

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

CRIMINAL APPEAL NO. 678 OF 2015

Jaikisan s/o Kashinath Dhamdhere,
Age : 36 years, Occu. : Driver,
R/o : Village Mohadi, Taluka and
District : Dhule.

[At present the Appellant is in
Nashik Road Central Prison, Nashik,
Taluka and District : Nashik]

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra,
through the Azad Nagar Police Station,
Dhule, Taluka and District :
Dhule.

... Respondent
(Prosecution)

...

Mr. Govind Kulkarni, Advocate h/f Mr. Devang R. Deshmukh, Advocate for the
Appellant.

Mrs. P. V. Diggikar, APP for the Respondent-State.

...

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

DATE : 05.01.2023

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

1. By invoking Section 374 of the Code of Criminal Procedure (Cr.P.C.), the
appellant is questioning the legality and maintainability of finding of his guilt
and conviction recorded by learned Additional Sessions Judge, Dhule in

Sessions Case No. 191 of 2014 vide judgment and order dated 28.07.2015 by which, he is awarded imprisonment for life and to pay fine of Rs.5,000/- for commission of offence punishable under Section 302 of the Indian Penal Code (IPC) and rigorous imprisonment for 10 years with fine of Rs.5,000/- for commission of offence punishable under Section 307 of IPC.

2. THE SUBSTRATUM OF PROSECUTION CASE IS AS UNDER :

Deceased Janki @ Sarita was married to PW9 Pankaj and they had children out of their wedlock. They both were manufacturing incense sticks in their house and PW9 used to go for marketing and sell the same on his handcart. Deceased Janki @ Sarita had developed illicit relations with accused Jaikisan. In spite of objection by PW9, deceased Janki continued her said relations with accused.

On 04.09.2014, as usual, PW9 left for his so-called business and went to Gindodia Chowk, Rachana Hall, Dhule. Around 8.00 p.m, his mother and sister-in-law and some ladies of his locality carried deceased Janki in rickshaw in injured condition. According to PW9-informant, on inquiry, deceased informed him that accused questioned her for having illicit relations with persons other than him and he assaulted her with knife at Swami Narayan Colony i.e. in front of the house of Govind Gulab Choudhary. He claims to

have seen that *saree* of his wife was blood stained and she had sustained injury on stomach, rib and back. PW9 asked his mother and sister-in-law to take his wife to the hospital and he too reached there. After short time, against medical advice, discharge was obtained from the civil hospital and Janki was taken to Siddheshwar Hospital but said hospital refused to take her and therefore, he took her to Seva Super Specialty Hospital. There, she breathed her last and thereafter, he approached police and set law into motion by lodging the FIR. Thereafter, crime baring 183 of 2014 was registered with Azad Nagar Police Station, District Dhule for the offence punishable under Section 307 of the Indian Penal Code (IPC), Section 25 r/w 4 of the Arms Act and Section 135 r/w 37(1)(3) of the Bombay Police Act.

Investigation was undertaken during which the Investigating Officer took all required steps and after gathering sufficient evidence, accused came to be chargesheeted.

3. Learned Additional Sessions Judge, Dhule, who was seized with the case, after explaining the charge, commenced trial. Both sides were allowed to participate therein and allowed to adduce evidence respectively. After hearing learned counsel for State as well as defence, learned trial court recorded guilt of the accused for offence punishable under Sections 302 as well as 307 of IPC.

The above conviction is now challenged before us by filing instant criminal appeal by invoking Section 374 of Cr.P.C.

4. As required, i.e. by virtue of the ruling of the Hon'ble Apex Court *Ishvarbhai Fujibhai Patni v. State of Gujarat* ; (1995) 1 SCC (Cri.) 222, this being a first appeal, this Court is expected to analyze, re-appreciate and re-evaluate the evidence adduced by the prosecution to ascertain whether there is any illegality and perversity while passing the impugned judgment and order.

We propose to deal with the oral and documentary evidence that has been tendered before the learned trial Judge and sum and substance of the evidence, to test credibility of prosecution to ascertain whether, as held by learned trial Judge, prosecution has at all succeeded in establishing the charges against the accused.

STATUS/ROLE OF THE WITNESSES

PW1 is the first doctor who examined the deceased while being posted as a Medical Officer in Civil Hospital, Dhule and he issued injury certificate; **PW2** is the pancha who visited the spot and drew hand-sketch map; **PW3** is the spot pancha in whose presence spot panchanama was drawn; **PW4** is the pancha to the panchanama Exhibit 18; **PW5** is the inquest pancha i.e.

panchanama Exhibit 20; **PW6 and PW7** are the panchas to seizure of clothes of accused and deceased i.e. Exhibits 22 and 24; **PW8** is the autopsy doctor who conducted postmortem on the dead body of Janki @ Sarita and who identified the postmortem report Exhibit 25 and issued provisional postmortem report; **PW9** is the informant-husband of deceased; **PW10** is the first eye witness; **PW11** is the second eye witness; **PW12** is the carrier of muddemal; **PW13 and PW17** are the Investigating Officers; **PW14** is the third eye witness; **PW15** is also a carrier; **PW16** is the doctor who treated the deceased at Seva Super Specialty Hospital.

5. In view of the charge under Section 302 of IPC, it is essentially to be seen whether at the outset prosecution had succeeded in establishing death of Janki @ Sarita to be homicidal one. To find answer to this question, obviously we are required to deal with the **PW8** autopsy doctor's evidence. At Exhibit 24, the autopsy doctor testified that he is Associate Professor and Head of the Department of Forensic Medicine and Toxicology, Hire Medical College, Civil Hospital, Dhule. According to him, on 05.09.2014, dead body of Janki was brought for autopsy along with inquest panchanama and he conducted postmortem on the same day between 1.10 p.m. to 2.10 p.m.. He narrated that as per inquest panchanama deceased died due to assault with knife. After noting details of dead body, he has narrated external injuries noticed by him i.e. reflected in column no. 17 which are as under:

1. **Lacerated injury** present over posterior parietal region in mid line; size - 2.8 cm X 2.5 cm X subcutaneous deep, obliquely placed.
2. **Linear abrasion** present 02 cm below left eye over left cheek of length 05 cm, red, obliquely placed.
3. **Linear abrasion** present 03 cm below injury no (2) over left cheek of length 02 cm, red, obliquely placed.
4. **Linear abrasion** present over lower lip, 01 cm left lateral to midline of 0.8 cm length, red, obliquely placed.
5. **Multiple abrasions** present over right lateral aspect of lower neck and over adjacent right infraclavicular region; size – 0.3 cm X 0.3 cm to 04 cm X 0.5 cm red, obliquely placed.
6. **Incised wound** present 02 cm below elbow joint over front of right forearm; size – 01 cm X 0.5 cm X muscle deep, obliquely placed.
7. **Multiple contused abrasions** present over back of right elbow; size – 0.3 cm X 0.3 cm to 0.5 cm X 0.3 cm, red, obliquely placed.
8. **Stitched incised injury** present over front of proximal phalanx of left hand thumb; size – 0.3 cm X 0.5 cm X muscle deep, obliquely placed.
9. **Stitched incised injury** present over lateral aspect of proximal phalanx of left hand index finger and over adjacent left hand palm; size – 04 cm X 0.5 cm X muscle deep, obliquely placed.
10. **Surgically stapled operative wound** extend from xiphisternum to 07 cm above pubic symphysis in mid line. Abdominal drainage tube present in situ at lower end of the operative wound.
11. **Stapled stab wound** present 11 cm below right nipple over right hypochondriac region of upper abdomen, size – 03 cm X 1.5 cm X cavity deep, obliquely placed.

12. **Surgical abdominal drainage wound** with one drainage tube in situ present 09 cm below injury no (11) over right lumbar region of abdomen; size – 01 cm X 01 cm X cavity deep, obliquely placed.
13. **Surgical thoracic drain wound** with one drainage tube in situ present 07 cm right lateral to right nipple over mid portion of lateral aspect of right side chest, size – 01 cm X 01 cm X cavity deep, obliquely placed.
14. **Stapled stab wound** present 05 cm below and left lateral to left nipple, size – 3.5 cm X 1.5 cm X cavity deep, obliquely placed.
15. **Surgical thoracic drain wound** with one drainage tube in situ present 04 cm behind injury no(14) over mid portion of right lateral aspect of chest, size – 02 cm X 01 cm X cavity deep, obliquely placed.
16. **Surgical abdomen drain wound** present over left lumbar region of abdomen, size – 1.5 cm X 01 cm X cavity deep, obliquely placed.
17. **Multiple abrasions** present over front of right knee, size – 0.3 cm X 0.3 cm X to 0.5 cm X 0.2 cm, red.
18. **Stapled stab wound** present over right side upper back, 04 cm right lateral to midline, 07 cm below lower border of neck, size – 03 cm X 02 cm X cavity deep, obliquely placed.
19. **Stapled stab wound** present 03 cm below injury no(18) over right side upper back; size – 02 cm X 01 cm X cavity deep, obliquely placed.
20. **Stapled stab wound** present over right side scapular region of back, 15 cm below right shoulder tip and 04 cm medial to posterior axillary line; size – 02 cm X 01 cm X muscle deep, obliquely placed.

21. **Stapled stab wound** present over right side scapular region of back, 03 cm medial and below to injury no. (20); size – 03 cm X 02 cm X bone deep, obliquely placed.
22. **Stapled stab wound** present over right scapular region of back, 2.5 cm below injury no(21), size – 03 cm X 02 cm X bone deep, obliquely placed.
23. **Stapled stab** wound present 12 cm below injury no (19) and 03 cm lateral to mid line over midportion of right side of back, size – 04 cm X 2.5 cm X cavity deep, obliquely placed.
24. **Stapled stab wound** present over posterior and lateral aspect of right side lower chest, 07 cm right lateral and below injury no.(23); size – 03 cm X 02 cm X cavity deep, obliquely placed.
25. **Stapled stab wound** – present 03 cm, left lateral to midline over left lumbar region of back, size – 02 cm X 0.8 cm X cavity deep, obliquely placed.
26. **Stapled stab wound** present over left lumbar region of back, 09 cm left lateral to injury no(25); size – 03 cm X 01 cm X cavity deep, obliquely placed.
27. **Stapled stab wound** present over left lumbar region of back, 3.5 cm below injury no(26); size – 03 cm X 01 cm X cavity deep, obliquely placed.
28. **Linear abrasion** present over upper portion of left buttock, 01 cm in length, red.
29. **Multiple contused abrasions** present over lateral malleolus of right foot; size – 0.2 cm X 0.2 cm to 0.3 cm X 0.3 cm, red.

30. **Stapled stab wound** present over epigastric region of upper mid portion of abdomen, 03 cm below xiphisternum; size – 04 cm X 01 cm X cavity deep, horizontally placed. The wound is crossed horizontally by the laparotomy wound (10). Underlying sternum bone lower end is cut fractured through and through.

Margins and angles of all the stab and incised injuries mentioned above are sharp and acute respectively.

Then he shifted to narrate that he undertook postmortem and during internal examination, he claims that there was cut and fracture on 11th rib corresponding to injury no. 11 in column no.17, 9th rib was cut and fractured corresponding to injury no.14 in column no.17, sternum bone lower end was cut, fractured through and through corresponding to injury no. 30 noted in column no.17. According to him, there were stab injuries present over right lung lower lobe corresponding to injury no. 11 noted in column no. 17 and it was lung tissue deep. He found surgical stitching over abdominal diaphragm over left upper portion and adjacent posterior portion of stomach corresponding to injury no. 30 in column no.17. He noted stitched stab injury present over lateral aspect of right lobe lower portion which was liver tissue deep, stitches in situ and another stitched stab injury present over interlober portion of liver and both the injuries were corresponding to injury no. 30 in column no.17. He came across stab injury over posterolateral aspect of mid portion of right kidney which was corresponding to injury no. 23 in column no. 17. He handed over (i) nail clippings of both hands, (ii) scalp hair, (iii) blood soaked guage piece for blood grouping and (iv) blood. It is his opinion

that all injuries being ante-mortem were sufficient in the ordinary course of nature to cause death and further, injury nos. 11, 23 and 30 noted in column no. 17 with their corresponding internal injuries mentioned in column nos. 20 and 21 were individually sufficient in the ordinary course of nature to cause death of a person. He spoke of giving opinion of cause of death as 'hemorrhage and shock due to stab injuries to vital organs'. The post-mortem report on being shown to him, he identified the same along with its contents and also identified his signature upon it. The post-mortem report is exhibited as Exhibit 25. He also identified the provisional post-mortem report under his signature. He stated that injuries at serial nos. 11, 14, 18 to 27, 30 and incised wounds at serial nos. 6, 8 and 9 mentioned in column no.17 are possible by article 3 shown to him in court.

The medico legal expert is subjected to extensive cross-examination by the counsel for defence wherein he has admitted that he has seen article 3 knife for the first time in the witness box and that both sides of the weapon are edged. He denied that one side is blunt near the handle and injury may not cause as a sharp one due to such portion. He admitted that police did not seek his opinion by confronting him the knife. He answered that article knife does not bear label or signature of the pancha. Then he answered that lacerated wound may be caused due to iron rod, stick, stone and abrasions may be caused due to fall on rough surface. He voluntarily stated that lacerated

wound caused to the head may be cause due to fall on the rough surface. He answered that different types of wounds caused to the deceased could be caused by assault at the hands of two to three persons. He had answered that there were wheel marks all over the body. Then he is questioned about rigor mortis and some portion of medical jurisprudence by Dr. K. S. Narayan is brought to his notice on the point of rigor mortis, its duration, its onset and its development. He is questioned about time required for digestion of food and partial digestion. After consulting record, he answered that the record and letter issued by Seva Super Specialty and Critical Care Center shows that deceased died at 4.45 a.m. on 05.09.2014. He denied that injury caused within eight hours prior to examination is termed as fresh injury. He is unable to state what treatment should be given by the doctor who first attends the patient. He stated that after 4.45 a.m. of 05.09.2014, deceased was not alive. He flatly denied that due to accident by pointed tin of vehicle such injuries may cause.

Above is the only cross on the point of cause of death.

6. We have considered medico legal expert's evidence in its entirety. Autopsy doctor, an expert, has noted injuries both internal as well as external in column no. 17 and the corresponding injuries and its impact. He is very categorical that such injuries mentioned in column no. 17 are ante-mortem in

nature and caused within 24 hours of actual time of death. He specified that all stab injuries i.e. injury nos. 11, 14, 18 to 27, 30 and incised injury nos. 6, 8, 9 mentioned in column no.17 are possible due to assault by sharp edged and pointed weapon such as knife. Doctor has stated about coming across stab injuries on right lung, which was tissue deep, on abdomen i.e. posterior portion of stomach, stab injury over lower portion of liver and right kidney. In examination-in-chief, in para 9, he is very categorical that **injuries noted in column no.17 with their corresponding injuries noted in column nos. 20 and 21 were individually sufficient in ordinary course of nature to cause death of a person** and accordingly he had opined the cause of death as **“hemorrhage and shock due to stab injuries to vital organs”**. Therefore, with such quality of evidence and multiple grievous injuries, that too on vital parts, we are more than convinced that Death of Janki @ Sarita is nothing but homicidal one and prosecution has clearly established death as homicidal one.

7. Having held that death to be homicidal one, we proceed to the next stage of ascertaining whether, as alleged by prosecution, the accused appellant is the author of the said injuries. To establish accused to be the assailant, prosecution is heavily relying on the evidence of PW10, PW11 and PW14. Prosecution has asserted that these witnesses are independent witnesses and are eye witnesses. Therefore, we proceed to examine their evidence to test their credibility.

8. **PW10** Kailas Choudhary testified that he knew deceased and her husband. According to him, on 04.09.2014 at 7.45 p.m. when he and his wife visited Swami Narayan Colony to watch Lord Ganpati Festival, they heard shouts. He and his wife then rushed to the spot where public had gathered. He saw accused assaulting deceased Janki @ Sarita with knife on chest, rib and back by pulling her hair and blood oozing from injury and she falling down. This witness stated that the public gathered apprehended accused on the spot and some of them gave call to police. Family members of Janki @ Sarita came and took her in auto rickshaw. Persons gathered there handed over accused in the custody of police. He further stated that persons gathered there had given thrashing to the accused before handing him over to police. He identified accused in the court stating that person who assaulted by knife to Janki @ Sarita is present in the court. He also identified article 3 knife.

Above witness is cross-examined wherein he is asked whether it happened so that his wife was with other ladies and whether his statement was recorded by police as per his say. Omissions are brought about hearing shouts and about running to such spot, whether it was specifically told to police about seeing accused assaulting deceased on chest, rib and back by pulling her hair, about apprehending accused and handing over to police. He is asked whether he informed police that he can identify the knife if shown to him. Rest is all denial.

9. The another eye witness **PW11** is at Exhibit 34 by name Rajendra Choudhary who in his testimony stated that he knew the complainant. He too stated that on 04.09.2014 at around 7.45 p.m. when he and his wife had been to Swami Narayan Colony to see Lord Ganpati festival, they heard shouts nearby and so they went to the spot and saw one person assaulting a woman with a knife by pulling her hair. The lady sustained bleeding injuries and when the assailant tried to run, he was apprehended. Gathered persons assaulted said person by fist and kick blows. Relatives of the lady came in a rickshaw and proceeded to civil hospital. Then he states that name of the lady was Sarita and according to him, she was residing adjacent to his house and therefore he was knowing her. He stated that the incident took place in front of the houses of Magan Teli and Gulab Choudhary. Police came and took the person, who assaulted the lady, in custody and he gave his name as Jaikisan. He identified accused in the court. He further stated that accused was abusing Janki @ Sarita as to why she was not attending his phone calls though he was paying her. He claims that accused was having illicit relations with Janki @ Sarita and subsequently, he came to know that Janki @ Sarita had died. He also identified article 3 knife shown to him by prosecution.

This witness is also cross-examined on the same lines as previous eye witness PW10. He was asked as to whether his wife was accompanying him and whether his statement and his wife's statement was recorded at once. On

further questioning, this witness has answered that “accused has not dragged the lady by pulling the hairs”. Omission to the extent of pulling hair and about assault on stomach, back and rib is brought on record. Similarly, omission is brought about knowing name of injured Janki @ Sarita. Even his statement to police was specifically silent about handing over accused to police and about accused disclosing his name before the police as Jaikisan. He is questioned as to whether he had personal knowledge about illicit relations between accused and deceased. Rest is all denial.

10. Now let us turn to the evidence of **PW 14** i.e. Pankaj Choudhary. He too stated that on 04.09.2014 when he had been to the Lord Ganpati pandal at Swami Narayan Colony for performing *Aarti*, he heard shouts near Magan Teli and Gulab Choudhary’s house and so he visited the spot and saw one person assaulting a woman with knife and the lady falling down and she had bleeding injuries. Her relatives came and they took her for treatment. He too stated that the person who assaulted the lady tried to run but persons gathered there caught him and assaulted him resulting into fracture, police arriving on the scene and that person being handed over to police. He too stated that the said person, on police inquiry, gave his name as Jaikisan. He answered that he came to know that deceased was having illicit relations with the person who assaulted her and he identified the accused in the court.

In cross-examination, he is asked whether he had mobile and whether he immediately called police. He answered in negative but volunteered that already information was passed on to police by others and so he did not inform. He is unable to give name of the person who informed police. He answered that police reached within one and half hour after incident and that he waited there till police took accused with them. He denied that he accompanied police to the police station. He answered that police have not recorded his statement on the spot, rather police recorded his statement on 06.09.2014 On inquiry whether there was any source of light, he answered that on the spot street light facility is not available and that it was dark. He answered that he saw person running and being immediately caught. He answered that lady was wearing white *saree* having yellow spots. Omission is brought in the form of police recording his ability to identify knife if shown to him. Rest is all denial.

SUMMATION ON THE ACCOUNT OF DIRECT EYE WITNESSES

11. The above witnesses **PW10**, **PW11** and **PW14** are very crucial for prosecution and therefore, prosecution seems to be heavily banking on their testimony. We have already discussed in detail evidence at their instance in the witness box. It is clearly emerging that occurrence has taken place during Lord Ganpati festival. All three witnesses claimed that in the evening around 7.45

p.m. they had been to see Lord Ganpati celebrations in Swami Narayan colony. All three witnesses are consistent on hearing shouts and they all visiting the spot from where the shouts came from. All three witnesses are consistent about seeing a man assaulting a woman with knife and causing her bleeding injuries. All three witnesses are also found to be further stating that when the said person tried to flee, he was caught by the gathering available there and he was also given thrashing. All three witnesses have identified the accused in the court. They have also identified article 3 knife shows to them in the court by prosecutor. Therefore, occurrence is firmly established at the hands of PW10, PW11 and PW14 wherein they speak about seeing actual assault with knife on a lady. One of these witnesses i.e. PW11 claims that he knew deceased lady because she was residing in their locality.

Thus, in the evidence of all the above three witnesses, it is conspicuously emerging that the person who assaulted had tried to flee from the spot and therefore caught by the gathering present there and even given thrashing. Undisputedly it is the accused who himself has lodged FIR of said episode of beating to him and that has been brought on record. In FIR he narrated cause of beating. There is no explanation as to how accused suffered fracture injury. The doctor who has occasion to examine deceased at the first instance had also stated before the court that he examined accused who was shown to be apprehended from the spot where alleged incident had taken

place. Such material reinforces the aspect of presence of accused at the spot. There was no reason nor is there any explanation coming from the accused as to why he was beaten and for what reason. The only inference that can be drawn from above material is that accused was apprehended and further beaten by the crowd only because he was seen assaulting a lady with knife. Therefore, apart from the role of accused, it is clearly brought on record by prosecution that accused is the only assailant.

12. Apart from above testimonies, there is also evidence of husband from which aspect of motive is coming on record. Therefore, let us visit the testimony of PW9 husband of deceased recorded by learned trial Judge while he was in witness box. The tenor of his evidence is that his wife had illicit relations with accused and he having learnt about it, had given her understanding, but according to him, she did not pay heed and continued relations with the accused. In his complaint, he has informed that in the afternoon of 04.09.2014, he left the house to sell incense sticks as usual. Then, at around 8.00 p.m., his mother, sister-in-law and some ladies of his locality came in a rickshaw carrying his injured wife and there he claims that on his query, his wife informed about being assaulted by accused for maintaining relations with persons other than the accused. This witness requested his mother and others to take his wife to hospital. Initially she was taken to civil hospital and from there she was transferred to Seva Hospital. In witness box,

he identified the accused. He stated that after admitting wife, he visited police station and lodged FIR Exhibit 32 and further showed the spot to police.

In cross-examination, he is asked for how much time he was in civil hospital. To further questioning he answered that from there they visited Siddheshwar Hospital, but they denied admission of his wife and so they visited Seval Hospital and admitted her there which was at 10 minutes distance from Siddheshwar Hospital. He answered that police visited hospital. Aazad Nagar Police Station was 3 to 4 kms. from Seva Hospital. He answered that on visiting police station, within five minutes police started recording FIR. He is questioned about whether his wife has illicit relations with many people and that her behaviour was not good and that he merely suspected about her illicit relations with the accused and all answers are denials. He is asked whether his wife was wearing blouse when she visited him and whether he had personally seen the injuries by removing her clothes, to which he has candidly answered in negative. He stated that when he returned to Seva Hospital at around 5.00 a.m., at that time his wife was dead and Seva Hospital issued death certificate. There is denial about falsely stating that his mother, sister-in-law and ladies came to him and his wife informing him about assault by accused.

Consequently, from the evidence of PW9 husband, prosecution has also brought on record **motive** behind the occurrence. Though PW9 claims about oral dying declaration being given by his wife while she was taken in rickshaw, unfortunately the same has not been proved nor investigated by police. Be it so. In our opinion, there is no reason to disbelieve as very husband claims that there were illicit relations by accused with his wife. Though there is nothing on record to show that accused was annoyed on deceased for maintaining parallel relations with others, as stated above, husband himself has confirmed his wife's relations with accused. Therefore, motive behind the occurrence is also brought on record in the form of the FIR. Even if this aspect is not accepted for want of evidence, as discussed above, there is already direct independent eye witnesses' account about accused assaulting deceased Janki @ Sarita with knife. Further, in the light of availability of direct evidence, aspect of motive is not relevant.

13. Prosecution has also adduced oral evidence of other witnesses. Therefore, let us deal with the same. **PW1** seems to be the first doctor who was posted at Civil Hospital, Dhule and who had mere occasion of examining deceased and giving her first aid. PW1 has noticed five CLW injuries on hypochondrium, left side of chest, back thoracic region, right side of back below scapula and at lumber region. He has also notice one contused incised wound on epigostic region and according to him, said injury is possible by account of

hard and sharp object and caused within 24 hours. He has identified injury certificate Exhibit 10 as well as confirmed that the injury is possible by object like knife.

In cross-examination he is asked about nature of injuries, contents of injury certificate and within how many hours the patient was discharged and whether he treated the patient, to which he answered that he gave only first aid treatment to her. He denied that the lady died on the morning of 04.05.2014.

Therefore, he is the first medical witness who had merely examined injuries and had given primary aid and nothing beyond it.

14. The next medical witness examined by prosecution is PW16 i.e. doctor posted at Seva Super Specialty Neuro Trauma and Critical Care Centre. On going through his evidence, it is emerging that on 04.09.2014 he was given call to attend duty at 9.30 p.m. on account of a patient by name Janki admitted with multiple stab injuries. He stated that he examined her at 9.40 p.m. At that time she was in shock. Bandage was wrapped along her abdomen and patient was semi conscious and disoriented. He speaks of history being given as being stabbed and shifted to their hospital from civil hospital. He stated that she was taken to operation theater, bandages were removed and he

came across multiple stab injuries on abdomen, chest and back. In para 3 he has given description of the injuries as under:

“3. She was taken in operation theater as there was bleeding. The bandage were removed at operation theater. I found multiple stab injuries on abdomen, chest and back. I noticed 18 injuries on abdomen, chest and back as under :

1. Incised wound below elbow joint over front of right forearm size 1 cmX-5cmX muscle deep obliquely placed.
2. Incised wound over font of proximal phalanx of left hand thumb size -3 cm x -5 cm x muscle deep obliquely placed.
3. Incised wound below joint over from of right forearm size 1 cm x 5 cm x muscle deep obliquely placed.
4. Incised injury over from proximal phalanx of left and thumb size -3 cm x -5 cm x muscle deep obliquely placed.
5. Incised injury over lateral aspect of proximal phalanx of left hand index finger and over adjacent left hand palm size 4 cm x -5 cm muscle deep obliquely placed.
6. Stab wound below right nipple over right hypochondriac region of upper abdomen size 3 cm x 1.5 cm x cavity deep, obliquely placed.
7. Stab wound below and left lateral to left nipple size 3.5 cm x 1.5. cm x cavity deep obliquely placed.
8. Stab wound below and left lateral to left nipple size 3.5 cm x 1.5 cm x cavity deep obliquely placed.

9. Stab wound over right upper back 4 cm right lateral to midline 7 cm below lower border of neck size 3 cm x 2 cm x cavity deep.
10. Stab wound over right side upper back size 2 cm x 1 cm x cavity deep.
11. Stab wound over right scapular region of back 15 cm below right lateral to
12. Stab wound over right scapular region of back size 3cm x 2cm x bone deep.
13. Stab wound lateral to midline over midportion of right side of back size 4 cm x 2.5 cm x cavity deep.
14. Stab wound over posterior and lateral aspect of right side lower chest 7 cm right lateral size 3 cm x 2 cm x cavity deep.
15. Stab wound left lateral to midline over left lumbar region of back size 2 cm x -8 cm x cavity deep.
16. Stab wound over left lumbar region of back 9 cm. left lateral size 3 cm x 1 cm x cavity deep.
17. Stab wound over left lumbar region of back 3.5 cm. below size 3 cm x 1 cm x cavity deep.
18. Stab wound over epigastric region of upper mid portion of abdomen 3cm below xiphisterum size 4 cm x 1 cm x cavity deep.

In further examination-in-chief he stated that injury nos.6, 7, 8, 14 and 18 are sufficient to cause death in ordinary course of nature and other injuries were grievous in nature. On being shown the article knife, he answered that

the same may cause injuries shown in column/para 3 and possible on account of assault by it. He identified the injury certificate issued by him and finally stated that on 05.09.2014, after operation at around 1 a.m., he left the hospital and Doctor Mali informed him that patient died at 4.45 a.m. on that day itself.

Above witness is also subjected to cross-examination about name of the patient, number of bed she was kept and column to that extent to be blank. He admitted that he did not mention in Exhibit 53 that injuries 1 to 5 were of cut injuries in nature. He denied that incised wound can be caused by hard and blunt object and that injury nos. 1 to 5 are possible by pointed stone. He answered that it is necessary that there should be hole on the blouse where injury no.6 is caused. He admitted that he is seeing informant for the first time. He answered that if knife passes abdominal part or back then, size of the wound may differ. He answered that certificate of civil hospital was not placed before him when patient was admitted. He is unable to state whether relatives and husband were present in the hospital but he stated that history was given by the relatives. He admitted that in Exhibit 57 it is mentioned that there is assault by unknown person and the incident happened in the house. Several further questions are put to this witness which are hypothetical in nature.

15. We have already discussed evidence of the third medical expert i.e. **PW8** who conducted postmortem. Therefore, it is emerging from the testimonies of

three medical experts that deceased had suffered multiple stab injuries on abdomen, chest and back. PW16 has noted as many as 18 injuries. Though few of them are due to medical intervention at the time of operation, but stab injuries as noted in post-mortem report which are various in number and on vital part are shown to be established through medical experts.

So here three medical experts are confirming number and nature of injuries suffered by victim Janki @ Sarita.

16. The next set of witnesses is the panchas who were party to the panchanama.

PW2 has merely drawn hand sketch map of the spot but he identified the said spot panchanama and confirmed it while facing cross-examination by specifically pointing to the circle mark appearing in the sketch map.

PW3 in the initial part has stated that he was called by police and was asked by police to sign on already prepared panchanama. However, he identified his signature and the same was exhibited as Exhibit 16. Thereafter, he turned his back and did not support prosecution. However, trial court seems to have exhibited panchanama Exhibit 16.

During spot panchanama, apart from gathering earth with and without blood, there is seizure of knife, of which description is given in the spot

panchanama, and also mobile of deceased. This spot panchanama is drawn on the very night of 04.09.2014.

PW 4 - pancha witness to spot panchanama has also not supported the prosecution.

PW5 seems to be pancha to the inquest panchanama and he proves the contents as well as signature and therefore, said panchanama is exhibited as Exhibit 20. In cross-examination he admitted that he is distant relative and answered that whatever was written in the panchanama was seen by him and he had accordingly deposed to that extent.

PW6 and PW7 have acted as pancha to seizure of clothes of accused and deceased respectively. However, they have not supported the prosecution. But both, spot panchanama as well as panchanama of seizure of clothes of accused and deceased are got established and accepted through evidence of the Investigating Officer. Therefore, though these witnesses have not supported prosecution, there is no major dent to the case of prosecution.

ANALYSIS ON THE POINT OF SEIZURE

17. The first Investigating Officer **PW13** has visited the spot shown by the informant and has seized knife and undertaken the exercise of collecting blood-stained soil, regular soil, knife, motorcycle and the spot panchanama got executed through this witness.

In cross-examination he is unable to state whether there were street light around and further he answered that knife was found lying on the open space and he had not taken fingerprints over it.

18. **PW17** is the second Investigating Officer who received FIR, spot panchanama, inquest panchanama, muddemal receipt, special report, arrest panchanama, statements of witnesses, supplementary statements of witnesses. He too handed over further investigation to API Deshmukh. He speaks of dispatching seizure to C.A. and about complaint by accused about assault on him by the crowd resulting in registration of crime no. 184/2014. According to him, at the time of the incident there were prohibitory orders in force and he placed the same on record Exhibit 66. He gathered medical papers.

This Investigating Officer is also cross-examined as to how statements of mother and sister-in-law of complainant and the ladies of the locality accompanying them were not recorded. According to him, deceased was conscious till 11.00 to 11.30 p.m. He answers about taking steps for recording dying declaration. He denied that there was no electric pole near the spot. He answered that after handing over muddemal to muddemal karkoon till it was sent, it was in custody of muddemal karkoon. He answered that after following due procedure, samples were dispatched in sealed condition for

analysis. He admitted that during investigation blouse of the deceased was not attached. Rest is all denial.

19. FROM THE ABOVE DISCUSSION ON ORAL AND DOCUMENTARY EVIDENCE, FACTS CLEARLY EMERGING ARE AS UNDER :

1. Deceased was married to complainant PW9.
2. Husband himself speaks about illicit affair of his deceased wife with accused.
3. At around 7.45 p.m. on 04.09.2014 direct independent eye witnesses PW10, PW11 and PW14 witnessed assault on deceased with knife and said assailant, i.e. accused, to be caught red handed by the gathering and given beating too, and further being handed over to police.
4. Deceased died on the intervening night of 04.09.2014 and 05.09.2014.
5. Medical experts confirmed multiple stab wounds and death is proved to be homicidal one.
6. Various panchanamas being proved.

GROUND/OBJECTIONS RAISED BY DEFENCE

20. In appeal before us, challenge to the judgment and order of conviction is on the following grounds:

1. Motive not established.
2. Alleged illicit relations between accused and deceased not established.
3. Occurrence taking place in the night and including IO, witnesses admit about no source of light, therefore, identification is doubtful.
4. Recovery of knife from open spot.
5. Inconsistencies and variances in the testimony of doctors about number of injuries render case of prosecution doubtful.
6. Possibility of accident in the backdrop of wheel marks found on the body not ruled out.
7. Statements of material witnesses like mother of PW9, sister-in-law of PW9 and other ladies not recorded.
8. Versions of eye witnesses doubtful and that they are planted witnesses.
9. Identification of the article and accused for the first time in the court and therefore possibility of tutoring to the witnesses not ruled out.
10. Material omissions and contradictions in the prosecution witnesses, more particularly, PW 10, 11 and 14.

21. Therefore, it becomes incumbent upon this Court to deal with the above objections and grounds raised before us.

22. First attack of the appellant's counsel is that prosecution has not cogently proved the motive behind the incident. Here, very husband PW9, who set law into motion, himself speaks about his wife having illicit relations with accused. He further speaks about warning his wife and giving her understanding to discontinue said relations, but, according to him, she did not listen and continued the said relations. Therefore, here none other than husband speaks about illicit relations of his wife with accused. He claims that before asking her to be taken to the hospital, he had asked her the cause of injuries. At that time, he alleges that, she informed him that accused assaulted her questioning her why she is maintaining parallel relations with others also. **PW11** a direct eye witness also speaks about hearing the accused saying that that why she is not responding to his calls though he pays her. Though investigating machinery has failed to take required legal steps for getting oral dying declaration recorded, the evidence of such an independent witness coupled with evidence of husband cannot be thrown overboard. Therefore, in our opinion, motive is also established. It is difficult for the investigating machinery to establish extramarital affair by gathering cogent material because it is a secret affair, moreover, extramarital affair and therefore there may not be clinching evidence as is expected by defence. However, as

discussed above, husband himself acknowledges affair of his wife with accused. Therefore, for above reasons the above defence holds no merit.

23. The **second** defence of the appellant is that alleged incident had taken place at around 7.45 p.m. i.e. when it was dark. There is nothing on record to show that there was no source of light and therefore, identification of assailant is doubtful.

We do not consider such defence as significant one because, firstly, the occurrence has taken place in the very city and moreover, it has taken place during Lord Ganpati festival. Therefore, all areas were illuminated with lights due to decorations made at Lord Ganpati pandals. Therefore it cannot be said that there was no source of light. Moreover, it was just 7.45 p.m.. The independent eye witnesses and others had specifically spoken about they going to watch Lord Ganpati celebrations and for *aarti* purpose. Therefore there is no hesitation to hold that there was sufficiency of light. Hearing shouts and cries, they went to the spot. Moreover, all of them speak about accused being caught by the crowd and being handed over to police from the spot itself after giving him thrashing. Therefore direct eye witnesses had ample opportunity to identify accused being in close proximity. On this point we would like to refer the ruling of the Hon'ble Apex Court in the case of ***Nathuni Yadav v. State of Bihar***, reported in (1998) 9 SCC 238, wherein it is observed as under:

“Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace. If the light then available, though meagre, was enough for the assailants why should we think that the same light was not enough for the injured who would certainly have pointedly focussed their eyes on the faces of the intruders standing in front of them. What is sauce for the goose is sauce for the gander.”

For above reasons, the second defence also gets washed away.

24. The **third** defence put forth by learned counsel for the appellant is that there was no test identification parade. Here, out of three direct eye witnesses, one is confirming about knowing accused as well as deceased. They had sufficient time to closely look at accused who was caught and beaten till he sustained fracture. Therefore, there was sufficient time for them to note the physical features of the apprehended accused. Moreover, all three direct eye witnesses have identified the accused in court. Identification of the accused, even though first time in court, is also well recognized. On this point we derive support of the ruling of Hon'ble Apex Court in the case of ***George and others v. State of Kerala and another*** reported in AIR 1998 SC 1376 and we quote the observations of Hon'ble Apex Court in para 25 as under :

“ law is well settled that identification of an accused in Court is the substantive evidence of the person identifying and his earlier identification in a T.I. parade corroborates the same. In other words, want of evidence of earlier identification in a T.I. parade does not affect the admissibility of evidence of identification in Court.”

Likewise, in another ruling of Hon'ble Apex Court ***Kanta Prasad v. Delhi Administration***, reported in AIR 1958 SC 350 in para 5 it is held “It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, **but failure to**

hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a matter for the Courts of fact and it is not for this Court to reassess the evidence unless exceptional grounds were established necessitating such a course.”

(emphasis laid).

Similar view is reiterated in the cases of (1) *Surendra Narain v. State of U.P.* [(1998) 1 SCC 76 / 1997 AIR SCW 4156] ; (2) *Jadunath Singh v. State of U.P.* [AIR 1971 SC 363] ; (3) *Harbhajan Singh v. State of Jammu and Kashmir* [(1975) 4 SCC 480] wherein it is reiterated that absence of T.I. parade is not necessarily fatal. In our view, in this case also there is no necessity to conduct any test identification parade.

25. Next defence raised by learned counsel for the appellant is that there are inconsistencies and variances in the evidence of three doctors as regards to number of injuries. They are not consistent about nature and number of injuries and therefore case of the prosecution is rendered doubtful.

Having gone through entire evidence of three medical experts, it is pertinent to note that PW1-doctor posted at civil hospital had mere occasion to note the superficial injuries and within short span deceased was taken away against medical advice to the Seva Super Speciality Hospital where PW16 was

in service. PW16 seems to have examined and treated the injuries. Finally, PW8 doctor, who conducted postmortem, had occasion to note all external injuries and the corresponding internal injuries. All three medical experts have narrated the nature and number of injuries and have independently examined and lady at different stages and time. Therefore, there is bound to be variance in the nature and number of injuries narrated by them and hence we are not convinced with the above objection to be important one and hence we discard it.

26. Learned counsel would strenuously submit that material witnesses like mother and sister-in-law of PW9 and other ladies who allegedly carried deceased in a rickshaw for treatment are not examined.

In our opinion this defence is also worthless because at first count these witnesses had no occasion to see the incident. In our opinion it is not at all necessary for prosecution to examine all persons who reached at the spot at later point of time and more particularly, those witnesses who had no occasion to see the occurrence. Even it has not been pointed out that these witnesses have been deliberately withheld by prosecution for oblique motive. Direct eye witnesses have spoken about relatives of lady reaching the spot on a later point of time and shifting her to the hospital. Even otherwise, there is trustworthy evidence of independent witnesses like PW10, PW11 and PW14. Therefore, it is the quality of evidence and not quantity which matters.

Prosecution finding direct eye witnesses, may have given up other witnesses like mother and sister-in-law of PW9 and other ladies. Therefore, in our opinion, non-examination of such witnesses, who are infact not material, will not give any dent to the prosecution case. Therefore, the above defence obviously has no force.

27. Learned counsel for the appellant also tried to suggest that doctor has categorically accepted that there were wheel marks on the deceased. Therefore, possibility of deceased meeting accident cannot be ruled out. This is a very far fetched imaginary defence. There is no iota of evidence in this direction. Right from the beginning occurrence has been seen by three direct eye witnesses whose oral account is discussed in detail along with their cross-examination. Defence has not probabilized this particular plea about possibility of accident and therefore, it is worthless to ponder over it.

28. It is further defence of learned counsel for the appellant that so called direct witnesses are planted witnesses. Merely such plea has been raised without any foundation. It has not been shown as to how these witnesses were not at all present and had no occasion to see the incident. Rather, they are independent witnesses and they are chance witnesses who had gone to the spot to see decorations of Lord Ganpati festival and for performing *Aarti*. Therefore, it is absurd to brand them as planted witnesses.

29. The last submission advanced by learned counsel for the appellant is that evidence of prosecution witnesses is full of contradictions and inconsistencies. It is pertinent to note that it has not been specifically pointed out as to what are the material contradictions and inconsistencies in the testimony of eye witnesses. It is settled law that minor contradictions and inconsistencies or insignificant embellishments that do not affect the core of the prosecution case should not be taken as a ground to disbelieve the prosecution case, as is held by the Hon'ble Apex Court in ***Mritunjoy Biswas v. Pranab alias Kuti Biswas and Another***, reported in (2013) 12 SCC 796. Here, as stated above, this Court finds credible testimony of three direct eye witnesses who had no bias or animosity with accused. They all have shown that they had been to the spot for watching Lord Ganpati festival decorations. There is justification for their presence on such spot.

Consequently, when nothing is brought in their cross-examination to demolish their evidence in examination-in-chief, their testimonies can safely be relied. Resultantly, the above defence also pales into insignificance.

SUMMATION

30. Therefore, taking into consideration all oral and documentary evidence, we are convinced that prosecution did succeed in making out a full proof case against the accused. He was apprehended from the very spot by public available there and was handed over to police. Before handing over to police,

he was beaten resulting in fracture, of which there is FIR at the instance of accused himself. Therefore all such circumstances are confirming presence and involvement of accused. Direct witnesses speak about seeing the actual occurrence of assault. Medical evidence confirms about multiple injuries and death to be **homicidal**. Therefore, taking into consideration direct evidence supported by medical evidence, there is no hesitation to hold that prosecution has successfully discharged their burden in establishing the case against accused beyond reasonable doubt.

31. Having gone through the impugned judgment and order of conviction, we are convinced that all legal requirements have been kept in mind while evaluating the oral and documentary evidence. No error whatsoever has been committed while appreciating the evidence. No perversity or illegality has been brought to our notice in the appeal and therefore there is no reason for us to overturn or interfere in the judgment under challenge. Hence, we proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)