Raman Bhai Naran Bhai Patel And Ors vs State Of Gujarat on 30 November, 1999

Author: S.B. Majmudar

Bench: S.B. Majmudar, Umesh C. Banerjee

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           CASE NO.:
Appeal (crl.)  581 of 1994

PETITIONER:
RAMAN BHAI NARAN BHAI PATEL AND ORS.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 30/11/1999

BENCH:
S.B. MAJMUDAR & UMESH C. BANERJEE

JUDGMENT:
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JUDGMENT 1999 Supp(5) SCR 41 The Judgment of the Court was delivered by S.B. MAJMUDAR, J. The appellants in this appeal, on grant of special leave under Article 136 of the Constitution of India, are original Accused Nos. 1 to 4 and 6 who were convicted for the offences under Sections 302, 307, 326, 324, 323, 342, 452 read with Section 149 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life by the Additional Sessions Judge, Surat. The said decision was upheld by the High Court in criminal appeal, which has resulted in the present appeal.

In all there were eight accused sent up for trial before the learned Sessions Judge. The Sessions Court, however, acquitted Accused Nos. 5,7 and

8. Appeal against their acquittal came to be dismissed by the High Court by the very same Judgment. Their Acquittal has not been further challenged before us by the State of Gujrat. Hence, in this appeal, we are concerned with the conviction and sentence of only the present appellants i.e. Accused Nos. 1 to 4 and 6. For the sake of convenience in the later part of the Judgment, we will refer to the appellants as Accused Nos. 1, 2, 3, 4, and 6 while considering their respective roles in the incident in question.

BACKGROUND FACTS The prosecution case in short is that an incident occurred on 25. 12. 1987 at 9.30 A.M. in Varachha road area of the City of Surat in the State of Gujrat. It is the case of the prosecution that the present appellants and three others, who, as aforesaid, were acquitted, being in all eight accused, along with five to six other persons came on motorcycles and scooters armed with weapons like knife, gupti, hockey stick etc. That in the first place Accused Nos. 3,4 and 6 came on a

motorcycle to the premises known as `Satyam Press' where one Nitin, the brother of the deceased Ramanbhai Mohanbhai was standing and inside the Press one of its worker by name Bhogilal Ranchhodbhai was present. Accused No. 4 had a gupti and he chased Nitin for about 30 to 40 paces and as Nitin managed to escape, Accused No. 4 came back to the press. In the mean time, Accused Nos. 3 and 6 were alleged to have climbed the steps and entered the Press and had started belabouring Bhogilal Ranchhodbahi and at the same time dragged him in. Accused No. 4, on return, joined them and all the three used their respective weapons and seriously injured Bhogilal Ranchhodbhai. Thereafter, they came out, but by then, Accused Nos. 1 and 2 had also come on the scene. Accused No. 1 was armed with a hockey stick and Accused No. 2 had an axe with him. At the time when the Press incident was in progress, two events took place in quick succession. One was the intervention of a pan- stall holder Karsanbhai Vallabbhai, when he started going towards the press and tried to reason out with the assailants of Bhogilal Ranchhodbhai saying that the latter was a mere labourer or a worker in the Press and he should not be harmed in any manner. Being enraged by this intervention, Accused Nos. 1 and 2 pounced upon Karsanbhai Vallabbhai with their weapons and caused him injuries. The second event is that by this very time deceased Ramanbhai Mohanbhai came out of his residence, which is quit nearby. Ramanbhai happens to be the elder brother of Nitinbhai, the owner of the press, and Ramanbhai was interrupted by Accused Nos. 1 and 2. Accused No.l is said to have given blows with the hockey stick to Ramanbhai and thereafter Ramanbhai turned back and rushed into his house to get shelter. Accused Nos. 3, 4 and 6 thereupon followed Ramanbahi Mohanbhai inside his house. He was inflicted fatal blows by these persons in his bedroom. Ramanbhai Mohanbahi's wife Niruban was an eyewitness to this assault on her husband.

It is the further case of the prosecution that at the time when the first part of the incident relating to press took place and when Karsanbhai Vallabbhai was injured, one more brother of Ramanbhai Mohanbhai i.e. Dhirubhai Mohanbhai, who was sitting on the stone platform near his house which is in near vicinity, also witnessed this incident. He is a practising lawyer and elder brother of Ramanbhai Mohanbahi. By the time aforesaid brother of Ramanbhai Mohanbhai, who was in his household dress of a lungi and a banian went inside to change his clothes the incident relating to the deceased Ramanbhai Mohanbhai occurred. When Dhirubhai Mohanbhai came out of his house, he was given an axe blow by the Accused No. 2 and as a result, he also turned back when the Accused No. 1 gave a blow with hockey stick on his back. At that time, witness Dhirubhai Mohanbhai is said to have seen Accused Nos. 3 to 6 coming out of the room of the deceased Ramanbhai Mohanbhai. Dhirubhai Mohanbhai, thereafter is said to have gone inside the room of his brother Ramanbhai Mohanbhai and found him to be critically injured. In that room, he also found Niruben, wife of Ramanbhai Mohanbhai and also wife of the elder brother of Dhirubhai named Nirmalaben. Dhirubhai helped these two women in fixing temporary bandage and Ramanbhai Mohanbhai was shifted to the hospital, so were the injured witnesses Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai.

It is the case of the prosecution that all these accused, who had formed an unlawful assembly with a common object of thrashing the victims, inflicted serious injuries on four persons, Namely, Ramanbahi Mohanbhai, Bhogilal Ranchhodbhai, Karsanbhai Vallabhbhai and Dhirubhai Mohanbhai. Out of these injured persons, Ramanbhai Mohanbhai died at the hospital on the same

day at about 4.00 to 4.30 P.M. and the remaining persons survived and they were examined as injured eye witnesses during the trial.

The prosecution alleged as a background of this case and also its motive leading to the assault, an incident that took place on the previous day i.e. on 24.12.1987. On that day witness Dilipbhai Mohanbhai, one more brother of the deceased Ramanbhai Mohanbhai is said to have a quarrel with the Accused No. 1 when both of them were studying in the same school. That quarrel resulted in loss of temper between Accused No. 1 and his friends on the one hand and Dilipbhai Mohanbhai and his brother Nitinbhai and others on the other. That quarrel was in connection with some school goods and other related matters. On 24.12.1987, while Dilipbhai Mohanbhai has gone to a nearby medical store with his friends, Accused No.l and his friends accosted him and picked up quarrel. As the house of Dilipbhai was near, his friend Atul went to his house and called Dilipbhai's brothers Nitinbhai and Kiranbhai who in the process, slapped Accused No.l. That the said dispute between the two warring groups is said to have been temporarily settled in the same evening of 24.12.1987, and the incident in question, according to the prosecution, was as a result of the aforesaid simmering dispute between the parties.

Further case of the prosecution was that a telephonic message was received in the morning of the incident by about 9.45 A.M. at Varachha Road Police Station and PSI Shri Farmer with other constables rushed on the spot and removed the crowd which had gathered there and arranged for Immediate removal of the injured to the hospital. Thereafter, when the injured Ramanbhai Mohanbhai was available for being interrogated after he underwent preliminary treatment in the hospital, Shri Parmar recorded his statement as FIR between 12.30 and 1.00 P.M. which had subsequently been treated as dying declaration as Ramanbhai succumbed to injuries in the afternoon of the day of the incident. After the registration of the said complaint of Ramanbhai, investigation was proceeded further. Inquest Panchnama and Panchnama of the scene of the offence were made. The statement of the witnesses were recorded partly in the evening of 25.12.1987 and partly on the next day morning when the statement of the witness Dilipbhai Mohanbhai was recorded. On the basis of the statements of the witnesses so recorded the accused were arrested and taken into judicial custody. After completion of the investigation, charge-sheet against all the Accused Nos. 1 to 8 were submitted and after committal enquiry they stood their trial for the offences with which they were charged before the Sessions Court, Surat. As noted earlier, the learned Sessions Judge, after recording the evidence offered by the prosecution and after hearing the version of the defence, convicted the present appellants-Accused Nos. 1 to 4 and 6 and sentenced them as aforesaid and acquitted the remaining three Accused Nos. 5,7 and 8. In their appeal, as noted earlier, Accused Nos. 1 to 4 and 6 failed to convince the High Court and that is how they are before us in the present proceeding.

Now before dealing with the main contentions canvassed by learned counsel for the appellants Shri Keshwanti, it is necessary to keep in view the limited scope of the present proceeding. As this appeal arises under Article 136 of the Constitution of India, judgment of the Sessions Court as well as the High Court wherein concurrent finding of fact had been reached by both the Courts on appreciation of evidence of the injured eyewitnesses as well as other eyewitnesses, cannot be assailed by making an effort to get the entire evidence re-appreciated as if this is a third appeal on facts. So far as the

jurisdiction of this Court under Article 136 in criminal appeals arising from judgment of the Sessions Court and the High Court concurrently finding the guilt of the accused on the relevant evidence appreciated by them is concerned, a three Judge Bench of this Court in the case of Ramniklal Gukaldas Oza v. The State of Gujrat, AIR (1975) SC 1752, speaking through Bhagwati J. as he then was, made the following pertinent observation in para 3 of the Report, as under:

> "It is a wholesale rule evolved by this Court, Which has been consistently followed, that in a criminal case, while hearing an appeal by special leave, this Court should not ordinarily embark upon a reappreciation of the evidence, when both the Sessions Court and the High Court have agreed in their appreciation of the evidence and arrived at concurrent findings of fact. It must be remembered that this Court is not a regular Court of appeal which an accused may approach as of right in criminal cases. It is an extraordinary jurisdiction which this Court exercises when it entertains an appeal by special leave and this jurisdiction, by its very nature, is exercisable only when this Court is satisfied that it is necessary to interfere in order to prevent grave or serious mismarriage of justice. Mere errors in appreciation of the evidence are not enough to attract this invigilatory jurisdiction. Or else, this Court would be converted into a regular Court of appeal where every judgment of the High Court in a criminal case would be liable to be scrutinised for its correctness. That is not the function of this Court."

In the same volume at page 1960 in the case of Duli Chand v. Delhi Administration, another three Judge Bench of this Court, again speaking through Bhagwati J., in para 5 of the Report laid down as under:

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We have had occasion to say before and we may emphasise it once again, that this Court is not a regular Court of Appeal to which every judgment of the High Court in criminal case may be brought up for scrutinising its correctness. It is not the practice of this Court to re-appreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact.

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In view of the aforesaid settled legal position, therefore, we have to see whether the findings of fact reached by the High Court agreeing with the appreciation of evidence by the Sessions Court suffer from any patent error of law or have resulted in miscarriage of justice which can call for our interference in this appeal.

We may, in this connection, note that the prosecution examined six eyewitnesses before the Trial Court out of which three were injured eyewitnesses, namely, Bhogillal Ranchhobhai, P.W.2. Karsanbhai Vallabhbhai, P.W. 14 and Dhirubhai Mohanbhai (brother of the deceased). Apart from the aforesaid three injured eyewitnesses, the prosecution also examined Niruben, wife/widow of Ramanbhai, the deceased, Dhirubhai Premjibhai, P.W.5, the tenant of Shivkrupa building, who is said to have witnessed the incident being a resident of the same locality and Dilipbhai, the younger brother of the deceased. In addition thereto, the Trial Court relied upon the dying declaration-Exhibit 75 and on a consideration of the totality of the aforesaid evidence, conviction and sentences were rendered against the accused appellants. The High Court, in its turn, reappreciated and reconsidered the entire evidence furnished by the prosecution and concurred with the findings of fact reached by the Trial Court and having found the evidence of the witnesses quite reliable, held that the prosecution has fully brought home the charge against the appellants.

We have also carefully considered the impugned judgment of the High Court and have found that the conclusion to which the High Court reached against the appellants is well sustained on evidence on record and calls for no interference. It could not be demonstrated by learned counsel for the appellants that the concurrent findings of fact reached by the Sessions Court and the High Court on prosecution evidence suffered from any manifest illegality or perversity or had resulted into any grave failure of justice. Once this conclusion is reached, the appeal would be liable to fail.

However, it will be appropriate for us to briefly deal with the main contentions canvassed by learned counsel for the appellants for our consideration. He submitted the following five points for our consideration:-

1. There are suspicious features in the case which throw doubt on the bona fides of police investigation. Therefore, it cannot be said that the prosecution has proved the case beyond reasonable doubt.

2. The police did not record the names of the accused at the earliest opportunity, but they waited and deliberated as to who should be included in the net of the accused.

3. FIR does not disclose the names of all the accused.

4. Medical evidence does not support the prosecution case.

5. The question is as to who are the accused when the eyewitnesses do not know the accused alleged to have participated in the offence.

We have heard learned counsel for the appellants as well as learned senior counsel for the respondent-State of Gujrat in connection with these points. We, therefore, deal with them seriatim.

POINT NOS. 1 & 2:

> So far as these two points are concerned, learned counsel for the appellants vehemently submitted placing reliance on some observations found in the judgment of the High Court that PSI Shri Parmar did not carry out his investigation in a proper manner and left many things to be desired and, therefore, the investigation was not a bona fide one. He contended that when Shri Parmar went on spot in the morning after the incident took place and when he saw three injured persons on spot, there was no reason why he should not have enquired about the accused who might have committed this crime and there was no reason why statements of available witnesses in this connection should not have been recorded then and there. Instead the injured were removed to the hospital and the FIR was recorded as late as at 12.30 P.M. which ultimately became a dying declaration i.e. Exhibit-75.

This showed that he was waiting for being supplied the names of the accused with a view to anyhow rope them in. It is difficult to appreciate this contention. The reason is obvious. According to the prosecution case and as supported by eyewitnesses account, a group of persons armed with deadly weapons came in by speeding vehicle like scooter and bullet motorcycles in batches and mounted an assault in broad day light near the Press as well as in the house of deceased Ramanbhai Mohanbhai and also in the near vicinity thereof resulting in serious injuries by sharp cutting instruments to eyewitnesses Bhogilal Ranchhodbhai, P.W. 2 Karsanbhai Vallabhbhai, P.W. 14, and Dhirubhai Mohanbhai (brother of the deceased). The injuries suffered by Bhogilal Ranchhodbhai were apparently of a very serious nature as his intestines had come out, as noted by the doctor who treated him, and a piece of his intestine was even found lying on the spot and was blood shed all round. In such a situation the anxiety of PSI Shri Parmar to first remove the injuried to the hospital to save their lives instead of going into the merticulous details by way of interrogating the persons standing nearby for finding out the cause of the assault, cannot be said to be unnatural or uncalled for. It is in the evidence of PSI Shri Parmar that the moment he got an opportunity in the hospital to record the statement of Ramanbhai Mohanbhai, he recorded the same at about 12.30 P.M. because prior thereto the doctor attending upon the injured had not permitted him to interrogate the injured and that the injured Bhogilal Ranchhodbhai was unconscious. While the injured Ramanbhai Mohanbhai was also being given preliminary treatment and only when he was removed to the ward that PSI Shri Parmar got an opportunity to interrogate him and immediately recorded his statement as an FIR which subsequently, as noted earlier, has become a dying declaration i.e. Exhibit-75. The evidence of Shri Parmar further shows that thereafter he started investigation, went on spot, made Panchnama of three places of offence i.e. the press, the house of Ramanbhai Mohanbhai and also in the vicinity and when in the meantime the injured Ramanbhai Mohanbhai died at 4.00 P.M. In the hospital recording the case of murder, the inquest Panchnama was made and thereafter in the evening statements of witnesses were recorded. Under these circumstances, it is difficult to appreciate how it can be alleged that the police investigation was not a bona fide one. It is, of course, true that the High Court, as noted in the impugned judgment, has observed that PSI Shri Parmar had miserably failed to come up to an ideal standard of investigation. But, in our view, the said observation is not fully justified. It may be that Shri Parmar could have acted more promptly but that would not mean that he was guilty of any mala fide intentions. Learned counsel for the appellants also heavily relied upon the observations of the High Court in para 30 of the judgment that the cross-examination of the witnesses and more particularly of Dhirubhai Mohanbhai, as also

the cross-examination of the two police officer Shri Parmar and Shri Buch, bring out enough material to show that some efforts were being made influence the investigation. These observations, however, cannot help the learned counsel for the appellants for the simple reason that the High Court itself notes that these efforts had failed. Once the injured eyewitnesses and other eyewitnesses have been found to be reliable and especially when the dying declaration Exhibit-75 clearly implicate Accused No. 1, 2 and other person, it is not possible to countenance the submission of learned counsel for the appellants that PSI Shri Parmar was waiting to rope in innocent accused and was in search of their names. The submissions in support of these two points, therefore, are not of any avail to learned counsel for the appellants.

POINT NO. 3:

It is true that the FIR, based on dying declaration Exhibit-75, does not disclose the names of all the accused. However, a mere look at the said dying declaration shows that the deceased Ramanbhai Mohanbhai clearly stated that he was assaulted by deadly weapons by Accused Nos. 1 and 2, amongst others, of course, he mentioned the names of Accused No. 5 Kiranbhai Ghanshyambhai Patel and one another Ghanshyambhai who assaulted him. But Accused No. 5-Kiranbhai Ghanshyambhai Patel was already acquitted which Ghanshyambhai was not charge-sheeted. However, in the same statement, he also mentioned that there was an assembly of 15 to 17 persons. Consequently, the dying declaration can certainly be held to have involved Accused Nos. 1 and 2 in the fatal assault on deceased Ramanbhai Mohanbhai, amongst others. Thus it has to be kept in view that the said dying declaration had not only mentioned a limited number of persons who had attacked him but had also clearly involved other persons who were accomplice of the named accused, who all came in a group and mounted assault on him. Consequently, non-mentioning of names of remaining accused by Ramanbhai Mohanbhai in his dying declaration pales into insignificance.

POINT NO. 4:

So far as the medical evidence is concerned, the High Court has observed in para 13 of the judgment that looking to the injuries received by the surviving victims as well as on the person of the deceased, the case of weapons as put-forth by the prosecution is certainly made out. No doubt, there is references to presence of spear and a dharia, which has not been ultimately spoken to by any of the witnesses as having been used, but when gupti is used, according to prosecution, stab wounds of a particular dimension can certainly be correlated with it as would be the case with the use of knife. Axe blows are also clearly made out from the point of view of medical evidence. These observations of the High Court, while considering the medical evidence, are fully borne out from the eyewitness account as seen in the light of the medical evidence. It has to be kept in view that this is a case in which assault was mounted by large number of persons forming an unlawful assembly and they were armed with different types of weapons even though injuries suffered by the victims might have

been caused by gupti or axe or hockey stick. It is easy to visualise that other persons who were forming part of the same group might have been armed with spear or dharia but as they are acquitted, nothing more can be said about the same. However, it must be held that the injuries suffered by the eyewitnesses as noted by the medical evidence could very well have been caused by sharp cutting instruments like axe and gupti. It, therefore, cannot be said that the medical evidence does not support the prosecution case. This point, therefore, also is not well sustained on evidence on record.

POINT NO. 5:

So far this point is concerned, we have gone through the relevant evidence on record, as noted by the Trial Court as well as by the High Court. It is true that the injured eyewitnesses Bhogilal Ranchhodbhai-P.W.2 and Karsanbhai Vallabhbhai-P.W.14 tried to identify the accused only in the Court and they were not knowing them earlier. Another witness Niruben also did not know them earlier as deposed to by her. It is equally true that the identification parade was not held but that would not mean that the witnesses who suffered grievous injuries were out to rope in wrong accused leaving out real culprits. So far as witnesses Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai are concerned, their evidence cannot be treated to be totally non est due to absence of identification parade. The said evidence may be treated to be one of a weak nature but cannot be said to be totally irrelevant or inadmissible. In this connection, we may refer to recent decision of this Court in the case of Rajesh Govind Jagesha and Ors . v. State of Maharashtra, JT, [1999] 9 SC 1 and in the case of State of Himachal Pradesh v. Lekh Raj and Anr. JT, [1999] 9 SC 43 wherein it has been observed as under:

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The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. Identification proceedings are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime. The identification parade even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where accused is not known to the witness or the complainant.

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In this connection, learned counsel for the appellants vehemently relied upon a decision of a three Judge Bench of this Court in the case of Mohanlal Gangaram Gehani v. State of Maharashtra, AIR [1982] SC 839 wherein Fazal All, J., speaking for the Bench in para 25 of the Report, made the following observations:

"... P.W.3 (Sheikh) admits at page 22 of the paper book that he had not seen the accused or any of the three accused before the date of the incident and that he had seen all the three for the first time at the time of the incident. He further admits that the names of me accused were given to him by the police. In these circumstances, therefore, if the appellant was not known to him before the incident and was identified for the first time in the Court, in the absence of a test identification parade the evidence of P.W.3 was .valueless and could not be relied upon...

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It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of State (Delhi Admn.) v. V.C. Shukla and another etc., AIR [1980] SC 1382 wherein also Fazal Ali J., speaking for a three Judge Bench made similar observations in this regard. In that case the evidence of the witness in the Court and his identifying the accused only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eyewitnesses. It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of test identification parade, the evidence of eyewitness identifying the accused would become inadmissible or totally useless whether the evidence deserves -any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as submitted by learned counsel for the appellants that the later decisions of this Court in the case of Rajesh Govind Jagesha and Ors. v. State of Maharashtra and State of Himachal Pradesh v. Lekh Raj and Am., (supra) had not considered the aforesaid three Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three Judge Bench judgment on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as submitted by learned counsel for the appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain

imprinted in their minds especially when they were assaulted in broad day light. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them.

But even that apart, there is direct eyewitness account deposed to by the witness Dhirubhai Mohanbhai (brother of the deceased), witness Dhirubhai Premjibhai P.W.5, the tenant residing in the locality and Dilipbhai, the younger brother of the deceased. These witnesses have clearly deposed that they knew the accused. In fact, Dilipbhai was the person who was involved in the incident of the previous day wherein Accused No.1 and his accomplices had a quarrel with him and his supporters. That part of the evidence of these eye witnesses had remained well sustained on record. So far as witness Niruben was concerned, she is the wife of the deceased Ramanbahi Mohanbhai. The accused mounted an assault on her husband in her bedroom and even though she might not be knowing the accused earlier, the faces of the accused mounting such an assault and which caused fatal injuries to her husband can easily be treated to have been imprinted in her mind and when she could identify these accused in the Court even in the absence of identification parade, it could not be said that her deposition was unnatural or she was trying to falsely rope in "the present accused by shielding the real assaulters on her husband.

In this connection, we may also consider one grievance put forward by learned counsel for the appellants. So far as the evidence of witness Dilipbhai Mohanbhai is concerned, he submitted that on a holiday like 25.12.1987, this witness who was aged 19 years, had no occasion to stand near the pan galla and witness the incident and that he was a chance witness. It is difficult to appreciate this contention. It is not unnatural for a young boy like Dilipbhai Mohanbhai on a holiday to stand near the pan galla. It was he who detected Accused Nos. 3, 4 and 6 who come on motorcycle and who were followed by their other accomplices forming part and parcel of the unlawful assembly. They were all armed with deadly weapons. This witness cannot be said to be a chance witness as he was staying in the same house in which Ramanbhai Mohanbhai was staying. His presence was, therefore, most natural. As he was involved in quarrel with Accused No.l and his group on the earlier day, he could easily identify them and could visualise that they had come to mount an assault on them.

Learned counsel for the appellants then submitted that if that was so the accused would have first assaulted Dilipbhai Mohanbhai instead of assaulting the witnesses Bhogilal Ranchhodbhai and Karsanbhai or for that matter deceased Ramanbhai Mohanbhai. The High Court has given a cogent reason for repelling this contention. The accused, as the eyewitness account shows, first rushed in a group to the Press belonging to Nitinbhai, who was involved in the incident of earlier day, and there they assaulted Bhogilal Ranchhodbhai and in the process also Karsanbhai Vallabhbhai and then rushed into the house of Ramanbhai. Therefore, they might have failed to witness Dilipbhai but that does not mean that the eyewitness account of Dilipbhai should be treated to be a concocted one especially when he fully knew the accused and their intentions as he had a quarrel with them only on

the earlier day.

Similarly, the submission of learned counsel for the appellants that witness Dhirubhai Premjibhai-P.W.5, was a chance witness, also cannot be counternanced as the evidence on record shows that he was a tenant of Shivkrupa building situated in the near vicinity and he was staying in the locality since number of years. He had no reason to falsely implicate the accused nor was he interested in any of the prosecution witnesses. He knew the accused as deposed to by him and that part of the evidence has stood the test of cross-examination. Consequently, this witness cannot be said to be a chance witness as contended by learned counsel for the appellants. So far as the witness Dhirubhai, brother of the deceased is concerned, he was a practising advocate and he was staying in the nearby house. His version was quite natural that he rushed on spot and saw the assault by the accused on the victims and tried to help the injured Ramanbhai Mohanbhai being carried to the hospital. This witness also had deposed that he had known the accused since long. Consequently, even leaving aside the eyewitness account of Niruben and the injured witnesses Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai as there was no identification parade of the accused qua them, the eyewitness account of Dhirubhai Mohanbhai, Dhirubhai Premjibhai and Dilipbhai clearly rope in the accused in the crime as they were well known to them. Both the Court's below have, therefore, rightly placed reliance on this evidence to bring home the charges to the accused. The net result of this discussion is that Accused Nos. 1 and 2 are clearly mentioned in the dying declaration Exhibit-75. They are said to have assaulted the deceased and inflicted severe injuries, which ultimately killed him. That part of the dying declaration is fully supported by the eyewitness account of witnesses Dhirubhai Mohanbhai, Dhirubhai Premjibhai and Dilipbhai who had seen these accused in the company of Accused Nos. 3, 4 and 6 and who had, on the date of the incident, being armed with deadly weapons and having formed an unlawful assembly had committed the crime in question. It must, therefore, be held that the prosecution had fully established its case against Accused Nos. 1, 2, 3, 4 and 6. Their appeal was rightly dismissed by the High Court. In the result, the appeal before us also fails and stands dismissed.