



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO.80 OF 2014
AND
CRIMINAL APPEAL NO.110 OF 2014**

CRIMINAL APPEAL NO.80 OF 2014

Mahesh s/o Natthuji Devgune,
age 30 years, occupation – business,
r/o Timki Mochipura, Nagpur.
(at present in Nagpur Central Prison). **Appellant.**

:: V E R S U S ::

The State of Maharashtra, through
PSO Tahsil Police Station,
district Nagpur. **Respondent.**

Shri R.K.Tiwari, Counsel for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the
Respondent/State.

CRIMINAL APPEAL NO.110 OF 2014

1. Sanjiv Shankar Kuhikar, aged 26 years.
2. Santosh Chaitram Kuhikar, aged about 38 years.
3. Devanand Chaitram Kuhikar, aged about 44 years.

4. Sheshrao Ramdas Kuhikar, aged 32 years.

5. Rajesh Ramprasad Kuhikar, aged about 35 years.

All resident of Timki Mochipura,
Nagpur. (All appellants are presently
in jail. Appellants.

:: V E R S U S ::

The State of Maharashtra, through
Police Station Officer, Police Station
Tahsil, Nagpur. Respondent.

Shri Avinash Gupta, Senior Counsel assisted by Shri Akash Gupta, Advocate for Appellants.
Shri M.J.Khan, Additional Public Prosecutor for the Respondent/State.

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**
CLOSED ON : 15/12/2025
PRONOUNCED ON : 14/01/2026

COMMON JUDGMENT (Per : Urmila Joshi-Phalke)

1. By these appeals, appellants (the accused persons) have challenged judgment and order dated 14.2.2014 passed by learned Additional Sessions Judge,

Nagpur (learned Judge of the trial court) in Sessions Trial No.219/2011.

2. By the said judgment impugned in these appeals, the accused persons are convicted for offence punishable under Section 143 of the IPC and sentenced to undergo three months rigorous imprisonment and pay fine Rs.200/-, in default, to undergo further rigorous imprisonment for 15 days.

They are further convicted for offence punishable under Section 144 of the IPC and sentenced to undergo rigorous imprisonment for 6 months and pay fine Rs.200/-, in default, to undergo further rigorous imprisonment for 15 days.

They are also convicted for offence punishable under Section 147 of the IPC and sentenced to undergo rigorous imprisonment for 6 months and pay fine Rs.200/-,

in default, to undergo further rigorous imprisonment for 15 days.

They are also convicted for offence punishable under Section 148 of the IPC and sentenced to undergo rigorous imprisonment for 6 months and pay fine Rs.300/-, in default, to undergo further rigorous imprisonment for 15 days.

They are convicted for offence punishable under Section 302 read with 149 of the IPC and sentenced to undergo life imprisonment and pay fine Rs.300/-, in default, to undergo further rigorous imprisonment for 15 days.

3. Brief facts of the prosecution case emerge from police papers, are as under:

(A) The FIR came to be registered on the basis of a report lodged by Deva @ Devdas Laxman

Shendekar, the brother of Dinesh (the deceased), on an allegation that the deceased was his younger brother. The accused persons are residents of the same locality and residing in front of his house and, therefore, he is acquainted to them. On 17.1.2011, there was a quarrel between brother of the deceased Guddu Laxman Shendekar and accused Rajesh Ramprasad Kuhikar on account of money. On 19.1.2011, at about 9:30 pm, when informant Deva was standing in front of his house, the accused persons came in front of his house possessing in their hands swords. Accused Devanand Chaitram Kuhikar has hit glass of window and broken it and they disclosed that they have killed his brother. After hearing the same, immediately, informant Deva rushed to the

spot at Rajgire Lane. He saw the deceased lying in pool of blood who has sustained swords injuries on his abdomen, throat, fingers, and hands. Amol Kumbhalkar was also there, who has also sustained injuries and was sitting near the dead body of his brother. Amol Kumbhalkar informed him that the accused persons killed his brother by assaulting him by weapons. When he intervened in the quarrel, he was also assaulted by them on his abdomen. He immediately rushed to the police station. The police have already received the information about the incident. Thereafter, the police came along with him at the spot and prepared spot panchanama. The police have seized various articles there and, thereafter, they have obtained his report. On the

basis of the said report, the police registered the crime against the accused persons.

(B) After registration of the crime, wheels of investigation started rotating. During the investigation, the investigating officer has visited the alleged spot of the incident and has drawn spot panchanama. They have also drawn inquest panchanama and forwarded the dead body of the deceased for conducting postmortem examination. They have seized clothes of the deceased and the accused persons. The accused persons were arrested. Accused Mahesh Natthuji Devgune has sustained injuries. He was also referred for medical examination. On the basis of memorandum statement of accused Mahesh Natthuji Devgune and acquitted accused Jitendra, incriminating weapons are recovered.

The said incriminating weapons are also forwarded to the medical officer for seeking opinion. All the incriminating articles were forwarded to the Chemical Analyzer and after completion of the investigation, he submitted chargesheet against the accused persons.

(C) Learned Judge of the trial court framed charge vide Exh.42. The contents of the charge are read over and explained to the accused persons in vernacular Marathi. The accused persons pleaded not guilty and claimed to be tried.

(D) The prosecution, in support of its case, has examined in all 14 witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Deva @ Devdas Laxman Shendekar, the	71

	informant and brother of the deceased;	
2	Tarachand Ganpatlal Aherwar, pancha on memorandum statement of accused Santosh and acquitted accused Jitendra and discovery panchanamas;	76
3	Atul Suresh Mahajan, pancha on seizure of clothes of the deceased and the accused persons	81
4	Amol Kumbhalkar, eyewitness	89
5	Dhnyaneshwar Dhapekar, eyewitness	91
6	Suman Devgune, eyewitness	93
7	Subhash Parde, eyewitness	95
8	Chanda Shendekar, the wife of the informant	97
9	Manish Shrigiriwar, Medical Officer	100
10	Sudhir Nandanwar, Investigating Officer	101
11	Anil Pawar, Investigating Officer	130
12	Pandurang Warkhade, Executive Magistrate	132
13	Dr.Naina Dhumale, Medical Officer	145
14	Dr.Mamta Sonsare, Medical Officer	147

(E) Besides the oral evidence of these witnesses, the prosecution placed reliance on report Exh.72, FIR Exh.73, indoor injury certificate Exh.75,

10

memorandum statement of accused Santosh Chaitram Kuhikar Exh.77, discovery panchanama Exh.78, memorandum statement of acquitted accused Jitendra Exh.79, discovery panchanama Exh.80, seizure memo of clothes of the deceased Exh.82, seizure memos as to blood samples and clothes of the accused persons and acquitted accused Jitendra Exhs.83 to 88, inquest panchanama Exh.98, spot panchanama Exh.98-A (as the spot panchanama is exhibited by the same Exhibit mark, therefore, it is marked as Exh.98-A for identification purpose), postmortem report Exh.100-A, query report Exh.100-B, arrest panchanamas of the accused persons Exhs.102-107, seizure memo of the clothes of accused Santosh Chaitram Kuhikar Exh.108, requisition to the medical officer Exh.109, seizure memo of

11

blood samples of the accused persons Exh.110, requisition to the Regional Forensic Laboratory by the Medical Officer dated 21.1.2011 forwarding the samples of the accused persons Exh.111 to 115, requisition to the Mayo Hospital Exh.116, requisition to the Chemical Analyzer dated 28.1.2011 Exh.125, invoice challan Exh.126, requisition to the Chemical Analyzer dated 21.3.2011 Exh.128, invoice challan Exh.129, communication from the Junior Engineer to the investigating officer Exh.127, medical certificate of accused Mahesh Natthuji Devgune Exh.146, and medical certificate of accused Sanjiv Shankar Kuhikar Exh.148

(F) All the incriminating evidence is put to the accused persons in order to obtain their explanations by recording their statements under

12

Section 313 of the CrPC. The defence of the accused persons is of total denial and of false implication.

(G) Learned Judge of the trial court appreciated the evidence and held the accused persons guilty and convicted and sentenced them as the aforesaid.

(H) Being aggrieved and dissatisfied with the same, the present appeals are preferred by the accused persons.

4. Heard learned counsel Shri R.K.Tiwari in Criminal Appeal No.80/2014; learned Senior Counsel Shri Avinash Gupta in Criminal appeal No.110/2014, and learned Additional Public Prosecutor Shri M.J.Khan for the State.

13

5. Learned Senior Counsel submitted that the prosecution has examined in all 14 witnesses. The entire case of the prosecution is rested upon two eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW6 Suman Devgune, who are already disbelieved by the trial court as their statements were recorded belatedly and there is no explanation by the investigating officer as to the belated statements. He submitted that besides the evidence of these eyewitnesses, the prosecution placed reliance on the evidence of PW2 Tarachand Aherwar, who acted as pancha on memorandum statement of accused Santosh Chaitram Kuhikar, at whose instance incriminating weapons are discovered. He is not an independent witness. He is brother-in-law of PW1 Deva Laxman Shendekar. Despite availability of independent witnesses, no attempt was made to record statements of the accused persons in presence of the independent witness and, therefore, the entire aspect of

14

recording of memorandum statement and discovery at the instance of accused Santosh Chaitram Kuhikar is doubtful. He further submitted that as per the prosecution, the said weapons are recovered at the instance of accused Santosh Chaitram Kuhikar on 22.1.2011. The weapons were forwarded to the medical officer on 18.3.2011 and again forwarded to the Chemical Analyzer on 21.3.2011. During this period, these weapons were kept in a safe custody and there was no possibility of planting any evidence is not adduced. On the contrary, PW10 Sudhir Nandanwar was unable to state explanation why the weapons are not forwarded to the medical officer prior to 18.3.2011 though the same are recovered on 21.1.2011. Thus, the entire case of the prosecution becomes doubtful as to recovery of the weapons and incriminating blood stains found on the clothes of the accused persons. He submitted that the judgment impugned in these appeals awarding the sentence

solely rests on circumstantial evidence. When the case is based on circumstantial evidence, the prosecution is under obligation to establish all circumstances unerringly pointing out towards the guilt of the accused. The circumstances as to voluntary statement of the accused and recovery of the weapons are itself doubtful. The weapons were deposited belatedly in Malkhana. The evidence as to recovery is also doubtful as nothing is mentioned stating that the accused has disclosed the place where the weapons were concealed. There is also no evidence to show that the weapons recovered were sealed immediately after recovery. Though the weapons were recovered on 21.1.2011, the same were deposited on 24.1.2011 and there is no explanation as to the place where the said weapons were kept during this period. There is an inordinate delay in sending the said weapons to the Chemical Analyzer. The carrier of the weapons is also not examined. There is no link evidence to

16

show from discovery till it is sent to the Chemical Analyzer and during this period the said weapons were in a proper custody. In absence of the link evidence, there is no guarantee as to the said weapons were not tampered. The accused persons were arrested immediately after the incident. However, the clothes were seized on 21.1.2011 and forwarded to the Chemical Analyzer on 28.1.2011. As per the prosecution case, the accused persons wearing those clothes at the time of the arrest were not immediately seized at the time of the arrest and, therefore, recovery of the clothes is also required to be discarded. The evidence of the investigating officer is also not cogent as despite receipt of the information of the cognizable offence, no offence was registered by the incharge of the police station. The FIR is a fabricated document. For all above these grounds, the judgment impugned in these appeals deserves to be quashed and set aside.

6. In support of his contentions, learned Senior Counsel placed reliance on following decisions:

- (1) Ramanand vs. State of Uttar Pradesh, reported in AIR 2022 SC 5273;
- (2) Kanhai Mishra alias Kanhaiya Misar vs. State of Bihar, reported in 2001 SCC (Cri) 537;
- (3) Din Dayal vs. Raj Kumar and ors, reported in MANU/SC/0216/1998;
- (4) Ganesh Bhavan Patel and ors vs. State of Maharashtra, reported in MANU/SC/0083/1978;
- (5) Pohalya Motya Valvi vs. State of Maharashtra, reported in MANU/SC/0204/1979;
- (6) Pratibha Ganesh Pande vs. State of Maharashtra, reported in MANU/MH/2602/2020;
- (7) Rakesh Mahadu Dandekar and ors vs. The State of Maharashtra, reported in MANU/MH/3389/2025;
- (8) State of Maharashtra vs. Prabhu Barku Gade, reported in MANU/MH/0160/1994;

(9) Mohd.Hussain Badamiyan Ramzan vs. State of Maharashtra, reported in MANU/MH/0130/1993;

(10) Gopal Singh and anr vs State of MP, reported AIR 1972 SC 1557;

(11) Anil vs. State of Maharashtra, reported in 2022 SCC OnLine Bom 1780; and

(12) Laxmi Singh vs. State of Bihar, reported in MANU/SC/0136/1976.

7. Learned counsel Shri R.K.Tiwari supported the contentions of learned Senior Counsel and submitted that the FIR is ante-time. Accused Mahesh Natthuji Devgune has also sustained injuries and, therefore, the recovery of blood stained clothes from his person and possibility of having his own blood stains on the said clothes cannot be ruled out. The investigation nowhere shows that counter case is filed regarding the said incident. Thus, faulty investigation is carried out and adverse inference is to be drawn against the

prosecution. He adopted the argument of learned Senior Counsel on the other aspects.

8. In support of his contentions, learned counsel Shri R.K.Tiwari has placed reliance on following decisions:

(1) Vijaybhai Bhanabhai Patel vs Navnitbhai Nathubhai Patel & Ors, reported in MANU/SC/0279/2004;

(2) Kochu Maitheen Kannu Salim vs. State of Kerala, reported in MANU/SC/0218/1998;

(3) Criminal Appeal No.1157/2011 (Turkesh Singh vs. State Chhattisgarh), decided on 14.5.2025, and

(4) Criminal Appeal No.608/2013 (Ramu Appa Mahapatar vs. The State of Maharashtra), decided on 4.2.2025.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that the prosecution case is not only rested on circumstantial evidence but also on the direct

evidence in the nature of eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW6 Suman Devgune. Merely because their statements are recorded belatedly, that by itself is not sufficient to discard their evidence. The opportunity is to be granted to the investigating officer to explain the delay by cross examining him on the delay aspect. The investigating officer has also explained the circumstance by mentioning the law and order situation. PW5 Dhnyaneshwar also stated about the law and order situation. The incident has occurred in such a manner that no witness was ready to come forward as well as the investigating agency were busy in maintaining law and order situation. Learned Judge of the trial court has not considered the evidence of extra judicial confession by accused Devanand Chaitram Kuhikar. There was a previous dispute between the brother of the deceased and accused Rajesh Ramprasad Kuhikar prior to the incident. The

21

evidence of eyewitnesses is not only corroborated by the circumstantial evidence, like recovery of the incriminating weapons at the instance of the accused, but also it is corroborated by the scientific evidence as blood stains are found on the said weapons. He submitted that merely because there is some negligence on the part of the investigating agency, the entire prosecution case cannot be thrown out. The evidence of PW6 Suman Devgune states about the terror of the accused persons. The accused persons have committed the offence to show their supremacy. Thus, the entire prosecution evidence, as far as authorship of the crime is concerned, is disclosed by accused Devanand Chaitram Kuhikar himself in the nature of extra judicial confession. It is further corroborated by the evidence of eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW6 Suman Devgune. Learned Judge of the trial court has wrongly ignored the evidence of these witnesses merely

because their statements are recorded belatedly. The evidence is consistent, cogent, and reliable one and, therefore, the appeals being devoid of merits are liable to be dismissed.

10. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

- (1) Criminal Appeal No.1181/2019 and other connected appeals (Goutam Joardar vs. State of West Bengal) decided on 7.10.2021 by the Hon'ble Apex Court;
- (2) Rameshwar s/o Dijnaji Dhawde vs. The State of Maharashtra, reported in 2016 ALL MR (Cri) 3864;
- (3) Ajay Singh vs. State of Maharashtra, reported in (2007)12 SCC 341;
- (4) Gura Singh vs. State of Rajasthan, reported in AIR 2001 SC 330;

(5) State of AP vs. S.Rayappa and ors reported in AIR 2006 SC 3709;

(6) Mahesh Janardhan Gonnade vs. State of Maharashtra, reported in AIR 2009 SC (Suppl) 428(2);

(7) Ajayan Alias Baby vs. State of Kerala, reported in 2010 SCC OnLine Kerala 5019; and

(8) Firoz Khan Akbarkhan vs. The State of Maharashtra, reported in 2025 LiveLaw (SC) 349.

11. Heard both the sides and perused the entire record.

MARSHALING OF EVIDENCE

12. The first and foremost question is, whether the death of the deceased is homicidal one.

13. Insofar as homicidal death of the deceased is concerned, the material evidence adduced by the

24

prosecution is of Medical Officer PW9 Dr. Manish Shrigiriwar examined vide Exh.100. He deposed that on 20.1.2011 he was attached to IGMC at Nagpur as Associate Professor. On that day, he received corpse of the deceased. He performed postmortem on the dead body of the deceased. On external examination, he found following injuries:

“(1) Incised wound present over left side of forehead 3 cm from midline and 4 cm above left eye brow of size 2.5 cm. x 0.5 cm. x muscle deep, obliquely placed.

(2) Chop wound present over left side of forehead, 1 cm below injury no.1 and 3 cm. above left eye brow of size 5 cm. x 1 cm x bone deep underlying bone cut, obliquely placed, bevelling present over lower margin, both margins sharp.

(3) Chop wound present over left parieto occipital region 8.5 cm. from midline and 9 cm. above tip of left mastoid of size 7 cm. x 1 cm. x

25

bone deep, underlying bone cut, obliquely placed, bevelling present over medial margin, both margins sharp.

(4) Chop wound present over left parieto occipital region extending upto midline and 3 cm. above injury no.3 of size 5 cm x 1 cm x bone deep underlying bone cut, obliquely placed, bevelling present over medial margin, both margins sharp.

(5) Chop wound present over right occipital region, 7 cm, from midline and lower end is 6 cm. from tip of right mastoid of size 3 cm. x 0.8 cm. x muscle deep, vertically placed, both margins sharp.

(6) Contused abrasion present over lateral end of left eye brow of size 2 cm. x 1 cm. dark red in colour.

(7) Incised wound present over lateral end of left eyebrow 0.2 cm. lateral to injury no.6 of size 1 cm. x 0.2 cm. x subcutaneous tissue deep obliquely placed.

26

(8) Incised wound present over left zygomatic region, below injury no.7 and 2.5 c.m. From lateral canthus of left eye of size 1.8 cm. x 0.5 c.m. X subcutaneous tissue deep, horizontally placed.

(9) Chop wound present over left zygomatic temporal region, 0.5 cm. lateral to injury no.8 and 3 cm. above tip of left mastoid of size 7.5 cm. x 1.5 cm. x bone deep, horizontally placed underlying bone cut.

(10) Multiple contused abrasion present over an area of 4 cm. x 3 cm. of left maxillary region of size varying from 1 cm. x 0.5 cm. to 0.5 cm. x 0.5 cm. dark red in colour.

(11) Contused abrasion present over right maxillary region. 4.5 cm. from midline of size 3.5 cm. x 2cm, dark red in colour.

(12) Contused abrasion present over right ala of nose .3.5 cm. from glabella of size 2 cm x 1 cm. dark red in colour.

(13) Chop wound present over left mandibular region extending upto upper part of left side of neck, upper end is 4.5 cm. from left tragus and lower end is 5 cm. from midline of size 6 cm x 1.5 c.m. X bone deep underlying bone cut, obliquely placed bevelling present over lower margin both margins sharp.

(14) Stab entry wound present over front of neck, 1 cm. above thyroid cartilage and 6 cm. from tip of chin, extending on both sides for length 1.5 cm. on right side and 3 cm on left side of size 4.5 cm. x 1.5 cm. x cervical spine deep, obliquely placed, directed downwards, backwards, towards right side leading to exit wound at right lateral aspect of neck at midpart 10 cm. from midline and lateral end 3 cm. below tip of right mastoid of size 4 cm. x 1.5 cm., margins erected and sharp. Both entry and exit wound obliquely placed.

(15) Incised wound present over upper 1/3 of left front of neck 0.5 cm. lateral to injury no. 14

28

of size 1.5 cm. x 0.5 cm. horizontally placed tailing present over medial end of length 0.5 cm.

(16) Incised wound present over upper 1/3 of left front of neck, 1.5 cm. from midline and 1 cm. below injury no.14 of size 1.5 cm. x 0.2 cm x subcutaneous tissue deep, obliquely placed tailing present over medial end of length 1 cm.

(17) Incised wound present over front of neck in midline, 4.5cm. Below thyroid cartilage extending on both sides of size 2.5 cm. x 0.2 cm x subcutaneous tissue deep horizontally placed.

(18) Stab wound present over lower 1/3rd of left front of neck, 0.5 cm. from midline and 2 cm. below injury no. 17 of size 2 cm. x 1 cm. x muscle deep obliquely placed, directed downwards, backwards and-medially. Both margins and angles sharp.

(19) Stab wound present over left supraclavicular region at medial part 1.5 cm. below. injury no.18 and 1 cm. above medial end of left clavicle of size 2.5 cm x 1 cm x muscle

deep, obliquely placed, directed downwards and medially, both margins and angles sharp.

(20) Incised wound present over postero latero lateral aspect of upper 1/3 right side of neck, 3.5 cm. from tip of right mastoid and 2 cm above exist wound of injury no.14 of size 3 cm. x 0.5 cm. x muscle deep, obliquely placed tailing present over upper end of length 1 cm.

(21) Stab wound present over right parasternal region of chest in 2 inter costal space, 1.5 cm. from midline of size 4 cm x 1 cm x cavity deep, obliquely placed directed downwards, backwards and medially both margins and angles sharp.

(22) Stab wound present over right upper chest in 3 inter costal space 5 cm. above right nipple and 8 cm. lateral to injury no.21 of size 3 cm. x 1 cm. x cavity deep obliquely placed, directed backwards and medially both margins and angles sharp.

(23) Stab wound present over right lateral aspect of chest in midaxillary line, 8 cm. below and

30

lateral to right nipple of size 3.5 cm. x 1 cm. x muscle deep obliquely placed directed upwards and medially both margins and angles sharp.

(24) Stab wound present over right hypochondriac region, 12 cm. below right nipple and 12 cm. from midline of size 1 cm. x 0.5 cm. x muscle deep obliquely placed both margins and angles sharp.

(25) Stab wound present over right umbilical region, 5 cm. above umbilicus and 10 cm. Below and medial to injury no.24 of size 1.5 cm. x 0.5 cm. x muscle deep, obliquely placed, both margins and angles sharp.

(26) Contused abrasion present over left lower anterior part of chest 12 cm. below left nipple and 16 cm from midline of size 3 cm x 1 cm. dark red in colour.

(27) Stab wound present over left lateral aspect of chest between midaxillary and posterior axillary line 15 cm. below and lateral to injury no.26 of size 4.5 cm. x 1 cm. x muscle deep,

31

obliquely placed, directed upwards and medially both margins and angles sharp.

(28) Stab wound present over left hypochondriac region 11 cm. from midline and 7 cm below injury no. 26 of size 3 cm x 1.5 cm. x muscle deep, obliquely placed directed upwards and medially both margins and angles sharp.

(29) Stab wound present over left lumbar region, 9 cm from midline and 8 cm. below and lateral to injury no.28 of size 4.5 cm. x 1.5 cm. x cavity deep, obliquely placed, directed upwards and medially both margins and angles sharp.

(30) Stab wound present over left lumbar region, 2 cm. below and quely placed, directed upwards and medially both margins and angles sharp.

(31) Contused (abrasion present over left upper scapular region, upper end 13 cm. from midline of size 7 cm x 0.8 cm. dark red in colour.

(32) Stab wound present over, midpart of left side of back at T12 vertebral level. 11 cm. from midline of size 2 cm x 1 cm. x cavity deep,

32

obliquely placed, directed forwards,, downwards and medially both margins and angles sharp.

(33) Incised wound present over lower part of back in midline extending on left side L3 vertebral level, 10 cm. below and medial to injury no.32 of size 7.5 cm x 1 cm. x muscle deep, horizontally placed, tailing present over left lateral end of size 5 cm.

(34) stab wound present over lower part of back in midline, at 14 vertebral level, 2 cm below injury no.33 of size 2.5 cm. x 1 cm. x bone deep, horizontally placed, directed forwards both margins and angles sharp.

(35) Contused abrasion present over postero medial aspect of lower 1/3 of right forearm, 18 cm. below olecranon process of size 3 cm x 0.2 cm. dark red in colour.

(36) Incised wound present over lower 1/3 of postero aspect of right forearm, 3 cm above wrist of size 1 cm. x 0.5 cm x muscle deep obliquely placed.

33

(37) Incised wound present over lower 1/3 of posteromedial aspect of right forearm, 2cm medial, to injury no.36 of size 2 cm x 0.5 cm. x muscle deep, obliquely placed.

(38) Incised wound present over dorsum of right hand proximally, 2 cm. distal to wrist of size 1.5 cm. x 0.2 cm. x muscle deep obliquely placed.

(39) Incised wound present over dorsum medial aspect of right hand, 3 cm from ulnar styloid of size 3 cm x 0.5 cm. x muscle deep obliquely placed.

(40) Chop wound present over dorsum of right hand 3.5 cm distal to injury No.38 extending upto dorsal lateral aspect of proximal pharynx of right thumb of size 8 cm. x 1.5 cm. x bone deep obliquely placed, underlying bone cut, bevelling present over lower margin.

(41) Incised wound present over dorsum of distal aspect of right hand, 1.5 cm. from injury no.40 and 1 cm. proximal to middle finger knuckle of

34

size 1.5 cm. x 0.5 cm. x muscle deep, obliquely placed.

(42) Incised wounds, one each over (1) distal phalanx (ii) Proximal phalanx of dorsum of right index finger present, distal one is 1.5 cm. from tip and proximal is 1 cm from knuckle of sizes 2 cm x 0.5 cm. x bone deep, distal phalanx bone cut and 2 cm x 0.2 cm. muscle deep both obliquely placed, respectively.

(43) Three incised wounds present over dorsum of right middle finger (i) one at proximal interphalyngeal joint of size 2.5 cm. x 0.5 cm. x muscle deep, obliquely placed (ii) two at proximal-phalanx of same size 1cm x 0.2 cm. X msucle deep both obliquely placed and separated by a distance of 1 cm.

(44) Incised wound present over knuckle of right ring finger-of size 1 cm x 0.2 cm. x muscle deep, horizontally placed.

(45) Chop wound present over proximal phalanx of forsum of right ring finger 2 cm distal to injury

35

no.44 of size 2cm x 0.5 cm x bone deep, underlying bone cut, horizontally placed.

(46) Chop wound present over proximal phalanx of dorsal aspect of right little finger extending upto knuckle of size 3 cm x 1 cm x bone deep underlying bone cut, obliquely placed, bevelling present over distal margin.

(47) Contused abrasion present over lateral part of left shoulder, 3.5 cm. from tip of size 7.5 cm. x 0.8 cm., dark red in colour.

(48) Contused abrasion present over lateral aspect of left shoulder extending upto lateral aspect of upper 1/3 of left arm intermingled with injury no.47 at its lower part, 1cm from tip of shoulder of size 9 cm. x 0.8 cm. dark red in colour.

(49) Contused abrasion present over posteromedial aspect of middle 1/34d of left forearm, 13 cam. Below olecranon process of size 3 cm x 2 cm, dark red in colour.

36

(50) Chop wound present over distal 1/34d of anterior aspect of left forearm 3ema above wrist joint of size 4.5 cm. x 1.5 cm. x muscle deep horizontally placed.

(51) Incised wound present over left thenar eminence of size 6 cm x 0.5 cm. x muscle deep, obliquely placed.

(52) Incised wound present over left hypothenar eminence extending towards midpart of palm of size 7cm x 0.2 cm. x muscle deep obliquely placed.

(53) chop wound present over palmer aspect of base of left lile finger involving medial aspect of right finger of size 4 cm x 1 cm x bone deep underlying bone cut obliquely placed.

(54) Chop wound present over left little finger medially extending from tip upto proximal phalanx, 1cm distal to injury no.53, vertically placed of size 4 cm x 0.5 cm x bone deep underlying bone cut.

(55) Incised wound present over proximal phalanx of palmer aspect of left thumb of size 3 cm x 0.2 cm. x subcutaneous tissue deep, horizontally placed.

(56) Incised wound present over dorsolateral aspect of distal phalanx of left thumb of size 3 cm x 0.5 cm. x muscle deep, obliquely placed.

(57) Incised wound present over dorsal aspect of proximal phalanx of left index finger of size 4.5 cm. x 0.5 cm. x muscle deep. obliquely placed.

(58) Incised wound present over knuckle of left little finger of 2:cm x 0.5 cm. x muscle deep, obliquely placed.

(59) Stab wound present over anterior aspect of middle 1/3 of left thigh 28 cm.. Below anterior superior iliac spine of size 1.5 cm. x 0.5 cm. x muscle deep, obliquely placed, directed backwards and medially both margins and angles sharp.

(60) Stab wound present over middle 1/3rd of medial aspect of left thigh 10 cm below and

38

medial to injury no.59 of size 2 cm x 0.5 cm. X muscle deep, obliquely placed directed backwards and laterally.

(61) Stab wound present over middle 1/3 of lateral aspect of back of left thigh, 28 cm. below anterior superior iliac spine of size 3 cm x 1 cm x muscle deep obliquely placed, directed forwards, both margins and angles sharp.

(62) Stab wound present over middle 1/3 of back of left thigh 5 cm below injury no.61 of size 3 cm x 1 cm. muscle deep obliquely placed, directed forwards both margins and angles sharp.

(63) Incised wound present over lateral aspect of upper part of left knee at front of size 4.5 cm. x 0.5 cm. x subcutaneous tissue deep, horizontally placed.

(64) Incised wound present over midpart of front of left knee 3 cm below injury no.63 of size 3 cm x 1 cm x subcutaneous tissue deep, horizontally placed.

(65) Contused abrasion present over anterolateral aspect of upper part of left leg 5 cm below injury no.64 of size 7 cm x 1cm dark red in colour."

As per his evidence, all the injuries were antemortem. On internal examination, he noticed following injuries:

"(1) Skull Vault: i) The cut mark present over left frontal bone of length 4 cm, ii) Cut mark present over left parieto occipital bone of length 6 cm iii) another cut mark present over left parieto occipital bone, 3 cm above 1 cut mark as described in (2) extending upto midline of length 4.5 cm iv) cut mark present over left zygomatic temporal bone of length 6 cm corresponding to the injury nos. (2)(3)(4) and (9) respectively mentioned in column no.17 of postmortem report.

40

(2) Meninges: Intact, pale. Differ subarachnoid hemorrhage present over both parieto occipital cerebral center as a thin red blood film.

(3) Walls, ribs, cartilages: (1) Cut marks present over ribs on right side from 2nd to 3rd ribs in parasternal region, from 3rd to 4th rib in midaxillary line corresponding to injuries nos. 21, 22 and 23 respectively as mentioned in column no.17(2) cut marks present over ribs on left side in posterior axillary line from 9th to 10th ribs corresponding to injury no.27 mentioned in column no.17.

(4) Pleura: Pale cut marks present over anterior surface of pleura on right side corresponding to injury nos.21 and 22 mentioned in column no.17.

(5) Trachea: Intact.

(6) Right lung: Pale, partially collapsed, stab wounds present over medial aspect and anterolateral aspect of right upper lobe of lung corresponding to injury no.21 and 22 mentioned

41

in column no.17 right pleural cavity contains about 800 ml of blood and blood clots.

(7) Large Vessels: Cut present over common carotid artery. Internal jugular vein and other small vessels on right side of neck corresponding to injury no.14 mentioned in column no.17.

(8) Peritoneum: Cut mark present over left side of peritoneum corresponding to injury no.29 mentioned in column no.17.

(9) Cavita contains about 1.5 liter of blood and blood clots mixed with fecal matter.

His evidence further shows that injury Nos.2-6 and 9-12 mentioned in column No.17 were corresponding to the internal injuries mentioned in column No.19. Injury No.14 with its damage is mentioned in column Nos.20 and 21. Injury Nos.21 and 22 with their internal damage are mentioned in column No.20 and injury Nos.29 and 32 with their corresponding internal damage mentioned in column No.21. All these injuries mentioned above were sufficient to

42

cause death in ordinary course of nature. The cause of death is due to injuries to vital organs. The said postmortem notes are in handwriting of his Assistant Doctor Ghormade. Accordingly, he issued postmortem notes Exh.100-A.

As far as his cross examination is concerned, the cause of death is not seriously challenged by the defence. The nature of death is homicidal one is not challenged by the defence. The cross examination shows that maximum injuries on the person of the deceased were on front side. He admitted that injuries mentioned at Sr.Nos.35, 47, 49, and 65 in postmortem report are not possible by the weapons shown to him.

Thus, an attempt was made to show that injuries sustained by the deceased were on the front side and some of injuries are not possible by weapon like "swords",

“guptis”, and “knives”, recovered at the instance of the accused.

14. Besides the evidence of Medical Officer PW9 Dr.Manish Shrigiriwar, the prosecution further placed reliance on inquest panchanama Exh.98. As per the inquest panchanama, on the dead body of the deceased, multiple injuries are seen by panchas, which are mentioned in the said panchanama. The said inquest panchanama is not challenged by the defence.

15. Thus, the evidence of Medical Officer PW9 Dr.Manish Shrigiriwar, substantiated by the inquest panchanama Exh.98, shows that the deceased has sustained multiple injuries, which are sufficient to cause death in the ordinary course of nature. The internal injuries are corresponding to the external injuries.

16. The evidence of Medical Officer PW9 Dr.Manish Shrigiriwar is not only opinion evidence but also his evidence is in the nature of direct evidence as he has an opportunity to see injuries on the person of the deceased.

17. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt. Nagindra Bala Mitraand vs. Sunil Chandra Roy and another**, reported at **1960 SCR (3) 1** wherein it has been observed as under:

“The value of a medical witness is not merely a check upon the testimony of eye witness; it is also independent testimony, because it may establish certain facts , quite apart from the other oral evidence . If a person is shot at closed range the marks of tattooing found by the medical witness would show that the

range was small, quite apart from any other opinion of his. Similarity, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victims' person."

Thus, testimony of medical witness is very important and it can be safely accepted.

18. In recent judgment also, The Hon'ble Apex Court in the case of **Anuj Singh @ Ramanuj Singh @ Seth Singh vs. The State of Bihar, reported in 2022 Live Law (SC) 402** dealt with the “evidentiary value” of the medical evidence and observed that, “*the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has*

been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged".

19. Thus, testimony of medical witness is very important and it can safely be accepted.

20. The evidence adduced by the medical officer, corroborated by the inquest panchanama, shows that the deceased died homicidal death.

21. The entire case of the prosecution is based on the direct evidence of PW4 Amol Kumbhalkar; PW5 Dhnyaneshwar Dhapekar; PW6 Suman Devgune, and eyewitness PW7 Subhash Parde. Besides the direct evidence, the prosecution has also placed reliance on the evidence of informant PW1 Deva @ Devdas Laxman Shendekar on extra judicial confession of accused Devanand

Chaitram Kuhikar and the circumstantial evidence i.e. the blood stained clothes recovered at the instance of the accused, blood stained weapons recovered at the instance of accused Santosh Chaitram Kuhikar and acquitted accused Jitendra.

22. The evidence of informant PW1 Deva @ Devdas Laxman Shendekar, who is brother of the deceased, deposed that the accused persons namely accused Nos.2 to 6 are residents of the same locality and, therefore, he is acquainted with them. He further deposed that on 19.1.2011, at about 9:00 pm, the accused persons came to his house holding swords in their hands. Amongst them, accused Devanand Chaitram Kuhikar told that they have killed his brother. Thereafter, they caused damages to glass of windows and, thereafter, left the place. Subsequent of leaving the place by the accused persons, Anand Jatap informed him that his brother is killed in Rajgire Lane in

front of grocery shop by the accused persons. He immediately rushed to the spot and saw his brother lying in pool of blood and sustained injuries on all over his body. PW4 Amol Kumbhalkar was sitting near the dead body of his brother, who has also sustained injuries. PW4 Amol Kumbhalkar informed him that the accused persons killed his brother by assaulting him with swords and when he attempted to intervene, he was also assaulted by the accused persons. He immediately rushed to the police station. The police have already received the information about the incident. Immediately, the police came along with him at the spot, prepared the spot panchanama, seized articles from the spot and, thereafter, again took him to the police station and recorded his report, which is at Exh.72 and the FIR is at Exh.73.

His evidence further shows that the spot of the incident was approximately 300 feet away from his house.

Accused Nos.2 to 6 are residing since birth near to his house and accused Mahesh Natthuji Devgune is their nearest relative. The reason behind the assault is narrated by him that on 17.1.2011 there was a quarrel between accused Rajesh Ramprasad Kuhikar and his another brother Guddu on account of money. There was abusing and altercation on that count also. He has identified weapons swords Articles-1 and 2 and “knife” Article-4 and also identified the accused.

Informant PW1 Deva @ Devdas Laxman Shendekar, is cross examined at length. His cross examination shows that he is residing in a thick locality and his residence is near the spot of the incident. It further came on record that PW5 Dhnyaneshwar Dhapekar; PW6 Suman Devgune, and eyewitness PW7 Subhash Parde are his nearest relatives. It further came in his cross examination that the police did not draw the panchanama

regarding the spot where the window glasses were broken. Rest of the cross examination shows that when he initially went to the police station, he disclosed the incident to the police which he was knowing and he was in the police station for 15 minutes. He also admitted that he went to the police station from the spot and at that time he stayed there upto 4:00 am and after recording of the FIR, he returned home. He denied the suggestion that when he reached the spot, PW4 Amol Kumbhalkar was not present there.

An omission is brought on record during the cross examination for accused No.3 that while lodging the report, he has not stated to the police that accused Sanjiv Shankar Kuhikar, Sheshrao Ramdas Kuhikar, and Rajesh Ramprasad Kuhikar killed his brother. He has not stated to the police while lodging the report that all the accused persons are residing in front of his house since their birth.

51

During the cross examination on behalf of accused Nos.4, 5 and 6, he denied suggestion that due to night, he could not see clearly anyone of the accused persons.

Thus, from the cross examination, an attempt was made to show that there is omission as far as as his acquaintance with the accused persons is concerned and there is delay in disclosing names of the assailants. Though an omission is brought on record that he has not stated in the FIR that the accused persons are residing near to his house, recital of the FIR shows that he has stated as to the residence of the accused persons in the same locality in a different manner.

23. To corroborate the version of informant PW1 Deva @ Devdas Laxman Shendekar, the prosecution has examined PW4 Amol Kumbhalkar vide Exh.89. Though he is injured eyewitness, he has left loyalty towards the

52

prosecution and not supported the prosecution case. However, as far as his evidence, regarding injuries on his person, is concerned, he only left loyalty towards the prosecution to the extent of involvement of the accused persons. His evidence shows that on 19.1.2011, between 9:00 pm and 10:00 pm, when he was near the house of Rajgire, and the deceased was also sitting near the house of Rajgire, they were attacked and he has sustained injuries in the said attack. His cross examination by learned APP shows that he used to talk to the deceased. Kuhikar family resides near the house of the deceased. Accused Sanjiv Shankar Kuhikar, Santosh Chaitram Kuhikar, Devanand Chaitram Kuhikar, and Sheshrao Ramdas Kuhikar are members of Kuhikar family and accused Mahesh Natthuji Devgune, and acquitted accused Jitendra are also residents of the same locality. He has also admitted his acquaintance with the deceased as well as the accused persons. However,

he has shown ignorance as to dispute between Kuhikar family and family of the deceased. He denied suggestion of learned APP that he was assaulted by the accused persons.

24. The evidence of eyewitnesses PW5 Dhnyaneshwar Dhapekar examined vide Exh.91, shows that on 19.1.2011, at about 8:30 pm, the deceased was sitting in front of the house of Rajgire. The deceased is his cousin. At the relevant time, he was in his house and 4-5 persons killed the deceased, those were Mahesh Natthuji Devgune, Sanjiv Shankar Kuhikar, Santosh Chaitram Kuhikar, Devanand Chaitram Kuhikar, and Jitendra who were possessing two swords and three guptis. He specifically stated that accused Santosh Chaitram Kuhikar and Devanand Chaitram Kuhikar were holding swords and Jitendra, Mahesh Natthuji Devgune and Sanjiv Shankar Kuhikar were holding “guptis” in their hands. After the assault, they left therefrom. Friend of the deceased PW4 Amol Kumbhalkar also sustained

injuries in the said incident. The deceased sustained injuries all over his body. He further stated that the deceased along with his friend PW4 Amol Kumbhalkar was sitting on vehicle in front of the house of Rajgire. At that time, they were assaulted by the accused persons. He has identified the accused persons and specifically stated that swords held by Santosh Chaitram Kuhikar and Devanand Chaitram Kuhikar, which are at Articles-1 and 2, weapons, which are at Articles-3 and 4, are also identified by him.

His cross examination for accused No.3 shows that when, initially, the police came at the spot, he did not disclose the police that he has seen the incident and identify the assailants. After three days of the incident, when the police came to him for enquiry, he disclosed the said incident to the police. He specifically admitted that the incident, which he has narrated to the police after three days of the incident, was narrated by him in his house. The

police recorded his statement after 3-4 days of the incident and that is the only statement recorded by the police.

Thus, from this cross examination, an attempt was made to show that despite he was aware about the incident, he himself has not disclosed about the incident to the police and when the police approached him, he has disclosed the incident to the police. There is a delay in recording statement of eyewitness. The eyewitness is the nearest relative of the deceased and, therefore, his evidence is to be scrutinized on the aspect that despite he was aware about the incident, he has not disclosed though he was having an opportunity to disclose the same.

Further cross examination of this witness shows that the incident took place in a thick locality. There are various houses near the house of Rajgire in front of whose house the alleged incident has taken place. It further came

in the cross examination that the incident was going on for about twenty minutes. He specifically stated that doors of all houses were closed and nobody came out of house.

Thus, the cross examination shows that the incident was of such a nature that nobody dared to come at the place of the incident.

On behalf of cross examination of accused No.1, it only came on record that he has never visited the house of accused Mahesh Natthuji Devgune and Mahesh is not living nearby houses. Rest of cross examination is in denial form.

An omission was brought on record to the extent that he has stated before the police while recording the statement that accused Sanjiv Shankar Kuhikar was holding “gupti” in his hand, which is not narrated by him.

Further omissions are brought on record that he has not stated before the police that the deceased was

sitting in front of the house of Rajgire and accused Jitendra and Sanjiv Shankar Kuhikar were holding “guptis” in their hands. He has witnessed Jitendra assaulting the deceased and PW4 Amol Kumbhalkar.

Perusal of the statement reveals that sum and substance is narrated by him that when he was at house at about 9:15 pm, 6-7 persons came and assaulted the deceased and PW4 Amol Kumbhalkar.

Thus, he has not stated that the deceased was sitting in front of the house of Rajgire, but he has stated that the accused persons were holding weapons in their hands like “swords” and “guptis” and they have assaulted the deceased and injured PW4 Amol Kumbhalkar.

25. PW6 Suman Devgune, is another eyewitness, who is sister of the deceased. As per her evidence on 19.1.2011, at about 9:15 to 9:30 pm, when she went near

the lane of Rajgire to call her brother for dinner, she witnessed the accused persons assaulting her brother. They were holding “swords”, “knives”, and “guptis”. She has also stated about presence of PW4 Amol Kumbhalkar at the spot and stated that when Amol intervened to rescue her brother, he was assaulted by the accused persons. Thereafter, her brother was lying in pool of blood. The nearby residents out of fear shut down doors and windows of their houses and they were viewing the incident from the galleries and thereafter, the accused persons fled away. As she was frightened, she sat there for some time and, thereafter, left for home. Her cross examination shows that PW4 Amol Kumbhalkar was present there and standing there, which is witnessed by her. The shop of Rajgire was closed. She further admitted that Amol Kumbhalkar was lying in injured condition at the spot. After the incident, she stayed there for 5-10 minutes and left for her home. When she

reached home, informant PW1 Deva Shendekar was not at home, but he met her at the spot. She clarified during the cross examination that after informing her mother about the incident, she returned to the spot at that time she met PW1 Deva. She has not narrated the incident to PW1 Deva.

During her cross examination, omissions are brought on record that she has not stated that she is residing along with her brothers. She has also not stated that on 17th there were altercations between her brother Guddu and accused Rajesh Ramprasad Kuhikar. She has also not stated that the accused persons are residing nearby to her house and accused Mahesh Natthuji Devgune is residing nearby the Corporation School in their locality and, therefore, she recognized them. She has not stated that nearby residents, out of fear, shut down doors and windows of their houses. She has explained that after the incident, the police had come to her house, but she was not

in a condition to talk. Thus, she has explained that why she has initially not narrated the incident to the police.

The cross examination on behalf of accused Nos.4 to 7 shows that the police were enquiring many people at the spot. She did not go to the police station at that night. She further admitted that when the police were coming, they were communicating with Deva. It further came in her cross examination that as she was not feeling well, after the incident, she was treated in the hospital and her family members were knowing about her ill-health. She denied the suggestion that the accused persons are not residing near to her house.

26. Eyewitness PW7 Subhash Parde, has not supported the prosecution case and left the loyalty towards the prosecution to the extent that he has witnessed any incident.

61

27. PW8 Chanda Shendekar, the wife of informant PW1 Deva @ Devdas Laxman Shendekar, has narrated about the incident that after the incident, all the accused persons came to her house and amongst them accused Devanand Chaitram Kuhikar disclosed that they have killed the deceased and the accused persons have broken glass of window at their house. Thereafter, she gave a phone call by dialing No.100 and informed the police about the attack on their house. Though extensive cross examination was carried out, nothing incriminating is brought on record. She has only admitted that broken glasses of window were lying there for 3-4 days. They have not picked up those pieces of glass and kept in their house.

Some omissions are also brought on record during her cross examination.

28. The circumstance, on which the prosecution placed reliance, is of PW2 Tarachand Aherwar, who acted as pancha on memorandum statements of accused Santosh Chaitram Kuhikar and acquitted accused Jitendra at whose instance incriminating weapons are recovered.

29. The evidence of PW2 Tarachand Aherwar shows that he along with one Ishant acted as pancha. In their presence, accused Santosh Chaitram Kuhikar gave memorandum statement that two “swords” and one “gupti” are concealed under a tyre in the locality and he would show the place. Accordingly, his memorandum statement was reduced into writing, which is at Exh.77. Then, he along with another pancha, police, and the accused proceeded in a Government vehicle. The accused led them via Golibar Square and asked to stop the vehicle at Ravidas Temple near his house. Thereafter, the accused was leading them and he took them near the house of one Jagdish

Pathane, where there was a heap of tyres from which the accused produced two blood stained “swords” and one “gupti”. The police seized the said weapons. One “sword” was without handle, one “sword” was having brass metal, and there was one “gupti.” Accordingly, seizure panchanama Exh.78 was done. He has identified accused Santosh Chaitram Kuhikar at whose instance the weapons were recovered and he has also identified the weapons recovered in his presence.

His further evidence shows that another accused Jitendra also made a statement in his presence that he has concealed the clothes, which were on his person at the time of the incident, and the weapons in his house. Accordingly, his memorandum statement was recorded in their presence, which is at Exh.79. Thereafter, he led them at his house and produced the clothes and the weapons kept in article like container beneath kitchen platform of his house. The said

64

weapon “knife” was seized in their presence as well as the clothes were seized. Accordingly, panchanama was drawn, which is at Exh.80. He has identified Jeans Pant Article-19 and T-Shirt Article-20 as well as “knife”.

The cross examination of this witness shows that he is relative of informant PW1 Deva Shendekar. On 22.1.2011, the police had been to the house of the informant and asked him to act as pancha. He has admitted that he has not received any summons from the police to act as pancha. Except this cross examination, nothing is brought on record as far as memorandum statement and discovery at the instance of the accused are concerned.

Thus, the evidence of PW2 Tarachand Aherwar shows that in his presence two “swords” and one “gupti” at the instance of accused Santosh Chaitram Kuhikar and one

“knife” at the instance of accused Jitendra and blood stained clothes are seized.

30. To corroborate the version of the prosecution, the prosecution has also adduced the medical evidence by examining PW9 Dr.Manish Shrigiriwar. His evidence as to homicidal death is already discussed. The evidence of PW9 Dr.Manish Shrigiriwar further shows that he received query from the investigating along with weapons. He examined the said weapons and opined that the “iron-swords” with handles are sharp pointed and heavy. The blades of the said “swords” were curved at distal part. The length of the same is 78.5, maximum breadth is 3 cm, maximum thickness is 4 mm, tip of the weapons was sharp and pointed, edges distal 1/3 upto 17 cm, both edges sharp from tip, and one edge – blunt and other edge sharp portion of blade near handle for length 14 cm, having both blunt edges. He has also drawn diagrams of the said weapons. He has further observed that

66

the surface of the blade was blood stains and rust. The stains are present over surface of the blade at places and advised for chemical analysis. He has further opined that cut marks present over clothes mentioned in column No.7 with injury Nos.1 to 5; 7 to 9, 13 to 25, 27 to 30, 32 to 34, 36 to 46, and 50 to 64 mentioned in column No.17 and internal damage mentioned in column No.19, 20, and 21 of the postmortem report can be possible with such kind of weapon.

The another weapon was also examined by him which was “iron-sword” sharp pointed, and heavy, dangerous, if used as weapon of the offence. The length of the said “iron sword” was 61 cms, maximum breadth was 3.8 cms, maximum thickness was 4 mm, tip was sharp and pointed, one edge sharp and another edge blunt, and one triangular projected end present near handle, the part of length 6 cms, maximum breadth 1.4 cms and maximum

thickness 4 mm. He has also drawn a diagram of the said weapon also. He has further observed that surface of the weapon was rough, blood stains, and rust stains. He has advised for chemical analysis. He opined cut marks present over clothes mentioned in column No.7 with injury Nos.1 to 5, 7 to 9, 13 to 25, 27 to 30, 32 to 34, 36 to 46, and 50 to 64 mentioned in column No.17 and internal damage mentioned in column Nos.19, 20 and 21 of the postmortem report can be possible with such kind of weapon.

Another weapon examined by him is "gupti" with handle, sharp, pointed, light, and dangerous, if used as weapon of offence. The length of the same is 31 cms, maximum breadth 2 cms, maximum thickness 3 mm, tip sharp and pointed, both edges are sharp upto 10.5 cms from tip, and white stains and rust stains present over the surface of places. He advised for chemical analysis. He opined cut marks over clothes mentioned in column No.7 with injury

68

Nos.1, 7, 8, 15 to 20, 22, 24, 25, 30, 32, 33, 34 to 39, 41 to 44, 51, 52, and 55 to 64 mentioned in column No.17 and internal damage mentioned in column No.21 of postmortem report can be possible with such kind of weapon. He has also drawn diagram of the said weapon. His query report further shows that all three weapons are signed, packed, sealed and handed over to Police Constable Sanjay (Bakkal No.3570) from police station tahsil. The evidence of PW9 Dr.Manish Shrigiriwar further shows that he has received three sealed packets containing weapons with Mal No.10/11 from the Tahsil Police Station.

Thus, his evidence shows that when he received the weapons, the same were in a sealed condition and while re-sending the same, he has again signed, sealed, and, thereafter, handed over to Police Constable Sanjay.

As far as his cross examination on the aspect of query report is concerned, he has admitted that even roughly he has not measured number of stains over the blades. He explained that it does not fall under his purview. He has admitted that he cannot specifically state that which injury is caused by which weapon.

Except this cross examination, nothing incriminating is brought on record by the defence counsel.

31. Another witness i.e. PW3 Atul Suresh Mahajan is examined to prove the seizure memos regarding the clothes of the accused persons which were on their person. As per his evidence, on 20.11.2011, he was called at the Tahsil Police Station. The police took him to the Mayo Hospital wherein the police seized white-shirt, black-colour-jeans, and underwear of the deceased. Accordingly, the police prepared seizure panchanama and the said seizure

panchanama is at Exh.82. The police have also seized the blood samples of the deceased in his presence and seizure memo was prepared in his presence. The police seized the clothes of the accused in the police station in his presence. Thereafter, the said witness has not supported the prosecution case and, therefore, with the permission of the court, learned APP was permitted to cross examine the witness.

During his cross examination, he stated that along with him another pancha Indranath Khinchi was present. In their presence, Police Constable Kishore produced blood samples of accused Rajesh Ramprasad Kuhikar. Accordingly, seizure memo was prepared, which is at Exh.83. On the same day, one embroidery white-colour-blood stained shirt and one black-colour lining pant stained with blood were seized from accused Devanand Chaitram Kuhikar and all these articles were seized in his presence

and in presence of another pancha by the police. The seizure memo is at Exh.84. His evidence further shows that on the same day, the police have seized black-colour half shirt and brown colour half-pant from accused Sheshrao Ramdas Kuhikar by drawing seizure memo Exh.85. On the same day, the police seized purple colour T-Shirt and greenish colour blood stained pant from accused Mahesh Natthuji Devgune. The police prepared its seizure panchanama, which is at Exh.86. On the same day, the police seized two pockets embroidery full-shirt and faint blue colour jeans pant from accused Sanjiv Shankar Kuhikar. The seized shirt was blood stained. The said seizure memo is at Exh.87. On 22.1.2011, the police called him and in his presence, seized blood samples of accused Jitendra by drawing seizure memo Exh.88. His cross examination shows that his house is at a distance of half kilometer from the Tahsil Police Station. Another pancha is

also from his locality. He has admitted that whenever the Tahsil Police Station requires witness, they called him on telephone to work as a pancha. He has also worked as a pancha in Lakadganj Police Station. He acted as a pancha at about 10-12 times. He has also admitted that whenever he was called to act as a pancha, that time another pancha Khinchi was also working with him as co-pancha.

Thus, from the cross examination, learned defence counsel attempted to show that the pancha witness, who is examined by the prosecution, has acted as a pancha in various cases and, therefore, he is habitual pancha.

32. As per the prosecution case, the statement of PW4 Amol Kumbhalkar is also recorded by the Executive Magistrate and, therefore, Executive Magistrate PW12 Pandurang Warkhade was examined as PW4 Amol

Kumbhalkar survived from the injuries and, therefore, the said statement is to be treated as statement under Section 161 of the CrPC.

33. Medical Officer PW13 Dr.Naina Dhumale, is examined by the prosecution to explain the injuries of accused Mahesh Natthuji Devgune. Her evidence shows that on 19.1.2011 she was on duty as Medical Officer in Government Medical College and Hospital. Police Naik Totaram (Bakkal No.3069) brought accused Mahesh Natthuji Devgune to the hospital for his physical examination. Accordingly, she examined him and found injuries on his person, one incised wound around 6 cms over his right little finger and ring finger. She referred him to orthopedic expert. The size of the injury caused on right little finger was measuring 6 cms x 1 cm. The injury was caused within 24 hours. As per the report of the orthopedic expert, the injury was fracture 5th metacarpal bone. It was

a grievous injury and caused by any sharp object. She issued the MLC, which is at Exh.146. Her evidence shows that she has examined the injured at 10:10 pm on 19.1.2011. Her cross examination shows that he has given history of assault. The medical certificate of accused Mahesh Natthuji Devgune is at Exh.146, which also shows that he was examined on 19.1.2011 at 10:10 pm. The alleged incident has taken place, as per the prosecution, between 9:15 and 9:30 pm on 19.1.2011. In the medical examination of the accused, before his arrest on 19.1.2011 at 10:10 pm, though the medical officer has stated that he has given history of assault, the medical certificate nowhere shows that he has given any history of assault before her.

34. PW14 Dr.Mamta Sonsare, is examined to prove the medical certificate of accused Sanjiv Shankar Kuhikar. As per her evidence, on 19.1.2011, when she was on duty, at about 10:00 pm, accused Sanjiv Shankar Kuhikar was

brought to the police station by Police Constable Totaram. She examined him and found injuries on his right cheek. It was incised wound. Since the injury was big, she referred him to ENT Expert. On the report of the expert, she opined that the injury was measuring 8 cms x 1 cm x 1 cm. The injury was extending from tragus upto zygomatic processus. It was simple in nature. It was fresh and caused within one hour. The injury may be caused by sharp point cutting object. In her cross examination, she has admitted that the patient had given her history of assault. It further shows that the police referred the injured with a requisition for examination.

Thus, the cross examination of PW14 Dr.Mamta Sonsare also shows that the incident had occurred on 19.1.2011. On the same day, at about 10:00 pm, accused Sanjiv Shankar Kuhikar was examined as he was referred by the police along with requisition and on examination,

76

the injury was found on his person. Though she has admitted that the patient has given history of assault, admittedly, the same was not mentioned in the medical certificate, which is at Exh.148.

35. Thus, by examining these two witnesses Medical Officers PW13 Dr.Naina Dhumale and PW14 Dr.Mamta Sonsare, the prosecution has explained the injuries of two accused Mahesh Natthuji Devgune and Sanjiv Shankar Kuhikar.

36. Coming to the evidence of Investigating Officers PW10 Sudhir Nandanwar and PW11 Anil Pawar, it shows that they have narrated about the investigation carried out by them.

The evidence of PW10 Sudhir Nandanwar shows that on 19.1.2011 he was working as Senior Police Station Officer. One person namely Deva @ Devdas Laxman

Shendekar approached the police station and informed that his brother is killed. At the same time, he received the information from the control room that murder is committed in "Timki Area". Accordingly, an entry was taken by him in the station diary. He along with informant PW1 Deva Shendekar went at the spot of the incident. On the spot, the brother of informant PW1 Deva @ Devdas Laxman Shendekar was found lying dead. He has sustained numerous injuries on his person. Informant PW1 Deva Shendekar informed the names of the accused persons in the police station as well as at the spot of the incident. Immediately, he communicated the names of the accused persons to the Detection Branch Squad and directed them to search the accused. He has also directed API PW11 Anil Pawar to draw panchanama of scene of occurrence and forwarded the dead body of the deceased for autopsy. As the situation due to the murder was tensed, he deployed

some police in the area and then went to the police station along with informant PW1 Deva Shendekar. Thereafter, API PW11 Anil Pawar obtained report of informant PW1 Deva Shendekar and then the crime was registered. Thereafter, he took the investigation in his hands and in the midnight, he arrested five accused persons. The officials of the Detection Branch Squad produced five accused before him and, thereafter, he arrested them. The arrest panchanamas are at Exhs.102 to 106. On the next day, he prepared the spot panchanama Exh.98. On 20.1.2011, he arrested accused Rajesh Ramprasad Kuhikar as per Exh.107. He has also seized the clothes of the accused persons which were on their person at the time of the incident. The said seizure panchanamas are at Exhs.84 to 88 and 108. He has also collected blood samples of the accused by seizure memo. He has also issued letter to the medical officer to record the statement of injured and through the Executive Magistrate

also, he recorded the statement. He got recorded the statement of injured PW4 Amol Kumbhalkar. He further stated that accused Santosh Chaitram Kuhikar, while in custody, gave a memorandum statement in presence of panchas that he has concealed two “swords” used in the crime in the heap of tyres near his house and is ready to produce the same. Accordingly, his statement was recorded in presence of panchas, which is at Exh.77. Thereafter, accused Santosh Chaitram Kuhikar led them towards his house and near his house, there was a heap of tyres from which he has produced two “swords” and one “gupti” having blood stains on it. Accordingly, panchanama was drawn, which is at Exh.78. His evidence further shows that at the instance of acquitted accused Jitendra, on the basis of his memorandum statement Exh.79, the “knife” and his blood stained clothes were discovered, which are at Exhs.79 and 80. Thereafter, he recorded the statements of

relevant witnesses. On 24.1.2011, he has recorded statements of eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW7 Subhash Parde. On 28.1.2011, he sent clothes of the accused persons and the deceased and their blood samples for chemical analysis. On 31.1.2011, he recorded the statement of another eyewitness PW6 Suman Devgune. He has sent the weapons used in the commission of the crime to the medical officer for opinion along with query. The said query report is at Exh.102 dated 18.3.2011. After completion of the investigation, he submitted the chargesheet against the accused persons.

His cross examination shows that the information given by informant PW1 Deva Shendekar was cognizable offence. He is aware that soon after the information of the cognizable offence, the FIR is required to be registered. He further admitted that in the present case registration of the FIR was kept reserved. He has admitted

81

that he has not attached separate entry of the information received about the incident in station diary because it was mentioned in spot panchanama. His cross examination further shows that when for the first time he reached the spot of the incident, there was a crowd. He enquired about the eyewitnesses of the incident, but he did not find any eyewitnesses of the incident. From both sides of the spot of the incident, there are residential houses. Prior to 24.1.2011, except injured PW4 Amol Kumbhalkar, he did not find any eyewitness. Since night of 19.1.2011 till 23.1.2011, he visited the “Timki Locality” for the purpose of the investigation and his investigation was to find out whether there was any eyewitness. When he visited the house of informant PW1 Deva Shendekar, at that also, he has enquired as to whether there was any eyewitness to the said incident from his family. The law and order was disturbed in the locality where the incident took place and,

therefore, police men were deployed in that locality and, therefore, the witnesses were not coming forward to give their statements. Hence, he could not record statements of eyewitness PW5 Dhnyaneshwar Dhapekar and PW7 Subhash Parde before 24.1.2011. Thus, he explained that there was a law and order situation and, therefore, nobody was coming forward and hence, he could not record statements of eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW7 Subhash Parde before 24.1.2011.

His cross examination further shows that PW5 Dhnyaneshwar Dhapekar and PW7 Subhash Parde told that due to the terror of the accused persons, they did not give their statements previously. He admitted that the explanation given by the witnesses is not recorded in their statements. He further explained that he did not feel it necessary to record their explanations and, therefore, he has not recorded the same in their statements. He did not

take the entry in the station diary that witnesses are not coming forward due to the terror of the accused persons. He further explained that the statement of PW6 Suman Devgune was not recorded till 31.1.2011 as she was under shock. Prior to 31.1.2011, he enquired her for 2-4 times, but he has not recorded her statement.

Thus, delay in recording the statement of PW6 Suman Devgune is also explained by this witness.

His further cross examination shows that in serious matters, pancha witnesses are to be called, but no summonses were issued to PW3 Atul Suresh Mahajan or Indranath Khinchi. They were called through the police. His evidence further shows that muddemal property seized vide Exhs.77 to 80 were deposited in Malkhana on 24.1.2011. There is no reason for not depositing that Muddemal in Malkhana prior to 24.1.2011. He has not

sent the weapons to the Forensic Science Laboratory, till 21.3.2011 and he explained that those weapons were sent to the doctor for query. He further explained that, normally, they do not send the weapons seized in the crime to the doctor for query, till notes of the postmortem are available. Accordingly, till 8.2.2011, he did not sent the weapons to the doctor for query. On 1.3.2011, he received the postmortem report and, thereafter, he has sent the weapons to the medical officer for query.

In further cross examination, omissions were brought on record of the evidence of informant PW1 Deva Shendekar, PW5 Dhnyaneshwar Dhapekar, PW6 Suman Devgune, and PW7 Subhash Parde.

37. PW11 Anil Pawar, is also investigating officer whose evidence is to the extent of recording the FIR of informant PW1 Deva Shendekar. He has also visited the

house of the deceased and witnessed stones and pieces of glasses lying there. He has also stated about gathering of the crowd at the spot of the incident. His cross examination shows that he reached the spot within five minutes from receipt of the information about the incident. Informant PW1 Deva Shendekar was not present at that time in the police station. There were many eyewitnesses on the spot. However, he has not recorded their statements. He is not aware whether PW10 Sudhir Nandanwar enquired anybody on the spot. He was busy in preparing the spot panchanama and, therefore, he has not recorded the statements of any eyewitnesses. His cross examination shows that there was a huge crowd and senior police officials were also present there. He also stated that there was a tensed situation and huge crowd. This aspect is brought on record during the cross examination.

38. Thus, the evidence of Investigating Officers PW10 Sudhir Nandanwar and PW11 Anil Pawar is consistent that due to the incident, there was a tensed situation and, therefore, the police bandobast was deployed at the spot of the incident.

39. The prosecution has also placed reliance on the scientific evidence i.e. C.A.Reports.

40. As per C.A. Reports Exhs.61 and 62, Blood Group of accused Mahesh Natthuji Devgune and Sheshrao Ramdas Kuhikar was not determined. As per Exh.63, Blood Group of accused Sanjiv Shankar Kuhikar is “B”. Blood Group of deceased is also “B” (Exh.65). Blood Group of accused Jitendra is not determined. As per Exh.68, Blood Group of accused Rajesh Ramprasad Kuhikar is “B”. As per Exh.69, Blood Group of accused Santosh Chaitram Kuhikar is “O”. Whereas, as per Exh.70 Blood

Group of accused Devanand Chaitram Kuhikar is “B”. As per Exh.64, Article-1 pair of rubber slipper found on the spot, Article-4 soil mixed with concrete pieces collected from the spot, Article-6 Shirt, Article-7 Jacket, Article-8 Jeans Full Pant, Article-9 underwear of the deceased, Article-10 Shirt of accused Santosh Chaitram Kuhikar, Article-11 Full Pant of accused Santosh Chaitram Kuhikar, Article-12 Shirt, Article-13 Full Pant, Article-16 T-Shirt of accused Mahesh Natthuji Devgune, Article-18 Shirt of accused Sanjiv Shankar Kuhikar, Article-21 Jeans Full Pant of accused Sanjiv Shankar Kuhikar are stained with Blood Group “B”. As per Exh.64, blood stains found on Article-2 woolen cap found on the spot and Article-3 handle of the “sword” are also stained with human blood. As per Exh.66, Article-1 “sword”, Article-2 another “sword”, and Article-3 “gupti” are stained with blood. Blood Group “B” was found

on Articles-1 and 2. Blood Group on Article-3 “gupti” is not determined.

41. Thus, as per the evidence of PW2 Tarachand Aherwar, the weapons are discovered on the basis of the memorandum statement of accused Santosh Chaitram Kuhikar on 22.1.2011 i.e. two “swords” and one “gupti” and the place of concealment of the “knife” was discovered on the basis of statement of acquitted accused Jitendra on 22.1.2011.

42. As per the evidence of Medical Officer PW9 Dr. Manish Shrigiriwar, he has received requisition on 18.3.2011 for examination of weapons and he has examined the weapons and replied to the query on 18.3.2011. The requisition, given by the Investigating Officer, by which the weapons were forwarded, is dated 21.3.2011 which is at Exh.128.

As per the evidence of Investigating Officer PW10 Sudhir Nandanwar, as per their practice, they do not send weapons to doctor for query, till they receive postmortem notes. He has received the postmortem notes on 1.3.2011 and, thereafter, on 21.3.2011, he has forwarded the weapons to the Chemical Analyzer. The mudde mal receipt Exh.58 shows that Mal.No.9/11 dated 21.1.2011 and Mal.No.10/11 dated 24.1.2011, i.e. simple soil, blood stained soil, handle of the swords, pare of slippers, woolen cap, total 21 articles, were deposited on 21.1.2011. Whereas, other articles were deposited on 24.1.2011.

43. Thus, the evidence on record shows that all articles were deposited by the investigating officer on 21.1.2011 and 24.1.2011.

APPRECIATION OF EVIDENCE

90

44. The entire case of the prosecution is based on direct evidence of eyewitnesses PW5 Dhnyaneshwar Dhapekar, PW6 Suman Devgune, and PW7 Subhash Parde and injured eyewitness PW4 Amol Kumbhalkar. Admittedly, injured PW4 Amol Kumbhalkar has not supported the prosecution case to the extent that the accused persons were assailants. However, the medical certificate of the injured shows that he was referred for the medical treatment as he has sustained injuries in the said incident and history of the assault was given by him to the medical officer. The said medical certificate Exh.75 is admitted by the defence wherein history of assault is given by him. The history narrated shows that he was assaulted by somebody on 19.1.2011. His date of admission was in the intervening night of 19.1.2011 and 20.1.2011 at about 2:25 am. He has left loyalty towards the prosecution only to the extent of names of the assailants. His evidence

91

shows that he was assaulted on 19.1.2011 by some unknown persons. On the contrary, the evidence of informant PW1 Deva Shendekar shows that after he received the information that his brother is assaulted, he immediately rushed to the spot of the incident and witnessed PW4 Amol Kumbhalkar in injured condition sitting near the dead body of the deceased. He has disclosed informant PW1 Deva Shendekar that the accused persons killed the deceased with “swords”.

45. As far as cross examination by accused No.3 is concerned, presence of PW4 Amol Kumbhalkar narrated by informant PW1 Deva Shendekar is not challenged. The fact, that he has seen PW4 Amol Kumbhalkar in injured condition at the spot, is also not denied by the defence counsel. The entire cross examination on behalf of accused No.3 shows that informant PW1 Deva Shendekar

reached the spot, but presence of PW4 Amol Kumbhalkar witnessed by him and narrated by him during his chief-examination is neither denied nor any cross examination is taken on that aspect. The facts, that the injured has sustained injuries on 19.1.2011 and informant PW1 Deva Shendekar witnessed the injured at the spot of the incident which remained unchallenged and PW5 Dhnyaneshwar Dhapekar has also witnessed the injured at the spot of the incident which is also not challenged during the cross examination of PW5 Dhnyaneshwar Dhapekar, are sufficient to infer that PW4 Amol Kumbhalkar has not supported the prosecution case and won over by the defence.

46. The evidence of informant PW1 Deva Shendekar shows on 19.1.2011, when he was at home, the accused persons came there along with weapons in their hands and out of them, accused Devanand Chaitram Kuhikar disclosed

that they have killed his brother and, thereafter, he rushed to the spot and witnessed his brother lying in pool of blood and PW4 Amol Kumbhalkar was also witnessed by him in injured condition at the spot. PW4 Amol Kumbhalkar has also disclosed about the involvement of the accused persons in the alleged incident and, thereafter, he rushed to the police station and along with the police, he came on the spot. The police officer has drawn the spot panchanama and, thereafter, he again went to the police station and lodged the report.

47. The evidence of informant PW1 Deva Shendekar is challenged by the defence on the grounds that his conduct is not natural; FIR is ante-time; there is no immediate disclosure by him to the police as to involvement of the accused persons in the alleged incident, and after thought, this FIR came to be lodged against the accused persons.

As far as the cross examination on behalf of accused No.3 is concerned, only his relationship with other witnesses i.e. PW5 Dhnyaneshwar Dhapekar and PW7 Subhash Parde was brought on record. During the cross examination of informant PW1 Deva Shendekar, nothing incriminating is brought on record, as far as the incident is concerned. The evidence of informant PW1 Deva Shendekar is criticized on all these aspects. The investigating officer is cross examined to show that informant PW1 Deva Shendekar has not disclosed the names of the assailants immediately and, therefore, no FIR was registered on the basis of the said information given by informant PW1 Deva Shendekar. The investigating officer has denied the suggestion that he has not immediately narrated the incident. On the contrary, the evidence of Investigating Officer PW10 Sudhir Nandanwar shows that when informant PW1 Deva Shendekar approached the

police station, at the same time, they received a message from the control room disclosing the incident and informant PW1 Deva Shendekar has also disclosed the incident and involvement of the accused persons and, therefore, he immediately rushed to the spot of the incident and witnessed the injured is lying in pool of blood in injured condition. After drawing the spot panchanama at the spot, again, he came along with informant PW1 Deva Shendekar at the police station and, thereafter, PW11 Anil Pawar has recorded the FIR.

48. In support of the contentions, learned Senior Counsel Shri Avinash Gupta for the accused, placed reliance on the decision in the case of **Kanhai Mishra alias Kanhaiya Misar *supra*** wherein the Hon'ble Apex Court in the facts and circumstances of the case observed that, “*by the time informant was at the police station he did not suspect complicity of the appellant with the crime and*

subsequently after due deliberations, fard-beyan was given by the informant at his house alleging therein that the appellant had complicity with the crime. Thus the evidence of this witness makes the prosecution case showing complicity of the appellant with the crime doubtful".

On going through the facts of the said case, it reveals that the officer incharge of police station recorded the fard-bayan of the informant PW3 at 11:00 O'clock. During the cross examination, he has admitted that he arrived at the police station at about 9:00 O'clock and stayed there for 10-20 minutes and, thereafter, returned to the village. At the relevant time, he has not stated about involvement of the accused before the officer incharge and when the witness had gone to the police station, his fard-bayan was not recorded there at 9:00 O'clock, but it was recorded at his house after two hours at 11:00 O'clock.

49. Here, in the present case, the facts are not identical. The facts of the present case show that informant PW1 Deva Shendekar received the information when the accused visited his house, he immediately rushed to the spot witnessing his brother lying in pool of blood and, thereafter, he immediately approached the police station. The police were informed by him. At the relevant time, investigating officer PW10 Sudhir Nandanwar has also received the message from the control room and, therefore, along with the informant rushed to the spot of the incident and after drawing the spot panchanama, the FIR was obtained. Admittedly, though he has stated that he has taken station diary entry to that effect, he has not produced the same on record.

The question is, whether failure of the investigating officer to produce the entry of the station diary is sufficient to discard the evidence.

50. In the present case, the alleged incident has occurred between 9:00 and 9:30 pm. Immediately, the information was received at the police station at 23:55 pm. There is no evidence that between this period, informant PW1 Deva Shendekar has either visited his house or there was any opportunity for him to have deliberations with other relatives and, thereafter, he lodged the report. No such facts came on record and, therefore, the contention of learned Senior Counsel Shri Avinash Gupta that the FIR is ante-time is not acceptable. On the same ground, he placed reliance on the decision in the case of **Ganesh Bhavan Patel and ors** *supra* wherein also the Hon'ble Apex Court observed that, “there was inordinate delay in registration of the FIR and further delay in recording the statements of the material witnesses.”

51. Insofar as the present case is concerned, the FIR is immediately lodged within two hours of the incident.

Informant PW1 Deva Shendekar has received the information at 9:00 to 9:15 pm; immediately rushed to the spot of the incident and, thereafter, approached the police; the police again took him to the spot and from the spot again he came to the police station after drawing the panchanama, which are sufficient to show that the FIR is lodged by him promptly after informing the incident to the police. Considering the facts in the cited, the facts in the present case are not identical one and not helpful to the defence. Therefore, the contention of learned Senior Counsel Shri Avinash Gupta, that the evidence of informant PW1 Deva Shendekar is not trustworthy and liable to be rejected, is not sustainable. As already observed, nothing incriminating came on record during his cross examination to show that there was any deliberation on his part with the other relatives and, thereafter, after thought, he lodged the report. On the contrary, there is

100

consistent evidence of informant PW1 Deva Shendekar that the accused persons came at his house at about 9:00 pm. One of the accused persons disclosed that they have killed his brother. Thereafter, he immediately went to the spot of the incident, witnessed his brother in pool of blood, approached the police station, informed the incident to the police, again came at the spot along with the police, the police have drawn the spot panchanama and, thereafter, he was again taken to the police station and he lodged the report.

Thus, it is sufficient to show that there was prompt FIR regarding the incident showing involvement of the accused persons in the crime.

52. The evidence of informant PW1 Deva Shendekar further shows that when the accused persons visited his

101

house, one of the accused persons Devanand Chaitram Kuhikar told that they have killed his brother.

Learned Additional Public Prosecutor for the State vehemently submitted the evidence of informant PW1 Deva Shendekar is sufficient to show that there was disclosure by one of the accused persons regarding their involvement in the said incident, which comes under extra judicial confession.

Learned Senior Counsel Shri Avinash Gupta, submitted that by no stretch of imagination, it can be said that it is extra judicial confession. The exact words are to be reproduced when the prosecution has placed reliance on the extra judicial confession. He submitted that in fact, extra judicial confession is very weak type of evidence and would not be sufficient to show involvement of the accused.

102

In support of his contentions, he placed reliance on the decision of the Hon'ble Apex Court in Criminal Appeal (**Harjinder Singh @ Kala vs. State of Punjab**) decided on **22.1.2025**, which has been placed on record by learned counsel Shri R.K.Tiwari, wherein the Hon'ble Apex Court observed that, "*it is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence*". He submitted that requirement of the law is that the exact words to be reproduced should be made voluntarily and should be truthful. It should inspire confidence, attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated

103

by other prosecution evidence. It should not suffer from any material discrepancies and inherent improbabilities. Such statement essentially has to be proved like any other fact and in accordance with law.

53. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that there is consistent evidence of informant PW1 Deva Shendekar and PW8 Chanda Shendekar, who stated about the disclosure made by accused Devanand Chaitram Kuhikar. He has invited our attention to recital of the FIR and submitted that the report shows that it was accused Devanand Chaitram Kuhikar who has broken down the glass of the window of the house of informant PW1 Deva Shendekar and said that, “your brother is murdered.” Admittedly, informant PW1 Deva Shendekar, during his evidence, has not stated in the words that, “your brother is murdered”, but he disclosed that, “they killed his

104

brother”. Though PW8 Chanda Shendekar exaggerated the version that accused Devanand Chaitram Kuhikar came to their house and disclosed that, “गुड्डू साले बाहर निकल, तेरे भाई दिनेशको हम सुलाके आये.” Learned Additional Public Prosecutor submitted that requirement of law is to be taken into consideration.

On this aspect, he placed reliance on the decision in the case of **Rameshwar s/o Dijnaji Dhawde** *supra* wherein the Division Bench of this Court has considered the law regarding extra judicial confession and observed by referring the decision in the case of **Chattar Singh and another vs. State of Haryana, reported in 2009 ALL MR CRI 936**, as under:

“An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact.

105

The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably

106

convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility”.

It has been further observed, as under:

“If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of

107

securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the

108

maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.)

A promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind

109

that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused".

110

On the similar issue, learned Additional Public Prosecutor placed reliance on the decision in the case of **Ajay Singh vs. State of Maharashtra** *supra* wherein the Hon'ble Apex Court held, as under:

“We shall first deal with the question regarding claim of extra judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra judicial confession, Court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra judicial confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is

111

made. It is not invariable that the Court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may

112

be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the Court to judge credibility of the witness's capacity and thereafter to decide whether his or her evidence has to be accepted or not. If Court believes witnesses before whom confession is made and is satisfied confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous".

54. Learned Additional Public Prosecutor for the State submitted that, in view of the decisions of the Hon'ble Apex Court in the cases of **Chattar Singh and another vs. State of Haryana** *supra* and **Ajay Singh vs. State of Maharashtra** *supra*, wherein requirement of law is not that the exact words to be stated by the witness. The only requirement is that there should not be vital and

113

material difference in the statements. He submitted that the evidence of informant PW1 Deva Shendekar and PW8 Chanda Shendekar shows that the accused disclosed that, they have killed the deceased. Thus, there is no vital difference as far as extra judicial confession of accused Devanand Chaitram Kuhikar is concerned.

55. On appreciation of the evidence of informant PW1 Deva Shendekar and PW8 Chanda Shendekar, who is the wife of the informant, it shows that they have categorically stated that the accused persons came to their house and it was accused Devanand Chaitram Kuhikar who made a statement that they have killed the deceased. Admittedly, PW8 Chanda Shendekar has narrated in a different manner, but the sum and substance of the communication is that it was accused Devanand Chaitram Kuhikar who has disclosed that they have killed the deceased. Admittedly, when the said statement was made

114

by accused Devanand Chaitram Kuhikar, he was a free person and was not under the control of the police. There was no influence on him. He was not enquired by anybody, but the statement made by him was voluntary.

56. On examining all the factors and circumstances of the case, it shows that it was the statement made by accused Devanand Chaitram Kuhikar when he was not under threat, inducement or promise or under the undue influence or under the control of any police machinery and, therefore, there is nothing on record to show that the accused was under the influence or under the inducement of any person. There is neither any rule of law nor of a prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The evidence of extra judicial confession is a weak piece of evidence. However, if the evidence about extra judicial confession comes from

115

the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra judicial confession can be accepted and be the basis of a conviction.

57. The Hon'ble Apex Court in the case of **State of U.P vs. M.K.Anthony**, reported in AIR 1985 SC 48 wherein also it has been held that, "*there is neither any rule of law nor of prudence that evidence furnished by extra-judicial*

116

confession cannot be relied upon unless corroborated by some other credible evidence".

58. In Criminal Appeal No.1424/2011 (**Pundlik Basu Chauhan vs. State of Maharashtra**) decided on 5.1.2017 wherein this Court has held, as under:

“The evidentiary value of an extra judicial confession depends on the reliability of the witness, who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. Needless to state, it would depend on the nature of circumstances, the time when the confession was made and the credibility of the witness, who speaks of such a confession. An extra judicial confession can be relied upon and conviction can be founded thereon, if the evidence comes from the mouth of the witness who is unbiased, not even remotely inimical to the accused and in respect of

whom, nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness are to be clear, unambiguous and should convey that the accused is a perpetrator of the crime. Thus, subjecting the evidence of such a witness to a rigorous test, on the touchstone of credibility, an extra judicial confession can be accepted and can be the basis of conviction”.

59. The Hon'ble Apex Court in the case of **Ajay Singh vs. State of Maharashtra** *supra* observed, as under:

“The expression 'confession' is not defined in the Evidence Act, 'Confession' is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. The dictionary meaning of the word 'statement' is "act of stating; that which is stated; a formal account, declaration of

118

facts etc." The word 'statement' includes both oral and written statement. Communication to another is not however an essential component to constitute a 'statement'. An accused might have been over-heard uttering to himself or saying to his wife or any other person in confidence. He might have also uttered something in soliloquy. He might also keep a note in writing. All the aforesaid nevertheless constitute a statement. If such statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. This very question came up for consideration before this Court in **Sahoo vs. State of Uttar Pradesh, AIR 1966 SC 40: (1966 Cr1 U 68)**. After referring to some passages written by well known authors on the "Law of Evidence" Subba Rao, J. (as he then was) held that "communication is not a necessary ingredient to constitute confession". In paragraph 5 of the judgment, this Court held as follows:

119

“...Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession goes not to depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be.... If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement,

120

whether communicated or not, admitting guilt is a confession of guilt".

60. In the light of the above proposition of law, if the evidence of informant PW1 Deva Shendekar and PW8 Chanda Shendekar is examined, the words spoken and heard by them, that the accused persons have assaulted the deceased, are unambiguous.

61. As regards the extra judicial confession, as held by the Hon'ble Apex Court, it is not expected that the witness should speak the exact words. The only requirement is that there cannot be vital and material difference. Another requirement is that the words spoken by the witness are to be clear, unambiguous and should convey that the accused is a perpetrator of the crime. Thus, subjecting the above said evidence to a rigorous test, on the touchstone of credibility, it shows that when the said statement was made, accused Devanand Chaitram Kuhikar

121

was not under the influence or inducement. The statement made by him was voluntary when he was free person and was not under the control of police or the investigating agency. The evidence of informant PW1 Deva Shendekar and PW8 Chanda Shendekar in clear and unambiguous words conveyed that accused Devanand Chaitram Kuhikar has disclosed that he along with other co-accused are perpetrators of the crime. Admittedly, informant PW1 Deva Shendekar was not inimical or biased against the accused. The accused has made voluntary statement. Moreover, this evidence as to extra judicial confession of informant PW1 Deva Shendekar and PW8 Chanda Shendekar is not shattered during the cross examination also. In fact, informant PW1 Deva Shendekar was not at all cross examined on the aspect of this extra judicial confession. Similarly, PW8 Chanda Shendekar is also not cross examined on the aspect of the said extra judicial

122

confession. Though the evidence of PW8 Chanda Shendekar is not in the exact words of the accused, it is communicating that accused Devanand Chaitram Kuhikar is perpetrator of the crime along with other co-accused.

62. To corroborate the version of these witnesses, admittedly, the prosecution placed reliance on the evidence of PW5 Dhnyaneshwar Dhapekar, who is alleged to be eyewitness of the incident. The evidence of the said witness is mostly criticized on the ground that there is inordinate delay in recording his statement, though he is available at the spot. He is cross examined and his cross examination shows that he has narrated the incident to the police after three days of the incident. He has not narrated the incident for three days to anybody. His presence was also admitted by him when the police came at the spot. He stated that he has not informed the police that he has seen the incident and identified the assailants.

123

Thus, from the cross examination, an attempt was made to show that his statement was recorded belatedly and, therefore, his evidence is not trustworthy.

Learned Senior Counsel submitted that learned Judge of the trial court has also disbelieved this witness as his statement is recorded belatedly. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the cases of **Ganesh Bhavan Patel and ors supra; Vijaybhai Bhanabhai Patel supra; Kochu Maitheen Kannu Salim supra, and Laxman Bapurao Ghaiwane vs. The State of Maharashtra**, reported in **MANU/MH/1375/2012** and submitted that delay in questioning the witnesses by the investigating officer without proper explanation is a serious mistake on the part of the prosecution and, therefore, the view taken by the High Court is proper one.

124

In the case of **Ganesh Bhavan Patel and ors** *supra*, it is held that there were infirmities and flaws in the evidence of the witnesses. There was inordinate delay in registration of the FIR and, therefore, the evidence of the witnesses, who, though having an opportunity to disclose the incident, have not disclosed the incident, the evidence is to be discarded.

63. As far as delay in recording the statement is concerned, it is well settled that the case of the prosecution cannot be rejected solely on the ground that there is a delay in examination of any particular witness.

64. In the case of **State of U.P vs. Satish, reported in (2005)3 SCC 114**, which is referred in the recent judgment by the Hon'ble Apex Court in **Criminal Appeal No.1669/2006 (State of Madhya Pradesh vs. Balveer**

125

Singh) decided non 24.2.2025, wherein it is observed, as under:

“It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses.”

65. Thus, primarily it was for the accused to question the investigating officer to explain the delay in recording the statement of witnesses.

126

66. Here, in the present case, PW10 Sudhir Nandanwar has stated that there was law and order situation after the said incident. During the cross examination, he stated that when for the first time he reached at the spot, there was a crowd and he enquired about the eyewitnesses of the incident. That time, he did not find any eyewitnesses of the incident. He enquired at the spot. Prior to 24.1.2011, except injured PW4 Amol Kumbhalkar, he did not find any eyewitness. Since the night of 19.1.2011 till 23.1.2011, he visited "Timki" locality for the purposes of investigation. His cross examination further shows that the law and order was disturbed in the locality where the incident took place and, therefore, the policemen were deployed in that locality and, therefore, the witnesses were not coming forward to give their statements. Hence, he could not record statement of eyewitnesses PW5 Dhnyaneshwar Dhapekar

127

and PW7 Subhash Parde before 24.1.2011. His cross examination further shows that explanations given by the witnesses, as to fact that they were under terror, though narrated by them, he has not recorded the same in their statements. He also explained that he did not feel it necessary to record their explanations and, therefore, he has not recorded the same in their statements.

PW5 Dhnyaneshwar Dhapekar, also explained the said situation during his evidence. He has stated that the police came at the spot. He was present there. At that time, he has not stated to the police that he had seen the incident. When the police approached him after three days of the incident, he has narrated the incident to the police. He has also stated that the incident was going on for about 20 minutes. At that time, doors of houses were closed and nobody came there.

128

Thus, the evidence of the investigating officer, that there was a tensed situation, is narrated by PW5 Dhnyaneshwar Dhapekar.

This aspect is also stated by eyewitness PW6 Suman Devgune, who stated that the persons were witnessing the incident from galleries and some persons closed their doors of houses.

Thus, the evidence of these two witnesses is sufficient to show that there was a tensed situation after the incident and, therefore, the police protection was deployed at the spot of the incident and that can be a reason for the witnesses for not coming forward to record their statements before the investigating agency. Moreover, this evidence is to be appreciated in the light of the fact that these witnesses are from the rural background. Many times, the witnesses are not aware that they have to

129

approach the police station and inform about the incident. There may be a reason of implication in any other case or they may be under apprehension that they may be called to give their evidence again and again before the court.

67. While assessing value of evidence of eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases

130

where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

68. In the light of the above proposition, if the evidence of eyewitness PW5 Dhnyaneshwar Dhapekar is considered, admittedly, he was residing in the same locality, which is not denied by the defence also. There is nothing on record to show that he was not residing at the said place and there was no opportunity for him to witness the incident. On the contrary, his evidence shows that he was residing in the same locality. The alleged incident has taken place in front of the house of one Rajgire. He was

131

also residing near the house of said Rajgire and, therefore, his presence at the spot of the incident is not unnatural one.

69. Learned defence counsel further vehemently submitted that eyewitnesses PW5 Dhnyaneshwar Dhapekar is the nearest relatives of the deceased and, therefore, he is an interested witness.

70. The law is a well settled that while appreciating the evidence of witnesses, approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed then undoubtedly it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the

132

witness and whether earlier evaluation of evidence is shaken as to render it unworthy of behalf. The material thing which is to be seen whether those inconsistencies go to the root of the matter. While appreciating evidence of relatives, great weightage is to be given to them on the principle that there is no reason for them not to speak the truth and shield the real culprit. In fact, a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. While dealing with evidence of witness who is relative, the evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or close relative of the deceased, if it

133

is otherwise found to be trustworthy. The said evidence only requires scrutiny with more care and caution.

71. Testing on the anvil and touchstone of the aforesaid principles laid down, we find that the evidence of eyewitness PW5 Dhnyaneshwar Dhapekar, who is close relative of the deceased, has reason to be there and his presence was natural at the spot of the incident as he was staying there and, therefore, his presence at the spot of the incident is also natural and there is nothing on record to doubt his version and, therefore, the contention of learned Senior Counsel, that he is interested witness, deserves to be discarded.

72. Learned Judge of the trial court has discarded the evidence of eyewitness PW5 Dhnyaneshwar Dhapekar. However, learned Judge of the trial court has not considered that he was residing in the same area and his

134

presence at the spot of the incident is natural one. The fact, that eyewitness PW5 Dhnyaneshwar Dhapekar is residing in the same locality where the alleged incident has taken place and the delay is properly explained by the investigating officer assigning a reason, is not taken into consideration by learned Judge of the trial court and, therefore, the observation of the trial court, that the evidence of eyewitness PW5 Dhnyaneshwar Dhapekar, is not believable, is erroneous.

73. As per the prosecution case, PW6 Suman Devgune is eyewitness. As far as her evidence is concerned, admittedly, she has nowhere disclosed that she immediately disclosed to informant PW1 Deva @ Devdas Laxman Shendekar that she has witnessed the said incident. Thus, there is no natural conduct on her part as far as she is concerned. Her statement is also recorded very belatedly. Though explanation is given by her that she

135

was not well, she has not given the statement. Investigating Officer PW10 Sudhir Nandanwar has also stated that she was not well and, therefore, her statement was not recorded, is difficult to accept.

74. A “chance witness” is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he/she is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a “chance witness”. Merely because a witness happens to see an occurrence by chance, his/her testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court.

136

75. The criticism was levelled against the evidence of eyewitness PW6 Suman Devgune that her conduct is not natural.

76. Admittedly, a “chance witness” evidence is to be appreciated and scrutinized in a very cautious manner and close scrutiny is required. A conduct of the “chance witness” subsequent to the incident may also be taken into consideration particularly as to whether he/she has informed anyone else in the village about the incident.

77. On the above principle, if the evidence of eyewitness PW6 Suman Devgune is taken into consideration, admittedly, she has not disclosed the incident though she has met informant PW1 Deva Shendekar at the spot, as per her evidence. She has not disclosed the incident to the police also though the police have visited repeatedly to her house and her statement was

137

recorded by the investigating officer on 31.1.2011. Though it is accepted that there was a tensed situation, considering eyewitness PW6 Suman Devgune is family member of the deceased and if she has witnessed the incident, there is nothing on record to show that there was any restriction on her to disclose the said incident to the police and, therefore, learned Judge of the trial court has rightly considered her evidence and rightly disbelieved her.

78. Besides the oral evidence of these prosecution witnesses, the prosecution has also placed on the evidence of PW2 Tarachand Ganpatlal Aherwar, who acted as a pancha on memorandum statement of the accused, at whose instance the alleged weapons are recovered. Learned Senior Counsel Shri Avinash Gupta criticized the evidence of PW2 Tarachand Aherwar on the ground that no independent witnesses are examined and PW2 Tarachand Aherwar is the close relatives of the deceased and he was

138

chosen as witness and, therefore, the entire prosecution case is suspicious. In support of his contention, he placed reliance on the decision in the case of **Ramanand vs. State of Uttar Pradesh *supra*** wherein the Hon'ble Apex Court has considered the aspect that the evidence of pancha witness is not to the effect that the accused has made statement that, "I will show you the weapon used and concealed by him." Thus, authorship of the concealment is not narrated by him. Moreover, PW2 Tarachand Aherwar is relative and not independent witness in whose presence the memorandum statement was recorded. Perusal of the evidence of PW2 Tarachand Aherwar clearly shows that the accused gave memorandum statement to the police in his presence that "two swords" and "one gupti" are concealed under tyre in the locality.

Learned Senior Counsel Shri Avinash Gupta submitted that there is nothing on record to show that he is

139

author of the concealment as PW2 Tarachand Aherwar has not stated the same. The cross examination of this witness shows that he is brother-in-law of informant PW1 Deva Shendekar. Except the relationship, nothing is brought on record to show that he is having any conflicting interest to act as a pancha. On the contrary, his evidence shows that the police approached him when he was at the house of informant PW1 Deva Shendekar and asked him to act as a pancha and, therefore, he acted as a pancha. Even, if the evidence of PW2 Tarachand Aherwar, as to authorship of the concealment is ignored, the evidence of Investigating Officer PW10 Sudhir Nandanwar specifically shows that the accused made memorandum statement that he will show the place wherein he concealed the weapons of the offence. Therefore, even, if the evidence of PW2 Tarachand Aherwar is ignored, as he has not stated about the authorship of the concealment, the evidence of

140

Investigating Officer PW10 Sudhir Nandanwar can be relied upon. As far as Investigating Officer PW10 Sudhir Nandanwar is concerned, who is not cross examined regarding voluntary statement of the accused or regarding the place of concealment either it is accessible to all or to discard the evidence as to the memorandum statement of the accused.

79. As far as the evidence as to recovery, in view of Section 27 of the Indian Evidence Act, is concerned, the requirement of Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered, after search is carried out, on the search of any information obtained from the prisoner, such discovery is guaranteed that the information supplied by the prisoner is true. It goes without saying and, therefore, that recovery of articles at the instance of the accused has to be proved by independent witness.

141

80. The Hon'ble Apex Court in the case of **Subramanya vs. State of Karnataka**, reported at **2022 LiveLaw (SC) 887** held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

Thus, what is admissible is the information and the same has to be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. The basic idea embedded in

142

Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner, such discovery is guarantee that the information supplied by the prisoner is true.

81. The importance of a pancha as a witness in a criminal trial to lend assurance to the judicial conscience is too well known to be either emphasized or stated even. He is supposed to be an independent witness and accordingly his evidence lends much needed assurance to the judicial conscience before the order of conviction and sentence is recorded against any accused. The reason is ordinarily panch witness has no personal axe to grind either to falsely support the prosecution or maliciously implicate the accused. His services are called in aid by the Investigating Agency to give true and correct picture of contemporary

143

circumstances of search, seizure or any such other things seen or heard at the place of the incident.

82. PW2 Tarachand Aherwar, is the pancha on seizure panchanama, the memorandum statement of the accused, and the recovery of the articles at his instance. Admittedly, it shows that he is relative of the deceased. However, merely because the witness is relative either of informant or accused, it should not make any difference, unless some thing is shown by the accused that due to selection of the relative of the pancha witness, any prejudice is caused to the accused. Much was argued for the accused on the circumstance that the relative of the deceased was used as a pancha witness and the trial court has also considered his evidence. It is true that almost all the pancha witnesses on memorandum statement of the accused and recovery panchanama are the close relatives of the deceased. At the most, it can be called as a lapse on

144

the part of the police. However, there are circumstances in the present matter to show that after the incident has occurred, there was a tensed situation and the persons from the locality have not come forward to give their evidence against the accused. To show the supremacy, the accused went to the house of the deceased along with weapons in their hands. Some police force was also deployed at the spot of the incident to avoid further complications. Thus, the law and order situation at the spot of the incident was tensed after the incident. In the said circumstances and considering the circumstance that even the eyewitness turned hostile, as they were won over by the accused persons, when no other independent witness was coming forward to act as a pancha, the police have taken the help of the relative of the deceased as pancha and nothing is brought on record to show that any prejudice was caused to the accused as he was chosen as

145

pancha witness and, therefore, the contention of learned Senior Counsel Shri Avinash Gupta, that the prosecution has selected the relative of the deceased as a pancha witness and, therefore, his evidence is to be discarded, is not sustainable.

83. The importance of a pancha as a witness in a criminal trial to lend assurance to the judicial conscience is too well known to be either emphasized or stated even. He is supposed to be an independent witness and accordingly his evidence lends much needed assurance to the judicial conscience before the order of conviction and sentence is recorded. In such matters, if the concerned police officer commits some mistake in picking up any wrong person as a pancha, then it may affect the investigation efforts. At the same time, when the Court mechanically stamping out the evidence of a police officer as an evidence of interested witness discards the prosecution case, this will indeed

146

greatly prejudice the overall public interest for which the Investigating Agency ultimately exists and which in turn would undermine the ultimate cause of justice. Therefore, mere label of "selected pancha" should not by itself be permitted to carry any weight, unless something is brought on record to show that the "selected pancha" was having any adverse interest and any prejudice is caused to the accused as he acted as a pancha in the process of investigation.

84. The another witness examined by the prosecution is PW3 Atul Suresh Mahajan, who acted as a pancha on seizure of the clothes of the accused and their blood samples. His evidence is criticized as he is habitual pancha. Merely because he acted as pancha in various matters, that by itself is not sufficient to discard his evidence. The court should examine evidence of such witness cautiously and carefully. The requirement,

147

admittedly, is to select the independent witness to corroborate the evidence of the police. It would not be proper to stamp a witness as a liar only because he happens to be a pancha witness or witness in some previous cases. The dependence of independence of such witness has to be assessed while appreciating the evidence.

85. In the case of **Nana Keshav Lagad vs. State of Maharashtra, reported in (2013)12 SCC 3**, the Hon'ble Apex Court has considered this aspect and held that, "merely because the witness has tendered the evidence in another case, it cannot be held that on that score alone his evidence should be rejected. The trial court has found that when his version as regards the recovery was truthfully and fully corroborated was acceptable and there was no reason to reject the version of the said witness.

148

86. Similarly, in the present case also, besides the evidence of PW2 Tarachand Aherwar and PW3 Atul Suresh Mahajan, the evidence of the investigating officers also corroborates the story of the prosecution as to the recovery of the weapons and recovery of the blood stained clothes at the instance of the accused.

87. Thus, the prosecution has proved and established the fact of recovery of the weapons and blood stained weapons at the instance of the accused by adducing the evidence of PW2 Tarachand Aherwar which is corroborated by Investigating Officer PW10 Sudhir Nandanwar and there is absolutely nothing on record to discard the evidence only on the ground that he is relative of the deceased. As nothing is brought on record to show that due to selection of the pancha, who is relative of the deceased, any prejudice is caused to the accused.

149

88. The oral evidence of informant PW1 Deva Shendekar and eyewitness PW5 Dhnyaneshwar Dhapekar is further corroborated by the medical evidence as Medical Officer PW9 Dr.Manish Shrigiriwar has categorically stated about description of the weapons, nature of the weapons, and possibility of sustaining the injury by such types of the weapons. Thus, there is corroboration to the oral evidence also. The evidence of informant PW1 Deva Shendekar and eyewitness PW5 Dhnyaneshwar Dhapekar is further criticized by learned defence counsel that there was a general identification of the accused by the witnesses. Admittedly, the accused persons were members of the “unlawful assembly. In pursuance of the common object of that assembly, they assaulted the deceased. As far as the evidence of the prosecution witnesses is concerned, that the accused persons came at the spot holding weapons in their hands, is consistent. Their evidence, that in

150

furtherance of their common object assaulted the deceased, is also consistent.

89. At this juncture, legal provision under Section 141 of the IPC which defines “unlawful assembly” is relevant. It say that, “an assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is to commit an illegal act by means of criminal force”.

90. Section 148 of the IPC, deals with rioting, armed with deadly weapons - Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

151

91. The offence of “riot” is defined in Section 146 of the IPC. In view of the said definition, “whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting”.

92. Section 149 of the IPC deals with every member of unlawful assembly guilty of offence committed in prosecution of common object. It say that, “if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence”.

152

93. Thus, if it is a case of murder under Section 302 of the IPC, each member of the “unlawful assembly” would be guilty of committing the offence under Section 302 of the IPC. Section 149 of IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. By applying this principle every member of an unlawful assembly to be held guilty of the offence committed by any member of that assembly in prosecution of the common object of that assembly. The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 of IPC. The question which is relevant and which is required to be answered by the Court is whether the accused is the member of an unlawful assembly or not.

94. In the case of **Vinubhai Ranchhodhbhai Patel Vs. Rajivbhai Dudabhai Patel, reported in (2018) 7 SCC 743**, wherein the Hon'ble Apex Court held that:

“in a cases where a large number of accused constituting “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all. Invocation of Section 149 of IPC is essential in such cases for punishing the members of such unlawful assembly on the ground of vicarious liability even though they are not accused of having inflicted fatal injuries in appropriate cases if the evidence on record justifies. The mere presence of an accused in such an unlawful assembly is sufficient to render him vicarious liable under Section 149 of IPC for causing the death of the victim of the attack provided that the accused are told that they have to face a charge rendering them vicarious

154

liable under Section 149 of IPC for the offence punishable under Section 302 of IPC.”

95. **In Criminal Appeal No. 1348/2014 (Nitya Nand vs. State of U.P. & Anr.) decided on 04.09.2024**, the Hon’ble Apex Court observed by reproducing para No.22 of the judgment of **Vinubhai Ranchhodhbhai Patel vs. Rajivbhai Dudabhai Patel:**

“22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act” — for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the

155

concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrongdoers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that their activity as members of the unlawful assembly is limited.”

96. Recently, in the judgment of **Zainul vs. The State of Bihar in Criminal Appeal No. 1187/2014** decided on **7.10.2025**, the Hon’ble Apex Court has held that:

“49. The expression observed that “in prosecution of the common object” means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. **In Charan Singh Vs. State**

156

of U.P reported in (2004) 4 SCC 205, this Court held that the test for determining the “common object” of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident.”

It is further observed that, Section 149 of IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fasten only upon proof that the act was done in perusal of the common object.

97. Thus, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a “member” of the unlawful assembly. Utmost it is important to consider whether the assembly consisted of some members who were merely viewers and who were there out of curiosity, without the knowledge, then such persons cannot be said to be members of the unlawful assembly. Thus, the existence of a common object is to be inferred from certain circumstances such as:

- a. the time and place at which the assembly was formed;
- b. the conduct and behaviour of its members at or near the scene of the offence;

- c. the collective conduct of the assembly, as distinct from that of individual members;
- d. the motive underlying the crime;
- e. the manner in which the occurrence unfolded;
- f. the nature of the weapons carried and used;
- g. the nature, extent, and number of injuries inflicted, and other relevant considerations.

98. Thus, by applying these considerations to the present case, the oral evidence of eyewitness PW5 Dhnyaneshwar Dhapekar corroborated by informant PW1 Deva Shendekar and the medical evidence and the circumstantial evidence that deadly weapons like “swords” and “guptis” were used in the commission of the crime and multiple injuries are found on the persons of the deceased, are sufficient to show the involvement of the accused persons in the alleged incident.

159

99. The evidence of these witnesses is further criticized by learned defence counsel that there is a general identification by eyewitnesses PW5 Dhnyaneshwar Dhapekar and PW6 Suman Devgune and in support of the contention, learned counsel Shri R.K.Tiwari for the accused placed on the decision in the case of **Turkesh Singh vs. State Chhattisgarh *supra*** wherein it has been observed that, “in a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade”.

It has been further held that, Identification of the accused sitting in the Court by the eyewitness is of

160

utmost importance. Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition.

100. Here, in the present case, admittedly, the accused persons are acquainted with the witnesses as they are residents of the same locality. As regards the evidence of eyewitness PW5 Dhnyaneshwar Dhapekar is concerned, he has identified them when he was present in the court. Informant PW1 Deva Shendekar has also identified them. Admittedly, they were not strangers to the accused.

101. The aspect, in a case, where large number of accused constituting “unlawful assembly” are alleged to have attacked or killed by one or more persons, is

161

considered by the Hon'ble Apex court in the case of **State of Punjab Vs. Hakam Singh, MANU/SC/0526/2005**, wherein it has been observed that, sometimes while appreciating the testimonies of rustic witnesses, we are liable to commit mistakes by losing sight of their rural background and try to appreciate testimony from our rational angle. When a lady is confronted with number of intruders in her house armed with deadly weapons and showering bullets she cannot give a very accurate and photogenic version as whole thing happened in few minutes. Therefore, while appreciating whole scenario in which the incident happened, it is not expected that she would be in a position to state act of each accused.

102. In the present case, similar is the fact that all the accused persons attacked the deceased by holding the weapons in their hands. In that situation, it is difficult for the witnesses to identify the accused persons. The

162

involvement of the accused is there or not is to be considered on the basis of the evidence brought on record by the prosecution. Merely because no specific role is attributed by the witnesses to the accused, when there is attack by several persons, is not sufficient to discard their evidence. It is not the case that the witnesses have not identified the accused. It is pertinent to note that in fact, the accused persons are not strangers to informant PW1 Deva Shendekar or PW5 Dhnyaneshwar Dhapekar. They are residing in the same locality and, therefore, their identification, that the accused persons are the same persons who are involved in the crime, is sufficient.

103. The law as to the appreciation of evidence is well settled. The appreciation as to the ocular evidence, there is no *straight jacket* formula. In **Criminal Appeal No.1910/2010 (Balu Sudam Khalde and anr vs. The State of Maharashtra) decided on 29.03.2023**, the Hon'ble Apex

163

Court has laid down the principles for appreciation of ocular evidence in a criminal case, as follows:-

“APPRECIATION OF ORAL EVIDENCE

25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the

164

general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness

165

are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. 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.

VI. By and large a witness cannot be expected to possess a photographic

166

memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main

167

purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

168

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

104. By applying these considerations in the present case, the oral evidence of informant PW1 Deva Shendekar and PW5 Dhnyaneshwar Dhapekar shows that all the accused persons came at the spot along with deadly weapons in their hands and assaulted the deceased. The oral evidence is corroborated by the medical evidence. It is further corroborated by the scientific evidence as the blood stains are found on the clothes of the accused as well as the weapons are recovered at the instance of accused Santosh Chaitram Kuhikar.

105. CA Report Exh.64 shows that on articles found on the spot, clothes of the deceased and clothes of accused Mahesh Natthuji Devgune, Sanjiv Shankar Kuhikar, Santosh Chaitram Kuhikar, blood stains of Blood Group "B" was found. Admittedly, accused Mahesh Natthuji Devgune was injured in the said incident. The injuries of accused

170

Mahesh Natthuji Devgune are explained by the prosecution by examining Medical Officers PW13 Dr.Naina Dhumale and PW14 Dr.Mamta Sonsare. Considering the medical evidence of PW13 Dr.Naina Dhumale and PW14 Dr.Mamta Sonsare, it shows that on 19.1.2011 itself they were referred for the medical examination and they are medically examined. In their medical certificates, it is nowhere mentioned that they have narrated the history of the assault. Accused Mahesh Natthuji Devgune has sustained the grievous injuries over the little finger. As per the medical evidence, they were holding sharp weapons and, therefore, while using the weapons during scuffle, possibility of injuries to their hands and on their body cannot be ruled out. It is not the case of the defence that the deceased was also holding the weapon at the relevant time and in the scuffle, they were also assaulted and, therefore, to protect themselves, they have assaulted the

171

deceased. Therefore, the contention of the prosecution that they may have sustained the injuries by handling the weapons cannot be ruled out. One of accused Sanjiv Shankar Kuhikar has also received injury on his cheek. The Blood Group of accused Devanand Chaitram Kuhikar is "B", but he has not sustained the injury. Blood Group of accused Santosh Chaitram Kuhikar is "O", who has also not sustained the injury. Blood Group of accused Mahesh Natthuji Devgune is not determined. As per Exh.64, the blood stains of Blood Group "B" were found on the clothes of accused Mahesh Natthuji Devgune, Sanjiv Shankar Kuhikar, and Santosh Chaitram Kuhikar. They have not given any explanation as to appearance of the blood stains on their clothes.

106. Exh.66 is another CA Report as to examination of weapons, which shows that "two swords" and "guptis" seized at the instance of accused Santosh Chaitram Kuhikar

172

are also stained with Blood Group “B”, which is the same as of the deceased. This evidence is criticized by learned defence counsel that though the weapons are recovered on 22.1.2011, the same were forwarded by the investigating officer to the CA on 21.3.2011 as per the requisition. Thereafter, he forwarded the weapons to the medical officer for seeking his opinion. The evidence of the medical officer shows that he has received the weapons on 18.3.2011 and on the same day, the weapons were examined by him and forwarded to the police station.

107. Exh.58 shows that muddemal articles weapons were seized and deposited on 24.1.2011. Even, accepting that the investigating officer has not immediately deposited the said weapons with the muddemal clerk, itself is not sufficient to discard the evidence. At the most, it can be termed as faulty investigation.

173

108. The evidence of the investigating officer is criticized on the ground that the prosecution has not explained that since seizure of the weapons till the same were forwarded, the same were kept in safe custody and there was no chance of tampering of the articles. Admittedly, the prosecution has to adduce the evidence that during that period, the articles were kept in safe custody and there was no chance of tampering of the same. The nature of argument was that, the investigation carried out by the investigating officer suggests that it was not kept in a proper and disciplined manner. Admittedly, the prosecution failed to adduce the evidence that during the said period, muddemal articles were kept in safe custody and there was no chance of tampering of the same. It shows that the weapons were seized on 22.1.2011 and the same were deposited with the muddemal clerk on 24.1.2011. However, the evidence of the medical officer

174

shows when he received the weapons, the same were in a sealed condition. After examination, he again resealed and forwarded the same to the police. The CA Report shows that when the articles were received, the seals were intact.

109. Even, accepting the contention of learned counsel for the accused persons, principle of law is crystal clear that on account of defective investigation, the benefit will not go to the accused persons on that ground alone. It is well within the domain of the court to consider the rest of the evidence which the prosecution has gathered such as statements of eyewitnesses and medical reports etc.. It has been well settled principle laid down in various decisions that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds raised by the defence. The trivial defects in investigation or process are

175

not enough in themselves to disbelieve the evidence of the eyewitnesses or the prosecution case. To acquit solely on the ground of defective investigation would be adding insult to injury.

110. The oral evidence is corroborated by the medical evidence as well as the scientific evidence. The blood stains weapons are recovered at the instance of accused Santosh Chaitram Kuhikar. The scientific evidence shows involvement of the accused persons in the alleged incident.

111. It is well settled that the law does not require a fact that requires to be proved on absolute terms bereft of all doubts. What law contemplates is that for a fact to be considered to be proven, it must eliminate any reasonable doubt. Reasonable doubt does not mean any trivial, fanciful or imaginary doubt, but doubt based on reason and common sense growing out of the evidence in the case.

176

A fact is considered proof if the Court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

112. It is cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubts and not all the doubts. Doubts would be called reasonable if they are free from a zest for abstract and speculation. Law cannot afford any favouring other than truth. Doubts must be actual and substantial doubts as to the guilt of the accused arising from the evidence. A reasonable doubt is not an imaginary or mere a possible doubt but a fare doubt based upon reason and common sense.

177

113. For the reasons discussed above, on consideration of the oral evidence, medical evidence, scientific evidence, and other proven fact, in our considered opinion, the prosecution has proved the guilt of the accused persons unmistakably to point out that being the members of the “unlawful assembly” and in furtherance of their common intention, they have committed the murder of deceased punishable under Section 302 of the IPC. These proved facts on the basis of proved evidence, the prosecution has proved the charges against the accused persons beyond reasonable doubts. Resultantly, the appeals deserve to be dismissed. Accordingly, we proceeding to pass following order:

ORDER

(1) The Criminal Appeals are **dismissed**.

178

(2) Accused persons Mahesh Natthuji Devgune, Sanjiv Shankar Kuhikar, Santosh Chaitram Kuhikar, Devanand Chaitram Kuhikar, Sheshrao Ramdas Kuhikar, and Rajesh Ramprasad Kuhikar shall surrender before the Superintendent of Central Prison at Nagpur to undergo the sentence on 23/01/2026.

(3) The Bail Bonds of the accused persons shall stand cancelled.

(4) The R&P be sent back to the trial court.

Appeals stand **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!