Supreme Court of India
State Of Karnataka vs Moin Patal And Others on 22 February, 1996
Bench: M.K. Mukherje, B.N. Kirpal

CASE NO.:
Appeal (crl.) 113 of 1983

PETITIONER:
STATE OF KARNATAKA

RESPONDENT:
MOIN PATAL AND OTHERS

DATE OF JUDGMENT: 22/02/1996

BENCH:
M.K. MUKHERJE & B.N. KIRPAL

JUDGMENT:

JUDGMENT 1996 (2) SCR 919 The Judgment of the Court was delivered by M.K. MUKHERJEE, J.

This appeal, at the instance of the State of Karnataka, is directed against the judgment of the Karnataka High Court in Crl. Appeal No. 158 of 1980 where by the High Court reversed the conviction and sentence recorded against the four respondents under Section 302 read with Section 34 IPC (on two counts) and also under Section 324 IPC against the Respondent No. 2 by the Additional Sessions Judge, Bidar and acquitted them. The two deceased, who were brothers, were closely related to the respondents in that the respondent No. 2 is the real brother of their father while the other three respondents are his (respondent No. 2's) sons. During pendency of this appeal the respondent No. 4 died and, therefore, the appeal, so far as he is concerned, abates, According to the prosecution case on June 25, 1978, at or about 8. P.M., the four respondents (hereinafter referred to as R1 to R4 respectively), who, along with the family of the deceased, are residents of village Kaplapur within the police station of Khatak-Chincholi in the district of Bidar went to the shop of Gorakhnath (P.W. 14) in their village where Ismail Patel ('Dl' for short) was sitting and assaulted him with axe and sickle resulting in his instantaneous death. Thereafter, they went to the house of Chinnamma (PW 16), situated at a distance of 60/70 paces from the shop of Gorakhnath, and similarly did away with the other bother Syed Patel ('D2' for short). When one Sakharam tried to come to the rescue of D2 he was also assaulted by R2 resulting in an injury on his left thigh. After the incident Gorakhnath, accompanied by Amir Patel (PW 12) and others, went to the Police Station and lodged a report there at or about 1 A.M. On that report PSI Khaja Sanaulla (PW 23) registered a case and after sending a report of the same to the Judicial Magistrate, Bhalki left for Kaplapur village at or about 1.45 A.M. Reaching there at 5 A.M. he held inquest on the dead bodies and sent them for post mortem examination. He seized some blood stained earth and sample earth from the two places were the dead bodies were found as also the blood stained clothes found on the bodies. He then recorded the statements of some of the witnesses under Section 161 Cr, P.C. On that very day (26.6.1978) Gulam Hamid (P.W. 24), the Circle inspector of Police took over investigation of the case from P.W. 23 and went in search of the respondents but could not find them. However his repeated attempts to arrest the respondents ultimately met with success on July 17, 1978 when they

were found in a ditch near river Kanaja, flowing across Kurub Khedgi village. In course of search of their persons P.W. 24 found two keys in the pocket of the baniyan of R2 and seized them. Pursuant to the statement made by R2 (Ex. P.36) and led by him PW 84 went to his house and with one of the seized keys he (R2) opened a room where from a sickle, a dhoti and baniyan, all of which were blood stained, were recovered. Thereafter R1 took them to another room which on being opened with the other seized key found to contain an axe, a bushshirt, and a pair of trousers, all blood stained. P.W. 24 seized all those articles and sent them for chemical examination. On receipt of the report of the post mortem examination and chemical examination and after completion of investigation, PW 24 submitted a charge sheet and in due course the case was committed to the Court of Session.

The motive that was ascribed by the prosecution to the respondents for the above murders was that the families of the accused and the deceased were having disputes and frequent quarrel over their properties in their village, and about a fortnight prior to the incident R2 had threatened D2 with dire consequences.

The respondents pleaded not guilty to the charges levelled against them and their defence, as can be gathered from the tend of cross-examination and their statements recorded under Section 313 Cr. P.C., was that D1 had an illicit connection with the wife of Raghunath, brother of P.W. 14, and since the dead body of Dl was found on the katta of their shop, they, being afraid, falsely implicated the respondents as the culprits. They further contended that Dl was the Secretary of 'Anjuman' and D2 was the 'Dalapati' of the village while their father, namely, Khan Patel was doing 'pairavi' work in the village. All of them used to drink liquor and were menace to the woman folk of the village. Some of these villagers who were ill- disposed towards Khan Patel and his sons murdered D1 and D2 and falsely implicated them in the case. They further contended that Chinnamma (P.W.

16) was selling illicit liquor with the connivance of Dl and D2 and their father Khan Patel.

To substantiate the charges levelled against the respondents the prosecution relied primarily upon the ocular versions of Gorakhnath (PW 14) and Shivanna (PW 15) for the murder of Dl and of Chinnamma (P.W. 16) and Hasan Sahib (PW .17) for the other. Besides, it relied upon the evidence given in support of the motive for the murders and the recoveries of blood stained weapons and clothes pursuant to the statements and at the instance of R1 and R2.

The trial Judge detailed and discussed the evidence adduced by the prosecution (no evidence was laid on behalf of the respondents) at length and on appreciation thereof held that the charges levelled against the respondents stood conclusively proved.

In dealing with the appeal, the High Court first went into the question whether the prosecution succeeded in proving that Dl and D2 met with homicidal death and answered the same in its favour with the following findings :

"The fact that Dl and D2 died on account of the injuries sustained by them due to assault has not been seriously challenged before us, and further, that their death was homicidal admits of no doubt. the evidence of P. Ws. 14 and 15 is to the effect that Dl was assaulted with axe and sickle by the

accused and that P. W. 19 who immediately went there was informed by P.W. 14 about the assault on Dl by the accused and all of them found that Dl was lying on the katta with bleeding injuries. Similarly is the evidence of P.Ws. 16 and 77, who claimed to have seen the assault on D2 by the accused with sickle and axe. The dead body of D2 wax lying on the katta of the house of P.W. 16 with bleeding injuries. In addition to this, there is the medical evidence which conclusively proves that the death of both Dl and D2 was homicidal. P.W. 20 Dr. Gopal, who conducted the post-mortem examination on the dead body of Dl on 26.6.1978 found five incised wounds on the chest, near the fore-head, eye and right side of the face and also found corresponding internal injuries. He has stated that all the injuries were ante-mortem and the case of death was due to injury to the brain as a result of multiple fracture of the skull bones and the injuries themselves in the ordinary course of nature are sufficient to case the death. He has issued the post-mortem certificate as per Ex. P.22.

Similarly P.W. 22 Dr. Advappa, who held the post-motem examination over the dead body of D2 on 27.6.1978 found 4 incised wounds over the right thigh, left shoulder, in the left infra axillary region and below the 10th rib placed transversely. He also found lacerated wound over the left abdomen, incised wound over the back on left side about 2" away from midline at the level of T-11 and T-12" vertebra penetrating injury 1" below the lateral angle of the left eye, multiple fractures of the left temporal bone, perietal occipital, right perietal and right temporal bones, He also found that number of small fractured bone were penetrating the brain matter. There was, according to him, corresponding internal injuries. He has further stated that all the said injuries were ante-mortem and the cause of death was due to injuries to vital organs, namely, brain and kidney. He issued the post-mortem certificate as per Ex. P. 24. The medical evidence has not been seriously challenged. Therefore, the prosecution has proved that the death of both Dl and D2 was homicidal in nature." (emphasis supplied) Notwithstanding the fact that the High Court relied upon the evidence of the four eye witnesses, besides others', to draw the above conclusions it disbelieved their evidence and, for that matter, the prosecution case so far as it sought to prove that the respondents were the authors of the crimes. The principal reasons for such disbelief as can be gathered from the impugned judgment as under :

(a) The claim of PW 14 that the FIR was lodged at the police station at 1.00 A.M. was doubtful as the evidence of Const, Tuka Ram (PW 4) dearly proved that he and other police personnel had reached the village by 1230 A.M. and that necessarily meant that the police had already come to know about the incident by some agency;

(b) Since PW 23 admitted that he did not have sufficient knowledge of Marathi and PW 14 asserted that he gave his statement of marathi, it was evident that the former wrote the FIR in Kannada Language after much deliberations;

(c) As D2 was the Dalpati and his father Khan Patel was the police patel of the village and the relation between the families of the deceased and the respondents was strained it was not unlikely that the FIR was lodged at the instance of the police patel later on and his conclusion was reinforced by the fact that the FIR reached the local Magistrate as late as 10A.M. on June 26, 1978;

(d) Since PW 14's evidence regarding lodging of FIR was suspect his presence at the time and place of incident also became doubtful;

(e) Non-examination of Gundaji and Sakharam, who according to the prosecution also sustained injuries during the assaults on Dl and D2 respectively, raised a considerable doubt about the manner in which those assaults took place;

(f) The evidence of the eye witnesses as to the time when the occurrence took place was contradictory inasmuch as while some of them stated that it took place after darkness others asserted that it took place before darkness set in;

(g) If PW 14 had really seen the incident it was expected that he would First lodge complaint with the Sarpanch of the local Panchayat, who was residing at a distance of one mile from his village instead of going straight to the police station which was at a distance of 18 kms.;

(h) PW 14 did not raise any hue and cry at the time of the incident to attract the neighbours even though, admittedly, many people lived in and around the vicinity of the place of incident;

(i) The non-seizure of the lanterns, glow of which, according to the eye witnesses enabled them to identify the respondents went a long way to suggest that the occurrence did not take place in the manner alleged by the prosecution;

(j) Evidence in proof of the motive was not satisfactory; and

(k) The evidence adduced by the prosecution in the shape of the statements made by R.1 and R.2 leading to recovery of blood stained earth and blood stained weapons did not inspire confidence.

The High Court also gave some other reasons for discarding the prosecution case which we will refer to at the appropriate stage.

Mr. Katarki, the learned counsel appearing for the appellant, submitted that a perusal of the record would clearly reveal that the impugned order of acquittal was based on misreading of the evidence, reliance on minor contradictions and injudicious reasonings. In elaborating his contention he urged that having regard to the fact that the respondents did not dispute that the murders took place at or about 8 P.M., the High Court ought not to have considered, much less relied upon, the supposed contradictions between the evidence of the eye witnesses as to whether the incident took place before or after darkness set in. He next urged that as both the murders admittedly took place in two shops it was expected that lanterns would be burning there at 8. P.M. and in that context non-seziure of lanterns by the Investigating Officer was of no moment. He lastly contended that the High Court was not at all justified in concluding that the FIR was not recorded that the time alleged by the prosecution solely relying upon a patently confused statement made by PW 4. Indeed, according to the learned counsel, the evidence on record clearly showed that the FIR was promptly lodged at the time alleged by the prosecution and was forwarded to the Magistrate at the earliest available opportunity.

Responding to the above contentions, Mr- Javali, the learned senior counsel appearing for the respondents, first submitted that each of the reasons canvassed by the High Court for recording the order of acquittal were based on proper appreciation of evidence and, therefore, this Court would not be justified in disturbing the same. He next submitted that even if it was assumed that one or the other of those reasons when considered in isolation could not be sustained, still then the impugned order was not liable to be set aside as collectively they justified the order. He further contended that the view taken by the High Court of the evidence could not be said to be an unreasonable one, the impugned order could not be interfered merely because a different view of the evidence could be taken. To bring home their respective contentions the learned counsel drew our attention to the relevant evidence on which the findings of the High Court are based.

To ascertain whether the judgment of the High Court can be sustained or not we have carefully gone through and examined the same in the light of the voluminous evidence on record. Our such exercise impels us to hold that the view of the evidence taken by the High Court cannot at all be said to be a reasonable one. Without meaning any disrespect to the High Court we are constrained to say that the impugned judgment is a laboured one. Material evidence has been ignored, unimpeachable evidence has been rejected on surmises and conjectures, undue importance has been given to and emphasis laid on trivial and ignorable contradictions and some conclusions have been drawn which are self contradictory. In fine, on the materials on record it is impossible to accept the conclusions of the High Court that the prosecution had failed to establish its case. It is in the context of these glaring and severe errors which has led to gross failure of justice, that we are unable to accept the threshold plea raised on behalf of the respondents that having regard to the long interval between the acquittal and the hearing of this appeal this Court may not interfere with the judgment.

As noticed earlier one of the principal reasons which weighed with the High Court in disbelieving the prosecution case was its suspicion centring around the lodging of the FIR, As a matter of fact, the High Court went to the extent of observing that the delay in lodging the FIR had a far reaching effect on the consideration of the evidence of the four eye witnesses. It will be appropriate therefore to first advert our attention to the evidence on record relating to the FIR. The entire evidence in this regard was furnished by PW 14 who lodged it, PW 23 who recorded it and Const, No. 345. Kanshi Ram (PW-5) who took it to the Magistrate at Bhaluka. PW 14 testified that accompanied by Maruthiappa, Ameer Patil (PW 12), Digamber and Vithoba he left their village (Kapalapur) at or about 930 P.M. and reached Khatak Chincholi Police station (which admittedly is at a distance of 18kms. from the village) at or about 1 A.M. There he orally reported the incident and PSI (PW 23) took down the same on a paper and obtained his signatures thereon. On going through the lengthy cross examination to which PW 14 was subjected to, we find that the only question that was put to him in connection with his above statement was relating to the time taken in recording the FIR and his answer was that it was completed in and about 1.1/2 hours to 1.3/4 hours. Lastly it was suggested to him that the FIR was not recorded at the time alleged by him and that it was subsequently prepared in consultation with the father of the deceased but he denied the suggestion. Though Ameer Patel (PW 12) who accompanied PW 14 along with others to the police station was not asked in his examination-in- chief the actual time when they reached there. In cross examination it was elicited from him that they reached at 1 A.M. It was farther elicited from that they returned to their village along with PSI (PW 23) and other police personnel by bicycles. The evidence of PW 23 on

this point is that on 26.6.1978 at 1 A.M. Gorakhanath (PW 14) of village Kapalapur came to the police station along with others and gave an oral complaint which he reduced into writing and after reading over the same to him took his signatures below it. He next stated that after registering the case against Janu Patel, Safi Patel, Moin Patel and Mehboob Patel (the four respondents) under Section 302 JPC on that FIR (Ext. P.21) he sent it to the Judicial Magistrate 1st Class, Bhaluka through Const. No. 345 Kashinath (PW 5). Thereafter at or about 1.43 A.M. he along with his staff, PW 14 and the persons who accompanied him left for Kapalapur village and reached there at 5. AM. All these three witnesses were cross examined at length but nothing was - nor could be - elicited from them which might go to even remotely suggest that their evidence as to the time when the FIR was recorded and PW 23 reached the village was suspect. Since, inspite thereof, the High Court disbelieved their evidence mainly in view of the evidence of Const. Tukaram (PW 4) we may now look into the same. He was examined by the prosecution only to prove that on June 26, 1978 at or about 2 A.M. the dead bodies of D1 and D2 were handed over to him for post-mortem examination, that he took them to the hospital for the purpose and that after post- mortem examination those dead bodies were handed over to him along with the clothes which were on their persons; and he testified accordingly. In cross examination, however, the following answers were elicited from him :

"I was present in K. Chincholi P.S., during the night of 25.6.78. That night at about 12 mid night or 1 a.m. myself and Kashinath PC 343 went to Kaplapur on foot. The P.S.I. and Jamadar went ahead on bicycle to Kaplapur. Myself and Kashinath reached Kaplapur by about 12.30 that night. I again say the number of police constable Kashinath who was with me i.e. 325 (PW

6). By the time we reached Kaplapur that night the P.S.I. and the Head Constable Seetaram and Munikappa were present near the dead bodies, I do not remember whether Gorakh was among them. The P.S.I. secured some persons there and questioned them during that night, No records were prepared during that night" (emphasis supplied) Quoting the above passage and solely relying upon the same the High Court observed that the above evidence of P.W. 4 completely belied the evidence of the above three witnesses, namely, PWs. 12,14 and 23 and that the only inference that could be drawn from the evidence of P.W.4 Was that police had already come to know about the incident from some agency and the PSI along with others reached Kapalapur before 1230 A.M. On 26.6.78. It is rather strange that the High Court failed to notice that the answers elicited in cross examination from P.W. 4 as quoted above are self contradictory for while in the first place P.W. 14 stated that he along with Const. Kashinath (PW 6) went to Kapalapur from the Police Station at 12 mid night or 1 A.M., in the next breath stated that he and Kashinath (PW

6) had reached there by 12.30 A.M. that night. It is his further evidence that they had left on foot. The above statement is not only confusing, for he could not have left the police station and reached Kapalapur at or about the same time but also absurd for if we were to proceed on the assumption that he had reached Kapalapur by 12.30 A.M. it Would mean that information about the murders would have to reach the police station before the murders were actually committed for it must have taken him about 4/5 hours to cover the distance of 18 kms. on foot in the night time. We hasten to add that is making this rough assessment of time we have not even considered the time taken in traversing that distance to give information of the murder. Incidentally it may be mentioned that no evidence is forthcoming to indicate that the Police Station could be contacted from the village over

telephone. Unfortunately, however, the High Court did not at all consider the evidence of P.W. 4 from this perspective. Besides the High Court did not consider the evidence of Const. No. 325 Kashinath (PW 6), who, according to P.W. 4 accompanied him, for his evidence not only dispelled the confusion that was created by the above, evidence of P.W.4 but fully corroborated the uncontrovertable evidence of PWs 12,14 and 23 on this point. P.W. 6 was examined by the prosecution to prove that the accused persons were not found on the various occasions when he went to apprehend them and that he had taken the articles seized in connection With the case to the Chemical Examiner, The witness, however, was cross examined by the respondents regarding the role played by him on that fateful night and he stated, inter alia :

"On the night of the incident I was in the police station at Khotak Chincholi, I came to Kaplapur village at about 5.00 am. on 26.6.78. That night we started from Khatak Chincholi at about 1.45 A.M. and reached Kaplapur at about 5.00 a.m.".

The answers so elicited .in cross examination unmistakably prove that P.W.

4 left the police station at or about 12 mid night or 1 A.M. On the face of the evidence of the above four witnesses the High court was not at all justified in giving undue reliance upon the contradictory statements made by P.W. 4 to brush aside the prosecution story regarding lodging of the FIR. In view of their evidence the High Court ought to have also noticed that when P.W. 4 stated that he met P.W. 23 in that night, he (PW 4) used the word 'night' loosely to mean the hours before the daybreak. It is pertinent to point out here that when it was suggested to P.W 23 that they had reached the village by 1230 A.M. it was emphatically denied by him.

Coming now to the comment of the High Court that there was an unusual delay in receipt of the FIR by the Magistrate which made the prosecution story regarding lodging of the FIR doubtful, we get from PW 5 that he received the same from PW 23 at 1.30 A.M. for handing over the same to the local Magistrate, He testified that he tried to go by a lorry but he could not get one. In rejecting his above plea the High Court observed that PW 23 admitted that there were 4 or 5 cycles at his command in the police station and, therefore, it was difficult to believe that he (PW 5) would not have been given a cycle to go to Bhaluka for the purpose and it was also difficult to accept that no lorry was available on Bombay Hussanabad High Way. We have not been able to appreciate the reasoning of the High Court in this regard, The evidence on record unmistakably proves that P.W. 5 received the FIR at the Police Station at or about 1.30 A.M. and handed over the same to the Magistrate at Bhaluka, which is at a distance of 17 kms. from the police station, at or about 10 A.M. It cannot therefore be said that there was an unusual delay in handing over the FIR to the Magistrate even if we are to proceed on the assumption that P.W. 5's explanation for not leaving for Bhaluka at the dead of night was an unsatisfactory one. While on this point, we also feel that the expectation of the High Court that P.W.5 would cover the distance of 17 Kms. at that unearthly hour on a cycle only for handing over the FIR was too wide.

The matter can be viewed from another angle also. It has already been found by us that the prosecution case that the FIR was promptly lodged at or about 1.30 A.M. and that the investigation started on the basis thereof is wholly reliable and acceptable. Judged in the context of the above

facts the mere delay in dispatch of the FIR - and for that matter in receipt thereof by the Magistrate - would not make the prosecution case suspect for as has been pointed out by a three Judge Bench of this Court in Pala Singh v. State of Punjab, AIR (1972) SC 2679, the relevant provision contained in Section 157 Cr. P.C. regarding forthwith dispatch of the report (FIR) is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give proper direction under Section 159 Cr. P.C. and therefore if in a given case it is found that F.I.R. was recorded without delay and the investigation started on that F.I.R. then however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable.

The other criticism of the High Court regarding FIR based on P.W. 23's inability to fully understand Marathi language in which P.W. 14 gave his statement, is equally unsustainable for it is the outcome of non consideration of the evidence of the latter. In cross examination it was elicited from P.W. 14 that his statement was read over to him in Kannada which he understood and found it correctly written. In view of such assertion of P.W. 14 it is evident that there was a proper channel of communication between him and P.W. 23. Resultantly, it must be said that the inference drawn by the High Court that the FIR must have seen the light of the day subsequently, after much deliberation is without any foundation however. In view of our above findings the other related observation of the High Court that as D2 was the Dalpati and his father Khan Patel was the police patel of the village and as the relation between the families of the deceased and the respondents was strained it was not unlikely that the FIR was lodged at the instance of the police Patel later, must be said to be based on surmise only.

Now that we have found that none of the grounds canvassed by the High Court for concluding that the F.I.R. was not lodged at or about the time alleged by the prosecution is sustainable, neither the prosecution case nor the evidence of P.W. 14 can be doubted on that score as has been done by the High Court. We therefore proceed to examine the- other grounds which weighed with the High Court for recording the order of acquittal.

As noticed earlier in disbelieving the evidence of the eye witnesses the High Court observed that they contradicted each other as to the time when the incident took place for while some of them stated that it took place after darkness others asserted that it took place before darkness set in. In making the above observation the High Court failed to notice that even the defence did not dispute the fact that the incident took place at or about 8 P.M., as was the prosecution case, when it suggested to the eye witnesses that in the night of the incident some unknown persons killed Ismail Patel and that they could not be identified in the darkness. In that context the High Court ought to have ignored the contradiction referred to above as of no moment - more so as the witnesses were rustic villagers. It is also pertinent to point out here that the High Court itself proceeded on the footing that the incident took place after darkness had set in and tested the evidence of the eye witnesses in that context, as the discussion to follow will indicate.

The next comment of the High Court that it was expected of P.W. 14 to first lodge the report with the Sarpanch of the local panchayat which was at a distance of 1 mile from the village instead of going to

the police station which was 18 kms. away is also tenuous for the Sarpanch would not have any role to play in dealing with the crimes and the perpetrators thereof except reporting to the police station and, therefore, if P.W. 14 decided to himself go straight to the police station it could not be said that his such decision was an unusual one. In a situation like the one in which P.W. 14 was placed, every person reacts in his own way and so long his such reaction cannot be said to be against all canons of normal human behaviour no exception can be taken to the same.

The High Court then referred to the following statement made by P.W. 14 in his cross examination :

"After the accused went away it did not strike me that I should go to the house of the Patil to Inform the incident nor did it strike me that I should gather people and catch the accused persons."

to observe, that it was expected of P.W. 14, if really the ghasty murder had taken place in his shop, to shout and draw attention of neightbours, in making the above observation the High Court totally overlooked the evidence of Ameer Patel (P.W. 12) when he stated :

"About one and a quarter years back on one evening I returned from land and I was in my house. At about 8.30 p.m. I heard noise of weeping and shouting. Some women were running saying that Syed Patel and Ismail Patel were killed by their uncle and his sons. I too ran with those people. 1 came near the shop of Gorakh (P.W. 14). Some people had gathered there. The dead body of Ismail Patel was lying on the katta in front of the shop of the Gorakh."

(emphasis supplied) The High Court has much commented upon the failure of P.W. 14 to mention in the FIR about his having seen the assailants by the light of the lanterns as also the non-seizure thereof by the police. According to the High Court as the incident took place in the dark, the source of light by which witnesses could identify the assailants was an important factor. Since however P.W. 14 did not speak about it in the FIR, his claim, and that of the other eye witnesses that they could identify the assailants was totally unacceptable. The irrationality of the above observations of the High Court be evident, from the fact that the High Court recorded a finding, which we have quoted earlier, that the murders did take place in the shops of P.W. 14 and P.W. 16; and when it was not in dispute that those murders took place at or about 8. P.M. the only legitimate inference that can be drawn is that there would be lights in the shops to conduct business. We are also surprised to see that after recording the above findings the High Court went to the extent of even observing that D1 was not expected to be in the shop of P.W. 14 to purchase cigarettes as evidence was led to show that he himself had a grocery shop in his house and that if really Dl was smoking cigarette sitting in the katta in front of the shop of Raghunath when he was killed the investigating agency would not have failed to notice and seize the but-end of the cigarette. The High Court ought to have held, having concurred with the finding of the trial Court that Dl was murdered in the shop of P.W. 14 and his dead body was found there, the reason which prompted him to go there was wholly immaterial. The presence of P.W, 14 in the shop at the material time was also doubted by the High Court on the ground that as his brother Raghunath was the owner of the shop and he (Raghunath) was in the village on that day he was expected to run the shop in the evening, and not P.W, 14. It is in evidence - which was not challenged - that Gorakhnath and his brother were jointly owning and running the shop and therefore, P.W. 14's claim that he was in the shop at the material time was nothing unusual

and, on the contrary, natural.

Apart from the fact that PW 14 was the most natural witness - the murder of D1 having taken place in their shop - we find that PW 14 was a disinterested witness also, for except a suggestion that he was inimically disposed towards the respondents which was denied by him and a statement made by R.3 in his statement recorded under Section 313 Cr. P.C. that there was a dispute between their family and Gundaji (grandfather of PW 14), which also remained unsubstantiated, there is no other reliable material on record to support the defence contention. We further find that even though PW 14 was cross examined at length nothing could be elicited in cross examination to discredit him. His evidence clearly establishes that all the respondents entered into the shop and R1 and R2 assaulted Dl with axe and sickle respectively as a result of which he fell down dead there. His evidence further shows that PW 15, who was in the shop at that time, was detained by A3 and A4 and when PW 14 tried to come out of the shop he too was detained by them. He also testified that Gundaji, who had come to the shop in the meanwhile was kicked on the hips by R 4 (since deceased). He further stated that thereafter the respondents went towards the house of Chinamma (PW 16). According to PW 14, when Ishwara (PW 19) opened the door of his house and came near his shop he (P.W. 14) disclosed the incident to him. The FIR, which we have found to have been lodged by PW 14 at the earliest opportunity and contains the substratum of the prosecution case, also goes a long way to corroborate his evidence.

Coming now to the evidence of P.W. 13 we find that the High Court discarded his evidence on the ground that it smacked of artificiality without spelling out the reasons therefore. It, however, pointed out certain contradictions with reference to his statement recorded under Section 161 Cr. P.C. Having carefully gone through those contradictions we are constrained to say that the trial Court ought not to have permitted the defence to bring them of record as they were only minor omissions and, as such did not amount to contradictions. P.W. 13 lived at a distance of 50- 60 paces away from the shop of P.W. 14 and he stated that at or about 7.30 P.M. he went to that shop to buy beedies. Reaching there he found P.W. 14 sitting in his shop with a lantern in front of him and A1 present there. He then recounted the manner in which R l and R2 murdered Dl and the treatment meted out to him, PW. 14 and Gundaji, by the other two respondents. PW 13 also stated that Ishwara (P.W. 19) came there immediately after the incident and P .W. 14 reported the incident to him. We find that this witness was also subjected to lengthy cross examination, but it did not yield any response favourable to the defence. The High Court, however, observed that his evidence was contradictory in as much as while in one breath he said that he raised a hue and cry but none came there, in the other he stated that he was afraid as he was threatened by the respondents not to make any noise. We do not think that such a contradiction was worth considering much less a sufficient ground to discard the evidence of a disinterested witness. On the contrary, we find, his evidence corroborates P.W. 14 on all material particulars and does not suffer from any infirmity whatsoever. The evidence of these two eye witnesses again gets some support from that of Ishwara (PW 19) who lives next to the shop of P.W. 1.4. From his evidence we get that hearing some thud emanating from the side of the shop of P.W. 14 when he went there he found Dl lying dead there and P.W. 14 and PW 15 and Gundaji present. He also deposed that P.W. 14 named the four respondents as the miscreants As we find no reason to disbelieve P.Ws. 14 and 15, we must hold that the respondents were responsible for the murder of Dl.

Regarding the other murder the prosecution relied upon, as already noticed, the ocular versions of P.W. 16 and 17. As regards their evidence the High Court first observed that 'though both the witnesses appeared to have corroborated each other in all material particulars with regard to the assault on D2 the same is not free from doubt'. The first reason expressed for doubting the evidence of P.W. 16 was in the context of the admitted fact that she was selling liquor in her house without any licence and the suggestion put to her by the defence that she was interested in the prosecution as both D2 and his father Khan Patel allowed her to run such business and did not bring it to the notice of the concerned authorities. We are surprised to find that the High Court relied upon the above suggestion to hold that PW 16 was an interested witness even though, she denied it and there was not an iota of evidence to indicate that D2 and his father Khan Patel permitted her to continue such unuthorised sale of liquor. Another reason for disbelieving her was that she had admitted in the cross-examination that at the time the assault took place it has not yet become- dark and, therefore, there was no necessity for her to have lit two chimnies, as testified to by her. Besides, she did not speak of the chimnies in her statement before the Investigating Officer. As discussed earlier the evidence on record dearly proves that the murder of D2 took place in darkness - in fact after that of Dl - and therefore, presence of two lighted chimnies, more, when she was running a business, though illegal, was very likely. It appears that an argument made on behalf of the prosecution that since the incident had taken place in her house her presence could not be ruled out was outright rejected by the High Court with the observation that the mere fact that dead body of D 2 was found in her house would not mean that she must have been present. The High Court further observed that the reasons given by it for discarding the evidence of P.Ws. 14,15 and 19 equally applied in respect of that of P.Ws. 16 and 17 also. Failure of P.W. 17 to inform Khan Patel or the persons concerned about the murder of D2, if really he had seen it, was also treated as a ground by the High Court to disbelieve him.

None of the above grounds to disbelieve the evidence of P.Ws. 16 and 17 impresses us for reasons which we have already given while dealing with the observations made by the High Court against acceptance of the evidence of P.Ws. 14 and 15. It appears from the evidence of P.W. 16 that it was not disputed by the defence that she was running a liquor shop in her house. It is of course true that she was running the same illegally but that cannot be treated as a factor for disbelieving her, if she is otherwise reliable. P.W. 16 stated that on the evening of the incident when she was sitting in the padasala of her house D 2 came there followed by Hussainsab (P.W. 17), a little later. While PW 17 was talking to D2, R3 came there and asked for some liquor. On her replying that liquor was not available, R3 retorted why did she then keep the chimney burning in the padasala. So saying he begain to lift his dhoti obscend to which D2 objected. In the meantime Sakharam had also come to the padasala. .Then came Rl, R2 and R4 and stood adjacent to the Katta. When D2 asked why they had come there, R3 caught hold of his hair and felled him. Then both Rl and R2 assaulted them with their respective weapons, namely, with axe and sickle. When Sakaram intervened he was assaulted by R2. The evidence of P.W. 17 is on the same lines. These two witnesses also most natural and probable witnesses, besides being disinterested. In such circumstances there cannot be any justifiable ground to disbelieve them, more so, when the High Court also found that they corroborated each other on material particulars, but rejected their evidence on grounds which were wholly unsustainable. Once their evidence is accepted as reliable the three respondents must be held liable for the death of D2 also.

The High Court much commented upon the failure of the prosecution to examine Gundaji and Sakaram, who according to the eye witnesses were in the shops of P.W, 14 and P.W. 16 respectively at the material time and sustained minor injuries. It is undoubtedly true that they were material witnesses and no satisfactory explanation was offered by the prosecution for their non-examination. Therefore, the question that naturally arises for consideration is whether the High Court was justified in discarding the entire prosecution case and disbelieving the four eye witnesses on that score. We have given our anxious consideration to this aspect of the matter and in our view the approach in such a case would be to Find an answer to the question whether the evidence actually produced is reliable or not and not to the question whether non-examination of such witnesses ipso facto vitiates the entire prosecution case, if the presumption under Section 114

(g) of the Evidence Act were to be drawn. In other words, if in a given case, it is found that there are independent witnesses whose evidence is reliable and trustworthy to prove the charges levelled against the accused the infirmities arising out of non examination of other independent wit- nesses will not be sufficient to put the prosecution case out of Court. In that view of the matter and for the foregoing discussion we are unable to sustain the findings of the High Court in this regard.

The High Court also doubted the prosecution case for its failure to satisfactorily prove the motive ascribed for the murders. Even if we proceed on the assumption that the finding of the High Court in this regard is correct still that it would not affect the prosecution case in any manner, for law is well settled that if the prosecution case regarding the commission of the offence itself can be safely relied upon, the question of motive pales into insignificance.

Lastly the High Court has found that the evidence led by the prosecution to prove the recovery of the sickle and axe pursuant to the statements made by R1 and R2 did not inspire confidence. Unfortunately, however, the High Court has not given any reason whatsoever for such rejection except observing that the manner in which search and seizure was effected was not in accordance with law, without spelling out the breach. Though it appears to us that the above comment of the High Court is not proper one, in view of the evidence on record, we do not wish to delve further into this aspect of the case for the evidence of the eye witnesses, which stand corroborated by medical evidence clearly proves the prosecution case beyond all reasonable doubts.

It was contended on behalf of the respondents that even if the entire prosecution case was accepted as true, still R3 could not be saddled with he liability for any of the two murders, for he did not, on the own showing of the prosecution, participate in the actual assault on Dl and D2 and there was no material to infer that he shared that common intention to commit he murders with Rl and R2, so as to foist him with that liability with the did of Section 34 IPC. We are not impressed by this argument. The evidence of the eye witnesses clearly establishes that R3 accompanied by R1 and R2, who were armed, first went to the shop of PW 14. Evidence further reveals that during assault on Dl he detained P.W. 14 and P,W, 15 then they tried to go out of the shop obviously to ensure that they could not call other people to come to their rescue. Evidence also reveals that after Dl was murdered, he went to the shop of P.W. 16, with Rl and R2 there the other murder was committed. During the assault on D2 when P.W. 17 caught hold of the handle of the axe that was in the hand of Al, A3 went behind P.W, 17, fisted him twice On the back of his neck, pushed him down the katta and detained

him. From all these facts and circumstances it is patently clear that he also shared a common intention with Rl and R2 to commit the murders.

On the conclusions as above we allow this appeal, set aside the inpugned order of the High Court and restore that of order of the trial court is so far as they relate to Noin Pat el, (Rl), Janu Patel, (R2) and Sofi Patel, (R3). As, the above three respondents are on bail they will now surrender to their bail bounds to serve out the remainder of the sentence.