

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

**CRIMINAL APPEAL NO.190 OF 2024
WITH
INTERIM APPLICATION NO.1224 OF 2024
IN
CRIMINAL APPEAL NO.190 OF 2024**

Ramesh @ Dattu Gopal Pawar

.... Appellant/
Applicant

versus

The State of Maharashtra & Ors.

.... Respondents

**WITH
CRIMINAL APPEAL NO.189 OF 2024
WITH
INTERIM APPLICATION NO.4376 OF 2025
IN
CRIMINAL APPEAL NO.189 OF 2024**

Kumar Bhimsingh Chavan & Anr.

.... Appellant/
Applicant

versus

The State of Maharashtra & Ors.

.... Respondents

**WITH
CRIMINAL APPEAL NO.980 OF 2024
WITH
INTERIM APPLICATION NO.3599 OF 2024
IN
CRIMINAL APPEAL NO.980 OF 2024**

Swapnil Uttam Padwal

.... Appellant/
Applicant

versus

The State of Maharashtra & Ors.

.... Respondents

.....

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- Mr. Veerdhaval Deshmukh a/w Mr. R. B. Patil, Advocate for Appellant/Applicant in APEAL/190/2024.
- Mr. Mohammed Umar Kazi a/w Ms. Sonia Santis a/w Mr. Umar Nizami a/w Tehseen Shaikh, Advocate for Appellant/Applicant in APEAL/189/2024.
- Mr. Sachindra B. Shetye a/w Mr. Irfan Shaikh a/w Mr. Atharva Pawar, Advocate for Appellant/Applicant in APEAL/980/2024.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.
- Mr. Rajas Naik, Advocate for Respondent Nos.2 and 3.

**CORAM : SARANG V. KOTWAL &
ASHISH S. CHAVAN, JJ.**

DATE : 17th JULY, 2026

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. All these three Appeals are decided by a common Judgment today because they arise out of the same impugned Judgment and Order dated dated 17/01/2024 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.29/2016.
2. For convenience the Appellants are described either by their names or status as accused before the Trial Court.
3. The Criminal Appeal No.190 of 2024 is filed by the accused No.1 Ramesh @ Dattu Gopal Pawar. The Criminal

Appeal No.189 of 2024 is preferred by the original accused No.3 Kumar Bhimsingh Chavan and the original accused No.4 Santosh Bhimsingh Chavan. The Criminal Appeal No.980 of 2024 is preferred by the original accused No.5 Swapnil Uttam Padwal.

4. At the conclusion of the trial, the accused were convicted and sentenced as follows :

- (i) All the Appellants were convicted for commission of offence punishable u/s 302 r/w 149 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer rigorous imprisonment for two months.
- (ii) All of them were convicted for commission of offence punishable u/s 120-B r/w 149 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine to suffer rigorous imprisonment for two months.
- (iii) All of them were convicted for commission of offence punishable u/s 201 r/w 149 of the Indian

Penal Code and were sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.3,000/- and in default of payment of fine to suffer rigorous imprisonment for one month.

- (iv) All of them were convicted for commission of offence punishable u/s 4 r/w 25 of the Arms Act and were sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default of payment of fine to suffer rigorous imprisonment for 15 days.
- (v) All of them were convicted for commission of offence punishable u/s 143 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for six months.
- (vi) All of them were convicted for commission of offence punishable u/s 147 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for two years.
- (vii) All of them were convicted for commission of offence punishable u/s 148 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for three years.

(viii) All the substantive sentences were directed to run concurrently.

(ix) The Appellants were granted set off u/s 428 of Cr.P.C.

(x) The fine amount, if deposited, was directed to be paid to the first informant and her mother.

5. Heard Mr. Veerdhaval Deshmukh, Mr. Mohammed Umar Kazi, Mr. Sachindra B. Shetye, learned counsel for Appellants and Ms. Mahalakshmi Ganapathy, learned APP for the State.

6. The prosecution case in brief is as follows ;

The deceased Ganesh knew accused No.4 Santosh Chavan. For his business purposes, the accused No.4 Santosh Chavan requested for financial assistance from the deceased Ganesh. It is the prosecution case that Ganesh pledged his ornaments and raised some money to help Santosh financially. After a few days Ganesh started demanding his amount. But Santosh was not willing to repay that amount. This created a rift

in their relationship. Two days prior to the incident, Santosh and the other accused met at a bar. P.W.2, Bali Jaiswal, was also present with them. At that time, accused No.4, Santosh, expressed his intention to commit murder of Ganesh. Bali was earlier employed with Ganesh. He informed about this threat to Ganesh. P.W.1, Jamuna Rathod, was the sister of Ganesh. She was told by Ganesh about the threat. She was worried. In the night of 26/09/2015, Ganesh did not return home for quite some time. She went in search of him near his house. He was talking with his friends Uday Raj and Naushad. Even Bali was present with them. As she was going towards Ganesh, she saw five to six persons coming in a Rikshaw. They were carrying weapons. She saw that all of them assaulted Ganesh with their weapons like chopper, knife and pointed iron weapons. She raised shouts. People gathered there. The accused ran away. She, along with others, took Ganesh to the hospital, but he succumbed to his injuries. The police were informed. They reached the hospital. They recorded statement of P.W.1, Jamuna, in the hospital. It was treated as an FIR. The offence vide CR No.I-538/2015 was registered at Manpada Police Station in the

midnight at around 12.35 a.m. on 27/09/2015. The investigation commenced. The dead body was sent for post-mortem examination. The Spot Panchanama was conducted. Various other Panchanamas were conducted. The accused were arrested one after the other. Some weapons were already found at the spot. Some other weapons and the blood stained clothes of the accused, were recovered at their instance. The statements of the witnesses were recorded u/s 164 of Cr.P.C. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

7. During trial, the prosecution examined 21 witnesses. The main witness was P.W.1, Jamuna Rathod, who had lodged the FIR. She was the sister of the deceased. The other eyewitness, Bali Jaiswal, was examined, but he turned hostile. Apart from them, the prosecution examined various Panchas, the Medical Officers, and the Investigating Officers.
8. The defence of the accused was of total denial. The learned Judge relied mainly on the evidence of P.W.1. He

referred to the CCTV footage from the bar where the accused No.4, in the presence of P.W.2, had expressed his intention to commit murder of the deceased. Learned Judge also took into consideration the motive behind the murder. After considering the defence of the accused and the arguments advanced by both the sides, the learned Judge convicted and sentenced the Appellants, as mentioned earlier. One more accused, that is accused No.2, Jamir Hanif Shaikh, had also faced the trial. According to the prosecution case, he was the rickshaw driver in which the accused had reached the spot. The learned Judge gave him benefit of doubt, as no role was attributed to him, and acquitted the original accused No.2, Jamir Shaikh.

9. P.W.1, Jamuna Rathod, was the first informant. She deposed that she was residing at Dawadi village with her brother (deceased in this case) and her mother. Her husband had deserted her three years prior to the incident. She was residing with her brother, Ganesh. He was in construction business. He had business in the name 'Chavan Enterprises'. She knew the accused No.4, Santosh, as he was from the same

community. She knew that accused No.4, Santosh Chavan, was residing at Shelar Naka. Her mother had a house at Shelar Naka, and P.W.1 also used to sell fish at Shelar Naka. Therefore, she knew the accused No.4, Santosh, who was also in construction business. According to her, the accused No.4 was in need of money. He requested her brother to lend him some money. Accused No.4 needed Rs.2 lakhs. P.W.1's brother, Ganesh, arranged Rs.2 Lakhs by pledging the gold chain and gold ornaments of her mother. The amount of Rs.2 lakhs was paid to the accused No.4, Santosh, who had requested time of four months to repay the amount. After four months, Ganesh demanded back his money, but Santosh declined. Ganesh even sent his mother to the accused No.4's house asking for money. But he did not pay the amount. Ganesh then tried to call him telephonically, but Santosh was not receiving his calls. One day, they met on the road, and there was quarrel between them on this count. This quarrel took place about two to three days prior to the incident of assault on Ganesh. Ganesh returned home and told about this quarrel with the accused No.4 to P.W.1.

10. P.W.1 further deposed that on 25/09/2015, the accused No.4 called Bali Jaiswal (P.W.2) to Savali Bar. Bali met the accused No.1 - Ramesh, accused No.4 - Santosh, and one Sagar Patil. Santosh told Bali that he would kill Ganesh. Bali in turn gave this information to Ganesh, and Ganesh narrated this back to P.W.1. Ganesh told her that he would talk to the accused No.4, Santosh, and settle the issue, but the issue was not settled. On 26/09/2015, Ganesh left home in the morning at around 09.00 a.m. At about 10.00 p.m. P.W.1 and her mother returned home after selling fish. They saw Ganesh's car parked under the building and Bali's motorcycle near the car. P.W.1 did not see her brother at home. Her mother then telephonically called Ganesh, who in turn told her that he was with Bali on the road near their house. Till about 10.45 p.m., Ganesh did not return home. Therefore, out of concern, P.W.1 went down to see him. She did not see Ganesh near the building. Therefore, she went ahead on the road. She saw her brother, Ganesh, standing with P.W.2 Bali, Naushad and Uday Raj in front of Dr. Palshetkar Hospital. She deposed that, at that time one rickshaw came from Dawadi Village. There were about 5 to 6 persons in the rickshaw. All of

them rushed towards Ganesh. They were armed with weapons. Accused No.4 Santosh was in the front. He had a big chopper in his hand. She deposed that accused No.4 - Santosh, accused No.1 - Ramesh, accused No.5 - Swapnil, accused No.3 - Kumar and one Shaquil assaulted Ganesh. Ramesh and Swapnil had knives in their hands. Kumar and one Chander had held the hands of Ganesh. All of them started giving blows with the weapons on Ganesh. P.W.1 started screaming. In the meantime, the public gathered there. The assailants dropped the weapons at the scene of incident and ran away. She caught her brother. She deposed that all of them had come in the autorickshaw of the accused No.2 Jamir, who also ran away from that place. The aforementioned Shaquil and Chander were absconding and did not face the trial. She further deposed that the people gathered near the spot, took her brother to AIIMS Hospital, but the doctor declared her brother dead on arrival at the hospital. Police came to the hospital. They made inquiry with her. They recorded her statement. That statement is produced on record at Ex.67. The police treated that statement as the FIR. She deposed that the police had read over and explained the contents of that

statement to her as she could not read and write Marathi. After that, she had signed the statement. At about 01.00 to 02.00 a.m., the police took her to the spot of incident. Police seized the weapons lying at the spot. They prepared the Spot Panchanama in her presence. P.W.1 identified the clothes worn by the deceased at the time of the incident when those clothes were produced in the court. She identified the knife produced in the Court which was used by the accused No.5 - Swapnil. She identified the chopper used by accused No.4 - Santosh. She identified all the accused who were present before the trial court.

11. P.W.1 was extensively cross-examined. She mentioned the phone number of her mother Shankari Chauhan. She accepted that she had a ration card of Trimurti Nagar, Shelar Chowk. It was in the name of her husband and two children, along with her. The house at Trimurti Nagar was owned by her mother. The distance between Trimurti Nagar and Dawadi Gaon was about 15 minutes by autorickshaw. She accepted that her mother sold country liquor in the room at Trimurti Nagar. She did not know whether there were CCTV cameras outside the

hospital of Dr. Palshetkar. She deposed that her brother Ganesh had two wives. She was specifically cross-examined from the point of view to see whether the blood of the deceased could be transferred on her clothes. She answered that when he was falling down, she held Ganesh's head. She specifically deposed that her brother's body did not touch her. Only his head touched her. She further deposed that they had taken her brother to AIIMS Hospital in a rickshaw. She went in a different autorickshaw to AIIMS Hospital. Bali and 3 to 4 other persons from the public had taken Ganesh in an autorickshaw to AIIMS Hospital. She was present when her brother was shifted from the autorickshaw to the hospital. The doctor at AIIMS Hospital made enquiries with her. He reduced her narration into writing. Police reached AIIMS Hospital after 15 to 20 minutes after P.W.1 had reached AIIMS Hospital. In that context, she deposed that she had not signed any papers in AIIMS Hospital. She was in that hospital for about half an hour after the police had come to AIIMS Hospital. Some minor omissions from her FIR were brought on record. Her FIR statement did not mention that the accused had dropped the weapons at the scene of incident. She

could not explain as to why it was not mentioned in her FIR. She deposed that she had not gone to the police station in the night. She had gone on the next day between 09.00 a.m. to 10.00 a.m. She had gone to the police station for about 3 to 4 times in connection with this case. On every visit, the police used to make some inquiry and record something into writing and make her sign it. But she clarified that they had taken her signature only on one document on 27/09/2015. She had received a copy of the FIR on the next day. She denied the suggestion that Ganesh used to lend money on interest and there were various cases pending against him in the nature of theft and extortion. She denied that Ganesh and Bali had gone to jail on many occasions. She deposed that the accused No.4, Santosh Chavan had a construction site at Shelu. She did not know whether Ganesh had purchased a room at Shelu from accused No.4 for Rs.3 lakhs. The police did not seize her clothes. She deposed that the police had detained Bali (P.W.2) on suspicion for about a day. She did not know any other person detained by police. At the time of her deposition, her husband was residing with her.

12. The FIR lodged by P.W.1, which is produced at Ex.67, substantially corroborates her deposition except on a crucial fact that the name of the accused No.3, Kumar was not mentioned by her in her FIR. She had mentioned the names of accused No.1, accused No.4 , accused No.5, and attributed specific roles to them. In addition, she had named one Chandar and Shaquil. Importantly, she had referred to one unknown person who was with the accused. That person had chased her brother and had held him. Thus, P.W.1 had not named the accused No.3, Kumar Chavan in her FIR. There is no other evidence to show that she had referred to the accused No.3, Kumar Chavan, as that unknown person. No Test Identification Parade was held to enable her to identify that unknown person or to show that it was none other than the accused No.3, Kumar Chavan.

13. P.W.2, Bali Jaiswal, was another eyewitness, but he did not support the prosecution case. He was declared hostile. He stated before the Court that he knew the deceased Ganesh, as he had worked with Ganesh. Ganesh and P.W.2 himself, both were residing at Shelar Chowk in the past. P.W.2 had shifted his

residence. He knew the accused because they were also residing at Shelar Chowk. He had left working with Ganesh since about six months prior to the incident. He deposed that he did not know how Ganesh had died. Ganesh and accused No.4 both were in construction business. They were known to each other. He deposed that there was some money transaction between Ganesh and Santosh. Ganesh had given a shop on rent to accused No.1 Ramesh, who had not paid the rent to Ganesh. He further deposed that Ganesh demanded that rent from accused No.1 Ramesh, but the accused No.1, Ramesh, avoided to pay that rent. He further deposed that Santosh had taken loan of Rs.2 lakhs from Ganesh. Santosh had transferred a room in a chawl in favour of Ganesh. There was some financial transaction between Ganesh and Shaquil. He deposed that on 25/09/2015, he was at Dombivali. In the afternoon, he was at railway station. He had gone to Savli Bar to meet one Sagar Patil, who called Santosh and Ramesh and asked them to come to the bar. P.W.2 further deposed that they had food and drinks, and then they left. He denied that while they were in the bar, Santosh had said that he was going to kill Ganesh. This was important because it

was the prosecution case which he did not support. Therefore, he was permitted to be cross-examined by the learned APP.

In the cross-examination conducted by the learned APP, he accepted that from Savli Bar they went to meet Ganesh. In the same night, they celebrated Ganesh's birthday. He accepted that on 26/09/2015, Ganesh narrated all these facts to one Rajesh Srivastav and requested him to settle the matter between Santosh and him. P.W.2 accepted that Rajesh told Ganesh that he would meet them at Regency Circle at 06.00 p.m. and try to settle the matter. P.W.2 along with Ganesh and 4 to 5 others met at Regency Circle and decided to settle the matter. After that, only Ganesh and P.W.2 waited there at the Regency Circle. The others left. After narrating this portion, he denied all the suggestions given by the learned prosecutor regarding the actual incident of assault. He had narrated the said incident in his statement before the police, naming the accused and attributing weapons and roles to them. This particular portion in his police statement was brought to his notice. He denied having made that statement to the police. Subsequently, that portion was proved

by the prosecution through the evidence of the Investigating Officer who had recorded P.W.2's statement during investigation. That portion is marked as Ex.219. It substantially corroborates the version of P.W.1. It describes the names of the accused, the roles played by them and the weapons used by them.

14. P.W.2 further admitted that his statement was recorded before J.M.F.C. at Kalyan. The statement was shown to him. He accepted that it had his signature. He further admitted that he had narrated the incident as it happened in that statement. The statement is taken on record at Ex.70. In that statement also, he had described the entire incident with the role played by each of the accused and the weapons used by them. He identified the accused present in the Court. He denied the suggestion that he was on friendly terms with the accused.

In the cross-examination conducted on behalf of accused, he again supported the defence. He deposed that Ganesh used to lend money to people at Vashi. He had reached AIIMS Hospital at about 11.15 to 11.30 p.m. By that time, the

police had already reached the hospital. According to him, police did not inquire with him, and he did not state anything to them about the incident. He did not remember whether P.W.1 was present at the hospital when he reached there. He accepted that he and Ganesh were co-accused in one case pending in Kalyan Court. He further accepted that in the present case, the police had arrested him as a suspect. He was detained for about three days. About 5 to 6 persons were also arrested on suspicion. They were known to him, but he did not give their further details. He was not produced before any Court during those three days. He deposed that he was brought to Court in police custody. His statement was recorded by police. It was a handwritten statement, and he had signed it. As soon as he gave his statement, the police released him. He further deposed that he was not produced before the Judge. He had signed Ex.70 at the police station. He further deposed that it was true to say that the police had told him that if he signed the statement, he would be released, or else he would be implicated in the case. His statement at Ex.70, as mentioned earlier, supports the evidence of P.W.1. He described the incident in Savli bar when P.W.4 had

told him that they were planning to commit murder of the deceased. He also described the actual incident of assault on the deceased by naming the accused with the weapons. He had also stated that P.W.1 was present near the dead body at the spot. After that, they had taken Ganesh to AIIMS Hospital.

15. P.W.3, Amit Kamble, was the Pancha for Inquest Panchanama. He deposed that the thumb of Ganesh's right hand was severed. One knife was stuck near the right armpit. He was also extensively cross-examined. But nothing much turned on his evidence. The Inquest Panchanama was produced on record at Ex.72.

16. P.W.4, Rajesh Chaudhary, was a Pancha for recovery of weapons and clothes of the accused No.3 Kumar Chavan. He deposed that he was called by Manpada police station on 01/10/2015. The accused No.3 was present in the police station. He showed willingness to show the place where he had concealed the chopper. That statement was recorded. It is produced on record at Ex.75. The accused No.3, Kumar led the

police and the Pancha near a temple in village Golavali. He went near the bushes and took out a chopper. P.W.4 deposed that the chopper was seized and sealed. P.W.4 put his signature on the sealed label. That Panchanama is produced on record at Ex.76. He was again called at about 05.00 p.m.. This time, the accused No.1, Ramesh Pawar, showed willingness to show the place where he had burnt his clothes. That statement was reduced into writing. It is produced on record at Ex.77. He led the Pancha and the police behind a public toilet at Ambivali. He showed the spot where he had burnt the clothes. Some ash was lying there. The police collected that ash. That ash was produced on record Ex.78. On 05/10/2015, again he was called at the police station. This time the accused No.3 showed willingness to point the place where he had thrown clothes of the accused from a running train. That statement was recorded. It is produced on record Ex.79. However, those clothes were not found. On 12/10/2015, he was again called to the police station. This time the accused No.5 Swapnil expressed willingness to show the place where he had concealed the clothes which he had worn at the time of incident. That

statement is produced on record Ex.81. They were recovered from his house. However, when this witness was asked to identify the accused, he stated that the accused were present before the court, but when he gave their names, the identity of the accused was wrongly stated by him. In short, he could not identify the accused in the Court properly. He was cross-examined regarding whether he had acted as a Pancha in the past. There were some other cases when he had acted as a Pancha.

17. P.W.5 Narendra Jagtap was a Pancha for seizure of clothes of the deceased. He was also a Pancha for the arrest of the accused No.3 Kumar and accused Chandrakant on 30/09/2015. On 03/10/2015, he witnessed the arrest Panchanama of the accused No.4 Santosh. That Panchanama is produced on record at Ex.99. Accused No.4 Santosh had his hand fractured. It was bandaged with a plaster. The Panchanama mentions as to how he had suffered the fracture, but the narration is in the nature of confession. Therefore, we are not referring to that particular portion from the arrest Panchanama, Ex.99 of the accused No.4.

18. P.W.6 Surendra Hamgi, had installed CCTV setup at Savli Bar. On 29/09/2015, he was asked to copy the footage from Savli Bar. He accordingly copied the footage. He also issued a certificate. It is produced on record at Ex.108. It was u/s 65-B of the Evidence Act. In the cross-examination, he deposed that the box in which the DVR was kept, was locked and the key was with the owner of the restaurant.

19. P.W.7 Ramesh Rathod was a Pancha for Spot Panchanama, which is produced on record at Ex.112. He described that there was a rickshaw at the spot. There were blood stains inside the auto rickshaw. There were blood stains on the windscreen of the rickshaw. There were blood stains on the back seat of the rickshaw. One knife was lying at the spot. There was also one mobile phone at the spot. There was a chopper, footwear, smartphone, and gold chain at the spot. One icepick and cover of knife was found at the spot. Apart from that, a broken left thumb had also fallen at the spot. He identified the articles produced in the Court as the articles which

he saw at the spot. The spot of incident and the articles found at the spot are hardly disputed.

20. P.W.8, Prabhakar Shetty, was the owner of Savli Bar. He deposed about recording of the CCTV footage on 29/09/2015. He described as to how P.W.6, Surendra Hamgi was called and how the CCTV footage from camera No.5 and 9 were copied.

In the cross-examination, he deposed that his statement was not recorded by the police u/s 161 of Cr.PC.

21. P.W.9, Hitesh Newadi, was a shop owner from whom an icepick was purchased by the accused, but he did not give details of the accused, neither he identified the accused in the Court. Therefore, his evidence is hardly of any significance.

22. P.W.10, Dr. Sanjay Baranwal, deposed about the injuries, suffered by the accused No.4. He stated that he was attached to Satyam Hospital, Kalamboli, in the year 2015. The accused No.4, Santosh, was admitted in that hospital on 27/09/2015. He was shifted from Taloja Central Hospital, where

the injury on his right upper limb was sutured. But on the next day, the doctors at Central Hospital did not find the radial artery pulse, and therefore, the accused No.4, Santosh, was immediately rushed to Satyam Hospital. P.W.10 examined him and saw that the radial artery and multiple tendons were cut. Surgery was performed by him. The hand of accused No.4 was saved. Importantly, he deposed that the accused No.4 had told him that he had fallen on a broken beer bottle and had sustained the injury. He produced the medical papers on record. He further deposed that the injury to the patient was possible by a sharp-edged weapon like a chopper. The patient was discharged on 03/10/2015.

In the cross-examination, he denied the suggestion that the accused No.4 had taken treatment since two days prior to coming to the hospital. He denied a suggestion that the injury was not possible by a sharp-edged weapon like knife or chopper, but can only be caused by broken glass.

23. P.W.11, Dr. Shashank Fanade, was attached to Hardev Nursing Home at Kalyan. He deposed that on 27/09/2015, he

had examined a person named Sandesh, who had a CLW on the left hand and an abrasion on the left shoulder. The said Sandesh had narrated a history of suffering the injury because of falling from a motorcycle. P.W.11 sutured the wound on OPD basis. The said person declined to get admitted in the hospital. According to the prosecution case, the said person was none other than the accused No.4. However, there is no linking evidence of this witness to show that he was describing about the accused No.4. He expressed his inability to identify the said Sandesh in the Court.

24. P.W.12, Akhtar Hashmi, was a shop owner from whom accused had purchased two knives. However, he did not identify the accused in the Court. Therefore, his evidence does not take the prosecution case any further.

25. P.W.13, Dr. Prashant Tingale, had conducted the postmortem examination. The deceased had suffered following injuries:

- 1] CLW over chin, measuring $6 \times 3 \times 4$ c.m.
- 2] CLW over neck, measuring $5 \times 3 \times 4$ c.m.
- 3] 4 CLW over central to chest measuring $2.5 \times 1 \times 8$ c.m.

- 4] 3 small wounds over central to the chest 4×1 m.m.
- 5] Left side lower chest anteriorly CLW $7 \times 2 \times 8$ c.m.
- 6] Near to umbilicus (below) 2 CLW at $3 \times 1 \times 6$ c.m.
- 7] Below to umbilicus CLW $5 \times 1 \times 8$ c.m.
- 8] Left lower abdomen $2 \times 1 \times 4$ c.m.
- 9] Right wrist $9 \times 2 \times 3$ c.m. crush injury. Piece of thumb is chopped, present with the body.
- 10] Crushed middle right finger.
- 11] Left wrist and hand crushed $10 \times 9 \times 3$ c.m. CLW with wound over palm and fracture of ring finger and middle finger.
- 12] Left shoulder CLW $4 \times 3 \times 4$ c.m.
- 13] Right upper back $2 \times 2 \times 4$ c.m. (2 CLW) present.
- 14] Left flank region $16 \times 4 \times 4$ c.m. CLW with multiple bruises over backside.

26. There were fractures of 3rd, 4th, 6th, and right 2nd rib.

The tracheal ring was fractured. Lungs and pericardium were ruptured. The cause of death was mentioned as 'death due to neurohemorrhagic shock by multiple stab wounds and multiple organ damage'. The postmortem report is produced on record at Ex.130. According to him, the injuries were possible by sharp-edged weapons, though he was extensively cross-examined that the injuries suffered by the deceased were due to use of sharp-edged weapons, which can hardly be disputed.

27. P.W.14, Ankush Diwakar, was the owner of a mobile phone shop. He deposed that accused No.1, Ramesh Pawar, had

bought a mobile phone from his shop on credit. It was Nokia 105 model. On 01/10/2015, P.W.14 was called by the police to identify the mobile phone. He identified the mobile phone produced at Article 'S' before the Court. He also identified the accused No.1 as the same person.

In the cross-examination, he deposed that accused No.1's shop is next to his shop. He stated that he could not produce the purchase bill of the mobile phone.

28. P.W.15 Deepak Chaplot was the jeweler with whom the deceased Ganesh had pledged his ornaments. He deposed that 3 to 4 months prior to the incident, Ganesh had come to his shop. He pledged his ornaments and took Rs.2 lakhs. But no document was executed. He deposed that he had taken the money to give it to someone. He did not give the details to whom the money was to be paid. After about a month, P.W. 15 demanded his money. At that time, Ganesh told him that the money was given to accused No.4 Santosh Chavan. But Santosh was not repaying the money. Ganesh did not return the money till he was alive,

and therefore, P.W.5 did not return the ornaments. After Ganesh's death, his mother paid the money and took back the ornaments.

In the cross-examination, he deposed that he had lent money to Ganesh in June 2015. He accepted that in the year 2002, there was theft in his shop for which he had lodged a police complaint. But he denied that he was acquainted with the police.

29. P.W.16 PSI Vinod Kadam, had pasted the prohibitory order regarding possession of arms issued by Police Commissioner, Thane on 22/09/2015. He had pasted the order at conspicuous places. Copy of the prohibitory order is produced on record at Ex.143.

30. P.W.17 Dr. Renu Shinde, produced the medical certificates regarding the injuries suffered by the accused. The medical certificate at Ex.148 shows that accused No.3 Kumar had injury on the left index finger. Accused No.4, Santosh, had

injury on his hand as mentioned earlier. The other accused did not have any injury.

31. P.W.18, WPN Manisha Jadhav, was attached to Manpada Police Station. On 01/10/2015, API Dhikale handed over six sealed envelopes to her. She took them to FSL Kalina. On 14/10/2015, again six sealed parcels were given to her. She carried those articles to FSL, Kalina. Again, on 17/10/2015, six more sealed parcels were given to her which she took to FSL Kalina.

In the cross-examination, she accepted that API Dhikale, took out the packets from his personal cupboard and gave them to her. The covering letters are produced at Ex.161, Ex.162 and Ex.163. The covering letters Ex.162 and Ex.163 show that they bear different dates and outward numbers. On both these occasions, the endorsement of the FSL shows that these parcels were received. Significantly, both these covering letters are exactly the same and the same articles are mentioned in both these covering letters.

32. P.W.19, Suresh Ingle, was a photographer who had taken the photographs at the spot. They are produced on record. The photographs are as per the description of the Spot Panchanama.

33. P.W.20, API Sagar Dhikle, was the main Investigating Officer. The investigation was handed over to him on 27/09/2015. He carried out the Inquest Panchanama. He seized the knife stuck on the person of the deceased. He sent the dead body for postmortem examination. He conducted the Spot Panchanama. He described the three mobile phones the rickshaw, stains of blood, sandal, chopper, iron pointer, cover of the button knife, part of broken finger, and broken golden chain seen at the spot. The articles were seized. Two phones were of Samsung company and one was of Nokia company. He identified those articles which were produced in the Court. He seized the clothes of the deceased carried by Police Naik Katkar. He recorded the statements of witnesses. He procured CCTV footage from Savli Bar. He deposed that on 30/09/2015, PSI Vijay More arrested accused No.3 Kumar and accused Chandrakant. On 01/10/2015,

a chopper was recovered at the instance of accused No.3. On 01/10/2015, ash of burnt clothes was recovered at the instance of accused No.1. On 03/10/2015, accused No.4 was arrested. He arrested accused No.1. On 01/10/2015, the accused No.3 produced the clothes of the accused. P.W.20 also arrested accused No.5 Swapnil on 07/10/2015. On 12/10/2015, the clothes of accused No.5 were found from his house under the supervision of this witness. The articles were sent for chemical analysis. He caused the statements of the witnesses to be recorded u/s 164 of Cr.P.C. He collected the medical reports regarding the treatment received by the accused No.3, accused No.4, and Chandrakant. He conducted investigation regarding the RTO papers of the seized Autorickshaw. The CCTV footage from Savli Bar was recorded in a pen drive. It was deposited in the Muddemal room, but it was not found. The copy in his laptop was produced as secondary evidence. He took out the hash value of the recorded footage. He gave certificate u/s 65-B regarding the same. Both these documents are produced at Ex.248 and 249. He described the meeting dated 25/09/2015 captured in that footage. He identified Sagar Patil, accused No.1

Ramesh Pawar, accused No.4 Santosh Chavan and and PW.2 Bali Jaiswal. The contrary statement of PW.2 Bali recorded by the police was proved through this witness, and it is marked as Ex.219.

34. He was extensively cross-examined. He deposed that on 29/09/2015, when PW.6 Surendra Hamgi gave a copy of the CCTV footage, at that time, PW.6 had not taken the hash value. He admitted that the CCTV footage was not shown to other witnesses, including PW.1. At about 11.00 to 11.30 a.m. in the night of the incident, API Avhad made a phone call to him and called him to the police station. He reached the police station at 11.45 p.m. He then went to AIIMS hospital between 12.00 to 12.30 p.m. At that time, API Avhad was taking down the statement of PW.1. The relatives of the deceased were present. API Avhad had recorded a statement on his laptop and then went to the police station. This witness did not get to read the FIR in the hospital. He stated that though there were other relatives of the deceased present in the hospital, he did not record their statements. He was cross-examined about the

mobile phone handset found at the spot. He accepted that he did not seize the clothes of P.W.1 which he was wearing at the time of incident. The person who had admitted the deceased in the hospital was named Nazir Shaikh, but P.W.20 has not recorded his statement. He accepted that Nazir Shaikh was the cousin of the second wife of the deceased. His investigation did not reveal as to how much rent amount was due from the accused No.1 payable to the deceased. He deposed in the cross-examination that there was not a single witness stating that the accused No.4 had suffered injuries in the scuffle.

In further cross-examination, P.W.20 stated that the last conversation between the deceased and the first informant was at around 05.48 p.m. The mobile number mentioned by this witness matched with the phone number of P.W.1's mother as deposed by her.

35. P.W.21 API Vijay More had arrested the accused Nos.3 and 4 on 21/09/2015 and 30/09/2015 respectively.

36. Besides this ocular evidence, the prosecution produced the CA report on record at Ex. 254. The clothes of the accused Nos.1, 2 and 5 showed presence of human blood. But the blood group was inconclusive. The chopper also showed presence of blood, but the blood group was inconclusive.

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

38. Learned counsel Mr. Shetye, appearing on behalf of accused No.5, made the following submissions.

The main evidence in this case is that of P.W.1. She claims to be an eyewitness, but she is not a trustworthy witness. She was a close relative of the deceased and hence, an interested witness. Therefore, her evidence is required to be scrutinized minutely. The evidence shows that she may not be present at the time of incident. The material witnesses were not examined. P.W.1 herself refers to the presence of one Uday Raj and Naushad. But these witnesses are not examined. Even their statements were not recorded by the police. Therefore, adverse

inference needs to be drawn. Her evidence shows that public had gathered at the spot at the time of incident, and yet none of the people who had gathered at the spot were examined. P.W.1 did not give the basic details regarding the incident. Her clothes were not seized by the police. If she was near the deceased, then naturally his blood could have stained her clothes. That would have established her presence, but her clothes were not seized, and therefore, the prosecution deliberately did not seize her clothes.

Since P.W.1 never stated that after the incident, the accused went inside the rickshaw. therefore, there was no occasion for there being any bloodstains inside the rickshaw. Finding of bloodstains inside the rickshaw shows that she was not describing the incident correctly. That would also mean she was not present at the spot.

The admission papers of the deceased to the hospital show that one Nazir Shaikh had admitted him to the hospital, but he was not examined. He would have been the best witness

to show as to how the deceased was admitted in the hospital and as to whether P.W.1 was really present at the spot until the deceased was taken to the hospital. The last phone call was made by the mother to the deceased at around 05.48 p.m. as is deposed by the Investigating Officer. Therefore, the theory of the prosecution that P.W.1 had made her mother call the deceased in the night is a false theory. Mr. Shetye submitted that P.W.1 had deposed that the deceased had not returned home till 10.45 p.m. and therefore, she got worried as per the prosecution case. According to Mr. Shetye, 10.45 p.m. in Mumbai is not such an odd hour which would have made P.W.1 worried about the safety of the deceased. The recording of the FIR in the hospital is also doubtful. There is only reference to a laptop. There is no reference to any printout. At one point, the witness P.W.1 has stated that she signed the FIR in the police station, but she has not deposed that she had gone to the police station in the night. Therefore, the FIR is a manipulated document. Mr. Shetye referred to her cross-examination where she had stated that she had not signed documents in the hospital. He invited our attention to the station diary entry made at Ex.251. He

specifically referred to the station diary entry made at 11.20 p.m. on 26/09/2015 and at 12.35 a.m. on 27/09/2015. He submitted that this was a short period. The first entry shows that at 11.20 p.m. API Avhad was at the police station. Then he went to the hospital. Then he recorded the FIR and came back to the police station. This was not possible within a short time between 11.20 p.m. to 12.35 a.m. Therefore, the FIR is manipulated. As far as accused No.5 is concerned, the panchnama of recovery of clothes does not show that the clothes were sealed, though P.W.5 in his deposition states that the clothes recovered at the instance of the accused No.5 were sealed. He invited our attention to the covering letters sent with the carrier P.W.18 to FSL. Those covering letters, as mentioned earlier, mention different dates and outward number but their contents are exactly the same. Therefore, there is doubt regarding the parcel received by the FSL. He relied on the admission given by P.W.18 in her cross-examination that API Dhikle took out the articles from his own cupboard and handed them over to this witness. He submitted that there was no motive for the accused No.5 to have committed this offence. Learned counsel also submitted that

finding of blood inside the rickshaw and on the windscreen of the rickshaw is contrary to the evidence of P.W.1.

39. Learned counsel Mr. Kazi, appearing for the accused Nos.3 and 4 adopted the entire argument made by Mr. Shetye. In addition, he made the following submissions:

There were CCTV cameras installed outside Dr. Palshetkar's Hospital, and yet the investigating agency did not bother to get the footage from that hospital, which would have shown the exact occurrence of the incident. He submitted that P.W.2 was admittedly detained by the police as a suspect in this case. In addition, there were 5 to 6 other persons detained, but there are no further details given by the investigating agency during the trial. The statement of P.W.2, which is proved through the Investigating Officer, loses its significance because obviously that statement was given under duress. In any case, P.W.2, is not a reliable witness. He has not supported the prosecution case. As far as P.W.1 is concerned, he relied on the submissions made by Mr. Shetye regarding, the lesser value of P.W.1's evidence to

contend that, there are indications that P.W.1 was not present at the spot when the incident took place. He submitted that according to the prosecution case, there was a dispute for Rs.2 lakhs, but there is evidence to show that the accused No.4 had given a room at Shelu to the deceased, and therefore, there was no due payable by the accused No.4 to the deceased, and hence, there is no motive in this case. The recovery attributed to the accused Nos.3 and 4 is effected from an open space, and therefore, it loses its significance. One chopper was already found at the spot. There is no reference to any other chopper. Therefore, the recovery of chopper at the instance of accused No.3 has no meaning. He submitted that the investigation was not honest, and there is a strong possibility of concoction of the prosecution case and planting of evidence.

40. Mr. Kazi submitted that the FIR does not make reference to accused No.3 at all. What is referred to in the FIR is that along with the named accused, there was one unknown person. A specific role is attributed to him. There was no test identification parade conducted to enable P.W.1 to identify that

unknown person. After that, only during the deposition, P.W.1 has directly named the accused No.3, Kumar Chavan. This clearly is an afterthought, and P.W.1 has attributed a role to him after four years, when her deposition was recorded in the year 2019.

41. Learned counsel, Mr. Deshmukh, appearing for the accused No.1, adopted the submissions made both by the both the learned counsel, Mr. Shetye and Mr. Kazi. In addition, he submitted that there is no witness examined by the prosecution to corroborate the version of P.W.1 that she had left her house in the night to go in search of her brother. Her conduct is unnatural. If she was present at the spot and if her brother was being assaulted in front of her, it is unnatural that she did not intervene and did not try to protect him. She did not even travel in the same rickshaw in which the deceased was taken to hospital. The police did not record statements of the witnesses who had taken the deceased to the hospital. Those witnesses are not examined during the trial. Therefore, adverse inference is required to be drawn. The investigation regarding the ownership

of the rickshaw is vague. The owner of the rickshaw could have thrown light as to how the rickshaw was taken by accused No.2. Though use of a weapon is attributed to the accused No.1 by P.W.1, the knife was never recovered at his instance. He submitted that the prosecution has not brought out any motive as far as the accused No.1 is concerned. He, therefore, submitted that considering all these submissions, benefit of doubt be given to the accused.

42. The learned APP Ms. Mahalakshmi Ganapathy made the following submissions -:

The prosecution has proved the motive and preparation through the evidence of P.W.1. She submitted the contradictory portion of P.W.2 in his police statement is proved through the IO. Moreover, he has admitted that he had given his statement before the learned JMFC, Kalyan, u/s 164 of Cr.P.C. Therefore, that statement can be read in evidence. The said statement describes the entire evidence in detail. She submitted that there is no force in the submissions of the defence counsel that P.W.1 has not given that FIR, since, P.W.1 has categorically stated that

it was her FIR and her signature appeared on that FIR, she supported the recovery evidence. She submitted that the weapons and clothes were concealed by the accused. It was within their exclusive knowledge, and therefore, those recoveries are incriminating. The ocular evidence is supported by the medical evidence.

43. Learned counsel Mr. Rajas Naik appearing for the sister and mother of the deceased adopted the submissions made by the learned APP.

Reasons and Conclusion :-

44. Before referring to the evidence of P.W.1, a reference can be made to the other corroborative pieces of evidence. The prosecution has tried to prove that the weapons and the blood stained clothes were recovered at the instance of different accused, as referred to hereinabove. In this context, the prosecution has examined P.W.4 Rajesh Chaudhary. The main feature of his deposition is that he was unable to identify the accused. Though he tried to identify the accused in the court, his

identification was wrong. This is a very significant aspect as far as his evidence is concerned.

45. Apart from that, we find force in the submissions of Mr. Shetye that the recovery evidence will have to be discarded because the carrier, i.e. PW.18, has admitted that the Investigating Officer had taken out all those articles which were sent to FSL from his own cupboard. Therefore, right from their alleged seizure, the articles remained in the custody of the Investigating Officer. The prosecution had to rule out the possibility of tampering with the evidence. This is a serious lapse in the investigation. Apart from that, we find force in his further submission that the covering letters were casually written. They bear different dates and different outward numbers, but their contents are exactly the same. Both the covering letters show endorsement that six articles each were received by the authorized person from FSL on two different dates. These are all loose ends as far as recovery evidence and those articles are concerned. Therefore, the prosecution has failed to prove that the recovery of the clothes and weapons at the instance of the

accused was connected with the offence of murder in this case. In any case, the CA report shows that the blood group was inconclusive. Thus, taking all these circumstances cumulatively, we are of the opinion that the prosecution has not connected the recovery of articles viz. weapons and clothes with the offence of murder in this case beyond reasonable doubt.

46. The prosecution has examined two eyewitnesses in this case. The first one is PW.1, Jamuna Rathod, and the other one is PW.2, Bali Jaiswal. PW.2 has turned hostile, but he was cross-examined by the learned APP, and as mentioned earlier, he admitted having given his statement before the learned Magistrate. That statement u/s 164 of Cr.PC. is produced on record. At the same time, his contrary version from the police statement which supports the prosecution case is also produced on record at Ex.219. Having said this, we find that since he has turned hostile, he is not a reliable witness. From his examination and cross-examination, it appears that he is not a reliable witness. However, some part of the prosecution case brought out on record through his evidence, is corroborated by the CCTV

footage produced on record. It is the prosecution case that on 25/09/2015, in the night, the accused had met Bali and Sagar Patil at Savli Bar. At that time, the accused No.4 had expressed his intention to commit the murder of the deceased. The CCTV footage is produced on record, though learned counsel, Mr. Deshmukh, submitted that the hash value of the original CCTV footage is not produced on record. The evidence of P.W.6, Surendra Hamgi and P.W.8 Prabhakar Shetty read together shows that the CCTV was properly preserved. It was copied by P.W.6, who was in-charge of the CCTV setup, and the copy was given to the police. P.W.6 had given a certificate u/s 65-B of the Indian Evidence Act. Thus, copy of the CCTV footage was properly made. Subsequently, the pen drive was not found, but the secondary evidence was permitted by the learned Judge, and the Investigating Officer was permitted to produce the copy from his laptop. We do not find any fault in that procedure. The description of the said CCTV footage supports the prosecution case that there was a meeting at Savli Bar, where P.W.2 Bali was present, along with Sagar Patil. He was joined by accused Nos.1 and 4, and at that time, accused No.4 had expressed his

intention. The CCTV footage to that extent supports the prosecution case.

47. The main evidence in this case is obviously the deposition of P.W.1, Jamuna Rathod, who was the sister of the deceased. She had given the history of enmity between the deceased and accused No.4. She was informed by the deceased himself that the accused No.4 had expressed a threat to eliminate him. She was told about the earlier quarrel. Mr. Shetye tried to contend that, as far as the deceased was concerned, his information was hearsay. The fact remains that the deceased had expressed his apprehension to P.W.1, Jamuna Rathod, as is clearly deposed by her and therefore, when the deceased did not return home till about 10.45 in the night, she naturally got worried. We do not find force in the submissions of Mr. Shetye that 10.45 in the night was not an odd hour to cause any worry to P.W.1. The record shows that P.W.1 was aware that there was threat to the life of the deceased, and therefore, when she did not find her brother at home at around 10.45 p.m., it was not unnatural that she would get worried. In that state of mind, she

tried to search for him, and when she came on the road, she saw the deceased talking with Bali, Naushad and Uday Raj. Immediately, within a short time, the accused came there and this incident took place in front of her. The most important feature in this case is that this incident took place at around 11.00 p.m. The deceased was immediately removed to the hospital. P.W.1 had followed him to the hospital. The police were informed at around 11.30 p.m. as per the station diary entries. They reached the hospital and immediately recorded her statement. The FIR was lodged at about 12.35 a.m. Thus, there was immediate disclosure by P.W.1 about the incident to the police, which is recorded in the FIR. There was no scope for deliberation and concoction. Hence, we do not find any reason to disbelieve her case that she was present at the spot. Merely because her clothes are not seized by the police, is not a reason to discard her evidence. In the cross-examination, she was specifically asked a question from that angle. She had deposed that the body of the deceased had not touched her. She had only held his head. As can be seen, all the injuries were on the chest, abdomen, and the hand of the deceased. Thus, we find that her

presence at the spot was natural. She was residing nearby. She had gone in search for her brother, as there was danger to his life, and he had not returned home, though his vehicle was parked in the building. As far as the narration of the actual incident is concerned, she has given sufficient details. She has named the accused in her deposition and has also attributed weapons and a particular role to each of the accused.

48. At this stage, we must note that though she has named accused No.3 in her deposition and has also attributed a role and weapon to him, his name is not mentioned in the FIR. The FIR mentions that apart from the named accused, there was an unknown person. No test identification parade was held. The prosecution did not take any precaution to establish that she had referred to accused No.3 as the unknown person. Therefore, there was a long gap after lodging the FIR and her deposition. Only at the time of deposition she had mentioned the name of the accused No.3. This is a strong circumstance against the prosecution as far as accused No.3 is concerned, and therefore, we are inclined to give him benefit of doubt.

49. However, as far as the other accused are concerned, she had described their role in detail. Their presence, the weapons used by them and other details are described by her. All of them had come together. They had formed an unlawful assembly. Two of the accused are absconding. One of them is acquitted, though there is no Appeal against the acquittal. However, in all, there are at least five accused who are attributed specific role and weapon. Thus, the prosecution has proved that those five accused had formed an unlawful assembly, and therefore, all of them are responsible for the offence, particularly referring to Section 149 of the IPC. Apart from that, in any case, P.W.1 has attributed a specific role to each of them.

50. Mr. Shetye tried to contend that P.W.1 has not made any reference that the accused had entered the rickshaw after the incident, and therefore, finding of the blood inside the rickshaw and, on the windshield shows that the incident might have occurred in a entirely different manner than is described by P.W.1. We are not inclined to accept this submission. Just

because P.W.1 did not describe as to how the blood was found inside the rickshaw, it does not mean that her entire evidence is required to be discarded. She had deposed about the incident in detail. After describing the incident, she stated that as people had gathered there, the accused ran away from there. It was not expected from her to have described as to where and how the accused ran away. It was not expected that she could have described that they entered the rickshaw or tried to go in a rickshaw, or they just left from that spot. Considering the serious incident which she had to witness, wherein her brother was brutally assaulted by 5 to 6 persons with deadly weapons, she could only narrate what was imprinted on her mind at that point of time. All the other details were quite pale compared to the main incident. Therefore, we do not find any reason to give benefit to the accused and to hold that P.W.1 was not telling the truth just because blood was found inside the rickshaw.

51. The contention that the prosecution did not record the statement of Nazir Shaikh, who had admitted the deceased in the hospital, shows that P.W.1 had never accompanied the

deceased to the hospital; is also not acceptable. She has clearly stated in her deposition that she did not travel in the same rickshaw in which the deceased was taken, but she traveled in a separate rickshaw by following the others. In that case, if somebody else admitted the deceased to the hospital, that does not make her deposition doubtful.

52. She had admitted in the cross-examination that she had not signed anything in the hospital. However, that questioning in the cross-examination has to be read in the context of the questions put to her. The question was in respect of the inquiry made by the Medical Officer with her, and therefore, in that context, she had stated that she had not signed any document. However, she has emphatically stated that the signature on the FIR was her signature. She had admitted to have given that FIR. Therefore, we find no reason to disbelieve that she had immediately given the FIR statement to the police in the hospital and that she had signed it. As mentioned earlier, the station diary entries completely corroborate her version. The short gap in which the FIR was registered, and the entries were

made, shows that there was absolutely no scope for concoction of a false story. Therefore, we are satisfied that P.W.1 is a truthful witness and can be the sole basis for conviction of the accused who are named by her in her FIR.

53. Apart from the direct evidence, as rightly submitted by the learned APP, her version is supported by the medical evidence. The post-mortem note shows the injuries caused by sharp weapons on the chest and abdomen, as described in the post-mortem notes.

54. As far as motive part is concerned, P.W.2 to that extent has not denied that there was financial transaction between the accused No.4 and the deceased, as well as between the accused No.1 and the deceased. The evidence of P.W.15 to a certain extent supports the prosecution case that the deceased had pledged his ornaments to borrow Rs.2 lakhs.

55. There is one more circumstance which needs some reference. The accused No.4 had suffered injury on his hand, which required surgery. Mr. Shetye has contended that the

prosecution has not explained this injury and therefore, the genesis is suppressed. However, the defence of the accused itself is of total denial. They do not admit their presence at the spot. In fact, the accused No.4 had given different history to the two doctors whom he had approached before he was arrested. At one place, he had told them that he had suffered injury because his motorcycle had slipped, and to the other doctor, he had told that he had suffered injury because of a beer bottle. In this situation, the burden was not on the prosecution to explain the injury suffered by the accused No.4. He was also arrested after a few days. There is nothing to show that as per the prosecution case, he had suffered the injury at the hands of the deceased or his friends.

56. The learned counsel contended that the prosecution deliberately or otherwise, has not examined the independent witnesses. Admittedly, two persons were talking with the deceased, i.e. Uday Raj and Naushad, but they were not examined by the investigating agency during investigation. Though it is true that the prosecution has not examined any

other witness from that locality, it is also quite clear that a close friend and a former employee of the deceased (PW.2 Bali) had turned hostile and had not supported the prosecution case. The incident had caused terror. Looking at the manner in which the deceased was assaulted showed that it was a terrifying act. Therefore, it was not unusual that the witnesses did not come forward. However, PW.1, being the sister, was present at the spot; and has clearly deposed about the entire incident, leaving no room to disbelieve her deposition. As a result, we find that the prosecution has proved its case against all the Appellants except the Appellant Kumar Chauhan i.e. the Appellant No.1 in Criminal Appeal number 189 of 2024.

57. Hence, the following order :

ORDER

- (i) The Criminal Appeal No.190 of 2024 is dismissed.
- (ii) The Criminal Appeal No.980 of 2024 is dismissed.
- (iii) The Criminal Appeal No.189 of 2024 is partly allowed.

- (iv) The Appellant No.1 Kumar Bhimsingh Chavan in Criminal Appeal No.189 of 2024 i.e. the original accused No.3 is acquitted from all the charges.
- (v) The Criminal Appeal No.189 of 2024 as far as the original accused No.4 Santosh Bhimsingh Chavan (Appellant No.2) is concerned, is dismissed.
- (vi) The accused No.3 Kumar Bhimsingh Chavan is in custody. He shall be released forthwith if not required in any other case. However, before being released he shall execute a bond of Rs.15,000/- (Rupees Fifteen Thousand only) in consonance with the provisions of Section 481 of BNSS in case Appeal against acquittal is preferred.
- (vii) The Appeals are disposed of in the aforesaid terms.
- (viii) With disposal of the Appeals, the connected applications are also disposed of.

(ASHISH S. CHAVAN, J.)

(SARANG V. KOTWAL, J.)