

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 132 OF 2013

Udal Harishchandra Nanak,
Age : 28 years, R/at: Yashwantnagar,
Katarwadi, Yerwada, Pune.
(Presently lodged at Yerwada Central
Jail, Pune.)

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

Versus

The State of Maharashtra

Respondents
(Orig. Complainant)

Mr. Vikas Shivarkar i/by Mr. K.S. Chaoudhary a/w Mr. Paras Yadav, a/w Mr. S.D. Khakare a/w Mr. R.B. Thombare for the Appellant.

Mr. Arfan Sait, APP for Respondent – State.

**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : FEBRUARY 03, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 203/2011, dated 31st December, 2012, whereby Appellant herein (Original Accused No. 1) who was convicted for the offences punishable under Sections 302 & 307 of the Indian Penal Code (for short “IPC”), and sentenced to suffer rigorous

imprisonment for life and also to pay fine, preferred the present Appeal.

2. The case of prosecution, in brief, can be summarized as under:

Victim Sagar Ranpise was engaged in a job of catering under the main caterer and his friend Raju Kamble. On the account of religious occasion namely, Datta Jayanti a contract of catering was given to Sagar. Sagar along with his other co-workers namely, Raju Kamble, Vivek Bhosale (PW 2), Aatish Kamble, Rupesh Pathare, Lallu Khule and Ganesh Pardeshi (PW 6) undertook the activity of catering on 19th December, 2010 in the eve of Datta Jayanti and the said contract completed on 21st December, 2010. In relation to this contract, Sagar used to be out of his home for most of the time. On 21st December, 2010, he made a phone call to his mother Jyoti Ranpise (PW 1) and informed her that he will return home after 1 and ½ hour taking payment. Sagar then returned to home after 1 and ½ hour along with his friend and co-worker Vivek Bhosale and informed his mother that as the payment is still awaited she would go back. Thereafter, Sagar and his friend Vivek Bhosale left his home hurriedly. Thereafter, Sagar received the amount of remuneration against their work and Sagar and his friend and co-workers decided to have dinner and thereafter to proceed to their respective homes.

3. Then they thought of having drinks before dinner and

accordingly, they purchased liquor from one shop namely, Mahesh Wine Shop, Alandi, Pune. Then they consumed liquor and while they were proceeding to their home Sagar told to Vivek Bhosale (PW 2) that four months prior to that day Udal Nanak i.e. Appellant – Accused had obstructed the way of Sagar. It is further the case of prosecution that the distance between the area wherein Sagar was residing and area where the accused persons reside is not far away. Then Sagar told Vivek Bhosale that they should go to the home of accused to ask as to why he had obstructed the way of Sagar. Accordingly, Sagar and his companion proceeded towards the house of Udal Nanak (A 1). Sagar and his companions parked their vehicles i.e. two wheeler at a flour mill situated near to the house of accused. Sagar and his companion then proceeded towards the house of Udal Nanak. At the same time, Udal Nanak, who was armed with weapon sickle gave a blow of sickle on the head of Sagar. When Vivek Bhosale made an attempt to intervene and save Sagar, in that process Vivek Bhosale received the blows by weapon sickle at the instance of accused Udal Nanak on his head and back. Udal Nanak (A 1) and Harishchandra Nanak (A 2) fled away from the spot. Except Vivek Bhosale, other companions of Sagar also ran away from the spot due to fear. Though, Vivek Bhosale himself was injured finding that condition of Sagar is serious he rushed to bring an auto-rickshaw. On his way to Tank Road, Shanti Nagar (for

bringing auto-rickshaw) Vivek Bhosale meet younger brother of Sagar i.e. Sushil. Vivek Bhosale then narrated the incident to Sushil. Sushil immediately rushed to his home to inform the incident to other family members. When Vivek Bhosale returned back to the spot of incident, he found that Sagar was shifted from the spot of incident and it so happened that while Vivek proceeded to bring auto-rickshaw, Swapnil Ubale (PW 7) who happened to be friend of Sagar was passing through that area by his motorcycle, he found that crowd is gathered at the spot and on inquiry he came to know what happened. When he saw that Sagar was lying in pool of blood in injured condition, he immediately called one of his friend Kiran Sonawane by giving him a phone call and asked him to rush to the spot. Kiran Sonawane then immediately rushed to the spot. Swapnil Ubale and Kiran Sonawane took immediate steps so as to shift Sagar to the hospital. Due to the assault the blood was oozing and the trouser of Sagar was soaked in blood and as it was becoming an obstacle for removing Sagar, Swapnil and Kiran removed the trouser of Sagar and handed over the same to one Vijay Takale. Then Sagar was made to sit behind Kiran Sonawane and Kiran Sonawane on motorcycle. Kiran was riding the motorcycle and Sagar was brought to Sassoon Hospital, Pune at about 11.30 pm. The duty doctor attached to Sassoon Hospital at the relevant time though made necessary arrangements to provide medical treatment to Sagar but

within a short time Sagar lost his life and doctor declared him dead.

4. Meantime, an information was forwarded to Vishrantwadi Police Station that one Sagar who was assaulted is admitted in Sassoon Hospital and he is in critical condition in receipt of that information PSI Vinod Patil (PW 16) who was attached to the said police station at the relevant time rushed to the Sassoon General Hospital with his staff. On reaching to the hospital, he found that Sagar was in ward no. 7 and doctor declared him dead. The dead body of Sagar was sent to mortuary. Inquest panchnama was drawn. Then the dead body was forwarded for conducting the postmortem through PHC Mr. Kate. Harishchandra Nanak (A 2) was arrested at 05.30 am and he was sent for medical examination. As stated above, when Vivek Bhosale reached to the spot he found that Sagar was shifted to hospital Vivek Bhosale along with one Sachin proceeded to a private hospital namely, Sethia Hospital for medial treatment. The doctor available at Sethia Hospital showed his inability to provide any medical treatment to Vivek and advised him to go to Sassoon General Hospital. Accordingly, he reached in Sassoon Hospital at about 00.15 hours on 22.12.2010. Dr. Gandhi attached to Sassoon General Hospital who was available at that time examined Vivek Bhosale. Vivek Bhosale provided the history of assault to Dr. Gandhi. Vivek Bhosale was treated as indoor patient in the hospital till his discharge on 23.12.2010. Dr. Gandhi opined that

Vivek had sustained incised injuries on his left shoulder and forehead and swelling on brain. As stated above, Sushil was informed by Vivek rushed to his house and informed about the assault of Sagar at the place Katarwadi. Sushil and his mother Jyoti were about the leave home and were proceeding for Katarwadi that time one Vijay Takele came there and handed over the blood stained trouser to Sushil and Jyoti. When Sushil and Jyoti reached near the flour mill, they found the crowd gathered there and it was informed to them by the people gathered there that accused Udal and Harischandra assaulted Sagar and Vivek. It was also informed to them that Sagar was shifted to Sassoon General Hospital, Pune. On receiving this information, Jyoti and Sushil and brother of Vivek who had meantime joined Sushil proceeded to Sassoon General Hospital and found that Sagar was lying on bed in one of the ward of hospital. It was also informed to Sushil and Jyoti that Vivek Bhosale had received the injuries in the assault was admitted in the hospital. Jyoti Ranpise mother of deceased then proceeded to Vishrantwadi Police Station and submitted her complaint at about 03.30 am and the same was treated as first information report. Bapurao Mohite (PW 10) attached to Vishrantwadi Police Station at the relevant time on receipt of the complaint and on registration of first information report registered the crime no. 286/2011 under Section 324 read with section 34 of IPC against the accused persons. A

requisition for the I Car unit equipped with technical instruments and experts was forwarded to the office of Commissioner and in response the I Car unit immediately reached to the spot. The blood sample from spot were collected. Panchnama was drawn as the investigation agency was set in motion. The other necessary formalities of investigation were completed such as, collecting the clothes of Sagar and Vivek Bhosale, drawing various panchnamas, recording the statement of witnesses, effecting the arrest of accused persons, recovery of weapon, forwarding material for chemical analysis, receiving reports from chemical analysis, collecting the postmortem report from autopsy surgeon and on completion of the investigation charge-sheet was filed against the accused persons for commission of offence under Section 302 and 324 read with Section 34 of IPC as well as under Section 135 read with Section 37 of Bombay Police Act. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Sessions Court.

5. Learned Trial Judge, on appreciation of evidence, recorded the judgment and order of conviction against the present accused and acquitted the Harishchandra Nanak from the offences.

6. Prosecution in support of its case, examined as many as 17 witness as follows: Vivek Bhosale (PW 2) is the injured eye witness, Mrs. Jyoti

Ranpise (PW 1), first informant & mother of deceased, Nikesh Awale (PW 3) panch to spot witness, Umesh Ubale (PW 4), panch to seizure of clothes of deceased, Nilesh Takale (PW 5), panch to seizure of clothes of Harishchandra, Ganesh Pardeshi (PW 6), alleged eye witness, Swapnil Ubale (PW 7), who has taken deceased to hospital, Madhukar Dhone (PW 8), who performed part investigation, Dr. Giriraj Gandhi (PW 9), Bapurao Mohite (PW 10), Dr. Ajay Taware (PW 11), autopsy surgeon, Suresh Bhanwale (PW 12), panch to recovery of weapon, Atish Naiknaware (PW 13), panch to seizure of trouser of deceased, Nandu @ Deepak Ghorpade (PW 14), panch to seizure of blood stained clothes of accused Udal, Gautam Sonawane (PW 15), Vinod Patil (PW 16) and Pandurang Gophane (PW 17).

7. Vivek Bhosale (PW 2) is the important and injured witness of the prosecution case, we may refer to the evidence of this witness, firstly.

8. Vivek Bhosale (PW 2) in his testimony before the Court deposed that deceased Sagar was known to him and was living in his locality. This witness further deposed that Sagar was a caterer and this witness used to work under him and Aatish Kamble, Rupesh Pathare, Lallu Kude were also working with them. This witness further deposed before the Court that on 19.12.2010 they had got a contract of catering of Gandhinagar, Yerwada, Pune on the eve

of Datta Jayanti festival. From 19.12.2010 to 21.12.2010 they had to prepared food in respect of said contract and as per availability of time, they used to visit their home during that period. This witness further deposed that on 21.12.2010 after receiving money they had plans to take dinner and thereafter had to go their homes. This witness further deposed that before taking dinner they purchased wine from one shop, namely, Mahesh Wines Shop, Alandi Road, Pune. Then they drank the wine and took dinner. After taking the meal, they started to proceed their home and this witness was sitting on the motorcycle of Sagar as pillion rider. When they were proceeding towards their house from Katarwadi at about 11.00 pm, they reached near flour mill of Bhandole, at that time deceased told this witness that four months ago, Udal Nanak, had stopped his vehicle in the way because of that Sagar told him they should go to Udal Nanak and ask him as to why he did so. This witness deposed that Udal Nanak's house was near to the said flour mill. Therefore, they took their vehicles to the place near the house of Udal and parked there. When they were proceeding towards the house of Udal, Udal and his father Harishchandra came out of their house and started beating Sagar. Udal gave blow on the head of Sagar by weapon which he was carrying in his hand. Then this witness went to intervene and to rescue Sagar. In that process, Udal also gave blow on the head and back of this witness with the same weapon. Due to

assault, this witness suffered bleeding injuries on his head and back. This witness further deposed that due to assault, Sagar sustained bleeding injuries and he fell down. Thereafter Udal Nanak and Harishchandra Nanak fled away from the spot. This witness further deposed that as the condition of Sagar was serious, this witness rushed to bring rickshaw towards Tank Road, Shantinagar. When this witness proceeding to bring rickshaw he met younger brother of deceased Sushil and this witness narrated the incident to Sushil. Therefore, Sushil went to his house and informed about the incident and he returned back to Katarwari at the place of incident. When this witness returned to the spot of incident, he saw that Sagar was taken to the hospital by somebody.

9. Then this witness and one Sachin went to the Sassoon Hospital, Pune at about 12.00 in the night. He showed his injuries to doctor. Then doctor admitted this witness in the hospital. This witness deposed that before reaching to the Sassoon Hospital, this witness had gone to private one private hospital namely, Shetia Hospital, but doctor did not admit him and advised him to go to Sassoon hospital, therefore, he went to Sassoon Hospital. This witness was admitted in Sassoon Hospital, Pune till 23.12.2010. In the meantime, this witness came to know that Sagar died in the same night in Sassoon Hospital, Pune. When this witness was admitted in the hospital, on 23.12.2010 police came to him for inquiry, so this witness narrated the

incident. This witness further deposed that at the of incident he worn one half sleeves 'T' shirt of ash colour and one pant was blue colour. His clothes were got blood stained due to injuries. His T-shirt got torn on the left back side near shoulder. When this witness admitted in the hospital doctors removed those clothes. This witness further deposed that he knew Udal Nanak prior to the incident.

10. In the cross-examination, this witness stated that he cannot say what is the distance between Katarwadi and Shantinagar. This witness admitted in the cross-examination that there is a road to got from Pune-Alandi Road, directly to Shantinagar where this witness residing without going to Katarwadi. This witness further stated in the cross-examination that two criminal cases are pending against him. This witness further stated that on 21.12.2010 at about 09.00 pm this witness and Sagar went to Mahesh wine shop. Then this witness stated that they had drunk liquor. This witness further stated that after drinking, at that place only Sagar told all of them that they should go to Udal Nanak's house and accordingly, this witness and Sagar proceeded towards the house of Udal Nanak with other friends. Then certain suggestions were given to this witness that after reaching to their, the started knocking the door of Udal Nanak's house, on giving knocks on the door, they realized that Udal Nanak was not present in the house, and Udal Nanak's

father came on their knocking the door and there was exchange of hot words between him and Sagar, these suggestions were denied by this witness. Then this witness admitted that it did not happened that after the incident stated by him he did not go to the police and station and not given the report of the incident to the police. Then this witness stated that Sagar also drunk the liquor but he was not under its influence. Then certain statements of this witness that at the time of incident Sagar had worn blue colour jean pant and black colour with yellow colour strips jacket. Then a statement of this witness that at 11.00 pm they were in front of Bhandawale's flour mill, on reaching to the Udal's house they parked their vehicle in front of his house and while they were proceeding to his house, Udal and his father came out and started beating to Sagar, are came on record by way of omission.

11. Learned APP objected the question raised by the defence Counsel that whether this witness stated before the police that Udal was holding weapon in his hand and with that he hit to Sagar on his head?. To which, this witness answered that he did not state exactly so. However, he said that he stated that Udal hit to Sagar with weapon in his hand.

12. Jyoti Ranpise (PW 1) is the mother of deceased Sagar. This witness is hearsay witness of the prosecution story. This witness deposed

before the Court that she has two sons, namely, Sagar and Sushil and one daughter, namely, Smita. This witness deposed before the Court that on 21.12.2010 Sagar did not return at home for taking bath in the morning. Thereafter, she went to her workplace. Then she returned to the home in the evening. After that she inquired about the Sagar to his husband, he informed that Sagar had not come on that day. Therefore, she made a phone call to Sagar and asked him why he did not come home. Then Sagar told her that he will come after half an hour after taking payment. After half an hour Sagar and Vivek Bhosale came to house and Sagar told that payment was awaited and therefore, he would again to go back. On return to home, Sagar and Vivek went away hurriedly. Thereafter this witness and her husband took dinner and went to bed to sleep. At about 12.00 in the night, Sushil came to her and woke her up and told that Sagar was beaten by somebody in Katarwadi. Therefore, she and Sushil rushed to Katarwadi. When they went near the flour mill of Suresh Bhandwalkar (PW 12), she saw blood stains on 2 to 3 places on the ground and various persons gathered there. Persons gathered there told them that rickshaw driver Harishchandra and his son Udal Nanak had beaten up to Sagar by sharp weapon and also beat to Vivek. The people gathered there also told that other persons by name Kiran Sonawane and Swapnil Ubale had taken the Sagar and Vivek to Sassoon Hospital, Pune. Then this witness and

her son Sushil and mother of Vivek went to Sassoon Hospital, Pune. When they reached to the ward of hospital, they found that Sagar was having sustained bleeding injuries on his head and other parts of the body. Then people in the hospital told that Sagar died. Then this witness went to Vishrantwadi Police Station and gave complaint. This witness narrated the incident to police. One Vijay Takale, had brought one blood stained pant of Sagar at their house before she left house to see Sagar. On 28.12.2010 She gave that blood stained pant to police and police seized the same from her.

13. In the cross-examination, this witness admitted that Shantinagar and Katarwadi are two different localities situated at different places. This witness further admitted that Kiran and Vivek had been in jail in respect of criminal cases against them. This witness admitted in the cross-examination that criminal offences were registered against Sagar also in the police station. This witness further admitted that Sagar used to drink with his friends with intervals outside the house. This witness admitted that Sagar had not come to house in nights since three days prior to the incident. This witness stated that it did not happen in that evening she made phone call to Sagar inquiring as to why he had not return to home for taking evening meal. It also did not happened that she sent anybody to Sagar to call him, even though he did not return till they went to bed. Then this witness stated that Vijay Takele brought

Sagar's pant immediately after Sushil had come to home and at that time she and Sushil were just leaving home to proceed to the spot. A suggestion was given to this witness that she herself or Sushil went to that police station of Vishrantwadi immediately after they went to the spot of incident at Katarwadi. When they went to Sassoon Hospital, Pune police persons were also present there. This witness further stated that no talk took place between them and police in Sassoon Hospital. This witness did not feel to give complaint to police present there. This witness admitted in the cross-examination that she did not say before the police while giving report at Exh. 39 that in Sassoon Hospital, Pune, she saw that Sagar had sustained injuries on his head and other parts of his body. This witness stated that at the time of giving complaint she was not knowing who were the Nanaks', as she did not see them earlier.

14. Nikesh Aawale (PW 3) is the panch witness to the spot panchnama. This witness deposed before the Court that on 22.12.2010 police of Vishrantwadi Police Station called him at Katarwadi, Pune to act as panch witness on the spot of incident. Police inspected the said spot in their presence. Then this witness saw the spot. This witness deposed that the house of accused Udal Nanak and Harishchandra Nanak is also near to the said spot. Blood stains were found at the place near the electric pole. Then police had taken blood samples with the help of two cotton bandages from the said place.

Then two blood sample bandages and one without blood sample bandage, were packed in three different packets and packets were sealed separately. Then signature of witness obtained.

In the cross-examination, this witness stated that he had gone to the spot of incident as Sushil Ranpise called him. Therefore, police asked him to act as panch witness. This witness further stated that in his presence photographs of spot of incident were not taken.

15. Umesh Ubale (PW 4) is the panch witness to the seizure of clothes. This witness deposed before the Court that on 22.12.2010 the police of Vishrantwadi Police station had called him at Police Station. Hawaldar Kate had brought 5 wearing clothes and said the clothes were stained with blood. Then this witness deposed that these clothes were of Vivek Bhosale. Then police wrote panchnama of these clothes as per description and those clothes were wrapped in a brown paper. Then signature of this witness obtained on paper slip. Then panchnama was prepared and it bears signature of this witness.

In the cross-examination, this witness stated that on 21.12.2010 he had no occasion to meet Vivek Bhosale and deceased Sagar. Therefore, he do not know that clothes were on the bodies of Vivek Bhosale and Sagar Ranpise.

16. Nilesh Takale (PW 5) is the panch witness to the seizure of clothes of Harishchandra Nanak. This witness deposed before the Court that on 25.12.2010 the police of Vishrantwadi Police Station called him at the police station. Therefore, he reached there. At that time accused Harishchandra Nanak was also present there. Then police took him to his house at Katarwadi. This witness accompanied them. In the house of Harishchandra Nanak, he went to the place where there is a cupboard beneath the TV, he took out some clothes and those clothes were one Khaki colour pant and one Khaki colour shirt. Shirt was having full sleeves. There having some blood stains on the right side of pant and shirt had blood stains on the collar from inside. Then police seized those clothes and prepared the panchnama. Then signature of this witness obtained on the same.

In the cross-examination, this witness stated that Vijay Takale is his brother. He knows Vivek Bhosale and Sagar Ranpise. A suggestion was given to this witness that police asked him to remain present at Katarwadi, this suggestion was denied. Then this witness admitted that he had not remain present in front of the house of accused Harishchandra Nanak.

17. Ganesh Pardeshi (PW 6) is the eye witness to the incident. This witness deposed before the Court that he know the deceased Sagar and Raju Kamble. This witness deposed that Sagar and Raju Kamble had obtained a

work order of catering at Gandhinagar on the eve of Datta Jayanti. Therefore, this witness, Raju Kamble, Sagar, Vivek Bhosale, Atish Kamble, Rupesh Pathare and Bharat Khude were doing the said work and this work was lasted for three days i.e., upto 21.12.2010. After completion of their work on 21.12.2010 they received the payment of their remuneration at about 09.00 pm, therefore, they decided that they would return home after taking dinner. Then Vivek brought liquor from Mahesh Wine Shop situated at Alandi Road, Pune. Then they drank liquor near the bridge of Vishrantwadi. After drinking liquor, Sagar said that Udal Nanak had come to his home at Katarwadi. Then deceased said to them that they should go to Udal Nanak's house and give threatening him to make him to be frightened so that he would leave that place and would go to his sister's home at Kalewadi. So they all went to the house of Udal Nanak at Katarwadi by two wheelers at about 11.00 pm. Then they reached the spot at about 11.00 pm and parked the vehicle. Then they all get down from the vehicles and went towards the house of Udal Nanak. Then this witness deposed before the Court in the examination-in-chief itself that Sagar knocked at the door of house. Then Udal's father Harishchandra came out. Then Sagar asked him as to where was Udal. Then there was exchange of hot words between them. Meanwhile, Udal Nanak came out the house holding one Sickie (Koyta) in his hand. On coming near to Sagar, Udal was

about to assault to Sagar with sickle. Due to fear other companions ran away from the place. Sagar also started to run away. Udal Nanak, however, reached to Sagar and gave a blow of sickle into the head of Sagar. In the meantime, Vivek also tried to intervene, in that process Udal also assaulted to Vivek with same weapon sickle. Due to assault, Sagar fell down on the road. This witness further deposed that place of incident is in front of a flour mill of Suresh Bhandalkar. This witness further deposed that on seeing all this, they ran away from the spot towards Tank road. As the people started gathering at that place, this witness again returned back at that place. In the meantime, somebody took Sagar to hospital near that place. He further deposed that he saw there was a pool of blood lying at the place where Sagar had fallen. Then this witness went to his house and went asleep. He further deposed that in the next morning, he came to know that Sagar died in the Sassoon Hospital, Pune.

18. In the cross-examination, this witness stated that except the above said place of catering, he had not gone to anybody's place on 21.12.2010 from morning. This witness do not know name of the person who had given the aforesaid order of catering. This witness deposed that Sagar was to distribute the money to all of them on that day. This witness stated that before this incident, they had not taken drinks by sitting in such party. This witness stated that he knows accused persons even prior to the incident by face. Then certain

suggestions were given to this witness as in the course of exchange of hot words between Sagar and Harishchandra, Sagar gave blow of sickle on the right hand of Harishchandra and meanwhile Vivek intervened to Sagar and that blow was hit on the back of Vivek, as soon as Vivek was hit in this way with the said sickle, he got annoyed and he snatched away sickle from the hand of Sagar and then, he assaulted with that sickle to Sagar, as Vivek was assaulting to Sagar, the other friends of Sagar started assault to Vivek, after such incident have occurred, all other friends of Sagar went away and thereafter Vivek assaulted to Sagar with that sickle, all these suggestions were denied by this witness. Then this witness admitted that none of the friends of this witness took Sagar to hospital after he had sustained injuries. Then this witness admitted that after sometime of the incident and after the people had gathered on the spot, he had gone to that place again to see what was going on. Then this witness stated that Vivek had put on t-shirt and sports track pant on his person and Sagar had put one black jerkin and jean pant. Accused Harishchandra was wearing Khaki colour clothes. Then this witness admitted that after going from the spot of incident to home, he had not disclose anything to anybody in his family as to what had happened.

19. Swapnil Ubale (PW 7) is the person who carried the deceased to the hospital. This witness deposed before the Court that on 21.12.2010 at

about 11.00 pm he was going on his motorcycle to give his laptop to his friend Atish Naiknaware, resident of Katarwadi. When he was passing through Katarwadi he had reached upto the square at Katarwadi, where he saw that there was gathering of some people on the road, therefore, he parked his motorcycle on side of road and went to see. Then he saw that one of his friend by name Sagar Ranpise was lying in the pool of blood on the road. So he immediately called his another friend Kiran on phone. Immediately Kiran also arrived at the spot. After his arrival this witness and Kiran were trying to make Sagar Ranpise to sit on his motorcycle. However, it was not possible as his pant had also loosed to downward upto knees. Therefore, they took out his pant and gave it to Vijay Takale. Pant was stained with blood. Then this witness and Kiran Sonawane took Sagar Ranpise to Sassoon Hospital, Pune. At that time, Sagar breathing slowly and on his head there were bleeding injuries. They reached to the Sassoon Hospital, Pune by 11.30 pm and admitted to Sagar in the emergency ward. Doctor available there examined him and started giving their treatment and then they immediately said that he had died. Then this witness deposed that in the meantime Vivek Bhosale also came to the said hospital in injured condition. Then his witness deposed before the Court that Vivek had injuries on his head and shoulder, he had bandage on his injuries.

20. In the cross-examination, this witness stated that Sagar Ranpise and Vivek Bhosale are resident of the Shantinagar. This witness stated that till next day of the said incident, he was not aware as to what had happened to Sagar. This witness stated that while admitting Sagar Ranpise in the hospital he had stated a history to the doctors that in quarrel somebody assaulted to him. Then this witness admitted that while carrying Sagar on motorcycle, his clothes and clothes of Kiran became stained with blood. Then this witness stated that pant they had removed from person of Sagar was given to Vijay Takale.

21. Madhukar Dhone (PW 8) is the ASI attached to Vishrantwadi Police Station at the relevant time as PHC and was doing the duty station officer. This stated about the steps taken by him in the process of investigation such as, seizure of clothes, preparing panchnama, etc.

22. Dr. Giriraj Gandhi (PW 9) is the medical officer in Sassoon General Hospital, Pune in Surgery department. This witness deposed before the Court that Vivek Bhosale gave history of assault. On examination, this witness found that Vivek had sustained incised injuries on his left shoulder and forehead and swelling on brain (mild generalised cerebral odema). Then Vivek Bhosale was discharged on 22.12.2010 and discharge certificate was

issued which is at Exh. 66.

23. Bapurao Mohite (PW 10) is the investigating officer who had performed the part investigation. This witness deposed before the Court that on 21.12.2010 from 10.00 pm he was on duty and was present at the said police station. On 22.12.2010 at 02.00 am also he was on duty and was present at the police station. At that time, one Jyoti Ranpise came to the police station and narrated the incident to this witness. Then this witness wrote down the same as per her narration which is at Exh. 39. Then this witness stated about the steps taken by him in the process of investigation such as, on receiving the complaint, submitting requisition to senior PI of Vishrantwadi Police Station for registration of crime. Then this witness is also a panchnama writer.

24. Dr. Ajay Taware (PW 11) is the autopsy surgeon. This witness deposed before the Court that on 22.12.2010 he was working as Assistant Professor in Forensic Science, BJ Medical College, Pune. On that day dead body of Sagar was brought by PSI Patil fo Vishrantwadi Police Station for postmortem. On examination of said body, he found following injuries.:

1. Tangential incised wound over right parietal region of head, anterior – posteriorly oblique, 7x2 cm, bone deep, margin's clean cut, angles acute;

2. Tangential incised wound over occipito, parietal region in the middle line anterior posteriorly, 7x2 cm, one deep, margin's clean cut, angles, acute;
3. Tangential wound starting from posterior end of injury No. 2, vertical 3x2 cm, bone deep, bone deep, margin's clean cut, angles acute;
4. Tangential chop wound over left parietal region of head, anterior posterior, 11x2 cm, brain deep, margin's clean cut, angles acute;
5. Incised wound over left occipital region, lower aspect vertically oblique, 6x2 cm, muscle deep with tailing showing abrasion of 11 cm starting from lower end,
6. Abrasion over left shoulder, anteriorly, 2x1 cm.
7. Abrasion over right cheek 2x1 cm;
8. Abrasion over right chin, 1.5x1 cm,
9. Abrasion 1 cm below right nostrils, 1x0.5 cm.,
10. Laceration over inner aspect of lower lip on left side, 0.8x0.3 cm muscle deep;
11. Contused lacerated wound over right hand dorsally, at the base of thumb 0.5x0.1 cm, muscle deep.

In his opinion, all the above mentioned injuries were fresh and ante mortem injuries.

25. On internal examination of head, he noticed the following injuries:

1. Haematoma in the scalp over left parietal region, 12x5 cm, occipital

- region, 6x5 cm, colour red;
2. Clean cut fracture (Tangential) underneath injury No. 4 of column No. 17 of the PM Notes (which is mentioned as external injury No. 4) in 10x6 cm area;
 3. Clean cut seen over, dura and left parietal region of brain underneath injury No. 4 of column No. 17 of the PM Notes (which is mentioned as external injury No. 4);
 4. Sub-arachnoid hemorrhage seen at places;
 5. Brain matter – oedematous;

In stomach, he noticed 150 cc semi digested food material. In his opinion, cause of death was due to traumatic and hemorrhagic shock due to chop injury over head. In ordinary course of nature, the injury No. 4 mentioned in column No. 17 of PM Notes along with internal injuries is sufficient to cause death. Injury Nos. 1 to 5 as mentioned in column No. 17 of PM Notes along with internal injuries are possible by muddemal article A weapon i.e. sickle.

26. Suresh Atmaram Bhandwale (PW 12) is the panch witness to recovery of weapon from the appellant. This witness deposed before the Court that on 26.10.2010 police had come to him and requested him to remain present at Vishrantwadi Police station on 27.12.2010 at Shantinagar. Therefore, on 27.12.2010 he went to Vishrantwadi police station. Police told him that the accused of the aforesaid murder case have been arrested and they

have produced weapon and clothes. Police said that they had seized the said weapon and clothes from the accused and they also told that panchnama was to be done in his presence. Then police showed the said weapon and the clothes to him. The weapon was like a knife.

In the cross-examination, this witness admitted that when he reached the police station, the knife like weapon and the clothes were kept on the table and police showed these articles to him and asked him to sign.

27. Atish Naiknaware (PW 13) is the panch witness to the seizure of pant of deceased. This witness deposed before the Court that on 28.12.2010 police had called him to appear in the police station. Therefore, he went to the police station. On appearing in the police station, police officer showed to him one pant and said that it was to be seized and therefore, requested to remain there to act as panch witness. Then police wrote seizure panchnama of seizure of pant.

In the cross-examination, this witness stated that the said pant was seen by him personally in the police station.

28. Nandu @ Deepak Ghorpade (PW 14) is the panch witness to the seizure of blood stained clothes of appellant. This witness deposed before the Court that on 27.12.2010 the police from Vishrantwadi Police station had

called him at police station. So he went to that police station. When he reached there he found that police were there and another panch Suresh Vbhandawale and the accused Udal also present. Police told to him and another panch that the accused Udal produced the blood stained clothes and weapon sickle. Then clothes and weapon sickle were seized by police. Panchnama was drawn and it bears signature of this witness.

In the cross-examination, this witness stated that weapon was recovered from a place which is accessible to all.

29. Gautam Sonawane (PW 15) is the witness who took the muddemal to chemical analysis. This witness deposed before the Court that on 29.12.2010 and 31.12.2010 he was serving as police head constable in Vishrantwadi Police Station, Pune. On 29.12.2010 police inspector Gofane, directed him to carry the muddemal clothes of the deceased and injured of this case to chemical analyzer's laboratory at Pune. Again on 31.12.2010 PI Gofane directed him to carry the muddemal clothes of the accused to the chemical analyzer's laboratory at Pune. Therefore, he delivered the same to the laboratory in sealed condition.

30. Vinod Patil (PW 16) is the investigating officer who performed the part investigation. This witness deposed before the Court that on

21.12.2010 he was serving as PSI at Vishrantwadi Police Station, Pune. On 21.12.2010 at about 23.45 hours when he was on duty, police station officer informed him that an information was received from Sassoon Hospital, Pune that a person by name Sagar was admitted in the hospital in unconscious state in ward no. 7. Therefore, he immediately rushed to the said hospital. In his presence doctor examined the patient. Then at about 00.15 hours of 22.12.2010 the doctor declared that the patient died. Then this witness stated about the steps taken by him in the process of investigation such as, recording the statement of witness, effecting arrest of accused, sending the dead body for postmortem, receiving PM notes, drawing various panchnamas, etc.

31. Pandurang Gofane (PW 17). This witness is also a investigating officer. This witness stated before the Court that on 22.12.2010 he was serving as PI Crimes at Vishrantwadi Police Station, Pune. Then this witness recorded the statement of Vivek, effected the arrest of accused Udal, then this witness recorded the statement of some witnesses, then this witness recorded the supplementary statement of Vivek, panchnama of seizure of weapon was carried by this witness, this witness also recorded the statement of accused person etc.

In the cross-examination, this witness admitted that as per the copy extract of control room which is at Exh. 114 the information was received

to the control room from mobile phone of Smt. Nanak. This witness further admitted that said information was that the incident was about quarrel. After receiving such information from control room police staff of Marshal controlling room of Vishrantwadi had proceeded to the spot of incident on 21.12.2010 in the night.

32. Defence, in support of their case, examined as many as four witnesses.

33. Ashwini Indrakant Baware (DW 1). This witness deposed that since her birth, she was living in the locality of Katarwadi, Pune. Opposite to her residential house, the house of accused Harishchandra and his family situated. Therefore, she know members of Nanak family. This witness in examination-in-chief deposed before the Court that on 21.12.2010 at about 11.00 pm she was in her house watching TV. Meanwhile she heard some noise of quarrel coming from outside. Therefore, she came out of her house. Then she saw that there were 4-5 boys in front of house of the Harishchandra Nasnak. There were shouting and saying "Udal, come out". Harishchandra Nanak was also there standing in his door of his house. Harishchandra Nanak was saying those boys that Udal did not live there. She further deposed that one of those boys was holding a sickle in his hand and he tried to assault with

it to Harishchandra. Then Harishchandra tried to save himself by raising his hand. Meanwhile, another boy wearing track pant and t-shirt was saying not to assault Harishchandra. Then he came near to that boy who was having sickle and was assaulting to Harishchandra. She further deposed that boy who was wearing track pant and t-shirt snatched away the sickle, and assaulted to that boy who was earlier holding the sickle. Then they were running after each other and meanwhile one body fell down in front of Bhandawale's flour mill. Then this witness deposed that then two boys came on motorcycle and they took the body who had fallen on the ground. Then Gauri phoned the police control room and thereafter police came.

In the cross-examination, this witness stated that she is working in Vipro Bipro Hinjwadi company. In those days, her working hours were 07.00 am to 05.00 pm. A suggestion was given to this witness that she had stated before the police that Udal and Harishchandra assaulted to those boys and Udal assaulted to two boys with sickle near the electric pole, this suggestion was denied.

34. Ganesh Parmar (DW 2). This witness deposed before the Court that since 8-9 years he was living at the Kalewadi, Pune. He know the accused Udal who is present before the Court. This witness deposed before the Court that on 21.12.2010 at about 10.30 pm he was at a stall which is situated near

Khushboo Garden. Udal Nanak, one Sajnay, one Dinesh and another Dinesh, were also with him during that period. Upto 11.15 to 11.30 they stayed there. Thereafter this witness and Udal Nanak left that spot to go to their respective residential houses. After two days thereof he was at Khushboo Garden with other friends in the afternoon, the police had come there to make inquiry about Udal. They made inquiry with this witness also. Then this witness told to them that at the time of alleged incident Udal was with him at Khushboo Garden. Thereafter police accosted the Udal and took him with them.

In the cross-examination, this witness stated that on the date of incident his duty hours were from 07.00 am to 03.00 pm. He further stated that generally they used to meet at a stall of Khushboo Garden or in the ways whenever occasion arises. House of this witness situated at half kilometers away from Khushboo Garden.

35. Papa Jagannath Sadabhaiyaa (DW 3). In the examination-in-chief, this witness deposed that since his birth he is living in Katarwadi area, Yerwada, Pune and working as auto-rickshaw driver. He knows Nanak family, as they live in the same locality of Katarwadi. He further deposed that on 21.12.2010 at about 09.00 to 09.30 pm he was present opposite floor mill of Bhandawale along with two other persons. When they were chitchatting, at that time 4-5 boys came and asked them where Udal Nanak is living. Then

they started uttering abuses for Udal Nanak. Then these persons asked them to go away from there as Udal did not live there. Then this witness deposed that thereafter at about 11.00 pm when this witness was sitting in the house of his maternal uncle Bawari he heard noise of shouting. Therefore, they came out from that house. They saw that the aforesaid boys had returned back and they were uttering abuses in the name of Udal Nanak and were also knocking the door of house of Nanak family. Then Harishchandra came out of house. Those boys asked him as to where was Udal. Then Harishchandra Nanak said that Udal was not living here. Then the boy who was wearing black jerkin raised sickle to give blow to Harishchandra Nanak, but Harishchandra raised his hand in his defence and the blow hit to Harishchandra Nanak's hand. Then the another boy amongst them who was wearing track pant and t-shirt and having black complexion came forward saying that 'do not hit to him'. Then he went between Harishchandra and that boy who was having sickle. Then the boy who having sickle was trying to give another blow to the boy wearing track pant and t-shirt. That blow hit to him on the back. Then another blow was also given with that sickle to that boy wearing track pant and t-shirt on his head. The boy wearing track pant and t-shirt got annoyed due to these two blows of sickle. He snatched away the sickle from the boy who was assaulting with it. After snatching the sickle, the boy wearing track pant and t-

shirt assaulted the earlier assailant with the sickle. 2-3 blows were given to him by that sickle to the earlier assailant. The earlier assailant started running away from there saying as “Baba, don’t assault” repeatedly. Then he went upto the electric pole and fell down. Then other boys fled away from the that spot. After 5-10 minutes thereof, two boys came there on one motorcycle, lifted the boy who had fallen there and took him away on their motorcycle. After sometime thereof police came to that spot. Police made inquiry with them. Then this witness narrated the above incident to the police.

In the cross-examination, this witness stated that Harishchandra Nanak is also rickshaw driver. Therefore, on rickshaw stand they always meet and talk. Then certain suggestions were given to this witness that he was deposing falsely that on that day at about 09.30 pm boys had come and asking for Udal Nanak and this witness said to them that he was not living there since long and thereupon those boys were uttering abuses for Udal Nanak, thereafter about 11.00 pm he heard noise while sitting in the house of his maternal uncle and saw that those boys had returned back, one boy assaulted to Harishchandra Nanak with sickle and Harishchandra tried to defend by raising his hand and therefore, sickle hit on his hand and when that boy was assaulting Harishchandra again, another boy wearing track pant and t-shirt came forward saying “Do not beat him”, meanwhile he went between

Harishchandra and that boy and blow of sickle hit to that boy wearing track pant and t-shirt on back, these suggestions were denied.

36. Parvati Harishchandra Nanak (DW 4) is the daughter of accused Harishchandra Nanak. In examination-in-chief, this witness deposed that on 21.12.2010 at about 10.00 pm at about 10.15 pm she took dinner and then sat watching T.V. Udal was also with her in the house. At that time, his friend came at the time between 10.15 pm to 10.30 pm and thereafter Udal went out with his friend. Then at about 11.30 pm Udal returned home. After his return, they went to sleep. Thereafter on the next day at about 11.00 am she received phone call from her sister Gauri. Gauri said that in the previous night 5-6 boys had come to their house at Katarwadi and they had assaulted to her father. She also said that her father had gone to police chowky and was yet to return home. Then on 23.12.2010 at about 11.00 am to 12.00 noon, police had come to her house at Kalewadi. At that time, Udal was at home as he had holiday. Police arrested him.

In the cross-examination, this witness stated that she is elder daughter of accused Harishchandra Nanak. Her brother works in different shift after interval of every one week. She further stated that the said friend of Udal, who had come to their house on 21.12.2010 was Dinesh. Then certain suggestion were given that she is deposing falsely that on that day Udal and

herself were in their house of Kalewadi and were watching T.V. at about 10.15 pm, at that time his friend Dinesh, came and then Udal went with him out and at about 11.00 pm Udal returned home, these suggestions were denied.

37. Learned Counsel for the Appellant vehemently submitted that thought the prosecution claims that there are eye witnesses to the incident, the version of eye witnesses is full of improvements and contradictions. Learned Counsel for the Appellant further submitted that the version of two eye witnesses namely, Vivek Bhosale (PW 2) who claimed to be an injured eye witness and Ganesh (PW 6) who is claimed to be eye witness, runs contrary to each other. Thus, it is the submission of learned Counsel that the witnesses account of prosecution is neither reliable nor trustworthy. It was also submitted by the learned Counsel for the Appellant that the prosecution evidence itself show that the victim Sagar and his companion were having the grudge against the accused Udal and they all with an intention to teach lesson to Udal on account of previous enmity proceeded towards house of the accused persons. It was also the submission of learned Counsel for the Appellant that victim Sagar started abusing and as such, he was the root cause for the incident. It was also submitted by the learned Counsel for the Appellant that as Sagar and his companions had consumed liquor and in aggression proceeded towards the house of accused persons and they were the

accused persons who were subjected to a sudden provocation by victim Sagar and his companion. Thus, it is submitted by learned Counsel for Appellant that the prosecution evidence is not reliable and trustworthy. Learned Counsel for Appellant in the alternate submitted that in case, this Court find that the evidence brought by the prosecution supports the case of prosecution against the accused would at the most fall under Section 304 (I) and not in Section 302 of IPC. Learned Counsel further submitted that the appellant are behind bars since their arrest. Learned Counsel for the Appellant placed heavy reliance on the judgment of this Court in the case of Narsinh Arjun Jadhav vs. State of Maharashtra¹.

38. *Per contra*, learned APP submitted that the prosecution evidence clearly show that the accused persons had initially raised a quarrel with deceased Sagar and as such, accused persons were having grudge against the injured victim Sagar. Learned APP further submitted that the witnesses are reliable and more particularly, Vivek Bhosale (PW 2) who is an injured witness. It was also the submission of learned APP that the medical evidence supports the case of prosecution and particularly, the version of Ganesh (PW 6). Thus, learned APP supported the judgment and order of learned Trial Judge and prayed for dismissal of Appeal.

1 2012 (1) Mh.L.J. (Cri.) 158

39. With the assistance of learned Counsel appearing for the respective parties, we have gone through the entire record and proceedings.

40. True it is, that the prosecution relies on the version of eye witnesses and more particularly, the injured eye witness i.e. Vivek Bhosale (PW 2), but even considering the evidence of the injured eye witness coupled with the evidence of Ganesh (PW 6) who is an eye witness, it clearly reveals that deceased Sagar and his companion after consuming liquor proceeded towards the house of accused persons. Thus, it can safely be said that the accused persons had no prior intimation or knowledge that the deceased Sagar and his companions are approaching to their house.

41. There is also considerable merit in the submission of learned Counsel for the Appellant that it was an sudden provocation by the act of deceased Sagar and his companion to the accused and his father when the deceased Sagar reached the house of accused firstly and secondly, by knocking door and then there was an heated exchange of words. There is also considerable merit in the submission of learned Counsel for the Appellant that though Vivek Bhosale is an injured witness, he is not disclosing the entire incident before the Court and certain facts are not disclosed by this witness which are reflected in the version of another eye witness i.e. Ganesh Pardeshi

(PW 6).

On perusal of evidence these two witnesses i.e., Vivek Bhosale (PW 2) and Ganesh Pardeshi (PW 6), it revealed that there are material omissions and contradictions in the version of these two eye witnesses. Vivek Bhosale (PW 2) stated in his evidence that the accused persons had assaulted deceased and this witness but, Ganesh Pardeshi (PW 6) stated in his evidence that deceased Sagar, this witnesses and their companion themselves gone to the house of accused and quarreled with them.

42. It also revealed from perusal of the record that certain witnesses who were important witnesses namely, Sushil and Police Constable Kate were not examined by the prosecution.

43. It was also the submission of learned Counsel for the Appellant that the case of accused at the most would fall under the exceptions to Section 300 of IPC.

44. To consider the above submission, for our ready reference, we may reproduce the Section 300 of IPC and exceptions as under:-

300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. When culpable homicide is not murder

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

—

First —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly —That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation: Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 : Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 : Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation : It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 : Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

45. The Hon'ble the Apex Court in the case of K.M. Nanavati vs. State of Maharashtra², observed in para 85 as under:

(85) The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise, giving room and scope

² AIR 1962 SC 605

for premeditation and calculation.

46. Bearing these principles in mind, now we refer to the facts of the present case at hand. After consuming liquor, deceased Sagar and his companion went towards the house of accused persons. On reaching the spot, deceased Sagar knocked the door, then Harishchandra opened the door, then deceased gave abuses to Harishchandra. This version is also reflected in the evidence of Ganesh Pardeshi (PW 6). This witness in his examination-in-chief stated that after consuming the liquor, deceased Sagar all they went to the house of accused. Sagar knocked at the door of house by uttering abuses for Udal. Then Udal's father Harishchandra came out. Then Sagar asked him as to where was Udal. Then there was exchange of hot words between them. Thus, knocking the door in the late night hours and giving abuses to accused persons itself sudden as well as grave provocation for accused.

47. This Court in the case of Narsinh Arjun Jadhav (supra) in paragraph 11 observed thus:

11. Thus, the facts and evidence needs to be probed. Shortage and wastage of water in the slum area was the cause of sudden and grave provocation. Shantidevi Rajbhar, PW 3 in her examination-in-chief has categorically stated that such type of quarrels in the locality take place every day and therefore, initially she did not pay much attention to it. No

evidence is on record to show the previous enmity between the accused and deceased. The incident has happened suddenly and there was no premeditation or any planning to assault or kill the deceased. As per the FIR (Exh.8), the deceased gave call to the accused that he should come out and accept his challenge. The accused who was in the house, came out with a knife and gave a blow of knife, which deceased tried to stop with his hands. However, the blow was given with such a force that it went through the forearm of the deceased and went upto the chest. Thereafter, deceased started running and accused followed and chased him and again inflicted second blow in his back, deceased fell down and accused again stabbed him in the chest. Medical Officer Dr.Prakash Maruti Shinde, PW 9 in examination-in-chief has deposed that one stab wound found in the chest and back each and third one was on the right fore-arm. The Medical Officer opined that the injury which was in the chest, was sufficient in the ordinary course of nature to cause death and the cause of death was shock and hemorrhage due to multiple injuries.

48. Considering the aforesaid principles so also the judgment of the Apex Court as well as of this Court, we are of the opinion that the case of prosecution against the accused would fall under Section 304 (I) and not in Section 302 of IPC. Hence, we pass the following order:

:ORDER:

1. Criminal Appeal is partly allowed.
2. The sentence recorded by learned Sessions Judge, Pune in his order dated 31st December, 2012 in Sessions Case No. 203 of 2011 is altered from Section 302 of IPC, 1860 to Section 304(I) of the IPC, 1860.
3. The appellant is guilty for the offence punishable under Section 304(I) of IPC, 1860 and sentenced to suffer rigorous imprisonment of 10 years. The order of the learned Sessions Judge in respect of fine and, in default of payment of fine amount, is confirmed. The sentence to run concurrently.
4. In case, the appellant has undergone the sentence term for 10 years, he be set at liberty, if he is not required in any other crime.
5. In view of disposal of the appeal, no separate orders are required to be passed in pending interim application Nos. 611 and 694 of 2020. Accordingly, the said applications are disposed of.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)