

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

CRIMINAL APPEAL NO. 385 OF 2014

Tulshiram S/o Balaji Pupalwad
Age : 35 years, Occu.: Nil,
R/o : Patoda, Tq. Naigaon,
Dist. Nanded

... Appellant
(Orig. Accused No.1)

Versus

The State of Maharashtra
Through Police Station Kuntur,
Tq. Naigaon, Dist. Nanded

... Respondent

....

Mr. S. U. Choudhari, Advocate for the Appellant
Mr. S.P. Deshmukh, A.P.P. for Respondent / State.

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

Closed for Judgment on : 28.06.2021

Judgment Pronounced on : 07.07.2021

JUDGMENT (PER SHRIKANT D. KULKARNI, J.) :-

1. This appeal is directed against the judgment and order of conviction passed in Sessions Case No.20 of 2011 by the Additional Sessions Judge at Biloli dated 24.05.2013 whereby the appellant / original accused no.1 has been convicted of the offence punishable under Section 302 of the Indian Penal Code.

2. The prosecution case in narrow compass is as under:

2(i) Shankar Venkat Papulwad (since deceased) and accused Tulshiram Balaji Papulwad are relatives and resident of Patoda, Tq. Naigaon. They reside in the same area of village Patoda. The incident took place on 15.12.2010 about 1.00 p.m. near the house of deceased. Deceased Shankar, Sambhaji Palulwad, Sanbhaji Papulwad (uncle of the first informant) and some villagers were weighing *Soyabean* and putting them into gunny bags. Balaji Papulwad who is son of the deceased (first informant) was also present there.

2(ii) According to the prosecution story, the accused had contested the Grampanchayat election of Patoda on 2-3 occasions, but he was defeated. In September 2010, one Kalawatibai a member from the party of the deceased had contested the Grampanchayat election and she was elected unopposed. For the said election, the deceased and the first informant had extended help to Kalawatibai for the victory. In the same Grampanchayat election of September 2010, the sister-in-law of the accused had filled-in nomination form, but her nomination form came to be rejected. It is alleged that the accused had grudge in his mind against the deceased due to his defeat in Grampanchyat election as well as defeat of his sister-in-law.

2(iii) It was about 1.00 p.m., accused armed with big knife rushed towards the platform where the work of weighing of Soyabean was going on. The accused alleged to have made attack on the person of the deceased Shankar. The accused alleged to have given blow of knife in his abdomen. The accused alleged to have stated to the deceased that because of him, his life is ruined and he always support to the opposite party and because of that he never won the Grampanchayat election. After giving first blow by knife, accused took out the knife and gave second blow on the neck of the deceased and fled away.

2(iv) Shankar was seriously injured in the attack and he was taken to the hospital at Barbada by the first informant where he was declared dead.

2(v) On the basis of first information report lodged by Balaji, on 15.12.2010 with Police Station Kandhar, crime No.107 of 2010 under Section 302 of the Indian Penal Code came to be registered.

2(vi) On the basis of supplementary statement given by the first informant, two more accused namely Sanjay and Balaji were roped in the said crime. Both the accused alleged to have instigated

the present accused and they alleged to have committed murder of Shankar with common intention.

2(vii) After making attack on the deceased, the present accused alleged to have taken shelter in the house of Bajirao Hambarde (PW No.5). The intimation was given to the police and police rushed to the house of Bajirao Hambarde at village Patoda where from accused Tulshiram taken into custody armed with knife. The dead body was sent to the hospital for postmortem and report. The investigating officer has seized the knife from the accused under seizure panchanama as well as clothes on his person at that time. The clothes of deceased also came to be sized. Seized clothes of deceased, clothes of accused and weapon recovered from him were sent to Chemical Analyzer for analysis and report. The investigation agency collected the Chemical Analyzer's report during course of investigation. The investigating officer has recorded the statements of witnesses including two eye witnesses namely Sambaji and Bajirao.

2(viii) The investigating officer found sufficient incriminating evidence against the accused and filed charge-sheet against in all three accused persons for the offence punishable under section 302 read with section 34 of the Indian Penal Code.

2(ix) After committal of the case, the learned Additional Sessions Judge at Biloli has framed the charge against three accused persons vide Exhibit 14 for the offence punishable under section 302 read with section 34 of the Indian Penal Code.

2(x) During the trial, the prosecution machinery has examined in all 8 witnesses, which consists 3 eye witnesses, Medical Officer who conducted the postmortem, investigating officers and panchas and carrier.

2(xi) The defence of all the accused was of common nature. They defended that they have been falsely foisted upon in this case. They are not concerned with the death of Shankar Ventak Papulwad.

2(xii) The learned Additional Sessions Judge after evaluating oral evidence, documentary evidence and considering the argument advanced by the prosecution side and the defence, arrived at a conclusion that the prosecution has proved the charge of murder against accused no.1 Tulshiram alone. The learned trial Judge has recorded the finding that the prosecution has failed to prove the charge of murder against accused nos. 2 and 3 punishable under Section 302 read with section 34 of the Indian Penal Code. The learned trial Judge was pleased to acquit accused nos. 2 Sanjay and 3 Balaji and set them free.

3. Feeling dissatisfied by the impugned judgment and order of conviction, accused no.1 has challenged the judgment and order of conviction on various grounds. Whereas, the prosecution has not preferred the appeal against the order of acquittal of accused no.2 Sanjay and accused no.3 Balaji, passed by the Additional Sessions Judge at Biloli.

4. We have heard Mr. S.U. Choudhari, learned counsel for appellant / original accused appointed by the Court at State expenses and Mr. S.P. Deshmukh, learned APP for the State at length.

Argument of learned counsel for Appellant

5. Mr. Choudhari, learned counsel for the appellant vehemently submitted that the Additional Sessions Judge has not properly appreciated the evidence of witnesses. The prosecution has examined only interested witnesses. According to Mr. Choudhari, though PW-1, PW-3, PW-4 have been posed as eye witnesses, they were not present at the time of the alleged incident. They cannot be treated as eye witnesses to the scene of offence. The learned trial Judge has given unnecessary importance to the evidence of PW-1, PW-3 and PW-4 and arrived at erroneous conclusion. He submitted that PW-5 Bajirao is also close relative of deceased and interested witness. The evidence of

PW-1, PW-3, PW-4 and PW-5 is full of contradictions and omissions. They are not trustworthy witnesses. The learned trial Judge has accepted their testimony and arrived at erroneous conclusion. According to Mr. Choudhary, the alleged incident took place at the platform where work of weighing Soyabean and putting them in gunny bags was going on. Gunny bags of Soyabean were not found at the place of incident when panchanama came to be drawn. It is very much suspicious. Mr. Choudhary submitted that blood stains were not found at crime scene though it was assault by knife. According to the prosecution, accused alleged to have given blow by means of knife on the abdomen and neck, but postmortem report, column no.17 nowhere speaks about injury on neck. The medical evidence is not supporting to the prosecution.

6. Mr. Choudhari submitted that, according to the prosecution, the accused had taken shelter in the house of Bajirao Hambarde (PW-5) and he was arrested therefrom is after thought story and cannot be relied. Mr. Choudhari submitted that the prosecution has not proved the motive in respect of crime. The findings recorded by the trial Court while holding the accused guilty under section 302 of the Indian Penal Code are erroneous and those findings are liable to be set aside. The accused / appellant needs to be set at liberty from

charge of murder under section 302 of the Indian Penal Code, which is slapped by the prosecution machinery.

7. Mr. Choudhari, learned counsel for the appellant by way of an alternate argument submitted that if this Court comes to the conclusion that deceased succumbed to death because of assault at the hands of present accused, it was a case of single knife blow. The motive is not proved by the prosecution. Having regard to the facts and circumstances of the case on hand and having regard to the single injury caused by the accused, conviction under Section 302 of the Indian Penal Code may be converted into section 304 Part II of the Indian Penal Code. Mr. Choudhari, learned counsel for the appellant has placed his reliance on the following stock of citations in support of his argument.

(i) *Stalin Vs. State Represented by the Inspector of Police* reported in *(2020) 9 SCC 524*.

(ii) *Rampal Singh Vs. State of Uttar Pradesh* reported in *(2012) 8 SCC 289*.

(iii) *Shrawan S/o Dagdu Pawar Vs. State of Maharashtra* reported in *2011 All MR (Cri) 2313*.

Argument of learned A.P.P.

8. Per contra, Mr. S.P. Deshmukh, learned APP for the State submitted that the case is based upon direct evidence and duly supported by the medical evidence and Chemical Analyzer's report. There are three witnesses who had seen accused while making assault on the deceased by means of knife. After the assault on the person of the deceased, accused had taken shelter in the house of Bajirao Hambarde (PW-5) where from he was taken into custody. PW-5 Bajirao Hambarde has supported to the prosecution case. Mr. Deshmukh, learned APP submitted that though eye witnesses are relative and interested witnesses, their testimony cannot be discarded on that ground. The defence side has not brought on record any material through the testimony of PW-1, PW-3 and PW-4 to disbelieve them. Mr. Deshmukh, learned APP submitted that after the attack on the deceased, accused took shelter in the house of Bajirao Hambarde. The was crowd gathered. The intimation was given to the police. The entry to that effect is taken into the station dairy and the same has been proved. The police rushed to the house of Bajirao Hambarde where from the accused was taken into custody.

9. Mr. Deshmukh, learned APP submitted that the prosecution has examined PW-6 Dr. Pratam Durge, who has conducted postmortem on the dead body and given opinion about cause of death. It is a homicidal death and accused is a author of murder. Postmortem report vide Exhibit 47, more particularly column No.17 speaks in detail about incised wound and stab wound. All the injuries were found antemortem. Dr. Pratam Durge has opined that the death was occurred due to internal bleeding due to stab wound over the abdomen. According to the learned APP, the prosecution has examined all the relevant and material witnesses and proved the charge of murder against the accused / appellant beyond reasonable doubt. The learned Additional Sessions Judge has rightly convicted the accused under section 302 of the Indian Penal Code. The findings recorded by the trial Court are based upon the cogent and sufficient evidence. Mr. Deshmukh, learned APP urged that it is not a fit case to disturb the findings recorded by the trial Court. The order of conviction rendered by the trial Court against the accused under section 302 of the Indian Penal Code needs to be maintained and confirmed.

10. We have considered the argument advanced by Mr. Choudhari, learned counsel for the appellant and Mr. Deshmukh, learned APP for the State. We have also gone through the paper book with the assistance of learned counsel for the appellant and the learned APP.

Medical Evidence

11. First we shall deal with the point of homicidal death. It is necessary to see what injuries were found on the dead body at the time of postmortem examination. The evidence of PW-6 Dr. Pratap Durge at Exhibit 46 is important. Dr. Pratap Durge has stated during his testimony about conducting postmortem report on the dead body of Shankar Venkat Papulwad on 15.12.2010 at Civil Hospital, Nanded. He noticed the following injuries on the dead body of Shankar Venkat Papulwad.

“1. Incised wound over right side of face horizontally placed at right angle of mandible extending up to right cheek size 11cm x 1 cm, tailing present at anterior end.

2. Stab wound (injury) present over abdomen, horizontally placed in middle 2.5 cm below umbilicus of size 4 x 2 cm x cavity deep coils of intestine protruding out of abdomen through injury margins of injury sharp. Angle of injury acute. Injury 1 & 2 were caused by sharp edged pointed object, age of both injury Nos. 1 & 2 fresh injury.”

12. According to Dr. Pratap Durge, above said injuries were antemortem and cause of death was due to internal stab injury over the abdomen. The postmortem report and cause of death certificate vide Exhibits 46 and 47 are duly proved at the hands of Dr. Pratap Durge. While facing the cross-examination, Dr. Pratap Durge admitted that he did not notice any injury on the neck of dead body. The first informant has stated in the first information report and in his evidence that accused had also given blow on neck, but no injury is found on the neck. It makes hardly any difference. Dr. Pratap has made it clear while facing the cross-examination that it was bleeding profused. The heavy bleeding might have been caused immediately after the assault. Injury no.1 is at right angle of mandible though not on neck. There are two stab injuries due to attack made by the accused, which are found at the time of postmortem examination as stated by the first informant.

13. Having regard to the medical evidence discussed herein before, we arrived at conclusion that it is a case of homicidal death. We are in agreement with the finding recorded by the learned Additional Sessions Judge.

14. It is important and material to see who is the author of murder of Shankar and secondly whether the prosecution agency has travelled the journey successfully to prove the charge of murder against the accused with the help of cogent and unimpeachable evidence.

Evidence of eye witnesses

15. PW-1 Balaji Shankar Pupulwad vide exhibit 27, PW-3 Chandrakant Dashrath Dawale vide exhibit 40 and PW-4 Sambhaji Laxman Pupulwad are stated to be the eye witnesses.

16. It is well settled law that the testimony of a witness cannot be discarded only because he happens to be related witness or interested witness. If it is shown by way of evidence that the testimony of related and interested witness is doubtful and suffers from material omissions, contradictions and improvements and does not inspire confidence of the Court, such testimony of an eye witness needs to be discarded.

17. Having regard to the above said legal position of law, the testimony of PW-1 Balaji Shankar Pupulwad and PW-4 Sambhaji Laxman Pupulwad cannot be discarded only because they are relatives of deceased Shankar. PW-3 Chandrakant Dashrath Dawale is not relative of the deceased. His testimony cannot be discarded only because he is interested witness. Their testimony needs to be assessed by way of above said legal test.

18. PW-1 Blaji Shankar Pupulwad happens to be the son of the deceased and first informant. His testimony reveals that the incident took place on 15.12.2010 about 1.00 p.m. on the platform where the work of weighing Soyabean was going on. His father Shankar (since deceased), Chandrakant Dawale Sambhaji Pupulwad, Kisan Gaddamwad and Ankush Dawale were performing the work of weighing Soyabean produce. He has further disclosed that all the accused rushed to them. Accused Tulshiram came on the platform and gave blow of knife (जांबीया) in the stomach of his father Shankar by saying “हरामखोर”. While giving blow, accused Tulshiram further stated to his father that his life is ruined because of him (Shankar) since he always supported the opposite party, and as a result, he (Tulshiram) was throughout defeated. Remaining two accused i.e.

accused nos. 2 and 3 were instigating to accused Tulshiram by stating him “मार साल्याला मार”. Accused Tulshiram gave another blow of knife on the neck of his father Shankar and afterwards all the accused fled away from the spot. He immediately rushed to the spot since he was working in the plot near the platform.

19. His testimony further disclosed that he along with Chandrkant Dawale and Sambhaji Pupulwad immediately took his father at hospital at Barwada by auto of one Ankush Alore. After giving primary medical aid to his father, shifted to the government hospital at Nanded where his father was declared dead by the Doctors. He has disclosed that there was political enmity between his father and accused No.1 Tulshiram since last 10-15 years. Accused Tulshiram made attack on his father Shankar because of grudge in the mind due to political rivalry. He stuck to his first information report vide exhibit 28.

20. While facing the cross-examination PW1 Balaji admitted that although he had stated before the police while lodging the first information report that accused nos. 2 and 3 instigating accused no.1 Tulshiram by uttering words “मार साल्याला मार”, said fact did not find

place in the first information report. These are the material improvements made by PW1 Balaji and those improvements have been duly proved at the hands of PW-8 Chandrashekhar Choudhari PI. / Investigating Officer.

21. PW-1 Balaji while facing cross-examination admitted that though he had stated before the police that Ankush Dawale was present at the time of weighing Soyabean produce, such fact did not find place in the first information report and that improvement is duly proved at the hands of PW-8 Investigation Officer / PI. Choudhari.

22 On going through the supplementary statement of PW-1 Balaji, it is noticed by us that role of accused nos.2 and 3 are brought on record through supplementary statement and it has no foundation in the first information report. Whatever instigation alleged to have made by accused nos.2 and 3 with their common intention is found to be after thought and concocted. The trial Court has considered this aspect and accordingly pleased to acquit accused nos.2 and 3.

23. The testimony of PW-1 Balaji cannot be thrown away only because of above stated improvements. His presence at the time of incident near the spot is not found doubtful. It appears from the

testimony of PW-1 Balaji that his father Shankar was weighing Soyabean produce on the platform. Whereas, he was working near the platform where his father Shankar was weighing Soyabean produce. He has also admitted while facing cross-examination that his father was alone present on the platform. He has categorically stated that after the incident, he along with Chandrakant Dawale and Sambhaji Pupulwad immediately took his father to hospital at Barbada by auto of one Ankush Alore and after providing primary medical aid at Barbada, his father was taken to the government hospital at Nanded where he was declared as dead. The natural conduct of the witness is forthcoming after the attack was made on his father. It is not in dispute that accused no.1 Tulshiram is a distant relative of deceased Shankar and they are residing in the same area of village Patoda. Accused No.1 Tulshiram is well known to the deceased Shankar as well as the first informant and other witnesses present there, and as such, there cannot be a case for the defence of mistaken identity. Moreover, it is brought on record through the cross-examination of PW-3 Chandrakant Dawale that deceased Shankar and accused no.1 Tulshiram were the only persons present on the platform. Obviously, it is raised finger to accused no.1 Tulshiram who

made attack on the person of Shankar by means of knife and caused serious injuries in the attack.

24. On careful scrutiny of the testimony of PW-1 Balaji, the presence of accused no.1 Tulshiram is duly proved. Further it is duly proved that accused no.1 Tulshiram rushed to the platform where Shankar was weighing Soyabean and made attack by means of knife and caused injuries. The testimony of PW-1 Balaji is found natural and trustworthy. His testimony needs to be accepted though it is found that he has made certain improvements regarding the role of accused nos. 2 and 3 that should not be hurdle in the way in believing the testimony of PW-1 Balaji. It is natural tendency of a witness to exaggerate something so as to strengthen his case. Where eye witnesses account is found credible and trustworthy, his deposition can not be brushed aside merely because there are some trivial contradictions or omissions. It was a daylight attack made by accused no.1 Tulshiram on Shankar by means of knife and same is categorically described by PW-1 Balaji in his testimony. The trial Court has rightly accepted the testimony of PW-1 after due scrutiny and by giving reasons.

25. PW-3 Chandrakant Dawale vide exhibit 40 is another eye witness to the incident. He has disclosed about the incident dated 15.12.2010, which occurred on the platform of the house Sambhaji and Shankar. It is evident that the work of weighing Soyabean was going on the platform. He along with Balaji (PW-1) and Sambhaji (PW-4) were present near the weighing machine. He has further stated that accused Tulshiram along with other accused rushed to platform. When they heard the sound of their footwear, they went back to the platform and saw all the accused persons there. Accused Tulshiram was seen on the platform. Accused No.1 Tulshiram gave blow of knife in the stomach of Shankar. Shankar raised hue and cry for help by saying to his brother “સંભા રે”. Other accused were instigating accused Tulshiram by saying “ઠાળ રે ઠાળ”. Accused Tulshiram gave another blow by same knife on the neck of Shankar by stating that his life is ruined due to Shankar. After the attack, Shankar failed down below the platform. He has witnessed the said incident of assault. Accused Tulshiram fled away. He went to the house of Bajirao Hambarde. Rest of his testimony speaks about taking up injured Shankar to rural hospital at Barbada by auto of one Ankush Alore and subsequently shifted to the government hospital at Nanded. He has

disclosed that said incident was occurred due to political rivalry between late Shankar and accused No.1 Tulshiram.

26. It is material to note that the name of this witness PW-3 Chandrakant Dawale is mentioned by PW-1 Balaji while lodging first information report as an eye witness to the incident. By way of cross-examination of PW-3 Chandrakant, certain improvements are brought on record and those have been duly proved at the hands of Investigating Officer regarding instigation by accused nos. 2 and 3 and their involvement, which we have discussed in the earlier part. Further improvement is brought on record that after hearing sound of footwears of accused persons, he went back to platform and seen all the accused persons there. The presence of accused nos. 2 and 3 as stated by PW-3 Chandrakant Dawale is found to be doubtful and that is why that piece of evidence is rightly discarded by the learned trial Court. The testimony of PW-3 Chandrakant Dawale is corroborated by the testimony of PW-1 Balaji on the point of incident and attack made by accused No.1 Tulshiram on the person of Shankar by means of knife. That piece of evidence of PW-3 Chandrakant Dawale is not any way shaken by way of cross-examination despite of above referred material omissions.

27. PW-3 Chandrakant is not any way related to the deceased or the first informant. He seems to be an independent witness falling in the category of the eye witness to the incident. He has disclosed in detailed in what matter incident occurred on 15.12.2010 when the work of weighing Soyabean was going on, on the platform. There is no enmity between PW-3 Chandrakant and the accused Tulshiram. We need to accept the testimony of PW-3 Chandrakant when it is found to be corroborated and inspires confidence of the Court. He has given truthful version about the incident and active role played by accused No.1 Tulshiram while making attack on Shankar by means of knife. Certainly evidence of PW-3 Chandrakant needs to be accepted when he is found to be truthful eye witness to the incident.

28. PW-4 Sambhaji Laxman Pupulwad vide exhibit 42 is another eye witness and happens to be cousin of deceased Shankar. He has described in detailed as to how and what manner the incident occurred on 15.12.2010, when he was present there. His testimony reveals that Shankar was helping them in the work of weighing Soyabean and putting them into gunny bags. He was present along with Chandrakant and Balaji. Accused No.1 Tulshiram came on the platform and stabbed Shankar, in his stomach and neck by means of

knife. This piece of evidence of PW-4 Sambhaji goes hand in hand with the narration given by PW-1 Balaji and PW-3 Chandrakant. So far as instigation at the hands of accused nos. 2 and 3 are concerned, though initially PW-4 Sambhaji though stated about instigation, but while facing the cross-examination, he has admitted that accused nos. 2 and 3 did not utter words “मार मार काय बघायलास” thereby vanished the case against accused against accused nos. 2 and 3. So far as narration given by PW-4 Sambhaji on the point of incident and the role of accused No.1 is concerned, it is duly proved and there is no reason to discard his evidence on that point.

29. PW-5 Bajirao Hambarde vide exhibit 43 is an independent witness in whose house accused no.1 had taken shelter after making assault on deceased Shankar. His testimony reveals on the day of incident, he came back from his field about 2.00 p.m. when he saw crowd gathered near his house. Upon making enquiry with his wife he came to know that accused Tulshiram had concealed in his house after making assault on Shankar. He had seen accused no.1 Tulshiram in his house while taking shelter. He has stated that police came to his house and Tulshiram was taken into custody. While facing cross-examination, he has admitted that the house of accused Tulshiram is

behind his house, but that admission is not any way helpful to the defence. The testimony of PW-5 Bajirao Hambarde regarding taking shelter by accused Tulshiram in his house after the attack is not any way shaken by way of cross-examination. PW-3 Chandrakant and PW-4 Sambhaji have also stated that accused Tulshiram took shelter in the house of Bajirao Hambarde after making assault on Shankar and concealed himself there. PW-5 Balaji Hambarde is an independent witness and he had no reason to speak against accused No.1 Tulshiram.

30. As held by the Apex Court in catena of decisions even very recently in case of *Khushwinder Singh Vs. State of Punjab* reported in *(2019) 4 SCC 415* and *State of Madhya Pradesh Vs. Chaakkilal and another* reported in *(2019) 12 SCC 326* that minor discrepancies are not to be given undue emphasis and the evidence has to be considered from the point of view of trustworthiness. While appreciating the evidence ;of witness in criminal trial, the test is whether the evidence as a ring of truth, cogent, credible and trustworthy or otherwise. If there are minor contradictions inconsistencies, exaggerations or embellishments in the evidence of a

witnesses, his evidence cannot be discarded. His evidence needs to be considered as a whole.

31. Having regard to the appreciation of above referred stock of eye witnesses, we do not find any hurdle in accepting their testimony on the point of ocular of incident, involvement and participation of accused No.1 Tulshiram in making attack on Shankar by means of knife.

Evidence of Panch witness on scene of offence and recovery of weapon

32. PW-2 Maroti Satwaji Dandewad vide exhibit 33 is a panch witness. His testimony speaks that police seized one cover of knife and one piece of cloth wherein blood stains from tiles were collected. The *Panchnama* of scene of offence vide exhibit 33 is duly proved at the hands of Maroti.

33. Second part of evidence of PW-2 Maroti relates to seizure of knife from accused Tulshiram when he was in the house of Bajirao Hambarde. He has categorically stated that accused Tulshiram was in the house of Bajirao Hambarde. Police entered into the house of Bajirao Hambarde. Accused No.1 Tulshiram was found while holding the knife in his hand and police seized the same as well as his shirt

under *panchanama* vide exhibit 35. While facing the cross-examination, PW-2 Maroti admitted that there were no blood stains on the cover of knife at the time of its seizure. But he has categorically denied that there were no blood stains on knife. The Investigating Officer Mr. Chopudhari, PI. (PW-8) has also categorically stated in his deposition vide exhibit 58 that accused Tulshiram had concealed himself in the house of Bajirao Hambarde where from accused Tulshiram was taken into custody. One knife with blood stains and his shirt stained with blood were also taken charge of and seized under *panchanam* vide exhibit 35. No material is brought of record through the cross-examination of PW-2 Matoti to disbelieve *panchanama* of scene of offence and *panchana* of seizure of knife and blood stained shirt of accused no.1.

34. PW-8 Mr. Chandrashekar Choudhari, vide exhibit 58 is a Investigating Officer / PI. who has conducted the major part of investigation of this case. He has stated about his procedural part of investigation. He has also stated about station diary entry vide exhibit 60 and in the said entry, it is not mentioned who assaulted the deceased. The entry in station diary vide exhibit 60 was an intimation on the basis of M.L.C. It cannot be termed as a first information report.

The first information report is the foundation for putting the criminal law in motion, and therefore, first information report plays important role while investigation of a criminal case. No more weightage can be given to the station diary entry vide exhibit 60, which is simply an intimation to police station Wazirabad Nanded by way of M.L.C.

35. While facing the cross-examination, PW-8 Mr. Chandrashekhar Choudhari / P.I. has admitted that accused Tulshiram was arrested on 15.12.2010 at 23.15 hours. The arrest *panchanama* vide exhibit 59 nowhere reflects the place where from accused Tulshiram came to be arrested. Be that as it may, accused Tulshiram was taken into custody by P.I. Choudhari from the house of Bajirao Hambarde and that fact is duly proved. Making arrest *panchanama* is a procedural part and it is a job of Investigating Officer. If the Investigating Officer did not mention the place where from the accused is arrested in the arrest *panchanama*, the prosecution cannot be blamed for that.

36. PW-9 Sonaji Amle vide exhibit 70 is another Investigating Officer who seems to have played very minimal role in the investigation. He has simply collected the papers and recorded supplementary statements of witnesses and after arresting two accused persons, filed the charge-sheet.

37. PW-7 Prabhakar Kawle P.S.I. vide exhibit 53 seems to be sample a carrier, who carried the sample to Chemical Analyzer, Aurangabad and deposited the same.

Chemical Analyzer's Report

38. The Chemical Analyzer's report vide exhibit 71 pertains to the clothes of the deceased and the weapon seized in the case. On going through the Chemical Analyzer's report vide exhibit 71, more particularly result of analysis, which read thus:

“RESULTS OF ANALYSIS

- Exhibits 3,4 and 9 are stained with blood.
- Exhibit is stained with blood on blade.
- Exhibit 2 has three blood stains each of about 0.5 cm in diameter on right sleeve.
- Exhibits 5, 6 and 7 each has considerable number of blood stains ranging from about 0.1 cm in diameter to big in size spread at places.
- Exhibit 8 has moderate number of blood stains ranging from about 0.5 cm in diameter to big size spread at places and appear washed.
- Exhibit 10 has moderate number of blood stains ranging from about 0.1 cm in diameter to big size spread at places.
- Blood detected on exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 is human.

- Exhibits 1, 2, 5, 7, 8, 9 and 10 are stained with blood of group 'O'.
- Group of blood detected on exhibits 3, 4 and 6 cannot be determined as the results are inconclusive."

39. As per chemical analyzer's report vide exhibit 73, blood group of the deceased is 'O'. Articles 1, 2, 5, 7, 8, 9 and 10 are found stained with blood of group "O", which pertains to the deceased Shankar. Article 1 is a knife and the blood was found on its blade, which has blood group 'O', which is of deceased Shankar. Except article nos.3, 4 and 6, all the articles were found stained with blood and the blood group of 'O', which pertains to the deceased Shankar, which are supporting to the prosecution case. Importantly, the knife seized in the case is found stained with blood with blood group of 'O', pertains to deceased Shankar, which has strengthened the prosecution case.

40. Mr. Choudhari, learned counsel for the appellant has given much stress that rickshaw driver is not examined to corroborate the version of PW-1 Balaji. We do not find any force in the submissions of Mr. Choudhari, learned counsel for the appellant. The auto rickshaw of Ankush Alore is used while taking injured Shankar to the Hospital at Barbada and thereafter he was shifted to Civil Hospital at Nanded

for further line of treatment. The role of Ankush Alore / rickshaw driver is very limited to the extent of carrying the injured Shankar to the hospital and not more than that. He is not that way material witness. It is not any way fatal to the prosecution case though the auto rickshaw driver is not examined.

Motive

41. The prosecution has brought on record through the testimony of PW-1 Balaji, PW-3 Chandrakant and PW-4 Sambhaji that there are political groups in the village Patoda. There was political rivalry between the deceased Shankar and accused Tulshiram on account of Grampanchayat election. Tulshiram was defeated in Grampanchayat elections till the year 2010 and he has grudge in his mind against the deceased Shankar since his panel members used to get elected in the Grampanchayat election. Thus the prosecution has also proved the motive for causing the murder of Shankar at the hands of Tulshiram. In the present case, there is evidence to establish the motive when the prosecution adduced positive evidence showing the direct involvement of accused Tulshiram in the crime. Motive assumed importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason.

41. Having regard to the appreciation of evidence of above stock of witnesses referred above, the prosecution has proved the charge of murder against the accused beyond reasonable doubt by completing successful journey of cogent and unimpeachable piece of evidence. We are in agreement with the findings recorded by the learned Additional Sessions Judge.

42. Mr. S.U. Choudhari, learned counsel for the appellant alternatively requested to convert the conviction from section 302 of the Indian Penal Code to section 304 Part II of the Indian Penal Code . He submitted that though it is a culpable homicide, it does not amount to murder since it is committed without premeditation in a sudden fight in heat of passion. It was a case of single blow. Mr. Choudhari has also referred three citations, referred above in support of his argument.

43. In case of *Stalin Vs. State Represented by the Inspector of Police* (supra), the Hon'ble Supreme Court has converted conviction from section 302 to section 304 Part II of the Indian Penal Code by noticing that the act was committed without premeditation in a sudden fight in the heat of passion upon sudden quarrel and without offender having taken undue advantage and not having acted in a

cruel or unusual manner. The facts of the case on hand are quite distinguishable. In the case at hand, accused Tulshiram armed with big knife rushed to the deceased when he was working and all of a sudden gave blow in his stomach and another blow on his neck. If the length and width of the blade of the knife are taken into consideration, it was a big in size. The accused Tulshiram had planned to make an attack on deceased and after due preparation, he seems to have made attack and gave blow by means of knife. Accused Tulshiram inflicted the injuries on the deceased on the vital part of his body with well preparation and with an intention to kill him

44. Now coming to the another citation relied upon by Mr. Choudhari, learned counsel for the appellant in case of ***Rampal Singh Vs. State of Uttar Pradesh*** (supra), the facts of the cited case and the facts of the case in hand are quite different. In the case at hand, the act committed by accused Tulshiram is done with clear intention to kill him. Certainly, it amounts to murder within the meaning of section 300 of the Indian Penal Code and punishable under section 302 of the Indian Penal Code.

45. The above citations of the Apex Court relied upon by Mr. Choudhari, learned counsel for the appellant are not any way helpful

to the defence to reduce the sentence and bring it down to section 304 Part II of the Indian Penal Code.

46. Now coming to last citation relied upon by Mr. Choudhari, learned counsel for the appellant in case of *Shrawan Dagdu Pawar Vs. State of Maharashtra* (supra), the Division Bench judgment of this Court. The Division Bench of this Court has considered three aspects (a) sudden fight, (b) absence of premeditation and (c) no undue advantage or cruelty. Considering the peculiar circumstances, converted the conviction from section 302 to section 304 Part II of the Indian Penal Code. Here in the case at hand, there was no sudden fight. It was an attack made by the accused armed with knife with clear intention to kill the deceased. The accused seems to have made attack on deceased when deceased was busy in his work and never thought of such attack at the hands of accused.

47. We are not impressed by the argument advanced by Mr. Choudhari, learned counsel for the appellant. In the case at hand, it is not a case of sudden fight in the heat of passion. As discussed herein before, accused Shankar armed with knife by way of pre-plan rushed to Shankar where he was weighing Soyabean and gave blow by knife suddenly in the stomach of Shankar. Shankar could not get any time

for his own defence. He was inattentive. This itself shows that accused had intention to kill the deceased and that is why he was armed with knife. Accused Tulshiram seems to have made attack on Shankar without any quarrel with him. There was no exchange of words and no fight amongst them. The citations relied upon by Mr. Choudhari are not any way helpful to convert this case from section 302 to section 304 Part II of the Indian Penal Code.

48. In view of the above, we are fully convinced with the trial Court. The trial Court has not committed any error in law or on facts while convicting the appellant Tulshiram for having committed offence of murder of Shankar under section 302 of the Indian Penal Code. There is no merit in the appeal.

49. Having regard to the above reasons and discussion, we conclude and proceed to pass the following order:

ORDER

- (i) The Criminal Appeal stands dismissed.
- (ii) The impugned judgment and order passed by the Additional Sessions Judge, Biloli is confirmed. The sentence awarded is maintained.

(iii) Mr. Shrikrishna U. Choudhari is appointed by this Court at State expenses. His professional fees are quantified at Rs.5,000/-.

(iv) As per the request made by Mr. Shrikrishna U. Choudhari, learned counsel for the appellant (appointed), the Secretary, High Court Legal Services Sub Committee at Aurangabad is directed to transfer the said fees of Rs.5,000/- to Covid fund of the State of Maharashtra.

(v) Record and Proceedings be sent back to the trial Court.

(SHRIKANT D. KULKARNI)
JUDGE

(V. K. JADHAV)
JUDGE

S.P Rane