

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

[1] CRIMINAL APPEAL NO.555 OF 2023

Ravi Gautam Nikalje	Appellant
Versus	
The State of Maharashtra	Respondent

.....
WITH
INTERIM APPLICATION NO.1305 OF 2026
IN
CRIMINAL APPEAL NO.555 OF 2023

.....
WITH

[2] CRIMINAL APPEAL NO.615 OF 2023

Dipak Datta Wavhal	Appellant
Versus	
The State of Maharashtra	Respondent

.....
WITH

[3] CRIMINAL APPEAL NO.891 OF 2023

Krushna Dadaram Shinde	Appellant
Versus	
The State of Maharashtra	Respondent

.....
WITH

[4] CRIMINAL APPEAL NO.434 OF 2023

Nitin Uttam Pandit	Appellant
Versus	
The State of Maharashtra	Respondent

.....
WITH

[5] CRIMINAL APPEAL NO.422 OF 2023

Akash alias Bablu Pandharinath Dambale	Appellant
Versus	

The State of Maharashtra

....Respondent

.....
WITH

[6] CRIMINAL APPEAL NO.811 OF 2023

Nilkanth Kisan Birajdar, & another
Versus

.....Appellants

Ravi Gautam Nikalje
and others

....Respondents

Ms. Anjali Patil, Advocate a/w. Tohid Shaikh for the Appellant in Apeal/555/2023 and for the Applicant in IA/1305/2026.

Mr. Aniket Vagal, Advocate a/w. Juhi Kadu, Savvy Kolhekar for the Appellant in Apeal/615/2023.

Mr. Keshav Chavan, Advocate a/w. Anita Marbhal, Ankush Dhokale for the Appellant in Apeal/891/2023.

Mr. Sudarshan Salunkhe, Advocate a/w. Heena Suvarnakar i/b. Prabhanjan Gujar for the Appellant in Apeal/434/2023.

Mr. Pratik Kalantri, Advocate (through VC) for the Appellant in Apeal/422/2023.

Mr. Ramesh Dube-Patil, Advocate a/w. Lisa Das i/b. Jay & Co. for the Appellant in Apeal/811/2023.

Ms. Gauri S. Rao, APP for the Respondent – State.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 18th SEPTEMBER, 2026

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. Heard Ms. Anjali Patil, learned counsel for the Appellant in Apeal/555/2023, Mr. Aniket Vagal, learned counsel for the Appellant in Apeal/615/2023, Mr. Keshav Chavan, learned counsel for the Appellant in Apeal/891/2023, Mr. Sudarshan Salunkhe, learned

counsel for the Appellant in Appeal/434/2023, Mr. Pratik Kalantri, learned counsel appearing through video conferencing for the Appellant in Appeal/422/2023, Mr. Ramesh Dube-Patil, learned counsel for the Appellant in Appeal/811/2023 and Ms. Gauri Rao, learned APP for the Respondent – State.

2. All these Appeals are decided by this common judgment because they arise from the same impugned judgment and order dated 14.2.2023 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.198/2018. For convenience, the Appellants are referred to by their status before the trial Court as mentioned in the cause title of the impugned judgment and order and also in their operative part.

3. Criminal Appeal No.555/2023 is preferred by the original accused No.1 Ravi Nikalje, Criminal Appeal No.615/2023 is preferred by the original accused No.2 Dipak Wavhal, Criminal Appeal No.891/2023 is preferred by the original accused No.3 Krushna Shinde, Criminal Appeal No.434/2023 is preferred by the original accused No.4 Nitin Pandit, and Criminal Appeal No.422/2023 is preferred by the original accused No.5 Akash alias Bablu Dambale.

4. The cause title of the impugned judgment and order and

the operative part of the said judgment and order referred to these accused as per these numbers. However, in paragraph No.3 of the Judgment the accused Nitin Pandit is mentioned as accused No.5 and the accused Bablu Dambale is mentioned as accused No.6. However, considering the cause title and the operative part of the impugned judgment and order, we are referring to these accused as accused Nos.1 to 5. Apart from these accused, there was a child in conflict with law [CCL] whose trial was separated. He was the brother of the accused No.1.

5. As far as Criminal Appeal No.811/2023 is concerned, it is preferred by the family members of both the deceased in this case. They have challenged the acquittal of the accused Nos.1 to 5 from the offence punishable under Section 135 of the Maharashtra Police Act and for awarding capital punishment to the accused Nos.1 to 5.

6. The learned trial Judge convicted and sentenced the Appellants as follows :

- i] All of them were convicted for commission of the offence punishable under Section 302 read with Section 149 of IPC and they were sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- each and in default to suffer S.I.

for six months.

- ii] All of them were convicted for commission of the offence punishable under Section 143 of IPC and they were sentenced to suffer R.I. for three months and to pay a fine of Rs.500/- each and in default to suffer S.I. for fifteen days.
- iii] They were convicted for commission of the offence punishable under Section 148 of IPC and were sentenced to suffer R.I. for two years and to pay a fine of Rs.1,500/- each and in default to suffer S.I. for two months.
- Iv] They were acquitted from the charges of commission of the offence punishable under Section 135 of the Maharashtra Police Act.

All the sentences were directed to run concurrently. They were granted set off under Section 428 of Cr.P.C. for the period undergone in prison pending trial.

7. The prosecution case, in brief, is as follows :

8. The incident occurred on 27.12.2017 at about 11.00 p.m..

All the accused came in a rickshaw near Rajiv Nagar Zopadpatti. There was a quarrel between one Devidas Ighe and the accused No.1 Ravi Nikalje. The child in conflict with law [CCL] and the accused No.3

Krushna ran towards the hutment. They brought sharp weapons. The CCL gave a blow with that sharp weapon on Devidas, who fell down. Devidas's relative Dinesh ran to save him. The accused No.1 Ravi took the sharp weapon from the hands of the CCL and gave blows on Dinesh. The first informant Ramesh Gaikwad tried to intervene but he was threatened. He started running away. He was chased. The other accused were carrying stones. He tripped and fell down. He suffered simple injury on his foot. He again stood up and started running. He looked back and saw that all of them were assaulting Dinesh and Devidas. After that, the assailants ran away. Devidas was seriously injured. Dinesh had succumbed to his injuries. Devidas was taken to the hospital but he did not survive. PW-1 Ramesh Gaikwad lodged his FIR with Indira Nagar Police Station vide C.R. No.348/2017. It was registered at 4.52 a.m.. Investigation was carried out. The postmortem examination of the two dead bodies was conducted. The accused were arrested. Their clothes were seized. It is the prosecution case that the murder weapon i.e. a big knife was recovered at the instance of the accused No.1 Ravi Nikalje on 3.1.2018 from near the bank of a river. The seized articles were sent for chemical analysis. The statements of various witnesses were recorded.

At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

9. During trial, the prosecution examined seventeen witnesses including four eye witnesses, the panchas, the medical officers and the investigating officers. The defence of the Appellants – accused was of total denial.

10. The learned Judge relied on the evidence of all the eye witnesses. He relied on the evidence of recovery of weapon and ultimately convicted and sentenced the Appellant as mentioned above. The learned Judge applied Section 149 of IPC as far as the accused Nos.1 to 5 were concerned.

11. PW-1 Ramesh Gaikwad is the most important witness in this case. He was the first informant. He deposed that he knew both Dinesh Birajdar and Devidas Ighe. He was a rickshaw driver. On 27.12.2017, he was present near the State Bank Chowk, Rane Nagar. Dinesh and Devidas were with him. They ate pavbhaji around 10.30 p.m.. After that, all three of them travelled on one motorcycle to drop Devidas at Rajiv Nagar Zopadpatti. They reached there at around 11.00 p.m.. They reached outside the house of Devidas. They got down from the motorcycle. One rickshaw was in front of them.

According to him, all the accused were sitting in the rickshaw. He had named all the accused as the persons who were sitting in the rickshaw. They got down and came near Devidas. He further deposed that because of some old dispute there was a quarrel between them and Devidas. The CCL and the accused No.3 Krushna ran towards the hutment area. They went inside. The CCL came with a weapon like sword and the accused No.3 Krushna brought a sickle. The CCL assaulted Devidas with his weapon on his neck. Devidas fell down in a pool of blood. PW-1 and Dinesh tried to pick him up. At that time, the accused No.1 Ravi Nikalje took the weapon like sword from the hands of the CCL and stabbed Dinesh's waist who also fell down. PW-1 got scared and started running towards the old Indira Nagar Police Station. The accused No.1 Ravi with a weapon in his hand and the others having stones in their hands started chasing him. PW-1 fell down and injured his left foot. He got up and went a little ahead. He looked back. The persons chasing him went back to the place where Dinesh and Devidas Ighe had fallen down. All of them assaulted both of them with weapons like sword and sickle. The people in the locality gathered there. The assailants ran away. PW-1 went back to Dinesh and Devidas. Dinesh had succumbed to his injuries. Devidas

was still alive. PW-1 put Devidas in a rickshaw and took him to Civil Hospital but the doctor declared Devidas dead in the hospital. At about 1.00 a.m to 1.30 a.m. in the night, he went to Indira Nagar police station and lodged his FIR. It is produced on record at Exhibit-61. He deposed that the weapon in the hands of the CCL was not a sword but it was a knife and, therefore, he again went to the police station and clarified that fact. He identified all the accused in the Court. He identified the knife produced in the Court as Article 'A'.

In the cross-examination, he deposed that the distance between the spot of incident and old Indira Nagar police station was of two minutes and the new Indira Nagar police station was at a distance of about 3 to 4 minutes. It took about 15 minutes to reach the Civil Hospital from the spot of incident. He had not informed about the incident at the chowky situated at the entrance of the Civil Hospital. He was in the Civil Hospital for about two to two and half hours. He did not tell the incident to the doctor. He had reached the Civil Hospital at about 11.15 p.m. on 27.12.2017. During that period, the doctor did not make any enquiry with him for his injuries and did not ask about the assailants or the weapons. At about 1.30 a.m. in the night, he reached Indira Nagar police station. He was there till 5.00

a.m.. During all this period, the police were continuously asking him details of the incident. According to him, he put his signature on the FIR at 1.30 a.m. After 5.00 a.m., he went back to his house. He reached there at about 5.15 a.m.. After that, till 12.00 p.m. he did not go to any place with the police of Indira Nagar police station. He had personally not lifted Devidas. He was sitting next to the driver in the rickshaw. His clothes were not seized by the police. Both Devidas and Dinesh were his childhood friends. Alka and Daggu Shelke were his aunt and uncle. Dinesh was Daggu's cousin. PW-1 had come to the Court with Daggu and Alka. In the past, the police had imposed penalty on him as he did not have badge for plying a rickshaw. He was called to the police station to identify the weapon at the police station. His statement was recorded by the Magistrate after that. He did not see the knife at the police station.

The FIR produced on record at Exhibit-61 substantially corroborates his evidence.

12. PW-8 Daggu Shelke is examined as an eye witness. He deposed that on 27.12.2017 at 11.00 p.m. he was present in his house. He heard a loud noise on the road. He went there. He saw that 5-6 people were assaulting his nephew Dinesh. The accused No.1 Ravi

had caught Dinesh's hair and was assaulting on his neck with a chopper. PW-8's brother Devidas was lying in a pool of blood at a distance of about 5 to 6 ft.. PW-8 went towards Devidas. He was still breathing. PW-8's wife suggested that Devidas should be taken to the hospital. Accordingly, PW-8's wife took Devidas to the hospital and PW-8 went towards Dinesh. In the meantime, the police van reached there and Dinesh was taken to Civil Hospital in that police van. By that time his wife had reached there. He identified the accused No.1 Ravi Nikalje. He identified the chopper Article 'A' produced in the Court. His statement was also recorded under Section 164 of Cr.PC.. It is produced on record at Exhibit-124. He identified the other accused i.e. accused Nos.2 to 5. He deposed that all the accused were assaulting his nephew Dinesh.

In the cross-examination, he stated that he did not know the phone number of the police station. He had never called the police station. The distance between Rajiv Nagar slum area and Indira Nagar police station was about 1 km. It was at five minutes walking distance. The police had come to the spot between 11.00 p.m. to 11.15 p.m.. He himself did not keep the injured in the rickshaw. There were about 3000 to 4000 people residing in Rajiv Nagar slum area.

After the incident, the police met him on 31.12.2017. The police had given him notice on 29.12.2017. He was called at the police station on 30.12.2017 but he did not go to the police station on that day. At the time of incident, about 50 persons had gathered at the spot and he had gone to the Civil Hospital in the midnight between 12.00 a.m. to 12.15 a.m. on 28.12.2017. He left the hospital at about 5.00 a.m.. During that time he did not see the police in the civil hospital. The police did not record his statement in writing. From 28.12.2017 till 30.12.2017 he did not give information to the police on his own. During those three days even the police officers did not approach him. He accepted that when he went to the police station on 31.12.2017, by that time, all the accused were arrested.

13. PW-9 Santosh Kadam was examined as another eye witness. He deposed that on 27.12.2017 he had gone to meet his uncle Nilkanth Birajdar at Ganesh Chowk at around 10.30 p.m.. Nilkanth Birajdar instructed him to go to Rajiv Nagar slum area for making payment to one Ramesh Salve. PW-9 along with his friends Chetan Bagul (PW-10) and Abhishek Shirsath reached Rajiv Nagar slum area at around 10.45 p.m.. He called Ramesh Salve, who told him to wait for about 10 to 15 minutes. He saw that some quarrel was

going on at a distance of about 100 to 125 ft.. There were abuses and exchange of blows. PW-9 and others went near the place of the quarrel. He saw 5-6 persons assaulting his cousin Dinesh and Devidas with a knife. He deposed that the accused No.1 gave a blow with a knife on Devidas's stomach, accused No.2 Dipak and accused No.5 Akash alias Bablu had caught hold of Devidas. The CCL stabbed Devidas with a knife. Devidas had come forward to save Dinesh. The accused No.1 Ravi Nikalje took the knife from the CCL and assaulted Dinesh on his back and neck. Dinesh tried to run but the accused No.3 Krushna and the accused No.4 Nitin caught him. Accused No.1 came near Dinesh and assaulted him on his throat using a knife. PW-9 and others raised shouts. Nobody came to help. After that PW-8 Daggu Shelke and his wife Alka came there. She took Devidas to Life Care Hospital. The police recorded the statement of PW-9. Before that they had given him a notice. The notice is produced on record at Exhibit-127. His statement was recorded by the J.M.F.C.. He identified the accused in the Court.

In the cross-examination, he deposed that the notice of the police station was dated 2.1.2018. It was another notice. It is produced on record at Exhibit-128. He admitted that both the

deceased were his relatives, but he had no financial transactions with them. Nilkanth Birajdar's finances were looked after by Nilkanth himself and his son Dinesh. The distance between Rajiv Nagar hutment and PW-9's residence was about 4 to 5 km. After the incident he was present at Rajiv Nagar Zopadpatti between 11.00 p.m. to 12.00 a.m.. During that time, the police attached to Indira Nagar police station had reached there. He had seen the police for 45 minutes but he did not reveal the details of the incident to them. He did not take any part in shifting the injured to the hospital. He went to the hospital from the spot of the incident. He was there till about 3.00 a.m. to 4.00 a.m.. Many police officers were present but he had not given information either to the police or to the relatives of the deceased present in the hospital. On 28.12.2017 till 1.1.2018, he on his own did not approach the police station to give information about the incident. The police also did not contact him. The police had called him on 30.12.2017 but he had not gone to the police station.

14. The evidence of PW-10 Chetan Bagul who was also examined as an eye witness; is exactly the same as that of PW-9. According to him, after the incident Dinesh was put in an ambulance and was taken to the civil hospital and after that PW-10 had gone back

to his house. Then he had gone to Jalgaon as his relative was serious. He returned on 2.1.2018. The police gave him a notice and then his statement was recorded on 2.1.2018. His statement was recorded under Section 164 of Cr.P.C. on 7.2.2018. It is produced on record at Exhibit-131. His description of the incident is exactly the same as that of PW-9.

In the cross-examination he admitted that both the deceased were his close friends. He admitted that he had stated in his police statement that the accused No.3 Krushna had caught Dinesh's hand but this fact was not mentioned in his police statement.

15. PW-6 Pravin Maru was a pancha for recovery of the weapon at the instance of the accused No.1 Ravi. He deposed that he was working in Municipal Corporation. On 2.1.2018, his superior gave him written instructions to go to Indira Nagar police station to act as a pancha. On the next day i.e. on 3.1.2018 he went to Indira Nagar police station at around 1.30 p.m. with another pancha Anil Naik. They met PI Chaudhari. The accused No.1 Ravi was brought before them. PI Chaudhari told them that the accused No.1 Ravi wanted to give memorandum statement and that they should listen to it. The accused No.1 told them that he would show the place where he had

thrown the weapon used in the crime. The memorandum statement was recorded. It is produced on record at Exhibit-110. It was recorded between 1.53 p.m. to 2.04 p.m. on 3.1.2018. After that, the accused No.1 Ravi took the panchas and the police towards Waldevi river. The accused No.1 asked them to stop near a bridge. He took them to another small bridge and told them that he had thrown the knife from that bridge. Search was conducted for finding a knife. It was found in the mud. It was seized. The panchnama was recorded. The recovery panchnama is produced on record at Exhibit-111. The knife was sealed. Photographs were taken.

16. PW-11 Harshal Pawar was a photographer who had accompanied the panchas and the police when the recovery of knife was effected. He produced the photographs on record.

17. PW-13 Dr. Vaibhav Dhoom had conducted the postmortem examination on the dead bodies. Dinesh had suffered eleven injuries in the nature of incised wounds, stab wounds and abrasions. There were injuries on left zygomatic region, face, mandible, neck, shoulder, chest, abdomen, palm and back. There were abrasions on both the knees. The cause of death was mentioned as 'hemorrhagic shock due to multiple stab injuries to neck, chest and abdomen which was

sufficient to cause death in the ordinary course of nature'. The postmortem notes were produced on record at Exhibit-147.

Devidas had suffered eight injuries. Out of them, one was in the nature of abrasion. The others were stab and incised wounds on face, neck, mandible, chest and abdomen. The cause of death was 'hemorrhagic shock due to multiple stab injuries to chest and abdomen which was sufficient to cause death in the ordinary course of nature'. On 15.1.2018, he received a letter from the investigating officer for examination of the weapon. He received the weapon in a sealed condition with that letter. He drew sketch of that weapon. According to him, the injuries mentioned in the postmortem notes were possible by that weapon. The weapon was again sealed in his presence and was handed over to the police officers.

In the cross-examination, he accepted that the injuries on both the bodies were not similar or identical.

18. PW-12 Dr. Mahesh Khairnar had examined PW-1 for his injuries to his foot. PW-1 was examined at 4.40 p.m. on 28.12.2017 at Civil Hospital. PW-1 had lacerations over left foot of the size 1 x 0.1 cm.. There was blunt trauma over left calf and knee joint. The medical certificate is produced on record at Exhibit-141.

In the cross-examination, he deposed that the injury was possible if a person falls on hard surface.

19. PW-2 Umesh Jadhav and PW-4 Santosh Deore were the panchas for inquest panchnamas for two dead bodies. PW-3 Mahesh Deore was a pancha for the spot panchnama. Their evidence is hardly in dispute.

20. PW-5 Umeshkumar Nagare was a pancha in whose presence clothes of both the deceased as well as clothes of the accused were seized. The clothes of the deceased were seized on 28.12.2017. The panchnama is produced on record at Exhibit-83. On 31.12.2017, the clothes of all the accused were seized under different panchnamas. Those panchnamas are produced on record at Exhibits-84 to 88. He deposed that the clothes of the accused were kept in a carry bag. The police showed each of those pieces of clothes to him and told him as to which clothes belonged to which accused. These panchnamas are in the form of separate search and seizure panchnamas; separate detailed panchnamas were not prepared.

21. PW-7 Amol Ghaiwate had turned hostile. According to the prosecution case, the accused No.1 and CCL had travelled in his rickshaw after the incident. Though he did not support the prosecution

case, in the cross-examination conducted by learned APP he accepted that the statement was recorded by the police on 29.12.2017. In that statement he had stated that at about 11.40 p.m. on 27.12.2017 the accused No.1 had contacted him on the mobile phone and called him to a temple behind Rajiv Nagar hutment. The accused No.1 and the CCL sat in his rickshaw and went to Nasik Road. They did not pay him the fare. He accepted that he had made that statement before the police. Hence that contradiction in his deposition and police statement is proved.

22. PW-14 Narayan Nahyalade had conducted some part of investigation. He had collected information from MSEDCL to show that the street lamps were functioning at the spot on 27.12.2017. He had recorded the statements of some of the witnesses and he had caused some of the statements to be recorded under Section 164 of Cr.P.C.. He had filed the charge-sheet against the accused before the J.M.F.C. on 27.3.2018. The C.A. reports received by him were produced on record at Exhibits-168 to 175.

23. PW-15 P.I. Kumar Chavan was another investigating officer. He had seized the clothes of the deceased. He had arrested four accused on 28.12.2017. He had supervised recovery of weapon.

He had seized clothes of all the accused. He had sent the articles to FSL. He had sought opinion of the doctor regarding the weapon and the injuries.

In the cross-examination, he deposed that the information about the incident was received by the police station before 1.30 a.m. on 28.12.2017. Before that the police attached to Indira Nagar police station had gone to the spot and had made inquiries but he had not recorded the statements of those police officers. He accepted that station diary entry mentioning that Dagdu Shelke had telephonically informed that one person from Rajiv Nagar Zopadpatti was lying on the road and he could have died. No further details were mentioned. This witness was at the spot from 1.30 a.m. to 7.00 a.m. but he did not recollect whether the first informant was present there. He had recorded Dagdu and Alka Shelke's statement on 31.12.2017. The accused No.1 was arrested on 29.12.2017 and the other accused were arrested on 28.12.2017.

24. PW-16 API Anil Jagtap had conducted the spot panchnama. According to him, the spot was shown by PW-1 Ramesh Gaikwad. He informed the Forensic Science Laboratory team who collected the blood samples.

In the cross-examination, he deposed that there were about 1500 to 2000 huts in Rajiv Nagar Zopadpatti. He was at the spot till the morning. For five hours the spot panchnama was not conducted. During those five hours, the local residents gave information about the incident, but, he did not take down anything in writing.

25. PW-17 was the last witness examined by the prosecution. He was API Sunil Bodake. He had gone to Civil Hospital, Nashik and supervised the inquest panchnamas.

26. Apart from this evidence, the prosecution produced the C.A. reports on record. The C.A. report at Exhibit-168 shows that there was blood of 'O' group on the clothes of the accused No.1. Similarly there was blood of 'O' group on the clothes of both the deceased. No blood was detected on the clothes of the other accused. The blood was detected on the knife but the blood group was inconclusive.

. This, in short, is the evidence led by the prosecution.

27. Shri Salunkhe, learned counsel appearing for the accused No.4 Nitin Pandit made the following submissions:

- i. The evidence of the eye witnesses is not consistent.

- ii. A specific role is not attributed to the accused No.4 Nitin Pandit.
- iii. There is delay in registering the FIR. The incident had taken place at about 11.00 p.m. in the night and the FIR was lodged at about 4.52 a.m.. No explanation is offered as to why it was lodged belatedly though PW-1 was present in the Civil Hospital. PW-1 himself had stated that he had gone to the police station at about 1.00 a.m. Therefore, the FIR should have been lodged immediately. The delay in lodging the FIR indicates afterthought, deliberation and false implication.
- iv. The conduct of the eye witnesses is unnatural. Neither of the eye witnesses who were either the relatives or friends of the deceased tried to save the deceased from the assault. They had not taken the deceased to the hospital except PW-8's wife but she does not refer to the name of PW-1 as the person accompanying them in the rickshaw. PW-8 had allegedly called the police station in the night itself and disclosed details of the incident. As deposed by PW-15, PW-8 has himself denied this fact. PW-8 was residing in the same locality, but, his statement was not recorded immediately. His statement was recorded only on 31.12.2017. No explanation is offered as to why his

statement was not recorded immediately. Even the statements of PW-9 and PW-10 were recorded much later on 2.1.2018. There is no explanation offered and only in those statements specific roles are attributed to the other accused and to accused No.4 as an afterthought.

- v. There was no recovery at the instance of accused No.4. No blood was found on his clothes.
- vi. There was no motive for him to commit the murder or take part in the assault. He had no enmity with the deceased.
- vii. Section 149 of the IPC is wrongly applied. There was neither knowledge nor common object as far as the accused No.4 is concerned with the other accused. The accused had come to the spot in a rickshaw and they were not carrying any weapons. Therefore, there cannot be a common object of an unlawful assembly to commit the murder of the deceased.
- viii. There are two different versions given by PW-1 on one hand and PW-9 & PW-10 on the other. Therefore, there is no consistency. In such a case, benefit of doubt must be given to the accused.

28. Learned counsel Smt. Anjali Patil appearing for the accused No.1 Ravi Nikalje made the following submissions:

- i. There was delay in lodging the FIR.
- ii. Her submissions were similar to that of the learned counsel Shri Salunkhe as far as registration of FIR is concerned. She added that the police station was very near from the spot of incident. It was hardly at a walking distance of five minutes from the spot of incident and that the FIR was lodged after about five hours.
- iii. There was no motive brought on record by the prosecution. There is no investigation as to from which hut the weapons were brought. The police had ample opportunity to carry out the investigation from that angle. The accused were arrested soon enough. The evidence of PW-1 on one hand and PWs-8,9 and 10 on the other is directly contrary. PWs-8,9 and 10 did not speak about the presence of PW-1.
- iv. PW-1's conduct was unnatural. He had not told anything to anybody in the hospital. PW-1's case was that he was in the rickshaw when Devidas was taken to the hospital. PW-8 does not support this case, as according to him only PW-8's wife had taken Devidas to the hospital. The statements of eye witnesses are recorded much belatedly.
- v. There is inconsistency in the evidence of PW-9 and PW-10

regarding how they met each other before reaching the spot. Their third friend Abhishek Shirsat who was an important witness was not examined.

- vi. The clothes of the accused were already in the police station. They were not seized from their person in presence of the panchas when the accused were arrested on 28.12.2017 and 29.12.2017. The accused No.1 was arrested on 29.12.2017 and there is no explanation as to why their clothes were seized on 31.12.2017. The clothes were sent to FSL belatedly on 9.1.2018.
- vii. The evidence of recovery of weapon is not trustworthy. The pancha was given information one day prior to the recovery. Therefore, it indicates that the statement given by the accused No.1 may not be voluntarily.
- viii. The weapon was recovered from an open place which was accessible to all. The weapon was sent to the doctor for examination. That time, the seal was removed and then it was resealed; but there is no explanation why there was no fresh panchnama in that behalf. The carrier of the knife was not examined. The knife was sent to FSL on 28.1.2018.

29. Shri Vagal, learned counsel appearing for the accused No.2 Dipak Wavhal made similar submissions and added that no specific role is attributed to the accused No.2 Dipak by anyone. PW-8 has also not assigned any role to him. Though PW-9 and PW-10 have assigned a specific role to the accused No.2, but their statements are recorded belatedly and, therefore, involvement of the accused No.2 is clearly an afterthought. No independent witness from the locality is examined.

30. Learned counsel Shri Keshav Chavan appearing for the accused No.3 Krushna Shinde adopted the same submissions of the other learned counsel. He emphasized that there was delay in lodging the FIR. There was no motive for the accused No.3 Krushna to take part in the assault. There was no recovery at his instance though allegedly he had brought a weapon from the hut. His clothes do not show presence of blood.

31. Shri Kalantri, learned counsel appearing for the accused No.5 Akash alias Bablu Dambale adopted the submissions made by the other learned counsel for the other accused.

32. On the other hand, learned APP as well as learned counsel for the father of the deceased submitted that the case is based on the

evidence of four eye witnesses. Their evidence on major aspects is consistent. It is not necessary that every eye witness has to mention the presence of the other eye witness. PW-1 had suffered injury while trying to run away and, therefore, the injury indicates that he was a truthful witness. The description given by the eye witnesses is corroborated by the medical evidence. All the accused had come at the spot in the same rickshaw. Devidas was the target. The weapons were kept ready at some place from where they were brought and Devidas and Dinesh were assaulted. Therefore, it is a clear case of commission of offence with common object. They submitted that since Section 149 of IPC is attracted, it is not necessary to describe a specific overt act vis-a-vis a particular individual accused.

33. We have considered these submissions. The most important aspect in this case is the evidence of the eye witnesses. As far as PW-8 is concerned, he himself had deposed that when he came near the spot, Devidas was already lying in a pool of blood and Dinesh was being assaulted. He has not attributed any specific role to any of the other accused except the accused No.1 Ravi Nikalje. His evidence is corroborated by the medical evidence. Therefore, his evidence can be used only against the accused No.1 Ravi Nikalje. He has made a

general statement that 5-6 persons assaulted Dinesh but he has given a specific role to the accused No.1 Ravi. He has deposed that the accused No.1 Ravi had caught Dinesh's hair and assaulted him on his neck. He has identified the accused No.1 and the chopper. He identified the other accused persons in the Court. Beyond that he has not deposed anything of significance. Importantly he has not deposed about all the accused chasing PW-1 and then coming back to the spot and continuing the assault on Devidas and Dinesh. To that extent his evidence does not support PW-1's version. He had made general statement that all the accused were assaulting Dinesh. However, he has not attributed any weapon to any of these accused. To that extent there is important contradiction to his evidence and PW-1's evidence. Whether PW-1 was chased by all the accused is entirely in the evidence of PW-1. Importantly, PW-8's statement was recorded on 31.12.2017. He was a resident of the same area. There is absolutely no explanation offered as to why his statement was not recorded earlier. He had gone to the Civil Hospital and was there till 5.00 a.m.. He had seen the police in the Civil Hospital, but, he had not stated anything to the police during that period. Even after returning home he had not gone to the police station on his own. He had admitted

that he had not given any information to the police on his own till his statement was recorded on 31.12.2017. He had admitted that when he had gone to the police station, by that time all the accused were arrested. Because of all these factors, his evidence is less reliable than the evidence of PW-1. His evidence does not fully corroborate the evidence of PW-1.

34. PW-9 and PW-10 are the other two eye witnesses examined by the prosecution. Their evidence has to be scrutinized carefully. Both of them have deposed consistently. They were chance witnesses. They were not residing in that area, but they had gone there to meet one Ramesh Salve. PW-9 Santosh Kadam wanted to make some payment and PW-10 had accompanied him. While they were waiting, they saw that a quarrel was going on at a distance of 100 to 125 ft. Therefore, they have not seen the incident from the time when the accused came at the spot. They first saw the incident when the quarrel had already started. They deposed that 5-6 persons were assaulting Dinesh and Devidas. The CCL gave knife blow on Devidas's stomach. They have stated that the accused No.2 Dipak and the accused No.5 Akash alias Bablu had caught Devidas. The accused No.1 Ravi Nikalje had assaulted Dinesh on the back of his neck. Dinesh tried to run but he

fell down. The accused No.3 Krushna and the accused No.4 Nitin had caught him. All this description is absent from the evidence of PW-1. All the eye witnesses' evidence are consistent only about the role played by the accused No.1 Ravi Nikalje and the CCL. As far as the other accused are concerned, PW-9 and PW-10 have given particular roles to them but PW-1 has not stated about the role played by each of these accused. Admittedly PW-9 was a relative of the deceased and PW-10 was a friend of both the deceased. The police statement of PW-9 was recorded on 2.1.2018. From 28.12.2017 till 1.1.2018, he himself had not gone to the police station to give information. PW-9 had seen the police at the spot for about 45 minutes. Even at that time, he had not informed the police about the incident. PW-10 had gone to Jalgaon, as his relative was serious and had returned on 2.1.2018. PW-9 was very much available in Nashik, but inspite of having seen the incident and being a close relative and friend, they did not give any information to police or anybody else. Their conduct was quite unnatural. This assumes importance because the specific roles were attributed to the accused Nos.2, 3, 4 & 5 only after their statements were recorded. This clearly indicates that to rope in the accused Nos.2, 3, 4 & 5, their statements were recorded belatedly. No

explanation is offered.

35. The evidence of PW-8, PW-9 and PW-10 has to be tested against the evidence of PW-1 who was also a friend of the deceased but he had lodged the FIR and, therefore, he had not suppressed the incident from the police or from anyone else. He was a natural witness because he had reached the spot with both the deceased. They were together from 10.30 p.m.. Therefore, the evidence of PW-1 is important. His presence is also established through the injury sustained by him, which is proved through the evidence of PW-12. Thus, we find that PW-1's evidence carries more weight.

36. As against that PW-8, PW-9 and PW-10 cannot be termed as reliable witnesses. In that background, we have considered the evidence of PW-1. PW-1 has stated that he was with both the deceased. They ate pavbhaji around 10.30 p.m.. After that all three of them came to Rajiv Nagar slum area at 11.00 p.m. on one motorcycle. One rickshaw was in front of them. All the accused got down from that rickshaw. Significantly, he has not stated that, at that time all the accused or any one of them was carrying any weapon. They went near Devidas and there was a quarrel between them and Devidas. Then the CCL and the accused No.3 Krushna ran towards the zopadpatti and

brought two weapons. Again, significantly, the accused No.3 Krushna never used that weapon. PW-1 has never deposed that the accused No.3 Krushna had assaulted Devidas with that weapon. The accused No.1 Ravi assaulted Dinesh after taking that weapon from the CCL. The weapon brought by Krushna was not used either by Krushna or by anyone else. At least PW-1 has not stated so in his deposition. Therefore, to that extent his deposition is incriminating only against the accused No.1 Ravi Nikalje and the CCL.

37. As far as the other accused are concerned, he had made general statement that the others had chased him with stones in their hands. However, it is not his case that they had either pelted the stones on him or on any of the deceased. While running he fell, got up and looked back. He again made a general statement that the persons chasing him went back to the place where Dinesh and Devidas were and started assaulting both of them with weapons like sword and sickle. This is a general statement. No specific name is mentioned in that context. Therefore, the evidence against the accused No.1 and other accused can be separated.

38. Though there is a criticism from the learned counsel for the Appellants that there was delay in lodging the FIR, PW-1 has

deposed that he had gone to the police station at about 1.30 a.m. and he was there till 5.00 a.m.. Therefore PW-1 had informed the police about the incident soon after the incident as he went to the police station from civil hospital. He was there till 5.00 a.m.. During that period, his FIR was taken down and it was actually registered at 4.52 a.m. on 28.12.2017. Therefore, we do not see any unexplained and unreasonable delay in lodging the FIR. He was a natural witness. He had seen the incident right from the inception. He is a reliable witness. However, we find that he has not made any specific statement against the accused Nos.2, 3, 4 & 5. The general statement made against them is vague. To that extent, we are not inclined to accept his evidence as far as the accused Nos.2, 3, 4 & 5 are concerned.

39. The learned Judge has applied Section 149 of IPC though the accused Nos.2, 3, 4 & 5 are not attributed the specific role of using weapons against either of the deceased. In this context, the sequence of the events is important. According to PW-1, all the accused had come to the spot in a rickshaw but as mentioned earlier, at that time, neither of them was carrying any weapon. After they got down, a quarrel took place. Therefore, it cannot be said that all the accused had formed an unlawful assembly and had reached the spot with the

common object of committing an offence. The quarrel took place at the spot. The prosecution has not brought out any motive behind the quarrel. Be that as it may, after the quarrel started, the CCL and the accused No.3 Krushna went to the zopadpatti and brought the weapons. Even at that point of time, it cannot be said that the others had any knowledge or idea that the CCL and the accused No.1 would assault Devidas and Dinesh on vital parts to commit their murder. Immediately, the CCL had assaulted Devidas who had fallen down. The accused No.1 had taken that weapon from the CCL and had assaulted Dinesh on his neck. The attack was on vital parts. By that time, none of the other accused can be attributed any knowledge or common object regarding the role played by the accused No.1 Ravi and the CCL.

40. In this context, a reference can be made to the judgment of the Hon'ble Supreme Court in the case of **Pandurang Kalu Patil and another Vs. State of Maharashtra**¹. In this context, paragraph Nos.10 and 17 are important, which are as follows:

10. The gist of the prosecution case is the following:

There was a dispute between A-1 and the father of the deceased over some landed property. The said dispute made them enemies. This is the background of the

1 (2002) 2 SCC 490

occurrence. While deceased Ramdas, and his brother PW 2 Narayan were proceeding to their village for taking lunch around 1.30 P.M. on 29.6.1992 the assailants went in a jeep and stopped just near the place of occurrence. All the assailants alighted from the jeep. A-1, A-2 and A-3 had a gun each with them. A-4 and A-6 had either a knife or a sword with them. It is unnecessary to mention about the weapons possessed by other persons. The assailants who were armed with guns opened fire at the deceased as well as PW 2. The deceased was then a few feet ahead of PW 2 and both were running up presumably to escape from the chasing assailants. Both of them sustained serious gun shot injuries, though PW 2 did not succumb to them. But the deceased fell down at the spot and died. Seeing this the assailants took to their heels leaving the jeep remaining at the spot as a mute remnant of the acts done by them.

XXXXX

XXXXX

17. But the position of A-4 and A-6 is different. Though they had knives with them they had not chosen to do anything. Even after the deceased fell down they did not move forward to inflict even a scratch on him. They did not do any harm to PW 2. There is nothing to indicate that they knew about the design of the other assailants. They were acquitted by the trial court. The view taken by the trial court on the facts of the case is reasonable and hence it was impermissible for the appellate court to interfere with the acquittal.”

41. In the case before the Hon'ble Supreme Court, two of the accused were carrying sharp weapons. The other accused were carrying guns. The two accused carrying sharp weapons had not chosen to do anything. Even after the deceased fell down, they did not move forward to inflict even a scratch on him. There was nothing to show that they knew about the design of the other assailants.

42. Therefore, the Hon'ble Supreme Court gave them benefit of doubt and they were acquitted. The other accused were convicted under Section 302 read with Section 34 of IPC instead of Section 302 read with Section 149 of IPC.

43. The same principle can be applied in the facts of the present case. PW-1 has not given clear and cogent evidence regarding the roles played by the accused Nos.2, 3, 4 & 5. They had not used any weapon to assault the deceased. There is a general statement that they were assaulting the deceased with weapons like sword and sickle; but those four accused i.e. the accused Nos.2, 3, 4 & 5 were not even carrying any weapon when they came at the spot. The weapons were used by the accused No.1 Ravi and the CCL. Therefore, the role of the accused Nos.2, 3, 4 & 5 cannot be equated with the roles played by the accused No.1 and the CCL. Similarly they cannot be roped in by using

Section 149 of IPC. These four accused, therefore, deserve benefit of doubt.

44. Apart from the evidence of eye witnesses, there is recovery of clothes; but we are not inclined to place reliance on that evidence because admittedly the clothes were kept in a carry-bag in the police station. There is no linking evidence that the clothes were taken from the person of the accused in the presence of the panchas. These clothes cannot be directly connected with any of the accused including the accused No.1. Therefore, that part of the evidence is not held against any of the accused including the accused No.1.

45. As far as the recovery of the weapon is concerned, though the pancha was called on 2.1.2018 and the recovery was effected on 3.1.2018, we do not find anything wrong in this approach of the police because only when the accused would express his willingness to show the place where he had concealed the weapon then the police can swing into action to call the panchas. Therefore, in this case accordingly, the panchas were called and on 3.1.2018 the accused No.1 gave a statement before the panchas that he was willing to show the place where he had thrown the weapon. He then led the police and the panchas to that spot. Though, as submitted by the learned

counsel, it was an open place accessible to all, however, it was near a bank of river and it was not easily accessible to all. It was only the accused No.1 who was aware where he had thrown the knife. Some efforts were taken to search that knife and only then the knife could be recovered. Therefore, recovery of knife at the instance of the accused No.1 is an additional corroborative circumstance against the accused No.1. Though the knife was sent to FSL and the carrier was not examined, that itself does not mean that the knife was not recovered at his instance. The CA report shows that there was human blood but the blood group was not determined. In any case the fact of recovery of knife at his instance from the place which was not easily accessible is proved against the accused No.1.

46. As far as the Criminal Appeal preferred by the parent/relative of the victims is concerned, no evidence is led to hold that the offence under Section 135 of the Maharashtra Police Act is made out. No case for enhancement of sentence is made out.

47. As a result of the above discussion, we are of the opinion that the accused Nos.2, 3, 4 & 5 deserve benefit of doubt. The conviction of the accused No.1 has to be altered from the one under Section 302 read with 149 of IPC to Section 302 read with Section 34

of IPC. Consequently he will have to be acquitted from the charge of commission of offences punishable under Sections 143 and 148 of IPC.

48. Hence, the following order :

:: O R D E R ::

- i. Criminal Appeal Nos.615/2023, 891/2023, 434/2023 & 422/2023 are allowed.
- ii. The accused No.2 Dipak Datta Wavhal, the accused No.3 Krushna Dadaram Shinde, the accused No.4 Nitin Uttam Pandit and the accused No.5 Akash alias Bablu Pandharinath Dambale are acquitted from all the charges. The judgment and order dated 14.2.2023 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No.198/2018 convicting and sentencing them is set aside.
- iii. They are on bail. They need not surrender. However, they shall execute a P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand only) each before the trial Court to secure their presence in case Appeal against acquittal is preferred, within a period of one month from uploading of this order.
- iv. The Appeal of the accused No.1 Ravi Gautam Nikalje is partly allowed. It is clarified that the conviction under Section 302

read with 149 of IPC is altered to conviction under section 302 read with 34 of IPC. He is sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- (Five Thousand Only) and in default to suffer S.I. for six months. He shall be granted set off under Section 428 of Cr.P.C..

- v. The the accused No.1 Ravi Gautam Nikalje, the accused No.2 Dipak Datta Wavhal, the accused No.3 Krushna Dadaram Shinde, the accused No.4 Nitin Uttam Pandit and the accused No.5 Akash alias Bablu Pandharinath Dambale are acquitted from the charges of commission of offence punishable under Sections 143 and 148 of IPC. The sentence imposed on them for commission of the offence punishable under Sections 143 and 148 of IPC is set aside.
- vi. Criminal Appeal No.811/2023 is dismissed.
- vii. With disposal of the Appeals, the connected Applications are also disposed of.

(RANJITSINHA RAJA BHONSALE, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)