

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

CRIMINAL APPEAL NO. 236 OF 2013

Narhari S/o. Laxman Suryawanshi,
Age 66 years, Occ. Agril.,
R/o. Rui (Uttar)
Tq. Ahmedpur, Dist. Latur.

...APPELLANT
(Ori. Accused)

versus

The State of Maharashtra

...RESPONDENTS
(Ori. Complainant)

.....
Mr. R.R. Mantri, with Mr.V.D. Gunale, Advocate for Applicant
Mr. M.M. Nerlikar, APP for Respondent-State
.....

**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 14TH FEBRUARY, 2017.

PRONOUNCED ON : 30TH JUNE, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Being dissatisfied with the judgment and order of conviction for the offence punishable under section 302 of IPC and the resultant sentence to suffer R.I. for life and fine of Rs. 2,000, in default, to suffer R.I, for six months imposed by the learned Additional Sessions Judge, Ahmedpur in Sessions Case NO. 12 of 2012, the appellant/original accused by availing the remedy under Section 374(2) of Cr.P.C. preferred the present appeal to redress his grievances.

2] The prosecution case in nutshell is as under :-

That, on 14-03-2012, the first informant Gangadhar Digambar Suryawanshi filed the FIR and alleged that the victim Laxman Digambar Suryawanshi was his real brother. He accompanied with victim Laxman, his parents I.e. father Digambar and mother Gayabai and other family members were residing at village Rui-Uttar, tahsil Ahmedpur. They all were eking livelihood by doing agricultural labour work. The appellant-original accused Narhari Laxman Suryawanshi is his uncle residing in the same village. The appellant/accused Narhari and one Sangram are the brothers of Digambar - father of the first informant. There was an ancestral agricultural land at village Rui Uttar. Since last 20 years, accused Narhari was at Mumbai for employment. Thereafter, he returned to village prior to two years of the incident and doing agricultural work. There was a dispute in between Digambar - father of the informant and his brothers - Sangram as well as accused Narhari, on account of family partition of the ancestral agricultural land and consequently, the relations in between the family of the brothers were strain.

3] On the unfortunate day of incident i.e. 14-03-2012 in the morning at about 11-00 a.m. the mother Gayabai, victim Laxman and others had been to the field known as "Bramhanache Shet" (Brahmin's field) for collecting firewood. There was a quarrel in between the appellant Narhari and victim Laxman, his mother Gayabai and others, on account of cutting of wood from the field. The appellant/accused exhorted victim Laxman and

his mother. There were altercation in between them and in the fight, accused assaulted mother Gayabai by means of stick etc. The victim Laxman, his mother Gayabai and others returned to home. They all were intending to lodge complaint against the accused Narhari in the police station, Ahmedpur. Therefore, the father Digambar, mother Gayabai and victim Laxman came to auto-rickshaw stand in the village, for going to Ahmedpur P.S. Meanwhile, accused Narhari and his wife Kalpana, both arrived at the auto-rickshaw stand. They picked up quarrel with the Digambar-father of First informant Gangadhar. In the altercation, appellant-Narhari dealt a blow of sickle on the head of Digambar, father of the first informant, but he succeeded to dodge the same. The victim Laxman, on seeing accused Narhari assaulting the father, rushed towards the appellant Narhari and intervened in the scuffle to rescue the father. But, Accused Kalpana - the wife of appellant Narhari caught hold the victim Laxman. The appellant Narhari gave a blows of sickle on the neck as well as shoulder of the victim Laxman. He received the fatal bleeding injuries. The denizens and onlookers thronged at the spot. Thereafter, assailant made their escape good from the scene of occurrence. The injured Laxman was escorted to the Government Hospital at Ahmedpur for medical treatment, But, the Doctor declared him dead. The information of death of victim Laxman was passed on to the concerned police of Ahmedpur Police station, District Latur. On receipt of information, the Ahmedpur Police, registered the A.D. No. 11 of 2012 under Section 174 of Cr.P.C. and swung into action for enquiry to ascertain the cause of death of victim Laxman. I.O. drawn

inquest panchanama and referred the dead body for autopsy to the rural hospital, Ahmedpur. The medical experts conducted the post-mortem and opined that the victim died due to hemorrhagic shock owing to injuries to vital organs. I.O. seized the clothes of the deceased after autopsy under panchanama. Meanwhile, the first informant Shri Gangadhar Suryawanshi approached to the police of Ahmedpur Police station and lodged the FIR. He blamed the accused/appellant Narhari and his wife Kalpana for the death of brother Laxman.

4] Pursuant to FIR of Gangadhar, the police of Ahmedpur P.S. registered the Crime NO. 35 of 2012, under Section 302, 324, 504 r/w. 34 of IPC and set the penal law in motion. I.O. visited to the scene of occurrence and drawn the panchanama of spot. I.O. recovered the blood stained earth, simple earth, Chappal stained with blood, etc. from the spot of incident. I.O. apprehended the appellant/accused Narhari for the sake of investigation. I.O. recorded statements of witnesses acquainted with the facts of the case. During custodial interrogation, appellant/accused confessed about the crime and shown willingness to produce the weapon of crime concealed in the bushes of Ketki trees. The I.O. recorded memorandum statement of appellant/accused under section 27 of the Evidence Act and proceeded towards Nanded- Ahmedpur Road. The appellant/accused produced the weapon of crime concealed in the bushes of the Ketki trees. I.O. seized the weapon under panchanama recovered at the behest of appellant. I.O. sent the seized Muddemal to the forensic Laboratory for analysis. I.O. collected the relevant documents of P.M. etc.

The accused No.2 - Kalpana w/o appellant Narhari was absconding since day of incident. There were endeavour to trace out the whereabouts of accused No.2 - Kalpana but all efforts found unavailing. Eventually, I.O. preferred the charge sheet against the appellant Narhari showing his wife accused Kalpana as absconding accused under Section 299 of Cr.P.C.

5] On receipt of charge sheet and investigation papers, the learned Magistrate Ahmedpur verified the charges pitted against the appellant/accused. It was transpired that the offence under Section 302 of IPC levelled against the appellant was exclusively triable by the Court of Sessions. Therefore, the learned Magistrate wisely transmitted the entire proceedings of RCC No. 84 of 2012 to the Court of Sessions for trial of the accused/appellant, within ambit of law. Since arrest, the appellant is in jail, being an under-trial prisoner. The learned Sessions Judge, after appreciation of allegations nurtured against the appellant/accused framed the charges for the offences punishable under Section 302, 324, 504 r/w. 34 of IPC against the appellant/accused Narhari Suryawanshi (Exh.8.) The appellant/accused denied the charges and pleaded not guilty. He claimed for trial.

6] In order to bring home guilt of the accused, prosecution adduced the evidence of in all 13 witnesses. The learned Sessions Judge also recorded the statement of appellant as prescribed under Section 313(1)(b) of Cr.P.C., to afford an opportunity to explain the incriminating circumstances brought on record against him. The appellant opposed the incriminating circumstances and claimed innocence for the charges pitted against him.

7] The learned Sessions Judge, after hearing the prosecution and the appellant/accused, appreciated the oral and circumstantial evidence adduced on record and arrived at the conclusion that the appellant/accused is guilty for the offence of murder of victim Laxman punishable under section 302 of IPC. Therefore, the learned Sessions Judge, drawn the adverse inference against the accused/appellant and passed the impugned judgment and order of conviction, and resultant sentence, which is the subject matter of the present appeal.

8] Learned counsel Shri Mantri, appearing for the appellant scathingly assailed that the impugned judgment and order of conviction is illegal, imperfect and not as per the provisions of law. The learned Sessions Judge did not appreciate the oral and circumstantial evidence in its proper perspective and committed error for adverse inference against the appellant. There are material discrepancies in the evidence of eye witnesses. The Medical evidence adduced on record is also suspicious and does not inspire confidence. The learned counsel much more gave emphasis on the circumstances that the concerned doctor did not mention in the post mortem report that the injuries received to the victim Laxman were ante-mortem in nature. The evidence of medical expert shows that death of victim Laxman was not homicidal. He received injuries accidentally after fallen on the rough surface. There was scoring/over-writing in the post mortem report in regard to size of injury No.1. These circumstances created doubt about the genuineness of the post mortem report. The medical evidence did not support the ocular evidence of prosecution witnesses

adduced on record. Learned counsel Shri Mantri also drawn attention towards the discrepancies in the ocular evidence of PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar. He submitted that these witnesses are the family members of victim Laxman and they are interested witnesses. The PW-7 Gayabai, PW-8 Digambar did not disclose about the presence of PW-11 Gangadhar at the scene of occurrence during the relevant period. The PW-8 Digambar also not stated in his evidence about the presence of PW-7 Gayabai on the spot of incident. Learned counsel Shri Mantri pointed out the contradictions and omissions in the version of eye witnesses, pertaining to earlier incident occurred in the morning hours in the field while collecting the firewood. According to learned counsel for appellant, there was dispute in between the brothers on account of partition of agricultural land. PW-11 Gangadhar and his family members were intending to grab the land of appellant. They had also attempted to sell the 7.5 acres of land of appellant, which was later on re-conveyed in the name of appellant, for consideration of Rs. 2,000/-. The learned counsel harped on the circumstances that there was delay of near about 11 hours in lodging the FIR after the alleged incident, occurred in the noon hours at about 12.30 p.m. He submits that the statement of eye witnesses PW-7 Gayabai, PW-8 Digambar were recorded at belated stage after about 3 days of the incident. He criticized the C.A. Report, inquest panchanama, seizure panchanama of the weapon under Section 27 of the Evidence Act etc. He alleged that the entire evidence adduced on record on behalf of prosecution is suspicious, doubtful and not credible to bring home guilt of the accused. Most of the

star witnesses of the prosecution turned hostile and did not support the prosecution case. Therefore, evidence of interested and partisan witnesses, who are relatives of the deceased Laxman, is required to be discarded. There are material discrepancies and contradictions in their evidence. Therefore, he prayed to allow the appeal and upset the impugned findings expressed by the learned Sessions Judge while convicting the accused/appellant for the offence punishable under Section 302 of IPC. In support of his arguments, he relied upon the exposition of law in the matter of Babu Ram & ors Vs. State of Punjab 2008 (3) SCC 709, Ishwar Singh : Ilam Singh Vs. State of Uttar Pradesh 1976 (4) SCC 355, Damodar Joma Mokashi & ors. Vs. State of Maharashtra 2012 (5) AIR Bom R 437, Sandhya Jadhav Vs. State of Maharashtra 2006 (4) SCC 653.

9] Per contra, learned APP vociferously opposed the contentions propounded on behalf of appellant/accused and submitted that the learned trial court has appreciated the oral & circumstantial evidence in its proper perspective . There are eye witnesses to the incident. The PW-7 Gayabai, PW-8 Digambar, and PW-11 Gangadhar had seen the appellant/accused while assaulting the victim Laxman with lethal weapon on the spot of incident. The appellant and the family of the victim were at inimical terms on account of family partition of agricultural land. The learned APP explained in detail the evidence of prosecution witnesses and contended that though the other eye witnesses turned hostile, their evidence cannot be thrown at the over board. The circumstances favourable to the prosecution in their evidence could be appreciated for adverse inference against the appellant/accused. There was

no delay in filing the FIR. Learned Prosecutor submitted that evidence of Medical experts categorically establish that death of victim Laxman was homicidal in nature. The ocular evidence of PW-7 Gayabai, PW-8 Digamber and PW-11 Gangadhar proved the complicity of the appellant for the homicidal death of victim Laxman. These are circumstances of recovery of weapon at the instance of the accused, under Section 27 of the Evidence Act. C.A. Report showing blood stained clothes of deceased as well as the appellant, the weapon Katti/sickle found smeared with blood stains, all which corroborated the testimonies of eye witnesses. Therefore, learned APP urged that the prosecution has proved the case against the appellant beyond all reasonable doubt. The conclusions drawn by the learned Additional Sessions Judge, in regard to guilt of the appellant is just, proper and reasonable. There is no perversity or error in the findings expressed by the learned Sessions Judge. Hence, learned APP prayed not to nod in favour of appellant and appeal may be dismissed. He relied upon the judicial pronouncement of the Apex Court in the matters of [1] Khujji @ Surendra Tiwari Vs. State of M.P., AIR 1991 SC 1853 [2] Sher Singh and anr. Vs. State of Haryana, AIR 2011 SC 373 [3] Bhagwan Singh Vs. The State of Haryana, AIR 1976 SC 202.

10] We have given anxious consideration to the arguments canvassed on behalf of both sides. We have also delved into the oral and circumstantial evidence adduced on record. Before embarking into the merits of the matter, to evaluate guilt of the accused, it would be apposite and justifiable to determine the exact cause of death of victim Laxman and

thereafter only, it would be convenient to proceed further for assessment of evidence of prosecution witnesses, to ascertain the nexus and proximity of the appellant with the alleged causes of death of victim Laxman.

(A) MEDICAL EVIDENCE :-

11] In order to prove the cause of death of victim Laxman, prosecution relied upon the Inquest Panchanama (Exh.31), The PW-2 Balaji Waghmare was the panch witness for inquest panchanama. He described the physical condition of mortal remains of victim Laxman at the time of inquest Panchanama. The document of Inquest Panchanama, (Exh.31), demonstrate that victim Laxman received the fatal injuries by sharp edged weapon on his neck below the head and nearer to shoulder. After inquest panchanama, the corpse of victim Laxman was referred to the Rural Hospital, Ahmedpur for autopsy. The medical expert PW-1 Dr. Patil conducted the post-mortem and noticed the following external injuries.

“1] Stab wound over right clavicle region, direction downward, of size 4 cm. In length, 2 cm., in breadth and 4 to 5 cm. in deep with fracture of clavicle on middle 1/3rd.

2] Contusion over occipital region, of size 2 x 2 cm.

3] injury to carotial artery on right lung.”

12] According to medical expert, all the aforesaid external injuries were ante mortem in nature. There were internal injuries like Hematoma of size of 2 x 2 cm., on the occipital region, as well as injuries at the upper border over the right plura as well as upper region of right lung. The medical expert opinion that the cause of death of victim Laxman was

“haemorrhagic shock due to injuries to the vital organs of lung and right side of the carotide vessels.” Accordingly, the medical expert PW-1 Dr. Patil issued the Post Mortem report (Exh.29). During the course of evidence the medical experts categorically stated that the injuries mentioned in Column No. 17 and 20 of the Post Mortem report could be possible by weapon scythe. The medical expert was cross-examined on behalf of accused/appellant. But, it reveals that there was no arduous cross examination sufficient to devastate the credibility of the evidence of medical expert PW-1 Dr. Patil. There was endeavor to point out infirmity that the medical expert did not mention in the post mortem report that the external injuries were ante mortem in nature. The learned counsel Shri Mantri also gave much more emphasis on this aspect. But we are not in agreement with the contention propounded on behalf of Mr. Mantri. The document of post mortem report (Exh.29) itself reflect that while mentioning the nature of injuries, the medical experts categorically made a reference to “injuries shown at Column Nos. 17 and 18 at column No. 18-A of P.M. report”. The medical experts indicated that the injuries shown in Column Nos. 17 and 18 of the post mortem report are of ante-mortem in nature. Therefore, the objection that the concerned medical expert failed to ascertain the ante-mortem nature of injuries, would not sustainable and appreciable in this case.

13] The concerned medical expert ruled out the possibility that the injuries shown in the Post Mortem Report at the neck and nearer to the shoulder of victim Laxman would be possible after fallen on the stony surface accidentally. Obviously, in view of nature of injuries received to

victim Laxman i.e. one stab wound on the clavicle region, fracture injuries to the right side lung i.e. on carotide vessels, it is evident that practically, these injuries are not at all possible to a human being after fallen on a rough surface. Therefore, the defence put-forth on behalf of appellant that the victim Laxman received the injuries accidentally appears not probable and acceptable one. The evidence of medical expert belies the defence of occurrence of any mishap with victim Laxman as projected on behalf of appellant. It is explicit from the post mortem findings that the victim Laxman met with an homicidal death. He received the injuries due to assault with lethal weapon. Therefore, we do not find impediment to conclude that the death of victim Laxman was homicidal in nature.

(B) OCULAR EVIDENCE :-

14] Now, the crucial point to be pondered over is in regard to nexus and proximity of the appellant-accused, with the alleged homicidal death of the victim Laxman, being the author of injuries sustained to him. According to prosecution, the appellant Narhari and his wife Kalpana, taking umbrage of the dispute of family partition of agricultural land, attacked the victim Laxman by means of lethal weapon like scythe/Katti and inflicted fatal injuries sufficient to cause his death. In order to prove the complicity of appellant with alleged homicidal death of victim Laxman, prosecution primarily relied upon the ocular evidence of eye witness account, comprising PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar- the first informant in this case. These witnesses i.e. PW-7 and 8 are the parents of Laxman and PW-11 is the elder brother of victim Laxman.

15] PW No.7, Gayabai Suryawanshi deposed that the deceased Laxman was her son. The family members of Gayabai, including her husband, sons and daughter in law all were residing jointly at village Rui-Uttar, Taluka Ahmedpur. The accused Narhari is her brother in law and younger brother of her husband PW-8 Digambar. She stated about the dispute on account of family partition of agricultural land in between accused and her husband PW-8 Digambar. According to PW-7 Gayabai, on the day of incident she, accompanied with grand-daughter had been to the field known as “Bramhanache Shet” for collecting fire-wood. Her son deceased Laxman also followed them in the field. Accused Narhari was seen sitting under the tree. On seeing PW-7 Gayabai, accused Narhari came running towards her and gave a blow of stick on her head. There was a quarrel in between the accused Narhari and PW-7 Gayabai as well as victim Laxman. Thereafter, they returned to home and disclosed about the incident to husband PW-8 Digambar. PW-7 Gayabai further added that they had an apprehension that accused Narhari might have filed a false complaint against them. Therefore, she, alongwith her husband, grand-daughter and victim Laxman came to the auto-rickshaw stand in the village for going to Police Station Ahmedpur to lodge the report of the incident. However, accused Narhari and his wife Kalpana arrived at the rickshaw stand. Accused Narhari dealt a blow of scythe (Katti) on the head of her husband PW-8 Digambar. Due to the attack her husband had sprawled on the ground. Meanwhile, victim Laxman rushed to intervene in the fight. PW-7 Gayabai deposed that accused Narhari gave blows of weapon-scythe near the neck of Laxman. His wife accused Kalpana

caught hold the victim Laxman. There were bleeding injuries sustained to victim Laxman. PW-7 Gayabai, on seeking brutal attack on her son, felt giddiness and she fell on the ground. Thereafter, the injured Laxman was escorted to the Govt. Hospital Ahmedpur, but he was declared dead by the concerned doctor.

16] The prosecution also examined PW-8 Digambar husband of PW-7 Gayabai. According to PW-8 Digambar, accused Narhari and one Sangram are his brothers. There was a dispute on account of family partition of agricultural land in between the brothers, due to which their relations were strain. PW-8 Digambar stated that on the day of incident, at about 10 to 11 a.m., his wife, as well as grand-daughter, had gone to the field located in the Arsad vicinity for collecting fire-wood. Victim Laxman also followed them. There was quarrel in between the accused Narhari and his wife Gayabai, as well as victim Laxman. Therefore, they returned to home, and disclosed about the incident of assault by accused Narhari to him. There was an apprehension that accused might have filed a false criminal case against them. Therefore, they decided to lodge report against accused Narhari at police station Ahmedpur. Hence, PW-8 Digambar, PW-7 Gayabai and victim Laxman came to the auto-rickshaw stand of the village for going to Ahmedpur. Meanwhile, accused Narhari arrived there. PW-8 Digambar asked accused Narhari the cause of quarrel occurred in the field. Accused Narhari gave a blow of Katti scythe on his head. PW-8 Digambar added that he tried to hold the accused and in the attempt, he fell on the ground. Meanwhile, victim Laxman by saying, "Aba Aba" rushed towards them to intervene in the

fight, but the accused dealt blows of Katti/Scythe on the neck of victim Laxman owing to which he sustained bleeding injuries and sprawled on the ground. According to PW-8 Digambar, his son injured Laxman was escorted in the auto-rickshaw to hospital at Ahmedpur but he was declared dead by the concerned doctor.

17] In order to strengthen the evidence of parents, prosecution adduced the evidence of PW-11 Gangadhar, brother of deceased Laxman. He was the first informant of crime for FIR bearing Cr.No. 35/2012. He deposed that on the day of incident, i.e. 14.3.2012, at about 11.00 a.m, he had gone to the field which is abutting to the village. He stated about the incident of assault by accused Narhari on his mother in the field known as "*Bramhanache Shet*" when they were collecting firewood. He has also deposed that accused Narhari had a habit of filing false complaints. Therefore, his parents and brother victim Laxman rushed to the auto rickshaw stand of the village for going to Police Station Ahmedpur to lodge report of the incident of assault by accused Narhari on his mother PW-7 Gayabai. But, the accused Narhari and his wife Kalpana intercepted them at the auto-rickshaw stand and picked up quarrel. On hearing the shouts (commotion), he rushed to the spot from the field. According to PW-11 Gangadhar, he saw the accused Narhari holding one bag containing weapon Katti scythe. Accused Narhari took out the weapon Katti from the bag and gave blow of Katti on the head of his father. His brother Laxman was present on the spot and he intervened to rescue his father. But, accused Narhari dealt blows of Katti/scythe on the neck and throat of victim Laxman,

due to which victim Laxman sustained bleeding injuries and sprawled on the ground. On seeing the worsened/critical condition of Laxman, he became frantic and perturbed. Meanwhile, accused Narhari and his wife Kalpana made their escape good from the spot. The denizens Sitaram Uttarwar, Datta Deokate and others watched the spectacle but they did not intervene in the fight fearing the accused for lodging false complaint against them. Thereafter, injured Laxman was escorted to the Govt. Hospital at Ahmedpur for medical treatment. However, the doctor declared him dead. After post mortem, he visited to the police station Ahmedpur and filed the FIR Exh. 55.

18] Learned counsel Shri Mantri scathingly assailed that there are material contradictions and omissions in the ocular evidence of PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar. They made improvements in their oral evidence before the learned trial court. It has been pointed out that PW-7 Gayabai did not disclose in her statement recorded under Section 161 of Cr.P.C. that the accused Narhari attacked her with stick in the field while collecting fire-wood. She had also not stated to the police that accused Narhari gave a blow of weapon Katti (scythe) on the head of her husband during the incident of assault occurred at rickshaw stand. PW-7 Gayabai and PW-8 Digambar did not state in their evidence about the arrival of PW-11 Gangadhar at the scene of occurrence. Moreover, they had not disclosed about the bag containing the weapon Katti (scythe) with accused Narhari. Learned counsel Shri Mantri further drawn our attention to the discrepancies that the PW-7 Gayabai in her statement before the police stated that her son PW-11 Gangadhar and husband PW-11 Digambar were

accompanied with her in the field known as “Bramhanache Shet” for collecting firewood. But, she changed her version and testified that her husband was sleeping at home and her son Gangadhar was in the field away from the spot of alleged incident of murderous attack on victim Laxman. These discrepancies in the version of PW-7 Gayabai are fatal to the prosecution case. Learned counsel Shri Mantri also criticized the evidence of PW-11 Gangadhar that he was not the eye witness of the incident, but he had gone to Udgir for his bricks Kiln work. PW-8 Digambar also stated that his son PW-11 Gandadhar had gone to Udgir for bricks kiln work. According to learned counsel Shri Mantri, the presence of PW-11 at the scene of occurrence was doubtful and suspicious one.

19] The intense scrutiny of the ocular evidence of these star witnesses of prosecution reveals that their evidence adduced on record found cogent, credible and consistent to prove the material circumstances of occurrence of incident of assault on the part of accused Narhari to victim Laxman resulting into his death. It is true that, there are some omissions and discrepancies in regard to morning hours incident of beating by the accused with stick to PW-7 Gayabai in the field. But, the so called incident of assault on PW-7 Gayabai occurred in the morning hours and presence of her family members in the field does not assume significance for evaluating the guilt of the accused pertains to incident of murderous attack on victim Laxman occurred in the noon hours. Therefore, the discrepancies in the evidence of these witnesses relating to morning hour's incident, would not cause any dent in the prosecution case. No doubt, the incident of attack by

accused in morning hours was one of the reason for going to auto rickshaw stand of village by the victim Laxman and his parents. But, primarily, the issue is to find out the assailant, responsible for homicidal death of victim Laxman and not about the occurrence of morning hour's incident.

20] Moreover, it is worth to mention that the alleged incident of brutal attack resulting into death of victim Laxman occurred in the broad day light at about 12.30 p.m. near the auto-rickshaw stand of village Rui-Uttar, Taluka Ahmedpur. The victim Laxman received the fatal bleeding injuries on the vital part of his body. He was immediately escorted to the hospital for medical treatment, but, unfortunately he was declared dead. Obviously, the family members were in mental trauma and grief following sudden death of one of their family members. In such distraught condition, PW-11 Gangadhar, elder brother of victim Laxman, lodged the FIR bearing Crime No. 35 of 2012 to police and set the criminal law in motion. In view of attending circumstances, some discrepancies and omissions are bound to occur in the ocular evidence of these key witnesses of the prosecution. We do not find that these discrepancies are detrimental to prosecution case.

21] While appreciating the evidence of PW-11 Gangadhar, it has been harped on the circumstance that he had been to Udgir for his brick kiln work. The PW-8 Digambar also stated that his son PW-11 Gangadhar had gone to Udgir at the relevant time for his brick kiln work. Moreover, the spouses PW-8 Digambar and his wife PW-7 Gayabai did not disclose about the arrival of PW-11 Gangadhar at the scene of occurrence during the relevant

period of incident. According to learned counsel Shri Mantri, PW-11 Gangadhar is the got up witness and he did not receive any opportunity to watch the spectacle of alleged murderous assault on victim Laxman. We are not prepared to accept these allegations against PW-11 Gangadhar to discard his evidence in this case. We would reiterate that in view of sudden death of victim Laxman, the entire family was in grief and disturbed mental condition. Therefore, the discrepancies appeared in their evidence as mentioned supra would not be considered as improvements to raise suspicion in the veracity of their evidence. In regard to presence of PW-11 at the scene of occurrence, he categorically stated that he was doing the agricultural work in the field nearer to the spot of incident. PW-7 Gayabai also stated that her son Gangadhar was in the field away from the spot. Moreover, after the post mortem, PW-11 Gangadhar immediately approached to the police and lodged the FIR. He blamed the accused Narhari for the death of brother victim Laxman. The possibility that PW-11 Gangadhar left the house on the day of incident saying to the father PW-8 Digambar that he was going to Udgir for bricks kiln work, but instead of going to Udgir, he remained in the village and attended the work in the field at some distance from the spot of incident of auto-rickshaw stand of village Rui-Uttar, cannot be ruled out. Therefore, the criticism that the P.W.11 Gangadhar was not present at the scene of occurrence found not sustainable and considerable one. In contrast, PW-11 Gangadhar categorically deposed that at the relevant time of incident, he was in the field located abutting to the village and after hearing shouts (commotion) he rushed towards the auto-rickshaw

stand and saw that accused Narhari was assaulting his brother Laxman by lethal weapon scythe and inflicted fatal injuries to him. The mode and tenor of the events verbalized in the FIR by PW-11 Gangadhar spontaneously demonstrates his presence at the scene of occurrence. He has also referred the names of on-lookers who watched the spectacle in his FIR. But, unfortunately, these so-called eye witnesses made volte-face and did not support the prosecution case. Albeit, they conceded about the presence of victim Laxman, his parents and accused at the spot during relevant time. We will deal with the evidence of hostile witnesses later-on. However, the document of FIR being former statement of witness under Section 157 of the Evidence act, would render corroboration to the oral testimony of PW-11 Gangadhar on this material aspect. Therefore, we do not find any impediment to act upon the evidence of these eye-witnesses who were family members of the victim Laxman.

22] Learned counsel Shri Mantri placed reliance on the exposition of law propounded by the Division Bench of this Court in the case of ***Damodar Joma Mokashi vs. State of Maharashtra reported in 2012(3) Bom.C.R. (Cri.) 371***, in regard to the material omissions and improvements in the evidence of prosecution witnesses, which would create doubt in the veracity of their evidence. It is worth to mention that the facts and circumstances of the aforesaid judicial pronouncement are distinguishable and not akin to the circumstances on record of the present case. In the aforesaid Damodar Mokashi's case, there was an assault on the people of village Pirkon by the assailants who were about 250 in number. They killed 5 persons and inflicted

grievous injuries to 19 persons as well as damaged 44 houses. The evidence of the related witnesses of the deceased found full of contradictions and omissions. There were no blood stains on the scene of occurrence in the spot panchanama. But, witnesses stated that the deceased were lying in a pool of blood. No weapons were recovered and the prosecution evidence appears full of loopholes and not tenable. Therefore, in view of material contradiction and omission the evidence of the related witnesses was discarded. However, in the matter in hand the facts are totally distinguishable from the facts of Damodar Mokashi's case. Therefore, the observations made in the said case do not advance the argument propounded on behalf of appellant.

23] The learned counsel Shri Mantri further raised the objections about the admissibility of evidence of these witnesses being closely related with each other, and belonging to one and the same family of victim Laxman. Therefore, they are all interested and partisan witnesses. It is to be noted that there is no bar to appreciate the evidence of interested and related witnesses, if it is found reliable, believable as well as duly corroborated by the Medical Evidence. It would be highly unjust and improper to discard the evidence of related witnesses merely on the ground that they are interested witnesses. In the instant case, it would be seen that, other independent witnesses, who received the opportunity to watch the spectacle, turned hostile and made volte-face. They found reluctant to get themselves involved in this case. It is to be borne in mind that now-a-days the people are less prone to becoming involved in police cases. In the aftermath,

prosecution has to keep implicit reliance on the evidence of related and interested witnesses in this case. The Honourable Supreme Court in series of decisions has held that mere relationship is not a decisive factor to affect the credibility of the witnesses. Their Lordships of Apex Court delineated in the case of (*Subal Ghorai Vs. State of West Bengal*) reported in (2013) 4 SCC 607) in para.39 as under;

“39. It is true that the prosecution has relied on the evidence of interested witnesses but, interested witness is not necessarily a bad witness. In fact, if the witness is related to the deceased, there is less chance of his leaving aside the real assailants. The evidence of interested witness has to be analysed with care. But, once the court comes to the conclusion that it is truthful and in accord with the relevant circumstances on record, the court should not hesitate to accept it and record conviction on the basis thereof. In this case, all the eyewitnesses are consistent about the prosecution case as regards assault on the deceased and setting on fire of the houses of Dharas. We are, therefore, not inclined to reject their evidence on the ground that they are related to the deceased. As already noted, two of the eyewitnesses i.e. PW-12 Jamini and PW-13 Mandakini are injured witnesses, whose presence at the scene of offence can not be doubted. They completely bear out the prosecution case.”

In the matter in hand, the minute scrutiny of the evidence of these witnesses reflects that, they are all reliable and dependable witnesses. Their versions found trustworthy and credible. Their presence on the spot of incident near auto-rickshaw stand appears natural and probable one. There are no circumstances available on record to create doubt in the veracity of their evidence. In contrast, these eye-witnesses are consistent as regards to assault on victim Laxman. We did not come across with any sort of exaggeration or coloured version in their evidence. Therefore, We do not find any impediment to appreciate the version of these witnesses for adverse

inference against the accused.

(C) **EVIDENCE OF HOSTILE WITNESSES :-**

24] At this juncture, we would like to appreciate the contentions put-forth on behalf of learned APP in regard to the evidence of hostile witnesses in this case. Learned APP vehemently submitted that the evidence of hostile witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent, their version is found to be dependable on the careful scrutiny thereof. In support of his contention, he relied upon the observations of Their Lordships of the Apex Court in the matter of *Khujji @ Surinder Tiwari Vs. State of M.P., reported in, AIR 1991 SC 1853*. The extract of para 6 is reproduced as below :-

“6.We have given our anxious consideration to the submissions made by the learned counsel for the contesting parties. The fact that an incident of the type alleged by the prosecution occurred on May 20, 1978 at about 8.20 p.m. is not seriously disputed nor is the location of the incident doubted. The evidence of PW 3 Kishan Lal and PW 4 Ramesh came to be rejected by the trial court because they were declared hostile to the prosecution by the learned Public Prosecutor as they refused to identify the appellant and his companions in the dock as the assailants of the deceased. But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court [Bhagwan Singh v. State of Haryana](#), [1976] 2 SCR 921; [Rabinder Kumar Dey v. State of Orissa](#), [1976] 4 SCC 233 and [Syed Akbar v. State of Karnataka](#), [1980] 1 SCR 95 that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.”

25] The learned APP submits that, PW-12 Bhimashankar Patil, PW-6 Nivrutti and PW-4 Sitaram Uttarwar, all were examined by the prosecution being an eye witness of the incident. But, they turned hostile and refused to support the prosecution case. However, it is brought on record in their evidence, that they were present in the immediate proximity of the spot of incident at the relevant time and they saw, the victim Laxman in injured condition. Thereafter, injured was escorted to the hospital for medical treatment in auto-rickshaw. Learned APP gave much more emphasis on the evidence of PW-6 Nivrutti Waghmare, who deposed that there was a fight in between victim Laxman and accused Narhari and at that time he was sitting on the platform of his house located nearer to the scene of occurrence. He has also divulged that at the time of alleged incident, victim Laxman and his wife were chasing the accused Narhari. According to learned APP, these hostile witnesses refused to disclose about the actual incident of assault by accused Narhari but the circumstances referred above are sufficient to point out the presence of prosecution witnesses, PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar at the scene of occurrence. Moreover, the PW-6 Nivrutti stated about the presence of accused Narhari at the spot who was allegedly chased by victim Laxman at the relevant time. Therefore, learned APP urged to accept the evidence of these hostile witnesses to the extent their version is found dependable and consistent with the guilt of the accused. According to learned APP, the prosecution has proved the incident of assault on victim Laxman by the accused Narhari resulting into his death. The version of hostile witness PW-6 Nivrutti pointed out the presence of

accused Narhari at the spot of incident.

26] We find force in the argument propounded on behalf of learned APP. Obviously, in view of settled rule of law, evidence of eye witnesses who made volte-face and retracted from their earlier statement before the police, could not be treated as non-est on their being declared hostile by the prosecution in this case. The analysis of their evidence would lead to establish that the deceased victim Laxman received the fatal injuries during the relevant time at the scene of occurrence located near the auto-rickshaw stand of the village. Thereafter, he was escorted to the hospital for medical treatment, but he succumbed to injuries. The evidence of PW-6 Nivrutti also indicate that he made endeavour to shield the accused Narhari, but while attempt he admitted the presence of accused Narhari at the scene of occurrence. It is to be noted that once it is accepted that victim Laxman received injuries at the scene of occurrence, with lethal weapon, the question would remain for consideration is, whether the appellant was the assailant of the deceased. We would reiterate that, it is evident from the ocular evidence of PW-7 Gayabai, PW-8 Gangadhar and PW-11 Gangadhar, coupled with evidence of PW-1 Dr. Patil that, the accused Narhari was only the assailant responsible for fatal injuries sustained to Victim Laxman. The evidence of hostile witnesses to some extent lend corroboration to the ocular evidence of related witnesses.

(D) **RECOVERY OF WEAPON OF CRIME U/S. 27 OF THE EVIDENCE ACT :-**

27] Now, turning to another spectrum of the matter, there was

evidence of recovery of weapon under Section 27 of the Evidence Act at the behest of the accused. Moreover, clothes of accused which were on his person, at the time of commission crime, also seized during the course of investigation. Firstly, we proceed to deal with the evidence of recovery of weapon at the instance of the accused. The prosecution examined PW-5 Mahadu Deokate to prove the confessional statement leading to the recovery of weapon at the instance of accused. Unfortunately, PW-5 Mahadu did not support the prosecution case in regard to confessional statement of the accused during the custodial interrogation in presence of panchas. However, he admitted his signature on Memorandum Panchanama (Exh.39) but he denied about confessional statement of the accused for production of weapon of the crime under section 27 of the Evidence Act. PW-5 Mahadu Deokate, however, conceded that he accompanied with accused and police personnel had gone to village Rui Uttar in vehicle jeep. The vehicle was stopped near the water tank in front of the house of accused Narhari in the village. He further deposed that accused produced one weapon Katti (skythe) which was kept inside his house. But, he had no knowledge where from the accused produced the weapon concealed in the house. Police prepared panchanama of seizure of weapon (Exh.40) recovered at the behest of accused and obtained his signature on it.

28] In view of the hostile conduct and demeanour of PW-5 Mahadu Deokate, particularly, on the factual aspect of confessional statement under section 27 of the Evidence Act made by the accused during the custodial interrogation for the memorandum panchanama (Exh.39), the prosecution

kept reliance on the evidence of I.O. - PW-13 - Pandit Kachawe. He stated that the accused Narhari was apprehended under Arrest Memo on the very same day of the incident i.e. 14.2.2012. The I.O. further deposed that on 18.3.2012, during custodial interrogation accused Narhari made confessional statement in presence of panchas that he had concealed the weapon of crime Katti/scythe in the bushes of Ketki trees near his house aside the road leading to Rui-Uttar village and he is ready to produce the same. (see the Marathi version of witness). Accordingly, memorandum panchanama was prepared. The panchas put their signature on it. Thereafter, accused Narhari led the police and panchas to the village Rui-Uttar and produced the weapon of crime, which was concealed in the bushes of Ketki trees. The weapon-scythe was recovered at the instance of the accused in presence of panchas under Panchanama (Exh.40). The I.O. stated about his visit accompanied with panchas to the spot of incident which was in the immediate proximity of auto-rickshaw stand of the village. The I.O. recovered one pair of chappal, blood stained soil, plain soil under the panchanama (Exh.37).

29] Admittedly, the prosecution did not succeed to prove the recovery of weapon of crime by adducing evidence of independent punch witnesses. However, prosecution, taking recourse of the evidence of I.O., attempted to bring on record the incriminating circumstances of recovery of weapon of the crime at the behest of the accused under section 27 of the Evidence Act. No doubt that, PW-5 Mahadu Deokate found reluctant to support the prosecution case. He denied about any confessional statement made by the accused during custodial interrogation in regard to

concealment of weapon of the crime Katti/scythe in the bushes of Ketki trees near his house. However, his evidence partly supported the prosecution case for recovery of weapon at the instance of accused. We do not find any legal infirmity in relying on the evidence of I.O. to prove recovery of weapon of the crime under Section 27 of the Evidence Act at the instance of the accused. In the case of ***Modansingh Vs. State of Rajasthan reported in AIR 1978 SC 1511***, Their Lordships of the Apex Court held that if the evidence of the I.O. who has recovered material object is convincing, the evidence as to the recovery need not be rejected on the ground that seizure witness did not support the prosecution case. This judicial precedent of Hon'ble Apex Court was also considered by the Division Bench of this Court at Nagpur in the case of ***Manohar Amrut Satpudkar Vs. The State of Maharashtra, reported in (2001) Cr.L.J. 4355***, in which it has been observed that merely because the panchas have not spoken about the disclosure made by the appellant/ accused, it does not affect the credibility of the evidence of recovery under section 27 of the Evidence Act. In view of the aforesaid legal guidelines, we are of the opinion that evidence of the I.O. adduced on record, relating to recovery of weapon Katti (scythe) under Section 27 of the Evidence Act, cannot be disbelieved or discarded merely because the panch PW-5 Mahadu Deokate refused to support the prosecution case. So, the recovery of weapon is one of the incriminating circumstances for adverse inference against accused Narhari in this case, which strengthen the ocular evidence of the eye witnesses discussed above. Needless to state that in case of ***Pradumaninh Kalubha Vs. State of***

Gujarat, reported in 1992 Cri.L.J. 1111, the Hon'ble Apex Court enunciated that in case where there is direct evidence, even the seizure of the weapon is not very material.

(E) SEIZURE OF BLOOD STAINED CLOTHES OF THE ACCUSED :-

30] The prosecution also relied upon the seizure of clothes of the accused during the investigation. There were blood stains of blood group "B" detected on the cloths of the accused. According to prosecution, in Chemical Analyzer's Report, human blood detected on the clothes of the accused which corroborates the direct evidence of the eye witnesses in this case. PW-5 Mahadu Deokate was the panch witness on the panchanama for seizure of clothes of the deceased Laxman (Exh.36). The clothes of the deceased Laxman were seized after post mortem. He is also the witness for the panchanama of scene of occurrence drawn after registration of crime in this case. He stated about the blood stains seen splashed on the spot of incident. The police prepared detailed panchanama (Exh.37) and obtained his signature on it. PW-5 Mahadu Deokate was also one of the panch of recovery of clothes of the accused after he was arrested in this crime. The seizure panchanama of clothes of the accused is at (Exh.38).

31] In the instant case, PW-13, I.O. Shri Kachawe, categorically stated that on the day of incident, the accused visited to the police station and filed report of commission of non-cognizable offence against the prosecution witnesses PW-8 Digamber and others. Accordingly, police registered the NC and referred the accused Narhari to learned Magistrate

under section 155 of the Cr.P.C. But, meanwhile, pursuant to FIR filed by PW-11 Gangadhar, accused Narhari was immediately apprehended in this case on the very day of the incident i.e. on 14-03-2012 under Arrest Panchanama (Exh.11), and since then, accused Narhari was in the custody of the police. These circumstances are indicative of the fact that the clothes which were on the person of the accused Narhari at the time of seizure panchnama of clothes (Exh.38) were the same clothes, he had wore at the time of alleged incident of assault on victim Laxman. The CA report of blood stains detected on the clothes of accused strengthen the allegations of the prosecution that, the accused Narhari had a nexus and proximity with the alleged injuries inflicted to the victim Laxman. It would profitable to reproduce the observations of their Lordships of the Apex Court, in the case of *Khujji @ Surendra Tiwari Vs. State of M.P. (supra)*, in para 10 as under :-

“10. xx xx xx

The find of human blood on the weapon and the pant of the appellant lends corroboration to the testimony of PW1 Komal Chand when he states that he had seen the appellant inflicting a knife blow on the deceased. He appellant has not explained the presence of human blood on these two articles. We are, therefore, of the opinion that, the aforesaid two decisions turned on the peculiar facts of each case and they do not lay down a general proposition that in the absence of determination of blood group the find of human blood on the weapon on garment of the accused is of no consequences. We, therefore, see no substance in this contention urged by Mr. Lalit.”

In the matter in hand, accused Narhari did not put-forth any explanation about the human blood stains found on his clothes. Therefore, these circumstances, being incriminating in nature, fortify the allegations nurtured on behalf of prosecution against the accused. The direct evidence of PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar is available on record coupled with medical evidence about the homicidal death of victim Laxman. In addition to ocular and medical evidence, prosecution succeeded to bring on record incriminating articles, such as, weapon of crime, blood stained clothes of the accused, coupled with C.A. Report, etc. Definitely, it would prop-up the edifice of the prosecution case bring home the guilt of accused.

(F) **NON-EXPLANATION OF INJURIES ON THE PERSON OF ACCUSED :-**

32] Learned counsel Shri Mantri much more gave emphasis on the controversial issue that, there were injuries on the person of the accused at the relevant time of lodging the report of non-cognizable offence. He was referred to the hospital for medical treatment. These injuries were also reproduced in the arrest panchnama of the accused (Exh.11). But, the prosecution failed to give reasonable explanation about the injuries received to the accused. The learned counsel Shri Mantri relied on the exposition of law laid down in the case of ***Baburam Vs. State of Punjab reported in 2008 AIR (SC) 1260***, in which it has been held that, non explanation of the injuries sustained by the accused at the time of occurrence or in the course of altercation is very important circumstance, from which, inference can be drawn that the prosecution has suppressed the genesis or origin of the occurrence and it has not presented a true version.

33] We have considered the submissions on the aspect of non-explanation of the injuries on the person of the accused by the prosecution. Obviously, the factum of injuries on the person of the accused sustained at the relevant time of incident, is a material and significant factor to be considered while appreciating the allegations nurtured on behalf of prosecution. But, it is imperative that the injuries received to the accused must be connected with the crime. In the instant case, immediately after the alleged incident, accused Narhari was apprehended in this crime. In the arrest memo (Exh.11), there were reference of injuries like scratch on the head and blisters on the sole of the foot as well as contusions on the right knee and left arm. There were no bleeding injuries seen on the person of accused at the time of his arrest in the wee hours of night at about 01-30 a.m. on 15-03-2012. Considering the sequence of events occurred at the scene of occurrence, it reveals that, these injuries have no proximity or not connected with the alleged crime. The accused was the agriculturist and possibility of sustaining the injuries as reported in arrest memo (Exh.11) during agricultural operations could not be ruled out. In absence of specific circumstances for causing injuries, it would unsafe to conclude that these injuries are connected with the alleged crime. Learned A.P.P. has rightly relied upon the observations of the Hon'ble Apex Court in the case of ***Shersingh and another Vs. State of Haryana, reported in A.I.R. 2011 SC 373***, wherein it has been held that if there was evidence to show that the injuries on the person of the accused could be connected with the incident, then only prosecution is required to be called upon to explain the injuries.

Therefore, non-explanation of these injuries by the prosecution do not cause any flaw in the prosecution case. Moreover, there was no any theory of right of private defence on the part of appellant / accused nor there was any defence of free fight causing injuries to him. In contrast, it has been suggested on the part of appellant-accused that the victim Laxman was chasing accused Narhari and while running victim Laxman accidentally fell-down on a stony surface and received the injuries. We are unable to persuade ourselves to accept this theory propounded on behalf of accused-appellant. In the instant case, absolutely there are no circumstances sufficient to point out that the alleged injuries of the accused were in connection with the present crime. Moreover, there was no any theory of private defence or free fight in between the accused and victim Laxman. In such circumstances, there was no obligation for the prosecution to explain the cause of injuries seen on the person of accused at the time of arrest memo (Exh.11).

(G) DELAY IN LODGING THE FIR :-

34] It has been alleged on behalf of appellant that the incident occurred on 14-03-2012 in the noon hours at about 12.30 p.m. to 1.00 p.m. and the alleged F.I.R. is lodged at about 22.45 hours on 14-03-2012. The delay of near about 10/11 hours caused in filing the F.I.R. and it would create doubt about the veracity of the allegations made against the accused. According to the learned counsel Shri Mantri, the prosecution witnesses were at Ahmadpur for medical treatment of the victim Laxman, but they did not approach to the police and filed the F.I.R. at the earliest. The conduct and

demeanour of the prosecution witnesses for delay in lodging F.I.R. itself is fatal to the prosecution case.

35] We find painful to accept these allegations cast on behalf of appellant in this case. The consistent evidence of PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar demonstrate that immediately after the alleged incident, they escorted victim Laxman to the Government Hospital at Ahmadpur, but Doctor declared him dead. Thereafter, police of Ahmedpur Police Station received information about the death of Laxman. Accordingly, A.D.No. 11 of 2012 under section 174 of the Cr.P.C. was registered and police of Ahmadpur Police Station dealt with the mortal remains of deceased Laxman and drawn the inquest panchnama. The dead body was referred for autopsy to ascertain the cause of death. The concerned Medical Officer PW-1 Dr. Patil conducted the postmortem on the dead body of deceased Laxman on the very same day in between 5.10 p.m. to 7.00 p.m., and thereafter, the dead body was delivered in the custody of the relatives of deceased Laxman. The medical experts given the probable cause of death of the deceased about the injuries to the vital part of the body. Thereafter, PW-11 Gangadhar visited to the police station and figured accused Narhari as assailant of his brother Laxman in the F.I.R.

36] It is essential to take into consideration the mental condition of prosecution witnesses at the relevant time. The deceased Laxman was the family member of the prosecution witnesses- PW-7 Gayabai, PW-8 Digambar and PW-11 Gangadhar. It can not be ignored that due to the sudden death of victim Laxman, the parents and brother- PW-11 Gangadhar were completely

distraught and in grief, and, if there was some delay, it would not adversely affect the prosecution case. Moreover, it would be preposterous to expect from the PW-11 Gangadhar that instead of escorting injured brother Laxman for medical treatment, immediately after the incident, he should approach to the police and lodge the F.I.R. of the incident. The PW-7 Gayabai and PW-8 Digambar are senior citizens and it was also necessary for PW-11 Gangadhar to take care of his old-aged parents, in such turn of events. Therefore, we are not prepared to nod in favour of appellant that as there was delay in lodging the F.I.R., it would get bereft of the advantage of spontaneity and, same was the product of deliberation and consultation, detrimental to trustworthiness and credibility of the version of PW-11 Gangadhar against the accused.

37] There was also the allegation that the weapon of crime was not shown to the concerned Doctor, and therefore, it could not be said that the alleged injuries sustained to victim Laxman would be possible by the weapon - scythe produced before the Court. This lacuna created doubt in the prosecution case. Learned counsel Shri Mantri kept reliance on the observations of their Lordships of the Apex Court in the case of *Ishwar Singh Vs. State of U.P., reported in (1996) DGLS SC 2050*. In view of factual scenario of the present case, we find it hard to digest these contentions put forth on behalf of learned counsel Shri Mantri. There is direct evidence in regard to participation and overt-act of the accused inflicting fatal injuries with the weapon-scythe /Katti. The medical expert PW-1 Dr. Patil, in explicit manner stated that, the injuries inflicted to the victim Laxman were

possible by the weapon Skythe / Katti. It is true that the weapon recovered at the behest of accused under section 27 of Evidence Act was not shown to the medical expert. But, the answer given by the medical expert about the possibility of injuries sustained to victim Laxman by means of weapon-scythe / katti would not cause any aberration, while evaluating the guilt of the accused. We are of the opinion that, the learned trial court has correctly appreciated the evidence of the prosecution witnesses in its proper perspective. There is no error or perversity in the findings recorded by the trial court. Therefore, we find no hesitation to uphold the conclusion drawn by the learned trial Court in this case against the accused/appellant.

38] At last, learned counsel Shri Mantri fervidly contended that, there was no intention of the accused Narhari to commit murder of victim Laxman. The alleged incident occurred within the spur of moment without any preparation, and hence, the case would fall within the ambit of Exception 4 to Section 300 of I.P.C. The learned counsel urged that, the appellant-accused be convicted under Section 304 Part-II of the I.P.C. instead of section 302 of the I.P.C. He placed reliance on the ratio laid down by the Apex Court in the case of *Sandhya Jadhav Vs. State of Maharashtra, reported in, 2006 DGLS (SC) 253*.

39] With utmost respect, we are not in agreement with the aforesaid submissions made on behalf of learned counsel Shri Mantri. Their Lordships delineated the legal guidelines for application of provision of Section 300 Exception 4 in para No. 9 of the aforesaid Sandhya Jadhav's case

as under :-

“9. xx xx xx

The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the fight occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must be further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression undue advantage as used in the provision means unfair advantage.”

The factual score occurred at the spot of incident do not permit us to hold the accused-appellant in this case guilty under Section 304 Part-II of the I.P.C. instead of Section 302 of the I.P.C. There was a history of earlier quarrel and altercation in the field known as '*Brahmnache Shet*'. The PW-7 Gayabai, PW-8 Digambar and victim Laxman fearing the accused, started proceeding to Ahmadpur for lodging the report of incident to the police. They all came at the Auto-rickshaw stand of the village. The accused Narhari and his wife with predetermination, arrived at the scene of occurrence and attacked on PW-8 Digambar. Meanwhile, victim Laxman intervened in the fight and ultimately accused Narhari gave multiple blows

of weapon-scythe on victim Laxman. It is discernible from the sequence of events as well as nature of injuries inflicted to victim Laxman on vital part of the body by lethal weapon that the appellant/accused had an intention to kill victim Laxman. In such circumstances, we are not prepared to accept the submission to hold the accused guilty for the offence punishable under Section 304 Part II of the I.P.C. instead of Section 302 of I.P.C.

40] In the above premises, we are of the considered opinion that, the prosecution has proved the charges of murder of victim Laxman against the appellant-accused beyond all reasonable doubt. There is direct evidence of eye witnesses' account to establish the overt-act and participation of the accused in this crime. The evidence of medical expert also corroborates the ocular evidence in regard to homicidal death of victim Laxman. In addition, there are incriminating circumstances of recovery of weapon of crime under section 27 of the Evidence Act. The clothes of the appellant-accused recovered under the panchnama also found stained with human blood of Group 'B' of victim Laxman. The C.A. report strengthen the direct evidence adduced on record by the prosecution. There was no explanation on the part of the accused-appellant in regard to blood stains detected on his clothes. The evidence of hostile witnesses also partly supported the prosecution case to the extent of occurrence of incident of assault resulting into fatal injuries to victim Laxman at the relevant time. All these circumstances are not only consistent with the guilt of the appellant, but same are also inconsistent with his innocence. The cumulative analysis of all these circumstances reflects that accused-appellant is only the assailant /

author of the injuries received to victim Laxman. The conclusions drawn by the learned trial court appears just, proper and reasonable. There is no error or perversity in the findings expressed by the trial court and same deserve to be confirmed. In sequel, appeal being devoid of merit stands dismissed accordingly.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-