State Of Maharsthra vs Ahmed Shaikh Babajan & Ors on 24 October, 2008

Author: D.K. Jain

Bench: C.K. Thakker, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 25-29 OF 2002

STATE OF MAHARASHTRA -- APPELLANT (S)

VERSUS

AHMED SHAIKH BABAJAN & ORS. -- RESPONDENT (S)

JUDGMENT

D.K. JAIN, J.:

1. The State of Maharashtra has preferred these five appeals, by special leave, against the common judgment and order of the High Court of Judicature at Bombay, in Criminal Appeals No.240, 241, 273, 381 of 1995 and Criminal Revision No.156 of 1995.

By the impugned order the High Court, while allowing all the criminal appeals preferred by the convicts and dismissing the criminal appeal and criminal revision preferred by the State, has affirmed the order passed by the Additional Sessions Judge dated 25th April, 1995, acquitting respondents No.1 to 3 herein, of the charge under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short `the I.P.C.') and has set aside the order of the Trial Court convicting the said respondents for offence under Section 456 read with Section 109 I.P.C. Conviction of respondents No.4 and 5 for the offence under Section 456 I.P.C. has also been set aside by the High Court.

2. The backdrop under which the alleged occurrence took place on 27th April, 1989, in brief, is as follows:

By an agreement of leave and licence dated 28th July, 1988, Ahmed Shaikh, (accused A-1), the owner of Flat No.H-14, 3rd Floor, Zohra Agadi, Yari Road, Versova, Andheri, inducted Smt. Rani Bhagwant Singh (PW-6), as a licensee of the said premises. The agreement was for a period of 9 months and was to expire on 27th April, 1989.

The flat was occupied by PW-6 along with her husband Bhagwant Singh (PW-4), her daughter, Harjeet Kaur (PW-5), her son Indrajeet Singh (deceased) and two other sons, Arvinder Singh (PW-1) and Harvinder Singh (not examined). Though the agreement was initially for a period of 9 months commencing from 28th July, 1989, it was subject to further extension and renewal. Advance rent for 9 months was paid to accused A-1 with one month's rent as security deposit.

3. The said agreement was finalised through an Estate Agent - Moinuddin Khan (accused A-3), a resident of the same society. About two weeks prior to the date of incident, accused A-1, his estate agent (accused A-3) and one Usmangani Shaikh (accused A-2), approached Bhagwant Singh Anand (PW-4) asking him to deliver vacant possession of the flat on the expiry of the said leave and licence agreement. Thereafter on 24th, 25th and 26th April, 1989, they again met Bhagwant Singh Anand and insisted on the delivery of vacant possession of the flat by 27th April, 1989. It will be of some relevance to note that Usmangani Shaikh (accused A-2) is the brother of Asmabi (accused A-4), wife of accused A- 1 and Rahimabi, (accused A-5) is the sister of accused A-1. PW-4 requested for permission to stay in the flat for a few more days as his children, including the complainant (PW-1), were busy in their annual examination; his wife, Rani Anand (PW-6) and daughter Harjeet Kaur (PW-5) were also away to Hyderabad since the latter was appearing for her final B.A. examination in Osmania University and they were expected to return back to Bombay on 27th April, 1989. The request was turned down by accused A-1, who insisted that the possession of the flat must be delivered by 27th April, 1989, failing which possession would be taken by force.

4. In this background, very shortly put, the prosecution version was that apprehending that the possession of the flat may not be delivered on the expiry of the licence agreement, accused A-1 decided to take the possession forcibly with the help of his wife (accused A-4), her brother (accused A-

2), his sister (accused A-5) and the Estate Agent, (accused A-3). On 27th April, 1989 at about 7.30 p.m., the deceased was standing in front of the shop of accused A-3 on the ground floor in the same society, three buildings away from the building in which the deceased resided, waiting for his mother and sister, who were scheduled to return from Hyderabad in the evening. He had the keys of the flat with him. His father (PW-4), who was in the flat till evening later left the house for bringing food for the family, instructing the deceased to wait on the road. Arvinder Singh (PW-

1) also left the house at about 7.00 p.m. for paying obeisance at the Gurudwara. While the deceased Inderjeet Singh was standing in front of the shop of accused A-3, accused A-1 and accused A-3 came near him and started beating him. The beating was witnessed by PW-1 who was returning from the Gurudwara. He rushed to save his brother, who, by that time had fallen down on the ground and

was stifling.

5. The incident drew attention of the public and the two accused were apprehended. One, Sunil Salvi (PW-2), a police constable (off duty) and a family friend of the Anands, also happened to be at the spot and he too accosted the two accused. He along with PW-1 took the victim to the clinic of one Dr. Asif Ali (PW-8) situated on the ground floor of the same building in which Anands resided. Finding the victim in a serious condition, PW-8 advised his removal to a bigger hospital. In the meanwhile, he also contacted the police control room. In a short while the police mobile van arrived and the deceased was removed to Cooper Hospital. PW-1 also accompanied him. The police also took accused A-1 and A-2 with them to the hospital. However, accused A-3 escaped. The deceased was examined by the doctors on duty and was declared brought dead.

6. PW-1 returned back to the flat to inform his father (PW-4) about the incident and the death of Indrajeet Singh but did not find him in the flat. Instead he found that the flat had been occupied by two ladies, accused A-4 and A-5 with a small child. When he protested, the said accused retorted by saying that he had no right to occupy the flat after the expiry of the agreement. He went out in search of his father who was found in a garden. He informed him about the incident and thereafter went to lodge the First Information Report (FIR) with the police.

7. When Smt. Rani Anand (PW-6) and Harjeet Kaur (PW-5) returned from Hyderabad and went to the flat, they also found accused A-4, A-5 and a small child occupying the flat. They carried their luggage inside the flat but the said accused did not permit them to do so and, in fact, accused A-4 threw the luggage outside the flat with the assistance of accused A-5. Accused A-4 informed PW-5 and PW- 6 that Inderjeet had assaulted her husband. In the meanwhile a police constable came to the flat and asked accused A-4 and A-5 and PW-6 to accompany him to the police station.

8. On completion of investigations, chargesheet was filed against the respondents. All of them were charged under Section 460, I.P.C. for committing offence of house breaking by night and causing death of a person. Additionally, accused A-1 to A-3 were also charged under Section 302 read with Section 34 I.P.C. for committing murder of Inderjeet Singh. In support of its case, the prosecution examined ten witnesses out of which PW-1 (brother of the deceased) and PW-2 (off duty constable) were stated to be the eye-witnesses. No evidence was produced in defence. The learned Additional Sessions Judge, on appreciation of evidence, acquitted accused A-1 to A-3 of the offence under Section 302 read with Section 34 I.P.C. However, relying on the testimony of PW-5 and PW-6, the Trial Court convicted accused A-4 and A-5 for offence under Section 456 I.P.C. for house breaking by night and accused A1 to A-3 for offences under Section 456 read with Section 109 I.P.C. and sentenced each of them to undergo rigorous imprisonment for a term of two years and pay fine of Rs.5000/- each with default stipulation.

9. The High Court, as noticed hereinabove, while affirming the acquittal of A-1 to A-3, has disagreed with the Trial Court and has set aside the conviction of the respondents for offences under Section 456 read with Section 109 I.P.C as well. In reversing the judgment, the High Court has relied on the following circumstances - (i) though the FIR was lodged by PW-1, three hours after the occurrence and that too after consulting his father (PW-4) there is not a word in the FIR about the forcible

occupation of the flat in question by accused A-4 and A-5; (ii) since accused A-1 and A-2 were admittedly apprehended by the mob soon after the incident in which Indrajeet was assaulted and they remained in police custody thereafter, there was no possibility of their abetting the commission of offence by accused A-4 and A-5; (iii) after the male members of the family had been apprehended and had been taken into custody by the police, the two female members of the family would not dare to forcibly occupy the flat; (iv) if the version of PW-5 is to be believed, accused A-4 and A-5 were detained by the police constable, who had taken them to the hospital with PW-6, the concerned constable was not examined to prove this fact. Hence the present appeals.

10. Mr. Adsure, learned counsel appearing for the State submitted that the High Court committed serious error in passing impugned judgment without taking into consideration the fact that a day prior to the date of occurrence, accused A-1 to A-3 had threatened PW-4 (father of the deceased) of forcible eviction from the flat and assault on the deceased was in furtherance thereof. Learned counsel asserted that insofar as accused A-1 to A-3 are concerned, in addition to commission of offence under Section 456 read with Section 109 I.P.C., a clear case for their conviction for offence under Section 304 Part-I, I.P.C. is made out. It was argued that the testimony of PW-5 and PW-6, coupled with the fact that there was no cross examination of the said witnesses in regard to the presence of accused A-4 and A-5 in the flat, was sufficient to establish the case against the accused. It was also contended that accused A-4 and A-5 committed the offence in furtherance of instigation by the male members of the family, namely, accused A-1 to A-3 and, therefore, all of them were rightly convicted for offences punishable under Section 456 read with Section 109 I.P.C.

11. Learned counsel appearing on behalf of respondents No.1, 2, 4 and 5, on the other hand, submitted that PW-2 having been declared hostile and presence of PW-1 at the time and place of occurrence having been doubted by both the courts below and in the absence of any other public witness, particularly when accused A-1 and A-2 are alleged to have been apprehended by the mob, the prosecution has failed to prove the involvement of accused A-1 to A-3 in the incident of assault on the deceased. It was also urged that there is no evidence on record to prove that any of the accused had forcibly entered in the flat, belonging to accused A-1 and thereby committed house breaking by night so as to attract Section 456 I.P.C. It was also argued that failure to mention anything about forcible occupation of the flat in the FIR by PW-1, who claims to have met accused A-4 and A-5, by itself, is fatal to the prosecution case against all the accused. Lastly, it was pleaded that accused A-4 and A-5 being ladies and the incident having taken place as far back as in the year 1989, a lenient view may be taken against them.

12. Before examining the rival stands with reference to the evidence adduced by the prosecution, the scope of our jurisdiction to deal with appeals by special leave against a judgment of acquittal by the High Court needs being noticed. True it is that Article 136 of the Constitution invests this Court with a plentitude of plenary appellate power over all courts and tribunals in India but a conspectus of a series of decisions shows that this Court has set for itself certain limits within which the power under the said Article is to be exercised. It is the established practice of this Court that power under Article 136 is invoked in very exceptional circumstances, when the approach of the lower courts is vitiated by some manifest illegality or the conclusion recorded is such which could not have been possibly arrived at by any court acting reasonably and judiciously. Nevertheless, even within the

restrictions imposed, this Court has undoubted power to interfere even with findings of fact, making no distinction between a judgment of acquittal and conviction, though in a case of acquittal ordinarily the Court does not interfere with the appreciation of evidence or of findings of fact, more so because the presumption of innocence of the accused is further reinforced by his acquittal, unless the High Court "acts perversely or otherwise improperly". (See: The State of Madras Vs. A. Vaidyanatha Iyer1; Himachal Pradesh Administration Vs. Shri Om Prakash2).

13. In so far as the jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is concerned, referring to the aforenoted decisions in Arunachalam Vs. P.S.R. Sadhanantham & Anr.3, O. Chinnappa Reddy, J. went on to observe as follows:

> "In dealing with an appeal against acquittal, the Court will, naturally, keep in mind the presumption of innocence in favour of the accused, reinforced, as may be, by the judgment of acquittal. But, also, the Court will not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere where interference is imperative. Where the acquittal is based on irrelevant ground, or where the High Court allows itself to be deflected by red herrings drawn across the track, or where the evidence accepted by the trial Court is rejected by the High Court after a perfunctory consideration, or where the baneful approach of the High Court has resulted in vital and crucial evidence being ignored, or for any such adequate reason, this Court may feel obliged to step in to secure the (1979) 2 SCC 297 (1972) 1 SCC 249 (1979) 2 SCC 297 interests of justice, to appease the judicial conscience, as it were."

14. Recently, in Chandrappa & Ors. Vs. State of Karnataka4 referring to almost the entire law on the point, one of us (C.K. Thakker, J.) has culled out the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal:-

> "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2)The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3)Various expressions, such as, "substantial and compelling reasons" "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the (2007) 4 SCC 415 reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
>
> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is

> available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

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

(5)If two reasonable views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial court, it ought not to be disturbed by the appellate court."

15. Bearing the afore-noted principles in mind, we shall now examine whether the present case calls for interference. We may note at the outset that in so far as the first part of the incident, viz., assault on the deceased is concerned, the prosecution examined only PW-1 and PW-2, as eye witnesses to the incident. PW-2 (Sunil Salvi), the sole independent witness did not support the prosecution version, in as much as he did not claim to have seen the occurrence in which the deceased was assaulted. In fact, in his deposition he stated that he came soon after the assault and PW-1 came even later. Thus, his testimony casts serious doubt on the presence of PW-1 at the spot at the time of occurrence. The Trial Court as well as the High Court have noticed many inconsistencies in the evidence of PW-1 and PW-2. It has also been observed that no member of the crowd which had gathered there, have been examined by the prosecution. Having regard to the evidence on record, we do not find any ground to interfere with the concurrent findings recorded by both the Courts below in reaching the conclusion that a case for conviction of the respondents under Section 302/34 I.P.C. is not made out. In view of the evidence on record, we find it difficult to accept the alternative contention of learned counsel for the State that an offence under Section 304 Part-I I.P.C. is made out against accused A-1 to A-3. Accordingly, we affirm the decision of the Courts below on the point.

16. However, as regards the offence under Section 456 I.P.C., since the Trial Court, on consideration of evidence before it, had convicted all the accused for the said offence and the High Court has reversed the order of conviction, we propose to delve on this aspect of the matter in a little greater detail.

17. As noted above, the first and the foremost circumstance, which has weighed with the High Court for acquittal of all the accused for offence under Section 456 I.P.C. is that although the FIR was lodged by PW-1 more than three hours after the occurrence and after due discussion with his father (PW-4), yet the factum of forcible occupation of the flat by accused A-4 and A-5 did not find mention in the FIR. The High Court has observed that having admittedly met his mother (PW-6), father (PW-4) and brother Harvinder Singh in the Cooper Hospital and lodged the FIR thereafter, it was difficult to believe that if PW-1 had seen accused A-4 and A-5 occupying the flat possessed by his family, this fact would not have been mentioned in the FIR. According to the High Court, it was not a case of mere omission, but a case where the very fact constituting the offence was absent from the FIR, the earliest version of the occurrence.

18. The First Information Report is a report relating to the commission of an offence, given to the police and recorded by it under Section 154 of the Code of Criminal Procedure, 1973 (for short the

"Cr.PC"). Though, as observed by the Privy Council in Emperor Vs. Khwaja Nazir Ahmad5, recording of a First Information Report is not a condition precedent to the setting in motion of the criminal investigation yet from the view point of the A.I.R. (32) 1945 Privy Council 18 investigating authorities it conveys to them earliest information regarding the circumstances in which the crime was committed; the names of the culprits and the role played by them as well as the names of the witnesses present at the scene of occurrence, so vital for effective and meaningful investigation. The information about an occurrence can be given by any person knowing about the commission of such an offence and not necessarily by an eye witness. Commenting on the object, value and use of First Information Report, in Sheikh Hasib alias Tabarak Vs. The State of Bihar6, a three-Judge Bench of this Court had observed as under:-

> "The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding (1972) 4 SCC 773 the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses."

19. Apart from the fact that lodging of information under Section 154 Cr.PC keeps the District Magistrate and the Superintendent of Police informed of the occurrence and when recorded, is the basis of the case set up by the informant and provides material to the police to commence investigation, its fundamental object is that it acts as a safeguard against embellishment, exaggeration and forgetfulness. True, that it is not the requirement of law that every minute detail of the occurrence needs to be recorded in the First Information Report and as observed by this Court in State of A.P. Vs. Golconda Linga Swamy & Anr.7 that the FIR is not intended to be an encyclopedia (2004) 6 SCC 522 of the background scenario. Nevertheless, having regard to the fact that it is one of the modes by which a person aggrieved sets the criminal law in motion, it must disclose the commission of an offence. Though it is trite that the First Information Report does not constitute substantive evidence and can, strictly speaking, be only used as a previous statement for the purpose of either corroborating or contradicting its maker, yet omission of material facts pertaining to the crime is undoubtedly relevant in judging the veracity of prosecution case.

20. In the present case, admittedly in the First Information Report lodged by PW-1, a law student, more than three hours after the alleged occurrence, there was no complaint of house breaking and occupation of the flat by accused A-4 and A-5 when he claims to have met them at the flat and had an altercation. In his cross-examination, when questioned on the omission to mention the fact of forcible occupation of the flat by accused A-4 and A-5, he stated as under:

> "At the time of recording of my complaint I was giving true and detailed account of all incidences regarding the visit of 24.4.89, 25.4.89, 26.4.89 and threats of

> dispossession and in the last of my complaint I deposed about the incident of assault in which Inderjeet Singh died. Therefore my F.I.R. is in detail on that behalf. However, name of two ladies accused nos.4 and 5 was not given out in my complaint against them for having trespassed in the flat immediately after the incident when I had gone to see my father. I cannot assign reason for such omission."

21. It is also pertinent to note that in his cross-

examination, he also stated that when his further statement was recorded on 29th April, 1989, i.e. two days after the occurrence, even then he did not disclose the fact that accused A-4 and A-5, viz., Asmabi and Rahimabi, had broken open their flat and had occupied it with a kid. He simply stated that "I cannot assign any reason to omit their names as persons taking unlawful occupation in the house immediately after the occurrence. This might be due to shock and tragedy we had faced on that date, which continues today. Before I met my father, I did not make report of the occurrence to the police, although police and police officers were present in the Cooper Hospital". It is, thus, manifest that the informant (PW-1) was not able to give any reasonable explanation for the significant omission on his part. We feel that the evidence of PW-1 is tainted with certain embellishments.

22. Furthermore, even in the evidence of Bhagwant Singh, PW-4, the father of the deceased and PW-1, there is not even a whisper about the forcible occupation of their flat by accused A-4 and A-5 although admittedly even before lodging the FIR, PW-1, his father and his mother (PW-6) had already met. We find it difficult to believe that their flat having been allegedly broken open and occupied by accused A-4 and A-5, it was an insignificant fact worthy of discussion amongst the family members. It is also pertinent to note that PW-3, (Smt. Najma) a neighbour of Anands, who was examined by the prosecution to prove that the accused had borrowed a hammer and screw-driver used by them for breaking open the latch of the flat, did not support the prosecution version. Besides, as also noted by the High Court that although as per the prosecution version accused A-4 and A-5, on the asking of the police constable, who had visited the flat, had accompanied him to the police station, this fact was not proved by examining the constable concerned. All these circumstances, in our judgment, not only take the bottom off the prosecution story, they are sufficient to throw considerable doubt on its truthfulness and the veracity of evidence of PW-1--an eye witness complainant and knowing accused A-4 and A-5, rendering it unsafe to base the conviction of the accused upon it.

23. Under these circumstances, in our opinion, the High Court was fully justified in holding that the omission to mention the fact regarding the occupation of flat by accused A-4 and A-5 in the First Information Report, was a very important circumstance, fatal to the case of the prosecution.

24. Now, what remains to be considered is whether conviction of the respondents for offence under Section 456 I.P.C. can be recorded on the basis of the evidence of two closely related witnesses viz. PW-5 and PW-6, sister and mother respectively of the deceased. In their testimony, which is on similar lines, they have stated that when they returned to their flat in the night of 27th April, 1989, they found the door of the flat open and accused A- 4 and A-5 present there along with a kid and

when they entered the flat, their luggage was thrown out by the said accused. They have also stated that when a constable came to the flat and enquired about the mother of the deceased, they had shown to him the damaged latch and bolt at the entrance. The constable asked both the accused and PW-6 to follow him and all of them went to the police station.

25. In Hari Obula Reddy & Ors. Vs. The State of Andhra Pradesh8 while dealing with the question whether the evidence of an interested witness can form the basis for conviction even without corroboration by an independent evidence, a three- judge Bench of this Court, speaking through R.S. Sarkaria, J. had laid down that:

> "Interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the (1981) 3 SCC 675 evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. However, these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations."

26. Very recently in Ashok Kumar Chaudhary & Ors.

Vs. State of Bihar9 this Court had the occasion to deal with the question of creditworthiness of the evidence of relatives of the victim. On a review of several decisions on the point, including Dalip Singh Vs. State of Punjab10, Masalti Vs. State of U.P.11 and Rizan & Anr. Vs. State of Chhattisgarh, through The Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhattisgarh12 it has been observed

that though the Court has to scrutinize such evidence with greater care and caution but such evidence cannot be discarded on the sole ground of the interest of such witness in the prosecution. The relationship per se does not affect the credibility of a witness. Merely because a witness happens to be a relative of the victim of the AIR 2008 SC 2436 [1954] 1 S.C.R. 145 [1964] 8 S.C.R. 133 (2003) 2 SCC 661 crime, he/she cannot be characterized as an "interested" witness. The term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other oblique motive.

27. In Namdeo Vs. State of Maharashtra13, one of us (C.K. Thakker, J.) has said that a close relative cannot be characterized as an "interested" witness. He is a natural witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the `sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject the evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare 2007 AIR SCW 1835 the real culprit and falsely implicate an innocent one.

28. Having considered the evidence of PW-5 and PW-6 in the light of the legal position enunciated in the aforementioned decisions and bearing in mind the fact that PW-3, who was examined by the prosecution to prove the vital fact that accused A-4 and A-5 had borrowed the hammer and screw driver from her, being a neighbour of the complainant has not supported the version of the prosecution, the testimony of the said two witnesses cannot be said to be intrinsically credible. Moreover, having regard to the fact that neither in the FIR nor in the statement of PW-1, recorded two days after the occurrence, he had stated the fact of house breaking, in our opinion, it will be hazardous to rely solely on the uncorroborated evidence of PW- 5 and PW-6 to convict the accused under Section 456 I.P.C. Evidently, having lost their son/brother, allegedly on account of beating by accused A-1 to A-

3, there was every reason for them to be inimical to the accused. They were keen to see that all of them were convicted.

29. For the aforesaid reasons, we are convinced that the view of the High Court in discarding the evidence of PW-5 and PW-6, does not suffer from any infirmity. In that view of the matter and in the absence of any other evidence on the issue, the order of the High Court acquitting all the accused of the offence under Section 456 I.P.C. does not suffer from any illegality warranting interference.

30. Consequently, all the appeals, being bereft of any merit, fail and are dismissed accordingly.

.....J. (C.K. THAKKER) .....J. (D.K. JAIN) NEW DELHI, OCTOBER 24, 2008.