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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.624 OF 2017

Mangesh Sarangdhar Kumbhare,
Aged about 38 years, occupation service,
R/o Sumthana, tahsil Bhadrawati,
District Chandrapur, Languishing of
Central Jail, Nagpur. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
Through P.S.O. Police Station
Bhadrawati, tahsil Bhadrawati,
District Chandrapur. **Respondent.**

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Shri A.R.Wagh, Counsel for the Appellant.
Shri S.M.Ghodewar, Additional Public Prosecutor for the
Respondent/State.

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CORAM : **V.M.DESHPANDE, & AMIT B.BORKAR, JJ.**
DATE : **SEPTEMBER 09, 2021**

ORAL JUDGMENT (Per : V.M.Deshpande, J.)

1. By this criminal appeal, the appellant is challenging judgment and order of conviction dated 7.11.2017 passed by learned Additional Sessions Judge, Warora in Sessions Case No.8/2015.

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2. By the judgment and order of conviction, impugned in the appeal, the appellant is convicted for offence punishable under Section 302 of the Indian Penal Code and is directed to suffer rigorous imprisonment for life and to pay fine Rs.2000/- and in default of payment of the fine amount to suffer further rigorous imprisonment for six months.

3. Kashinath Laxman Ingle (PW1), who is father of Vijay, (deceased), set criminal law into motion by lodging his oral report (Exhibit-19) dated 13.11.2014 with Bhadrawati Police Station, Chandrapur. The Police Station Officer, Bhadrawati, registered offence vide Crime No.260/2014 for offence punishable under Section 302 of the Indian Penal Code against the appellant. Printed First Information Report is at Exhibit-20.

4. As per the oral report (Exhibit-19), informant Kashinath (PW1) stays along with his family at New Sumthana, Bhadrawati consisting of his wife Sonabai, son Vijay (deceased) and his wife Varsha and their sons. Vijay, was working with The Maharashtra State Road Transport Corporation at Warora Depot as

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Conductor. As per the report, the appellant, who resides nearby, is also working with The Maharashtra State Road Transport Corporation and he and Vijay were good friends. He used to visit informant's house very regularly. However, since last four months he did not visit.

5. According to the oral report (Exhibit-19), about seven days prior to incident, the appellant and his wife Chabu came to informant Kashinath's (PW1) house and disclosed that his wife and Vijay (deceased) are having illicit relations. Fed up with the said, he left Sumthana four months ago and was residing at Chiroli along with his wife. However, there also, Vijay used to visit and meet his wife and, therefore, it was requested by the appellant to the informant to give him word of advice. According to the report, therefore, the informant got knowledge about illicit relations between his son Vijay and the wife of the appellant.

6. The oral report (Exhibit-19) further recites that on day of incident, i.e. 13.11.2014, when informant Kashinath (PW1) was proceeding on his motorcycle to garage for serving, at Sumthana

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square, he noticed gathering of persons and, therefore, he parked his vehicle. That time, auto-rickshaw driver Bhojraj Khobragade (PW3) came and informed him that prior to fifteen minutes the appellant assaulted Vijay (deceased) by means of knife and, therefore, he was shifted to hospital. On getting this information, as per the oral report, he immediately proceeded to Bhadrawati Rural Hospital. That time, he noticed that numerous injuries were on the person of his son and doctor informed him that he is dead.

7. After registration of the crime by Police Inspector Suhas Chavan (PW14), he reached to the spot of occurrence. Bhojraj Khobragade (PW3) shown the spot of the incident. On the spot, he noticed a chappal. He executed spot panchnama in presence of panch witness Vaibhav Patil (PW9). The spot panchnama is at Exhibit-40. The Investigating Officer also seized a chappal which was lying on the spot having blood stains, blood mixed earth, simple earth, and a leaf having blood stains in presence of Vaibhav Patil under seizure panchnama (Exhibit-41). He also recorded statement of Bhojraj Khobragade and one Suraj

Vishwakarma.

8. In the meanwhile, Assistant Police Inspector Ashish Gajbhiye (PW15) conducted inquest panchnama (Exhibit-31). Sandip Jiwane (PW8) is one of witnesses for the same. The appellant was arrested under arrest panchnama (Exhibit-59). His clothes, having blood stains, were seized in presence of Sandip Jiwane under seizure panchnama (Exhibit-32). His blood samples were also seized under seizure memo (Exhibit-33). His other article, such as cellphone, was seized under seizure panchnama (Exhibit-34).

9. Sub Divisional Police Officer Abhijit Faske (PW12), conducted further investigation. On 15.11.2014, the appellant gave his disclosure statement in presence of Sandip Jiwane (PW8) whereby he agreed to show place where he concealed weapon. Admissible portion of the statement is at Exhibit-36. Accordingly, as per directions of the appellant, the police party along with the panch reached to place which is the house of the appellant from where weapon knife was seized under seizure panchnama

(Exhibit-37).

10. After completion of other usual investigation, chargesheet was filed. In Sessions Case No.8/2015, under Exhibit-10, learned Additional Sessions Judge, Warora framed charge against the appellant that he committed murder of Vijay and thereby he committed offence punishable under Section 302 of the Indian Penal Code. After the charge was explained to the appellant, he denied the same and claimed for his trial. During course of the trial, the prosecution examined in all 15 witnesses and also relied upon various documents duly proved during course of the trial. After appreciation of the entire prosecution case, learned Judge convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code.

Hence, this appeal.

11. We have heard learned counsel Shri A.R.Wagh for the appellant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the respondent/State.

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12. Kashinath Laxman Ingle is PW1. He is first informant. Varsha Ingle is PW2. She is the wife of Vijay (deceased). Her evidence shows that six months prior to incident the appellant took up a quarrel with her husband on allegation that he is having illicit relations with his wife. That time, as per her evidence, the appellant assaulted by means of ball pen.

13. Bhojraj Khobragade is PW3. He is auto-rickshaw driver who plies his auto-rickshaw from S.T.Stand Bhadrawati to village Gaurala. As per his evidence, he noticed a crowd at Sumthana square and, therefore, he went there to find that Vijay, who was known to him, was lying in an injured condition and blood was oozing from his abdomen. He, therefore, put him in his auto-rickshaw and admitted in Bhadrawati Rural Hospital. His evidence shows that the spot was shown by him to the police and he informed the incident of assault to informant Kashinath (PW1).

14. Rakesh Nandeshwar (PW4); Premdas Humne (PW5); Bandu Ramteke (PW6), and Kishor Darvekar (PW7) are examined by the prosecution as eyewitnesses to incident.

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15. Sandip Jiwane (PW8), is panch witness who has proved various panchnamas. Similarly, Vaibhav Patil (PW9) has proved spot panchnama (Exhibit-40).

16. Ravikiran Pore (PW10) is doctor. He conducted postmortem over dead body and proved Postmortem Report (Exhibit46). He also proved Query Reports (Exhibits-49 and 50) by which he opined that weapons, which were sent to him, can cause injuries which he found while conducting postmortem.

17. Sandip Walde (PW11), is another panch witness for spot panchnama (Exhibit-40). Abhijit Faske (PW12); Suhas Chvan (PW14), and Ashish Gajbhiye (PW15) are police officers who conducted investigation at one point of time or the other. Pradip Dharnewar (PW13), is photographer who took photographs of the spot.

18. Dr.Ravikiran Pore (PW10), conducted postmortem over dead body of Vijay. He found following external injuries on the dead body:

[1]	Incised wound on right forearm upper 1/3 rd 4 cm below on elbow joint.
[2]	Punctured wound on right arm middle 1/3 rd posterior aspect vertically downward, 3 x 1 cm margin sharp, acute angle 8 cm above right elbow.
[3]	Punctured wound on right arm posterior aspect oblique muscle deep, 2 x ¾ cm, 14 cm below right shoulder margin sharp acute angle.
[4]	Punctured wound on left forearm middle 1/3 rd posteriorly oblique laterally 3 x 1 cm muscle deep 12 cm above wrist joint.
[5]	Punctured wound on left hand hypothenar eminence laterally transversed outwards 5 cm below wrist 2 x ½ cm muscle deep.
[6]	Punctured wound on left hand thenar eminence palmar aspect laterally obliquely downward 3 x 1 cm muscle deep.
[7]	Punctured wound on right infra axillary region 15 cm above lateral to ASIS 2 x ½ x 4 cm transversed laterally oriented.
[8]	Stab injury punctured incised wound penetrating perforating injury elliptical oval in shape on left upper thorax 12 cm supero lateral to left nipple 6 cm below left clavical size 2 x 1 x 4 cm cavity deep, 2 ½ cm edges apposed, angle acute margin sharp direction vertically downward inferiorly. The crack is 3 cm deep evenly cut directed infero medially perforating the chest wall through and through third intercostal space and perforating heart left ventricular wall inferiorly.

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[9]	Stab injury punctured incised wound on right lower thorax 7 cm inferior medial to right nipple 18 cm inferior to right clavical, 1½ x ½ cm x 4 cm x bone deep 2 ½ cm with edges apposed, acute angle sharp margin, directed vertically downward, track is evenly cut medially directed perforating the chest wall, penetrating the pericardium.
[10]	Stab injury punctured incised wound penetrating perforating injury ecliptical oval in shape 4 cm lateral inferior to injury No.9, 8 cm below right nipple, 3 x 1½ x 2½ cm bone deep, 3½ cm edges apposed directed vertically downward with track 4 cm deep.
[11]	Stab injury punctured incised wound on right lower thorax size 4 x 2 x 6 cm bone deep.
[12]	Stab injury punctured incised wound on left lower thorax size 11 cm below injury No.8 size 3 x 1 x 6 cm cavity deep.
[13]	Stab injury punctured incised wound on left hypochondrium, 2 x ½ x 4 cm muscular deep.
[14]	Stab injury punctured incised wound on epigastric region 3 x 2 x 8 cm cavity deep.
[15]	Stab injury punctured incised wound on right lumbar region 4 x 2 x 12 cm cavity deep.
[16]	Stab injury punctured incised wound on right lumbar region 3 x 2 x 6 cm cavity deep.
[17]	Stab injury punctured incised wound on right loin 3 x 1 cm cavity deep.
[18]	Stab injury punctured incised wound 5 cm medial to injury No.17 size 2 x 1 cm muscular deep.
[19]	Stab injury punctured incised wound 8 cm superomedial to injury No.17 size 2 x 1 cm muscular deep.

He also found various internal injuries corresponding

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to the external injuries. He proved Postmortem Report (Exhibit-46). According to the Autopsy Surgeon's opinion, cause of death is, "*injury to vital organ with shock and hemorrhage due to multiple injuries.*"

19. In view of the evidence of Dr.Ravikiran Pore (PW10) and injuries mentioned in Postmortem Report (Exhibit-46), it is crystal clear not only death of Vijay was unnatural one but also it was homicidal one.

20. According to the prosecution, it is the appellant who is responsible for homicidal death of Vijay. In order to prove authorship to the appellant, the prosecution examined four eyewitnesses whose names are mentioned in earlier paragraph of this judgment. With assistance of learned counsel for the appellant and learned Additional Public Prosecutor for the respondent/State, we have gone through their respective eyewitnesses' account.

21. From versions of eyewitnesses, which have gone unchallenged, the incident in question occurred between 3:00 p.m.

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and 3:10 p.m.. According to these four eyewitnesses, bus came at Sumthana and from it Vijay (deceased) stepped down. That time, the appellant was standing along with his son. After boarded down from bus, as per versions of these four eyewitnesses, some verbal alterations took place and, thereafter, the appellant pushed Vijay in deep portion on side of road. Thereafter, they heard noise of Vijay as “वाचवा” “वाचवा”. Resultantly, these eyewitnesses, who were standing near about 100 feet away from the spot, ran towards the direction to notice that the appellant was sat on the chest of Vijay and was inflicting blows after blows.

22. Though eyewitnesses were examined by learned defence counsel, nothing could be brought on record to impeach their testimonies either in respect of their versions about their presence on the spot or that they have not seen the incident. In this view of the matter, when part of their evidences about actual assault made by the appellant over the body of Vijay has gone unchallenged, though there are some omissions in police statement which are very minor in nature and in fact, that shows that they

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are not tutored witnesses, there cannot be any doubt in one's mind that it is the appellant who assaulted at the place where various persons were gathered in a broad daylight by dangerous weapon causing numerous injuries on vital part of Vijay, resulting into his death. We have, therefore, no hesitation in our minds to record our finding that learned Judge, before whom the trial was conducted, was right in recording his finding that the appellant is author who caused injuries on the person of Vijay.

23. We have also seen that during course of investigation, clothes of the appellant were seized and also weapon was also seized. Investigating Officer sent requisition (Exhibit-68) to Chemical Analyzer along with muddemal property. Chemical Analyzer's Reports are placed on record. As per Chemical Analyzer's Report (Exhibit-41), the blood of Vijay was having "Blood Group-AB". As per Chemical Analyzer's Report (Exhibit-42), on full shirt and on full pant of the appellant the Chemical Analyzer found human blood. Similarly, knife and blade of scissor, which were weapons of the assault, were found with blood of

Group-AB.

24. Thus, in this prosecution case not only there is an ocular evidence but also the prosecution is having adequate corroboration from scientific evidence.

25. Learned counsel for the appellant has made before this Court two submissions only:

(i) that though all eyewitnesses are stating that the appellant was present on the spot along with his son, his son is not examined by the prosecution who could have thrown light on the prosecution case,

(ii) that since scuffle took place, this Court should convict the appellant for offence punishable under Section 304 Part-II of the Indian Penal Code rather than for offence punishable under Section 302 of the Indian Penal Code.

Besides these two submissions, no other submission was advanced by learned counsel for the appellant.

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26. We are afraid that submissions, as noted above made by learned counsel for the appellant, have any merit.

27. Even, according to all eyewitnesses, though son of the appellant was with him, they found the boy was aged between 5 and 6 years. Secondly, though the prosecution has not examined his son, it was always open for the appellant to examine his son as defence witness if the appellant was sure that he will disclose the truth.

28. Evidences of all eyewitnesses show that after some scuffle and altercation, Vijay, the deceased, ran away, but he was followed by the appellant and, thereafter, he was pushed in lower part of road and then he sat on his chest and made assault by two weapons by his both hands, resulting into numerous injuries as noted in Postmortem Report (Exhibit-46).

29. In view of the above, we pass following order:

ORDER

(1) The criminal appeal is **dismissed** and disposed of accordingly.

Judgment

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(2) Judgment and order of conviction dated 7.11.2017 passed by learned Additional Sessions Judge, Warora in Sessions Case No.8/2015 stands confirmed.

JUDGE

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