N. H. Hingorani and Mrs. K. Hingorani for Appellant No.

2. H. R. Khanna and M. N. Shroff for the Respondent. The Judgment of the Court was delivered by SARKAR1A, J. This appeal is directed against a judgment, dated December 2/4, 1972, of the High Court of Bombay, whereby it converted the acquittal of the appellants herein, into a conviction under Section 302 read with 34, Indian Penal Code.

According to the prosecution, Damji had illicit relations with Smt. Bachibai, wife of Dana Ravji Patel, appellant, who was original accused No. 1 at the trial. Dana was aware of these relations, and about two to four months before the occurrence, he had threatened to kill the deceased. Damji deceased, along with his wife and daughter, was living in a room in Building No. 3, Bhaveshwar Nagar, Ghatkopar, Bombay.

On November 29, 1969, at about 7 p.m., the deceased was returning home on his bicycle. When he entered the lane adjacent to the said Building No. 3, both the appellants assaulted him with knives. Pramila (P.W.2), and about 13 years, the daughter of the deceased was Sitting on a charpoy in the compound of Building No. 3. This compound is enclosed by a wall and is close to the lane. Another girl, named Kuvarbai (P.W. 5), also aged 13 years, was sitting on the Otla nearby. On being attacked, the deceased cried out Bachao Bachao'. On hearing this, Pramila got up and ran to the place of occurrence. On coming out of the compound gate, she saw both the appellants causing injuries with knives to the deceased who was then lying on the ground. His legs were in the gutter and the rest of

the body on the road. Pramila asked the assailants as to why they were assaulting her father. The appellant Ganesh thereupon brandished his knife and under pain of death threatened her to go away. Pramila then raised a hue and cry, on hearing which, Welji Harkha (P.W. 3), a Contractor, who was going in his car to his office in a nearby building, was attracted to the spot. Welji stopped his car and immediately proceeded towards the scene of occurrence. On his approach, Dana, appellant ran away carrying the knife with him, but Ganesh appellant was still there dealing blows to the deceased. Welji caught hold of Ganesh `by his shirt, slapped and upbraided him as to why he was assaulting the deceased. Ganesh got himself released from Welji's grip and ran away in the Same direction in which his companion had gone. Welji then went to his office in the hind street. His son, Mohan was there. A large number of other persons were also there. He did not whisper even a word about the occurrence to any of them, not even to his son, Mohan. At his request, his son, Mohan, drove him in the car to his residence.

At the spot, Kuvarbai (P.W. 5), on seeing the appellant assaulting the deceased, ran to the residential room of the deceased and informed his wife, Santukbai (P.W. 6). Thereupon, Santukbai rushed to the place of occurrence and found her husband lying in a pool of blood. She, also, saw her daughter, Pramila, standing there. Pramila and Santukbai, both pulled out the deceased from the gutter to the road. Pramila then ran to her uncle, Kanjibhai (P.W. 7), who was residing in the vicinity, and informed him about the incident. Pramila returned to the spot along with Kanjibhai. By that time, one Ravji (P.W. 1), who had been betrothed to Pramila, had come to the spot. He learnt from Santukbai and Pramila all about the occurrence. At about 7.30 p.m., Constable Shinde (P.W. 20), along with a Head Constable and another Constable, who were on patrol duty, came to the scene. Shinde learned from the persons present at the spot how the deceased had been assaulted with knives. Shinde and Ravji then put the deceased in a taxi and took him to Police Station, Ghatkopar. Shinde informed the Police Sub-Inspector Patil (P.W. 21), who was incharge of the I Police Station at that time. The deceased was then taken to the Sion Hospital by another Police Constable. Shinde and Ravji accompanied the deceased. On reaching the Hospital, the doctor declared the de ceased dead. At about 8.30 p.m., Ravji and Shinde returned to the Police Station. The Sub-Inspector then recorded Ravji's statement and registered a case under Section 302 read with 34, Indian Penal Code.

The investigation was started by Inspector Tipnis (P.W.

24) . Accompanied by Sub-Inspector Pathak (P.W. 22) and S. I. Patil, the Inspector went to the Hospital. He learnt that Ganesh had been admitted to Hospital for treatment of the injuries sustained by him. There, the investigator arrested Ganesh and interrogated him. He also seized a blood-stained Chaddi (Ex.

52) from the person of Ganesh and prepared a Panchnama in this connection. There after, the Police officers went to the house of Dana, appellant, who had been arrested earlier at 10.45 p.m. by Constable Shinde (P.W. 20). Under a Panchnama (Ex. 44), the Police seized blood-stained clothes of Dana. They were produced by his wife, Bachibai (P.W. 12).

The prosecution case further is that Dana appellant produced two knives (Ex. 17 and Ex. 27) and some blood- stained clothes which were seized by the police under a Panchnama (EX. 44).

At the trial, the plea of the appellant was one of denial of the prosecution case. Dana appellant, however, admitted that there were improper relations between his wife and the deceased. His story was that on the date of the incident at about 7 p.m., when he was proceeding along the road in front of Building No. 3, the deceased came from behind on a bicycle and slapped him on the neck. The deceased then left his bicycle near the gate of the compound of Building No. 3, took a knife and got hold of Dana to strike him. When Dana was struggling to get out of the clutches of the deceased, the latter attempted to stab the former. But the blow attempted by the deceased, missed its aim and grazed past the appellant's right arm, causing only a scratch. The deceased then attempted another knife blow on the chest of Dana, but Ganesh intervened and came to the rescue of Dana. In the meanwhile, the second blow attempted by the deceased landed on the left shoulder of Dana causing an injury. Dana then got free and ran away in the direction of Kailash Nagar.

Ganesh told, more or less, the same story. His version was that he had seen the deceased coming and giving a slap from behind on the neck of Dana. On seeing this, he went to the rescue of Dana. By that time, the deceased had already caused a stab wound on the left shoulder of Dana. While grappling with the deceased, he (Ganesh) also received cuts on his fingers from the knife held by the deceased. Ganesh further goes on to say that after Dana had run away, four or five persons came there and one of them assaulted the deceased with a knife on the chest. When this scuffle between the deceased and the stranger assailant started, the appellant ran away to the house of Dana and advised his father to arrange for medical aid to Dana.

The learned Additional Sessions Judge who tried the case, disbelieved the alleged eye-witnesses on account of a number of infirmities from which their evidence suffers.

On appeal, the High Court re-examined the evidence and came to the conclusion that the infirmities noticed by the Trial Court did not constitute good grounds for rejecting the evidence of the eyewitnesses. In the result, the High Court reversed the acquittal and convicted both the accused under Section 302 read with 34, Penal Code, and sentenced each of them to undergo imprisonment for life.

Hence this appeal.

The mainstay of the prosecution consisted of the testimony of Pramila (P.W. 2), Welji Harkha (P.W. 3) and Kuvarbai (P.W. S) who claimed to be eyewitnesses of the occurrence. Then, there was another set of witnesses who claimed to have reached the scene of crime soon after its commission when the deceased was still lying injured at the spot. These are Santukbai (P.W. 6), Kamjibhai (P.W. 7), Ravji (P.W. 1) and constable Shinde (P.W. 20).

The dictum of the Privy Council in Sheo Swarup v. King Emperor ('), and a bead-roll of decisions of this Court have firmly established the position that although in an appeal from an order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should-to use the words of Lord Russel of Killowen-'always give proper weight and consideration to such matters as (1) the views of the Trial Judge as to the credibility of the witnesses (2) the presumption of innocence in

favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, in the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal.

Keeping in mind these principles, with the aid of Shri Javali, amicus curiae for appellant No. 2, we have carefully examined the evidence of all the material witnesses and also the judgments of the Courts below.

As noted by the Trial Court, one unusual feature which projects its shadow on the evidence of P.Ws., Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161 Cr. P.C. were recorded on the following day. Welji (P.W. 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. delay of a few hours, simpliciler, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay, exists in the instant case.

The first of these circumstances is that no F.I.R. appears to have been recorded in this case before 3 A.M. Of the morning of the 30th November. The prosecution have treated the statement of Ravji, recorded in the course of investigation, as the F.I.R. Police Sub-Inspector Patil who was in charge of the Police Station at the relevant time, wanted to have it believed that he had recorded this statement of Ravji at 8.30 P.M. On the 29th November But no less a witness than Ravji, himself, gave a direct lie to Patil on this point. Ravji testified in unmistakable terms that his statement was recorded in the Police Station at 12 midnight or 1 a.m. after the completion of the Panchnama of the scene of offence. This Panchnama, according to the prosecution, was completed by the investigators at 12.15 a.m., and immediately thereafter, the Panchnama in regard to the production of the blood-stained clothes of accused 1 was prepared and completed at about 12.45 a.m. Ravji further stated that he might have signed his statement recorded by the Police, at 3 a.m. The Trial Court accepted the evidence of Ravji in as much as he stated that his statement-which was treated as F.I.R.-was recorded by the police between 12 midnight and 1 a.m. and was completed when he signed it at about 3 a.m. The Learned Judges of the High Court have disbelieved Ravji on this point, for the reason that he is a "labour boy" about 18 years old, having "no sense of time", and have preferred to accept the ipse dixit of S.I. Patil that Ravji's statement was recorded at 8.30 P.M. With respect, the reasons given by the High Court for brushing aside the testimony of Ravji on this point, appear to us, manifestly unsustainable. The very fact that Ravji was a "labour boy", aged about 18, far from

being a reason for doubting his veracity on this point, was a guarantee of the truth of his version. He was an unsophisticated witness who was not fully aware or bosted about the twists and distortions introduced by the investigating officer. He therefore, unwittingly blurted out the truth on this point. As against him, S.I. Patil, besides being highly interested in the prosecution, was supposed to be aware that in order a statement should be treated as F.I.R., it must be recorded first in point of time before the commencement of investigation.

In this connection, the second circumstance, which enhances the potentiality of this delay as a factor undermining the prosecution case, is the order of priority or sequence in which the investigating officer recorded the statements of witnesses. Normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence, over the evidence of other witnesses Here, the natural order of priorities seems to have been reversed. The investigating officer first recorded the statement of Ravji, in all probability, between 12.45 and 3 a.m. On the 30th, of Constable Shinde, at 4 a.m., and thereafter of Walji, Kanjibhai (P.W. 7), Santukbai (P.W. 6), Pramila, and Kuvarbai, between 8 a.m. and 1 p.m. The investigating officers made a futile attempt to explain away their conduct in not promptly recording the statements of the alleged eyewitnesses. Inspector Tipnis and Sub-Inspector Pathak stated that after the completion of the panchnamas at the spot, they made efforts to contact the material witnesses, including Pramila, Santukbai and Kuvarbai. Santukbai was actually questioned by the investigating officers, but they did not then record her statement, because she was in an anguished state of mind and was wailing.

With regard to Pramila and Kuvarbai, the investigators said that these girls were then asleep, and therefore, they did not think it proper to disturb them. Inspector Tipnis tried to give an additional reason for delaying the examination of these witnesses till the following day. He stated that he did not want the girls and the women-folk to be present in the Police Station at that hour of the night. The Trial Judge rejected this explanation, and we think rightly. Santukbai herself had knocked the bottom out of these 'explanations'. She stated that she was questioned by the investigating officers during the night and she had answered all their questions. Even if she was then in a state of anguish, it is not understandable why the answers given by her to the questions of the investigating officer, were not recorded. If she answered those questions, which, even according to S.I. Pathak, she did, it could not be said that she was not in a position to make a statement.

Ravji (P.W.1) further falsified the 'explanations' given by the investigating officers. He stated that Pramila, Kuvarbai and Santukbai, all the three, were actually called out and questioned during the night, by the investigating officers.

If the untruth of any aspect of these 'explanations' remained in the penumbral zone, hidden from judicial scrutiny, the same was fully exposed by Constable Kakde (P.W. 18) of this very Police Station.

In cross-examination, Kakde let the cat out of the bag in as much as he stated that about 2.30 a.m. he had seen P.Ws. Pramila, Kuvarbai, Santukbai, Kanjibai and Ravji in the Police Station.

A third circumstance to be noted in the context, which enhances the suspicion about Welji, Pramila and Kuvarbai having been introduced as 'eye-witnesses' at a late stage of the case, is, that their names as such witnesses were not mentioned anywhere in the investigation record before the morning of the 30th November. In this connection, it may be mentioned that Ravji and Shinde reached the scene of crime soon after its commission. Ravji came a few moments earlier than Constable Shinde. Damji was then alive and lay injured at the spot. It was Constable Shinde who, accompanied by Ravji, removed the injured in a taxi, first to the Police Station and from there to the Sion Hospital.

At the trial. Shinde stated that on reaching the Police Station, he had reported "the matter" to S.I. Patil, who was incharge of the Police Station. Shinde did not say that he had mentioned the names of the assailants of Damji or the witnesses to the Sub-Inspector on this occasion. Further, Shinde did not vouch that Ravji had made any report about the incident to S.I. Patil.

S.I. Patil (P.W. 21), also, did not say that Shinde had told him that Damji had been, according to his information, assaulted by the accused, Ganesh and Dana. Nor did Patil say that Shinde had mentioned the names of the witnesses of the occurrence. All that Patil stated on this point was that at about 7.30 a.m., Constable Shinde came to the Police Station and informed the witness that one person who had been assauled by two others with knives, was lying injured in a Taxi outside, and that he was accompanied by Ravji. In variance with Shinde's version, however, S.I. Patil stated that he had questioned Ravji on this occasion and the latter told him that Damji had been assaulted with knives by Ganesh and Dana accused. Ravji directly contradicted S.I. Patil on this point, and stated that on this occasion he was not at all questioned by S.I. Patil; nor did the witness himself give any information about the incident to the Sub-Inspector. Ravji had no motive to tell a lie on this point. He was a "would-be" son-in-law of the deceased. He was in no way hostile to the prosecution. on the contrary, he was playing the active role of a "complainant" in this case. The Trial Court was, fully justified in accepting his testimony on this point, in preference to the bare oral word of S.I. Patil, particularly, when Ravji's version was, and Patil's was not, consistent with the surrounding circumstances and probabilities of the case.

The most important of these circumstances is the conduct of S.I. Patil in not recording that "first information" allegedly given by Shinde and Ravji on that occasion. S. I. Patil admitted that he did not record the information given to him by Shinde and Ravji about the occurrence on that occasion. The information, which he then received, was about the commission of a cognizable offence. It was, therefore, the duty of S.I. Patil (who was incharge of the Police Station) to record it in accordance with the provisions of Section 154 Cr. P.C., but he did not do so. The explanation given by him was that it was the practice of his Police Station not to record such information until a message was received from the Hospital with regard to the condition of the injured person. This explanation of Patil's failure to do what was his statutory duty. was mere moonshine and was rightly repelled by the learned trial Judge.

It will bear repetition that the learned Judges of the High Court have disbelieved Ravji and accepted S.I. Patil's bare word of mouth, both with regard to the time of recording Ravji's statement and Ravji's having informed Patil in the Police Station at 7.30 p.m. about the accused being the

assailants of the deceased, when Ravji and Shinde took the injured there in a taxi. As noticed already, one of the reasons given by the High Court for rejecting Ravji's testimony on this point, is that he was a mere labour boy having no sense of time. With respect, this reason appears to us manifestly, unsound. Labourers, masons and artisans who work on daily wages for fixed hours, have an acute sense of time. There was nothing indefinite or unbelievable in Ravji's version to the effect that his statement was recorded by the Police Sub-Inspector between 12 midnight and 1 a.m., while his signature was obtained on that statement probably at 3 a.m. No question was put to him to test his 'sense of time'. Nor was any attempt made in re-examination to elicit a clarification, if one was needed, with a view to reconcile this version of the witness with that of the prosecution case, as laid by S.I. Patil, about the time of recording Ravji's statement, treated as the F.I.R.

Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'F.I.R.' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.

Keeping in mind this all-clouding infirmity the trial Judge scrutinised the evidence of the witnesses.

The first infirmity noted by the Trial Judge in regard to Pramila's evidence was that her name or her presence at the scene of offence was not mentioned in the record of the investigation till 9.15 or 9.30 a.m. of the 30th November. Even Welji in his police statement recorded at about 8 a.m. On the 30th November, did not mention Pramila's name or her presence at the scene of offence. Constable Shinde, while reporting to S.I. Patil at the Police Station at about 7.30 p.m., did not mention either the name of the accused or the eye-witnesses. Even in his statement before the police alleged to have been recorded at about 4 p.m., Shinde did not mention that he had got the information from Pramila or that Pramila wars present on the spot, when he reached there.

Apart from the vitiating circumstance that Pramila, the 13 year old daughter of the deceased, was introduced by the Investigator as a witness as late as 9.15 A.M. On the following day, the Trial Judge noted that her conduct was unnatural and inconsistent with her being an eyewitness. Pramila admitted in unmistakable terms that on seeing accused 2 assaulting her father, she did not immediately raise an alarm; she simply stated that on reaching the spot she asked the accused why he was assaulting her father. The accused then pointed his knife towards her and asked her to go away otherwise she would be killed. It was at this stage, that she raised the outcry: "Bachao Bachao", on hearing which, Welji Harka came to the spot. The l rial Judge who had the occasion to observe,- the demeanour of Pramila in the witnessbox, thought this conduct on her part was very unnatural because the normal instinctive reaction of such a child on seeing her parent being attacked, should have been to raise an instant alarm to attract the inhabitants of the locality for help; and her shouting 'Bachao Bachao' as she alleges-at a stage when the assault on her father was over, was "very artificial" and appeared to have been introduced only for making Welji's version that he was attracted by such shouts to the spot, plausible.

The third circumstance which in the opinion of the Trial Judge, throws a cloud on the veracity of Pramila's evidence was this. The occurrence took place at about 7 p.m. which was not an unusual hour, in an inhabited locality, there being several big residential buildings in the vicinity, each

having numerous one-room tenements. Building No. 3, in a room of which Pramila lived with her parents, had three S storeys, and each storey had 10 or 12 rooms, each room being in the occupation of a different family. The lane must have been frequented at that hour by the numerous residents of the locality or passers-by If there was any out-cry by the victim or alarm by Pramila, a large number of persons should have been attracted to the scene of occurrence. But, according to Pramila and Santukbai, even after the attack was over, only two or three strangers came there, who helped them in pulling out the deceased from the gutter. According to Ravji, the number of the persons, who had collected there, was four or five. None of those independent witnesses whose attraction to the spot was probable, or whose collecting on the scene immediately after the occurrence was admitted, was examined by the, prosecution. Pramila's version that none other came on the scene of occurrence, excepting Welji and Kuvarbai, was improbable.

The fourth infirmity noted by the Trial Court was that Pramila was a highly interested witness and the amenability to tutoring of a girl of such tender age, cannot be ruled out.

The Trial Judge further pointed out several contradictions between what she stated at the trial and what she had earlier stated in the Committal Court. These contradictions related to, (a) whether accused 1 had run away and accused 2 alone was at the spot stabbing the deceased when Welji came; (b) whether Kuvarbai was sitting on that very cot on which Pramila was sitting, or was sitting at some distance on an Otla when the shouts of 'Bachao Bachao' were heard from the scene of occurrence; and

(c) whether Santukbai, her mother came to the spot alone or whether she was then accompanied by Pramila, and whether it was after the arrival of Shantukbai, that Pramila want from the spot to fetch her uncle, Kanjibhai.

As regards the evidence of Kuvarbai (P.W.5), the learned trial Judge reasoned that "if Pramila's presence itself at the scene of crime was doubtful, there was hardly anything that this girl (Kuvarbai) would corroborate with regard to what Pramila had said," He again stressed that Kuvarbai's statement was recorded by the police after a delay of 40 hours and no satisfactory explanation of this delay was coming forth. He further noted that Kuvarbai, also, a child hardly 13 or 14 year old, and the possibility of her having been tutored could not be ruled out. He further reasoned that Kuvarbai had, according to her own admission, seen the incident for a brief moment over the compound wall from a distance of about 24 or 25 feet. It was 7 p.m. and the month was November. There was no natural light at that time. The street lamp, which was then on, was at a distance of about 35 feet from the spot and the lamp-post was, according to the evidence of Ramrao Jadhav (P.W. 4), 25 feet high. According to Pramila, she caught only a momentary glimpse of the backs of the assailants. She never saw their faces. She could not describe the colour or the kind of the clothes that the assailants were wearing, although she claimed to have seen them assaulting with knives. She could not, however, say whether the knives were big or small. Taking into consideration all these factors, the learned trial Judge concluded- and in our opinion, rightly- that the chances of her "identifying clearly and without mistake, the two assailants as the two accused before the Court, appears to be rather meagre." A further reason given by the trial Judge for doubting Kuvarbai's veracity was that in her statement before the police, she did not mention accused 2 at all. Being a

material omission, it amounted to a contradiction.

The last two infirmities noted by the trial Judge ion Kuvarbai's evidence were weighty and could not be lightly overlooked.

We now come to the evidence of Welji Harkha (P.W. 3). The story told by him at the trial was that he was returning in his car, driven by himself, from the Municipal Garden on Tilak Road, where he had gone, as usual, heart a discourse on the Geeta. The witness was proceeding towards his office situated in Bhaveshwar Nagar, Building No 3 in the third street, on Mahatma Gandhi Road. When he in his car came in front of the residence of Damji in Building No. 3, he heard Pramila shouting 'Bachao Bachao'. The witness stopped. By the time he stopped his car and alighted, accused 1 ran away with a knife in hand, while accused 2 was stabbing Damji with a knife. The witness went to accused 2, caught him by his shirt and slapped him but the accused managed to free himself and run away.

As rightly pointed out by the trial Court, the most glaring infirmity which vitiates Welji's evidence, was his unnatural conduct. Welji was 8-817 SCI/78 the leader of the community of artisan that lived in this locality. Welji admitted that Damji was his child-hood acquaintance. Since his childhood, the deceased had worked as an artisan or labourer for the witness in connection with the latter's business as a contractor. They knew each other in Pakistan where they were residing before their migration to India. But, on seeing the brutal assault on his child hood acquaintance, or friend, Welji left him bleeding profusely in the gutter. He did not even care to see whether Damji was dead or alive. He had a car with him. He did not suggest or offer his car for removal of Damji to the Hospital, nor did anything else to arrange for medical aid to the injured who according to the other witnesses, was still alive. After seeing all this, he callously and non- challantly drove away to his office, without having even a look at the dying man. According to the witness, on reaching his office he found there a number of his workmen and his son, Mohan. He did not inform any of those persons, not even his son, anything about the occurrence, much less did he ask his son or any of those persons present there to inform the- police or to go and arrange for medical aid or other assistance to Damji and his relatives. He had a telephone in his office and also at his residence. Yet he did not give or cause to be given and information about the crime to the police. The explanation given by Welji for his indifferent, and strange conduct was that he had got frightened and upset and the persons present in his office had already come to know about the occurrence. The explanation was manifestly untenable and was, in our opinion, rightly repelled by the trial Court. After the assailants had run away from the spot, there remained no cause for Welji to fear them. On the departure of the assailants, it was expected of him to have at least a glance at his childhood fellow to ascertain whether he was dead or alive. According to him, his office was nearby in the third street. This means, he reached his office only seconds after tine incident. This being the case, the trial Court very rightly remarked that the news about the assault could not have travelled faster than his car. Welji claims to be the leader of the labour community, who were inhabitants of that locality. The least which was expected from such a labour leader was, that he should arrange for the immediate removal of his injured fellow-man to the Hospital.

We have therefore, no hesitation in agreeing with the learned trial Judge that this strange conduct of the witness "comes in the way of accepting his story as true".

Apart from the. fact that Welji's conduct was strange and inconsistent with the normal conduct of an eye-witness, and the inordinate delay in recording his statement by the police, his evidence suffers from other material flaws, also. In his statement before the police, Welji did not specifically name Pramila (P.W. 2) as person by whose shouts, he was attracted to the scene of occurrence. In variance with what he stated at the trial, his version before the police was that he had heard 'some ladies, (that means more than one person), shouting 'Bachao Bachao'. Admittedly, he knew Pramila's name prior to the occurrence. His version in the witness-box that he was attracted to the spot on hearing the shouts of Pramila, was therefore, an improvement deliberately made to fit in the prosecution story at the trial.

Again, Welji stated that when he caught hold of accused 2, his pyjama got blood-stains upto a height of 5 or 6 inches. No such pyjama was produced before the police or even in the Trial Court. Questioned why he failed to do so, the witness stated that he did not want that the accused should be involved at his instance as both the accused and the victim were equal to him like his two eyes. This explanation was obviously unacceptable, because at the trial, he did appear as a witness for the prosecution and against the other party, that is, the accused.

Another admitted circumstance which blemished the evidence of Welji, was that the father of accused 2 was in the employ of the witness as a motor-driver for about seven or eight years. His services were dispensed with by the witness about 2 months prior to the occurrence on the ground of irregularity in service. The case put to him by the defence was that the father of accused 2 had raised a dispute by demanding a higher pay.

Last but not the least, Welji was admittedly operated upon for cataract, only a couple of months before the occurrence. His eye- sight was weak. He was old and infirm and a heart-patient. He was a Contractor and a man of means and had in his employment a motor-driver for 7 or 8 years. Moreover, his adult son who admittedly knew car driving well, was available to drive the ear for him. In these circumstances, the trial Court's observation, to the effect that it was most unlikely that this old man of 69 years with a weak eye-sight and a weak heart, would be driving his car himself at 7 p.m. when it was pretty dark, without there being any emergency cannot be rejected out of hand.

In sum, we find that the over-all view of the evidence taken by the trial Court was reasonable. While it is true that some of the reasons given by the trial Court, if taken individually, do not appear to be substantial or impeccable but taken in their totality, they cer-

tainly render the evidence of the material prosecution witnesses unsafe to be acted upon.

All the infirmities and flaws pointed out by the trial Court assumed importance, when considered in the light of the all-pervading circumstance that there was inordinate delay in recording Ravji's statement on the basis of which the "F.I.R." was registered) and further delay in recording the statements of Welji, Pramila and Kuvarbai. This circumstance, looming large in the background,

inevitably leads to the conclusion, that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting, highly redolent of doubt and suspicion.

This all-vitiating circumstance, we say so with great respect, could not be, and has not been, effectively dispelled by the High Court, except by a blind acceptance of the ipse dixit of Sub-Inspector Patil, on this point, in preference to the testimony of Ravji (P.W. 1), who was, according to the prosecution, the prime mover of the gear.

For all the foregoing reasons, we allow this appeal, set aside the conviction of the appellants and acquit them of the charges levelled against them.

Before we part with this judgment, we will place on record our appreciation of the valuable assistance rendered to us by Shri Javali, who, though amicus curiae for appellant 2, has fully argued the case on behalf of appellant 1, also.

P.B.R. Appeal allowed.