

MARWADI KISHOR PARMANAND

v.

STATE OF GUJARAT

MARCH 15, 1994

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

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Indian Penal Code, 1860—Section 302/34—Conviction under—Appreciation of evidence of a solitary but reliable eye witness—Conforming to and consistent on all material points—His presence at place of occurrence established—Conviction based on his testimony even without corroboration—Sustainable.

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Criminal Procedure Code, 1973—Sections 378 and 386—Appeal against acquittal—Scope of.

Evidence—Witness deposing about a fact evidence has to be appreciated in a realistic manner having due regard to all the surrounding facts and circumstances prevailing at or about the time of occurrence.

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The two appellants were convicted u/s 302/34 of the Indian Penal Code and sentenced to life imprisonment by the High Court converting the acquittal of the appellants recorded by the Trial Court into conviction. This appeal by special leave had been directed by the appellants against the judgment of the High Court.

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The prosecution case was that the complainant, PW1 was a Government Contractor and the two deceased persons, namely P and S who were known to him were also engaged in the contract business; that the deceased were interested in securing the contract from Saurashtra Chemicals for removal of dust but no final deal was struck in their favour; that the complainant accompanied with the two deceased persons met PW8, an Officer of Saurashtra Chemicals in his office where they discussed with him the terms and conditions but the contract was still not finalised; that when the complainant along with the two deceased were proceeding on foot to take meals, the two appellants came on a scooter, got down with open knives in their hands and rushed towards P and S; that one of the appellants held P and another held S and asked them as to why they were coming in their way as they were not happy with the deceased who were

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A trying to obtain the said contract; that the complainant being frightened on seeing the appellants with open knives, stood at a distance at the corner of the broader lane watching them with fear and anxiety; that one of the appellants gave one knife blow to P and another appellant gave one knife blow to S; that the complainant looking to the incident of assault by knife, became nervous and ran away from there, came to a nearby lane and when B he heard that the appellants started the scooter and went away, he returned to the lane where the incident had occurred; that the complainant noticed that though there were blood stains in the lane, P and S were not there and, therefore, he proceeded ahead and found P lying unconscious at the corner of the by lane; that he rushed to a nearby tea shop and made C a telephone call for ambulance and also informed the police station of the incident; that thereafter the complainant proceeded further and found that S was lying dead on another road; that the ambulance arrived after about an hour and injured S and P were taken to hospital by the complainant where the two were declared dead and the complainant gave first information D report which was registered. The prosecution further stated that the two appellants also reached the police station in injured condition and they were also taken in the same hospital by a constable and after the report of the complainant was recorded and sent to the police station for registration, the same police officer also recorded the FIR alleged to have been given by the appellant No. 2 which was also registered.

E At the Trial the two appellants adjured their guilt and pleaded false implication. They denied having met the deceased persons on the day of occurrence or the alleged entries in the police station dairy regarding their appearance in the police station or that they were taken to the Hospital. F Both the appellants denied the disclosure statement, the seizure of knives at their instance, seizure of scooter as well as appellants clothes stained with blood. They took the plea that they had a quarrel *intre se* in which they had sustained the injuries.

G The trial court on scrutiny of the evidence of the sole eye witness, the complainant, PW1 disbelieved his testimony on account of veracious infirmities and recorded the order of acquittal of both the appellants. The Trial Judge recorded the findings that the evidence of PW8 did not establish the presence of PW1 along with two deceased persons who came to him to negotiate the contract as he deposed about the presence of a third person H whom he did not know at that time but learnt subsequently that he was,

the complainant, but subsequently in his statement before police he did not state that he knew the name of complainant; that PW1 did not know the accused since before and he learnt about their names in the hospital but could not identify in the Court; that PW1 had a very short span of time to observe the appellants and, therefore, it was not possible for him to fix up definitively that the appellants were the assailants; that PW1 said to have seen the accused appellants in the hospital did not state the said fact in his *fard-beyan* recorded in the hospital which was treated as FIR; that the alleged sole eye witness received no injuries and the appellants also did not attack him which fact supported the possibility that he might not have detained himself at the place of occurrence to see the incident; that the witness did not shout for help nor did he tell anyone before giving FIR at the hospital that he had seen the incident himself; that the statement of complainant that he saw the accused appellant in the hospital was also improbable in view of the evidence of PW10 who examined the accused No.2 in the hospital at 2.35 p.m. and the appellant No. 1 at 4.00 p.m. while both of them had not come to the hospital together; that the evidence of constable PW19 could not be accepted that he had taken both the appellants from police station in the Government Vehicle without any police *yadi* (memo) to the hospital and lastly that in view of the evidence of Head Constable PW18 that he did not receive any telephonic call from complainant about the incident and that in the absence of entry in the police station diary to support the version of complainant, his statement was falsified.

In appeal, the High Court on reappraisal and close scrutiny of the evidence of the said eye witness recorded the conclusion that testimony of the sole eye witness did not suffer from any infirmity and held that slight variations in his statement, on immaterial aspects did not make his testimony incredible. Placing complete reliance on the evidence of PW1, and other material on record, the High Court reversed the acquittal and convicted both the appellants u/s 302/34 of the Penal Code and sentenced each one of them to undergo life imprisonment. Hence this appeal.

The appellants submitted that the High Court while interfering with finding of facts recorded by the Trial Court did not follow the principles to be followed in an appeal from the order of acquittal; that the sole eye witness PW1 was neither accompanying the deceased at the time of occurrence nor was he present at the time of occurrence but a got up witness

A and, therefore, the conviction of the appellants could not be founded on the testimony of PW1.

Dismissing the appeal, this Court

B HELD : 1. The evidence of a witness deposing about a fact has to be appreciated in a realistic manner having due regard to all the surrounding facts and circumstances prevailing at or about the time of occurrence of an incident. Some contradictions and omissions even in the evidence of a witness who was actually present and had seen the occurrence are bound to occur even in the natural course. It is a sound rule to be observed that
C where the facts stated by an eye-witness substantially conform to and are consistent on material points from the facts stated earlier to the police either in FIR or case diary statements and are also consistent in all material details as well as on vital points there would be no justification or any valid reason for the Court to view his evidence with suspicion or
D cast any doubt on such evidence. In the present case as the solitary witness PW1 was a wholly reliable witness and his evidence in itself, without any further corroboration was enough to sustain the conviction of the two appellants for the crime they were charged with, but the evidence of the sole eye-witness found corroboration on material aspects from the evidence of PW6, PW8, PW10, PW11, PW12 and the Head Constable PW18.
E Thus the corroboration was also not lacking in the present case and there was hardly any ground or any possibility of taking the view which was unfortunately taken by the Trial Judge. The Trial Court clearly fell in serious error in rejecting the truthful version made by the sole eye-witness PW1 whose evidence did not suffer from any infirmities, much less the
F unwarranted criticism made by the Trial Court. The High Court was therefore, in exercise of its powers under Sections 378 and 386 Criminal Procedure Code, fully justified to reverse the erroneous findings recorded by the Trial Court. [22-C-H; 23-A]

G 2.1. Different persons react differently in different situations and circumstances. No hard and fast rule of universal application with regard to the reaction of a person in a given circumstance can be laid down. Most often when a person happens to see or come across a gruesome and cruel act being perpetrated within his sight then there is a possibility that he may lose his equilibrium and balance of mind and therefore he may remain
H a silent spectator till he is able to reconcile himself and then react in his

own way. [17-E-F]

2.2. In the present case on perusal of the evidence of the sole eye-witness, it was revealed that he did depose that when he saw the appellants got down from the scooter with open knives he was frightened and therefore, kept himself away witnessing the incident by standing at the extreme and remained thinking as what to do. He rushed to a nearby shop to phone for the ambulance and inform the police. The presence of PW1 at the place of occurrence and his being in the company of the deceased was established by several circumstances as pointed out by the High Court. The witness had sufficient opportunity and time to see and identify the appellants and, therefore, he could not have made any mistake as to the identity of the assailants. The witness was a matured person and a Government Contractor. He was expected to possess a fair knowledge and understanding and not expected to falter in recognizing persons whom he had seen in broad-day light. Presence of the two appellants in the hospital was conclusively established by reliable evidence of PW10 as well as by the admission of this fact by the appellants themselves. Presence of PW1 in the hospital at the relevant time could not be doubted at all. The prosecution had examined one PW6, who had a tea shop and a telephone. He deposed that on the day of occurrence one person made two phones, one to the police station and the other to the fire brigade saying that two persons were injured with knife and, therefore, to send ambulance immediately. The witness did not know as to what was the name of the person who made the phone calls but after the telephonic message the ambulance car did arrive at the place of occurrence and the victims were taken to the hospital in the same ambulance and the complainant also accompanied the injured to the hospital. [pp 18-A-H; 19-A-H; 20-A; 21-C-E; 22-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 700 of 1980.

From the Judgment and Order dated 4/5.9.80 of the Gujarat High Court in CrI. A. No. 1072 of 1978.

B.K. Mehta, Ms. Reema Bhandari and K.V. Sreekumar for the Appellant.

R.N. Sachthey, Anip Sachthey and S.K. Sabharwal for the Respondent.

A The Judgment of the Court was delivered by

FAIZAN UDDIN, J. This appeal by special leave has been directed by the two appellants Marwadi Kishor Parmanand and Marwadi Mangal Dhulji against the judgment of the High Court of Gujarat whereby the High Court has converted the acquittal of the appellants herein recorded by the Additional Sessions Judge, Junagarh into a conviction under Section 302/34 of the Indian Penal Code and sentenced them to life imprisonment.

The complainant Ranchhodbhai Bhagwanand. That the relevant time, was a Government Contractor and the two deceased persons, namely Punaram and Sohanlal who were known to him were also engaged in the contract business. The deceased Punaram and Sohanlal were interested in securing the contract from Saurashtra Chemicals for removal of dust (Grit) and in that connection they had approached the complainant Ranchhodbhai to ascertain whether he too was interested in the same. It is said that a sum of Rs. 25,000/- was deposited by the deceased persons through a Bank draft with Saurashtra Chemicals but no final deal was struck in their favour till 11.8.77. The complainant accompanied with the two deceased persons came to Porbandar from Junagarh on 11.8.77 at about 11.00 AM and met O.P. Makkar, PW8 an officer of Saurashtra Chemicals in his office. There they discussed with him the terms and conditions but the contract was still not finalised. It is said that a car belonging to the old contractor whose contract work with Saurashtra Chemicals was going on, was parked outside the gate of the company, but there was not one in the car. The complainant Ranchhodbhai along with the two deceased Punaram and Sohanlal left Saurashtra Chemicals at about 12.30 PM and proceeded on a Rickshaw to Sudama Chowk, and from there they proceeded on foot towards Ghayal Lodge to take meals there. While so proceeding towards Ghayal Lodge they passed from the Liberty Talkies road to a narrow Lane and from there to a broader lane at the end of which there was a road. According to the complainant when they came out of the broader lane, the two appellants came on a scooter from opposite direction which they stopped and parked near them. It is alleged that both the appellants got down from the scooter with open knives in their hands and rushed towards Punaram and Sohanlal. One of the appellants held Punaram and another held Sohanlal and asked them as to why they were coming in their way. The deceased Punaram and Sohanlal offered to withdraw from the contract if the appellants were interested in the same. It is said that the contract in

which the deceased were interested was given to Mukesh & Co. and one Ram Gopal had an interest in the same and since the appellants were not only related to Ram Gopal, but they were themselves partners in Mukesh & Co. and, therefore, they were not happy with the deceased who were trying to obtain the said contract. A

The complainant being frightened with the attitude of the appellants with open knives, he stood at a distance at the corner of the broader lane watching them with fear and anxiety. It is said that though the deceased were prepared to withdraw themselves from the said deal yet one of the appellants gave one knife blow to Punaram and another appellant gave one knife blow to Sohanlal. The complainant, Ranchhodbhai, looking to the incident of assault by knife, became nervous and ran away from there and came to a nearby lane. Soon after he heard that the appellants started the scooter and went away. The complainant, Ranchhodbhai again returned to the lane where the incident had occurred. He noticed that though there were blood stains in the lane but Punaram and Sohanlal were not there and, therefore, he proceeded ahead and found Punaram lying unconscious at the corner of the byelane. He rushed to a nearby tea shop and made a telephonic call for ambulance and also informed the police station of the incident. Thereafter he proceeded further and found that Sohanlal was lying dead on the Liberty Talkies road. According to the complainant the ambulance arrived after about an hour and injured Sohanlal and Punaram were taken to hospital by the complainant. The Medical Officer who attended the two declared them dead. It is said that in the meanwhile the Police Inspector, Dwivedi, PW20 also arrived in the hospital where the complainant Ranchhodbhai (PW1) gave First Information Report at 3.30 PM Marked 'A' which was registered in the Police Station at about 3.45 PM. B
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It is also the prosecution case that the two appellants also reached the police station in injured condition and they were also taken in the same hospital by a constable in a van at or about the time when the report of the complainant Ranchhodbhai was being recorded in the hospital. After the report of Ranchhodbhai was recorded and sent to the police station for registration, the same Police Officer also recorded the FIR alleged to have been given by the appellant No.2, Mangal Dhulji which was also registered at the police station at about 4.00 PM. G
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A After the preparation of the Inquest Reports of the two dead bodies, post-mortem was conducted. Dr. H.V. Avasia, PW11 performed an autopsy over the dead body of Punaram on the day of occurrence itself between 5.00 to 6.00 PM who as per his post-mortem report found an incised wound on the left Supraclavicular region one inch above from the mid of left clavicle on the apex of the left lung traverse in position. The injury was anti-mortem in nature and sufficient in the ordinary course of nature to cause death. Dr. H.N. Joshi, PW12 performed an autopsy over the dead body of Sohanlal on the day of occurrence itself between 5.30 to 7.00 PM and as per his report he found 1 oblique stab wound cavity deep on left lateral side of vertebral column between 8th and 9th, inter-costal space left side Plurs of left lung was cut and left lung had collapsed. The injury was ante-mortem in nature. The cause of death was due to shock and haemorrhage and injury to vital organ like lung.

D During the course of investigation wall scrapings and blood stained earth from the lane as well as from the Liberty Talkies road was lifted. The scooter on which the appellants are said to have arrived at the place of occurrence was also seized from appellant No. 1, Kishor. The clothes of the appellant, Mangal Dhulji collectively marked 'F' and his wrist watch marked 'G' were also seized. On the disclosure statement, said to have been made by the appellant Mangal Dhulji, a blood stained knife article 'H' was also seized at his instance. The blood stained clothes collectively marked 'I' of the appellant, Kishor and his blood stained watch marked 'J' were also seized. On a disclosure statement said to have been made by the appellant, Kishor a knife article 'K' was also seized at his instance. All these articles were sent to the Chemical Examiner, Ahmedabad. The Chemical Examiner found blood on the earth lifted from the place of occurrence and well scrapings as well as on the two knives seized from the appellants and also on the Golden dial wrist watch. The Serologist found human blood on the wall scrapings, earth, wrist watch and knives and also on some of the clothes of the appellants.

G A Site Plan Ext. 32 was also prepared by the Maintenance Surveyor, I.M. Joshi, PW3 in which the lane where the incident is said to have occurred and the two places where the dead bodies of Sohanlal and Punaram were found lying are shown as well as the places where blood was found. In the cite plan Ext. 32, blood has been shown to be present at the entrance of the lane as well as near Kalyan Press at Liberty Road as well

as near garage belonging to Govind Meehami (PW 2).

At the trial the two appellants adjured their guilt and pleaded false implication. The appellants denied that they were partners in Mukesh & Co. or that the two deceased persons were negotiating for the said contract. They also denied having met the deceased persons on the day of occurrence in the lane where the incident is said to have occurred. They also denied the alleged entries in the police station diary regarding their appearance in the police station or that they were taken from the Police Station to the Hospital by the Constable Prabhashanker Tulsī, PW19. Though appellant No.1, Kishor admitted to have gone to the hospital at 4.00 PM but he stated that he was discharged same day after dressing. Appellant No.2, Mangal Dhulji also admitted to have been examined by the Medical Officer in the hospital same day at 2.35 PM in respect of an injury which according to him was sustained by him on account of his scuffle with appellant No.1. Both the appellants denied the disclosure statement and the seizure of knives at their instance. The appellant No.1 also denied the seizure of scooter from him as well as the seizure of mat and right side grip which are said to be stained with blood. Both the appellants took the plea that they had a quarrel *inter se* in which they had sustained the injuries.

The learned Additional Sessions Judge on scrutiny of the evidence of the sole eye-witness Ranchhodbhai, PW1 disbelieved his testimony on account of various infirmities pointed out by him in his judgment and, therefore, recorded the order of acquittal of both the appellants. However, the High Court on reappraisal and close scrutiny of the evidence of the said eye-witness recorded the conclusion that testimony of the above named sole eye-witness does not suffer from any infirmities as pointed out by the trial and took the view that slight variations in his statement, on immaterial aspects do not make his testimony incredible. Placing complete reliance on the evidence of Ranchhodbhai, PW 1, and other material on record, the High Court reversed the acquittal and convicted both the appellants under Section 302/34 of the Penal Code and sentenced each one of them to undergo life imprisonment against which this appeal has been directed.

Learned counsel for the appellants first submitted that though the High Court while interfering with the finding of facts recorded by the Trial Court sounded a note of caution that they are fully conscious of the fact

A that in an appeal from the order of acquittal the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against the order of conviction, yet as a rule of prudence it should always give proper weight and consideration to the views of the Trial Court as to the credibility of the witness; the presumption of innocence in favour of the accused; the right of the accused to the benefit of any doubt and the slowness to the appellate Court in disturbing a finding of fact arrived at by the Trial Judge who had the advantage of seeing the witness, but the High Court in fact practically did not follow the said principles which are well settled by a series of decisions of this Court. The learned counsel for the appellants denounced the reasoning and the view taken by the High Court on the evidence of the sole witness and strenuously urged that the sole eye-witness Ranchhodbhai, PW 1 was neither accompanying the deceased at the time of occurrence nor was he present at the time of occurrence and he is not an eye-witness to the occurrence but a got up witness which is evident from various infirmities as pointed out by the Trial Court and, therefore, the conviction of the appellants cannot be founded on the testimony of Ranchhodbhai, PW 1 who is said to be the only eye-witness.

E The law relating to the value of the sole eye-witness was settled by this Court as far back as 1957 in the case of *V. Thevar v. The State of Madras*, AIR (1957) SC 614, in which this Court in paragraph 11 of the Report observed as under :

F "The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in S.134 quoted above. The section enshrines the well recognised maxim that 'Evidence has to be weighed had not counted.' Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the

circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact."

In the said report this Court further pointed out that generally speaking oral testimony may be classified into three categories, namely (1) Wholly reliable (2) Wholly unreliable, and (3) Neither wholly reliable nor wholly unreliable. So far as the *first category* of proof is concerned, the Courts have no difficulty in coming to its conclusion either way i.e. to say it may convict or may acquit on the testimony of the single witness, if his testimony is found to be above approach or suspicion of interestedness, incompetence or subordination. In the case of *second category* of the witness, the Court has equally no difficulty in coming to the conclusion. But in the *third category* of cases, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. Most often there are situations where only a single person is available to give evidence in respect of a disputed fact. Naturally in such a situation the Court has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. It is no doubt true that in the present case the prosecution case rests on the testimony of the sole eye-witness, namely, Ranchhodbhai, PW 1 and, therefore, we shall examine his testimony with greater care and caution and in accordance with the principles enunciated for appreciation of the evidence of single witness with a view to see whether the High Court while reversing the order of acquittal has acted within the judicial constraints and the principles stated above.

Before examining the testimony of the sole eye-witness Ranchhod-

A bhai, PW 1, and other evidence and relevant material on record, we shall prefer to look to the infirmities noticed by the Trial Court and other grounds on the basis of which his testimony has been rejected by the Trial Court while recording the order acquittal.

B At the very outset we may mention that an argument was advanced before the Trial Court on behalf of the accused/appellants that the place of occurrence was not the same as deposed by the prosecution witnesses, particularly by the alleged sole eye-witness Ranchhodbhai, PW 1, but this argument was repelled and rejected by the Trial Court itself by holding that there was no substance in the same in view of the fact that blood stains were found on Liberty Talkies Road as well as in the Lane. We also find ourselves in full agreement to this part of the finding as confirmed by the High Court also.

D However, the learned Trial Judge recorded the findings that the evidence of Makkar, PW 8, the Assistant Engineer of Saurashtra Chemicals did not establish the presence of Ranchhodbhai, PW 1 along with the two deceased persons who came to him to negotiate the contract as Shri Makker deposed about the presence of a third person whom he did not know at that time but learnt subsequently that he was the complainant belonging to Junagarh but in his statement before police recorded after 2-3 days he did not state that he knew the name of Ranchhodbhai and that he was of Junagarh; the identity of the assailants could not be fixed as Ranchhodbhai, PW 1 did not know the accused appellants since before and he learnt about their names in the hospital between 3.30 to 4.00 PM but could not identify in the Court as to who was Kishor and who was Mangal; the complainant Ranchhodbhai, PW 1 had a very short span of time to observe the appellants and, therefore, it was not possible for him to fix up definitely that the appellants were the assailants. The witness Ranchhodbhai is said to have seen the accused appellants in the hospital but he did not state the said fact in his Fard-beyan recorded in the hospital which was treated as FIR. The alleged sole eye-witness Ranchhodbhai received no injuries and the accused appellants also did not attack him which fact supports the possibility that he may not have detained himself at the place of occurrence to see the incident; regarding the conduct of the sole eye-witness Ranchhodbhai the Trial Court observed that he did not shout for help nor did he tell to anyone before giving FIR at the hospital that he had seen the incident himself. The learned Trial Judge, therefore,

treated this story as unnatural. The Trial Court proceed to observe that the statement of complainant Ranchhodbhai that he saw the accused appellants in the hospital is also improbable in view of the evidence of Dr. Nathani, PW 10 who examined the accused No. 2, Mangal at 2.35 PM in the hospital and the appellant No. 1, Kishor at 4.00 PM while both of them had not come to the hospital together; the evidence of Constable Prabhaskar Tulsi, PW19 cannot be accepted that he had taken both the accused appellants from police station in the Government vehicle without any police yadi (Memo) to the hospital; and, lastly, the Trial Court observed that in view of the evidence of Head Constable, Moolchand Hiranand, PW 18 that he did not receive any telephonic call from Ranchhodbhai about the incident and in the absence of entry in the police station diary to support the version of Ranchhodbhai that he had phoned the police station and Fire Brigade about the occurrence, his statement is falsified. On these findings the learned Trial Judge took the view that Ranchhodbhai, PW 1 cannot be accepted as an eye-witness and, as such, no conviction can be founded on his evidence and, therefore, recorded the order of acquittal of the appellants from the offences they were charged with. As against this the High Court took a contrary view by reversing all the aforesaid findings and conclusion recorded by the Trial Court and took a definite view that the evidence of Ranchhodbhai, PW 1 is fully consistent, free from all infirmities and embellishment and treating him as a truthful witness placed him in the category of wholly reliable witness and, therefore, reversed the order of acquittal and recorded the finding of guilt against the appellants.

The question for our consideration is whether the High Court on reappraisal of the testimony of the sole eye-witness and other material on record has acted within the constraints and the principles laid down by this Court with regard to the reassessment of the evidence and was justified in interfering with the order of acquittal.

Learned counsel for parties were heard quite at length. Having regard to the settled principles of law and the dictum with regard to the powers of the High Court to deal with an appeal from an order of acquittal, we have critically examined the evidence of the alleged eye-witness Ranchhodbhai, PW 1, and other witnesses together with all the relevant material on record and have also carefully perused the judgments of the Trial Court and the High Court. We are of the firm opinion that the

A learned Trial Judge rejected the evidence on misplaced considerations as well as on flimsy grounds and took entirely an unreasonable view resulting into patent miscarriage of justice which has been demonstrated by the High Court in its well reasoned judgment and which would be evident from the discussion in the paras hereafter. We shall examine the material evidence minutely and closely to point out that the view taken by the High Court on reappraisal of the evidence is the only reasonable and possible view.

But before we launch our scrutiny of the evidence of occurrence on record we may look to the medical evidence, as to the nature of injuries and cause of death of the two victims, though the homicidal deaths of Punaram and Sohanlal are not in dispute. Dr. Avasia, PW 11, at the relevant time was Medical Officer in Bhavsinhji hospital at Porbandar who conducted an autopsy over the dead body of Punaram on 11.8.77. The dead body was received by the Doctor at 4.45 PM with a police yadi. The post-mortem commenced at 5.00 PM and completed at 6.00 PM and as per post mortem report and the evidence of Dr. Avasia, PW 11, there was an incised wound on the left superclavicular region which had also cut the left lung. The injury was ante-mortem in nature and the cause of death was on account of haemorrhage due to profused bleeding. The injury in the opinion of the doctor was sufficient in the ordinary course of nature to cause the death of the victim. The dead body of Sohanlal was also received in the same hospital at 5.25 PM by Dr. Joshi, PW 12 who performed an autopsy at 5.30 PM and completed the same at 7.00 PM. As per post-mortem report and statement of Dr. Joshi there was one stab wound 2" x 1/2" cavity deep on the left lateral side of vertebral column between 8th and 9th inter-costal space and had cut the plura of the left lung which had collapsed. This injury was ante-mortem in nature and in the opinion of the doctor it was sufficient in the ordinary course of nature to cause death and the same could have been caused by a weapon like knife.

The medical evidence discussed above established beyond doubt that the two victims had died the homicidal death on the date of occurrence itself.

Now we shall advert to the material evidence on record. Ranchhodhai, PW 1, the solitary witness of the incident is resident of Porbandar. At the relevant time he was a Government Contractor and the deceased Punaram was also working as a contractor who belonged to

Rajasthan but was living at Malia for the last 10 to 15 years and was known to Ranchhodbhai since a number of years and had also worked with the deceased Punaram in the years 1973-74. The deceased Sohanlal was known to this witness Ranchhodbhai since about three months prior to the occurrence. Ranchhodbhai, PW 1 deposed that about three months prior to the occurrence both the deceased Punaram and Sohanlal had approached him saying that they wanted to take the contract of lime dust of Saurashtra Syndicate, Porbandar. Both the deceased asked him to accompany them and see by himself. Ranchhodbhai then went along with them to Porbandar and came back but without obtaining the contract. About three-four days prior to the occurrence the two deceased persons again approached Ranchhodbhai in his shop at Junagarh and told him that they had finalised the work of lime dust with Saurashtra Syndicate. The deceased Punaram, therefore, went to *Dhari* for collecting the dues of his bill and Sohanlal stayed at Junagarh for a day and then went to his place Malia. A day before the occurrence deceased Punaram again approached Ranchhodbhai and told him that he had taken out a Demand Draft (Ext. 49) for a sum of Rs. 25000 for payment to the Saurashtra Chemicals.

Ranchhodbhai, PW 1 further deposed that on 11.8.77, the day of occurrence, he along with the deceased Punaram and Sohanlal left Junagarh for Porbandar by bus at 6.00 AM and met Shri Makkar, PW 8 who was a Civil Engineer in Saurashtra Chemicals and discussed with him the terms of contract but the contract could not be finalised. Ranchhodbhai and the two deceased persons left Saurashtra Chemicals at about 12.30 in the noon and saw a motorcar parked outside the factory gate belonging to the then contractor of Saurashtra Chemicals. Ranchhodbhai goes on the state that at the factory gate they hired a Rickshaw for taking them up to Sudama Chowk. From Sudama Chowk they proceeded on foot to Ghayal lodge through Liberty Talkies road, taking their lunch there. They enquired from a person the location of Ghayal lodge. He guided them to the road leading to the said lodge. All the three persons passed through a narrow lane, arrived at a big road and at that point, as stated by Ranchhodbhai, PW 1, two persons arrived on a scooter and rushed towards them with open knives. One of them caught hold Punaram while the other caught hold Sohanlal. Ranchhodbhai identified the appellants in the Court room to be those two persons who arrived on the scooter with open knives as according to him he had seen these two appellants again in the Government

A dispensary also soon after the occurrence between 3.30 to 4.00 PM.

Ranchhodbhai, PW 1 further deposed that after the appellants caught hold the deceased Punaram and Sohanlal with open knives, the appellant questioned them as to why they were obstructing in their contract with Saurashtra Chemicals. When this dialogue was going on between the deceased and the appellants he got frightened and, therefore, ran away to some distance and stood at the corner of the lane watching them from there. Then the man who had caught Punaram gave a knife blow to him and the other man who had caught Sohanlal gave a knife blow to him also while the two victims were shouting as to why they are being assaulted. Ranchhodbhai further deposed that he then came on the main road and at that time he heard that the accused/appellants started the scooter and then saw the assailants going away on the motor cycle. After the appellants went away he came back to the place wherefrom he had seen the occurrence. He found blood in the narrow lane but Punaram and Sohanlal were not there. He went to the narrow lane and from there reached to the Liberty Talkies road. He saw Punaram lying unconscious in a lane connecting the Liberty Talkies road. He was bleeding from his shoulder. He then rushed to a nearby tea-shop wherefrom he phoned for the ambulance and also informed the police about the occurrence. Thereafter he saw a crowd of some persons at the nearby tea shop. He also went there and found that Sohanlal was lying dead on the Liberty road.

After about an hour the ambulance arrived and Sohanlal and Punaram both were removed to the hospital. Ranchhodbhai deposed that he accompanied them in the ambulance to the hospital where they were examined and declared dead by the doctor. In the meanwhile the Police Inspector, Dwivedi, PW 20 arrived in the hospital and started writing his report. Ranchhodbhai deposed that while he was dictating the complaint to the Police Inspector the two appellants also came to the same hospital for treatment of their injuries. Ranchhodbhai stated that he had told the Police Inspector Dwivedi that these two accused were the assailants of Punaram and Sohanlal. In cross-examination Ranchhodbhai stated that after the appellants had caught hold the victims he remained standing there for 2 to 3 minutes and thereafter he ran away and came on the road which has a dead end which is just near the Liberty road. He further stated that he had informed the police that two murders had taken place and that they should come immediately but no reply was received from the police to the

effect whether they had taken any notice to the same or not. He further deposed that from the dispensary staff he had heard the names of the appellants as Kishore and Mangal when the injuries of the appellants were being dressed and that he had seen the accused persons in the dispensary after the police had come and he was dictating his complaint to the police approximately at about 3.45 PM.

In the aforesaid statement of the solitary eye-witness, namely, Ranchhodbhai, PW 1 we do not find any infirmity or anything unusual features from which it may be inferred that the witness is a got up witness and not a truthful person.

However, the learned Trial Judge found various faults in his evidence which we have already pointed out earlier but on a close scrutiny of his evidence we find that the grounds considered by the Trial Court in rejecting his evidence are totally unfounded and unsupportable from the evidence and material on record and the learned Trial Judge took a perverse view of his evidence. One of the reasons given by the Trial Court for rejecting the evidence of Ranchhodbhai is that at the time of occurrence his conduct was not natural inasmuch as that after he saw that his two companions were being given knife blows he neither shouted for help nor after the occurrence told about the incident to anyone before making the report to the police in the hospital. *In our opinion the learned Trial Judge committed a serious error in rejecting his evidence on this account totally ignoring the fact that different persons react differently in different situations and circumstances. No hard and fast rule of universal application with regard to the reaction of a person in a given circumstance can be laid down. Most often when a person happen to see or come across a gruesome and cruel act being perpetrated within his sight then there is a possibility that he may lose his equilibrium and balance of mind and therefore he may remain as a silent spectator till he is able to reconcile himself and then react in his own way. There may be a person who may react by shouting for help while others may even choose to quietly slip away from the place of occurrence giving an impression as if they have seen nothing with a view to avoid their involvement, in any way, with the occurrence. Yet, there may be persons who may be so daring, hazardous and chivalrous enough to come forward unhesitatingly and jump in the fray at the peril of their own life with a zeal to scare away the assailants and save the victim from further assailants. Thus, it is common knowledge that different persons react differently and no*

A hard and fast rule as to their behaviour can precisely be laid down in a defined way. in the present case on perusal of the evidence of the sole eye-witness Ranchhodbhai we find that he did depose that when he saw the appellants got down from the scooter with open knives he was frightened and, therefore, kept himself away witnessing the incident by standing at the extreme end of the lane and for some time he was confused and remained thinking as what to do. Not only this but he rushed to a nearby shop to phone for the ambulance and inform the police. In this regard the approach of the learned Trial Judge in appreciating the evidence of the sole eye-witness, Ranchhodbhai, PW 1 is wholly erroneous and unrealistic. The High Court was, therefore, fully justified in rejecting this ground.

The other reason stated by the learned Trial Judge in rejecting the evidence of Ranchhodbhai, PW 1 is that the evidence of Shri Makkar, PW 8 Assistant Engineer of Saurashtra Chemicals did not establish the presence of Ranchhodbhai, PW 1 along with the two deceased persons who had come to him on the day of occurrence to negotiate the contract and since there is no other evidence to show the presence of PW 1 at the place of occurrence he cannot be accepted as a witness to the incident. In our opinion the reasoning of the learned Sessions Judge is faulty and perverse totally contrary to the facts on record. We have examined the evidence of Shri Makkar, PW 8 who has deposed that the contract was given to Mukesh & Co. for the year preceding to the year of occurrence and other work was done by the deceased Sohanlal in the name of Santosh & Co. He also deposed that negotiations with the deceased Sohanlal and Punaram were also going on. He stated that the two deceased persons had come to his office on the day of occurrence at about 10.30 AM along with a third person from Junagarh. Surprisingly enough the learned Trial Judge treated this evidence as formal in character and rejected the evidence of Shri Makkar, PW 8 on the ground that in his police statement he did not disclose the name of the witness Ranchhodbhai to be the third person accompanying the deceased persons. The reasoning is extremely erroneous and unsustainable because the witness Makkar is said to have stated in his police statement that the deceased were accompanied with a third person in his office and did not disclose that the third person was Ranchhodbhai. But the mere fact that Shri Makkar did not name of the third person, who was a total stranger for him, accompanying the two deceased persons, will not render his testimony as untruthful or unreliable. The presence of Ranchhodbhai at the place of occurrence and his being in the company of

the deceased is established by several circumstances as pointed out by the High Court and we do not deem it necessary to repeat them here over again since we agree with the High Courts reasoning and finding. A

Yet another reason for rejecting the evidence of sole eye-witness Ranchhodbhai, PW 1 is that the two appellants were stranger to him and the witness having seen them within the short span of time only during the course of occurrence it was not possible for him to say definitely that the appellants were assailants. This finding is again devoid of any substance for the reason that according to the evidence of Ranchhodbhai, PW 1, he watched the appellants for 2-3 minutes discussing with the two deceased as to why they were obstructing in their contract and thus had sufficient opportunity to see the appellants. Secondly, soon after the occurrence he again saw the appellants in the same hospital, where the two deceased were taken between 3.30 to 4.00 PM where the appellants had also come for the dressing of their injuries. The presence of the two appellants in the same hospital is established beyond all doubts by the evidence of Dr. Nathani, PW 10. In these circumstances we find that the witness Ranchhodbhai had sufficient opportunity and time to see and identify the appellants and, therefore, he could not have made any mistake as to the identity of the assailants. The witness, Ranchhodbhai is a matured person and a Government Contractor. He is expected to possess a fair knowledge and understanding and not expected to falter in recognizing persons whom he had seen in broad-day light. The fact that the witness Ranchhodbhai had seen the accused appellants in the hospital but did not state that fact in his Fard-beyan which was recorded in the hospital is not of much consequence as the presence of the two appellants in the hospital is conclusively established by reliable evidence of Dr. Nathani PW 10 as well as by the admission of this fact by the appellants themselves. B C D E F

Another ground taken by the learned Trial Judge in rejecting the evidence of Ranchhodbhai is the fact that it was quite improbable for the witness Ranchhodbhai to have seen the appellants together in the hospital as according to the evidence of Dr. Nathani, PW 10, the accused appellant No. 2, Mangal was examined at 2.35 PM while the accused appellant No. 1, Kishor was examined by him at 4.00 PM and that both of them had not come to the hospital together. If we may say so, this reasoning is absolutely faulty as the learned Trial Judge has erred in not properly appreciating the evidence in this behalf. It may be stated that the presence of Ranchhodbhai in the hospital at the relevant time cannot be doubted at all. Similarly the G H

A presence of the two appellants in the hospital also at or about the same time cannot be doubted. Constable Prabhashankar, PW 19 has clearly
B these two persons had injuries said to be sustained in a scuffle between them. One person had injury on the thumb and the blood was oozing out and another person had an ordinary injury. On the direction of the Station House Officer he took both the appellants to the hospital for treatment but without any Yadi (Memo) being given by the Police Inspector. Dr. Nathani,
C by Police Constable Prabhashankar, PW 19. The accused appellant No. 2 Mangal was examined by him at 2.35 PM and found an incised wound over the right palm lateral aspect. The injury was fresh and bleeding caused by a sharp cutting instrument like a knife. Dr. Nathani stated that the accused No. 2 Mangal was admitted as an indoor patient and he was
D discharged on 12.8.77 at 1.00 PM. This shows that appellant Mangal was in the hospital right from 2.35 PM till 1.00 PM on 12.8.77. Dr. Nathani, PW 10 examined appellant No. 1 Kishor also same day at about 4.00 PM who had one incised muscle deep wound on the rest of left thumb. A perusal of the Fard-beyan (FIR) given by Ranchhodhbhai, PW 1 in the hospital will
E go to show that it was recorded between 3.30 to 3.45 PM on 11.8.77. The evidence of Constable Prabhashankar, PW 19 as discussed above goes to show that he took both the accused/appellants to the hospital for treatment of their injuries. It appears that since the accused Mangal had a bit serious injury he was examined first and admitted as an indoor patient, the turn of
F examining accused No. 1, Kishor may have come later at about 4.00 PM. But the mere fact that he was examined at 4.00 PM will not lead to an inference that he reached the hospital only at 4.00 PM and not alongwith the accused No. 1 Kishor as deposed by Prabhashankar, PW 19. This apart the question whether both the appellants came together to the hospital is not very much material but there is positive evidence that they were in the
G hospital during the period the complaint of Ranchhodhbhai was being recorded and, therefore, the reasoning of the learned Trial Judge that Ranchhodhbhai would not have seen the appellants in the hospital together is absolutely incorrect and on that account the evidence of Ranchhodhbhai cannot be rejected as doubtful within any stretch of imagination.

H

There is yet another ground which made the learned Sessions Judge to disbelieve the testimony of Ranchhodbhai and it is this that he did not find in the evidence of the Head Constable Moolchand Hiranand, PW 18 who was on duty in the police station at the relevant time, that he received any telephonic message from Ranchhodbhai about the incident and there was no entry to this effect in the police station diary to support the version of Ranchhodbhai that he had phoned to the police station and fire brigade. This finding of the learned Trial Judge, like all other findings is also based on wholly wrong approach to the case and total mis-appreciation of the evidence on record which would be demonstrated by us in the para hereinafter.

The prosecution had examined one Jayantilal, PW 6 who had a tea shop on the Liberty road and has a telephone bearing No. 408. he deposed that on the day of occurrence at about 1.30 or 2.00 PM when he was present in his shop, one person came and said he wanted to phone. He allowed him to telephone and that person made two phones, one to the police station and the other to the fire brigade saying that two persons were injured with knife and, therefore, send ambulance immediately. He further deposed that the person who came to phone and made two phone calls belonged to Junagarh. A criticism was advanced that Constable Prabhaskar, PW 19 who was on duty in Porbandar City Police Station did not depose that any such telephonic message was conveyed to the police station and the station diary of Porbandar dated 11.8.77 Ext. 64 only shows a telephone message having been conveyed at 2.10 PM by Gopalbhai Ranchhodbhai from telephone No. 622 of Gujarat Cycle Stores near Liberty Talkies that two persons were lying in a pool of blood and were unconscious. This evidence was sought to be capitalised by the learned counsel for the appellants by contending that Ranchhodbhai did not phone at all either to the police station or for the ambulance as he himself does not make any mention for having phoned from phone No. 622. We are afraid, this argument has no substance. In fact the Constable Prabhaskar was not questioned at all either in examination-in-chief or in cross-examination about Ranchhodbhai having phoned from phone No. 408 or 622. However, the Head Constable Moolchand, PW 18 who made the entry Ext. 64 in the police station diary deposed that he had received the phone from phone No 622 of Gujarat Cycle Store, Liberty Road, Porbandar. The question whether the telephonic message was conveyed from phone No. 408 or 622 is not so much material as the message itself

A and in view of the evidence of Jayantilal Pandey, PW 6 and Head Constable Moolchand, PW 18 it can hardly be said that no telephonic message was conveyed by Ranchhodbhai, PW 1. It is true that the witness Jayantilal did not know as to what was the name of the person who made the phone calls but in the context of what has been discussed above that person could be
B no other than Ranchhodbhai PW 1, himself. This inference is fortified from the fact that after the telephonic message the ambulance car did arrive at the place of occurrence and the victims were taken to the hospital in the same ambulance and the complainant Ranchhodbhai also accompanied the injured to the hospital. Not only this but police also arrived in the hospital as in the mean time a message from the hospital was also sent to the police
C station about the two injured persons.

The evidence of a witness deposing about a fact has to be appreciated in a realistic manner having due regard to all the surrounding facts and circumstances prevailing at or about the time of occurrence of
D an incident. Some contradictions and omissions even in the evidence of a witness who was actually present and had seen the occurrence are bound to occur even in the natural course. It is a sound rule to be observed that where the facts stated by an eye-witness substantially conform to and are consistent on material points from the facts stated earlier to the police either in FIR or case diary statements and are also consistent in all material
E details as well as on vital points there would be no justification or any valid reason for the Court to view his evidence with suspicion or cast any doubt on such evidence. In the present case as discussed above we find that the solitary witness Ranchhodbhai, PW 1 is a wholly reliable witness and his evidence in itself, without any further corroboration is enough to sustain
F the conviction of the two appellants for the crime they are charged with, but we find that the evidence of the sole eye-witness Ranchhodbhai finds corroboration on material aspects from the evidence of Jayantilal PW 6, Makker PW 8, Dr. Nathani PW 10, Dr. Avasia PW 11, Dr. Joshi PW 12 and the Head Constable Moolchand PW 18. Thus the corroboration is also not lacking in the present case and there was hardly any ground or any
G possibility of taking the view which is unfortunately taken by the learned Trial Judge. In our considered opinion the Trial Court clearly fell in serious error in rejecting the truthful version made by the sole eye-witness PW 1 whose evidence does not suffer from any infirmities, muchless the unwarranted criticism made by the Trial Court. The High Court was therefore,
H in exercise of its powers under Sections 378 and 386, Criminal Procedure

Code, fully justified to reverse the erroneous findings recorded by the Trial Court. We find ourselves wholly in agreement with the view taken by the High Court and the conclusions recorded by it. Consequently the appeal deserves to be dismissed. A

In the result the appeal fails and is hereby dismissed. The conviction of the two appellants as recorded by the High Court with sentences thereunder is maintained. B

R.A.