

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

CRIMINAL APPEAL NO. 729 OF 2018

1. Sanjay s/o Datta Shinde,
(on bail by order dated 02.04.2019),
aged about 26 years, Occ. Labour,
2. Sanjay s/o Prakash Bachalkar,
(In jail) aged about 27 years, Occ: Labour,
3. Prathmesh alias Nana s/o Ankush Rode,
(In jail) aged about 30 years, Occ: Labour,
4. Mayur s/o Vilas Pusnake,
(In jail) aged about 20 years, Occ: Labour,

All R/o Umarsara, Tahsil and District
Yavatmal (Presently in District Jail Yavatmal)

...APPELLANTS

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station Wadgaon Road,
Yavatmal, Dist. Yavatmal.

...RESPONDENT

Shri R.M. Daga, Advocate for appellants.
Shri T. A. Mirza, A.P.P. for respondent.

CORAM:- V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE:- MARCH 3, 2022

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

Being aggrieved by the judgment and order of conviction passed by learned Additional Sessions Judge, Yavatmal in Sessions Trial No.21 of 2017 dated 03.10.2018, the appellants have filed the present appeal. All the appellants were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short “IPC”) and were directed to suffer imprisonment for life and to pay fine of ₹10,000/- by each of them and in default to undergo further Rigorous Imprisonment for six months. In addition to the aforesaid conviction, appellant no.3 – Prathmesh alias Nana Rode was also convicted for the offence punishable under Sections 324 and 506 of the IPC and for that, he was directed to suffer Rigorous Imprisonment for two years and to pay fine of ₹2,000/- and ₹1,000/- respectively with default clause.

All the appellants were acquitted of the offence punishable under Sections 307, 504 and 120B of the IPC and Sections 4 and 25 of the Arms Act.

Prosecution case:

2. The prosecution case as it was disclosed during the

course of trial is as under:

A) On 10.08.2016, Santosh Vaijnath Kendre (PW13) was attached to the Police Station, Wadgaon Road as API. His duty hours on the said day was from 08:00 p.m. to 08:00 a.m. on the next day. While he was discharging his duty, he received an information of commission of crime at Sankatmochan Road and the injured were taken to Yavatmal Government Hospital therefore API Kendre went to the hospital.

On reaching there, he came to know that injured Amit was serious and therefore he was taken to Nagpur and one Ashish Paltankar was admitted in the hospital with injuries on his person. He therefore issued a letter to Medical Officer (Exh.35) to certify as to whether injured Ashish is fit to give statement.

Dr. Azharuddin Sharif Patel (PW2) accordingly examined injured Ashish and made endorsement on letter (Exh.35) itself that patient is conscious and orientated to time, place and person. Endorsement recorded by Dr.Azharuddin is at Exh.36. Accordingly, API Kendre recorded the statement of Ashish (Exh.39), the injured. After recording his statement, Dr. Azharuddin gave his certificate that the patient was conscious and well orientated at the time of recording his statement and

statement was recorded in his presence. The said endorsement of Dr. Azharuddin is at Exh.37.

B) As per Exh.39 statement, recorded by API Kendre, Ashish disclosed that his cousin Amit Dipak Paltankar, stays beside his house, who used to give helping hand to him sometimes to run a pan kiosk by name Samarth Pan shop in front of Satanji Temple. It is also disclosed in the statement that about three months prior, a dispute occurred between Amit and Nana Rode(appellant no.3).

Statement (Exh.39) further recites that on 10.08.2016 in the night hours at 08:45 p.m. Amit came to pan kiosk and they both started watching a movie by name 'Tiger' in the pan kiosk itself. That time, Nana Rode (appellant no.3), Chini, Barkya and Jyangya were standing at pan kiosk of Viju Rajurkar, which was just opposite of pan kiosk of Ashish. Statement Exh. 39 further shows that all of a sudden they came to pan kiosk of Ashish. That time, Chini and Nana Rode started abusing Amit, and Nana challenged Amit by stating, 'तुझा विषय खतम करतो' and started assaulting on him by fist and kick blows. Thereafter, Nana Rode took out knife and when Ashish tried to save Amit resulting receiving injuries on his left hand. Thereafter, he intentionally

made an assault on him however that was also saved by Ashish by his left hand. At that time, Chini alias Mayur Pusnake (appellant no.4), Jyangya and Barkya were assaulting Amit by fist blows due to which Amit fell on the ground. At that time, Chini took flower pot and hit on the chest of Amit. Jyangya assaulted on Amit on his head by cold-drink bottle due to which the said bottle was crushed. Thereafter, all four dragged Amit in front of Pan kiosk on the road and continue to assault by kick blows and at that time, Chini and Nana took the heavy tile and hit on Amit's head. As per the statement Exh.39, the incident was witnessed by other persons also. As per statement, Ashish took Amit in an auto-rickshaw and brought to the Government Hospital.

On the basis of the aforesaid statement API Kendre registered an offence (Exh.40) punishable under Section 307 read with Section 34 at Wadgaon Police Station against four persons. Due to the death of Amit Section 302 of IPC was added. API Kendre arrested appellant no.1-Sanjay Shinde and appellant no.2 – Sanjay Bachalkar on 11.08.2020 under arrest Panchanam (Exh.49 and 50).

During the course of the investigation API Kendre visited the spot of the incident and spot panchama was drawn in

presence of *panchas*. The spot panchanama(Exh.56) is duly proved by Yogendra Kalbande (PW8). From the spot various articles scattered on the spot of the occurrence namely the pieces of glass, bottle, tiles, broken pot, broken Rudraksh and pair of Chappal were also seized under the spot panchanam itself. Further, investigation was handed over to Umesh Nasare (PW12).

C) After the case diary was received, Umesh Nasare (PW12) carried further investigation from 11.08.2016 itself. He visited Government Hospital, Yavatmal and conducted inquest over dead body under inquest panchanama (Exh.30). He also seized clothes of deceased Amit under seizure panchanama (Exh.44), viscera, nail clippings, hair samples and blood samples of Amit was seized under seizure panchanama (Exh.45). Similarly, he seized clothes of the appellant nos.1 and 2 in presence of pancha witness Yogendra Kalbande (PW8) vide panchanma (Exhs.57 and 58). Investigating officer Nasare also seized clothes of injured Ashish Paltankar under seizure panchanama (Exh.46). He also seized blood samples of accused no.1 and 2 (Exhs.49 and 50).

On 25.08.2016, PSI Nasare (PW12) arrested appellant nos.3 and 4 under arrest panchanama (Exh.47 and 48). At the time of arrest, mobile handset and SIM card of Reliance service provider were also seized from appellant no.4 under panchanama (Exh.62). He also seized phone of Nokia along with SIM card and two other SIM cards were also seized from appellant no.3 under seizure panchanama (Exh.61).

Clothes of the appellant no.3 and 4 were also seized under seizure panchanama (Exh.80 and 81) respectively, blood stains were noticed on jean pant of the appellant no.4. Blood samples of appellant nos.3 and 4 were also seized after their collection under seizure panchanama (Exh.81).

During the police custody remand the appellant no.3 made his disclosure statement in presence of panchas and agreed to show the place where he concealed weapon i.e. knife. The statement was recorded in presence of panchas. Exh. 82 is the admissible portion from the disclosure statement recorded under Section 27 of the Indian Evidence Act. Thereafter, appellant no.3 led the police party and from the place which was specially known only to the appellant no.3, in presence of panchas, took out knife, which was concealed. The said knife was seized and sealed on the

spot under the recovery panchanma (Exh.63). The investigating officer thereafter sent Muddemal property to CA and after completion of other usual investigation he presented charge-sheet in the Court of Jurisdictional Magistrate who in turn committed the same the Court of Sessions as it was exclusively triable by the Court of Sessions.

D) The learned Sessions Judge in Sessions Trial No.21 of 2017 framed the charge against the appellants below Exh.12 for the offence punishable under Sections 302, 307, 504, 506 read with Section 34 and 120B of the IPC and under Sections 4 and 5 of the Arms Act. All the appellants abjured their guilt and prayed that they be tried.

E) In order to prove its case against appellants prosecution has examined in all 13 witnesses and also relied upon the various documents duly proved during the course of the trial. None of the appellants examined any defence witness and their common tread of defence was that false case is lodged against them.

After appreciating the entire prosecution case, the learned Additional Sessions Judge, before whom the trial was committed, passed the impugned judgment. Hence, this appeal.

3. We have heard Shri R.M. Daga, learned counsel for the appellants and Shri T.A. Mirza, learned Additional Public Prosecutor for the respondent/State in *extenso*. We have gone through the paper book in detail with the assistance of learned counsel.

4. According to the submission of the learned counsel Shri Daga that all the appellants are roped in falsely at the behest of first informant. He submitted that conduct of PW4-Vijay Rajurkar is unnatural, therefore, it is his submission that this Court should discard him as eye witness. It is also his submission that PW6-Sarita, mother of the deceased, was disbelieved by the trial Court to the extent that she is eye witness. Similarly, he submitted that PW5-Sudhakar also cannot be eye witness.

Insofar as the evidence of first informant-Ashish (PW3) is concerned, it is his submission that he is taking name of only appellant no.3 and appellant no.4. He submitted that the though other two accused person were referred in first information report as Jyangya and Barkya no test identification parade was conducted during the course of trial, which is fatal to the prosecution. It is also his submission that no overt act is attributed

to appellant no.1 – Sanjay Shinde and appellant no.2 – Sanjay Bachalkar therefore they cannot be convicted with the aid of Section 34 of the IPC. To buttress his submission, he placed reliance on recent pronouncement by Hon'ble Apex Court in Criminal Appeal No.288 of 2022 arising out of Special Leave Petition (CRL) No.6893 of 2021 dated 16.02.2022 and read out paragraph nos.11 and 20 from the said judgment. He, therefore, submitted that in any case the appeal is required to be allowed partly by acquitting appellant nos.1 and 2.

5. *Per contra*, learned Additional Public Prosecutor, Shri T.A. Mirza, vehemently opposed the submissions put forth by the learned counsel for the appellants. He submitted that even role is attributed to the appellant nos.1 and 2 in respect of their overt act, if F.I.R. (Exh.39) and the evidence of eye witnesses including the first informant is read in correct perspective. He, therefore, submitted that appeal be dismissed.

Critical examination of prosecution case:

6. Dr. V. Niranjani (PW9) on 10.06.2016 at 10:30 p.m. medically examined Amit when he was alive. He found that time

various injuries. It is undisputed that since condition of Amit was serious when he was taken to Nagpur, however during journey he died.

On same date Ashish (PW3) was examined by him and on his examination he found following injuries:

1. tab entry wound on left forearm of size 5 x 1.5 x 1 cm.
2. An incised exit wound on left elbow of size 1 x 1 x 0.5 cm.

According to evidence of Dr. Niranjani, these injuries were grievous in nature and caused by sharp edged pointed weapon and the same were fresh. He proved by injuries certificate of Ashish (Exh.66).

7. Dr. Kapildeo Patil (PW1) conducted post mortem over the dead body of Amit, while conducting the same he found following external injuries at the time of conducting post mortem.

1) Stitched wound over right parietal region, horizontally placed of size 4 cm x 2 cm x tissue deep. On opening the stitches, margins were irregular and blood infiltrated.

2) Lacerated wound over left parietal region, vertically placed of size 2 cm x 1 cm x tissue deep, margins were irregular and blood infiltrated.

- 3) *Multiple abrasions present over midfrontral region of head of size ranging from 1 cm x 0.5 cm to 0.5 cm to 0.2 cm, reddish in colour.*
- 4) *Lacerated wound over lateral angle of left eye of size 1.5 cm. X 0.5 cm x tissue deep, obliquely placed, margins were irregular and blood infiltrated.*
- 5) *Graze abrasion present over lateral side of left eye of size 12 cm x 7.5 cm directed medially downwards, reddish in colour.*
- 6) *Multiple abrasions present over nose of size ranging from 1 cm x 0.5 cm to 0.5 cm to 0.2 cm, reddish in colour.*
- 7) *Contused abrasion present over right cheek of size 8 cm x 6 cm, reddish in colour.*
- 8) *Abrasion present over lower lip of size 1.5 cm x 0.5 cm., horizontally placed, reddish in colour.*
- 9) *Lacerated wound over chin of size 2.5 cm x 1.5 cm x tissue deep, obliquely placed, margins were irregular and blood infiltrated.*
- 10) *Abrasion present over chin of size 4 cm x 3 cm reddish in colour.*
- 11) *Multiple abrasions present over right lower chest, vertically placed of size ranging from 6 cm x 0.5 cm to 2.00 cm x 0.5 cm, reddish in colour.*
- 12) *Multiple abrasion present over lower chest, vertically placed of size ranging from 6 cm x 0.5 cm to 2.00 cm x 0.5 cm, reddish in colour.*

- 13) *Multiple abrasions present over extensor aspect of right elbow of size ranging from 1 cm x 0.5 cm to 0.5 cm x 0.5 cm, reddish in colour.*
- 14) *Multiple abrasions present over left shoulder of size ranging from 1 cm x 0.5 cm to 0.5 cm x 0.5 cm, reddish in colour.*
- 15) *Multiple abrasions present over extensor aspect of left elbow of size ranging from 1 cm x 0.5 cm to 0.5 cm x 0.2 cm, reddish in colour.*
- 16) *Multiple abrasions present over mid back, vertically placed of size ranging from 1 cm x 0.5 cm x 0.2 cm, reddish in colour.*
- 17) *Lacerated wound over right knee, obliquely placed of size 3 cm x 2 cm x tissue deep, margins were irregular and blood infiltrated.*
- 18) *Incised wound over posterior aspect of middle one third of right thigh obliquely placed of size 3 cm x 1 cm, margins were clean cut and reddish.*

He also found following internal injuries :-

Underscalp haematoma over right fronto-parieto-temporal region and left fronto-temporal region. Dark red in colour. There was evidence of horizontal linear fracture in anterior cranial fossa. Fracture margins were irregular and blood infiltrated. There was diffused subdural hemorrhage present all over the brain surface, also there was subarchnoid hemorrhage over right and left temporo-parietal region.”

8. He proved the post mortem report, which is at Exh.31. According to post mortem report and the substantive evidence of Dr. Kapildeo Patil the cause of death was due to head injuries. According to Doctor, the injuries as mentioned in the post mortem report were sufficient to cause death in the ordinary course of nature. He also found that external injury nos.1 to 3 correspondes to internal damage as mentioned in column no.19 of post mortem report. Thus, from the post mortem report (Exh.31) and from evidence of Dr. Kapildeo Patil, it is clear that Amit died homicidal death and appellants are the assailants as per the prosecution.

9. Learned counsel for the appellants submitted that identity of the assailant is not properly established in absence of holding and conducting the test identification parade during the course of investigation.

10. Let us examine whether this submission can sustain in the eye of law.

11. The incident in question occurred on 10.08.2016 in

between 21:30 hours to 21:45 hours. Exhibit 39 is the statement of Ashish (PW3), cousin of deceased Amit. This statement was recorded by API Kendre (PW13) after obtaining fitness certificate of Ashish from Dr. Azharuddin Patel (PW2). From the endorsement (Exh.37) given by Dr. Azharuddin Patel it is clear that recording of statement of injured Ashish was completed on 11.08.2016 at 01:45 a.m. Thus, without losing any time the investigating officer Kendre took immediate steps to record the statement of injured.

Exh.40 is the printed F.I.R. From column 3(b) and (c) it is clear that the crime was registered with Wadgaon Road Police Station by API Kendre on 11.08.2016 at 03:20 a.m. That shows that no time was not wasted for registration of crime after the incident in question.

12. Prompt lodgement of F.I.R. always rules out false implication of the accused persons and also exaggeration of the incident. The obvious reason is because first informant thought process is not influenced by anybody. The immediate narration of the incident by the first informant if he is eye witness will always be the account of the incident which he has witnessed.

13. Ashish (PW3) apart from the fact that he is a first informant is also an injured eye witness. In addition to this, his presence on the spot is not disputed at all. The incident in question has occurred at the Pan kiosk of Ashish. Further, the first informant has specifically referred the name of appellant no.3 as Nana Ankush Rode. Insofar as other appellants are concerned, he referred their names as Mayur alias Chini Pusnake (appellant no.4), brother-in-law of Vitthal Done i.e. appellant no.2 and Jyangya (appellant no.1). From the said, it is clear that the name of the appellant nos.1 and 2 were not disclosed but they were referred as brother-in-law of Vitthal Done and Jyangya. In this context it is the submission of the learned counsel for the appellants that the test identification parade was must and not conducting the same is fatal to the prosecution.

14. It is a trite law that the test identification parade is not the substantive piece of evidence. The identification of the accused from the witness box by the witness is a substantive evidence. The purpose for holding and conducting the test identification parade is to lend the assurance to investigating officer that his the line of

investigation is on a correct path.

15. From the unchallenged evidence of Ashish (PW3) it is clear that he was knowing all the appellants since they used to come to Chowk, where his Pan kiosk is situated.

It is very common that though the name of a person is a particular one, he may also be knowing by his nick name in the society and many a time a person may not recollect the actual name of a person and he may refer that person his nick name alone.

16. After the appellants were arrested their arrests forms were prepared by the investigating officer. Exh.47 is the arrest form of appellant no.3. Exh.47 would reveal at clause-6 under the head particulars of the accused, his name is stated as Prathmesh Ankush Rode and his nick name i.e. alias Nana.

Exh. 48 is the arrest form of appellant no.4. This will show as his name is Mayur Vilas Pusnake and his nick name i.e. alias Chinya.

Exh. 49 is the arrest form of appellant no.1- Sanjay Datta Shinde, his nick name i.e. alias Barkya.

Exh.50 is the arrest form of appellant no.2 – Sanjay Prakash Bachalkar, his nick name i.e. alias Jyangya.

The most important fact about these four arrest forms is that during the course of the trial all the appellants specifically admitted these documents. On their admission, these documents were exhibited by the learned Judge of the trial Court. Therefore, it is clear that they themselves have admitted that they have nick names which are mentioned in their arrest forms. Therefore, it is crystal clear that apart from their actual name of all these four appellants also known in the society by their nick names.

Injured Ashish has referred in his statement referred appellants by their nick names coupled with their they were known to the said witness which is not disputed at all. In our view not holding of test identification parade is not fatal inasmuch as injured witness Ashish was known the identity of the identity of each of the appellant.

17. Another submission of the learned counsel is that no overt act is attributed to appellant nos.1 and 2 therefore they cannot be convicted by taking aid of Section 34 of the IPC.

18. While considering his submission the Court cannot forget the cardinal principle of criminal jurisprudence that ordinarily every man is responsible criminally for criminal act done by him. No man can be held responsible for an independent act and wrong committed by the other. The principle of criminal liability is that the person who commits an offence is responsible and for that only he can be held guilty. However, Section 34 of the IPC makes an exception to this principle. It lays down the principle of joint liability in doing a criminal act. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention; is the law laid down by the Hon'ble Apex Court in various authoritative pronouncements.

The existence of common intention has to be inferred from the facts.

19. In the light of aforesaid established principle of law, we are afraid that the submission made by the learned counsel for the appellants that the appellant nos.1 and 2 cannot be convicted by taking aid of Section 34 of the IPC has any merit. In that behalf it would be useful to examine the prosecution case from the said angle. From

the evidence of Ashish (PW3), which is corroborated in respect of material fact by Vijay (PW4). It is clear that right from beginning these four persons were together.

20. The learned counsel for the appellants submitted that Vijay Rajurkar cannot be said to be the eye witness because of his conduct.

Vijay Rajurkar is another Pan kiosk owner whose Pan kiosk is situated just opposite to the Pan kiosk of Ashish (PW3). Unchallenged facts which Vijay established that he was knowing all the appellants as they used to come his Pan kiosk to have “Kharra” (i.e. preparation of tobacco and betel nut).

21. Evidence of Ashish shows that Vijay Rajurkar was present at his Pan kiosk and all the appellants were standing near the Pan kiosk of Vijay. Vijay (PW4) states on oath that at the relevant time all the appellants were present at his Pan kiosk. According to learned counsel inaction on the part of Vijay not to intervene in the quarrel and he being remaining seated in Pan kiosk during the entire incident as admitted by him in his cross-examination is sufficient to discard his evidence.

22. Reaction of a person to the action by 3rd person in his presence varies from person to person. Different persons may react differently to same situation. Therefore, merely because he did not participate in rescuing the injured or the deceased the Court should not discard his testimony only on that ground especially when his testimony is found to be trustworthy and is without any exaggeration.

23. From the nature of the injuries as mentioned in the post mortem report and the substantive evidence, it is crystal clear that deceased must have been dragged from Pan kiosk on road, as stated by this eye witness as disclosed by injured Aashish also, because of Autopsy Surgeon noticing multiple abrasions on the back and injuries nos.10 to 16.

24. Thus, from the evidence of PW3 and PW4, it is clear that before actual assault of all the appellants assembled near Pan kiosk of Vijay and thereafter they rushed towards Pan kiosk of Ashish and started the assault, which proves ultimately fatal qua Amit.

25. The overt acts of all appellants as per first information report (Exh.39), which is reiterated by the first informant in his substantive evidence is as under:

- i. The appellant no.3 – Nana was having knife. He assaulted on deceased as well as Ashish (first informant) by the knife.
- ii. During this assault remaining accused persons assaulted by fist and kick blows upon the deceased resultantly he fell down on the ground.
- iii. Thereafter, appellant no.4 dropped flower pot on the chest of deceased.
- iv. Thereafter, appellant no.2 (Jyangya) assaulted by means of bottle on the head of deceased.
- v. Thereafter, all the accused dragged deceased on the road.
- vi. Thereafter, appellant no.4 (Chini) and appellant no.3 (Nana) assaulted on the head of deceased.

Thus, the submission of the learned counsel for the appellant that no overt act was attributed at least to the appellant nos.1 and 2 is not found to be correct.

26. From the evidence of first informant and PW4 Vijay it is firmly establish that all the appellants were together at the Pan kiosk of PW4. They all simultaneously rushed towards the Pan kiosk of first informant where along with the deceased were

seating. They all simultaneously started assault. They dragged deceased on road and continued their attack on his chest and head.

In our view, their togetherness and assault on first informant and the deceased in group clearly establish that they were sharing common intention to commit murder of Amit.

27. According to the first information report, deceased Amit disclosed to him about a quarrel of deceased with appellant no.3-Nana. Similarly, it was stated in his substantive evidence, as reason for assault on Amit. As per his evidence, there was a dispute with deceased with all the appellants and the reason for the that was on account of money.

Though learned Judge of the trial Court has not believed Sarita (PW6), the mother of the deceased as eye witness and which appears to be correct, however her evidence would show that the reason for assault on her son was on account of previous money dispute.

28. The prosecution has also examined one Shaikh Jahid (PW7). He was a friend of deceased also he knows all the

appellants. As per his evidence, after getting information about assault and the admission of Ashish in the hospital he went there. That time, he received a phone call from appellant no.3-Nana and as per evidence of Shaikh Jahid (PW7) during that verbatim conversation the appellant no.3 said to him as “*Maine Tere Bahi Ko Mar Diya*”. Upon that prosecution witness told appellant no.3 that “*Tune Galat Kiya*”. As per the prosecution witness, thereafter, appellant no.3 stated to him that “*Muze Tumse Yehi Sunana Tha*” and then he asked him to come alone at Sankatmochan road. According to this prosecution witness, this was immediately disclosed to a police personnel who was standing near to him thereafter he and police went to Sankatmochan road however nobody was found thereafter and thereafter the phone of appellant no.3 was not responding.

What is important to note above is that this particular version made of oath by this prosecution witness is not even touch by the learned cross-examiner when this witness was available for the same. Thus, the evidence of this prosecution witness has gone unchallenged. Tenor of the said talk as reproduced hereinabove allows to Court to reach to the conclusion that there must be the previous enmity in between deceased and the at least with

appellant no.3-Nana and other appellants being his associate shared common intention with him to finish Amit and the all attack on him with their common intention to commit his murder.

29. A feeble submission was also made about evidence of Sudhakar (PW5) that he also cannot be eye witness because though he reached to the spot and when the incident was going on he did not took any steps to save the deceased. From the evidence of this prosecution witness, it is clear that when he reached on spot getting information of assault he noticed that four accused, who are known to him, were assaulting on Amit, who was lying on the ground and injured Ashish was standing. At that time, as per evidence of this prosecution witness appellant no.3 showed knife to him and quipped “समोर आला तर मारुन टाकीन”. As per evidence, therefore he did not intervene and in view of the threat extended to him there was reason for this man not to intervene to rescue that might have endanger his life. Therefore, only for that reason his evidence cannot be discarded.

30. According to Dr. Kapildeo, on 30.10.2016 he received query letter (Exh.32) from the investigating officer along with

broken pieces of glass bottle and one blood stain piece of tile, pieces of broken pot and one knife in sealed condition. According to the Autopsy Surgeon, on 17.10.2016 he examined those articles and changed his report (Exh.33). As per Exh.33, Article-A is a piece of glass bottle and Article-D is a knife. According to doctor's opinion cut marks mentioned in column 7 of post mortem report are possible with Article-A and Article-D and injury nos.1 to 17 of column no.17 corresponding to internal damage mentioned in column 19 of the post mortem report are possible by Article-A to Article-C. As per Exh.33, Article-C is flower pot and Article-B is blood stained tile. According to Exh.33 report, injury no.18 of column 17 of post mortem report is possible by Article-D i.e. knife. As per evidence, all these articles were dangerous and they can cause death, if used as weapons. According to Doctor, thereafter he packed sealed label and handed over to the police.

31. The investigating officer under Exh.19 sent muddemal property to CA. During course of the investigation the clothes of the appellants were seized. Those were sent in sealed condition to the CA and as per CA report (Exh.94) on the clothes of all appellants blood having blood group 'A' was found.

Clothes of the deceased were also sent to CA and on the said clothes human blood of 'A' group was found. Though blood group of deceased could not be determined for obvious reason, it is clear that on his clothes the human blood of blood group 'A' was there. Similarly, the blood group of injured Ashish was determined as Group 'B'. As per the CA report, these blood were found on the clothes of the appellants and they could not offer any explanation for the same rather they state that it is 'false' when this incriminating material was brought to their notice when their statements were recorded by learned Judge of the trial Court under Section 313 of the Code of Criminal Procedure. In the backdrop of aforesaid established facts on record the judgment of Hon'ble Supreme Court in Krishnamurthay alias Gundodu and others Vs. State of Karnataka, specifically paragraph 11 and 12 as it placed into service by the learned counsel for the appellants, in our view, cannot be made applicable in the light of the facts which are fully established in the prosecution case.

32. On reappreciation of the entire prosecution case we are of the view that the learned Judge of the trial Court has not

committed any mistake either in facts or law while convicting the appellants and sentencing them as directed in the judgment passed by it. Resultantly, we pass the following order:

ORDER

- i] The appeal is dismissed.
- ii] The appellants, who are in jail shall undergo the jail sentence as imposed on them by the learned trial Court.

JUDGE

JUDGE

Wagh