

Bombay High Court

Gulabsingh Prabhu Rathod vs State Of Maharashtra on 23 March, 2001

Equivalent citations: (2002) 104 BOMLR 357

Author: P Upasani

Bench: V Sahai, P Upasani

JUDGMENT Pratibha Upasani, J.

1. These three criminal appeals are filed by the appellants Gulabsingh Prabhu Rathod, Ranglal @ Ganeshdas and Harikisandas Keshavji Johanputra (original accused Nos. 1, 3 and 4), being aggrieved by the judgment and order dated 4.10.1985, passed by the Additional Sessions Judge, Greater Bombay, in Sessions Case No. 301 of 1984. By the impugned judgment and order, the learned Additional Sessions Judge, Greater Bombay, convicted these appellants/original accused for offence punishable under Section 302 r/w Section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life. The learned Additional Sessions Judge also convicted the appellants for an offence punishable under Section 201 r/w Section 34 of the Indian Penal Code and sentenced them to suffer R.I. for seven years. Both the sentences were ordered to run concurrently.

Original accused. No. 2 Nandkishore Gulabsingh Rathod, who was the son of original accused No. 3 Gulabsingh Prabhu Rathod, expired during the pendency of the trial.

2. The charge against the appellants was that these appellants and the deceased Nandkishore Rathod intentionally or with knowledge and in furtherance of common intention committed murder of one Narsinghdas Tyagi Baba with dangerous weapons like brass plate and stick and after committing the murder of Narsinghdas Tyagi Baba, accused Nos. 1 to 3 and the deceased accused Nandkishore Rathod put the dead body of Narsinghdas Tyagi Baba in a gunny bag and removed it outside the said temple to dump it at some unknown place with a view to conceal the evidence of commission of the said offence and thereby attempted the evidence of the commission of that offence to disappear with the intention of screening the offenders from legal punishment.

3. The prosecution story can be briefly narrated as follows:

Ramjit Sharma (P.W. 11) was working as a sweeper at the relevant time i.e., February, 1984 in Panchmukhi Hanuman Temple which is situated at Chembur, Mumbai. He used to sleep in the room adjoining to Lord Shiva's Pindi in the said temple. Prior to that he was working as a barber in a saloon by name, "Malaya Hair Cutting Saloon", which is situated at Chembur. At the relevant time one Narsinghdas Tyagi Baba, who was the priest of the Panchmukhi Hanuman Temple, used to stay in the said temple. Ramjit Sharma started residing in the said temple. On being asked by Narsinghdas Tyagi Baba, he was cooking meals for himself and for the said Baba. About one-and-half month after Ramjit Sharma joined the Panchmukhi Hanuman Temple as a sweeper and also as a cook, accused No. 1 Ganeshdas also started residing in the said temple. Three days after accused No. 1 started residing in the said temple, disputes arose between him and the said Baba over money matters. Accused No. 1 was known to Ramjit Sharma and they both used to sleep in a room adjoining Lord Shiva's Pindi while Narsinghdas Tyagi Baba used to sleep near the Agni Kund.

The incident in question took place in the night between 18th and 19th of February, 1984. On that fateful night, the said Tyagi Baba was murdered. It was a Saturday night. As per the prosecution story, after cleaning the temple, Ramjit Sharma took his meals at about 12.30 midnight along with accused No. 1 Ganeshdas and the deceased Tyagi Baba. After taking their meals, Tyagi Baba slept near the Agni Kund in the temple while Ramjit Sharma and accused No. 1 slept at their usual place, next to Lord Shiva's Pindi. At about 3.30 a.m. Ramjit Sharma heard noise of the opening of the collapsible door of the temple. He woke up due to the said sound and got up from his bed. He wanted to go out but the wooden door of the said room near the Agni Kund was found to be bolted from outside. Ramjit Sharma, therefore, could not open the said door. He then came near the window of the said room and he saw that Tyagi Baba and accused No. 1 Ganeshdas were having a fight opposite the Ganesh idol. At the time accused No. 3 Harikisandas was also present there. Ramjit Sharma also saw accused No. 2 Gulabsingh and his son Nandkishore Rathod (since deceased) standing outside the door opposite the idol of Hanuman in the said temple. Ramjit Sharma saw that first accused No. 1 gave fist blows on Tyagi Baba's face. Thereafter, accused No. 1 caught the neck of Tyagi Baba and then hit him with a brass plate, which was being used as a bell in the said temple, on the chest and neck of Tyagi Baba. Accused No. 1 Ganeshdas then picked up the said brass plate before hitting the same on Tyagi Baba near the Agni Kund, where it was lying on the floor. Due to this assault, Tyagi Baba fell down. Thereafter, accused No. 3 Harikisandas picked up a bamboo stick which was also lying near the Agni Kund and hit the said bamboo stick on the legs of Tyagi Baba. Ramjit Sharma saw that there was no movement in Tyagi Baba. At that time accused No. 1 Ganeshdas called accused No. 2 Gulabsingh and Nandkishore inside the temple. Accused No. 2 and Nandkishore accordingly came inside the temple. Thereafter, accused No. 3 Harikisandas went out of the said temple and accused No. 2 Gulabsingh and accused No. 1 Ganeshdas were talking amongst themselves in a low tone which Ramjit Sharma could not hear. After about half-an-hour accused No. 3 returned to the temple with two gunny bags. Then accused No. 1 Ganeshdas, accused Nandkishore and accused No. 3 Harikisandas tied the legs and hand of the said Tyagi Baba with a coir rope and also with a saffron and yellow colour cloth. The gunny bag which was brought by accused No. 3 Harikisandas, was held by accused No. 2 Gulabsingh, accused No. 3 Harikisandas, accused No. 1 Ganeshdas and the said Nandkishore. Thereafter put the body of Tyagi Baba inside the said gunny bag. Thereafter, all the four accused removed the said gunny bag outside the temple. While going, accused No. 1 closed the collapsible door of the temple. All these were seen by Ramjit Sharma in the light of one tubelight which was burning opposite the idol of Hanumanji, which always used to be kept burning throughout the night in the said temple. The entire incident was thus seen by him. Ramjit Sharma thus having seen the incident could not sleep thereafter. He just lied down in his bed. The next day in the morning at about 6.30 a.m. accused No. 1 Ganeshdas came to the temple and woke him up. Ganeshdas then performed pooja of the Hanuman idol and left at about 7.00 a.m..

4. On 19th February, 1984, P.I. Jagannath Navage (P.W. 17), who was attached to Mulund Police Station and who was on duty at the relevant time, got a telephonic message from S.I. Rane that a gunny bag containing a dead body was found in a nala opposite Indira Steel Yard on Mulund-Goregaon link road. He, therefore, accompanied by S.I. Rane and other police staff went to the spot. He saw at the spot a gunny bag lying in the nala. The said gunny bag was having stitches and P.I. Navage could see the legs of the dead body from the said stitches. He also found another

gunny bag lying at a distance of few feet away from the gunny bag in which the dead body was kept. When the dead body was taken out from the gunny bag, it was found that the hands and legs of the said body were tied and again the legs and hands of the dead body were tied together with a coir rope and a saffron and yellow colour cloth in such a manner that the thighs of the legs of the dead body were touching the chest of the dead body. The dead body was wrapped in a white cloth. When the said gunny bag was emptied by making it upside down, the police personnel found that 5-6 kilos of brinjals, bundles of coriander and other vegetables were stuffed in the said gunny bag. There was a red-coloured jangaya on the dead body. The police personnel also found a big needle which is generally used for stitching gunny bags along with a sutal. Thereafter, P.I. Navage recorded the F.I.R. of S.I. Rane on the very same day i.e. 19th February, 1984. Thereafter routine investigation followed. The inquest panchnama was made and articles were seized, packed and scaled in the presence of panchas. The dead body was first sent to morgue through P.C. (P.W. 16) of Mulund Police Station and thereafter for post-mortem. Thereafter it was learnt that the said dead body was that of Narsinghdas Tyagi Baba. Statements of various witnesses were recorded. On 21st February, 1984, statement of the eye-witness Ramjit Sharma was recorded. Accused Nos. 1, 2 and Nandkishore (since deceased) were arrested on 21st February, 1984 while accused No. 3 was arrested on 25th February, 1984. In pursuance to the Statement made by accused No. 3, the police staff visited the shop of Hiranand Khetani and took charge of the gunny bag (Article 11) under a panchnama. Statements of some more witnesses were recorded. The articles which were seized, including the brass plate and bamboo stick, were sent to the Chemical Analyst for obtaining his report. After completing investigation, P.I. Navage filed charge sheet on 2nd May, 1984 before the Metropolitan Magistrate, 27th Court, Mulund, Mumbai vide C.C. No. 663/P/1984. Thereafter the case was committed to the Court of Sessions on 10th May, 1984.

5. In the Court of Sessions, Greater Bombay, charge under Section 302 r/w Section 34 and under Section 201 r/w Section 34 of the Indian Penal Code was framed against accused No. 1 Ranglal @ Ganeshdas, accused No. 2 Gulabsingh Prabhu Rathod and accused No. 3 Harikisandas Keshavji Johanputra on 29th August, 1984. An accused Nandkishore Rathod had already expired. All the three accused, when the charge was read over and explained to them, denied the same and claimed to be tried. Their defence was that of total denial.

6. The prosecution, to bring home the charge against the accused, examined 19 witnesses.

P.W. 1 was the draftsman M. Ramanand Babu, who had drawn the plan on a tracing paper of the place which was opposite Indira Steel Yard, Mulund-Goregaon link road. This was the place where there was a nala in which the dead body of deceased Tyagi Baba was found. He also visited the Panchmukhi Hanuman Temple on 5th April, 1985 and drew the plan of the said temple. He stated in his deposition with regard to his visit to the Panchmukhi Hanuman Temple and the position of idols of Durgadevi and Hanuman, so also with respect to the distance and visibility from the window of the room where allegedly the incident took place. In his deposition he explained as to how he had prepared the plan of the place of offence. The explanation regarding the position of idols, so also about the fact of their being no partition or any obstruction in between is significant on the background of the evidence of the eye witness Ramjit Sharma (P.W. 11), who claimed to have seen the incident standing near the window of the room where he was sleeping on the fateful night.

P.W. 2 Ashok Fadatare had acted as a panch at the time when the body of deceased Tyagi Baba was recovered from the nala. In his deposition he gave a vivid description as to in what position and posture the dead body of Tyagi Baba was found in the gunny bag. He also deposed about the big needle and thread which were found in the gunny bag and about the second gunny bag lying about four feet away from the dead body.

P.W. 3 Rameshchandra Joshi had acted as a panch at the time of recovery of the brass thali and a stick. He was the panch for the recovery memorandum along with his co-panch. The recovery of this article was at the instance of accused No. 1.

P.W. 4 was Shirish Vedpathak, who also acted as a panch at the time of recovery of the gunny bags at the instance of accused No. 3 and the information with respect to the purchase of the gunny bags. As per the contents of the panchnama, the gunny bag were purchased from the shop of P.W. 6 Hiranand Khetani.

P.W. 5 was Parshuram Sawani, Head Constable No. 11107, attached to Mulund Police Station, who stated in his deposition that on 28.2.1984 at about 8.45 p.m., P.S.I. Rane and other officer informed him that a corpse was found lying in a gunny bag on the Mulund-Goregaon link road and a brief description of the corpse was also given. He stated that he went to Juhu coroner's morgue in Cooper Hospital and saw the dead body. He further stated that he was knowing that person as Tyagi Baba though he was not knowing his full name. He further stated that then he went to Panchmukhi Hanuman Temple at Chembur but found that the temple was locked.

P.W. 6 was one Hiranand Khetani, who was the shop-keeper running a provision store on Dr. Choitram Gidwani Road at Chembur under the name and style, "Hiranand T. Brothers". He stated in his deposition that he was running the said shop for the last about 35 years, that the stock in trade in his shop was purchased from the market and was sent to him after measuring and packing in gunny bags and that on the said gunny bags the name as, "H.B." used to be written to indicate, "Hiranand Brothers". He categorically stated that those two gunny bags were from his shop and that they bore the mark "H.B." He also identified accused No. 3 and stated that he was the one who had purchased those two gunny bags from his shop. He also stated that when the police staff had brought him to his shop on 28.2.1984, a statement was given by him to the police and that the police thereafter drew a panchnama in his shop. He further stated that on the request made by the police he also gave a spare gunny bag to the police, which was identical to the ones which had been earlier sold by him. Thereafter he specifically deposed that accused No. 3 had come to his shop for purchasing two gunny bags about ten days prior to 28.2.1984 and that along with two gunny bags accused No. 3 had also purchased from him a sutal and a big needle. He further stated that he knew accused No. 3 as he was his customer and that he used to purchase pooja saman (articles required for performing the pooja) from his shop.

P.W. 7 was Nilakshi Patil, who stated in her deposition that she was residing at Chembur along with her husband and two daughters at a place which was near Panchmukhi Hanuman Temple. She stated that she knew the earlier priest of the said temple, namely Sant Sarandas @ Niku Baba and that he had died about three years back and thereafter Narsingdas Tyagi Baba succeeded Niku Baba

as priest of the said temple. She also stated that the deceased some time used to visit her house. She further stated that she knew accused No. 2 by name and that whenever deceased Tyagi Baba used to come to her house, he used to talk to her about a dispute between him and accused No. 2 over the said temple. She further stated that about one month prior to his death, Tyagi Baba had kept the case papers in respect of a suit filed by him against accused No. 2 in the City Civil Court at Bombay and that the said papers were with her till she handed over the said case papers to one Chawariya, who was a well-known social worker of the area. She stated that she had seen Tyagi Baba leaving Panchmukhi Hanuman Temple in the evening of Saturday, 18th February, 1984 at about 7.30 p.m. and that she learnt about his death on 28.2.1984 from one Choube, who came to her and informed her that Tyagi Baba was dead. She also stated that the said Choube demanded the said case papers from her and suggested that they should be handed over to Chawariya in his office, which she did.

P.W. 8 was the husband of P.W. 7 Nilakshi Patil, who also reiterated what his wife had stated in her deposition with respect to the civil suit filed by the deceased against accused No. 2 and others in the Bombay City Civil Court and about handing over of the said case papers to him/his wife by the deceased one month prior to his death. He stated that Tyagi Baba was last seen alive by him on 18.2.1984, at about 5.30 p.m., when he came to the gymnasium where P.W. 8 Ramchandra was working as a teacher.

P.W. 9 was one Asaram Badarge, who was working as a helper in the grocery shop of P.W. 6 Hiranand Khetani. He stated in his deposition that he knew accused No. 3 by face and that prior to seeing accused No. 3 in the Court, he had also seen him on 28.2.1984 when he had come to the said shop along with the police in a police car where some statement was made by him and pointing out Hiranand (P.W. 6) he also stated that Hiranand gave one gunny bag with mark "H.B." to the police on that day. He also identified the said gunny bag. He further stated that 8-10 days prior to 28.2.1984 accused No. 3 had come to their shop and had purchased two gunny bags from their shop. He also identified those two gunny bags, when they were shown to him, as the ones which were purchased from the shop of P.W. 6 Hiranand, where he was working as a helper. He also categorically stated that he had seen accused No. 3 even prior to that as he used to come to that shop to purchase pooja saman such as gulal, abir, etc. P.W. 10 was one Giridhariprasad Jogi, who was the priest of the temple Jai Bhawani Santoshi Mata which was adjacent to Panchmukhi Hanuman Temple. He stated that he knew Tyagi Baba for about 3-4 years prior to his death. He stated that he also knew accused No. 2 since last 20 years. He stated that accused No. 2 used to reside behind Raj Mahal Hotel in Adarsh Nagar and that the said place was about 50 steps away from the Panchmukhi Hanuman Temple. He also stated that there was rivalry between Narsingdas Tyagi Baba and accused Gulabsingh Rathod as there was a dispute between them with regard to the ownership of the said Panchmukhi Hanuman Temple and that because of this rivalry, Tyagi Baba had filed a suit in the City Civil Court against accused No. 2. He further stated that he last saw Tyagi Baba alive on 18.2.1984 at about 8.30 p.m. and that he learnt about his death on 20.2.1984.

P.W. 11 is Ramjit Sharma, who is the eye witness and who claims to have seen the entire incident from near the window of the room where he was sleeping in the Panchmukhi Hanuman Temple. He stated that he was working as a sweeper in the said temple in February, 1984 and also used to cook food for himself as well as for Tyagi Baba. He stated that he used to sleep in the room adjoining to

Lord Shiva's Pindi in the temple while Narsingdas Tyagi Baba, who was the priest of the said temple, used to sleep near the Agni Kund. He further stated that about one-and-half month after he joined the Panchmukhi Hanuman Temple as a sweeper and also as a cook, accused No. 1 Ganeshdas also started residing in the said temple. Three days after accused No. 1 started residing in the said temple, disputes arose between him (accused No. 1) and the said Baba over money matters. Accused No. 1 also used to sleep in the Panchmukhi Hanuman Temple where Ramjit Sharma used to sleep.

Ramjit Sharma stated in his deposition that on the day of the incident or rather in the intervening night of 18th and 19th of February, 1984, after cleaning the temple, at about 12.30 p.m. at midnight, he took his food along with accused No. 1 and the said Tyagi Baba. Thereafter, Tyagi Baba slept, near the Agni Kund in the temple while Ramjit Sharma and accused No. 1 slept at their usual place, next to Lord Shiva's Pindi. At about 3.30 a.m. Ramjit Sharma heard noise of opening of the collapsible door of the temple. He woke up due to the said sound and got up from his bed. He wanted to go out but the wooden door of the said room near the Agni Kund was found bolted from outside. He, therefore, could not open it. So he came near the window of the said room and saw that Tyagi Baba and accused No. 1 were having a fight amongst themselves opposite the Ganesh idol. Accused No. 3 was also present there. He also saw accused No. 2 and one Nandkishore Rathod (son of accused No. 2 and since deceased) standing outside the door opposite the idol of Hanuman in the said temple. He deposed that first accused No. 1 gave fist blows on Tyagi Baba's face. Thereafter, accused No. 1 caught the neck of Tyagi Baba but still he did not fall down. Thereafter, accused No. 1 hit Tyagi Baba with a brass plate, which was being used as a bell in the said temple, on the chest and neck of Tyagi Baba. Accused No. 1 had picked up the said brass plate before hitting the same on Tyagi Baba from near the Agni Kund, where it was lying on the floor. Due to this assault, Tyagi Baba fell down. Thereafter, accused No. 3 picked up a bamboo stick which was also lying near the Agni Kund and hit the said bamboo stick on the legs of Tyagi Baba. P.W. 11 Ramjit Sharma further stated that there was no movement in Tyagi Baba. He then deposed that thereafter accused No. 1 called accused No. 2 and Nandkishore inside the temple. They accordingly came inside the temple. Thereafter, accused No. 3 Harikisandas went out of the said temple. Then accused No. 2 Gulabsingh and accused No. 1 Ganeshdas were talking amongst themselves in a low tone which P.W. 11 could not hear. After about half-an-hour accused No. 3 returned to the temple with two gunny bags. Thereafter, accused No. 1 Ganeshdas, Nandkishore and Harikisandas tied the legs and hand of the said Tyagi Baba with a coir rope and also with a saffron and yellow colour cloth. The gunny bag which was brought by accused No. 3 Harikisandas, was held by accused No. 2 Gulabsingh, accused No. 3 Harikisandas, accused No. 1 Ganeshdas and Nandkishore. They then put the body of Tyagi Baba inside the said gunny bag. Thereafter, all the four accused removed the said gunny bag outside the temple. Accused No. 1 then closed the collapsible door of the temple. P.W. 11 Ramjit Sharma stated that he could see all this because one tubelight, which was opposite the idol of Hanumanji, was always used to be kept burning throughout the night in the said temple. He further deposed that after seeing this incident, he could not sleep and that he was just lying down on the bed. On the next day, in the morning at about 6.30 a.m., accused No. 1 came to the temple and woke him up. Thereafter, he (accused No. 1) performed pooja of the Hanuman idol and went out. He further stated that his statement was recorded by the police on 21.2.1984. He identified the bamboo stick and the brass plate with which Tyagi Baba was assaulted by accused No. 3 and accused No. 1, respectively. He also stated that he knew accused No. 1 and his son Nandkishore because they had a tailoring shop next to Panchmukhi

Hanuman Temple and that some times they used to sell coconut in the said tailoring shop. He stated that he also knew accused No. 3 Harikisandas as he used to come to the Panchmukhi Hanuman Temple to meet Tyagi Baba.

P.W. 12 was Dr. Kumar Nanaware, who at the relevant time was attached as Medical Officer to the Coroner's Court, Juhu-Vile Parle. He was the one who performed the post-mortem of the dead body of Tyagi Baba on 20.2.1984, between 3-4 p.m.. He deposed that on examining the dead body, following external injuries were found:

1. One abrasion 3 cm. x 2 cm. over left zygomatic bone, below left eye, lateral border.
2. Abrasion 0.5 cm. x 0.5 cm. over left angle of upper lip.
3. Lacerated wound oblique 1.0 cm. x 0.5 cm. mucosa deep over undersurface of upper lip Lt. side clotted blood present in the wound.
4. Contusion over the tip of nose present, hemorrhage in the subcutaneous tissue present.
5. Colour of contusion reddish blue. There is no other external injury found.

He further stated as follows:

In internal examination I found epiglottis congested covered with frothy blood stained fluid. Larynx, trachea and bronchi intact. Lumen contain frothy blood stain fluid. Mucosa congested. I found neck cartilages intact. There is no haemorrhage under the muscle layers of the neck. Right lung shows pulmonary T.B. cavities in the upper lobe containing frank pus stained with blood. Right chambers of the heart full of blood. Coronary orifice patent. Stomach content full of undigested yellow coloured rice, no peculiar or alcoholic smell to the food, mucosa congested.

He further deposed as follows:

I had also found the following external things. Tongue inside the mouth. Tip of tongue bitten in between the teeth. Clotted blood present in the mouth, blood stain marks seen around the left angle of mouth going downward, clotted blood also seen in the left nostril, blocking the nose. Eyes closed. Both eyes congested and face was livid. Lips were bluish. No sub conjunctival haemorrhage. Rigor mortis not well marked absent from upper limb, neck and chest. Rigor mortis present over right lower limb below knee. Sign of decomposition present on the body i.e. green discoloration over left iliac fossa. Post-mortem lividity over buttocks and back. There was paralysis and atrophy of muscles of both lower limbs more marked on left side. The post-mortem notes were made by me and I have signed the same. I produce the said post-mortem notes. (Postmortem notes dated 20.2.1984 are taken on record and marked as Ex. 26.) Dr. Nanaware deposed that the external findings of the dead body, which was sent to him for post-mortem, showed that there was a partial paralysis of the muscles of the lower limbs and that the said person was suffering from T.B. and, therefore, the said person must be very weak in health and must be handicapped. He further stated that if a victim of

physical character like the one seen by him in the dead person, on his becoming unconscious, was put in a gunny bag and the said gunny bag was stuffed with large quantity of bringers and other vegetables and was stitched as such that the person would suffer from asphyxia and die. He also stated that the action of hitting the brass plate on the neck on a person like the deceased in this case, who was suffering from paralysis of the muscles of the lower limbs and was having a history of T.B., would necessarily be fatal. He also deposed that the action of putting such a person in a gunny bag, after he became unconscious and stuffing the said gunny bag with large quantity of vegetables and stitching the said gunny bag would also be fatal to the said person.

As far as time of death of the deceased was concerned, Dr. Nanaware opined that the time of death approximately was within 34 to 36 hours at the time of post-mortem. Lastly, he gave his opinion about the cause of death and stated that according to him, the deceased must have died due to putting him in a gunny bag, as he died by smothering. Dr. Nanaware, in the post-mortem report, had mentioned the cause of death as asphyxia from occlusion of respiratory passage (suffocation) by smothering (unnatural).

P.W. 13 was one Jagatnarayan Dube, who was working as a teacher in Sadhu Vaswani High School at Chembur. He was one of the trustees of the Panchmukhi Hanuman Temple.

He stated that deceased Tyagi Baba was one of the managing trustees while he and one Purshottam Guiab Zasa, Kashinath Sutar and Eknath Kadam were the other trustees. He stated that he knew accused No. 3 Harikisandas and further stated that 5 to 6 months prior to 18.2.1984, accused No. 3 was residing with him. He further deposed that prior to that accused No. 3 was residing in Panchmukhi Hanuman Temple, but he never used to get up early and attend to the work of the temple before the arrival of the devotees there and this conduct of Harikisandas was not liked by Tyagi Baba and there used to be disputes over this. He further stated that Tyagi Baba, therefore, requested him to accommodate accused No. 3 in his house, at night, so that automatically accused No. 3 would not sleep in the temple at night. He stated that since he was alone and his family was not there, he agreed to the said suggestion and accommodated accused No. 3 at night, in his house.

P.W. 13 Dube further stated that accused No. 3 was in his house upto 11.30 p.m. and thereafter he left, informing Dube that he wanted to go for a bhajan programme. Thereafter, accused No. 3 returned back to Dube's place only at 7.30 in the morning, the next day i.e., 19.2.1984, which was a Sunday. After his return, accused No. 3 was in the house all throughout the day and also at night. On 20.2.1984 when Dube came back from his school, accused No. 3 was not found in the house. However, Dube's neighbour, by name Gulani, informed him that accused No. 3 had gone to attend a pooja somewhere and that he would be returning back only after 3-4 days. Dube also found that accused No. 3 had taken away all his belongings with him from his place. Then on 22.2.1984, at about 2.00 a.m., the police visited his place, made enquiries about accused No. 3 and also searched his house. His statement was recorded on 4.3.1984.

He stated in his deposition that Tyagi Baba and accused No. 3 used to claim that they were Guru Bhai of each other. He further stated that on 18.2.1984 when he came back to his house after attending his tuition at about 9.00 p.m., he saw accused No. 3 in his house and that he was there

upto 11.30 p.m. and that when he came home he saw the accused sitting on a wooden plank in his house, having a mala in his hand and meditating.

P.W. 14 Neksing Chawriya was the acquaintance of both the deceased Tyagi Baba as well as accused Nos. 2 and 3. He stated that he was knowing both of them since the year 1983 and that in September, 1983 Tyagi Baba had come to him and had informed him that accused No. 2 and his two sons-Nandkishore and Purshottam were obstructing him from entering the Panchmukhi Hanuman Temple. Chawriya also deposed that the deceased was claiming to be the chief trustee of the said temple and, therefore, he asked him to produce documentary evidence to support his claim so that he could assist him. Accordingly, Tyagi Baba gave to Chawriya all the relevant papers from which Chawriya found out that he indeed was the chief trustee of the said temple. Thereafter, Chawriya took Tyagi Baba to one of the Advocates, for legal advice and thereafter a suit came to be filed against accused No. 2 and his sons in the City Civil Court at Mumbai. This suit was filed on or about 23.9.1983. There was also an order of injunction passed by the Court in favour of Tyagi Baba in the said suit.

P.W. 14 Chawriya deposed that accused No. 3 and Tyagi Baba were not on good terms. He has made a reference about accused No. 3 coming to his house along with one Vijay Sonar and making a grievance against Tyagi Baba. Accused No. 3 was removed by Tyagi Baba from the said temple.

P.W. 15 was Ramdas Yadav, a hawker. He was the cousin brother of deceased Tyagi Baba alias Nandlal Haradwar Yadav and as a close relative of the deceased, he had claimed the dead body of the deceased by making application to the Coroner's Court on 4.3.1984.

P.Ws. 16, 17 and 18 are the police personnel, who played different roles in this episode during investigation.

P.W. 19 was P.S.I. Noormohomed Mulani, the Investigating Officer who carried out the routine investigation and filed the charge-sheet.

P.W. 16 Vilas Sonawane was the one who took P.W.-15 to the morgue to show the dead body. Earlier, as per the instructions of P.S.I. Rane (P.W. 18), P.W. 16 had affixed labels on the dead body and had taken the said dead body to the morgue and handed it over to the morgue attendant at about 2.45 p.m. on 20.2.1984.

P.W. 17 Jagannath Navage was the Inspector of Police who at the relevant time was attached to the Mulund Police Station and it was he who was on duty with PSI Rane (P.W. 18) when the telephonic message was received to the effect that a gunny bag, containing a dead body, was found in a nala opposite Indira Steel Yard on Goregaon - Mulund Link Road. He had gone to the said spot along with P.S.I. Rane and other police staff. In his deposition, he described how the gunny bag was lying in the nala. He deposed that the said gunny bag was having stitches and from the said stitches he could see the legs of the dead body. He also found one other gunny bag laying at a distance of few feet away from the gunny bag in which the dead body was kept. He also described that the hands and legs of the said dead body were tied and again the legs and the hands of the said dead body were

tied together with a coir rope and cloth, having saffron and yellow colour, in such a manner that the thighs and legs of the dead body were touching the chest of the dead body. The dead body was wrapped in a white cloth. When the gunny bag was emptied by making it upside down, the police staff found about 5-6 kilos of brinjals, bundles of coriander leaves and other vegetables stuffed in the said gunny bag. One of the brinjals was stained with blood and there was a reddish colour jangaya on the dead body. They also found on the neck of the dead body one black thread with a locket (Tait) tied to it. The police staff also found a big needle, which is generally used for stitching gunny bags, along with a sutal (Articles 1 to 18). P.W. 17 identified all these articles in the Court. He was the one who recorded the F.I.R. of S.I. Rane, dated 19.2.1984. He recorded at the police station the statement of P.W. 11 Ramjit Sharma, who claimed to be an eye witness to the incident. He deposed that accused Nos. 1 and 2 and Nandkishore (who is now dead) were arrested on 21.2.1984 and were brought to the police station while accused No. 3 was arrested on 25.2.1984 by the Chembur Police Station and was handed over to them. He also recorded the statements of some other witnesses, who were later on examined in the Court.

P.W. 19 P.S.I. Noormohomed Mulani has described vividly what steps were taken by him while carrying out the investigation of this case.

7. This was in all the prosecution evidence. Apart from the substantive evidence of the prosecution witnesses, there was recovery of Articles 1 to 8 at the instance of the accused. Panchnamas were properly proved. The medical evidence also corroborates the prosecution story. The star witness, however, is P.W. 11 Ramjit Sharma. It is pertinent to note that though all the prosecution witnesses were cross-examined at length and in detail, there was no dent in their depositions in the cross-examination. The deposition of the eye witness P.W. 11 Sharma was very crucial but if one goes through the cross-examination of this witness, one would find that the defence could not bring on record any material contradiction or omission to destroy the prosecution case. Even the evidence of the shop-keeper P.W. 6 Hiranand and his helper P.W. 9 Asaram had tremendous corroborative value but nothing has been brought on record by the defence in the cross-examination.

8. Ms. Kiran Gupta, learned Advocate appearing for original accused No. 1 Ranglal @ Ganeshdas vehemently argued that the entire prosecution case is based on the evidence of P.W. 11 Ramjit Sharma, who claims to be an eye-witness to the incident but that his evidence is not reliable in as much as he failed to disclose the names of the assailants to the police at the earliest possible opportunity, though he knew who were the assailants of Tyagi Baba. She submitted that the conduct of P.W. 11 Sharma in not disclosing the names of the assailants from 19.2.1984 till the time his statement was recorded on 21.2.1984 is suspicious and destroys the credibility of this so-called eye witness. To substantiate her argument, she relied upon the decision of the Supreme Court in the case of State of Orissa v. Brahmananda . In this case, the entire prosecution case against the accused rested on the oral evidence of one Chanchala, who claimed to be an eye witness to the murder of Hrudananda, one of the six persons alleged to have been killed by the respondent. The Addl. Sessions Judge believed the evidence of Chanchala but the High Court found it difficult to accept her testimony. The reasons given by the High Court for rejecting Chanchala's testimony were accepted by the Supreme Court. After going through the evidence of Chanchala, the Supreme Court observed that Chanchala's evidence suffered from serious infirmities which were discussed in detail

by the High Court. By way of example, one such infirmity was cited by the Supreme Court, which is as follows:

...Though according to this witness (Chanchala), she saw the murderous assault on Hrudananda by the respondent (accused) and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of 13.3.1969 and yet she did not come out with the name of the respondent, until the morning of 15.6.1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than 15.6.1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the Club House which was just opposite the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection with the case and had also visited her house on 14.6.1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to A.S.I. Madan Das and should have waited till the morning of 15.6.1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of this witness. The High Court has also given various other reasons for rejecting her testimony and most of these reasons are, in our opinion, valid and cogent. If the evidence of this witness is rejected as untrustworthy, nothing survives of the prosecution case....

9. Taking a cue from the observations of the Supreme Court about the unnatural behaviour of the so-called eye witness Chanchala in not disclosing the name of the assailant though it was known to her and relying upon the decision cited above, Ms. Kiran Gupta submitted that once the evidence of P.W. 11 Shartna was rejected, nothing survived in the prosecution case in as much as P.W. 11 Sharma had kept quiet for about two days, and therefore, his evidence becomes untrustworthy and hence has to be rejected.

10. I find it difficult to accept the submission of Ms. Gupta. The facts in Brahmananda's case (supra) relied upon by Ms. Gupta and the reasonings given by the High Court and the infirmities highlighted, which were accepted by the Supreme Court while rejecting Chanchala's testimony in that case, are totally different from the facts of the present case. The conclusion is also, therefore, bound to be different. Firstly, in the present case at hand, though P.W. 11 Sharma is the sole and solitary eye witness who had actually seen the accused murdering Tyagi Baba, the entire prosecution case does not depend on the sole testimony of this witness. There is a strong corroboration coming from the substantive evidence of P.W. 6 Hiranand, the shop-keeper, P.W. 9 Asaram, a helper in the shop of P.W. 6 and the evidence of P.W. 7 Nilakshi, P.W. 8 Ramchandra and P.W. 10 Giridhariprasad who have pointedly deposed about the enmity between the accused persons and deceased Tyagi Baba, and the motive which the accused had in doing away with the deceased. From the depositions of these witnesses, it is evident that the accused persons had an axe to grind with the deceased and were bent upon removing him from their path. There were disputes between them with respect to the collection in the temple, and also disputes with respect to the trusteeship,

ownership and possession of the temple itself. The conduct of accused No. 3 and his sons was not liked by the deceased and there often used to be quarrels between them. The deceased did not want accused No. 3 to sleep inside the temple and somehow managed to keep him away by requesting P.W. 13 Dube to permit him to sleep in his house.

In the above referred decision of the Supreme Court, the explanation given by the prosecution that the non-disclosure of the name of the assailant was because of the fear of the accused, was not accepted by the High Court and by the Supreme Court for a different reason. In the present case at hand, the situation is entirely different. Though the explanation given is again the same, namely fear of the accused, in the present case the police had not arrived at the scene nor they were stationed in the temple. P.W. 11 Sharma, though he had seen the entire incident on the night between 18th and 19th February, 1984, feigned ignorance and pretended as if he did not know anything; but once he spilled the beans, he did not want to go back to the temple. He, in fact, ran away to his native place. Such was his fear of the accused. In Brahmananda's case (supra) A.S.I. Madan Das was the nephew of the eye-witness Chanchala and he had visited her house on the previous day i.e., on 14.6.1969. Under these circumstances, the natural conduct of Chanchala would have been to disclose the name of the assailant to A.S.I. Madan Das, who was her close relative, namely, nephew. It would have been a natural conduct on the part of Chanchala if she had confided in him. He had come to her residence on a private visit. Under these circumstances, her conduct of not disclosing the name of the assailant was found to be not proper by the High Court and this view was endorsed by the Supreme Court, and rightly so. It is also observed in Brahmananda's case that there were other reasons for rejecting Chanchala's testimony while in the present case at hand, as pointed out earlier, there are no reasons whatsoever to reject the testimony of any of the prosecution witnesses as the defence was not able to bring out any material contradiction or omission in the cross-examination. Thus, the decision in Brahmananda's case (supra) is of no help to Ms. Gupta as the facts therein were different. As observed in the case of Prakash Chandra v. State of U.P. AIR 1960 SC 195 : 1960 Cr.L.J. 283, a decision on facts cannot be of any help.

11. As already discussed, the medical evidence corroborates the testimony of P.W. 11 Sharma. The evidence of P.W. 11 Sharma is so vivid that one can visualise the scene, as described by him,...three persons hitting a weak and paralytic person who is suffering from T.B. with a brass plate, making him unconscious and then suffocating him in the gunny bag wherein he is smothered and done to death. The nature of the injuries on the body of the deceased were not that serious and perhaps might not have ended in his death but because the victim was suffering from paralysis of lower limbs and T.B., and because he was in an unconscious state when he was put inside the gunny bag, he died of asphyxia. The accused very well knew what they were doing. Thus, the case of death given by P.W. 12 Dr. Nanaware corroborates the narration of P.W. 11 Sharma.

12. Thus, the Trial Court has properly marshalled and appreciated the evidence. The Trial Court has also made observations of the demeanour of the witnesses. The Trial Judge has remarked that he had closely marked P.W. 11's behaviour and demeanour in the witness box and the manner in which he was giving evidence and he was convinced that this witness had deposed the truth. He has further observed in his judgment that P.W. 11 Sharma had given the evidence and narrated the incident in question in a natural way and that, in the cross-examination, the credibility of which also is not

shaken by the defence Advocate.

Obviously, weightage has to be given to the observations of the Trial Judge with respect to the behaviour and demeanour of the witness, as seen by him. The Appellate Court, reads evidence and the judgment of the Trial Court which is in cold print. However, the Trial Judge has an opportunity to see the witness in flesh and blood and hence the observations of the Trial Judge with respect to the behaviour and demeanour of the witness and the reasons given by him for believing the testimony of this witness has to be taken into consideration. The Trial Judge also, as revealed from the judgment, visited the Panchmukhi Hanuman Temple and stood at the place where P.W. 11 Sharma had allegedly stood and watched the entire incident. After doing this exercise, the Trial Judge came to the conclusion that P.W. 11 Sharma was in fact standing at a very strategic position from where he could see the incident but the accused who were standing and who were engaged in the gruesome murder were at such a place from where they could not have seen the said eye witness Sharma.

13. Thus considering the entire evidence on record, the Trial Judge had rightly convicted and sentenced the accused to suffer life imprisonment. During the pendency of the Trial, original accused No. 2 Nandkishore Gulabsingh Rathod, who was the son of original accused No. 3 Gulabsingh Prabhu Rathod, expired. One may call this divine justice or poetic justice. As far as the other accused are concerned, the prosecution certainly succeeded in establishing beyond reasonable doubt that they committed the murder of Tyagi Baba. Their conviction, therefore, under Section 302 r/w Section 34 and also under Section 201 r/w Section 34 of the Indian Penal Code and the sentence awarded by the Trial Court, namely that of life imprisonment and seven years R.I., respectively, was correct. There is no merit in these appeals, which deserve to be dismissed. Hence the following order:

ORDER Criminal Appeal Nos. 730 of 1985, 860 of 1985 and 346 of 1986 are hereby dismissed.

The conviction and sentence of the appellants/accused Ranglal @ Ganeshdas, Gulabsingh Prabhu Rathod and Harikisandas Keshavji Johantputra, under Section 302 r/w Section 34 and under Section 201 r/w Section 34 of the Indian Penal Code, is hereby confirmed.

The appellants who are on bail, are directed to be taken into custody forthwith to serve their sentence.