

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.631 OF 2012**

Yakinali Nasirali Shaikh	]	
Aged: 35 years, Occ: Welder	]	
Resident of Diamond Tower, A/703,	]	
Near Octroi Naka, Kashmirira	]	
(Presently lodged at Thane District Prison)	]	Appellant
		(Orig. Accused)

Versus

1. The State of Maharashtra	]	
2. Nasren Abdul Aziz Khan	]	
Church Zhopadpatti, Next to house of	]	
Alka Kotkar, Kashigaon, Kashmirira,	]	
Dist. Thane.	]	
3. Mumtaz Akbar Khan	]	
Age: 36 yrs, R/at Kapadiya Compound,	]	
Opp. Amasha Darga, Reti Bunder,	]	
Ghodbunder Village, Kashmirira,	]	
Thane (Palghar).	]	Respondent

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Ms. Ruchi Pawar i/b Mallika A. Ingale, for Appellant.

Ms. Veera Shinde, A.P.P, for Respondent No.1-State.

Ms. Devyani Kulkarni, Appointed Advocate for Respondent No.2
(Victim).

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**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : 15th NOVEMBER, 2021.

**PRONOUNCED ON: 7th JANUARY, 2022.
(Through V.C.)**

JUDGMENT: [Per Prithviraj K. Chavan, J.]

1. By this appeal, the appellant has challenged his conviction under section 302 of the Indian Penal Code by the Additional Sessions Judge, Thane on 23rd November, 2011 in Sessions Case No.246 of 2010 for having committed murder of one Akbar Sardar Khan. The learned Additional Sessions Judge apart from sentencing him to life imprisonment, imposed fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months.

2. Before advertng to the facts of the case, it is to be noted that during pendency of this appeal, the appellant had absconded from Central Prison, Kolhapur when he was released on parole. There is a standing non bailable warrant against him till date.

3. Factual matrix in a nutshell can be stated as under;

4. Complainant (P.W.2) - Nasrin Abdul Ajj Khan and P.W.4- Nayma Najim Shah Mulla were friends. They occasionally used to visit the house of one Samsunissa Gulam Rasool Patel residing in "*Gulshan Villa*". A building by name "*Sai Krupa*" is situate in front of "*Gulshan Villa*". P.W.3 - Rubina Hussain Shaikh and P.W.12 - Rehana Sameer Shendule are real sisters. One Noorjaha is the mother of the appellant and mother-in-law of P.W.3 - Rubina Hussain Shaikh. Deceased Akbar Sardar Khan is the Driver of one Samsunissa Gulam Rasool Patel.

5. The incident occurred on 12th March, 2010. On that day, at about 5.00 pm, P.W.2 - Nasrin, P.W.4 - Nayma and P.W.12 - Rehana had been to the house of Samsunissa. P.W.3 - Rubina and her husband Hussain Shaikh also came over there and stated that there was a quarrel between P.W.3 - Rubina and her mother-in-law - Noorjaha on account of some domestic issue. They requested Samsunissa to mediate. Samsunissa convinced P.W.3 - Rubina and her husband - Hussain Shaikh and asked them to return to their house. However, within short time, P.W.3 - Rubina came back to Samsunissa and stated that her mother-in-law- Noorjaha was not allowing her to enter into the house. Thereafter, Samsunnissa asked P.W.2 - Nasrin, P.W.4 - Nayma and P.W.12- Rehana to convince Noorjaha. Accordingly, P.W.2 - Nasrin, P.W.4- Nayma and P.W.12 - Rehana had been to the house of Noorjaha around 5.30 p.m and attempted to convince Noorjaha. However, they could not convince her. Noorjaha wanted her sons to return home.

6. Meanwhile, her elder son namely Hamid Nasir Ali returned home at about 6.15 p.m. P.W.2 - Nasrin and others narrated about the quarrel and requested him to convince Noorjaha. Hamid also tried to convince his mother. Thereafter, within 15 to 20 minutes, the appellant came to the house. When P.W.2 - Nasrin, P.W.4- Nayma and P.W.12 - Rehana tried to communicate him about the incident, it is alleged that the appellant started abusing them as to why they had come to his house. He immediately whipped out a knife from his waist and rushed towards P.W.12 - Rehana by abusing her. Hamid tried to restrain him. Thereafter, P.W.2 - Nasrin and P.W.12 - Rehana were about to go to their house and were climbing down the staircase from third floor when the appellant again abused P.W.12 - Rehana by rushing towards her. At that time, Akbar Sardar Khan (hereinafter referred to as "deceased Akbar") came over there. He pushed P.W.12 - Rehana aside and tried to convince the appellant. However, all of a sudden, the appellant inflicted blows of knife in the stomach of deceased Akbar and twisted it. Then he took out the knife forcibly which resulted into serious bleeding injuries and ultimately deceased Akbar fell down. The appellant went downstairs of the said building; but he was caught by the neighbours including one Advocate Rajey Gaikwad and others. Deceased Akbar was taken to the hospital, however, Doctor declared him brought dead.

7. P.W.2 - Nasrin lodged a report with Kashimira Police Station. On the basis of the report, offences came to be registered vide C.R. No.83 of 2010 under sections 302, 504 and 352 of the Indian Penal Code (for short "I.P.C") against the appellant.

8. Investigating officer of this case P.W.16 - Anant Sitaram Bhoir visited the scene of occurrence. He recorded statements of the witnesses. He drew spot *panchanama*. An inquest *panchanama* was also drawn at the Hospital. Blood stained clothes of deceased Akbar as well as the appellant were seized and sent for chemical analysis to the Forensic Science Laboratory. After investigation, he laid a charge-sheet in the Court of Judicial Magistrate First Class, 2nd Court, Thane.

9. On committal, the learned Additional Sessions Judge framed a charge on 25th April, 2011 below **Exhibit 7** under sections 302 and 452 of the Indian Penal Code. It was read over to the appellant, he pleaded not guilty and claimed a trial. His defence was simplicitor denial of the offence alleged and false implication. No defence evidence has been adduced.

10. To substantiate it's case, prosecution examined 17 witnesses coupled with documentary evidence in the form of autopsy report, *panchanamas* and CA reports. The learned Additional Sessions Judge after considering the evidence on record found the appellant guilty of the offence punishable under section 302 of the Indian Penal Code and sentenced him to life imprisonment as above. However, the appellant came to be acquitted of the offence punishable under section 452 of the Indian Penal Code.

11. We heard Ms. Pawar, learned Counsel for the appellant, Ms Veera Shinde, the learned A.P.P and Ms. Kulkarni, appointed Advocate for respondent No.2.

12. Ms. Pawar would argue that the prosecution has failed to bring home the guilt of the appellant beyond all reasonable doubts as the learned Additional Sessions Judge erred in not considering the material omissions and contradictions on record which were so vital that a reasonable doubt has been created as to whether it was the appellant who was responsible for causing the death of deceased Akbar.

13. Learned Counsel took us through the evidence of prosecution witnesses. She would argue that without prejudice to the arguments, the appellant had no intention to commit murder of deceased Akbar. Only because deceased Akbar had intervened in the quarrel between PW.12- Rehana and the appellant, accidentally the appellant dealt blows of knife into the stomach of deceased Akbar. In short, the defence has taken an alternative plea of *transferred malice* as contemplated under section 301 of the Indian Penal Code. Ultimately, the learned Counsel would argue that it is a case of acquittal as the charge has not been proved beyond all doubts.

14. On the other hand, Ms. Shinde, the learned A.PP supported the impugned judgment of conviction and sentence by the learned Additional Sessions Judge by emphasizing on the fact that there are not one or two but four eye witnesses whose evidence is so consistent and convincing that there is hardly any scope to doubt their un-rebutted versions. The learned A.PP would argue that there is no question of *transfer of malice* in view of the fact that the appellant had inflicted not one or two but three stab wounds

in the stomach of deceased Akbar.

15. Indubitably, deceased Akbar died a homicidal death. Evidence of P.W.14 - Dr. Arun Bhanudas Koli would be relevant in that regard who had conducted autopsy over the corpse of deceased Akbar. The evidence of P.W.14 - Dr. Arun Koli indicates that on 13th March, 2010, when he was attached to Mira-Bhayandar Postmortem Centre, dead body of Akbar was referred by the Police for an autopsy. Since the cutter was not available, body was kept in Civil Hospital, Thane. He conducted autopsy on 13th March, 2010 and found following external injuries;

- 1] Right side chin stab wound 4x3x1 c.m (lower);
- 2] Left site forehead. Abrasion near left eye 1x1 c.m;
- 3] Left site in lower site in I abrasion 1/2 x 1/2 c.m;
- 4] Left site II abrasion on parallel lower site III abrasion 1x1 c.m;
- 5] Right hand back site elbow joint stab wound 3x2x1 c.m;
- 6] A stab wound at left hypochondriac area oblique 4x1 cavity deep elliptical margins regular inwardly draining oedematous redish a small content at upper pole at wound seen;

16. P.W.14 - Dr. Arun Koli noticed following corresponding internal injuries mentioned in column No.19;

- 1] Stab wound in front site 1x1/2 c.m front side spleen;
- 2] Abdominal incised wound 1x1x1/2 c.m splenic vessel at hilum.

According to this witness, there were six external injuries on the dead body of deceased Akbar. All injuries were ante mortem and within two hours of death. Corresponding internal injuries were mentioned in column No.19. It has been specifically testified by P.W.14 - Dr. Arun Koli that there was a stab wound on the front side spleen admeasuring 1x 1/2 c.m. Abdominal incised wound 1x1x1/2 cm spenic vessel at hilum. He has also noticed external stab wound on chin and left site forehead. There was one more stab wound on the elbow joint. Thus, there were three stab wounds on the person of deceased Akbar which corroborates the versions of the eye witnesses. Thus, there were stab wounds on abdomen, chest and elbow of deceased Akbar which were possible by Article-7-knife. This is the evidence of P.W.14 - Dr Arun Koli who categorically testified that those injuries were sufficient to cause death. Cause of death was due to haemorrhage shock due to stab wound. Accordingly, he issued a postmortem report under his signature. It is proved at **Exhibit 54**.

17. P.W.14 - Dr. Arun Koli had specifically testified that there were three stab wounds on the abdomen, chest and elbow which were possible by *muddemal* Article No.7 which was shown to him i.e knife. **Exhibit 56** is the arrest-cum-personal search *panchanama* of the appellant wherein weapon of the offence has been

described. It was an iron knife. It's total length is 1 ft x 1 c.m. Length of the blade is 20 c.m and grip is 11 c.m. It was sharp from one side and tapering towards the end. It was stained with blood.

18. Now, turning to the evidence of prosecution witnesses. There are four eye witnesses. They are P.W.2 - Nasrin, P.W.3- Rubina, P.W.4 - Nayma and P.W.12 - Rehana.

19. Evidence of P.W.2 - Nasrin indicates that on the day of the incident, P.W.3 - Rubina and her husband Hussain Shaikh had been to the house of Samsunissa and by that time, this witness along with P.W.4 - Nayma and P.W.12 - Rehana also reached over there and they were sitting outside the house of Samsunissa.

20. There was a quarrel between P.W.3 - Rubina and her mother-in-law- Noorjaha. P.W.3 - Rubina is the brother's wife of the appellant. P.W.3 - Rubina told Samsunissa that her mother-in-law - Noorjaha was not allowing her to enter into the house. Samsunissa, therefore, sent P.W.3 - Rubina to her in-law's house and she too accompanied them. This witness along with P.W.4- Nayma and P.W.12 - Rehana also accompanied Samsunissa to the house of Noorjaha. They tried to convince Norrjaha - mother-in-law of P.W.3 - Rubina and requested her to allow P.W3 - Rubina to stay in the house. However, Noorjaha declined. By that time, Hamid came over there. He too tried to convince his mother - Noorjahaa, but she was adamant.

21. After some time, the appellant returned home and started abusing P.W.12 - Rehana. When P.W.12 - Rehana asked the appellant to behave properly, he got angry and whipped out the knife from his waist. He pointed the knife to her stomach and then caught hold of her hair. By that time, this witness and others tried to rescue P.W.12 - Rehana from the clutches of the appellant and, in that process, came down on the staircase of third floor. Meanwhile, deceased Akbar arrived at the scene from downstairs and tried to pacify the quarrel. At that time, the appellant set free hair of P.W.12 - Rehana and inflicted blows of knife on the stomach of deceased Akbar. Not only he inflicted the blows in the stomach, but while taking out the knife, he twisted it. Due to such blows, deceased Akbar sustained injuries not only on the stomach but also on his face and hand and fell down. The appellant left the spot and went down.

22. This witness along with one Advocate Rajey Gaikwad carried deceased Akbar to the Hospital. However, Doctor declared him dead. This witness lodged a report with Police which is at **Exhibit 20**. The witness had duly identified the weapon of the offence i.e the knife-Article-7 shown to her during the trial.

23. A futile attempt has been made by the defence to rebut her testimony. However, nothing could be elicited to doubt her testimony except a few omissions which are not material and would not render the prosecution story unbelievable. Rather, it has been substantiated in the cross-examination as to how she along with P.W.3 - Rubina, P.W.4 - Nayma and P.W.12 - Rehana had

been to the Police Station after the incident to inform as to what had happened in that evening. The fact that the appellant caught hold hair of PW.12 - Rehana and attempt made by this witness to free her from the clutches of the appellant had been proved to be an omission, yet it would not be material in view of the substantive part of her evidence which deals with the actual infliction of blows of knife by the appellant on the stomach of deceased Akbar.

24. PW.3 - Rubina, PW.4 - Nayma and PW.12 - Rehana spoke in tune with PW.2 - Nasrin on material aspect of the case i.e assault by the appellant upon deceased Akbar by means of a knife. The sum and substance of the evidence of PW.3 - Rubina is that her mother-in-law - Noorjaha used to suspect her character, in the sense, she was suspecting her illicit relations with the husband of one Gulshan Patel, because Rubina had previously worked with Gulshan Patel. Her evidence reveals that on the day of the incident when her husband tried to take her to the house, her mother-in-law - Noorjaha strongly objected and did not allow them to enter into the house. When PW.3 - Rubina had been to the house of Samsunissa Patel and narrated the incident as to how her mother-in-law prevented her from entering into the house, PW.-2- Nasrin and PW.12 - Rehana at the request of Samsunissa had been to the house of Noorjaha. However, Noorjaha was firm on her stand not to allow PW.3 - Rubina in the house. Rather, it is testified by PW.3 - Rubina that Noorjaha wanted the appellant to come back. She even did not listen to her elder son Hamid who tried to convince her. Evidence of PW.3 - Rubina further indicates that

Noorjaha had said to P.W.12 - Rehana "*Tu Jati Kidhar Hai, Teri Charbi Nikal Denge, Tu Gulshan ke Jan pe Nachti Hai, Teri Charbi Mera Beta Aake Nikalega*". Here, it appears that Noorjaha referred the appellant as her *beta* who would take out the *charbi* from Rehana, literally means the appellant would teach her a lesson.

25. The evidence of P.W.3 - Rubina reveals that the appellant came over there and started abusing P.W.12 - Rehana. When P.W.12 - Rehana asked him not to abuse, the appellant said "*Tu kya Karegi re*". He took out one *sura* (knife) from his waist and kept it on the stomach of P.W.12 - Rehana. P.W.2 - Nasrin and P.W.4 - Nayma pushed back P.W.12 - Rehana but the appellant caught her hair and dragged her upto the third floor. P.W.3 - Rubina raised shouts by saying, "*mere bahen ko mar raha hai, bachao, bachao*". At that time, deceased Akbar came over there. The appellant kicked P.W.12 - Rehana and inflicted a blow of knife in the stomach of Akbar and twisted the same. After removing the knife from the stomach of Akbar, he ran downstairs. However, he was caught by the public.

26. A few omissions have been surfaced during the cross-examination of P.W.3 - Rubina which are again not material and would not make any dent in the otherwise convincing and cogent evidence of this witness. P.W.3 - Rubina admits that there was no enmity between the appellant and deceased Akbar and that due to the sudden arrival of Akbar on the spot, who tried to intervene and separate the quarrel, perhaps the appellant had inflicted the blow of knife in his stomach. As already stated hereinabove, the

defence has also taken an alternative plea of *doctrine of transferred malice* which we shall discuss hereinafter. Suffice it to say that in view of the number and nature of injuries noticed upon the dead body of deceased Akbar by P.W.14 - Dr. Arun Koli, it would be quite difficult to construe that the appellant had no intention or knowledge to commit murder of deceased Akbar.

27. Turning to the evidence of P.W.4 - Nayma. It corroborates the evidence of P.W.2 - Nasrin and P.W.3 - Rubina in material particulars. Presence of P.W.2 - Nasrin, P.W.3 - Rubina and P.W.4 - Nayma on the spot of the incident is quite natural being residents of the same locality and they too had been to the house of the appellant to convince his mother Noorjaha to allow P.W.3 - Rubina to enter into the house. By no stretch of imagination, these witnesses can be branded as interested witness as they had no axe to grind against the appellant. Testimonies of P.W.2 - Nasrin, P.W.3 - Rubina and P.W.4 - Nayma are quiet consistent as regards the time, venue and manner of occurrence. P.W.4 - Nayma apart from other facts, as stated earlier, as to the reason why they had been to the house of Noorjaha, testified that even another son of Noorjaha namely Hamid tried to convince his mother and even scolded her for her behaviour, for, she was not ready to accept P.W.3 - Rubina in the house. Evidence of P.W.4 - Nayma further reveals that Noorjaha had said that the appellant Yakin Ali will come and he will take the decision. It can be inferred from the overall circumstances and the evidence on record that, perhaps, Noorjaha was aware of the nature and temperament of the appellant who would make the things straight by one way or the other.

Otherwise, Noorjaha could have accepted the request of her another son Hamid.

28. Be that as it may. The evidence further reveals that when the appellant returned home, his younger sister told him "*Bhai Hamko Inhone Nanga Karke Maare*", meaning thereby, P.W.12- Rehana and others had assaulted after denuding them. The alleged statement of younger sister of the appellant "*Bhai Hamko Inhone Nanga Karke Maare*" has been an omission. The appellant, thereafter, took out a knife and rushed towards P.W.12 - Rehana. This witness and others tried to pull Rehana to save her and during that process, all of them came up to the third floor. P.W.12 - Rehana tried to shelter herself behind deceased Akbar, however, the appellant inflicted blow of knife in the stomach of Akbar. Mother of the appellant had offered water to Akbar who had fallen on the staircase. The appellant was caught by the public. Thereafter, along with Advocate Rajey Gaikwad, P.W.2 - Nasrin had carried Akbar to the Hospital.

29. P.W.4 - Nayma too, had identified knife - Article 7 by which the appellant had dealt blows on the stomach of deceased Akbar. The fact that younger sister of the appellant told him "*Bhai Hamko Inhone Nanga Karke Maare*" as well as the fact that this witness tried to convince the appellant and that the appellant pushed P.W.12 - Rehana are proved to be omissions. However, these are not material in view of the fact that the evidence of this witness is otherwise consistent and inspires confidence on the material aspect of inflicting blows of knife by the appellant on the person of

deceased Akbar at the third floor of the building.

30. Turning to the evidence of P.W.12 - Rehana wherein she has also supported the testimonies of P.W.2 - Nasreen, P.W.3 - Rubina and P.W.4 - Nayma on material aspect of assault by the appellant by means of a knife and resultant death of deceased Akbar due to the stab wounds. What has been additionally stated by P.W.12-Rehana is that the appellant caught her hair by pointing knife to her stomach and abused her by saying "*Teri Maa Ka Bhosada, Bahot Ucchalati Hai Gulshan Ke Saath Raheke, Bahot Ucchalati hai, Teri Charbi Nikalta Hu*" and then dragged her upto to the third floor. When deceased Akbar came for her rescue, the appellant set her free and inflicted blows of knife on his stomach. She specifically testified that the appellant had inflicted three stab wounds on the stomach of deceased Akbar at three times and then she became unconscious. There are few omissions in her statement before the Police. Infliction of three blows of knife into the stomach of Akbar is proved to be an omission. As a matter of fact, there were indeed three blows but they were on different parts of the body. In view of the evidence of P.W.14 - Dr. Arun Koli, there was one blow in the stomach while other two blows were on the chest and hand of deceased Akbar. It cannot be said to be a material omission in view of the fact that normally during such incidents, it is quite difficult to have a photographic memory to retain each and every act of the assailant. What is required to be seen is the substance and not other superficial aspects. It has been elicited in the cross-examination that there were six cases pending against her and Samsunnisa Patel and that in two criminal cases,

she was in jail for one month and ten days along with Samsunnisa. That itself would not falsify her evidence as regards the incident in question.

31. C.A report **Exhibit 63** indicates blood group of the appellant as "B". C.A report **Exhibit 64** indicates blood group of deceased Akbar as "A". Even though, C.A report **Exhibit 65** indicates result of blood group on Articles No.1 to 6 and 9 and 10 as inconclusive, blood found on the shirt and pant of deceased i.e Articles-7 and 8 indicates blood group as "A" of the deceased. C.A report **Exhibit 66** indicates that *muddemal* i.e two buttons wrapped in paper (Exhibit 5) and one button wrapped in paper (Exhibit 6) tally with buttons on full bush shirt i.e (Exhibit 2) and (Exhibit 8) with respect to design as well as physical properties and thermal characteristics. C.A reports support the prosecution case.

32. Inquest *panchanama* **Exhibit 30** drawn in the presence of *panchas* i.e P.W.5- Mohd. Soyeb Abdulla Jumani also supports the prosecution case. Even though P.W.5- Mohd. Soyeb Abdulla Jumani initially did not support the prosecution case but during cross-examination by the learned A.P.P, he admitted the contents of the said *panchanama* and noting down all the injuries on the dead body of deceased Akbar, in his presence at Orbit Hospital, Kashmirira. P.W.6-Amiruddin Jainuddin Patel has also proved the contents of the inquest *panchanama* **Exhibit 30** and corroborated the evidence of P.W.5-Mohd. Soyeb Abdulla Jumani.

33. P.W.7 - Hitendra Patil, P.W.8 - Prafulchandra Patil, P.W.9 - Sagir Alam Alfaz Alam and P.W.11 - Sunil Raut have turned hostile, so also P.W.13 - Rajanameri Perinaygam. However, P.W.16 - Anant Bhoir, Investigating Officer has testified as to how the investigation was conducted and has also proved the omissions in the statements of P.W.7 - Hintendra Patil, P.W.8- Prafulchandra Patil, P.W.9 -Sagir Alam Alfaz Alam and P.W.11 - Sunil Raut. It can be safely inferred that these witnesses had been won over by the defence. That itself does not make any difference as evidence of four eye witnesses is quite acceptable, trustworthy, believable and inspires full confidence.

34. P.W.1- Dattesh Murlidhar Pankar has proved the spot/seizure *panchanama* qua one piece of brick, buttons of shirt, red shirt and one key chain lying on the staircase of third floor. Spot *panchanama* is proved at **Exhibit 11**.

35. Turning to Section 301 of the Indian Penal Code which defines culpable homicide by causing death of person other than person whose death was intended. In other words, this is called a *doctrine of transferred malice* or transmigration of motive. No doubt, in the given set of facts and evidence on record, it appears that the appellant wanted to cause death of P.W.12 - Rehana. It has come on record that he grabbed her hair and pointed the knife on her stomach. When deceased Akbar tried to intervene, he left P.W.12 - Rehana and assaulted deceased Akbar.

36. As already discussed hereinabove, it has been categorically testified by almost all the eye witnesses supported by the evidence of P.W.14 - Dr. Arun Koli that there were three stab wounds on the person of deceased Akbar which necessarily meant to be that the appellant had full knowledge and intention that due to his act, Akbar would die or otherwise, he would have inflicted a single blow, not on his vital part, but somewhere else. It is further evident that he did not simply stab in the stomach of Akbar but twisted the knife and then pulled it back which demonstrates his clear intention and *mens rea* in committing the murder of deceased Akbar. Though, initially, it might, at the first blush, appeared that he intended to cause death of P.W.12 - Rehana but, instead he thrust the knife into the stomach of Akbar with force and twisted the same. He did not stop there but further stabbed deceased Akbar in the chest and hand. What more is required to understand the intention of the appellant? Act of the appellant would not, therefore, be covered by section 304 of the Indian Penal Code, but it would definitely be covered within clause (ii) of section 300 of the Indian Penal Code which contemplates that culpable homicide is a murder 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. No sane man would accept and believe that instead of causing death of P.W.12 - Rehana, the knife blows accidentally fell upon the person of deceased Akbar. It is significant to note that there was not a single stab wound but consecutively three stab wounds inflicted on the vital part of the body of deceased Akbar namely stomach, chest and arm. It cannot be said to be a case covered

under section 301 of the Indian Penal Code. It is more conspicuous in view of the fact that he freed P.W.12 - Rehana and then assaulted deceased Akbar and, therefore, there was no question that while inflicting blow of knife upon P.W.12 - Rehana, it alighted on the person of deceased Akbar. It appears that real intention of the appellant had been to kill Akbar instead of P.W.12 - Rehana. The act is quite deliberate, intentional and with full knowledge and, therefore, we do not agree with the contention of the defence that it was a case of *transfer of malice*.

37. *Having* taken into consideration the entire evidence on record, especially well corroborated versions of four eye witnesses supported with the postmortem report, C.A reports as well as *panchanamas*, the learned Additional Sessions Judge, Thane held the appellant guilty of the offence punishable under section 302 of the Indian Penal Code.

38. Before parting with the judgment, it appears that the learned Additional Sessions Judge, Thane while convicting the appellant, apart from substantive sentence, imposed a fine of Rs.5000/- which was directed to be paid to the legal heirs of deceased Akbar, if recovered. We do not feel that an amount of Rs.5,000/- would be adequate to compensate the victim i.e next of kin of deceased Akbar. In that view of the matter, the District Legal Services Authority, Thane shall decide the quantum of compensation to be awarded to the widow of deceased Akbar in view of the victim compensation scheme under section 357-A of the Code of Criminal Procedure.

39. The District Legal Services Authority, Thane shall after conducting due inquiry within two months from today, award adequate compensation to the widow of deceased Akbar.

40. We appreciate the sincere efforts of Junior Advocate Ms. Ruchi Pawar who has not only argued the appeal competently but took us through the relevant legal provisions. We also appreciate the efforts of Ms. Devyani Kulkarni, who has been appointed for espousing cause of respondent No.2 by drawing our attention to the legal provisions and case laws on the subject.

41. Consequently, there is no reason to interfere with the impugned judgment.

42. As such, the appeal stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]

[SMT. SADHANA S. JADHAV, J.]