Mahesh S/O Janardhan Gonnade vs State Of Maharashtra on 10 April, 2008

Author: Lokeshwar Singh Panta

Bench: P. P. Naolekar, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (crl.)  545 of 2007

PETITIONER:
Mahesh s/o Janardhan Gonnade

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 10/04/2008

BENCH:
P. P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
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J U D G M E N T REPORTABLE CRIMINAL APPEAL NO. 545 OF 2007 Lokeshwar Singh Panta, J.

1. The appellant has filed this appeal under Section 379 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.") read with Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 read with Order 21 Rules XII to XXIX of the Supreme Court Rules, 1966, against the judgment and order dated 09.03.2007 passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. By the judgment under challenge, the High Court has partly set aside the judgment dated 25.01.1990 of the learned Additional Sessions Judge, Bhandara, passed in Sessions Trial No.44/88 convicting the appellant under Section 302 of the Indian Penal Code [for short 'IPC'] and sentencing him to imprisonment for life and to pay a fine of Rs.1,000/- with default clause to suffer further six months' R.I. The appellant, however, has been acquitted for the offences punishable under Sections 307 and 324 of the IPC and Sections 25 and 27 of the Arms Act.

2. Brief facts, which led to the trial of the accused, are as follows:-

> The appellant-Mahesh and one Sunita were residents of Bastarwari Ward, Paoni, Tehsil Paoni, District Bhandara. It was alleged that they developed love-affair with each other when they were studying in the school. The prosecution case was that the marriage of Sunita was arranged with Sanjay, a resident of Nagpur. Before the marriage of Sunita could take place with Sanjay, the appellant had gone to the house of Sanjay and disclosed the fact of his past love-affair with Sunita. He also threatened

> Sanjay to face with dire consequences if he would marry with Sunita. Sanjay in the presence of his brother Manik (PW-7) told the appellant that as the "Sakshagandha" Ceremony had already taken place, he was left with no other option except to marry with Sunita. It was on 12.02.1988 when the marriage between Sunita and Sanjay took place at Nagpur. On 27.03.1988, Sanjay and his wife Sunita both had gone to the house of Nirmalabai for inviting the latter to attend the marriage of the niece of Sanjay scheduled to take place at Nagpur. They had stayed for a night at the house of Nirmalabai. On the next day, i.e. 28.03.1988, Nirmalabai, Sanjay (PW-8), his wife Sunita, Archana (PW-4) - niece of Sunita and Rupesh (PW-16), son of the maternal uncle of Sunita, had gone towards the bridge side of Wainganga River for evening walk. It was alleged that around 5.00 or 5.30 in the evening, the appellant along with his friend Rajesh (PW-5) was seen by the above-said persons going on a motorcycle to Wainganga River bridge side. The appellant on seeing Sanjay, his wife Sunita, Nirmalabai, PWs-

Archana and Rupesh at the site of the river, allegedly uttered "Sali Sunita Yevdha Prem Asun Aaj Ekda Sudha Mazyakade Pahile Nahi" to PW-Rajesh. The prosecution alleged that on the same day, the appellant had kept a gun and one bag at the house of Laxmibai (PW-2) in the presence of Bilkish Begum (PW-3), a neighbour of PW-2 on the pretext that he would collect these articles in the evening for hunting purpose. The appellant and PW-Rajesh returned to their respective houses in the evening. After some time, the appellant armed with a gun and knife came back to the place of incident and fire shot in the back of Sanjay, who, as a result of bleeding injury, uttered 'Are Bapre' and then laid on the road side. Sunita and Nirmalabai both tried to extend help to injured Sanjay, but the appellant came near them, pulled Sunita's hair and stabbed her on vital parts of head, neck and back. Sunita collapsed on receipt of severe injuries. Nirmalabai tried to save her daughter Sunita, but the appellant struck knife blows to Nirmalabai also. The appellant, on seeing the gathering of people at the scene of occurrence, ran away leaving all the three injured persons on the spot.

3. Prakash (PW-1), a private Medical Practitioner, who lived nearby the place of occurrence, on hearing shouting of the people, went to the spot. He spotted Sunita lying with bleeding injuries on the road side. He also spotted Nirmalabai and one man lying in injured condition at a little distance away from Sunita. PW-Prakash lifted Sanjay, Sunita and Nirmalabai into a rickshaw and took them to the Government Hospital, Paoni, where they were admitted by Dr. Laxman (PW-

10), Medical Officer. Sunita could not survive and succumbed to the injuries in the evening around 7.15 p.m. Dr. Laxman sent a memo to the Police Station, Paoni, regarding admission of the injured persons. PW-Sanjay and Nirmalabai were transferred to Medical College, Nagpur, at about 7.45 p.m. for proper medical treatment.

4. PW-Prakash at about 7.30 p.m. lodged a written complaint (Ext. 28) at Paoni Police Station, on the basis of which First Information Report bearing Crime No.34/1988 (Ext. 29) was registered by PSI Dhimole (PW-18) under Sections 302 and 307 of the IPC. PW-Dhimole started investigation. He tried to get the dying declaration of Sunita and statements of injured Sanjay and Nirmalabai

recorded, but at the relevant time he could not get the services of any Executive Magistrate readily available for the purpose. The Investigating Officer conducted inquest on the dead body of Sunita. He arrested the appellant on the same day at about 7.30 p.m. The appellant allegedly made a disclosure statement to the Investigating Officer expressing his willingness to point out the place where a gun and one knife were concealed by him. The appellant took the Police and the Panch witnesses, namely, Vithoba Khobragade (PW-9), a Legal Practitioner, and Harihar Barsagade (PW-13) to his house and got the weapons of offence recovered therefrom. The articles were seized by the Investigating Officer vide Panchnama (Ext. 43).

5. Dr. Laxman conducted the post mortem examination on the dead body of the deceased Sunita and recorded the following injuries in Post Mortem Report (Ext. 62):-

1) Incised wound 3 cm x 1 cm over left forehead.

2) Incised wound 3 cm x 1 cm inter-scapular region to right side.

3) Incised wound/stab 1 cm x = cm over posterior side of neck in midline area.

4) Incised wound 3 cm over Metacarpopharynegeal joint of right hand.

5) Incised wound 2 cm 1 cm over middle finger of right hand.

6) Incised wound 1 cm x 1 cm Metacarpopharynegeal joint of right middle finger.

7) Incised wound over scalp 3 cm x 1cm behind right ear.

8) Incised wound 3 cm x 1 cm over occipital region of skull.

9) Incised wound 5 cm x 1 cm over mid parietal region.

Her autopsy vide Exhibit 62 shows following internal injuries on her person:-

1) Pleura-perforating injury 1 cm x 1 cm upto apex of left lung.

2) Left lung: 2 cm x = cm injury to the apex of left lung plenty blood collection was seen in left thoracic cavity.

According to the opinion of the doctor, the cause of death of Sunita was due to shock due to hemorrhage.

6. Dr. Laxman examined PW-Sanjay and found the following injuries on his person:-

1) Incised wound/stab over abdomen 3 cm x 4 cm in left Hypochondrium.

2) Fire arm injuries 9 in number on left size back at renal angle level to upper iliac crest.

3) Firearm injuries over buttocks. Two injuries were on right buttock and one injury was on left buttock and size of each injury was 1 cm x 1 cm edges of all the said injuries were inverted.

Black right all around the injuries would of exit seen.

7. On examination of Nirmalabai, Dr. Laxman noticed the following injuries on her person:-

a. Incised wound/stab over left scapular region 2.5 cm x 1cm bleeding was present.

b. Incised wound 7 cm x 1 cm over face right side lateral to lateral angle of eye.

c. Incised wound 2.5 cm x 1 cm over right hand above little finger.

d. Incised wound over right elbow joint 2.5 cm x 1 cm Movements frees.

8. The Investigating Officer collected the post mortem report (Ext. 62) of Sunita, her Injury Certificate (Ext. 54), Injury Certificate of PW-Sanjay (Ext. 55) and Injury Certificate of PW-Nirmalabai (Ext. 56) respectively. At the Medical College Hospital at Nagpur, some pellets of gun fire were taken out of the body of PW-Sanjay. The Investigating Officer collected samples of nails of the appellant in the presence of Panch witnesses and the same were sent to the Chemical Analyser.

9. After completion of the investigation and after receipt of the post mortem report and the Injury Certificates of deceased Sunita, PW-Sanjay and Nirmalabai and also the Chemical Analyser's Reports (Ext. 99, Ext. 100 and Ext. 102) and Report of Ballistic Expert (Ext. 101). PW-Dhimole submitted charge sheet against the appellant in the Court of Chief Judicial Magistrate, Bhandara. The Chief Judicial Magistrate committed the trial of the appellant to the Court of Sessions, Bhandara, as the offences framed in the charge sheet were exclusively triable by the Court of Sessions.

10. The trial of the appellant was conducted by the learned Additional Sessions Judge, who framed charges against the appellant for the offences under Sections 302, 307 and 324 of the IPC and for the offences under Sections 25 and 27 of the Arms Act.

11. The prosecution examined as many as 18 witnesses in support of its case. In the statement under Section 313 of Cr.P.C., the appellant has denied his involvement in the crime. He pleaded that the prosecution witnesses are inimical towards him. He admitted that on the day of incident at about 5.00 to 5.30 p.m., he along with PW-Rajesh had gone on a motorcycle towards river side for evening walk and thereafter they went to a small hillock in the vicinity and stayed there for about 1 = hours. They kept motorcycle near one Hotel, where they had taken tea and when they were walking on a small hill, they heard sound of blasting of cracker and thereafter they returned to their respective

houses. The appellant also stated that when he came to his house, some people told that murder had taken place. The defence of the appellant was that he was arrested on suspicion by the Police on account of old quarrel with the grandfather of deceased Sunita and he pleaded innocence.

12. The learned Additional Sessions Judge has disbelieved the testimony of the injured witnesses inter alia on the grounds: (a) they are close relatives and also interested witnesses besides they being untrustworthy because their evidence did not find corroboration from any independent witnesses though many people were present at the scene of occurrence, yet none of them was examined by the prosecution, (b) some of the important witnesses have turned hostile to the prosecution and (c) the recovery of weapons of offence has not been supported by the panch witnesses and, therefore, recorded the judgment of acquittal of the appellant. Being aggrieved, the State of Maharashtra preferred Criminal Appeal No.198/90 in the High Court of Judicature at Bombay, Nagpur Bench. The Division Bench of the High Court scrutinized and reappraised the entire oral and documentary evidence on record and has come to the conclusion that the learned Trial Judge has not properly appreciated the evidence on record and therefore, the judgment was set aside and as a result thereof, the appellant has been held guilty for the offence of murder of Sunita. The record shows that during the pendency of the trial, Nirmalabai had died and, therefore, she could not be examined as a witness and injuries sustained by her though sought to be proved through PW-Dr. Laxman, yet the High Court has noticed that there was no evidence on record to prove the period of hospitalization of Nirmalabai and the nature of medical treatment given to her by the doctor of Medical College at Nagpur. In the circumstances, the appellant has been acquitted of the charge under Section 324 of IPC for causing injuries to Nirmalabai. As regards the gunshot injuries caused to PW-Sanjay by the appellant, the High Court has come to the conclusion that the prosecution has not established that pellets extracted out of the body of PW-Sanjay were corresponding to the pellets allegedly fired by the appellant from the gun recovered from him by the Investigating Officer. No Medical Officer from Medical College, Nagpur, who medically examined PW-Sanjay, has been examined by the prosecution to prove injuries received by Sanjay from fire arm. In these circumstances, the High Court has given benefit of doubt to the appellant for an offence under Section 307 of IPC and consequently, no offence under the Arms Act as well has been found against the appellant. The appellant has filed this appeal against his conviction and sentence imposed upon him by the High Court for the murder of Sunita.

13. We have heard learned counsel for the parties who have taken us through the oral evidence of the material witnesses as well as the documentary evidence appearing on record.

14. Mr. Sushil Kumar, learned senior Advocate appearing for the appellant, first contended that the High Court committed grave error in interfering with the order of acquittal passed by the Trial court, only because another view could have been taken in the matter and the interference of the High Court in the context of reversal of acquittal is against the well- established principles laid down by this Court in a series of decisions. In support of this submission, reliance has been placed on the decisions of this Court in Tota Singh & Anr. v. State of Punjab [(1987) 2 SCC 529] and State of Rajasthan v. Raja Ram [(2003) 8 SCC 180]. We have gone through the above-said decisions. It is not in dispute that this Court by a series of decisions has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the Appellate Court while dealing with appeal

against an order of acquittal. In the case of Tota Singh v. State of Punjab (supra), it was held as under:- (SCC p.532 para 6) "6. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

15. In State of Rajasthan v. Raja Ram (supra), this Court held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice, which may arise from acquittal of the guilty, is no less than the conviction of an innocent. Further, it is held that in a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interfere only where there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were again highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]; Ramesh Babulal Doshi v. State of Gujarat [(1996) 9 SCC 225] and Jaswant Singh v. State of Haryana [(2000) 4 SCC 484] and same parameters were reiterated in the latest judgment of this Court in State of Goa v. Sanjay Thakran & Anr. ((2007) 3 SCC

755).

16. Though the above principles are well-established, a different note was struck in several decisions by this Court. It is, therefore, appropriate if we consider some more leading decisions on the point.

17. In Prandas v. State [AIR 1954 SC 36], the accused was acquitted by the Trial court. The Provincial Government preferred an appeal which was allowed and the accused was convicted for offences punishable under Sections 302 and 323 IPC. The High Court, for convicting the accused, placed reliance on certain eye-witnesses.

18. Upholding the decision of the High Court and following the proposition of law in Sheo Swarup v. R. Emperor (1933-

34)61 IA 398 : AIR 1934 PC 227 (2), a six-Judge Bench speaking through Fazl Ali, J. unanimously stated: (Prandas case, AIR p. 38, para 6) "6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under

Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."

(emphasis supplied)

19. In Surajpal Singh v. State [AIR 1952 SC 52], a two- Judge Bench observed that it was well-established that in an appeal under Section 417 of the Cr.P.C. (old), the High Court had full power to review the evidence upon which the order of acquittal was founded. But it was equally well-settled that the presumption of innocence of the accused was further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons.

20. In Aher Raja Khima v. State of Saurashtra [AIR 1956 SC 217], the accused was prosecuted under Sections 302 and 447 IPC. He was acquitted by the trial court but convicted by the High Court. Dealing with the power of the High Court against an order of acquittal, Bose, J. speaking for the majority (2:1) stated: (AIR p. 220, para 1) "It is, in our opinion, well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong." (emphasis supplied)

21. In Chandrappa v. State of Karnataka (2007) 4 SCC 415], on consideration of a catena of earlier decisions of this Court and Privy Council, the following general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal emerge:

> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

22. Again in a recent decision in Girja Prasad (Dead) by Lrs. V. State of M. P. [(2007) 7 SCC 625], this Court held that in an appeal against acquittal, it is for the Appellate Court to keep in view the relevant principles of law, to re-appreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence in consonance with the principles of criminal jurisprudence. In the teeth of the well-established principles discussed in the above-stated decisions, the question whether the High Court in exercise of its appellate jurisdiction has exceeded its limitations in an appeal against acquittal of the appellant by the Trial Judge, shall be dealt with in the later part of the judgment after recording all the submissions urged on behalf of the appellant before us.

23. The learned senior counsel contended that the High Court has failed to appreciate the vital aspect of the matter that the trial court has recorded fact finding that the alleged eye-witnesses in the present case were interested witnesses as they are related to the deceased and their evidence was not reliable unless the same was corroborated by independent witnesses who were not examined by the prosecution though available to it or who have turned hostile to the prosecution.

24. The learned counsel then contended that the High Court again committed grave error in relying on the evidence of panch witnesses who have not supported the prosecution case in respect of recovery of weapons of offence allegedly used in the commission of the crime, surprisingly the High Court convicted the appellant for offence under Section 302, while on the same set of evidence it has given benefit of doubt to the appellant holding him not guilty of offences under Section 307 of IPC and Arms Act for causing gunshot injury to PW-Sanjay. According to the learned counsel, the evidence of the eye- witnesses did not inspire confidence in the prosecution story and reliance upon the same for convicting the appellant under Section 302, IPC, was wholly unsustainable. He next contended that the High Court also failed to appreciate that statements of witnesses recorded after considerable delay would point out towards a concerted attempt on the part of the prosecution and the witnesses to falsely implicate the appellant. The High Court has failed to appreciate that the report of the Chemical Analyser did not conclusively prove the presence of human blood-stains found on the clothes of the appellant bearing blood group of the deceased Sunita. The trial court on the basis of these material defects and loopholes in the case of the prosecution has rightly drawn adverse inference against the prosecution, but the High Court having failed to appreciate the material aspect of the matter, recorded different findings against the appellant which are wholly perverse based on mis-appreciation of the evidence appearing on record. The learned counsel, by taking us through the judgment of the High Court, then contended that PW-Sanjay has not stated in his statement anything in regard to the stab injury caused to him by the appellant which is noticed by the Medical Officer in his report. The prosecution has also not examined the Medical Officer, who had taken out pellets or its remains from the body of PW-Sanjay and, therefore, full truth has not come before the Court and genesis of occurrence has been suppressed by the prosecution. He also raised a contention that the High Court has failed to appreciate the evidence of PW-Rajesh, who has

supported the defence version to a considerable extent pleaded by the appellant in the statement under Section 313 Cr.P.C. According to the learned counsel, the time mentioned at 7.30 p.m. in First Information Report was also repeated on the arrest memo of the appellant as well as on the other material documents prepared by the Investigating Officer, would cast reasonable doubt that the investigation was not conducted fairly and honestly. He then submitted that the learned Trial court was right in holding the prosecution case doubtful as it has failed to explain the injury on the little finger of the hand of the appellant, but the High Court has held the appellant responsible for non-explanation of blood injury on his finger, which finding is contrary to the well-settled principle of law. The learned counsel then contended that the evidence of the alleged eye-witnesses is full of contradictions, unexplained discrepancies and also the fact that the statements of PW-Sanjay and Nirmalabai, were not recorded immediately after they were taken to Paoni Hospital and statements of PW-Archana and PW-Rupesh were recorded after about 3 or 4 days from the day of incident, in spite of their availability for giving the statements to the Police. According to the learned counsel, the statements of injured PW-Sanjay and Nirmalabai (who died during trial) ought to have been recorded as dying declaration to unfold the true genesis of the occurrence and to prove beyond reasonable doubt that it was the appellant and none else who caused the death of Sunita and injuries to PW-Sanjay and deceased Nirmalabai. It is also contended by the learned counsel that the prosecution story was inherently improbable as the appellant could not have held a gun in one hand and a knife in another for inflicting injuries to the injured persons and deceased Sunita by using two different weapons at the same time. Lastly, the learned counsel submitted that the judgment of the learned Trial Judge was valid and legal based upon proper appreciation of the evidence and reasonable considerations of the entire material on record which has been set aside by the High Court on unsustainable, untenable grounds and misreading and mis-appreciation of the entire evidence appearing on record.

25. In opposition, Dr. Rajiv Masodkar, learned counsel for the respondent-State, submitted that the evidence of injured PW-Sanjay has been corroborated by PW-Archana, PW- Rupesh, who are the other eye-witnesses of the occurrence, and also to some extent by PW-Prakash Deshkar, the complainant. He submitted that no doubt PW-2 Laxmibai, PW-3 Bilkish Begum, PW-5 Rajesh and PW-15 Nilkanth have resiled from their earlier statements made to the Police and the Special Judicial Magistrate, but their versions in the Court on material aspect of the matter find support to the prosecution case and, therefore, their evidence to that extent has to be accepted in the circumstances of the case. The learned counsel also relied upon the evidence of PW-Vithoba Khobragade and PW-Harihar Barsagade, who had noticed stains of blood on the wearing apparel of the appellant at the time of his arrest and disclosure statement made by him in their presence, on the basis of which gun and knife used for the commission of offence were recovered coupled with the fact that blood-stained nails clippings are sufficient and consistent circumstances connecting the appellant in the commission of the crime. The learned counsel then contended that the High Court has made proper and perspective re-appraisal of the entire evidence on record and found the appellant guilty of the offence of murder of Sunita and if the Investigating Officer was not prompt in recording the statements of the eye-witnesses, his slackness in no circumstances will prove the innocence of the appellant whose presence at the scene of occurrence armed with weapons of offence has been fully established by the injured eye-witness and other material witnesses. He submitted that this Court shall not be obliged to interfere with the well-merited and well-reasoned

judgment of the High Court which, in no circumstances, can be said as perverse or illegal.

26. In the backdrop of the above-said contentions of the learned counsel for the parties and in the light of principles laid down in the above referred decisions of this Court and the Privy Council on the question of exercising powers in appeal by the High Court against the order of acquittal and the well- settled principles laid down in a series of decisions of this Court on the point of appreciation of the evidence of the injured eye-witnesses and non-injured eye-witnesses, we shall consider the evidence placed on record to find out whether the High Court has committed any error in dealing with the evidence, which can be said to be patently illegal or that the conclusion arrived at is wholly untenable, calling for interference by us.

27. The substance of occurrence of incident as alleged by the prosecution is not disputed and the only question would be whether the appellant is proved to be responsible for causing the injury to deceased Sunita, which later on proved fatal to her.

28. It is the categorical evidence of PW-Sanjay that on 28.03.1988 he along with his wife Sunita, mother-in-law Nirmalabai, PW-Archana and PW-Rupesh had gone towards the bridge of Wainganga River for evening walk. At about 6.00 p.m. when they started returning to the house of his mother- in-law they noticed the appellant and his one friend going on a motorcycle towards bridge side. As soon as they reached near the house of his mother-in-law, he heard sound of gun fire from his back side which hit him in the back and at that time he saw the appellant approaching behind him armed with a gun. The appellant then kept gun at one side of the scene of the incident and he himself rushed towards them armed with knife. He attacked his wife Sunita with knife and stabbed parts of her head, neck and back, etc. and in the process, the appellant also assaulted his mother-in-law with the knife and on seeing the people gathering at the spot, the appellant fled away from the scene of occurrence. It is his evidence that one day before the day of "Sakshagandha" ceremony, which took place on 13.12.1987, the appellant had come to his house at Nagpur and apprised him about his love-affair with Sunita and disclosed that on an earlier occasion as well he had broken the proposal of marriage of Sunita with one boy. The appellant warned him that if he still would like to marry Sunita he would face dire consequences at the hands of the appellant. The series of suggestions of the defence that on the day of incident the witness had not seen the appellant at the spot; the appellant had not carried the gun with him; the appellant had not rushed towards him, his wife Sunita and other persons accompanying them armed with knife and that the appellant had not stabbed deceased Sunita and Nirmalabai with knife, have categorically been denied by him. This witness is not a stranger to the appellant and he has clearly identified the appellant as an assailant. His evidence has not been shattered or discredited by the defence in spite of searching cross-examination. He is natural witness being an injured person and his evidence is cogent, satisfactory and consistent which has been properly re-appreciated and accepted by the High Court holding the appellant an assailant of the murder of Sunita.

29. PW-Archana has fully corroborated the testimony of PW-Sanjay. It is her evidence that on the day of occurrence, Sunita had requested her and PW-Rupesh to give company to her, her husband Sanjay and mother Nirmalabai, who had decided to go to Wainganga river bridge side for evening walk. They left the house of Nirmalabai around 5.00 p.m. At about 6.00 p.m. or 6.30 p.m. they

started returning to the house of Nirmalabai from the place of their visit, when they saw the appellant and Raju Deshkar (PW-5) going towards the bridge side riding on a motorcycle. It is her evidence that after crossing the gate of Fort and turning towards western side of the place of incident, they heard a sound of gunshot, which hit PW-Sanjay on his back and Sanjay shouted "Are Bapre" and as a result of gun fire injury, Sanjay laid down on the road. Sunita and Nirmalabai immediately rushed towards Sanjay and embraced him. This witness has identified the appellant who was following them at a distance of about 5 or 6 feet holding a gun and one knife in his hands. She deposed that in her presence the appellant at first attempt pulled Sunita's hair and then inflicted knife blows on her head, neck and back without any cause. She and PW-Rupesh got frightened due to the sudden horrible incident, they rushed to the house of PW- Sadashiorao - grandfather of Sunita to narrate the incident but Sadashiorao, at the relevant time, was not present in the house. The grandmother of Sunita told them that her husband, at the relevant time, could be found in the nearby house of Ganpati Nimje. She along with PW-Rupesh went to the house of Ganpati Nimje and they accordingly narrated the entire incident to PW-Sadashiorao, who in turn immediately rushed to the scene of occurrence. She stated that in the evening at about 7.30 p.m., she came to know that Sunita had died. The learned counsel for the appellant has challenged the testimony of this witness on the ground that she and PW- Rupesh, being close relatives of Sunita, had not cared to take the injured to the Hospital nor they made any attempt to go to the Police Station for reporting the matter and, therefore, in such circumstances the presence of these two witnesses on the place of occurrence was doubtful and they being the interested witnesses were later on introduced by the Police projecting them as eye-witnesses. He next contended that the statement of this witness under Section 161 Cr. P.C. was recorded by the Police after 3 or 4 days of the incident which fact itself would cast serious doubt about the presence of this witness on the scene of occurrence. We have independently scrutinized the evidence of this witness and found that in spite of lengthy cross-examination by the defence, her testimony could not be impeached in regard to the manner in which the appellant had assaulted deceased Sunita with knife. She had withstood the cross-examination very boldly and, in our view, she is a truthful witness and has given positive, satisfactory and consistent account of the incident. The evidence of this witness is free from any doubt and cannot be disbelieved or discarded simply because she is a relative of deceased Sunita.

30. PW-Rupesh has corroborated the testimony of PWs- Sanjay and Archana in its entirety. He has identified the appellant, who had pulled hair of Sunita at the scene of occurrence and then stabbed her on her head, neck and back without any reason. He corroborated the testimony of PW- Archana to the extent they got frightened at the scene of occurrence due to sudden horrible incident. He has categorically repeated the entire sequence of events which has been deposed by PW-Archana in her deposition. It is his evidence that in the evening around 7.00 or 7.30 p.m. he came to know that Sunita had died due to the injuries she suffered at the hands of the appellant. The evidence of this witness was consistent and free from embellishment. Nothing has been elicited in the cross-examination to discredit his testimony. A suggestion of the defence that in the evening of the incident he did not accompany PW-Archana, PW-Sanjay, deceased Sunita and deceased Nirmalabai for a walk as deposed by him in the Court, has been denied by him categorically.

31. PW-6 corroborated the testimony of PWs-Archana and Rupesh to the extent that both these witnesses had come to his house and narrated the entire sequence of the incident to him. He rushed

to the spot of occurrence where he came to know that injured Sunita, Sanjay and Nirmalabai were already taken to the Hospital. He immediately went to the Hospital at Paoni, where he found Nirmalabai, Sanjay and Sunita lying in an injured condition. Sunita at that time was unconscious; therefore, he could not speak to her. PW-Sanjay at that time was vomiting. A suggestion of the defence that when he went to the Hospital he found Nirmalabai in an unconscious condition was denied by him. One more suggestion of the defence that the witness has falsely implicated the appellant because deceased Sunita was his grand-daughter and also due to the reason that the father of the appellant was not on speaking terms with him, was emphatically denied by him. Therefore, this witness has corroborated the testimony of PWs- 4 and 16 who had narrated the entire incident to him naming the appellant the author of the serious offence of murder of Sunita.

32. PW-Prakash, who lodged report [Ext. 28] of the incident, stated that on hearing Sunita's shouts "Wachawa Wachawa", he rushed to the spot of incident and noticed Sunita lying with bleeding injuries on the road side in front of the house of one Ganeshe Tahsildar and he also spotted Nirmalabai and one man lying on the ground in an injured condition. The injured man had uttered "Golya Kadha Golya Kadha". This witness, no doubt, has turned hostile to the prosecution and in the cross-examination by the learned A.P.P. he denied having made portion marked 'A' of his statement to the Police to the extent that Mahesh was standing near the place where Sunita, her husband and Nirmalabai were lying with bleeding injuries, holding gun between his knees and one knife in his hand and at that time the appellant was shouting "arrest him arrest him". PW-1, the complainant, is a Medical Practitioner and belongs to village Paoni. He knew the deceased Sunita, her mother Nirmalabai and the appellant-Mahesh. His dispensary is at a distance of about 50 feet from the place of occurrence. His evidence is that Sunita, Nirmalabai and the man were having bleeding injuries on their person. He lifted them into a rickshaw and took them to the Government Hospital at Paoni, where he assisted the Medical Officer in giving medical treatment to the injured persons. At about 7.30 or 8.00 p.m. as per his version, Sunita died in the hospital whereas Nirmalabai and the said injured man were sent for better medical treatment to Medical College Hospital at Nagpur. He stated that he reported the entire incident to the Police in the Police Station and made a report (Ext. 28) which was signed by him. The testimony of this witness also corroborates the testimony of injured PW-Sanjay and other non-injured eye- witnesses to the extent that deceased Sunita, PW-Sanjay and Nirmalabai were lying with bleeding injuries at the scene of occurrence on the day of incident.

33. It is the evidence of PW-PSI Dhimole that portion mark 'A' appearing in the statement of PW-1 was recorded by him correctly. The defence has not brought on record any evidence to show why the Investigating Officer had recorded mark 'A' portion of the statement of PW-1 incorrectly. If PW-1 the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the Investigating Officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW- 1 has tried to conceal the material truth from the Court with a sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution.

34. Laxmibai (PW-2) and Bilkish Begum (PW-3) have also followed the same trend which PW-1 had adopted. They were confronted by the learned A.P.P. with portion mark 'A' of their earlier statements made to the Police implicating the appellant as an assailant, but later on they have resiled from their earlier statements perhaps for some undisclosed reasons and considerations, which are confined to themselves. The evidence of PSI Dhimole (PW-18) has proved on record that he had recorded mark portion 'A' of the statements made by PWs- 2 and 3 during investigation, correctly and nothing more was added by him in their statements.

35. Nilkant (PW-15) is the resident of village Paoni and he is acquainted with the appellant. It is his evidence that at about 6.00 or 6.30 p.m. on the day of incident, he was sitting on a bench in front of tea stall of one Gopal Somnathe, when he saw Nirmalabai, her daughter and son-in-law coming from the bridge side of the river and going to the house of Nirmalabai. He heard some sound emanating from western side of the road. When he was going to his house, he came to know near the house of one Parate that Nirmalabai's son-in-law was given beatings. He returned to the shop of Gopal Somnathe where he was told that the son-in-law of Nirmalabai had been taken to the hospital in an injured condition. He was allowed to be cross-examined by the learned A.P.P. when he admitted that during investigation of this case the Police had recorded his statement and later on Special Judicial Magistrate had also recorded his statement under Section 164 Cr.P.C. along with four or five more witnesses. He has denied having made statement to the Special Judicial Magistrate to the extent that on the day of incident he saw the appellant armed with a gun and giving knife blows on the person of Sunita and her mother Nirmalabai.

36. Shri Prabhakar (PW-17) Special Judicial Magistrate on 05.04.1988 recorded the statements of PW-Nilkanth, PW- Laxmibai, PW-Archana and PW-Rupesh under Section 164 Cr.P.C. On 06.04.1988, the Special Judicial Magistrate recorded the statements of PW-Prakash - the complainant. Copies of the statements were placed on record (Ext.79, Ext.80, Ext.81, Ext. 82 and Ex.83) respectively. The Special Judicial Magistrate denied the suggestion of the defence that he had prepared the statements of the said witnesses on the basis of the statements recorded by the Police. PW-Prakash, PW-Laxmi and PW-Nilkanth could not explain any reason why the Special Judicial Magistrate was interested to record the portions of their statements incorrectly in which they had named the appellant as an author of the crime. The testimony of the Investigating Officer also would not ipso facto give rise to doubt its credibility when the same was not shaken in cross- examination and he has no animus against the appellant to frame him in a false case. Merely because PWs-1, 2, 3 and 15 did not support the prosecution case when they were examined in the Court, that would not, in the circumstances, lead to the conclusion that the appellant was innocent. The Investigating Officer and the Special Judicial Magistrate both have categorically stated that they had correctly recorded the statements of PWs-1, 2, 3 and 15 under Section 161, Cr.P.C. and Section 164, Cr.P.C. respectively. The testimony of the Investigating Officer and Special Judicial Magistrate in no circumstances and for no good reason could be disbelieved and discredited and we, accordingly, accept their evidence in its entirety without any hesitation.

37. The learned Trial Judge has disbelieved the evidence of PW-Sanjay, PW-Archana, PW-Rupesh and PW-Sadashio merely on the grounds that they are close relatives of deceased Sunita and therefore interested witnesses and that no other independent witnesses who were present at the

scene of occurrence, had been examined by the prosecution and therefore there was no independent corroboration to the eye- witnesses account of the interested witnesses.

38. This Court in Salim Sahab v. State of M. P. [(2007) 1 SCC 699] held that mere relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. In Masalti v. State of U. P. [AIR 1965 SC 202] this Court observed: (AIR pp. 209-210, para 14) "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan, would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect are the decisions in State of Punjab v. Jagir Singh [(1974) 3 SCC 277], Lehna v. State of Haryana [(2002) 3 SCC 76] and Gangadhar Behera v. State of Orissa [(2002) 8 SCC 381].

39. As regards non-examination of the independent witnesses who probably witnessed the occurrence on the road side, suffice it to say that testimony of the PW-Sanjay, an eye- witness, who received injuries in the occurrence, if found to be trustworthy of belief, cannot be discarded merely for non- examination of the independent witnesses. The High Court has held in its judgment and, in our view, rightly that the reasons given by the learned Trial Judge for discarding and disbelieving the testimony of PWs-4, 5, 6 and 8 were wholly unreasonable, untenable and perverse. The occurrence of the incident, as noticed earlier, is not in serious dispute. PW- Prakash Deshkar has also admitted that he had lodged complaint to the Police about the incident on the basis of which FIR came to be registered and this witness has supported in his deposition the contents of the complaint to some extent. It is well-settled that in such cases many a times, independent witnesses do not come forward to depose in favour of the prosecution. There are many reasons that persons some times are not inclined to become witnesses in the case for variety of reasons. It is well settled that merely because the witnesses examined by the prosecution are relatives of the victim, that fact by itself will not be sufficient to discard and discredit the evidence of the relative witnesses, if otherwise they are found to be truthful witnesses and rule of caution is that the evidence of the relative witnesses has to be reliable evidence which has to be accepted after deep and thorough scrutiny.

40. PWs-4, 5, 6 and 8 have consistently supported the prosecution case in their statements made before the Police as well as in deposition before the trial court. We have referred to and discussed their material evidence in the earlier paragraph of this judgment and we do not find any cogent and valid reason to discard and discredit their testimony, more so when their evidence is corroborated by medical evidence and other important piece of evidence appearing on record. Dr. Laxman Fegadkar (PW-10) on 28.03.1988 had admitted injured Sunita, Nirmalabai and PW-Sanjay in the Government Hospital, Paoni. He immediately passed on the information to the Police Station about

the admission of the injured persons in the Hospital. He received a letter from the Police Officer, Paoni, requesting him to certify whether Sunita was in a fit condition to give statement and in reply thereto, doctor certified that Sunita was not fit for giving oral statement as she was lying unconscious. He could not take sample of blood of Sunita as her veins had collapsed. On examination of Sunita, he found as many as 9 injuries on her body. In the opinion of the doctor, all the injuries were caused by a sharp- edged weapon within a duration of six hours. According to the opinion of the doctor, the general condition of Sunita was poor when she was brought to the hospital and Sunita expired around 7.15 p.m. on 28.03.1988. Doctor placed on record Injury Certificate (Ext. 54) of Sunita. Dr. Laxman also conducted medical examination of injured Sanjay and on examination his condition was also found very poor and as many as three severe injuries were found on his person. Injury No.1 could be caused by sharp object and Injury Nos. 2 and 3 were as a result of fire arm as per doctor's opinion. The duration of all the said injuries was reported to be within six hours. The case of PW-Sanjay was referred to Medical College, Nagpur, for further management. The injury statement of PW-Sanjay was placed on record mark (Ext. 55). On the same day, Dr. Laxman examined Nirmalabai and found as many as four injuries on her person caused by sharp object and the duration of the injuries was within six hours. Injured Nirmalabai was also referred to Nagpur for further management and her Injury Certificate was placed on record marked Exhibit 56.

41. Dr. Laxman medically examined the appellant at about 10.30 p.m. on 29.03.1988 when he was brought to the hospital by Police Constable. A lacerated wound 1 cm x 1cm over right little finger, muscle deep over middle phalanx was noticed on his hand by the doctor. The injury was found simple in nature and could have been caused by hard and blunt object within a duration of about 24 hours. The Injury Certificate of the appellant was placed on record marked Exhibit 57. Doctor collected five C.C. Venous blood from the body of the appellant. On 30.03.1988, the Police Station Officer of Paoni sent one knife to the doctor for his opinion. Dr. Laxman found blade of the knife blood-stained. Doctor has opined that the injuries found on the body of Sunita and on the person of PW-Sanjay, as mentioned in their Medical Certificates, could be caused by knife which he identified (Art. No. 20) before the Court. In post mortem report of the deceased Sunita, doctor reported the injuries to be ante mortem. He found two internal injuries on the body of deceased Sunita: (1) Pleura-perforating injury 1 cm x 1 cm upto apex of left lung and (2) Left lung: 2 cm x = cm injury to the apex of left lung plenty blood collection was seen in left thoracic cavity. Doctor opined the cause of death of Sunita due to shock and haemorrhage as a result of severe injury to vital part, i.e., left lung. Injury No.2 as described in post mortem report was reported to be sufficient in ordinary course of nature to cause the death of Sunita and was possible with knife [Article No. 20]. In cross-examination, Dr. Laxman categorically stated that when Sanjay and Nirmalabai were brought to the hospital, their conditions were serious; therefore they were referred to the Medical Hospital, Nagpur, for further medical treatment. A suggestion of the defence that the injuries mentioned by him in the Injury Statement (Ext. 54) and post mortem report (Ext.

62) of deceased Sunita could not have been possibly caused by knife (Art. No. 20) has been categorically denied by him.

42. Thus, the testimony of the eye-witnesses including the injured eye-witness PW-Sanjay finds complete corroboration from the medical evidence in regard to the severe injuries sustained by

deceased Sunita at the hands of the appellant with knife (Art. 20), the weapon of offence used in the commission of the crime. PW-Sanjay and his brother PW-Manik deposed that the appellant had extended threats to PW-Sanjay to get ready for facing dire consequences if he would marry with Sunita since the appellant was in love with her since their school days. The evidence of these witnesses on this aspect has remained intact and untouched from the defence side.

43. The contention of the learned counsel for the appellant that the conduct of PWs-Archana and Rupesh, the alleged eye-witnesses, not accompanying the injured persons to the hospital and not reporting the incident to the Police should be viewed with suspicion and, therefore, their evidence has to be rejected from consideration. In support of this submission, reliance has been placed on Surinder Singh v. State of Punjab [(1989) Supp. (2) SCC 21]. In that case, after seeing the occurrence the eye-witness had not gone to inform the parents and relatives of the deceased but had gone to his own house and slept for some time and then went and informed the matter to PW-3 and some other persons. In such circumstances of the case, this Court found the conduct of the said witness suspicious and his explanation that due to threats of the accused he did not inform anyone forthwith was not found acceptable. The facts and circumstances of that case are entirely different to the factual situation of the present case. In the present case, we find from the record that at the time of the occurrence of the crime PW-Archana was about 19 years of age whereas PW- Rupesh was hardly 14 years of age. Both these witnesses as earlier stated on seeing the appellant giving repeated knife blows on some parts of neck, head and back of Sunita and inflicting severe injuries to PW-Sanjay and Nirmalabai, they immediately rushed to the house of PW-Sadashio and promptly reported the entire incident to him. The conduct of these two children, in these circumstances, cannot be found suspicious or unnatural as contended by the learned counsel. These witnesses have withstood the cross- examination with courage and boldness and their testimony could not be impeached by the defence in regard to the genesis of the incident. The eye-witnesses have no animus against the appellant to implicate him in a false case and leaving the real assailant from the clutches of law. In the circumstances, no fault can be found in regard to the conduct of these witnesses. This contention raised deserves to be rejected

44. Learned counsel for the appellant next contended that because of the fault of the Investigating Officer not recording the statements of injured Nirmalabai, Sunita and PW-Sanjay in the form of dying declarations; the true genesis of the incident and name of the author of the crime have been concealed by the prosecution. In order to appreciate this contention, we have already pointed out in the earlier part of the judgment that as per the opinion of Dr. Laxman, injured Sunita was in serious condition when she was brought to the hospital and she could not regain the consciousness till she succumbed to her injuries. As regards non-recording of the statements of injured Sanjay and Nirmalabai, it is the explanation of the Investigating Officer that he tried to get their statements recorded, but considering the seriousness of injuries on their person, doctor had referred them to the Medical College, Nagpur, and before they could be taken to Nagpur, he made an attempt to request the Tehsildar or any other Magistrate to visit hospital for recording statements of the injured persons, but no officers were found available at the relevant time for the said purpose. In these circumstances, no fault could lie on the conduct of the Investigating Officer and this contention therefore is rejected. It is also submitted by the learned counsel for the appellant that there are some discrepancies, contradictions and omissions in the evidence of PW-Archana,

PW-Rupesh and PW-Sanjay in regard to giving different time of the incident, reporting of the matter to the Police and preparation of memos by the Investigating Officer during investigation would create suspicion that they are not trustworthy and natural witnesses and they have tried to implicate the appellant as an assailant in a false case. PW- Sanjay and PW-Manik both clearly and unambiguously deposed in regard to the motive of the appellant. The appellant, as noticed above, in his statement under Section 313, Cr. P.C., has admitted that he along with PW-Rajesh around 5.00 or 5.30 p.m. on the date of incident had gone on a motorcycle towards the river side for evening walk. The versions of PWs-Sanjay and Manik that before marriage of Sanjay with Sunita, the appellant had gone to the house of Sanjay at Nagpur and disclosed the factum of his love-affair with Sunita have not been rebutted by the appellant in his statement. PW-Rajesh and appellant himself have admitted that at about 5.30 p.m. or 6.00 p.m. on the day of occurrence, both of them had gone on motorcycle to river side for evening walk. In cross-examination by Public Prosecutor, PW-Rajesh along with the appellant had returned to their respective houses at about 7.30 p.m. and thereafter at about 7.45 p.m. or 7.50 p.m. he again went to hill side along with Ulhas, the elder brother of the appellant. The High Court has observed that this piece of evidence of this witness was not possible to believe that when such incident had occurred in a village and his friend appellant was arrested by the Police at about 7.30 p.m. for the murder of Sunita and causing severe injuries to PW-Sanjay and Nirmalabai, this witness along with elder brother of the appellant would have gone for second round of walk and in such sequence of events, PW-Rajesh was obviously hiding the truth from the Court. His evidence does not lend any support to the defence plea of the appellant that he has been falsely framed in this case by the Police or by eye-witnesses for some ulterior reasons.

45. The appellant was arrested by the Investigating Officer in the presence of PW-Vithoba Khobragade and PW- Harihar. The learned counsel submitted that there is discrepancy in giving 7.30 p.m. the time of the arrest of the appellant, which was factually incorrect as the same time was mentioned in the FIR and no reliance, therefore, could be placed on such documents and according to the counsel no reliance could be placed on the evidence of PW-Harihar being habitual panch witness of the Police. It is no doubt true that PW-Harihar in cross-examination admitted that during the period from 1978 to 1981 he had given evidence as Panch in 5 or 6 cases in the Court on behalf of the Police as his residence is located in front of the Police Colony. It is difficult to believe that simply because this witness in the past had appeared as Panch in the Court during the period 1978 to 1981 and for that sole reason he has to be branded as habitual Panch witness and in this case for the incident of 1988 he had blindly signed Panchnama (Ext. 41). PW- Vithoba Khobragade is a Legal Practitioner and he has fully supported the preparation of the arrest panchnama of the appellant. The appellant has not pointed out any reason as to why PW-Vithoba Khobragade has deposed against him. The arrest Panchnama (Ext. 41) would reveal that the appellant at the time of arrest was wearing a sky colour white check manila and brown catechu coloured full-pant and stains of blood were noticed at his shirt when he was arrested. It also finds mentioned in the Panchnama that the appellant had a cut injury on his right little finger and blood was oozing out of the said injury. The Panchnama was prepared by the Investing Officer immediately after the incident. The appellant has not explained the existence of cut injury on his right little finger. Dr. Laxman recorded the cut injury on the little finger of the appellant in the Medical Report (Ext. 57). The injury was simple in nature and was caused by blunt object. Besides the arrest panchnama (Ext.

41), the Investigating Officer prepared panchnama (Ext. 45) by which samples of nail clippings of the appellant were also taken in the presence of PW-Vithoba Khobragade. Chemical Analyser's Report (Ext. 100) shows that the shirt, pant and nail clippings of the appellant contained stains of human blood. The learned counsel contended that the prosecution has not taken the sample of blood group of the deceased Sunita for comparison with group of blood found on wearing apparel of the appellant and in such circumstances it could not be established that the group of blood found on the clothes of the appellant as well as on his nail clippings was the blood group of the deceased Sunita. He also contended that the prosecution has not explained the injury found on the little finger of the right hand of the appellant and, therefore, the appellant on this ground was also entitled to the benefit of doubt which has rightly been given to him by the trial court. We are afraid to accept this contention of the learned counsel. Dr. Laxman in his deposition before the Court clearly stated that on receipt of a letter from Police Station Officer requesting for taking sample of blood of deceased Sunita, he tried to collect her blood but he was unable to collect the same as all veins of Sunita had collapsed. He handed over Certificate (Ext. 52) to the Police to that effect. The appellant has not explained that the clothes which he was wearing at the time of arrest contained stains of his own blood oozing out of the injury sustained by him on little finger of his right hand. It is no doubt true that human blood found on the clothes and nail clippings of the appellant was not conclusive proof that it belonged to the blood group of the deceased. The decision of this Court in Raghu Nath v. State of Harnaya & Anr. [(2003) 1 SCC 398], relied upon by the appellant on this point, is of no assistance to him in the facts and circumstances of the present case. In that case, this Court held that where prosecution evidence consisted of interested or inimical witnesses and defence version would compete in probability with that of the prosecution, non-explanation of the injuries of grievous nature sustained by the accused rendered the prosecution story doubtful. That was a case of mob-fight in which injuries were received by both the parties in the melee.

46. This Court in Krishan & Ors. v. State of Haryana [(2006) 12 SCC 459] held that merely because prosecution has failed to explain injuries on the accused, the same cannot be a solitary ground for doubting the prosecution case, if otherwise, evidence relied upon is found to be credible. In the case on hand, as we are of the view that no ground is made out to disbelieve and discard the evidence of PWs-4, 8 and 16, who are injured and non-injured eye- witnesses and whose evidence is corroborated by other oral and documentary evidence including the medical evidence, therefore non-explanation of simple injury on little finger of the right hand of the appellant by the prosecution is insignificant in the teeth of the overwhelming, cogent, consistent and trustworthy evidence appearing on record against the appellant for holding him guilty of the commission of the offence.

47. The recovery of the gun and knife was effected by the Investigating Officer at the instance of the appellant from his house in the presence of panch witnesses PW-Vithoba Khobragade and PW-Harihar. It is no doubt true that PW- Vithoba Khobragade deposed that the appellant did not disclose anything before the Police, but he also deposed that the Police had recovered a gun and one knife from the house of the appellant at his instance at about 9.40 to 10.30 on 28.03.1988. The High Court, in our view, rightly observed that it was not possible to hold that the prosecution witnesses or the Police had planted these articles in the house of the appellant, so as to make a show of discovery of the weapons of offence from him. The blade of the knife recovered from the appellant contained blood stains as per the version of Dr. Laxman when this weapon was shown to him by the Police. As

per the Chemical Analyser's Report, stains of human blood were found on the knife, which was produced in the Court and identified by Dr. Laxman who categorically stated that injuries found on the dead body of Sunita could be caused by the said weapon (Article No.20).

48. The High Court, on reappraisal and reassessment of the entire evidence on record, came to the conclusion that immediately after the occurrence a report came to be lodged to the Police Station against the appellant who has been identified by the PW-Sanjay, an injured eye-witness and non-injured eye-witnesses and further that the appellant had strong motive to commit the murder of Sunita with malice towards PW-Sanjay-her husband, as well as her deceased mother Nirmalabai, therefore, simply because there are some minor discrepancies in the evidence of witnesses which are of no consequence to the true genesis of the case and that some evidence has not been adduced by the prosecution, though might have been available, would not be sufficient grounds to believe that the appellant has been booked in a false case. There is nothing on record brought by the appellant to show that it was quite possible that the witnesses would spare the real culprit and implicate him in a false case. On the basis of the entire evidence elaborately discussed by the High Court, it cannot be held that the appellant, in the present case, has been framed on suspicion.

49. Having given our careful consideration to the submissions made by the learned counsel for the parties and in the light of the evidence discussed in the earlier part of the judgment and tested in the light of the principles of law highlighted above, it must be held that the interference made in the present case by the High Court with the order of acquittal passed by the learned Additional District Judge, was wholly justified and warranted. The evaluation of the findings recorded by the High Court do not suffer from any manifest error and improper and mis-appreciation of evidence on record. Hence, we agree with the opinion of the High Court that the appellant is the real culprit and he has been rightly held guilty of the offence punishable under Section 302 of IPC. All the contentions raised by the learned counsel for the appellant, in our view, do not merit acceptance.

50. In the result, there is no merit in this appeal and it is, accordingly, dismissed.