

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 800 OF 2018

Ramnayan Ramsumer Vishwakarma

Age : 33 years,

R/o. Post Khupari, Tal – Wada, Dist–Palghar

Also at Sethval, Police Thane, Ranikasraya,

Tal – Azamgadh, Dist – Uttar Pradesh.

(Presently in Amravati Central Prison, Amravati)

... Appellant

V/s.

1. The State of Maharashtra

Through Sr. PI of Wada Police Station,

Wada, Dist-Palghar.

... Respondent

Mr. Sayaji D. Nangre, Appointed by Legal Aid, Advocate for the Appellant.
Mr. Shreekant V. Gavand, Additional Public Prosecutor for the State.

CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 25th SEPTEMBER 2025.

PRONOUNCED ON : 28th JULY 2026.

JUDGMENT [PER RANJITSINHA RAJA BHONSALE, J] :-

1) By the present Appeal, the Appellant seeks to challenge the Judgment and Order of conviction dated 18th August, 2017, passed by the learned Additional Sessions Judge, Thane in Session Case No. 462/2015, whereby the Appellant has been convicted for an offence punishable under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer life

imprisonment and to pay a fine of Rs.5,000/-.In default of payment of fine, the Appellant is directed to suffer simple imprisonment for a period of two months.

2) Briefly the prosecution case alleged, is as under:-

2.1) Appellant, Ramnayan R. Vishwakarma, a resident of village Khupari, Tal-Wada, Dist-Palghar, was working in Sun Metallic and Alois Pvt. Ltd. situated at Kudus, Taluka Wada, Dist. Palghar. One Radhika Sitaram Yadav (Radhika/Deceased) was previously working in Sun Metallic and Alois Pvt. Ltd. for a few days. During the said period, Radhika and the Appellant got acquainted with each other.

2.2) Appellant, used to follow Radhika and frequently call her. That, Radhika was married and living with her family i.e husband and children at Kudus. At the time of incident, Radhika was working in Rimple Packaging Company. The husband of Radhika, after seeing her mobile, asked her, as to who phoned her so frequently. Radhika informed her husband that, when she was working in Sun Metallic Company, she was acquainted with the Appellant and he used to follow her and harass her by calling her. Radhika's husband therefore called the Appellant and warned him against calling Radhika. The Appellant had promised that, he would not call Radhika.

2.3) That, on 3rd May, 2015, at about 7.50 am, Radhika and her three friends i.e PW No.2 Rohini Ravindra Bhoir, PW No.3 Ranjana Ramesh Valte and PW No. 4 Vishakha Shantaram Valte were as usual going to the Rimple

Packaging Company for work. Appellant followed Radhika and was then talking to her. That, PW Nos. 2 to 4 were walking ahead of Radhika. The Appellant stabbed Radhika with a knife on her stomach, chest and shoulder, threw the knife on the spot and ran away. On hearing the shouts of Radhika, her friends turned around and allegedly saw the incident. PW-2 Rohini R. Bhoir, called Radhika's husband i.e. PW No.1 Sitaram R. Yadav, who came to the spot. PW No.1 suspected, Appellant to have committed the murder of his wife Radhika, as he used to follow/call her. PW No.1 suspected that, being annoyed due to the warning, Appellant committed murder of Radhika. PW No.1 then lodged the FIR.

2.4) Investigation was carried out by PW No.7 PSI Anil Salunke. PW No.7 visited the spot of incident, prepared Inquest Panchanama and Spot Panchanama. Body of the deceased was sent to the Rural Hospital, Wada for Postmortem. PW No.7 seized Articles i.e. iron knife, ladies chappal, blood mixed soil, plain soil, one mobile phone of Videocon Company, one blood stained handkerchief, one brown coloured purse of the deceased from the spot of incident. Statements of three eye witnesses were recorded i.e. PW Nos.2 to 4. Statement of PW No.5 Darshan Bharat Patel, Manager of the Rimple Packaging Company was also recorded.

2.5) The blood stained clothes of the deceased, muddemal articles seized from the spot, blood sample of the deceased were sent to the FSL Kalina for chemical analyses. PW No.7 sent letter to Tahasildar, Thane for

taking Test Identification Parade, which was carried out at Central Prison, Thane on 10th September, 2015. Two out of three eye witnesses i.e. PW-2 Rohini R. Bhoir and PW-3 Ranjana R. Valte identified the Accused. The C. A. Report and Postmortem Report were received, as also the CDR of Mobile Phone of the Appellant. After investigation, chargesheet was filed. After the case was committed, the learned Sessions Court, on 5th December, 2015 framed the charge (Exhibit 3) under Section 302 of IPC. The charge was read over, explained to Appellant in the vernacular language. Statement of the Appellant (Exhibit 4) was recorded on 5th December, 2015, where he pleaded not guilty and claimed to be tried.

3) To bring home the guilt of the Appellant, the prosecution has examined in all 10 witnesses.

4) PW No.1 Sitaram Rampyare Yadav, husband of the deceased; PW No.2 Rohini Ravindra Bhoir, PW No.3 Ranjana Ramesh Valte and PW No. 4 Vishakha Shantaram Valte, all colleagues/friends of the deceased and eye witnesses to the alleged incident. PW No.5, Darshan Bharat Patel, Manager of Rimple Packaging Company. PW No.6, Prakash Rama Patil, Nayab Tahasildar, Thane, who conducted Test Identification Parade. PW No.7, Anil V Salunkhe, Investigating Officer. PW No.8, Rizwan Ahmed Khan, Ex co-worker of the Appellant. PW No.9, Ravi Khemraj Pardeshi, Nodal Officer of Vodafone Company and PW No.10, Ashok Ghisaram Dhanuka, Manager of Sun Metallic Company.

5) The defense of the Appellant is of total denial. In the statement recorded under Section 313 of Criminal Procedure Code, Appellant denied all the circumstances alleged against him. In answer to question No.11, Appellant has stated that, PW No.1 Sitaram Yadav had phoned him 10 times and that he had no concern with the wife of Sitaram Yadav. In answer to question No.15, Appellant stated that, PW No 1 Sitaram Yadav has taken Rs.10,000/- from him to secure employment/work. That, PW No.1, Sitaram Yadav got him employment in Sun Metallic Company, where he worked for one day. That, when the Appellant demanded return of his money from PW No.1 Sitaram Yadav, he refused and therefore to avoid repayment has implicated the Appellant in the present false complaint. That, Appellants, mobile (Number-8698935867) was stolen.

6) The Prosecution has mainly relied upon evidence of three eye witnesses i.e PW No.2 to 4 and the evidence of PW-6 Prakash Rama Patil, who conducted Test Identification Parade. In considering the case of the Appellant, what needs to be seen is the evidence of eye witnesses and whether the evidence of eye witnesses, when considered along with the other prosecution witnesses and documents on record, is credible and proves beyond reasonable doubt the fact that the Appellant has committed the murder of the deceased Radhika Yadav.

7) The learned Advocate for the Appellant, Mr. Sayaji D. Nangre, submits that:

7.1) The evidence of three eye witnesses read with the evidence of complainant PW-1 Sitaram Yadav and evidence of PW-5 Darshan Bharat Patel raises a serious doubt as to the truthfulness and veracity of the prosecution case and evidence. The credibility of the eye witnesses, comes in doubt. A careful perusal of the version of the eye witnesses read with evidence of PW-1 and PW-5 make the presence of all or some of the said eye witnesses doubtful. That, contradictions in the evidence of these eye witnesses, is on material points and makes the prosecution story doubtful and is therefore fatal to the prosecution. A doubt is cast upon the truthfulness of the evidence and genesis of the incident.

7.2) It is only by the re-examination of PW-3, the point of identification parade and identification of the Appellant has been brought on record. That, the mandatory permission of the Court as required under section 138 of the Indian Evidence Act, has not been obtained. Therefore, the evidence, as far as, identification of the Appellant in the Test Identification Parade by PW-3 cannot be considered.

7.3) There is a variance and contradiction in respect of material aspects between the ocular and medical evidence. The number of injuries differ and are not accounted for. Apart from the aforesaid variance, there is also variance in number of injuries and place of injuries. That, none of the prosecution witness have identified the weapon. This, according to him, is very critical lacuna in the case of prosecution.

7.4) That, it is the case of the prosecution that, the deceased was lying in the pool of blood and her phone was seized from the spot. That, PW-2 Rohini R. Bhoir allegedly picked up the phone of the deceased from the spot and called PW-1 Sitaram Yadav. That, there has been no blood stain reported either on the hands of the PW-2 Rohini Ravindra Bhoir or on her clothes.

7.5) The Test Identification Parade has been delayed and there is no explanation for the delay. The procedure prescribed in law, for conducting Test Identification Parade has not been followed. It is therefore vitiated. It prima facie appears that, the Police Officer was present during the Test Identification Parade.

7.6) The clothes of the Appellant have not been seized and C. A. Report in respect of the blood is inconclusive.

7.7) As per the CDR records, produced through PW-9, the Appellant was not present at the place of incident. That, for this re-examination of PW No. 9, the permission of the learned Court was taken vide Exh.56. That, the prosecution was at all times aware and accepts that, permission under section 138 of the Indian Evidence Act is a must.

7.8) The learned Advocate for the Appellant, in support of his contentions relied on the following Authorities:

(i) The Judgment of the Hon'ble Supreme Court in the case of *Mohar Singh and others V/s. State of Punjab* reported in *AIR 1981 Supreme Court 1578* to contend that if ocular evidence is in direct conflict with the medical

evidence and an inconsistent prosecution story emerges, the benefit of doubt ought to be given to the Appellant.

(ii) The Hon'ble Supreme Court in the case of *Ram Narain Vs. The State of Punjab (Criminal Appeal No.258 of 1974)* and *Jaggar Singh and Ors Vs. The State of Punjab (In Criminal Appeal No.259 of 1974)* reported in 1975 *CRI. L. J. 1500*, wherein the Hon'ble Supreme Court has held that when direct evidence/eye witness is not supported by expert evidence/medical evidence, then the evidence is wanting in the material part of the prosecution case and it would be difficult to sustain a conviction.

(iii) The Judgment of the Hon'ble Supreme Court in the case of *Mustkeen alias Sirajuddin V/s. State of Rajasthan* reported in *AIR 2011 Supreme Court 2769*, to contend that what is admissible under Section 27 of the Indian Evidence Act is the information leading to discovery and not any opinion formed on it by the prosecution.

(iv) The Judgment of the Hon'ble Supreme Court in the case of *Raja Naykar V/s. State of Chattisgarh* reported in *AIR 2024 Supreme Court 695* to contend that in a statement recorded under section 27 of the Evidence Act, only portion pertaining to the recovery of the article would be relevant.

(v) The Hon'ble Supreme Court in the case of *Wakil Singh v. State of Bihar*, reported in 1981 *Supp SCC 28* wherein it is held that it will not be safe to rely upon a test identification parade, which is conducted after considerable delay.

(vi) The Judgment of the Honble Supreme Court in the case of *Manzoor V/s. State of U. P reported in 1983 CRI. L.J. 441* wherein it is held that in a case of circumstantial evidence, the guilt of the accused has to be proved beyond reasonable doubt.

(vii) The Judgment of the Hon'ble Supreme Court in the case of *Rajesh Govind Jagesha V/s. State of Maharashtra reported in AIR 2000 Supreme Court 160*, to contend that unexplained delay in test identification parade is fatal to the prosecution. In such cases evidence of the prosecution regarding identity of an accused cannot be held absolutely reliable. Accused is entitled to the benefit of doubt.

viii) The Hon'ble Supreme Court in the case of *State of Punjab v. Harbans Singh and another reported in 2003 CrI. L.J. 2335 SC* has observed that in a case where the witness carried the injured person to the Primary health Center but no blood stains were found from the person/clothes of the said witnessess made the presence of the witnessess doubtful. Relying on the said observations, it was submitted that though PW No.2 called PW No.1 using the phone of the deceased which was lying in the pool of blood, no blood stains were found on the body of PW No.2 or her clothes. The presence of the said witness was therefore doubtful.

8) Per Contra, Mr. Shreekant V. Gavand, Additional Public Prosecutor appearing for the State submits that:-

8.1) The conviction is well founded and based on evidence. Eye

witnesses PW-2 to 4 are natural witnesses, their conduct is natural and other prosecution witnesses corroborate the prosecution story.

8.2) As regards the argument, that the mobile of the deceased, not being stained with blood or no blood of the Deceased was found on the clothes/body of PW-2, he submitted that, from the evidence, it is not clear as to where exactly the mobile was fallen. In any event, the same is a minor discrepancy. The eye witness evidence cannot be discarded solely on that basis.

8.3) PW-2 Rohini Ravindra Bhoir, the eye witness, was working with the deceased, used to travel with her and also knew the Appellant. The witness has specifically stated that, the Appellant used come to meet the deceased. The Appellant was known to the deceased. That, this witness informed PW No.1 of the incident. That, on critical points in respect of evidence of PW-2 and on the point of the identification in the Test Identification Parade, the defence has not conducted any cross-examination. That, PW No.2 has no reason to falsely implicate the Appellant. The testimony of PW No.2 is reliable and trustworthy.

8.4) That, PW No.1, on being informed immediately came to the spot by vehicle and then filed present complaint. There is no delay.

8.5) As per the CDR records, the location of the Appellant as per the mobile tower is at Kudus. That, the Appellant was very much at the spot of the incident.

8.6) As regards to the point of re-examination and permission required under Section 138 of Indian Evidence Act, the re-examination has been conducted to clear an ambiguity and to clarify certain points, which have already been taken on record.

8.7) The learned APP relied upon the Judgment of the Supreme Court in the matter of *Rammi alias Rameshwar V/s. State of M. P and Bhura alias Sajjan Kumar Vs. State of M. P reported in 1999 AIR SCW 3546*, and whilst referring para No.15 to 19 thereof, submitted that, the very purpose of re-examination is to explain the matter, which has been brought out in the cross-examination. There is an erroneous impression that, re-examination should be confined to clarification to ambiguities, which has been brought down in the cross-examination. That, apart from clarifying ambiguity, when a party who called the witness feels that, an explanation is required for any matter referred in the cross-examination, he is at liberty to put any question in re-examination to get the said explanation. An explanation may be required either when an ambiguity remains regarding any answer elicited during cross-examination or even otherwise. One has the freedom and right to put such question to clarify an ambiguity. That, even if the Public Prosecutor feels that, new matters should be elicited from the witness, he can do so, in which case, the only requirement is that, permission of the Court must be sought. While referring to Paragraph No.24 and 25 of the said Judgment, learned APP submits that, when eye witnesses are examined at length, it is quite possible for him to make

some discrepancies. That, it is only when the discrepancies in the evidence of a witness, are so incompatible with the credibility of his version, that a Court is justifying in jettisoning the evidence. Mere inconsistency in the evidence are not sufficient to impeach the credit of the witness.

8.8) The Hon'ble Supreme Court in the case of *Vadi Velu Thevar Anr. Vs. State of Madras reported in (1957) 1 SCC 700* has observed that:-

“17. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as in 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence, 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian legislature has not insisted on laying down any such exceptions to the general rule recognised in Section 134 quoted above. The section enshrines the well-recognised maxim that “Evidence has to be weighed and 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 to 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.

18. *Generally speaking, oral testimony in this context may be classified into three categories, namely:*

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way—it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

19. *There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally 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. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are*

cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

8.9) The Hon’ble Supreme Court in the case of *Rammi alias Rameshwar Vs. State of M.P.* reported in 1999 AIR SCW 3546 has observed that:-

“15. With the above scrutiny we are unable to place any reliance on the evidence of PW 13 regarding recovery of the weapons at the instance of the accused. In this context we are tempted to observe that the Additional Public Prosecutor who conducted prosecution has not discharged his responsibility as he avoided putting any question to those witnesses when an opportunity for re-examination was provided to him.

16. The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus:

*“138.****

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examiner. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he has the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his questions for that purpose. Explanation may be required either when the ambiguity remains regarding any

answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that certain answers require more elucidation from the witness he has the freedom and the right to put such questions as he deems necessary for that purpose, subject of course to the control of the court in accordance with the other provisions. But the court cannot direct him to confine his questions to ambiguities alone which arose in cross-examination.

18. Even if the Public Prosecutor feels that new matters should be elicited from the witness he can do so, in which case the only requirement is that he must secure permission of the court. If the court thinks that such new matters are necessary for proving any material fact, courts must be liberal in granting permission to put necessary questions.

.....

24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

“155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

*(1)-(2)****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

8.10) The learned APP further placed reliance in the Judgment of *Sarwan Singh Appellant V/s. State of Punjab Respondent, reported in 2003 Cri. L. J. 21* and while referring to Paragraph No.8, submitted that it is a rule of justice that, whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted.

"8.... It is rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted."

9) We shall now consider and analyze the evidence and the material on record, to see if the offence as alleged against the Appellant is made out. According to the Prosecution case, PW-1 Sitaram Yadav, husband of the deceased has filed the complaint. PW Nos. 2 to 4 are the friends of the deceased and eye witnesses of the incident. There is Test Identification Parade conducted, though belatedly. The murder weapon has not been identified by any of the eye witnesses or any witness. The Appellant admitted following documents i.e (i) Inquest Panchanama (Exhibit 21); (ii) Spot Panchanama (Exhibit 20); (iii) Seizure Panchanama (Exhibit 22) and (iv) Postmortem Report (Exhibit 23). We shall first proceed to consider the evidence of the eye witnesses i.e. PW-2 to PW-4 and the evidence of PW-1 i.e complainant and

PW-5 i.e. Manager of Rimple Packaging Company, to see if the said evidence can be termed and accepted to be “reliable and trustworthy testimony” and whether it would be safe to place reliance on the said evidence.

9.1) PW-1 Sitaram Rampyare Yadav, is the complainant and husband of the deceased. PW No.1 in his evidence, has stated that, on 3rd May 2015, in the morning, Radhika (his wife) left for work. That, PW-2 Rohini called him and informed that the Appellant had murdered Radhika. That, on being informed he went to the spot of the incident and saw that Radhika was lying on the road, in a pool of blood. PW No.1 lodged the complaint (Exh 8). PW No.1, in his evidence has deposed that, “I know the Accused, because he was working in the company where my wife was working a month before the incident”. Though, PW No.1 has in his cross examination, admitted that, he was not knowing the full name of the Appellant and that he has not personally met him. From the evidence of PW-1, it is clear that, PW No.2 Rohini, the eye witness informed him that, the Appellant murdered his wife.

9.2) According to the prosecution, PW-2 Rohini R. Bhoir, is one of the eye witness. In her examination-in-chief, she has deposed that, she along with the deceased, PW-3 and PW-4, would go in the same vehicle for work. That, she knew the Appellant, as on some occasions, he used to travel in the same vehicle. That, on the day of the incident, she along with PW-3 and PW-4 were walking 10 to 15 steps ahead of Radhika, who was talking with the Appellant. PW No.2 has deposed that, on hearing the shouts of Radhika she turned back

and saw that Radhika was stabbed on her left breast, abdomen, left shoulder and on the right side of her stomach. She has deposed that, she heard the shouts and went near Radhika. That, she picked up Radhika's phone, called her husband i.e. PW No.1 and told to come to the spot of the incident. That, PW No.1 told them that, deceased Radhika was talking on phone with the Appellant and that he had warned the Appellant not to call Radhika on phone. Regarding, the test identification parade, PW No.2 deposed that, on 10th September, 2015, she along with PW-3 were called to Thane Jail, where Test Identification was held and that, she identified the Appellant. PW No.2 in her cross-examination, admits that, she has never seen deceased Radhika with Appellant in any objectionable condition or talking to the Appellant. That, deceased never told her any complaint or love of Appellant. PW-5 further stated that PW-2 called PW-1 and when PW No.1 came to the spot, PW-5 was present. We have noted that, though the investigating agencies have not seized or recovered any blood stain clothes of or blood on the hands of PW-2 or the mobile phone, this cannot be a ground to doubt the presence of the witness or the fact that the call was made by the PW No.2 to PW No.1. We find the eye witness version credible and there is no reason to doubt the entire prosecution story for such a reason. The cross examination of PW No.2 has not got out any fact or circumstances which would make the evidence of PW No.2 doubtful or unreliable for any reason. No part of the cross examination makes the presence doubtful or even raises any doubt on the presence of the

witness at the scene of offence. We find that, the presence of PW No.2 at the spot of the incident is natural and her evidence is reliable and trustworthy.

9.3) PW-3 Ranjana Ramesh Valte, is the second eye witness. PW No.3, in her examination-in-chief, has deposed that, on the day of incident, she along with PW No.2 and 4 were going from Kudus to Kupari by Tata Magic vehicle for work. That, after getting down from the vehicle at Khupari, and when they were walking towards their company/work place she saw the Appellant sitting at road near the pump house. The witness has deposed that, at that time there was quarrel between the Appellant and Radhika. It is further deposed that, they (PW Nos.2 to 4) continued to walk to their company and were walking ahead at some distance. On hearing the shouts of Radhika, she turned back and saw the Appellant stabbing Radhika on the left side of her chest. The Appellant stabbed Radhika twice on her stomach and ran away. She has deposed that, by the time they went near Radhika, she had fallen down and was dead. The mobile phone of Radhika was fallen there. The witness deposes that, PW-2 picked up the mobile phone and called PW No.1 i.e Radhika's husband. The witness further deposed that, after PW No.1 came to the spot he informed them that, there was dispute between Radhika and the Appellant. In the cross-examination, this witness admits that, she did not listen as to what quarrel took place between deceased Radhika and Appellant. The evidence of PW No. 3 clearly demonstrates that she was present at the scene of offence and has witnessed the assault. The fact that,

she did not hear the quarrel is of no consequences and will not cast any sort of doubt on the evidence or the presence of the witness. The witness along with the other Prosecution witnesses was admittedly walking ahead at a distance. It is not necessary that the witness ought to have heard the contents of the quarrel or even known the reason for the quarrel. In fact, the witness by truthfully stating that, she did not hear the quarrel makes the witness more reliable and trustworthy. We have noted that, the witness has not exaggerated the version or any aspect of the incident. In our opinion the narration appears to be natural and a narration of the events as they transpired. This is, in fact indicative of the fact that, the witness is not exaggerating any of the facts. As regards the witness not being able to tell the police the colour of the Appellants clothes or the direction in which the Appellant ran away, according to us, is of no consequence. It would be a natural conduct for a witness of a murderous assault to not note or remember the clothes of the assailant or the direction in which the assailant ran away while leaving the spot. We find that, the testimony of this witness is also reliable, trustworthy and of credence. This witness has been re-examined by the prosecution and it is during this re-examination, the fact that, this witness identified the accused in the Test Identification parade, has been brought on record.

9.4) PW-4 Vishakha Shantaram Valte is the third eye witness. PW No.4 has deposed that, she along with deceased Radhika, PW-2 and PW-3 were traveling from Kudus to Kupari. At Kupari, the Appellant was seen sitting near

the pump house. She has deposed that, as Radhika was talking with the Appellant, she along with PW-2 and PW-3 walked ahead. She deposed that, the three of them were walking ahead, at a short distance. The witness has deposed that, on hearing shouts of Radhika, all of them turned back and saw that, the Appellant stabbed Radhika on her chest and stomach with knife. She has deposed that, as they rushed towards Radhika the Appellant ran away. The witness deposes that, afterwards they came to know the name of the Appellant as Ramnayan Ramsuman Vishwakarma. Even this witness has deposed that, PW-2 picked up the phone of deceased Radhika and called PW-1. This witness was unable to state as to which direction the Appellant ran away. The witness in her cross examination has stated that, if anybody was hiding in the bushes, on the side of the road, it was not visible. In our view, these statements or admissions in the cross examination are not enough to discredit the entire version/evidence of a otherwise reliable and trustworthy eye witness or the entire prosecution story. We find that the version and account given by this eye witnesses is consistent with the other eye witnesses, reliable and trustworthy. In our considered opinion, minor discrepancies, if they maybe called so, which creep in the evidence of eye witness are indicative of the fact that, the eye witness was a natural witness, has narrated the incident as it unfolded before the witness and has made no attempt to exaggerate the version in an attempt and with a object to make a water tight case. This witness, in our opinion has stated the facts as they took place and

answered/deposed in the cross examination a truthful version of the incident. The minor contradictions or discrepancies, in our opinion are not fatal to the case of the prosecution.

9.5) We are of the considered view that, the eye witnesses PW-2 to PW No.4 are concerned, they were traveling with the deceased to work in their normal course of daily life and the Appellant was known to them. The witnesses have seen the assault and the Appellant fleeing from the spot. In addition to this, the presence of the Appellant is also further corroborated with the CDR records and evidence of PW No. 9. In our opinion, considering the facts of the case, the evidence of the eye witnesses is reliable, sufficient and creditworthy for the conviction to be based on.

9.6) We have noted that the test identification parade, was conducted after delay of 4 to 5 months. Only PW No.2 and 3, were called for the Test Identification Parade. PW No.4 was not called for the test identification parade. PW No.3 has not referred to the test identification parade in the examination-in-chief and therefore, in the cross-examination, no question appears to have been put to her in respect of Test Identification Parade. It was only by way of a re-examination that, the prosecution has tried to get on record the fact that, this witness has identified the Appellant in the test identification parade. Re-examination is envisaged and allowed under section 138 of the Evidence Act. Section 138 of Evidence Act clearly stipulates that, re-examination in respect of the new matter can only done with the

permission of the Court. Admittedly, there is no permission sought from the Court. The issue of test identification parade was not forming part of examination-in-chief, resultant there was no reference of the same in the cross-examination. Re-examination for clarification or re-examination of certain things brought in the cross-examination is permitted as of right. It is only completely new fact as sought to be brought on record by using re-examination, that the permission of the Court as mandated by Section 138 of the Evidence Act is a must. The same is evident from the fact that, during examination of PW-9, permission was sought by the prosecution for re-examination and it was allowed as per order below Exh.56. We are of the considered view that, in view of the aforesaid discussion the evidence of PW No.-3, in respect of test identification/ identification, cannot be considered. As far as identification of the Appellant by PW No. 2, is concerned, the same has been conducted though belatedly. Perusal of the record would indicate that, the proper procedure has been followed and precautions taken in respect of the test identification parade. It is an admitted and accepted position that the Appellant was well known to the witnesses. In our opinion, there was no need to conduct a test identification parade. It is not the case that the witnesses and the Appellant were totally unknown to each other or that they were strangers. The prosecution witness knew the accused or acquainted with him. Going by the prosecution case, there was in the first place, no need to hold a test identification parade. In the peculiar facts of this case, to our mind,

it appears that, the test identification parade and the evidence gathered therein, is only for the purposes of further corroboration. In the present case, the Appellant is known to witnesses and used to even travel with them. It is the case of the prosecution that, the deceased and Appellant were talking, in fact quarreling with each other. We have noted that, even though it was the first test identification parade undertaken by PW No.6, the guidelines in respect of the test identification parade have been properly followed and substantially complied with. Even the aspect of the presence of the police officers has been properly and satisfactorily clarified and explained. Even if the evidence of the test identification parade is to be considered for the purposes of corroboration we find that the delay, if any in holding the test identification parade in the facts and circumstances of the present case is not fatal to the prosecution. One must also not loose sight of the fact that the Appellant was not traceable for sometime.

9.7) The other witness who immediately reached the spot of incident is PW-5 Darshan Bharat Patel. This witness, runs a factory, where deceased Radhika, and PW Nos. 2 to 4 were working. This witness is an independent third party witness and a natural witness. This witness in his examination-in-chief, has deposed that, watchman Mahendra Mishra informed him that, PW-2 and other women were shouting. PW No.5, therefore with one staff went outside and to the spot of incident. At the spot, he saw that, deceased Radhika was fallen dead. This witness in his examination-in-chief has specifically

deposed that, PW No.2 informed him that one person stabbed Radhika with knife. PW No.2 also informed him that, she has called PW No.1 (husband of deceased Radhika) from on the mobile of the deceased. This witness has deposed that, he was present at the spot, when PW No.1 came to the spot. PW No.5 deposed that, PW-1 informed them that, he was knowing the Appellant as he had warned him not to contact his wife. PW-1 informed the name of the Appellant as Ramnayan Vishwakarma.

9.8) The record indicates that the Spot panchanama (Exh.20), Inquest Panchanama (Exh. 21), seizure panchnama of clothes (Exh.22) and the Postmortem Report (Exh.23) have all been admitted by the Appellant. In column No.17 of the Postmortem Report, the following 4 injuries were shown;

- i. Stab Injury below (Lt) breast above 5cm x 3cm.
- ii. Stab Injury below (Rt) Shoulder above 3cm x 3cm.
- iii. Stab Injury on abdomen 5cm x 3cm of (Rt) side of navel.
- iv. Stab Injury below navel 3cm x 2cm.

Further, in Column No.20, the description of injury is mentioned as “cavity intact stab injury passing anterior to chest wall from (Rt) shoulder oblique in direction towards navel 25 cm in length”; as “WNL” and as “Penetrating wound to heart passing through ventricles and base of heart”. In Column No.21, the description of injury is as follows “2 Stab injuries noted 5 cm x 3 cm x 2 cm to (Rt) side of navel. 3 cm x 2 cm x 2 cm below navel not free fluid in cavity.”

The opinion as to the probable cause of death is “Hemodynamic shock in a case of multiple stab injuries and penetrating cardiac wound.”. We find that considering the Postmortem report has been admitted by the Appellant.

9.9) PW-7 Anil V. Salunkhe is the Investigating Officer. In his examination-in-chief he has deposed that, when working as PSI in Wada Police Station, he got information of the said crime. The witness prepared spot panchanama, under which he seized brown coloured purse, red handkerchief, one mobile of Videocon Company, one ladies chappal and one iron knife. That, the articles were found at the spot and that, there was a pool of blood at the spot. That, on 15th May, 2015, he sent the seized muddemal to FSL, Kalina. The Appellant being absconding, was arrested on 25th June, 2015 and the test identification parade was conducted on 10th September, 2015. That, by informing SP, Palghar, tower location of the mobile phone of the Appellant was traced out. That, seizure of muddemal articles was done in front of two panchas and sealed. In his cross-examination, it has come on record that the Appellant was absent from his place of duty since 11th April, 2015. That, PW-1 has not file any complaint against the accused prior to the incident. That, deceased Radhika had not disclosed anything about the Appellant to her friends. In our opinion only because the deceased had not disclosed anything about the Appellant to her friends the prosecution story does not become doubtful.

9.10) PW-8 Rizwan Ahmad Khan, is a Security Guard working in Kudus. That, on 2nd May, 2015, he left his house and reached Mahalaxmi petrol pump rickshaw stand. That, he along with three women were seated in one Rickshaw and near Rimple Company, four women got down and he proceeded to his company. That, police and the three women came to his company and informed that one worker of their company has murdered one lady. That, the police told him to call all the workers and then asked the three women whether any of those people had committed the said murder. That, the women replied in negative. That, on the same day the police once again came at 1.00 pm and showed him one identity card and photo on it. That, he identified the man in the identity card and told the police that the said man is working in the Sun Metallic Company at Kudus. That, he identified the person, because prior to 10 to 15 days, the said man boarded the same rickshaw at Murli Manohar stop. That, the man sat near the woman, who was murdered. That, the said woman got down near Rimple Company and the man in the Rickshaw (Appellant) told the driver that, he has to get down near Sun Metallic company. Even if the evidence of the present witness is accepted in respect of the fact to where the Appellant got down or that he told driver his destination, that is not enough to disbelieve and discredit the eye witnesses, who in our opinion are fully trust worthy. This witness does not depose as to where the Appellant actually got down.

9.11) PW No.8, has deposed that, the said man was talking with the

woman in the rickshaw, Though in his cross-examination, he has admitted that, he did not remember the date when he seen that man in the rickshaw.

9.12) PW-9 Ravi Khemraj Pardeshi is the witness working as Nodal Officer in Vodafone Mobile Company, and provided information in respect of mobile phone of the Appellant. That, the CDR report, indicates that, 80 to 90 outgoing calls were made from the number of the Appellant to the number of the deceased. That, the tower location code was produced separately at Exh.55. That, this witness was re-examined with the permission of the Trial Court as required under Section 138 of the Indian Evidence Act. In the re-examination, witness has stated that, on 3rd May, 2015 at 7.21.48 the same tower location code number and the location was that of the same tower till 7.45.29. That, in Exhibit No 55 at Serial No.2, the address of the tower location is mentioned. That, on 3rd May, 2015, there was an outgoing call from mobile No.8698935869 to Mobile No.7758872842 at 10.51.54. That, the tower location code is 404270030522298 and its address is Tukaram Gangaram Patil, Survey No.305, at Kondale, Taluka Wada, Dist. Thane. This evidence is indicative of the fact that, the Appellant was present in the area. When this evidence is read with the evidence of PW No. 2 to PW No. 4, the presence of the Appellant is at the scene of the offence is established. Even independently the evidence of the three eye witnesses is fully trustworthy and credible.

9.13) PW-10 Ashok Ghisaram Dhanuka is the Manager working in Sun

Metallic & Alois Pvt. Ltd. at Wada. In his examination-in-chief, he stated that, he knows the Appellant and that the Appellant was the iron smith in their company, residing in the company quarters for about 5 to 6 months. That, after the Appellant left the quarters, he went to Kupari. That, on 3rd May, 2015, Wada Police came to the company to make inquiry about Appellant and contended that the Appellant has murdered a woman. That, he gave the Aadhar Card and Muster Card to the Police. In his cross-examination, the witness admits that, the Appellant was not working in their company from 10th April, 2015.

10) We find that, the evidence of PW No.2 to 4 is reliable and trustworthy. The witnesses and the Appellant were known to each other. The deceased and the Appellant have worked together. We find no reason on record nor is it the case of the Appellant that the three eye witnesses have any reason to falsely implicate the Appellant. Perusal of the testimony of the witnesses, indicates that the witnesses have deposed the facts as they unfolded. The witnesses have not exaggerated the version nor tried to improvise the facts. We find that, the said witnesses are natural witnesses and there is no reason to doubt their presence at the scene of the offence. We find that, the evidence, when read as a whole and in its entirety, to be sterling quality. Minor discrepancies, are infact signs of truthfulness of the evidence. One must at all times remember that, evidence of natural and genuine eye witnesses in murder trials is bound to have certain discrepancies considering

the fact that they have witness a murder. Considering the impact the incident on the witnesses, minor discrepancies are bound to occur and much cannot be made out of such discrepancies by the accused. Eyewitness, when examined at some length and in situations like the present one where they suddenly witness a murder in broad daylight, it is quite possible and natural that they make some minor error or a some discrepancy or minor omission creeps in. For an untutored witness, to make an omission or the evidence to have some discrepancies, in our opinion is natural. In fact it is sign of the truthfulness of the witness. Impeccable evidence, without any flaw or variance is possibly a prima facie sign of a tutored version of evidence. Discrepancies in the evidence of a witness which go to the root of the matter or make the entire prosecution doubtful and incompatible with the credibility of the version of the witness, court can interfere to hold that the evidence is not reliable. Some minor and inconsequential inconsistency in evidence, in our opinion cannot be a ground to call in, find doubtful and to impair the credit and trustworthiness of a witness or the entire prosecution story.

11) As observed by the Hon'ble Supreme Court in the case of *Vadi Velu Thevar anr Vs State of Madras (supra)* oral testimony of witnesses may be classified into three categories i.e (i) wholly reliable;(ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. We find that, in the present case and after considering the entire evidence on record, the evidence of the witnesses is "wholly reliable". There is no valid reason or circumstance

which would persuade us to categories the testimony of the three eye witnesses in the other two categories i.e category (ii) or (iii) as aforenoted.

12) In view of the above discussion and after perusing entire evidence on record, we find no error with the findings recorded by the Additional Sessions Court, Thane. The reasons given are well supported by the evidence and well founded. We find no reason to interfere with Judgment and Order of Conviction dated 18th August 2017 passed by the Additional Sessions Court, Thane in Sessions Case No. 462 of 2015.

13) The present appeal warrants no interference. Hence, the Appeal is dismissed.

(**RANJITSINHA RAJA BHONSALE, J.**)

(**A.S. GADKARI, J.**)

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