Namdeo vs State Of Maharashtra on 13 March, 2007

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Author: C.K. Thakker

Bench: C.K. Thakker, P.K. Balasubramanyan

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           CASE NO.:
Appeal (crl.)  914 of 2006

PETITIONER:
NAMDEO

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 13/03/2007

BENCH:
C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
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J U D G M E N T C.K. THAKKER, J.

The present appeal is filed against the judgment and order passed by the High Court of Judicature at Bombay (Nagpur Bench) on March 29, 2005 in Criminal Appeal No. 262 of 2001 by which the High Court dismissed the appeal against an order of conviction recorded by the Sessions Judge, Buldana on July 23, 2001 in Sessions Case No. 19 of 2001 convicting the appellant for an offence punishable under Section 302 of Indian Penal Code (IPC).

Short facts leading to the present appeal are that the deceased Ninaji Rupaji Ghonge was a resident of Deodhaba, Taluk Malkapur, District Buldana. He was residing with his son Sopan (PW6). His other sons were staying separately. Deceased Ninaji possessed she goats, sheep and she buffalos. The appellant-accused Namdeo was also residing in a nearby house. Relations between the deceased

Ninaji and the accused Namdeo were strained. The reason was the belief entertained by the accused. Namdeo harboured a suspicion that she goats and sheep belonged to him died due to some disease and the deceased Ninaji and his friends were responsible for the death of those animals as deceased Ninaji had played a witch craft. This resulted in accused Namdeo abusing the deceased and administering threat to kill. PW6- Sopan, son of the deceased, however requested village people to settle the dispute between his father and the accused. Accordingly, some responsible persons intervened, called both of them and advised not to quarrel.

On October 25, 2000 between 8.00 to 9.00 p.m., a she buffalo of accused Namdeo died. Deceased Ninaji, after taking his meal, was sleeping on the wooden cot in the backyard of his house. On the same night, at about 2.00 to 3.00 a.m., PW6-Sopan (complainant) heard shouts of his father calling 'Bapa re Bapa re'. On hearing the cry, PW6-Sopan and his wife rushed towards the backyard of his house where Ninaji was sleeping and noticed that the accused Namdeo was assaulting him. PW6-Sopan saw the accused administering axe blow on the head of his father Ninaji, in the light of electric bulb. On seeing Sopan, the accused Namdeo fled away from the place taking axe in his hand. Sopan chased him, but the accused disappeared in the darkness and Sopan could not catch him. PW8-Raju Prahlad Sonune, who was a neighbour, also heard the shout of Ninaji and came there. He also tried to catch the accused Namdeo but could not succeed. Sopan and Raju returned to the backyard where Ninaji was lying. They noticed two injuries one on the head and another near his right eye and they were bleeding. Meanwhile neighbours had gathered. Ninaji was then taken to Dr. Suresh Wagh (PW7). According to the prosecution, Dr. Suresh Wagh- PW7 asked Ninaji as to what had happened and the latter told him that accused Namdeo had assaulted him with axe. Dr. Suresh Wagh gave one injection to Ninaji and asked Sopan to take Ninaji to the hospital at Malkapur for better treatment. Sopan and his friends brought Ninaji to Malkapur in a jeep at about 6.30 a.m. in the following morning at the hospital of Dr. Suhas Borle (PW3), who advised to take Ninaji to 'Advance Critical Center' at Malkapur and accordingly he was taken there. Dr. Suhas Borle examined Ninaji and applied stitches to his wounds. However, at about 8.00 a.m. on that day, Ninaji succumbed to the injuries in the hospital itself. At about 8.15 a.m., Dr. Suhas Borle sent report to police station, Malkapur about the accidental death of Ninaji. A case was registered at Malkapur police station being Accidental Death Case No. 24 of 2000. At about 12.00 noon, PSI Diwakar Pedgaonkar (PW10) and other police officers came to Advance Critical Center, prepared inquest panchnama of the dead body of Ninaji and seized the quilt, kerchief from dead body and sent the dead body for autopsy. Then, complainant Sopan went to Malkapur rural police station and gave oral information which was reduced to writing and the same was treated as complaint (Ex.38).

On the basis of the above report, offence vide Crime No. 94 of 2000 was registered under Section 302 IPC. PSI Diwakar himself took over the investigation of the case. He went to village Deodhaba, where the offence was committed. He prepared sketch of scene of offence in presence of panchas. He found the blood lying on the earth at the place and one wooden cot also. One pillow stained with blood was on the cot. He collected samples of blood smeared earth and simple earth and attached the pillow and wooden cot under the panchanama. He noticed that one electric bulb was near one room in that house. It was tested and found operating. Supplementary statement of complainant Sopan and of other witnesses were recorded. After completion of investigation, charge sheet was submitted against the accused in the Court of Judicial Magistrate, Malkapur who committed the

case to the Sessions Court, Buldana.

The prosecution, in all, examined 10 witnesses in support of the case. PW6-Sopan is the son of deceased Ninaji and a star witness. He is complainant also. He stated that he was sleeping in his house along with his wife on the night of October 25, 2000 after taking meal. His father slept on a wooden cot (charpai) in the backyard of the house. At about 2.00 or 3.00 a.m., he heard shouts of his father calling 'Bapa re Bapa re'. Immediately, he and his wife rushed towards the backyard and saw that the accused Namdeo was assaulting his father Ninaji with axe. He specifically stated that he and his wife witnessed the incident in the light of electric lamp. Namdeo fled away from the place along with axe in his hand. Though the witness chased the accused, but he disappeared in darkness. He further stated that PW8- Raju was behind him when he was chasing the accused. After disappearance of accused, both of them i.e., Sopan- PW6 and Raju-PW8, returned to his house. At that time, Ninaji was saying that he was assaulted by the accused Namdeo. Ninaji was bleeding from the injuries sustained by him.

The evidence of PW6-Sopan was corroborated by PW8-Raju. He stated that he is a neighbour of deceased Ninaji and his house is situated at a distance of only 30 feet from the house of deceased Ninaji. He also stated that house of accused Namdeo is situated at a distance of about 25 feet from his house. According to him, the relations between the accused Namdeo and the deceased Ninaji were strained. Regarding the incident, he stated that he was sleeping in the courtyard of his house on the day of the incident and at about 3.00 a.m., he heard the shouts to the effect 'Bapa re Bapa re', 'Namya assaulted'. On hearing the shouts, he rushed to the house of Ninaji and saw that accused Namdeo was coming out of the house of Ninaji and PW6-Sopan was following him i.e. running behind him. The witness also started running behind Sopan. He deposed that he witnessed this in the electricity light. According to him, there were two injuries on Ninaji, one on head and another near right ear. PW7-Dr. Suresh Wagh stated that on inquiry, the injured (deceased) Ninaji told him that it was the accused Namdeo who assaulted him with an axe. The injuries sustained by Ninaji were duly proved by the evidence of PW7-Dr. Suresh Wagh, PW3-Dr. Suhas Sopan Borle and PW4-Dr. Laxminarayan Ashokchand Jaiswal who effected autopsy of dead body of Ninaji on October 26, 2000. The trial Court, on the basis of the above evidence, held that it was proved that Ninaji died of homicidal death. So far as the guilt of the accused is concerned, the trial Court held that from the evidence of PW6-Sopan (complainant), son of deceased, it was clear that he had witnessed the incident in electric light. His evidence was corroborated by PW8-Raju who not only heard the shout 'Bapa re Bapa re', 'Namya assaulted' but Ninaji also told the witness that it was the accused who caused him injuries. The Court also held that when injured (deceased) was taken to the house of PW7-Dr. Suresh Wagh, Ninaji informed the Doctor that it was the accused who had assaulted him.

During the investigation, the axe was also recovered at the instance of accused Namdeo by the Investigating Officer. The prosecution had examined PW9 Nivrutti Patil who was a panch witness. The accused had made a statement that he had concealed the axe beneath the fodder of his cattle shed and he would produce it. Memorandum of statement (Ex.44) was prepared and the accused led the panch and PSI Diwakar to the cattle shed from where the axe stained with blood was found. PW10 PSI Diwakar sent muddamal axe to Chemical Analyzer, Nagpur which was found to have

human blood. No blood group, however, could be ascertained. On the basis of the above evidence, the trial Court held that it was proved beyond reasonable doubt that it was accused and accused alone who had caused injuries to the deceased which resulted in his death. The accused was, therefore, convicted for an offence punishable under Section 302 IPC and was awarded imprisonment for life. The appeal filed by the accused before the High Court was dismissed observing that the trial Court had not committed any error and the judgment and order did not deserve interference. The said order is challenged before this Court.

We have heard learned counsel for the parties. The learned counsel for the appellant contended that the entire case of the prosecution is based on solitary testimony of eye witness Sopan, son of the deceased. He is thus an 'interested' witness. In absence of any corroboration, it would not be safe to place implicit reliance on his testimony who could not have seen the assailant in the dark night. It was further contended that though several persons had come at the place of offence, none was examined except Raju PW8, who was also not an eye witness. It was submitted that oral dying declaration said to have been made by the deceased Ninaji either before PW8-Raju or PW7-Dr. Suresh Wagh cannot be relied upon in the light of the fact that the injured was in critical condition and died within a short time. It was finally submitted that even if the case of the prosecution is believed, only a single blow was given by the accused and the case would not be covered under Section 302 IPC but would fall under Section 304, Part II IPC and the order of conviction and sentence requires to be modified.

The learned advocate for the State supported the order of conviction and sentence. According to him, both the Courts considered the evidence in its proper perspective and no fault can be found when they held the accused guilty. Regarding nature of offence, it was submitted that an axe blow was administered on the vital part of the body i.e. head which resulted in death of the deceased which was rightly held to be a case of an offence of murder. A prayer was therefore made to dismiss the appeal.

Having heard the learned counsel for the parties, in our opinion, no interference is called for in exercise of power under Article 136 of the Constitution. It is no doubt true that there is only one eye witness who is also a close relative of the deceased, viz. his son. 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 a criminal trial and the emphasis of Courts is always on quality of evidence.

So far as legal position is concerned, it is found in the statutory provision in Section 134 of the Evidence Act, 1872; which reads;

134. Number of witnesses. No particular number of witnesses shall in any case be required for the proof of any fact.

Let us now consider few leading decisions on the point.

Before more than six decades, in Mohamed Sugal Esa Mamasan Rer Alalah v. The King, AIR 1946 PC 3 :

> 222 IC 304 (PC), one M together with his brother E caused murder of his half-brother A. The trial Court convicted M and sentenced him to death acquitting his brother E. The conviction was confirmed by the appellate Court. It was contended before the Privy Council that the conviction was solely based on unsworn evidence of a girl aged about 10-11 years. The trial Court found her competent to testify, but was of the view that she was not able to understand the nature of an oath and, therefore, oath was not administered. It was contended by the accused that no conviction could be recorded on a solitary witness and that too on an unsworn evidence of a tender-aged girl of 10-11 years without corroboration.

Considering the question raised before the Judicial Committee, leave was granted.

Their Lordships considered the legal position in England and in India. It was held that such evidence is admissible under Indian Law "whether corroborated or not".

Lord Goddard, speaking for the Board stated:

> " Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law. In a careful and satisfactory judgment the Judge of the Protectorate Court shows that he was fully alive to this rule and that he applied it, and their Lordships are in agreement with him as to the matters he took into account as corroborative of the girl's evidence."

In Vadivelu Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614, referring to Mahomed Sugal, this Court stated;

On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established :

> (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
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> (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

> (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

Quoting Section 134 of the Evidence Act, their Lordships stated that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated."

The Court proceeded to state;

It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.

The Court also stated;

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

In the leading case of Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

In Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

In Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 : JT 1995 (8) SC 425, referring to several cases, this Court stated; "On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence." In Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397 : JT 2003 (7) SC 270, this Court had an occasion to consider a similar question. In that case, the sole testimony of a young boy of 15 years was relied upon for recording an order of conviction. Following Mohamed Sugal and reiterating the law laid down therein, this Court stated:

> "The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact."

(emphasis supplied) Recently, in Bhimappa Chandappa v. State of Karnataka, (2006) 11 SCC 323, this Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony. From the aforesaid discussion, it is clear that Indian legal system does

not insist on plurality of witnesses. Neither the Legislature (Section 134, Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye witness, therefore, has no force and must be negatived. It was then contended that the only eye witness PW6-Sopan was none other than the son of the deceased. He was, therefore, 'highly interested' witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive.

Before more than half a century in Dalip Singh v. State of Punjab, 1954 SCR 145 : AIR 1953 SC 364, a similar question came up for consideration before this Court. In that case, the High Court observed that testimony of two eye witnesses required corroboration since they were closely related to the deceased. Commenting on the approach of the High Court, this Court held that it was 'unable to concur' with the said view. Referring to an earlier decision in Rameshwar Kalyan Singh v. State of Rajasthan, 1952 SCR 377 : AIR 1952 SC 54, their Lordships observed that it was a fallacy common to many criminal cases and in spite of endeavours to dispel, "it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel".

Speaking for the Court, Vivian Bose, J. stated:

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth".

(emphasis supplied) The Court, no doubt, uttered a word of caution:

> "However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts". (emphasis supplied) In Darya Singh & Ors. v. State of Punjab, (1964) 3 SCR 397 : AIR 1965 SC

328, this Court held that evidence of an eye witness who is a near relative of the victim, should be closely scrutinized but no corroboration is necessary for acceptance of his evidence. Speaking for the Court, Gajendragadkar, J. (as His Lordship then was) stated:

"There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars." (emphasis supplied) In Dalbir Kaur (Mst.) v. State of Punjab, (1976) 4 SCC 158 : AIR 1977 SC 472, the accused killed his own father and real brother over a property dispute. Eye-witnesses to the 'gruesome, brutal and unprovoked' double-murder were near relatives of the deceased. It was, therefore, contended that they were 'interested' witnesses and their evidence should not be accepted for holding the appellants guilty.

> Negativing the contention, upholding the order of conviction, and referring to Dalip Singh, this Court stated;
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> "There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested"

postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here. In the instant case there is absolutely no evidence to indicate that either Jaswant Kaur or Shiv Kaur bore any animus against the accused." In Kartik Malhar v. State of Bihar, (1996) 1 SCC 614, this Court considered several leading cases on the point and said:

> "On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelyu Thevar's case (supra) and, therefore, conviction can be recorded on the basis of the statement of single eye witness provided his credibility is not shaken by any adverse circumstances appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness. The Court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the Courts insist on the quality, and, not on the quantity of evidence".

(emphasis supplied) Recently, in Harbans Kaur v. State of Haryana, (2005) 9 SCC 195, the conviction of the accused was challenged in this Court, inter alia, on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negativing the contention this Court said:

> "There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

From the above case-law, it is clear that a close relative cannot be characterised as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy,conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. In the present case, PW6-Sopan is the son of deceased Ninaji. The

incident took place at the residence of Ninaji as well as the witness (PW6-Sopan). It was night time about 3.00 a.m. Obviously, therefore, his presence in his own house was natural and he could not be said to be a 'chance witness'. PW6 was sleeping in his own room along with his wife and deceased Ninaji was in the courtyard on his cot. That was also natural. There is nothing unusual in his (PW6-Sopan) coming out of his room when his father cried 'Bapa re Bapa re'. It was also normal behaviour on the part of the son to chase the accused as he had seen the accused administering axe blow on the head of his father. Unfortunately, however, due to darkness outside the house, the accused was successful in making his escape. The testimony of PW6- Sopan appears to both the Courts to be trustworthy and reliable. In addition, the Court also found further corroboration from the evidence of PW8-Raju who could not strictly be said to be an eye witness but who saw the accused coming out of the house of Ninaji with axe in his hand. He referred to electric light in the courtyard where deceased Ninaji was sleeping. He also stated that Ninaji was saying that he was assaulted by Nanya, i.e. accused Namdeo. Similar dying declaration was made by deceased Ninaji before PW 7- Dr. Suresh Wagh as well. Medical evidence of PW7 Dr. Suresh Wagh, PW3 Dr. Suhas Borle and PW4 Dr. Jaiswal further corroborates the prosecution story and injuries sustained by Ninaji. It, therefore, cannot be said that the Courts below had committed an error in relying upon the sole testimony of PW6-Sopan, particularly when it was corroborated in material particulars with the testimony of PW8-Raju and three Doctors. The contention raised by the accused, therefore, cannot be upheld.

Finally, we are unable to uphold the argument of the learned counsel for the appellant-accused that the case falls under Section 304, II IPC. Considering the nature of weapon used by the accused (axe) and the vital part of the body (head) of the deceased chosen by him, it was clear that the intention of the accused was to cause death of Ninaji. PW 4 Dr. Jaiswal in his deposition stated that injury No. 1 was sufficient in the ordinary course of nature to cause death of the victim. In the circumstances, both the Courts were right in holding that the case was covered by Section 302 IPC.

For the foregoing reasons, we see no infirmity in the orders passed by the courts below. The appeal deserves to be dismissed and is accordingly dismissed. The order of conviction and sentence is hereby maintained.