

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 516 OF 2015**

Sk. Chandpasha s/o Sk. Basheer,  
Age 45 years, Occu. Auto Driver,  
R/o Parbhani at present  
Asara Nagar, Nanded,  
Tq. and Dist. Nanded.  
(At present is in jail)

... Appellant  
(Orig. Accused)

Versus

The State of Maharashtra,  
Through Police Station Nanal Peth,  
Parbhani, Tq. and Dist. Parbhani

... Respondent

...  
Mr. Gajanan G. Kadam, Advocate for the Appellant.  
Mrs. Preeti V. Diggikar, APP for the Respondent-State.

...

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

**DATE : 01.02.2023**

**JUDGMENT (PER ABHAY S. WAGHWASE, J.) :**

1. This appeal is directed against the judgment and order of conviction dated 12.06.2015 passed by learned Sessions Judge Parbhani in Sessions Trial No. 14 of 2010 by which conviction was recorded for commission of offence punishable under Section 302 of the Indian Penal Code (IPC) and the appellant has been sentenced to suffer rigorous imprisonment for life and to

pay fine of Rs.20,000/-, in default to suffer simple imprisonment for six months.

### FACTS GIVING RISE TO THE SESSIONS CASE

2. Appellant accused has a sister. Deceased Salim had taken her photographs and, according to father of accused, deceased was showing the photographs to others and informing that he would marry her. On hearing this from father, accused Chandpasha came from Nanded on 21.11.2008. On 23.11.2008, while deceased Salim was travelling in the rickshaw of PW3 Sk. Amar, near Mari Aai Temple, accused held deceased by his collar, pulled him out of the rickshaw and questioned him for taking photographs of his sister. On same count, he whisked out *jambiya* (kinfe) and inflicted stabs on Salim. Injured Salim was taken to the hospital, however he succumbed to the injuries.

3. Accused himself surrendered at police station and gave statement which was recorded by PW9 PI Shingade. Crime came to be registered on the strength of the same. Accused was arrested. The knife in his possession was also seized and PW12 PI Kasture carried out investigation and filed charge sheet.

4. Case came to be committed on the file of learned Sessions Judge and therein prosecution examined in all 13 witnesses and also relied on documentary evidence and after hearing respective parties and on appreciating the evidence, learned Sessions Judge held accused guilty and convicted him as stated above.

Now exception has been taken by accused to the above judgment and order on various grounds raised in the appeal memo.

### **SUBMISSIONS**

5. The sum and substance of the arguments raised before us by learned Advocate for the appellant is that learned trial court has failed to consider and appreciate the oral and documentary evidence in its proper perspective. According to him, here, though case of prosecution is of direct evidence, it is pointed out that cross-examination of so-called direct eye witness PW3 Sk. Amar creates doubt about occurrence. That, evidence of PW3 being shaky, ought not to have been accepted, more particularly when there was no corroboration to the testimony of PW3 Sk. Amar.

**Secondly**, it is put forth that even prosecution could not cogently and firmly establish motive behind the occurrence. That, evidence of prosecution is full of contradictions and omissions. Testimony of pancha witnesses is also not

trustworthy and reliable. Rather all pancha witnesses are either got up witnesses or are related witnesses.

**Thirdly**, the alleged statement of deceased also ought not to have been relied by learned trial court because there was clear evidence of medical expert that condition of deceased was poor and as such, he was not in a position to give dying declaration. Therefore, even dying declaration ought not to have been relied.

**Fourthly**, statement given by accused which is inculpatory and that too allegedly given to police machinery, is not valid in the eyes of law. It is submitted that, however, learned trial court failed to appreciate the legal position on that count. That, entire story of prosecution being doubtful, benefit of doubt ought to have been given, but learned trial court has failed to do so. It is lastly prayed that the appeal be allowed. In support of his submissions, learned Advocate for the appellant has placed reliance on the following rulings:

1. ***Mahavir Raghunathrao Hulungare v. The State of Maharashtra***, reported in MANU/MH/3320/2022.
2. ***Iqbal Ahmed Kallan Khan and Ors. v. The State of Maharashtra***, reported in MANU/MH/1574/2022.
3. ***Khema and Ors. v. State of Uttar Pradesh***, reported in

MANU/SC/0984/2022.

4. ***Ramanand v. State of Uttar Pradesh***, reported in MANU/SC/1324/2022.
5. ***Md. Jabbar Ali and Ors. v. The State of Assam***, reported in MANU/SC/1351/2022.
6. ***Aghnoo Nagesia v. State of Bihar***, reported in MANU/SC/0079/1965.

6. While refuting the above submissions, learned APP would submit that prosecution had come with a case of direct evidence. PW3 Sk. Amar is the best witness. That, infact deceased, shortly before assault, was travelling in his rickshaw and in presence of PW3 Sk. Amar deceased was pulled out of the rickshaw and assaulted. Therefore there is trustworthy, cogent and reliable eye witness account. His testimony has remained unshaken in cross-examination. It is further pointed out that even statement of deceased was recorded in the hospital. Deceased had named accused for assaulting him. The background in which assault was carried out has also come in the evidence of prosecution in the form of testimony of PW3 Sk. Amar and the statement of deceased himself. Motive is also therefore cogently proved. Learned APP also took us through the testimony of panchas and pointed out that pancha witnesses have also supported prosecution case. Moreover, accused has surrendered himself and handed over weapon allegedly used by him. Clothes and articles sent for analysis are also carrying blood of deceased. Therefore from all angles, story of prosecution has been found to be trustworthy and therefore, it is submitted

that learned trial court committed no error whatsoever in appreciating such evidence and convicting the accused. Hence, he prays that such findings based on sound reasons may not be disturbed.

7. This being first appellate court, in view of Section 374 of the Code of Criminal Procedure (Cr.P.C.), we are expected to re-evaluate, re-examine and reassess the entire evidence adduced by prosecution in trial court to ascertain whether findings are legal and proper and liable to be maintained or not.

### **EVIDENCE ON BEHALF OF PROSECUTION**

8. Prosecution has examined 13 witnesses and we propose to deal with the role of prosecution witnesses and the sum and substance of their evidence in the witness box.

9. **PW1** Yasmin is wife of deceased, but her evidence shows that at the time of incident, she was at her parents' house because of strained relations between herself and deceased. She claims to have learnt about murder of her husband at the hands of accused Chandpasha. She has also stated that there was quarrel on account of illicit relations of sister of accused Chandpasha and her own husband and in that background accused Chandpasha has committed murder. Therefore, her evidence is mere hearsay one.

In cross-examination addiction of her husband to liquor is brought on record. However, she has candidly admitted that she is not aware as to how murder of her husband was committed and by whom.

10. **PW2** Dr. Bhalerao is the medical expert who has conducted autopsy and has issued postmortem report and cause of death as “death due to hypovolumetric shock due to liver injury by stab wound over right posterior aspect”.

In cross-examination he was asked how many postmortems he has conducted. He answered that due to injuries mentioned in column no. 17, there is blood loss and patient may have died due to shock. He answered that injuries mentioned in column no. 17 are dangerous to life.

11. **PW3** Sk. Amar is the eye witness who stated that he knew accused and deceased. According to him, on that day he was taking his rickshaw for repairs to the garage. That time Salim met him. Three passengers hired his rickshaw and Salim also expressed his desire to accompany this witness as he wanted to go that side. This witness stated that after the rickshaw reached Mari Aai Temple, Chandpasha intercepted and stopped the rickshaw and said to this witness to carry the passengers forward and that he has some work with

Salim. However, this witness went with Salim to Shahi Masjid near a bakery. That, while said three passengers were alighting, accused came there, caught hold of collar of Salim and pulled him out of the rickshaw. At that time, it was 1.30 to 2.00 p.m. There was scuffle between accused and Salim. This witness tried to intervene, however, accused threatened him to stay away and pushed him. Thereafter accused took out *khanjar* and stabbed Salim on neck and abdomen. According to this witness, accused threatened this witness to go away otherwise he would stab him also. He has stated that after accused had given 3 to 4 blows to Salim, this witness started his rickshaw and fled from the spot and later on he came to the spot along with one Allauddin and there he learnt that Salim was taken to hospital. He stated that when accused and Salim were quarreling, accused was repeatedly asking Salim that why he had taken photographs of his sister. This witness has stated that on the same day Salim died.

Above witness is cross-examined at length by learned Advocate for accused on the point of his relation with deceased. This witness has answered that Salim was his cousin. This witness was unable to state whether Salim had habit of drinking alcohol. He was questioned as to since when he is plying rickshaw and whether he had a license. Then he is asked about the surroundings and location of garage. He was asked who were the passengers and whether he knew them. This witness has answered that all three

passengers were ladies. He was asked about the distance between the spot and the temple and he answered that it was about 200 to 250 meters from the garage. He was questioned as to how busy the locality was and whether there was crowd. Then he was questioned about his statement and omissions are brought which are missing from his statement. The omissions brought are that accused caught hold of collar of Salim, accused pushed this witness while he tried to intervene, about when accused stabbed Salim, this witness tried to intervene, about 3 to 4 stabs given to Salim.

This witness was asked whether he was present at the spot till completion of the incident and this witness volunteered that because of threats he had fled from the spot. Remaining cross-examination is about house of Allauddin, distance of Masjid from house of Allauddin, location of chowki in the Government Hospital, about whether relatives gathered. Rest is all denial.

12. **PW4** Ajam Khan is the brother of deceased. He claims that accused is in his relation. On the day of incident, he had received phone call from Chandpasha at around 12.00 to 12.30 p.m.. He gave his own mobile number and also narrated the mobile number of accused and told that accused asked this witness to take his brother Salim back from Parbhani or he would kill Salim. This witness stated that around 3.00 p.m he received phone call from his uncle about assault to his brother Salim by Chandpasha.

In cross-examination, he has narrated about how many brothers he had and that he resided at Pune. He admitted that Salim was married and had children and at the time of incident, his wife was residing at Kausadi. He denied that his brother used to get drunk and pick up quarrel. He was asked whether he had any idea as to what Salim was doing in Nanded and Parbhani, and whether there are relatives in Parbhani and whether he informed any relatives at Parbhani about receiving phone call from accused. Rest all suggestions were denied.

13. **PW5** Mohd. Ashfaque stated that on 23.11.2008 in his presence accused came along with *jambiya* stained with blood and told police that he assaulted with the same. Police noted down his statement and obtained his signature as well as signature of this witness. He identified accused in the court and he also identified the statement Exhibit 28.

However, in cross-examination he seems to be deviating from his earlier version and is found to be answering that at the request of police he signed and that signature of accused was not taken in his presence, rather it was already on the statement and that it was police who told him that Chandpasha is the accused. He denied knowing the contents of the statement.

14. **PW6** Sk. Rafique is the inquest pancha who stated that he was party to the panchanama drawn at Government Hospital and he identified the same at Exhibit 30. He has also acted as pancha to seizure of clothes of deceased handed over at police station and he identified the said panchanama Exhibit 31 and articles like wallet, election card, driving license and some papers. In cross-examination he was asked about his occupation. He answered that his relative Aminabee was admitted in the hospital and so he had been there. He answered that while he was standing on the ground floor in general ward, police called him and drew panchanama. He was unable to state who brought clothes of deceased in the police station. He stated that his signature was obtained after writing of the said document. He denied that he is habitual pancha.

15. **PW7** Abdul Habib is pancha to spot panchanama. He identified the same at Exhibit 37. In cross-examination he was asked about surroundings of the spot which he duly answered. However, he answered that police came to his shop and told him that panchanama is prepared and asked him to cause signature over it.

16. **PW8** Sunil is the pancha to seizure of clothes of accused on 23.11.2008 i.e. at Nanal Peth Police Station around 10.00 to 10.30 p.m. He gave

description of clothes and identified the panchanama. He has also acted as pancha to seizure of wallet Exhibit 41. He was again called to act as pancha on 26.11.2008 during which blood sample brought by LPC was seized by drawing panchanama Exhibit 42. On 27.11.2008, in his presence one mobile was seized from the auto mechanic vide panchanama Exhibit 43.

In cross-examination, he answered that he had occasion to go to court only twice as pancha witness, but at the same time he has admitted that he has acted as pancha in about 100 to 150 panchanamas. He has admitted that he caused signatures wherever police asked him to sign. Accordingly, he was cross-examined about his visits on 23.11.2008, 25.11.2008, 26.11.2008 and 27.11.2008 for drawing various panchanamas. He has denied that no panchanama was drawn in his presence.

17. **PW9** PI Shingade is the police officer and he claims that on the date of incident, around 2.30 to 2.45 p.m., one person entered in his cabin with a knife in his hand and told that he has committed murder of Salim and he is presenting himself to the police station. This witness has stated that in presence of two panchas he recorded the said statement of accused. This witness has narrated the story given by accused. He identified the statement at Exhibit 28.

This witness was also subjected to lengthy cross-examination as to whether before recording statement of Chandpasha other police were present and how many police personnel were around him, whether he verified that Chandpasha understands Marathi and whether there was noting to that extent. He was unable to state names of the police staff present in the police station or the name of police personnel who went to call panchas. He answered that pancha witnesses were not known to him but after their arrival, he got acquainted with their names. He gave name of his own writer. He answered that he did not record statement of such writer. He was asked for how much time recording lasted. He answered that he received information of death of Salim from Government Hospital as well as he received MLC from Kasture. He answered that he did not prepare separate panchanama of knife as he has mentioned about it in the statement itself. He stated that he seized muddemal by drawing receipt. He denied that two days prior to the incident accused Chandpasha had come to police station to lodge complaint about quarrel. He also denied that on 23.11.2008, relatives of deceased and some politicians had gathered at the police station and because of their pressure, FIR was lodged. Rest is all denial.

18. **PW10** ASI Shaikh stated that on 23.11.2008 one Salim was admitted in the hospital at around 2.00 to 2.30 p.m. He went to record his statement and before recording statement, he asked doctor to verify condition of patient.

After doctor gave opinion, he recorded dying declaration. He identified the dying declaration at Exhibit 51. This witness in cross-examination was asked about his duty hours, whether MLC registered was maintained, whether there was any endorsement in the same. He was asked whether there was any MLC issued by doctor. He was asked who were present with deceased Salim when he went to record statement and he answered that nobody was present. He was unable to state whether other relatives of patient were present there. He answered that doctor examined deceased on his request. He was asked whether there were other patients in the ward. He was asked whether he questioned Salim as to whether he knew Marathi or not. He admitted that patient told him in Hindi and he noted it in Marathi. He stated that as patient was serious, he had not written in the statement that contents were read over to the patient and patient admitted it to be correct. He admitted that he had not noted timing of commencement of statement and when it was over. He denied that Salim had not given any statement on 23.11.2008. Rest is all denial.

19. **PW11** Dr. Yadav is the doctor who issued certificate before recording statement of deceased.

20. **PW12** PI Kasture is the Investigating Officer.

21. **PW13** ASI Gadekar is the carrier.

### ANALYSIS

22. Charge being under Section 302 of IPC, it is to be seen as to whether prosecution had at the threshold succeeded in establishing death of Salim to be homicidal one. For this, best witness is the medico legal expert i.e. PW2 Dr. Bhalerao who conducted postmortem. It is also equally important to go through the inquest panchanama. On going through the inquest panchanama it is emerging that bleeding injury to the back side of head, bleeding injury on the backside of neck, injury mark on left side of chest, bleeding injury below right side of chest, bleeding injury on the right side of waist are noted. After examining evidence of PW2 Dr. Bhalerao i.e. autopsy doctor, it is emerging that before conducting postmortem, doctor came across following injuries:

1. Stab wound 6 cm x 4 cm x 16 cm over right back just below the ribs cage.
2. C.L.W. over right chest 4 cm x 4 cm.
3. C.L.W. over left chest anterior inferiorly 3 cm x 2 cm.
4. Stab wound over left neck posteriorly 4 cm x 4 cm x 7 cm.

Doctor has given probable cause of death as “hypovolumetric shock due to lever injury by stab wound over right posterioy aspect.”

23. Though above medical expert was subjected to extensive cross, the aspect of cause of death has not been disturbed. Apparently, deceased Salim had suffered stab injuries on vital parts of body. Therefore, taking the above material into account, we too are of the opinion like learned Sessions Judge that prosecution has successfully shown that death of Salim was nothing but homicide.

24. Now it is to be seen whether accused is the author of the homicidal injuries on Salim.

25. We have carefully sifted the prosecution evidence on record. As stated above, prosecution has discharged its burden of proving that death of Salim was homicidal. Prosecution has come with a case that deceased had developed interest in sister of accused Chandpasha and was also possessing her photographs. That, moreover, he was showing said photographs to others saying that he is going to marry her. This is what precisely angered the accused. Therefore, this is the motive behind the occurrence according to prosecution. Let us see whether prosecution's case has been established or not.

26. On going through the evidence, it is emerging that **PW1** Yasmin i.e. wife of deceased, though was residing separately on account of bitter relations with

her husband Salim, she has been examined by prosecution. In her substantive evidence, she is found to be stating that accused and deceased were quarreling. She went to the extent of saying that her deceased husband had illicit relations with sister of accused.

27. Here, prosecution seems to be heavily banking on the testimony of **PW3** Sk. Amar who, by all means, for prosecution is a star witness. On going through his substantive evidence, we find him stating that before assault, accused and deceased quarreled. Accused was repeatedly asking deceased as to why he had taken photographs of his sister. It is pertinent to note that in spite of being subjected to cross-examination at length, this witness has not been seriously cross-examined on above aspect of motive or alleged possession of photographs of sister of deceased. This witness is categorically stating that he saw accused taking knife from his pocket and stabbing deceased. It was broad day light. Therefore, in our opinion, his testimony is very crucial and there are reasons to hold that he was very much present at the spot. We have carefully gone through his cross-examination. Though he admitted that he is cousin of deceased, nothing beyond this was brought to hold that there was any false implication or any animosity between him and accused. Infact, the sequence of events narrated by him shows that deceased had met him and accompanied him while this witness was proceeding towards garage. There is no reason to disbelieve such testimony. It is on the way to the garage, while

deceased was in the company of this witness, accused allegedly intercepted, pulled him out of rickshaw of this witness, questioned him and thereafter stabbed him. No material omissions, contradictions or inconsistencies are brought from his evidence in spite of being subjected to lengthy cross-examination. The core case of prosecution about quarrel and assault has not being disturbed or rendered doubtful. Oral account is finding support from the testimony of medical expert on the point of injuries. Hence, there is no hesitation to hold that authorship of injuries can very well be attributed to none other than the present appellant-accused.

28. Consequently, PW3 undoubtedly is a sole eye witness. We have re-examined and re-assessed his substantive evidence before the court. We find it confidence inspiring. The Hon'ble Apex court has time and again held that even sole testimony of a witness, if inspiring confidence, can be applied for recording guilt and conviction. If testimony of a sole eye witness has remained unshaken and is free from suspicion, it can very well be based for recording conviction. In support of our above opinion, we derive strength from rulings of Hon'ble Apex Court in the cases of ***State of Maharashtra v. Dinesh***, reported in (2018) 15 SCC 161 and ***Jayaram Shiva Tagore and others v. State of Maharashtra*** 1992 SCC (Cri) 62 as well as recent ruling of Hon Apex court in the Judgment in Criminal Appeal No. 598-600 of 2013 ***Ajai and others v. State of Uttar Pradesh*** reported in MANU/SC/0127/2023 wherein also it is

reiterated that conviction can very well be based even on sole testimony of eye witness, if the same is found to be truthful version.

29. Another crucial witness for prosecution i.e. on the point of annoyance of accused is **PW4** Ajam Khan, brother of deceased who seems to be resident of Pune. This witness spoke about receiving phone call from accused. In deposition, he narrated his own mobile number as well as mobile number of accused. This witness stated that accused told him on phone to take his brother back from Parbhani or else he would be killed. Therefore, it is coming on record that prior to the incident, accused had issued threats to kill. Call details report (CDR) of conversation between accused and this witness also seems to have been gathered by prosecution and placed on record vide Exhibits 71/6 and 71/11.

30. While carefully examining the seizure panchanama Exhibit 32, we have also come across wallet of deceased in which there were articles like driving license and photographs of a girl. Therefore, with such material on record, it can safely be inferred that accused was enraged because of possession of photograph of his sister by deceased. On the strength of above material, we are of considered opinion that aspect of motive has been brought on record by prosecution.

31. No doubt prosecution has come with a case that accused surrendered himself to the police authorities and gave an inculpatory statement and informed to the police that he has assaulted Salim and he also allegedly handed over the knife which came to be seized. It is true that such evidence of prosecution is not valued in the eyes of law, it being given to the police while he was in the constructive custody of police machinery. Defence has also raised strong objection that such evidence of prosecution about confessional part cannot be taken aid of by prosecution and therefore it is the case of defence that FIR itself is liable to be discarded and that learned trial court ought to have done so but it failed to do so. We agree that confessional statement of accused cannot be considered in view of bar under Section 25 of the Indian Evidence Act. However, the statement only to the extent of inculpatory or confessional part can be excluded and rest of the part can be used to draw inference. In our opinion, conduct of the accused can definitely be gauged from his statement. In the case of ***Aghnoo Nagesia v. State of Bihar*** reported in **AIR 1966 SC 119** the Hon'ble Apex Court in a similar case has, in para 10 of the judgment, held and observed as under:

*“Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is called as a*

*witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant, see Faddi v. State of Madhya Pradesh (Criminal Appeal No. 210 of 1963 decided on January 24, 1964) explaining Nisar Ali v. State of U.P. (AIR 1957 SC 366) and Dal Singh v. King-Emperor (LR 44 IA 137). But a confessional first information report to a police officer cannot be used against the accused in view of Section 25 of the Evidence Act.”*

Therefore, by virtue of Section 8 of the Indian Evidence Act, conduct of accused can be taken note of.

32. Similarly, very recently Hon’ble Apex court in the case of ***Brajendrasingh v. State of Madhya Pradesh*** reported in 2012 SCC OnLine SC 214 in para 18, observed as under :

*“18. As we have already noticed in the narration of facts above, that FIR was recorded by Sub-Inspector Mohan Singh Maurya, PW 16 based on the statement of the appellant itself, made in the police station. This cannot be treated, in law and in fact, as a confessional statement made by the accused and it would certainly attain its admissibility in the evidence as an FIR recorded by the competent officer in accordance with law.”*

33. Another aspect which we also wish to take note of is that testimony of PW9 PI Shingade on the point of seizure of knife in the backdrop of statement of accused at Exhibit 28 also cannot be washed away. By taking recourse to Section 27 of the Indian Evidence Act, recovery part can be applied. In the very remand report at the time of first production of accused before learned JMFC, aspect of accused coming to police with knife has come on record. Even arrest panchanama shows that accused was arrested in Nanal Peth Police Station itself after completing all legal requirements and procedure. There is no objection to the said arrest by defence in any manner. For the said recovery/seizure under Section 27 of the Evidence Act, it was not mandatory that accused should have been formally “arrested” under Section 46(1) of Cr.P.C. We would like to rely on the judgment in ***Vikram Singh & Ors. vs. State of Punjab***, reported in AIR 2010 SC 1007 which was also referred in ***Gulam Sarbar v. State of Bihar (Now Jharkhand)***, reported in (2014) 3 SCC 401. Therefore, in the light of above discussed evidence, even above aspect lends strength to the case of prosecution.

#### GROUNDS AND OBJECTIONS RAISED IN APPEAL

34. The fundamental objection raised before us in appeal is that motive is not cogently established.

Here, evidence of prosecution shows that deceased was possessing photographs of sister of accused. It is further case of prosecution that he was showing said photographs to the relatives and informing them that he is going to marry her. Wife of deceased herself in her testimony acknowledges that on account of illicit relations between sister of accused Chandpasha and her husband, there used to be quarrels between both of them. PW3 Sk. Amar has also testified about hearing accused questioning deceased for possessing photographs of his sister. Therefore, in the light of such material on record, motive behind the crime is forthcoming having been cogently established by prosecution.

35. It is tried to be submitted that prosecution's own evidence shows that deceased was in the habit of consuming liquor and picking up quarrels with people, and therefore, possibility of someone else, with whom he quarreled, behind the incidence and death cannot be ruled out.

Here, above objection holds no water as, apart from no evidence on the aspect of deceased picking up quarrels under influence of liquor with several people, here, there is direct evidence in the form of testimony of PW3 Sk. Amar and therefore the above objection is without any foundation and hence is required to be kept out of consideration.

36. That there are contradictions and omissions in the testimony of PW3 Sk. Amar on the point of accused catching hold of collar of Salim, he being pushed away and accused giving three to four blows.

In our considered opinion, so-called contradictions and omissions are minor in nature and therefore, not being material or affecting the core case of prosecution, the said contradictions and omissions cannot be said to be fatal.

37. Learned Advocate for the appellant pointed out that entire evidence of prosecution is full of defects and irregularities. In our considered opinion, these defects and irregularities are not vital. In the light of availability of other cogent, reliable and overwhelming direct evidence, the so-called defects and irregularities will be rendered insignificant so as to cast doubt over entire evidence of the prosecution. There are umpteen judgments of the Hon'ble Apex Court holding that mere defective investigation will not render entire case of prosecution redundant if the core of prosecution case has remained undisturbed. Therefore, there being no substance in the above objection, we discard the same.

38. Similarly, ground is taken in the appeal that there is no independent witness and only interested and related witnesses are examined by prosecution. It is fairly settled that mere relationship of victim itself cannot be made a ground to look upon the evidence with suspicion and further doubt it. At times, incidence does take place in the very places of near and dear ones and as such they become natural witnesses. The Hon'ble Apex Court in the case of *State v. Saravanan and another* reported in 2008 SCC OnLine SC 1529 has reiterated that relationship is not a factor to affect the credibility of a witness. It is elaborated that whenever any plea is taken by accused person, about interestedness of the witnesses, material has to be placed in that regard and court has to adopt a careful approach while analyzing evidence to find whether testimony is cogent and credible. Here, no effort whatsoever has been done by defence to place any material which is so sufficient to hold that witness can be disbelieved for particular reason being interested one.

39. It is strenuously submitted that deceased was not in a fit state, either physical or mental, to give any statement to police as is the case of prosecution because the doctor who examined and permitted police to record statement had certified that condition of deceased was poor and therefore so-called dying declaration is rendered doubtful. We have considered the said evidence and given anxious thought to the same. No doubt, doctor has used the word

‘poor’ about condition of deceased but has at the same time also certified that he was conscious. Doctor has not rendered deceased to be unfit to give statement. Therefore, when deceased was taken to the hospital, though with fatal injuries, he seems to be conscious and he has also given statement which is recorded by police personnel. Therefore, in our opinion the above objection has no merits, more particularly when dying declaration is not solely relied by prosecution. Here, there is ocular account which has been accepted for accepting the case of prosecution.

40. Another objection raised before us is that panchas have not supported prosecution. We do not accept this submission for the reason that panchas have wholeheartedly participated in the evidence and have also supported prosecution except **PW5** Mohd. Ashfaque who has initially turned his back from prosecution but in cross-examination, has admitted all suggestions put forth by learned APP. Therefore, even said objection has no merits. After seizure, the muddemal has been subjected to analysis. CA report discloses marks of human blood.

### SUMMATION

41. On taking audit of above discussed evidence, the residue which falls back is that accused was annoyed with deceased for possessing photographs of his sister and broadcasting that he intended to marry her. In that backdrop he

questioned deceased in presence of PW3 Sk. Amar. At such time accused was armed with knife. PW3 Sk. Amar has seen accused putting the knife to use and inflicting injuries which turned out to be fatal i.e. resulting into death. Apart from testimony of PW3 Sk. Amar, there are other testimonies lending supporting to the prosecution case. PW4 Ajam Khan testified about accused calling him on mobile and asking him to take away deceased from Parbhani and further threatening that if not done so, he would kill him. In spite of being subjected to lengthy cross-examination, neither testimony of PW3 Sk. Amar nor other witnesses has been rendered doubtful. By examining medical expert, death is established to be homicidal one. Testimony of PW3 Sk. Amar is corroborated by medical evidence. Therefore, learned trial Judge has committed no error whatsoever in recording guilt of the accused and sentencing him accordingly.

42. It is only possible view, in our opinion, that could emerge with above quality of evidence on record. In appeal, how learned trial Judge erred and reached to erroneous finding has not been brought to our notice. We have also gone through the rulings relied by learned Advocate for the appellant. In our considered opinion, the facts in all those cases and the facts in the case in hand being distinct, the same cannot be applied here. Consequently, there is no reason to interfere in the judgment of trial court and hence, we proceed to pass following order:

**ORDER**

The appeal is hereby dismissed.

**(ABHAY S. WAGHWASE, J.)**

**(SMT. VIBHA KANKANWADI, J.)**

*VRE*