



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 408 OF 2024

Suryakant Abhiman Patil
Age: 57 years, Occupation: Agriculture,
R/o. Kalmadi, Tq. Sindhkheda, Dist. Dhule. **...APPELLANT**
[Orig. Accused No. 1]

VERSUS

The State of Maharashtra **...RESPONDENT**

Ms. Monika Dahat, Advocate for appellant
Mrs. S.N. Deshmukh, APP for respondent-State
Mr. Joydeep Chatterji, Advocate for Assist to P.P.

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**CORAM : NITIN B. SURYAWANSHI AND
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 25th MARCH, 2025
PRONOUNCED ON: 23rd APRIL, 2025**

JUDGMENT [PER: NITIN B. SURYAWANSHI, J.]

1. The appellant is the original accused No.1 in Sessions Case No.119 of 2015. He is assailing the judgment and order dated 11.10.2023, passed by the learned Additional Sessions Judge, Dhule convicting him for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life with fine of Rs.10,000/- and in default of payment of fine to suffer further rigorous imprisonment for two years.

2. The prosecution case in short is that, informant Gokul Dhondu Patil, a permanent resident of Kalmadi, Taluka Shindkheda, District Dhule, was residing at Mumbai alongwith his brothers, namely, Murlidhar and Sunil. Other brother Pradeep @ Raju cultivated their agricultural land at Kalmadi, Taluka Sindhkheda. The informant alongwith his brothers Murlidhar and Sunil used to visit their village at Kalmadi for maintaining their agricultural land. Their cousin brother, namely, Abhiman Venkat Patil owned agricultural Gat No.341, 343 in Walkheda Shiwar. The half share of these two lands was cultivated by Devman Venkat Patil, a common well was there in land Gat No.343. There was a dispute between Abhiman Venkat Patil and Devman Venkat Patil over sharing of water from the said well. The civil suit instituted by Devman Venkat Patil was decreed in his favour. Devman Venkat Patil requested the informant to come down to the village to install a electric motor on common well. Accordingly, the informant came along with his brother on 21.07.2015. On 22.07.2015, the informant alongwith his brothers Murlidhar and Pradip Patil installed said motor on the common well located in Gat No.343. Though accused No.1 to 3 were present there, they did not oppose the installation of electric motor. Since there was no power available at that time to

check the motor, they decided to come at 10.00 a.m. on the next day. Accordingly, Devman Venkat Patil came at village Kalmadi at 7.30 a.m. Since they had only one motorcycle, the informant told his brother Murlidhar that he should proceed ahead on foot and they will follow him on the motorcycle. While Devman and the informant were proceeding on the motorcycle at about 8.30 a.m. to 8.45 a.m. when they reached near the agricultural land of Dipchand Patil on the outskirts of village Kalmadi, they saw that accused No.1 Suryakant knocked down Murlidhar Dhondur Patil by riding his motorcycle in a high speed. Accused Suryakant, after knocking down Murlidhar stabbed in stomach with a sharp weapon. As soon as accused Suryakant saw the informant and Devman Patil, he got frightened and ran away from the spot. The informant stayed with injured Murlidhar and sent his brother Devman to fetch the transport from the village. After Devman brought vehicle of Sanjay Shivaji Patil from the village, injured Murlidhar was taken to Sudha Hospital, Dhule for medical treatment.

3. On the information given by Gokul to Nardana Police Station, C.R.No.44 of 2015 was registered and investigation was conducted by the Police Sub-Inspector. He visited the spot,

prepared spot panchnama and collected documents of treatment, recorded the statements of witnesses. Murlidhar who was admitted in Sudha Hospital 23.07.2015 after undergoing treatment succumbed to his injuries on 29.07.2015. Accused No.1 to 3 were arrested. After completion of investigation, chargesheet came to be filed. The charge was framed against the accused for the offence punishable under Sections 302, 326, 279, 337, 338 read with Section 34 of the Indian Penal Code. The accused abjured guilt and claimed to be tried.

4. In support of its case, prosecution has examined 11 witnesses. The defence of the accused was of total denial and false implication due to the dispute of agricultural land. The Trial Court acquitted Accused No. 2 and 3 and convicted the appellant as aforesaid. Hence, the present appeal.

5. Learned advocate for the appellant submits that evidence of the eye witnesses is not believable. Their conduct appears to be unnatural as they did not intervene in the incident and did not try to save their brother. The eye witnesses is contradictory to each other. She further submits that if at all the accused wanted to oppose the deceased, then when the motor was installed on the previous day that time only the assault

could have been committed. Hence, there is no motive for the alleged assault. Independent eye witnesses though available were not examined and only PW1 and PW6 who are interested and on inimical terms with the accused were examined, therefore adverse inference should be drawn against the prosecution. There is variance in the medical history given at the time of admitting deceased at the hospital. Spot of incident is changed in the medical history. No blood was found on the clothes of witnesses and therefore their presence at the time of incident is doubtful. She submits that the evidence of PW6 is hear say. Weapon recovered at the instance of accused was not sealed and there is one month delay in sending articles to Chemical Analyzer. Therefore, recovery of articles from the accused cannot be believed. The panchas to memorandum and recovery panchnama are habitual panchas and therefore their evidence should be disbelieved. Therefore the appellant is entitled for acquittal. In the alternate she submitted that taking into consideration the fact that single blow is given by the appellant he is liable to be punished for lesser offence.

In support of her submissions, learned advocate for the appellant has relied on *Ashraf Hussain Shah v. State of Maharashtra*, 1996 CRI.L.J. 3147.

6. Per contra, learned APP supported the impugned judgment and order of conviction. She submits that Trial Court has properly appreciated the evidence on record and prosecution has proved the case beyond reasonable doubt and appeal being devoid of merit may be dismissed.

7. Learned advocate who is permitted to assist the learned APP adopted the arguments of learned APP. He submits that Trial Court is justified in convicting the accused on the basis of evidence led before it.

8. Heard the learned advocate for the appellant, learned APP for State and learned advocate for the informant at length. Perused the record.

9. Prosecution has examined PW10 Dr. Milind Gulabrao Patil, in whose hospital deceased was initially admitted after the incident. He deposed that on 23.07.2015 Murlidhar Dhondur Patil was admitted in his hospital. The complaint of patient was assault of stab injury. All history of assault was narrated by his brother namely Devman Patil because patient was not in a condition to speak. On examination, he found abdomen walls loops with supra umbilical out side over, anterior abdomen wall

with active bleeding, incise wound over anterior abdomen wall in vertical midline supra umbilical approximately 8 x 4 cm cavity deep, margins are clean cut elliptical and wound is actually bleeding. He took patient for surgery after doing abdomen CT scan and CT scan of chest. The patient died on 29.07.2015 at about 2.15 a.m. He was attending the patient regularly. Though police approached him for recording statement of Murlidhar, the patient was not in a condition to speak. Endorsement to that effect was given by RMO of his hospital. He proved the medical case papers (IPD papers) of Murlidhar (Exhibit-166) and injury certificate (Exhibit-167). In the injury certificate injury mentioned is, "Incise wound over anterior abdomen wall in vertical middle region 8 x 4 cm cavity deep. Margines are clean cut elliptical and wound is actually bleeding and omentum oozing out through wound, active bleeding, neuroperitoneum." Operative finding given by him are "two perforation over transverse colon 1 x 1 cm. Two mesentry test 4 x 2 x2 cm each mensentry hematoma with contusion of small bowel with meaoperi." He stated that he had given treatment to said patient personally and as Dr. Lalit Patil was unable to give evidence due to illness, he was giving evidence on his behalf being Administrator of Sudha Hospital, Dhule.

10. In cross, he stated that, it was medico legal case. Incident had taken place under the jurisdiction of Nardana Police Station. After admission of patient they have informed to Deopur Police Station. Devman Patil informed them that he is brother of patient and while working in the farm patient was assaulted by sharp weapon. He did not inform to them that assailant was their relative or not. He admitted that both injuries were having clean cut edge, which is caused by a sharp weapon.

11. Homicidal death of deceased is proved by the prosecution by examining PW5 Dr. Ramesh Kashinath Gadhari. He has conducted post mortem on the dead body of Murlidhar Patil and proved provisional post mortem report Exhibit-128. He found following injuries on the dead body.

(i) Sutured wound present over midline of abdomen with 32 intact stapler pin stitches in situ, extending from 4cm below epigastric region up to umbilicus & halfly encircling on left side to umbilicus, of total length 26cm, on opening stitches approximation of rectus sheath, peritoneum & surgical intervention over internal organs by sutured wound notes. (Suggestive of surgical intervention for emergency exploratory laparotomy.)

(ii) Surgical drain wound present over right iliac region, situated 16 cm from umbilicus, of size 1.5 cm X 1cm X

cavity deep with greenish – yellow pus fluid oozing out.

(iii) Surgical drain wound present over left iliac region, situated 14 cm from umbilicus, of size 1.5 cm X 1cm X cavity deep with greenish – yellow pus fluid oozing out.

(iv) Multiple abrasions present over forehead of size vary from 1 X 1cm to 1 X 0.3 cm, blackish in colour.

(v) Abrasion present over right nostril of size 1 X 0.5 cm, blackish in color.

(vi) Multiple abrasions present over back below right scapular region of size vary from 3 x 2 cm to 1 x 1 cm, blackish in color associated with peeling of skin.

(vii) Abrasion present over right lower leg calf region of size 3 X 2 cm, blackish in colour.

12. On internal examination, he noticed both pleural cavity contains 150cc reddish fluid. Both lungs were collapses and congested. On internal examination of abdomen peritoneum inflamed and adherent to other internal organs. Peritoneum cavity 50cc yellowish green fluid present. Small and intestine and its contents evidence of perforation present over jejunum transverse colon and mesentry which was sutured. Coils of intestine-intact and adherent to each other at places with inflammation and greenish color pus flaked present at places.

Spleen with weight-intact, greenish- yellow sub-capsular pus pockets present, on c/s congested and pulpy, weight-200 gm. The cause of death given by him is "Septicaemia following internal injuries described." In due course memorandum post mortem report (Exhibit-129) was prepared and is signed by Dr. Devraj, Dr. Pathak and PW5. After seeing article 'C' (kitchen knife) he stated that injuries mentioned in Column No. 21 in Exhibit-129 may be possible by Article No. 'C'.

13. In cross, he admitted that, police did not send Article No. 'C' to them for opinion. One side of Article No. 'C' is sharp and one side is blunt. Injury No. 1 to 3 are deep in the body cavity. He denied the suggestion of defence that injuries No. 1 to 3 may be possible by any pierce long pointed object. He stated that in Exhibit-129 he has not mentioned that injuries are incise or caused due to sharp edged weapon.

14. PW1 Gokul Dhondu Patil, brother of the deceased is an eye witness. He deposed that his native village is Kalmadi, Taluka- Shindkheda, Dist. Dhule. His younger brother namely Pradip Dhondu Patil lives there. He, deceased Murlidhar and Sunil are residing at New Mumbai. They have their agricultural land at village Kalmadi and their younger brother Pradip was

cultivating the said land. They used to visit village Kalmadi from time to time and used to look after the said agricultural land. They all four brothers were also cultivating half share of their cousin brother Devman Patil's land Gat No. 341 and Gat No. 343 in Walkheda Shiwar since four years before the incident. Devman's brother Abhiman owned half share in Gat No. 343. There was dispute between Devman and Abhiman over taking water from the common well. Devman had filed Civil Suit in Shindkheda Court in respect of dispute over that water. On 16.07.2015, Civil Suit was decided in favour of Devman. Devman informed that Civil Suit is decided in his favour and asked them to come to Kalmadi as motor was to be installed on that well. On 21.07.2015, he and Murlidhar went to Kalmadi village. On 22.07.2015 they called Devman and told that they have come to Kalmadi. Devman then came to village Kalmadi. After that he, Murlidhar, Pradip and Devman installed motor on the well in Gat No. 343. Abhiman (A-3), Suraykant (A-1) and Chandrakant (A-2) were present at that time. They did not oppose installing of motor.

15. On 23.03.2015, Devman came to village Kalmadi at about 7.30 am as the light was supposed to come at 10 am.

They were going to check motor which was installed in the well. His younger brother Pradip and his son Chetan went to the land. They had only one motorcycle. He told Murlidhar to go ahead on foot. Murlidhar was walking along with bullock cart road while Devman and he were going behind him on motorbike. Between 08.15 and 09.15 accused Suryakant who was having motorcycle gave dash to Murlidhar by his motorcycle in deep road near Dipchand Maharu's land. Suryakant had some sharp weapon with which he stabbed Murlidhar in stomach. He saw the said incident. Suryakant got scared after seeing them and tried to put motorcycle on them and ran away. He stopped near Murlidhar and sent Devman to bring the vehicle from the village. Devman brought an Ape rickshaw of Sanjay Shivaji Kadam from the village. Before that, when Murlidhar and he were alone, accused No. 2 and 3 came there and told him why they entered into the dispute between two brothers and installed motor on their well. Both of them threatened to kill him saying that you two should be blown up like their brother. At that time Prabhakar Devidas Patil and Ramrao Vishwas Patil of village were going there and seeing them accused No. 2 and 3 left from there. Prabhakar and Ramrao saw the situation of his brother. Then they put Murlidhar in Ape rickshaw and brought him to the village. Thereafter

Murlidhar was brought to Sudha Hospital, Dhule in his Safari car. He lodged report with Nardana Police Station (Exhibit-110).

On 23.07.2015, Murlidhar died at 2.15 pm while undergoing treatment. On 31.07.2015 his supplementary statement was recorded. He showed spot to the police on 24.07.2015. Police seized broken parts of motorcycle from the spot. He identified broken parts of motorcycle (Article-A) and (Article-B).

16. In cross examination he deposed that they four brothers were cultivating half share in Gat No. 341 and 343 since four years. They had an oral agreement with Devman about cultivation of half share. In these four years they had no dispute with accused, but nine months before the incident, his brother Pradip was beaten up by accused and they settled the dispute. After that they did not have any dispute with accused. The well in Gat No. 343 was jointly owned by Devman and Abhiman. Since previous four years to incident they on behalf of Devman and Abhiman were using that well jointly. He had no concern with Civil Suit which was filed in Shindkheda Court. Accused were present in same area while the work of installing motor was going on. He admitted that there are agricultural lands of other

people adjacent to Dipchand's land. He could not tell whether there were other people present in their land. When he first saw Surayakant, he was about 50-60 feet away from him. After they saw Suraykant, they went on a motorbike near Suryakant and on seeing them, Suryakant was trying to run away. He tried to put motorcycle on them and tried to give dash to them with his motorcycle and then left immediately. By the time they reached the place, Murlidhar was lying on the ground. There was blood on the road. After 15-20 minutes, Devman brought Ape rickshaw from village. He, Devman and driver of rickshaw picked up Murlidhar and put him in the rickshaw. He sat in that rickshaw and Devman came back with a motorbike. There was no blood on his clothes while putting Murlidhar in rickshaw or getting into rickshaw. His clothes were not seized by police during investigation. Murlidhar had received 4 to 5 injuries on his body. Blood was coming from the wounds. Murlidhar's blood was in the rickshaw.

After bringing Murlidhar in the village they waited for 10 minutes. At that time people of the village had gathered. Murlidhar was not in a position to speak, he did not tell anything about the incident to the villagers, he admitted Murlidhar to Sudha Hospital, Dhule. Doctor asked him what happened. Police

came to Sudha Hospital and he disclosed incident to police. On 23.07.2015, he came to Nardana Police Station at 6.00 pm to 6.30 pm. He waited in the police station for one and half hour. At that time Devman was with him. Devman informed police about incident at that time. First his complaint was taken and thereafter Devman's statement was taken. The complaint given by him to police was written down and he signed it. He denied the suggestion that he has not witnessed the incident and that Suryakant did not try to give dash to them by motorcycle and no such incident happened before him.

17. Another eye witness PW6 Devman Vyankat Patil has deposed on the lines of PW1 in respect of ownership of lands Gat No. 341 and 343 and half share in the well. He stated that he had given his share in Gat No. 341 and 343 to his cousin Gokul Patil, Murlidhar Patil, Sunil Patil and Pradeep Patil for cultivation, on share basis. His brother Abhiman Patil restrained him from using water from the common well. So he filed suit in Shindkheda Court. The suit was decreed in his favour. After passing of the decree, he called complainant and deceased Murlidhar and informed them that the suit is decreed in their favour, so they should come to Kalmadi and install the motor on

the well. On 21.07.2015, PW1 and Murlidhar came to Kalmadi from Mumbai and called him. On 22.07.2015, they took motor to Kalmadi and went to agricultural land. At that time, Accused No. 1 to 3 were present in the field. On 23.07.2015, he came to Kalmadi at about 7.30 am to check the motor installed on the well as electricity was to come. As there was only one motorbike they asked Murlidhar to go to agricultural land on foot. He told Murlidhar that he and complainant PW1 Gokul would be going on motorcycle. Murlidhar started walking towards land. After 10 minutes he and PW1 started going to the land on motorcycle. When Murlidhar was walking on foot accused gave dash to Murlidhar with motorcycle on deep road of bullock cart of their land between 8.30 am and 8.45 am near Dipchand Maharu's land. Number of motorcycle was MH-15-BK-3911. Murlidhar fell down due to dash of motorcycle. Suryakant stabbed Murlidhar with some sharp weapon in the stomach. He and PW1 saw him stabbing. So Suryakant got scared and tried to put motorcycle on them and ran away. Murlidhar was unconscious. PW1 stopped near Murlidhar and he went to Kalmadi village to fetch a vehicle. He brought Ape rickshaw of Sanjay. Murlidhar was put in the Ape rickshaw and brought to Kalmadi and from there he was admitted in Sudha Hospital, Dhule in Safari car of PW1. He was

informed by PW1 that when he went to fetch vehicle, accused No. 2 and 3 approached him and threatened to kill him and abused him, at that time Ramrao Patil and Prabhakar Patil of the village came there. Therefore, accused No. 2 and 3 left from there. Murlidhar underwent surgery at Sudha Hospital, Dhule. After that PW1 went to Nardana Police Station and lodged a complaint. He identified the knife Article 'C' which was used in the incident.

18. In cross he stated that well in Gat No. 343 is common well of himself and Abhiman. His pump was previously installed on that well. Abhiman was using water from said pump. At the time of incident, his pre-installed pump was running. He denied that before incident they were not on visiting terms and there was no conversation with Abhiman. It did not happen that a year before the incident, Abhiman and he had a dispute over well water. Omissions to the effect that, "a year ago, I and Abhiman had a dispute over the well water", "Abhiman and I had a quarrel over well water a year before the incident" were brought on record in his cross examination. He admitted that Abhiman had filed complaint against Pradip, Gokul and him at Nardana Police Station as they assaulted him. He admitted that

Murlidhar and his family were responsible for installing pump at the well. Accused No. 1 to 3 did not object to installing of the pump on the well. The spot of incident is a road used by farmers. He was not able to say whether farm labourers or farm owners were present around the spot of incident or not. At the time of incident, the vehicle or vehicle drivers were not seen on the said road. He was riding their motorcycle himself. It took approximately 5 minutes to reach the spot. Suryakant was coming towards them. When he first saw Suryakant, he was about 50 feet away. He cannot say whether Suryakant dashed Murlidhar from the front or from back. Murlidhar fell on the ground after dash was given to him. He could not say whether there was talk between Murlidhar and Suryakant at that time. Murlidhar was injured in 2 to 3 places after falling on the ground. After dash by the motorcycle, after five minutes, Suryakant stabbed Murlidhar. He saw only one stab given by accused to Murlidhar. He was on his motorcycle at that time. They did not have time to stop Suryakant from stabbing. After the incident, Suryakant crossed them and went away. Neither, he nor Gokul tried to stop Suryakant. He did not ask PW1 anything about the incident. It did not happen that, he came to know the whole incident of dash of motorbike and stabbing by Suryakant to

Murlidhar. While giving supplementary statement he did not tell the police that, "I came to know that Suryakant had stabbed his cousin Muralidhar Dhondu Patil on his stomach by knife having iron blade." He stated that portion mark 'A' to the above effect in his supplementary statement is incorrect. Though, he held Murlidhar at the time of putting him at rickshaw, there was no blood on his clothes at that time. Doctor did not ask him what happened to him. Police did not come to the hospital on that day. Next day in the evening PW1 went to Nardana Police Station at about 8.00 to 8.30 pm. He also went along with PW1. Police did not enquire with him after PW1 filed complaint. He himself did not try to tell the police about the incident. On the next day, in the evening, police recorded his statement. He denied that PW1 was present while recording his statement and that PW1 told him what was stated in the complaint. He denied the suggestion that no incident had taken place before him and as he had enmity with appellant, therefore, he was deposing false.

19. PW7 Devidas Patil has proved the spot panchnama (Exhibit-139). He stated that PW1 Gokul Patil had shown the deep bullock cart road near his field. Broken plastic pieces of motorcycle were lying there. Two soil samples were also seized.

He identified the broken plastic pieces of motorcycle (Article 'A') and soil samples (Article 'D' and 'E').

In cross, he stated that, his farm is adjacent to the road near the incident site. Road is approximately 10 feet wide and it is unpaved and dirt road. Bullock carts are used on that road. Due to bullock carts, there are deep pits of bullock cart wheels on both sides of the road. He denied that there were rough stones on the said road. When he went for the spot panchnama, there was no motorcycle on the spot.

20. Pancha's to the spot panchnama PW2 Ashpaq Shaikh and PW3 Roshan Shaikh have turned hostile.

21. PW4 Manoj Lohar proved the memorandum statement of accused (Exhibit-119). He deposed that accused gave statement to police before him and another panch Nitin Patil that he kept knife used in the crime behind the cupboard in his residence. This statement was recorded in writing and accused, the pancha's and investigating officer have signed it. Then the accused led panch and police personnel to his house and took out the knife (Article 'C') from behind the cupboard, which was seized vide panchnama (Exhibit-120).

22. In cross, he deposed that Kale Saheb (Investigating Officer) has his phone number. Whenever Kale Saheb was in need, he used to call him for panchnama. Kale Saheb also had mobile number of second panch Nitin Patil since beginning. Nitin Patil has also earlier worked as panch with Kale Saheb. At the time of recovery of knife no one was present in the house of accused. The cupboard was made of iron.

23. At the time of incident PW8 Mansabkhan Niyakhan was working at Nardana Police Station as Assistant Police Inspector. In absence of investigating officer B.M. Kale, for few days he conducted the investigation. By letter dated 07.09.2015 (Exhibit-148) he requested Tahsildar to draw map of spot of incident. Accordingly, map of spot was prepared by Circle Officer (Exhibit-150). By letter dated 27.08.2015 (Exhibit-151) he had sent blood samples to forensic lab for examination. He proved chemical analysis reports (Exhibit-152 and 153).

24. In cross, he admitted that he had taken remand of accused on 01.08.2015 and 03.08.2015. He did not remember whether he got any eye witnesses, for the reason mentioned in that report or not. He admitted that he did not receive eye witnesses of incident till the investigation came to him.

25. PW9 Akbar Abdul Rahim Patel was working as ASI in Deopur Police Station. He was directed to record statement of injured Murlidhar Patil, who was admitted in Sudha Hospital, Deopur, Dhule. When he went to the hospital, doctor took him to the patient and told him that patient was not in a condition to speak. The doctor accordingly made endorsement on the letter (Exhibit-163).

26. PW11 Bharat Kale was working as Police Sub Inspector at Nardana Police Station at the relevant time. On 23.07.2015 Crime No. 44/2015 was registered at Nardana Police Station against three accused and investigation was handed over to him. He conducted investigation, spot panchnama, seized the motorcycle used by accused (Article 'B') vide seizure panchnama (Exhibit-171). He arrested accused on 24.07.2015. Arrest panchnama is at Exhibit-116. He proved steps taken during the investigation. He recorded memorandum statement of accused (Exhibit-119) and seized knife (Article 'C') vide seizure panchnam (Exhibit-120). By letter dated 28.07.2015 (Exhibit-176) he sought opinion of doctor whether injuries mentioned in the injury certificate could lead to death. He received opinion of doctor (Exhibit-177) stating that a person may die due to said

injuries. During treatment, Murlidhar expired on 29.07.2015. Deopur Police conducted inquest panchnama (Exhibit-124) and provided provisional post mortem report (Exhibit-127). He added Section 302 of IPC in the crime. He arrested Accused No. 2 on 29.07.2015 by arrest panchnama (Exhibit-180). He collected copies of complaint along with charge sheet and NC (Exhibit-181 and 182) filed by villagers against Accused No. 1 and 2. Copies of pending civil suit were collected by him along with charge sheet (Exhibit-183).

27. In cross, he admitted that, crime was registered at 6.15 pm. According to the witnesses incident took place at about 7.30 am. Distance between Nardana Police Station and spot of incident is approximately 15 to 20 km. During investigation, it was revealed that motorcycle and knife were used in the crime. Spot of incident is road in use by farmers, which is approximately 1 km away from village Kalmadi. He admitted that there are agricultural lands around the spot of incident and he prepared spot panchnama after 24 hours of occurrence of incident. He recorded statements of six eye witnesses till the arrest of Accused No. 1 Suryakant. Devman was one amongst them. He admitted that Devman Patil has stated in his

supplementary statement that, he came to know that appellant had stabbed Murlidhar in the stomach with knife with iron blade. He admitted that, he did not conduct investigation about NC reports lodged against the accused.

28. In assessing the value of evidence of eye-witnesses, 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 situation as would make it possible for them to witness the fact deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the 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 (Vide "***Shahaja @ Sahahanan Ismail Mohd. Shaikh V/s State of Maharashtra***" 2022 ALL MR Cri 3035 (SC)).

On appreciation of evidence of eye witnesses PW1 Gokul and PW6 Devman, by applying aforesaid principles, we find that PW1 Gokul has given graphic details of the occurrence.

His evidence is corroborated by PW6 Devman. They both have narrated the manner in which the incident has taken place. Accused gave dash to Murlidhar by his motorcycle and after he fell down, inflicted a knife blow on him. In their evidence the prosecution has also brought on record that there was dispute between Devman and Abhiman, father of accused, over taking water from the common well situated in Gut No. 343. Merely because accused did not resist at the time of installing motor on the previous day, it cannot be said that accused had no motive for assault. It appears that due to said installation, accused was annoyed and therefore on the next day he assaulted the deceased. Thus, prosecution has proved the motive behind commission of offence. The presence of both the eye witnesses at the spot of incident is natural, their evidence in respect of assault is cogent, consistent and reliable. Merely because no blood stains are found on their clothes, though they put deceased in Ape rickshaw, this by itself is not sufficient to doubt their presence at the spot of incident. Their testimony is not shaken in the cross examination.

Though there are minor omissions brought on record by way of contradiction, they are on trivial matters not touching the core of the case. We find that minor discrepancies are not so

material to cast shadow of doubt on the testimony of the eye witnesses. It is well settled that, the discrepancies which do not shake the basic version of the prosecution case may be discarded. Similarly, the discrepancies which are due to normal errors of perception or observation should not be given importance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record as a whole and should not disbelieve the evidence of a witness altogether, if it is otherwise trustworthy. (Vide ***Appabhai v. State of Gujarat***, 1988 SCC (Cri) 559). We find that evidence of eye witnesses PW1 Gokul and PW6 Devman read as a whole, appears to have ring of truth and same is rightly believed by the Trial Court.

PW1 Gokul and PW6 Devman both are close relatives of deceased, fact remains that they are also close relatives of accused. Therefore, they cannot be said to be interested witnesses and that ground is not sufficient to discard their otherwise trustworthy testimony. Normally a close relative of deceased would be most reluctant to spare the real assailants and falsely mention the names of other persons as those responsible for causing injuries to the deceased (vide ***Bishan Singh and others v. The State of Punjab***, AIR 1973 SC 2443).

29. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far as removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. (see **"Rana Pratap and Others V/s State of Haryana" 1983 (3) SCC 327**).

30. In **"Rammi @ Rameshwar V/s State of M.P." (1999) 8 SCC 649**, the Apex Court has held that, the post event conduct of witness cannot be predicted. It varies from person to person

as different people react differently to what they witness.

31. Considering the above ratio, we find that merely because PW-1 and PW-6 have not intervened in the assault or they did not react in a particular manner, their conduct cannot be termed as unnatural so as to render their testimony unreliable.

32. Homicidal death of deceased is not seriously disputed by the accused. Inquest Panchnama(Exhibit-124) is admitted by defence. It corroborates the prosecution case that appellant knocked down Murlidhar by motorcycle and stabbed him in stomach by knife. Injury certificate (Exhibit-167) shows "Incise wound over anterior abdomen wall in vertical middle region 8 x 4 cm cavity deep. Margines are clean cut eliptical and wound is actually bleeding and omentum oozing out through wound, active bleeding, neuroperitoneum." Post mortem report further proves that deceased died due to "Septicaemia following internal injuries". Thus, the prosecution has proved that Murlidhar died homicidal death and appellant is the author of the injury caused to Murlidhar.

33. Investigating Officer PW11 has seized broken parts of

motorcycle from the spot along with blood stained soil. PW4 has proved memorandum statement of accused Suryakant and recovery of knife used in the incident from him, which he had kept in his house behind the cupboard. Merely because panch to the memorandum statement and recovery panchnama PW4 and other panch Nitin Patil have appeared as panch earlier, that is not sufficient to discard their testimony. Fact remains that memorandum statement and seizure of knife is also proved by Investigating Officer PW11.

34. Forensic evidence i.e. CA reports (Exhibit-152 and 153) show that human blood was found on knife (Article 'C'). Therefore the prosecution has proved beyond reasonable doubt that appellant has assaulted Murlidhar with knife on the fateful day and due to said assault Murlidhar expired on 29.07.2015.

35. Now the question before us is whether accused is liable to be convicted under Section 302 of IPC or for lesser offence?

36. Immediately after the assault, Murlidhar was admitted in the hospital of PW10 Dr. Milind Patil. His evidence shows that Murlidhar was having "Incise wound over anterior

abdomen wall in vertical middle region 8 x 4 cm cavity deep." Margines are clean cut elliptical and wound is actually bleeding. It is therefore clear that accused inflicted a single blow of knife on Murlidhar. Both the eye witnesses have also stated that accused stabbed Murlidhar with knife. Since the accused has given a single blow of knife to the deceased, therefore knowledge can be attributed to the accused that blow of knife given by him is likely to cause death of Murlidhar. However, in this peculiar facts intention to cause death or to cause such fatal injury which likely to cause death cannot be attributed to the accused. He is therefore liable to be held guilty for commission of offence under Section 304 Part-I of IPC.

37. The accused was arrested on 24.07.2015 and he is in jail since then. Therefore so far he has completed about 9 years and 8 months sentence.

38. Learned advocate for the appellant has relied on Ashraf Hussain Shah (supra), wherein this Court held that, "*in absence of proof that articles were sealed and were forwarded to chemical analyst in sealed condition, recovery evidence is liable to be rejected*". It is also held that, *since witnesses whose testimony is essential for unfolding of the narrative were not*

examined and explanation was not given for not producing him, the prosecution case stands vitiated."

There cannot be any dispute about above proposition. In CA report (Exhibit-153) description of parcels received by forensic lab is given as "one sealed cloth parcel, two sealed packets and one sealed parcel, seals intact and as per copy sent". Therefore, we are unable to accept the submission of appellant that articles were not sealed at the time of recovery. The prosecution has examined two eye witnesses PW1 and PW6 and they have proved the prosecution case. Therefore, it was not necessary for the prosecution to examine more witnesses in the present case.

39. In the light of aforesaid discussion, we pass the following order:

ORDER

- (i) Criminal Appeal is partly allowed.
- (ii) The conviction of appellant/accused under Section 302 awarded by the Additional Sessions Judge, Dhule in Sessions Case No. 119 of 2015 dated 11.10.2023 is hereby quashed and set aside.
- (iii) The appellant/accused is convicted under Section 304 Part-I of the Indian Penal Code, and is sentenced to suffer

imprisonment for the period already undergone by him.

- (iv) The appellant/accused be released forthwith, if not required in any other case.
- (v) The appellant/accused to execute bail bonds under Section 481 of Bhartiya Nagrik Suraksha Sanhita, 2023 (Section 437A of the Criminal Procedure Code).
- vi) Sentence of fine is maintained.
- (vii) Muddemal property be dealt with in accordance with law.

[MANJUSHA DESHPANDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE