

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.269 OF 2016

1. Ramchandra s/o Lahanuji Divase
Age: 69 years, Occu.: Agril.,
R/o. Indira Nagar, Sarsam,
Tq. Himayatnagar, Dist. Nanded
2. Pandurang s/o Kashiba Divase
Age: 64 years, Occu. And
R/o. As above.
3. Namdeo s/o Ramchandra Divase
Age: 32 years, Occu. And
R/o. As above.
4. Nagorao s/o Pandurang Divase
Age: 27 years, Occu. And
R/o. As above,
(At present are in jail)
(As per order dated 13.03.2023
separate appeal i.e. Criminal Appeal
No.255/2023 has been filed by
appellant No.4)

.. Appellants

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Himayatnagar,
Tq. Himayatnagar, Dist. Nanded.

.. Respondent

...

WITH
CRIMINAL APPEAL NO.255 OF 2023

Nagorao s/o Pandhurang Divase
Age: 35 years, Occu.: Agri.,
R/o. Indra Nagar, Sarsam,
Tq. Himayatnagar, Dist. Nanded

.. Appellant

Versus

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

.. Respondent

...

Mr. Gajanan G. Kadam, Advocate for appellants in Criminal Appeal No.269 of 2016.

Mr. Chaitanya C. Deshpande, Advocate for appellant in Criminal Appeal No.255 of 2023.

Mr. A. V. Deshmukh, APP for the respondent – State in both the appeals.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 1st August, 2023

PRONOUNCED ON : 31st August, 2023

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Both the appeals are arising out of the same judgment and, therefore, taken up together for scrutiny. The appellants in both the appeals are the original accused persons. They faced trial in Sessions Case No.37 of 2012 before the learned Additional Sessions Judge, Bhokar, Dist. Nanded. They have been held guilty of committing offence punishable under Section 302 read with Section 34 of Indian Penal Code on 22.03.2016 and have been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for three months.

2. Heard learned Advocate Mr. Gajanan G. Kadam for the appellants in Criminal Appeal No.269 of 2016, learned Advocate Mr. Chaitanya C. Deshpande for the appellant in Criminal Appeal No.255 of 2023 and learned APP Mr. A. V. Deshmukh for the respondent – State in both the appeals.

3. The prosecution story in short is that informant Dashrath Ramesh Chavan is the brother of deceased Santosh Ramesh Chavan. They are in all three brothers residing with their parents and family members at Indira Nagar, Sarsam, Tq. Himayatnagar, Dist. Nanded. They are mainly agriculturist. FIR has been lodged on 10.05.2012, wherein it was contended that there was a quarrel around 4.00 p.m. on 09.05.2012 between the informant's younger brother Nilkanth with neighbour Ramchandra Kashiba Divase, Pandurang Kashiba Divase, Namdeo Ramchandra Divase and Nagorao Pandurang Divase i.e. present accused Nos.1 to 4. That quarrel was on account of allegation that Nilkanth had allowed his bull to eat the fodder from the heap of fodder which was kept by accused Nos.1 to 4. Thereafter, when deceased Santosh Ramesh Chavan was proceeding for freeing the she-goats from their shed around 7.30 a.m. on 10.05.2012, at that time, accused Nos.1 to 4 picked up quarrel with him. Even Nagorao's

wife was also present there. All of them took Santosh towards the house of one Datta More in a Galli and started beating him. Nagorao's wife was shouting in filthy language and instigating accused Nos.1 to 4. Dashrath went running to rescue, but at that time accused Pandurang, Namdeo and Nagorao started catching hold of Santosh and assaulting him and then accused Ramchandra took out a knife and stabbed it in the chest of Santosh. It caused a bleeding injury to him at the chest. Informant Dashrath was also beaten on his head. Santosh fell down on the ground and then the persons from the Galli came to rescue. They separated the accused from the deceased. Santosh was shifted to Primary Health Centre in injured condition at Sarsam and then he was referred to Nanded Hospital. However, Santosh expired in the journey around 9.30 a.m. Thereafter, Dashrath went to police station and lodged the first information report. On the basis of his First Information Report offence vide Crime No.51 of 2012 came to be registered with Himayatnagar Police Station, Dist. Nanded for the offence punishable under Sections 302, 147, 148, 149, 504 of Indian Penal Code and the investigation was taken up.

4. During the course of the investigation panchanama of the spot (Exhibit-72), inquest panchanama (Exhibit-76) came to be executed.

The dead body was sent for the postmortem. The accused persons came to be arrested. A dagger was discovered at the instance of accused No.1. The seized articles were sent for chemical analysis. Statements of witnesses under Section 161 of the Code of Criminal Procedure came to be recorded. After the completion of the investigation, charge-sheet was filed.

5. It appears that accused No.1 was never released on bail, but the other accused persons were on bail. After the committal of the case, when they denied to plead guilty, charge was framed at Exhibit-3. The prosecution has examined in all ten witnesses to bring home the guilt of the accused. The prosecution has also relied on various documents. As the incriminating evidence has come, statement of the accused under Section 313 of the Code of Criminal Procedure came to be recorded and thereupon the opportunity was given to the accused to lead witness in defence. Accordingly, D.W.1 Dr. Hanmant Dharmkare, the then medical officer from SGGS Hospital, Nanded, has been examined to prove the injuries on the person of accused No.1. After considering the evidence on record and hearing both sides, the learned Trial Judge has held the original accused Nos.1 to 4 guilty of committing offence as aforesaid, however, original accused

No.5 has been acquitted of all the charges and, therefore, these two appeals by original accused Nos.1 to 4 respectively.

6. It has been vehemently submitted on behalf of the appellants that the prosecution story is unbelievable. The story about homicidal death of Santosh is unacceptable. The informant P.W.1 Dashrath has posed himself as eye witness, injured and the informant, but his presence at the spot at the relevant time itself is doubtful. Prosecution has examined eye witness P.W.4 Balaji and in his cross-examination, he has admitted that Dashrath has come to the place of incident when Santosh fell down on the ground. That means the actual stabbing or assault by knife has not been seen by P.W.1 Dashrath. Even as regards P.W.4 Balaji is concerned it appears that he came to the spot a little later. P.W.2 Taibai is another eye witness. If we consider the testimony of P.W.1 Dashrath, P.W.2 Taibai and P.W.4 Balaji then we can see the discrepancies amongst their testimony. Their statements have been belatedly recorded, for which there is no explanation offered by the investigating officer. The informant stays far away from the place of incident and it has also come on record that there was no necessity to go from the place in front of the house of accused even for untying she-goats. The family members never used to use the said

road for the said purpose. Rather the prosecution has not explained the injuries on the person of accused. In the cross-examination, the investigating officer has admitted that he had arrested accused Nos.1 and 2 from the hospital. He admitted that they were indoor patients. He had collected their injury certificates, yet he has not filed those certificates on record. Therefore, this appears to be the case of free fight if at all it is accepted from the testimony of the informant and the eye witnesses. When the testimony of these witnesses is not beyond reasonable doubt, then the learned Trial Judge ought not to have proceeded to convict them. The presence of P.W.4 Balaji is doubtful. He has admitted in his cross-examination that he does not reside in the same lane, but then he comes with the story that he was proceeding to call one Kishan More at the relevant time. The topographical situation that has been brought on record through cross-examination of this witness as well as spot panchanama would certainly show that there is much distance between the house of the accused and house of the informant. Therefore, deceased Santosh had no occasion to go to the house of or be in front of the house of the accused. Both the learned Advocates have taken us through all the documents on record and the testimony of the witnesses for the appreciation of the evidence and their submissions. It has come on

record that accused Ramchandra Divase suffers from eye disease. His medical certificates showing his disability have been produced on record. If his vision was not clear, then it is hard to believe that he would have inflicted the blow of the said weapon to the deceased Santosh. That certificate has not been properly considered and, therefore, interference is required. The prosecution has not proved the guilt of the accused beyond reasonable doubt.

7. Learned Advocate Mr. Chaitanya C. Deshpande appearing for the appellant in Criminal Appeal No.255 of 2023 has relied on the decision in **Nand Lal and others Vs. The State of Chattisgarh, [2023 LiveLaw (SC) 186]**, wherein it has been held that “when it is a case of proving previous enmity, then a possibility of false implication cannot be ruled out. Further, when there is omission on the part of the prosecution to explain the injuries on the person of the accused would assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.” What is the effect of delay in lodging the FIR has also not been considered in this case. They both have therefore prayed for acquittal of the appellants.

8. Per contra the learned APP supported the reasons given by the learned Trial Judge. He has also taken us through the testimony of witnesses wherever required to support his submission. He submitted that prosecution has proved that accused Nos.2, 3 and 4 had caught hold of Santosh and then accused No.1 has stabbed him with the help of knife, therefore, they shared a common intention. There was quarrel on the previous day, which was in fact resolved by the elder persons, but still it appears that the anger was there in the mind of the accused persons. The contradictions and omissions on which the learned Advocate for the appellants are relying are not material contradictions and omissions. The testimony of P.W.1 Dashrath stood corroborated by testimony of P.W.2 Taibai and P.W.4 Balaji. Specific role has been attributed to each of the accused. Thereafter the inquest panchanama has been proved through panch witness Exhibit-76 by examining P.W.5 Tukaram. Testimony of P.W.9 Dr. Maroti Dake, the medical officer, who conducted the autopsy, would show that there was stab injury on front of chest at left clavicular area, which proved to be fatal and use of knife would be definitely with an intention to kill. The probable cause of death is “due to stab injury to left lung and pulmonary artery”. Therefore, it was a homicidal death. The accused persons shared the common intention and, therefore,

conviction awarded to them is perfectly justified. There is no necessity to interfere.

9. Here, in this case, the prosecution has come with the specific case that the death of Santosh is homicidal in nature i.e. by knife. In order to prove the homicidal death of Santosh, prosecution is relying upon ocular evidence as well as medical evidence. P.W.9 Dr. Maroti Dake is the medical officer attached to Government Medical College and Hospital, Nanded. He has conducted autopsy on 10.05.2012 between 12.00 p.m. to 1.00 p.m. He had found stab injury on front of chest at left clavicular area, 2 cm lateral to mid line, obliquely placed, 2.5 cm x 1 cm x cavity deep, directed downwards, backwards and laterally, bevelling of upper margin and undermining of lower margin present. It is said that both angles were blunt. He had noted the corresponding internal injury and after considering injuries and other aspects, he has opined that the cause of death was “due to stab injury to left lung and pulmonary artery”. In the cross-examination he has admitted that he has not mentioned the time of death, but according to him the death would have been instantaneous. He also said that the edges of the injury were corresponding with the edges of the weapon. He was unable to opine regarding use of force with the help

of weapon at the time of commission of the offence. Important point to be noted is that the knife i.e. article No.1, which is said to be seized under the memorandum panchanama, was not shown to this witness and his opinion has not been sought as to whether the injuries he had noted on the dead body were possible due to said weapon. Yet, certainly it can be said from the contents of the autopsy report itself that the death was due to stab injury and the death is homicidal in nature.

10. The said fact has also been brought on record and proved by the prosecution by examining P.W.1 Dashrath – brother of deceased Santosh, P.W.2 Taibai, P.W.4 Balaji eye witness. All of them have said that accused No.1 had inflicted blow of knife on the chest of Santosh when Santosh was caught hold of by accused Pandurang, Namdeo and Nagorao. Important point to be noted is that while recording testimony of P.W.1 Dashrath, the knife has been marked as article No.9, but in the testimony of P.W.4 Balaji, P.W.6 Maruti and P.W.10 P.I. Ghuge – Investigating Officer, the knife has been marked as article No.1. The recording does not show that in all two knives were recovered. Therefore, it can be said that the knife that was shown to these witnesses was only one knife, but this confusion could have

been removed or ought not to have been created by the learned Trial Judge. Yet, at the cost of repetition it can be certainly said that the said knife was not shown to the medical officer and his opinion was not sought regarding the use of said knife, but the said knife has been identified by P.W.1 Dashrath, P.W.2 Taibai and P.W.4 Balaji.

11. Now, turning towards the ocular evidence in respect of the incident, the testimony of P.W.1 Dashrath and P.W.4 Balaji appear to be supporting each other broadly, however, only broad support is not necessary to prove the guilt of the accused. It is required to be seen as to whether those witnesses were corroborating each other on material aspects and they are trustworthy, before it is certified that the conviction can be based on the testimony of these witnesses.

12. P.W.1 Dashrath - informant - brother of deceased has deposed that there was a quarrel between his younger brother Nilkanth and their neighbours Ramchandra, Namdeo and Nagorao around 4.00 p.m. and the reason for quarrel was as to why the bullock belonging to deceased and informant had consumed the fodder/*Kadba* belonging to accused persons. Then it is stated by the informant that around 7.30 a.m. on 10.05.2012 i.e. next day, when Santosh was proceeding towards the hut in order to set the she-goats free, at that

time, the accused persons came there and took Santosh towards the lane of house of Datta More and started abusing and beating him. Here, it is to be noted that the testimony of P.W.1 Dashrath is silent as to how much distance would have been covered by the accused while allegedly taking away Santosh. In the cross-examination it has been admitted that there are five lanes in Indira Nagar. Those lanes have residential accommodations of different persons and it can be seen from the cross-examination of this witness that they are not residing in the same lane. Therefore, while he was being taken away whether Santosh had tried to rescue himself or in what manner the accused persons took away deceased Santosh has not been told by these witnesses. When a person realizes that he has been asked by another to accompany that person with force or under pressure, definitely, the person, who has been so asked would react, then witnesses, who claim themselves to be eye witnesses, have stated that Santosh was resisting the said act on the part of the accused to take him forcibly along with them. Further, it has not come on record as to what was the location, where the she-goats belonging to informant were tied. Here, it has come in the evidence of P.W.1, P.W.2 and P.W.4 that the incident has taken place near the house of one Datta More and even the Investigating Officer is accepting the said position,

still P.W.10 Investigating Officer does not say that he had recorded the statement of Datta More under Section 161 of the Code of Criminal Procedure. It has rather come on record that the house of accused is near or adjacent to the house of Datta More. It is the defence of the accused that P.W.1 Dashrath, deceased Santosh had assaulted accused No.1 Ramchandra and P.W.2 Pandurang. Whether there is any substance in the defence or not would be considered at a later stage, yet the fact ought to have been brought on record or evidence ought to have been led to show that this taking away was with some intention and not by way of attack on the accused persons wherein injuries were caused to both sides. Of course the accused persons are not coming with a case that the injuries were caused to the deceased as well as P.W.1 Dashrath as a right of private defence and thereupon the Court would be asked to assess who is the aggressor. But when prosecution is duty bound to prove the guilt of the accused beyond reasonable doubt, then evidence should be adduced by the prosecution from all the angles.

13. According to P.W.1 Dashrath, wife of Nagorao was shouting and instigating, but then Pandurang, Namdeo and Nagorao caught hold of Santosh and then Ramchandra gave blow of knife on the chest

of Santosh. P.W.2 Taibai and P.W.4 Balaji are not the witnesses to the alleged dispute that had taken place on the earlier day i.e. 09.05.2012. They are the witnesses on the point what they had seen around 7.30 a.m. on 10.05.2012. According to P.W.2 Taibai, she came out after hearing the noise and then saw that Ramchandra, Pandurang, Nagorao and Namdeo were holding Santosh. One Archanabai had also come running. She has also stated that Ramchandra has taken out the knife and gave blow to Santosh. P.W.4 Balaji is also saying so. At this stage itself, we would like to consider the defence taken by Ramchandra. Ramchandra says that he is partially blind after he suffered paralytic attack. He has also given a written notes of arguments and also certificates of disability in respect of his eye sight. He has examined D.W.1 Dr. Hanmant to prove injuries on his person. This witness has also said about the examination of Ramchandra by Ophthalmologist on 10.05.2012. It is said that the patient's right eye pupil was not responsive to light. The left eye of the patient was infected by raw cataract, but in the cross-examination he has admitted that if the eye is infected with cataract, it is possible to view in unclear way. Even if for the sake of arguments we accept that Ramchandra was in a position to see, yet it is required to be tested as to whether the evidence led by the prosecution proves

the offence beyond reasonable doubt.

14. The motive is said to be the alleged quarrel on 09.05.2012. At the cost of repetition it can be said that except P.W.1 Dashrath, nobody has been examined to say anything about the incident dated 09.05.2012. He has also stated that the quarrel was between Ramchandra, Namdeo, Nagorao on one part with Nilkanth, who is the younger brother of P.W.1 Dashrath. He does not say that deceased Santosh was also there and he had in any way tried to intervene. Therefore, the question arises as to why on the next day, Santosh would have been caught hold by these persons. Therefore, the said motive appears to be shaky or the real reason behind the incident has not been told. Nilkanth has not been examined to prove the incident dated 09.05.2012. In the cross-examination, P.W.1 Dashrath says that report was given before Tanta Mukti Samiti regarding incident dated 09.05.2012 and on that day in the evening the President of the said Samiti had met Dashrath and his grievance were noted, but he does not say that he has tried to lodge any report with the police, nor Nilkanth has reported the matter to police. As aforesaid, the said incident has nothing to do with Santosh and, therefore, whether Santosh was the target of the accused itself, is a question. When

there are eye witnesses, then motive does not play a lead role and, therefore, we may keep the point aside for a moment.

15. P.W.1 Dashrath has said that after hearing shouts of Santosh, he went running towards the place and saw that Pandurang, Namdeo and Nagorao had caught hold of Santosh and they were beating him, whereas Ramchandra took out a knife and gave blow on the chest of his brother. He has not stated as to from how much distance he had seen the incident, but certainly he had not intervened before the blow was allegedly given by accused No.1. He then says that after his brother fell down, he went towards Santosh, but he received blow on the backside of his head. He does not say as to who had assaulted him, but then says that they were separated by Lalbaji Gaikwad, Taibai Kshirsagar, Kamalbai Nandkumar as well as Balaji. Out of them Taibai and Balaji have been examined. He then says that he has then taken his brother Santosh to Primary Health Centre, Sarsam, where primary aid was given and then Santosh was referred to Civil Hospital, Nanded, but on the way Santosh has expired. In the cross-examination, the situation around the place of incident has come on record. It can be seen that it is surrounded by houses, therefore, those persons in the vicinity were the appropriate witnesses. In his cross-

examination, P.W.6 has stated that the place of tying she-goats is in the fifth lane near the house of Digambar Kadam. That means, it appears to be away from their house. It has not come on record as to whether the said road, where the said incident has taken place, was in the mid of the house of the informant and the place where their she-goats were tied. P.W.1 Dashrath has accepted that accused Ramchandra and Pandurang are residing separately. Police persons had come after the incident and in categorical terms he admits that the police persons had taken accused No.1 from Sarsam to Himayatnagar. He claimed ignorance as to whether Pandurang and Ramchandra were taken by police to Primary Health Center, Sarsam for the purpose of treatment and thereafter for two days they had taken treatment from the hospital at Nanded. He has denied the suggestion that one Nilu (may be referring to Nilkanth) and Nandu had caught hold of Pandurang and with the help of axe P.W.1 Dashrath had given blow to Pandurang. He denied that Pandurang was assaulted on his head, chest and back by him. He further denied that he himself along with Nilu and Nandu had beaten Ramchandra on his forehead near eye, backside of right shoulder and on chest. He denied that there was a scuffle between them and Santosh was taken within 15 minutes thereafter to Primary Health Centre. Thus, the

defence of accused is that P.W.1 Dashrath, one Nilu, Nandu and also Santosh had attacked them and caused injuries and it is also their defence that these prosecution witnesses and others were the aggressors. As regards the testimony of P.W.2 Taibai is concerned, as aforesaid, she had broadly corroborated P.W.1 Dashrath, however, it is to be noted that in her statement under Section 161 of the Code of Criminal Procedure, she had stated that accused No.1 had caught hold of Santosh. It was therefore suggested that when accused No.1 had caught hold of Santosh, how he could have given the blow. This witness has made improvement. She had denied the suggestions about receiving injuries by accused Nos.1 and 2. P.W.4 Balaji has deposed on the same line. However, it is to be noted that he is not residing in the same lane, but according to him he was proceeding towards the house of Kisan More at the relevant time. In his cross, he has admitted that P.W.1 Dashrath came to the place of incident after Santosh had fallen on the ground, however, this alleged admission cannot be read in isolation and it is a fishing question. It is also not in consonance with the defence that has been taken by the accused. He admitted that police had come and when they were taken Ramchandra i.e. accused No.1 with them, there were injuries on the person of accused No.1, his clothes were blood stained. Clothes of

Pandurang were also blood stained and there were injuries on the person of Pandurang. Thus, the prosecution eye witness is saying about the injuries on the person of the accused, but not explaining as to how those injuries were caused to accused Nos.1 and 2. At this stage itself, if we take note of the cross-examination of P.W.10 P.I. Ashok Ghuge, then it emerges that he had reached the place of incident after about 45 minutes. He has caused accused No.1 and 2 to be referred to Primary Health Centre and accordingly, they came to be examined around 9.00 a.m. He has not collected the treatment papers even in respect of P.W.1 Dashrath. He has not seized the weapons which were used while assaulting accused and causing injuries to them. He has also stated that he had noted that the clothes of accused Nos.1 and 2 were blood stained when he brought them to police station. He had made the entry about their arrival in the police station in the station diary. He had not recorded the statement of the injured accused persons, nor seized their clothes. He says that he had collected the injury certificates of the accused, but did not file it along with the charge-sheet. He admitted that Pandurang and Ramchandra were admitted as indoor patients for three days. He had perused the medical certificates of accused. According to him he has not filed the medical papers of accused Nos.1 and 2, as they have killed Santosh.

Such kind of investigation is not contemplated at all. The investigation should be fair and when all these things were happening, he ought to have placed all the relevant papers and collected the evidence by considering all the angles. The evidence that has been carried out by P.W.10 P.I. Ghuge is one sided, arbitrary. He has suppressed the genesis of the incident. Here, we are also taking note of the testimony of D.W.1 Dr. Hanmant, who was the medical officer with SGGS Hospital, Nanded. He had examined accused No.1 at about 12.40 p.m. on 10.05.2012 and had noted giddiness and pains at right shoulder and injury on forehead and right eyebrow. He had referred the patient to surgery department. It is to be noted that the prosecution has then developed a case of self inflicting injuries by the accused persons, but there is no suggestion to D.W.1 Dr. Hanmant as to whether these injuries can be self inflicted. The theory of the self infliction has come on record through P.W.2 Taibai and P.W.4 Balaji. Interestingly, P.W.1 Dashrath has not stated anything about it. P.W.2 Taibai and P.W.4 Balaji have stated that all the accused after assaulting Santosh went to their house and then threatened the general public by saying that if anybody is having courage, then he should come forward. In fact, it has not been brought on record as to why the accused persons would have enmity

with other persons. It is the case of these eye witnesses that only Ramchandra was holding knife, yet these two witnesses i.e. P.W.2 and P.W.4 are saying that Pandurang and Ramchandra caused injuries to themselves with the help of weapons, they were possessing. In other words, when there is no case by prosecution that Pandurang was also possessing any weapon, then how he could have inflicted those injuries. No doubt, the defence has not produced the injury certificates of accused Pandurang and D.W.1 Dr. Hanmant in his examination-in-chief has clearly stated that the injuries may not be self inflicted injuries. The prosecution in his cross has not shown the knife seized in the case and asked opinion as to whether the injuries on the person of Ramchndra are possible by article No.1 or article No.9 - knife. Therefore, prosecution story itself is not corroborated. At the cost of repetition, it can be said that there is total suppression of the documents in respect of injuries caused to the accused by the investigating officer, though he collected it.

16. P.W.3 Sunil Wankhede is the panch witness to the spot panchanama which is not disputed much by the accused themselves in a sense that the situation at the spot at the relevant time appears to be disputed, but not the location. P.W.5 Tukaram Gundekar is the

panch to the inquest panchanama and it can be said that the death of Santosh is not disputed. P.W.6 Maroti Suryawanshi is the panch to the discovery panchanama. It has been said that accused No.1 had discovered the knife from the cattle shed. In the cross-examination, he has stated that the Head Constable, who had gone to call him, told him that they want to prepare panchanama regarding seizure of knife and, therefore, required him to accompany him. Even if for the sake of arguments, it is accepted that such type of panchanama is prepared, yet neither the contents of the panchanama nor the testimony of P.W.6 Maroti is clear enough in indicating that which was the place from the cattle shed from where the knife was discovered. By merely stating that it was discovered from cattle shed is not sufficient. The incident has taken place on 10.05.2012 and the alleged discovery is on 18.05.2012. Further, it has come on record that on 10.05.2012 itself from the said place of incident P.W.10 P.I. Ghuge had taken accused Ramchandra and Pandurang to police station. Then the question arises when injured Ramchandra had time to conceal the knife and after the hospital had discharged Ramchandra, P.W.10 P.I. Ghuge had arrested him at about 15.30 hours on 13.05.2012 and therefore, the said discovery under Section 27 of the Indian Evidence Act is doubtful. P.W.7 Baburao is the

panch to the seizure of clothes. Same is as regards P.W.8 Anand.

17. Thus, it can be seen that though eye witnesses are examined and it is in a way proved that death of Santosh is homicidal in nature, yet the prosecution story is doubtful. The learned Advocate Mr. Chaitanya C. Deshpande has rightly placed reliance on the decision of three Judge Bench in **Nand Lal and Ors. (Supra)**, wherein it has been held that “omission on the part of the prosecution to explain the injuries on the accused would assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.” In this case, reliance has been placed on the decision in **Lakshmi Singh and others Vs. State of Bihar, [(1976) 4 SCC 394]**, the other decisions have also been referred and then the above-said ratio has been laid down. We would like to reproduce paragraph No.12 from **Lakshmi Singh and others (Supra)** in respect of non explanation of injuries sustained by accused, which reads as under :-

“12.It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance

from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

18. Therefore, in this case also, as aforesaid, the prosecution has suppressed the genesis and the origin of the occurrence by non explanation of injuries to accused Ramchandra and Pandurang. Under the said circumstance, the benefit of doubt will have to be given to the accused. Their appeals therefore deserve to be allowed. Hence, the following order :-

ORDER

I) Both the criminal appeals stand allowed.

II) The conviction awarded to accused Nos.1 to 4 i.e. appellants in respective appeals in Sessions Case No.37 of 2012

by learned Additional Sessions Judge, Bhokar, Dist. Nanded on 22.03.2016, after holding them guilty of committing offence punishable under Section 302 read with Section 34 of Indian Penal Code, stands set aside.

III) The appellants in respective appeals i.e. accused Nos.1 to 4 viz., (i) **Ramchandra s/o Lahanuji Divase**, (ii) **Pandurang s/o Kashiba Divase**, (iii) **Namdeo s/o Ramchandra Divase** and (iv) **Nagorao s/o Pandurang Divase** stand acquitted of the offence punishable under Sections 302 read with Section 34 of Indian Penal Code.

IV) They be set at liberty if not required in any other case.

V) The fine amount deposited, if any, be refunded to the appellants after the statutory period is over.

VI) We clarify that there is no change in the order in respect of disposal of Muddemal passed by the learned Additional Sessions Judge.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

scm