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

CRIMINAL APPEAL NO.281 OF 2020

Anwar Khan s/o Samiuddin Khan,
aged about 36 years, occupation scooter
mechanic, r/o c/o Rahul Pramodrao
Hiwre, plot no.25, Shrinagar 1,
Manewada Road, Nagpur. (presently
in central prison at Nagpur). **Appellant.**

:: V E R S U S ::

The State of Maharashtra, through
PSO Police Station Hudkeshwar,
district Nagpur. **Respondent.**

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Shri C.R.Thakur, Counsel for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the Resp/State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 12/12/2022

PRONOUNCED ON : 16/06/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. The appellant (accused) challenges judgment and order of conviction and sentence dated 14.9.2017 passed by learned Additional Sessions Judge, Nagpur in Sessions Trial No.291/2013 whereby the accused is convicted and sentenced, as follows:

For offence punishable under Section 302 of the Indian Penal Code, the accused is convicted and sentenced

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him to undergo life imprisonment and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for six months.

For offence punishable under Section 307 of the Indian Penal Code, the accused is convicted and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine Rs.3000/-, in default, to undergo rigorous imprisonment for six months.

For offence punishable under Section 449 of the Indian Penal Code, the accused is convicted and sentenced him to undergo rigorous imprisonment for five years and to pay fine Rs.3000/-, in default, to undergo rigorous imprisonment for six months.

For offence punishable under Section 452 of the Indian Penal Code, the accused is convicted and sentenced him to undergo rigorous imprisonment for five years and to pay fine Rs.3000/-, in default, to undergo rigorous imprisonment for six months.

For offence punishable under Section 3/25 of the Indian Arms Act, the accused is convicted and sentenced him

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to undergo rigorous imprisonment for two years and to pay fine Rs.3000/-, in default, to undergo rigorous imprisonment for three months.

Learned Judge of the trial court directed that all the sentences of the accused shall run concurrently and set-off under Section 428 of the Code of Criminal Procedure was also given to him since he was in jail.

2. The prosecution case in a nutshell is as under:

Informant Ashwini Yogeshwar Dakhore, who is the daughter of Yogeshwar (the deceased), lodged report with the Hudkeshwar Police Station, Nagpur on 3.4.2013 on allegations that she is residing along with her parents at plot No.53 Shrinagar, Nagpur. Her two brothers, Mangesh and Ashish, are residing at Brahmapuri and Pune respectively. At the time of incident, the accused was residing as a tenant in the house of one Hiwre which is at a distance of 2-3 houses from her house. The accused was mechanic of two-wheeler and used to visit her house to repair two-wheeler and, therefore, she was acquainted with him. The accused was insisting her to talk with her and was harassing her. He used

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to obstruct her while she was going to college by snatching keys of two-wheeler, her mobile or college bag. She informed this fact to her brother. However, her brother told her that if the accused repeats the acts, you should shout and gather mob. On 17.2.2013, the accused threatened her and, therefore, she lodged a report with the Hudkeshwar Police Station against the accused on 19.2.2013.

3. The incident occurred in the intervening night of 2nd and 3rd April 2013. It is stated in the report that on the earlier night, when she along with family members was sleeping in the bed room, at about 2:00 to 2:30 am, she heard a noise of firing of bullet. She woke up and saw that the accused was holding a gun which was pointed towards his father. The accused was sitting on the person of the father. Her mother intervened and attempted to rescue her father, but the accused took out a knife and gave blows of knife on the person of her father as well as her mother. He assaulted her mother by putting his foot on the chest of her mother and gave repeated blows. Thereafter, he went outside the room. Her mother locked the bedroom from inside and went in the washroom and called her brother Ashish and informed

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the incident. In the meantime, the accused broke open the door of the bedroom by means of an iron rod. The accused gave blows of the iron rod on the head of the mother. Her parents were lying in a pool of blood. Thereafter, the accused hold her hairs and took her on terrace of her house. He smashed her head on the wall of the terrace. Due to hearing of shouts, the people gathered there, but the accused threatened them that he had already killed two persons and if somebody intervenes, he will kill them also. At the relevant time, son Rahul of the landlord of the accused, came there and caught hold the hands of the accused. The police also arrived there and the accused was handed over to them. Her father was dead and the mother was admitted in the hospital.

4. On the basis of the said report, the police registered the offence against the accused vide Crime No.83/2013. During investigation, the investigating officer has visited the alleged spot of the incident, drawn spot panchanama. During the spot panchanama, he collected blood stains. The accused was taken into custody as he was caught by the persons present there. The pistol (desi katta)

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and two live cartridges were recovered from him. The accused was found with blood stained clothes, which were also seized. During the spot panchanama, the police collected blood stains from the spot and also seized the blood stained articles found on the spot. The police also seized one blood stained iron rod and blood stained knife thrown by the accused from the spot by drawing panchanama. The panchanama, regarding removal of live cartridges from the desi katta, was also drawn. The dead body of the deceased was sent from postmortem examination. The blood stained clothes of the deceased were also seized. All the incriminating articles were forwarded to the chemical analyzer. After completion of the investigation, chargesheet was submitted against the accused.

5. As the offence was exclusively triable by the court of sessions, the case was committed to the court of sessions. Learned Judge of the court framed charge vide Exhibit-3. The contents of the charge are explained to the accused and he pleaded not guilty and claimed to be tried.

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6. To substantiate the charge, the prosecution has examined in all 18 witnesses, as follows:

PW1 Ashish Yogeshwar Dakhore, vide Exhibit-11, the son of the deceased;

PW2 Ashwini Yogeshwar Dakhore, vide Exhibit-14, the informant and the daughter of the deceased;

PW3 Kusum Yogeshwar Dakhore, vide Exhibit-18, the injured eyewitness and wife of the deceased;

PW4 Gulab Harbaji Wankar, vide Exhibit-20, pancha on seizure of clothes of the accused;

PW5 Pankaj @ Sachin Tejram Nakhate, vide Exhibit-22;

PW6 Prabhakar Pundlik Gote, vide Exhibit-23, pancha on panchanama of removing bullet from the desi katta;

PW7 Krushna Pancham Lad, vide Exhibit-26;

PW8 Dr.Pradip Gangadhar Dixit, vide Exhibit-28, the medical officer;

PW9 Rahul Pramod Hiware, vide Exhibit-34, the landlord of the accused;

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PW10 Dr.Prashant Shalikramji Kadu, vide Exhibit-35, pancha on spot;

PW11 Jagdish Udhavrao Andhare, vide Exhibit-41;

PW12 Vishal Prabhulal Jaiswal, vide Exhibit-45, the investigating officer;

PW13 Mahesh Baburao Jajurwar, vide Exhibit-48, the medical officer who examined the accused;

PW14 Ajit Balkrishna Jadhav, vide Exhibit-52, the investigating officer;

PW15 Kishor Laxmanrao Shegaonkar, vide Exhibit-56;

PW16 Suresh Tukaram Shinde, vide Exhibit-60, the investigating officer;

PW17 Dr.Gautam Madan Warhade, vide Exhibit-75; who examined the accused, and

PW18 Dr.Sunil Pundlikrao Vairagade, vide Exhibit-78, the medical officer who examined the injured.

7. Besides the oral evidence, the prosecution also placed reliance on following documents:

report Exhibit-17;

FIR Exhibit-18;

arrest cum clothes seizure panchanama of the accused Exhibit-21;

bullet removal from the desi katta panchanama Exhibit-25;

postmortem report Exhibit-30;

letter to the medical officer Exhibit-31;

query report Exhibit-32;

property seizure panchanama Exhibit-35;

inquest panchanama Exhibit-36;

spot panchanama Exhibit-38;

personal search panchanama Exhibit-39;

letter to the medical officer for medical examination of the accused Exhibit-49;

letter to the chemical analyzer by the medical officer Exhibits-50 and 51;

arrest panchanama Exhibit-53;

letter to the medical officer Exhibit-61;

letter to the executive magistrate Exhibit-63;

letter to the medical officer Exhibit-64;

letter to chemical analyzer Exhibits-70 and 71;

OPD papers as to medical treatment of the accused Exhibit-76;

medical certificate of the injured Exhibit-79;

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report by the medical officer to police inspector Exhibit-80;

the chemical analyzer's reports Exhibits-84 to 87 and 91 to 95;

DNA Report Exhibit-88;

8. On the basis of the oral evidence, the prosecution claimed that the case of the accused was proved beyond reasonable doubt. The statement of the accused was recorded by putting all incriminating evidence to the accused. The defence of the accused was of total denial and of false implication.

9. Heard learned counsel Shri C.R.Thakur for the accused and learned Additional Public Prosecutor Shri M.J.Khan for the State.

10. Learned counsel Shri C.R.Thakur for the accused submitted that the accused was one of persons who gathered at the spot of the incident after hearing the shouts. The accused was implicated in the crime falsely with the best reasons known to the prosecution witnesses. In fact, the accused is not involved in the said crime. The evidence

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adduced by the prosecution is not cogent, not reliable, and not acceptable on the touchstone of credibility. Hence, the accused be acquitted of the charges levelled against him.

11. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment of learned Judge of the trial court and submitted that the prosecution has adduced direct evidence by examining informant PW2 Ashwini and the wife of the deceased PW3 Kusum. These both witnesses are eyewitnesses. The presence of the accused at the house of the informant was noticed by the other prosecution witnesses. The blood stained clothes and discovery of articles seized from the spot of the incident sufficiently shows involvement of the accused in the alleged offence. The oral evidence is further supported by the medical evidence, the scientific evidence, chemical analyzer's reports, and DNA reports. Thus, the prosecution has proved its case beyond reasonable doubt against the accused.

12. Having heard learned counsel Shri C.R.Thakur for the accused and learned Additional Public Prosecutor Shri M.J.Khan for the State and perused the record of the case

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with their able assistance, the first and foremost question comes for determination is, whether the prosecution has proved the homicidal death of the deceased. To prove the homicidal death of the deceased, the prosecution mainly placed reliance on the evidence of PW8 Dr.Pradip Dixit, examined vide Exhibit-28, who conducted the postmortem on the dead body of the deceased. As per his evidence, he has conducted the postmortem on the dead body of the deceased along with his associate medical doctors. On examination, he found white banian, black half pant, and black underwear on the person of the deceased having blood stains on it. There were three cut marks on the banian. On examination, he found following injuries on the person of the deceased:

"1. wound of entry of firearm present over left over forehead, 5 cm the left of midline and 3 cm above left eyebrow of size 1.3 cm x 0.5 cm x scalp tissue deep oval, margins abraded and contused (abrasion collar).

2. wound of entry of firearm present over back of left shoulder of size 0.5 cm x 0.2 cm x muscle deep with metal bullet particle of size 0.2 cm x 0.2 cm x 0.2 cm embedded in it, margins abraded and contused. (Bullet particle packed, sealed and handed over to Police Constable duty).

3. contused abrasion present over left forehead 3 cm the left of midline and 3 cm above left

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eyebrow of size 2.5 cm x 2 cm, brownish red oval in shape.

4. abrasion present over left forehead 4 cm to the left of midline and 2 cm above left eyebrow of size 0.8 cm x 0.5 cm, brownish red.

5. abrasion present over left forehead 2 cm to the left midline and 3 cm above left eyebrow of size 0.7 cm x 0.4 cm, brownish red.

6. abrasion present over left side of face 3 cm away from lateral end of left eyebrow of size 1 cm x 0.5, brownish red.

7. abrasion present over left mylar prominence of size 0.6 cm x 0.5 cm, brownish red.

8. abrasion present over left side of face in preauricular area, 3 cm away from tragus of left ear size 0.8 cm x 0.7 cm, brownish red.

9. abrasion present over front of left shoulder of size 0.5 cm x 0.3 cm, brownish red.

10. abrasion present over anterior aspect upper 1/3rd, left arm of size 0.7 cm x 0.4 cm, brownish red.

11. stab wound present over left scapular region of back (5 cm to the left to midline at the level of T2 vertebra, size 3 cm x 0.5 cm x cavity deep, both angles acute, lower and placed medially, clean cut, obliquely placed, back to front above downwards medial to lateral, skin subcutaneous tissue laceration pleura left lung over lobe posterior aspect 2 cm long and 1 cm deep.

12. stab wound present over right scapular region of back (9 cm to the right of midline at the level of T4 vertebra), size 3 cm x 0.5 cm x 3.5 cm deep, both angles acute, clean cut, vertically placed, back to front above downwards, right to

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left, structures cut were skin sub subcutaneous tissue muscle.

13. stab wound present over right scapular region of back (11 cm to the right of midline at the level of T5 vertebra), 2 cm x 0.5 cm x 2.5 deep, both angles acute upper end place medially, clean cut obliquely placed, back to front above downwards right to left, structures cut were skin subcutaneous tissue muscle.

14. stab wound present over right scapular region of back (6 cm to the right of midline at the level of T3 vertebra, size 3 cm x 0.5 cm x 3.5 cm deep, both angles acute upper end placed medially, clean cut, obliquely placed, back to front above downwards right to left, structure cut were skin subcutaneous tissue muscle.

15. incise wound present over left Mandi bullax area, size 3.5. cm x 0.5. cm muscle deep, upper end placed 4.00 cm below tragus of left ear, clean cut, obliquely placed.

16. incise wound present over left lateral aspect of neck (5 cm below left mastoid process), size 3 cm x 0.5 cm x muscle deep, tailing at lower end, clean cut, obliquely placed.

17. incise wound present over left mastoid process in left temporal area, size 4 cm x 0.5 cm x bone deep, tailing at lower end, clean cut, obliquely placed.

18. incise wound present over left occipital area (4 cm to the left of midline), size 4 cm x 0.5 cm x bone deep, clean cut, obliquely placed.

19. incise would present over nape of neck (7 cm below external occipital protuberance across midline), size 2 cm x 0.3 cm x muscle deep, tailing at left end, clean cut, tranversely placed.

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20. incise wound present over nape of neck (9 cm below external occipital protuberance across midline), size 4 cm x 0.3 cm x muscle deep, tailing at left end, clean cut, transversely placed.

21. incise wound present over posterior aspect of left shoulder, size 3 cm x 0.5 x muscle deep, tailing at upper end, clean cut, obliquely placed.

22. incise wound present over right scapular region of back (8 cm to the right of midline at the level of T2 vertebra), size 2 cm x 1 cm x muscle deep, tailing at lower end, clean cut, obliquely placed.

23. incise wound present over inter scapular region of back at the level of midline T2 vertebra, size 5 cm x 0.3 cm x muscle deep, tailing at lower end, clean cut, obliquely placed.

24. incise wound present over interscapular region of back 3 cm above the level of midline T2 vertebra, size 0.7 cm x 0.2 cm x muscle deep, tailing at lower end, clean cut, obliquely placed.

25. incise wound present over anterior aspect, upper 1/3rd left arm, size 2 cm x 0.3 cm x muscle deep, tailing at left end, clean cut, transversely placed."

On internal examination, he found injuries under scalp haematoma present over left from temporal area of size 7 cm x 5 cm surrounding wound of entry fire arm reddish with bullet shell of length 1.1 cm x 0.8 cms diameter closed at one end and open at other end embedded in left

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frontal region and bullet particles embedded in muscles under scalp of left temporal region of length 1.9 cms x 0.7 cms diameter. On examination of brain, he has seen haemorrhage present over left fronto-parieto temporary area in the form of thin red film.

On examination of thorax, cut marks were present corresponding to injury Nos.11 to 14 and 22 to 24 of column No.17 with the evidence of extravasation of blood in surrounding area, ribs and cartridges are intact.

On examination of left lung, he found stab wound present over posterior aspect of lower lobe corresponding to injury No.11 to column No.17. He further observed the blood clots present in the large vessel. The evidence of neck muscle haematoma over left sternocleido mastoid, muscle of size 6 cm x 4 cm corresponding to injury No.16 of column No.17. All the injuries were antemortem and he opined that the cause of death was due to shock and haemorrhage caused by injury to vital organ caused by fire arm and injury. Accordingly, he issued the postmortem notes Exhibit-30.

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His evidence further discloses that on 20.4.2013, he received the requisition from the police station regarding examination of two articles which are received in a sealed condition. On opening the seal, he found one iron rod and one knife. On examining the said articles, he opined that the the injuries are possible by Article-99 the knife and Article-18 the iron rod. He differentiated that injuries Nos.11 to 25 can be caused by Article-99 the knife and the injury No.3 can be caused by the iron rod. The query report is at Exhibit-12.

During his examination, the attempt was made to bring it on record that he has not mentioned dimension of the injury or size and width of the weapons. Hence, the evidence of PW8 Dr.Pradip Dixit is not helpful.

13. Besides the medical evidence, the prosecution also relied on the inquest panchanama. The inquest panchanama was admitted by the defence. A perusal of the inquest panchanama shows that the deceased has sustained various injuries which are serious in nature. On the basis of the medical evidence as well as the evidence of panchanama, the prosecution claimed that the death of the deceased is

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homicidal one. Admittedly, the defence has not challenged much the cause of the death. The only contention of the accused is that he has not caused the said injuries to the deceased.

14. Now, it is well settled that the evidence of the doctor is not only the opinion evidence but also is in the nature of direct evidence as the had an opportunity to see the injuries on the person of the deceased.

15. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1 wherein the Honourable Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the

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range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

16. In the recent judgment also, the Honourable Apex Court in the case of Anuj Singh @ Ramanuj Singh @ Seth Singh vs. The State of Bihar, reported in 2022 Live Law (SC) 402 dealt with the evidentiary value of the medical evidence and observed that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves

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that the injuries could have been caused in the manner alleged.

17. In view of the evidence on record, there is no dispute that the death of the deceased is homicidal. The evidence of the medical officer is sufficient to show that the cause of the death of the deceased is due to the injuries on vital organs and loss of blood due to the said injuries. Thus, the contention of the prosecution that the death of the deceased is homicidal one is proved by the prosecution.

18. As per the allegation of the prosecution witnesses, it was the accused who has committed the murder of the deceased. To substantiate the said contention, the prosecution placed reliance on the direct evidence of informant PW2 Ashwini and the wife of the deceased PW3 Kusum. The prosecution further placed reliance on the circumstances that PW5 Pankaj @ Sachin Nakhate witnessed the accused at the terrace of informant PW2 Ashwini along with informant PW2 Ashwini threatening said Ashwini as well as the persons gathered there. PW1 Ashish was informed by informant PW2 Ashwini immediately by telephonic call. PW3

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Kusum is the injured eyewitness. PW7 Krushna Lad, is residing adjacent to the spot of the incident. PW9 Rahul Hiware and PW11 Jagdish Andhare had also witnessed the accused and PW14 Ajit Jadhao at the spot of the incident.

19. The prosecution relied upon the direct evidence of the witnesses i.e. PW2 Ashwini and PW3 Kusum, the daughter and the wife of the deceased, staying along with the deceased in the same house at the time of the incident. The evidence of both these witnesses shows that the accused is also resident of the same area and working as a motor mechanic. As the accused used to visit their house to repair the two-wheeler, they were acquainted with him. The further evidence of these witnesses shows that as the accused was harassing informant PW2 Ashwini, the accused was given understanding. As the accused was not paid any heed to it, informant PW2 Ashwini has lodged report against him prior to the incident on 19.2.2013. In the intervening night of 2nd and 3rd April 2013, the accused entered in their house by breaking open the latch of the door holding the desi katta and the knife in his hands. The accused has assaulted the deceased by firing a bullet as well as by giving the knife

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blows. The accused also assaulted PW3 Kusum by giving knife blows on her chest and the head. Due to the assault, the deceased died on the spot and PW3 Kusum sustained grievous injuries. PW2 Ashwini informed her brother by telephonic call. Thereafter, the accused took her on the terrace by holding her hairs and smashed her head to the wall of the terrace of the house. Thereafter, he threatened the people gathered there. One of the persons in the crowd, namely Rahul Hiware, came on the terrace and caught hold the accused along with the desi katta. In the mean time, the police arrived there and took the accused in their custody. PW2 Ashwini has lodged the report regarding the said incident. She had also shown the spot of the incident to the police. She has identified the articles, bed sheets, pillow covers, blanket, knife, iron rod, ladies chappal, broken pieces of bangles, bullets, and latches of the door which were having blood stains on it and the same are marked at Articles-8 to 19.

20. Though informant PW2 Ashwini cross examined at length, only defence of the accused is that PW2 Ashwini has called her boyfriend at the house who has committed the

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alleged crime and the accused is falsely implicated. The defence further put that the accused was called by PW2 Ashwini at her house and implicated him in the alleged offence. Admittedly, PW2 Ashwini has denied above these facts. Thus, the defence has attempted to explain the presence of the accused at the spot of the incident. PW2 Ashwini has denied her love affair with anybody and out of which the alleged incident has taken place.

21. PW3 Kusum was also cross examined and the similar defence was put that the alleged incident has occurred as PW2 Ashwini has called her boyfriend who assaulted the deceased as well as PW3 Kusum. Obviously, PW3 Kusum has denied all these facts. Some omissions are also brought on record to the extent that PW3 Kusum has never stated before the police that she has warned to the accused not to come to her house.

22. PW3 Kusum is not only an eyewitness but also she has sustained the injuries in the alleged incident. The presence of the accused was attempted to be explained by saying that he was called by PW2 Ashwini to save her

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boyfriend who killed the deceased and made PW3 Kusum injured.

23. The fact that PW2 Ashwini has informed her brother by telephonic call is proved by the prosecution by examining PW1 Ashish, who is her brother and the son of the deceased and PW3 Kusum. The evidence of PW2 Ashish is that he was acquainted with the accused as the accused was residing in the same area and visited their house for repairing two-wheeler. His evidence further shows his sister PW2 Ashwini informed him about the harassment at the instance of the accused and, therefore, he gave understanding to the accused. He was also along with PW2 Ashwini when she has lodged report against the accused on 19.2.2013 that is prior to two months of the incident. He further deposed that on 3.4.2013 at about 2:45 am he received a phone call of his sister who informed him that the accused has entered in the house and is assaulting his father by means of weapons. She further informed him that the accused threatened them that he will not spare them and, therefore, he attempted to call the police by giving call at number 100, but he could not contact and, therefore, he

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called his friend PW5 Pankaj @ Sachin Nakhate and informed him about the incident and asked him to help his parents. He further called his maternal cousin Nilesh Waghade and asked him to visit his house. Thereafter, he again received a phone call of his sister who told him that now the accused is assaulting to their mother and, thereafter, he called one Rajendra @ Pintu and asked him to go to his house immediately to save his parents. His further evidence shows he also received the call of his mother who informed him that she is seriously injured and is in a pool of blood and his father is unconscious and the accused took Ashwini on the terrace. His mother requested him to call doctor Vairagade and, therefore, he called Shailesh Ragid who is working at Vairagade Hospital and narrated the incident to him and requested him to help. Thereafter, he reached at Nagpur at 7:00 to 7:30 am and he came to know that his father is dead and the mother is admitted in the hospital. During his cross examination, it is attempted to bring on record that as he was staying in Pune, he is not aware about anything and some omissions are brought on record.

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24. To substantiate the contentions of PW1 Ashish that he called Pankaj @ Sachin, the prosecution has examined PW5 Pankaj @ Sachin Nakhate vide Exhibit-22. He corroborated the version of PW1 Ashish that he received a call of Ashish who requested him to visit his house and, therefore, he reached at the house of Ashish. The sum and substance of his evidence is that he is also residing in the same area in Manewada Road, Shrinagar and was acquainted with the family members of the deceased. On 2.4.2013, he was present in Saikrupa Hospital wherein he received a mobile call of PW1 Ashish who informed him that the accused entered in his house at Nagpur and assaulted his parents. He also requested him to visit his house and help them. He immediately went at the house of the deceased which was 1 and 1/2 to two kilometers away. When he reached at the spot, he saw that the accused and PW2 Ashwini were standing on the roof of the house. The accused was holding the desi katta and was threatening that he killed two persons and now he will kill Ashwini. At the relevant time, one Rahul Hiware climbed the compound wall of the house of the deceased and went inside the said house. He also went to

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the first floor of the house and saw that PW3 Kusum (whom he has referred as "kaku") sustained the injuries on her head, hands, and the blood was oozing from her person. He wrapped bed sheet around her head and brought her to the ground floor and sent her in the hospital. She gave him a signal to go inside the room and he saw that deceased was lying in an injured condition. In the meantime, Rahul caught the accused and brought him on the ground floor. The police also came on the spot and took the accused in the custody. During his cross examination, only thing brought on record is PW1 Ashish is his childhood friend. He admitted that when he reached at the spot, it was a dark. Thus, nothing incriminating came on record during his cross examination.

25. To complete the chain, the prosecution also examined Rahul Hiware as PW9. But, he has not supported the prosecution case. The only thing came on record is that the accused was residing as a tenant in his house. He supported the incident and deposed that on the day of the incident he was present at his house. The accused was also present along with him on the terrace at his house. He heard the noise and saw that the people were assembled in front of

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the house. But, he left the loyalty towards the prosecution to the extent that he has seen the accused with PW2 Ashwini on the terrace and brought the accused from the terrace.

26. PW11 Jagdish Andhare, is also examined to prove the presence of the accused at the house of the deceased. He also deposed that he was residing as a tenant in the house of one Borkar in the same area and the house of the deceased is situated just adjacent to the house of said Borkar. His evidence further shows that during the intervening night, he heard noise at about 2:00 to 2:30 am and saw that the people were gathered in front of the house of Dakhore. The gate of Dakhore was locked. Sachin Nakhate gave a call to Dakhore. After some time, Smt.Dakhore opened the door of the house who was seriously injured. He saw one boy standing along with PW2 Ashwini on the terrace holding the desi katta in his hands and was threatening the crowd. The said boy was Anwar, i.e. the accused. During the cross examination of this witness, it came on record that there was a street light on the road and there was sufficient light to identify the person in the premises of the house of Dakhore. It also further came in his

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evidence that son of Hiware climbed the compound wall of the house of Dakhore and went inside the house. He further stated that the boy namely Nakhate went inside the house of Dakhore. During his cross examination, he admitted that he has not seen Anwar. He is not aware who was that Anwar was. However, he denied that PW2 Ashwini opened the gate of the house from inside.

27. Thus, on the basis of the evidence of eyewitnesses, the prosecution has tried to establish that it was the accused who assaulted the deceased and PW3 Kusum. The presence of the accused was noted by PW5 Pankaj @ Sachin Nakhate and PW11 Jagdish Andhare.

28. To corroborate the version of the prosecution, the prosecution further placed reliance on PW14 Ajit Jadhav who is the investigating officer, who also testified that the accused was caught by the people and he took the accused in his possession. He further deposed that it was Rahul Hiware who caught the accused.

29. To prove that PW3 Kusum has sustained injuries in the alleged incident, the prosecution placed reliance on the

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evidence of PW18 Dr.Sunil Pundlikrao Vairagade, examined vide Exhibit-78. He testified that on 3.4.2013 PW3 Kusum was admitted in his hospital. She was assaulted by the knife and the steel rod. She has sustained the following injuries on her person:

1. lacerated wound scalp on right side of four in numbers.
2. lacerated wound on chin on right side, size 7x4 cm square.
3. stab lacerated wound on right side breast infero medial region, size 4x4 cm square.
4. stab lacerated wound on right infra scapular region, 5 cm lateral to midline size 4x4 cm square.
5. lacerated wound index/, middle/ring finger 2x4 cm square at distal phalynx.
6. lacerted wound on palm, size 2 x 2 cm square,
7. fracture two vertebra out defiat.
8. head injury with sub-arachnoid hemorrhage temporary region.
9. heamothorax (mild) on right side chest.

His evidence further discloses that the age of the injury was one hour approximately and the nature of the injuries were grievous in nature and the said injuries can be

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fatal if timely treatment was not given to patient. He further deposed that some of injuries of the injured requires life time treatment. He also received the requisition Exhibit-64 from the police on 8.4.2013 and he opined that the injuries on the head, chest, and the hands were caused by sharp object knife and blunt object steel rod. The medical certificate is at Exhibit-79 and opinion is at Exhibit-80. This medical officer admitted that while preparing food, one can sustain the injuries from the knife. But, he denied that injury Nos.5 and 6 may be caused due to kitchen knife while preparing the food.

30. Thus, the evidence of medical officer PW18 Dr.Sunil Pundlikrao Vairagade shows that PW3 Kusum has sustained life threatening injuries in the alleged incident.

31. Besides this direct evidence, the prosecution further placed reliance on the evidence of PW10 Dr.Prashant Shalikramji Kadu who acted as a pancha on the spot panchanama. As per his evidence, the police asked the crowd gathered in front of the spot of the incident about the willingness to act as a pancha. He came forward to act as a

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pancha. The police took him inside the house. The spot of the incident was the house having parking space and one stair case of two steps. The police took him inside one hall and, thereafter, in one bed room wherein he saw blood stained bed sheets, pillow, one pillow in a pool of blood, blood stains as well as on wall and on the floor, and one iron rod on the cot. He further observed that the latch of the door was broken and was lying on the floor. He further observed empty cartridge shell cap lying on the floor. He has seen the broken bangles pieces, one blanket having blood stains, and one pair of slipper. The police seized all the articles and also collected the blood stains from the floor as well as from the wall. Accordingly, panchanama Exhibit-38 was drawn. His evidence further discloses that he also went towards the stair case and saw the hand marks of the blood. One latch of the door was lying on the floor and also observed blood stains on the terrace. He also observed one person was caught by the police whose name was disclosed as Anwar Khan. The police has taken personal search of the said person and two cartridges were found in his right side pant pocket, one knife which was lying in the courtyard was also seized in his

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presence. Thus, as per his evidence, during the spot panchanama the police seized Article-1 desi katta, Article-1A live cartridge, Article-2 empty two bullet shells, Article-3 two brass and black pieces of bullets, Article-4 yellow blackish two cartridges, Articles-8 and 9 bed sheets, Article-10 blanket, Articles-11 and 12 pillow covers having blood stains, Article-13 blackbits, Article-14 latch, Article-15 hairs, Article-16 pieces of bangles, Article-17 pair of chappal, Article-18 iron rod, and Article-19 the knife. During his cross examination, he admitted that the fact that hand marks of the blood on the wall is not mentioned in the panchanama. He further admitted that the police shown the knife from the terrace which is not mentioned in the panchanama. He further admitted that when he went on the terrace, the police shown him the gun. Except this cross examination, regarding the circumstances, observed in the panchanama, are not challenged.

32. The evidence regarding the circumstances appearing while drawing the panchanama corroborated by investigating officer PW14 Ajit Balkrishna Jadhav. His evidence is also to the extent that the accused was caught at

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the spot and during his personal search, he was found along with the two live cartridges. One desi katta was also seized from his possession. Regarding the blood stains appearing on the spot and collection of the articles also narrated by him. Admittedly, nothing incriminating is brought on record during his cross examination regarding the circumstances found at the spot.

33. PW6 Prabhakar Pundlik Gote, is the pancha in whose presence panchanama regarding removing of the bullets from the revolver is drawn at the police station. As per evidence, one bullet stuck was removed in his presence and accordingly panchanama Exhibit-24 was drawn. His evidence shows that after he reached at the police, the police shown the revolver, but he was not informed from whom the said revolver was seized. He further admitted that the bullet was stuck in the barrel of the revolver and that time the revolver was not in a working condition.

34. PW17 Dr.Gautam Madan Warhade, has examined the accused when he was referred for medical examination.

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On examination, he observed following injuries on his person:

- (1) contusion/abrasion on head 1 cm x 0.5 cm,
- (2) abrasion 1 cm x 1 cm on right hand between thumb and the index finger,
- (3) contusion on left forearm middle one third – 1 cm x 3 cm,
- (4) abrasion 4.5 cms x 0.5 cms on forehead.

All the injuries were simple in nature and caused within 24 hours. Those injuries were caused by hard and blunt object. As per the history, the deceased was assaulted on 3.4.2013 at 3:00 am near Manewada. PW13 Mahesh Baburao Jajurwar, has obtained the blood samples, nail clippings and hand wash of the accused.

35. The prosecution has also examined PW12 Vishal Prabhulal Jaiswal, Assistant Police Inspector attached to the Special Branch, who deposed that he sent the seized sealed weapons to the medical officer for the purpose of obtaining the opinion by issuing a letter and also recorded statements of some witnesses. His evidence was not challenged by the defence.

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36. PW15 Kishor Laxmanrao Shegaonkar, has obtained the previous complaint of PW2 Ashwini. His evidence shows that on 19.2.2013 PW2 Ashwini approached to the police station along with her brother and on the basis of her complaint, NC report was registered.

37. PW7 Krushna Pancham Lad, was examined, whose evidence shows that on the day of the incident, the police approached to him and was asking about the ladder. He had kept the ladder on the terrace of the house. However, he could not find the same. The police enquired with him that whether the ladder, kept in the terrace of the deceased, belongs to him and he identified the said ladder. His cross examination shows that the ladder is about 3 steps and one cannot climb to reach to the terrace of anybody from that ladder.

38. Besides the above oral evidence, the prosecution placed reliance on the scientific evidence of the chemical analyzer's reports Exhibits-84 to 87. As per Exhibit-84, all the articles collected from the spot and the clothes of the accused were forwarded to the chemical analyzer. The

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clothes of the accused that is full shirt and the jean pant Exhibits-24 and 25 were stained with human blood. Exhibit-1 single barrel country made hand gun, Exhibits-4 to 7 cotton swabs, Exhibits-8 and 9 bed sheets, Exhibit-10 blanket, Exhibit-11 load cover, Exhibit-12 pillow cover, Exhibit-13 blackbits, Exhibit-14 latch, Exhibit-15 hairs, Exhibit-16 broken bangles pieces, Exhibit-17 A and B pair of chappal, Exhibit-18 iron rod, Exhibit-19 knife, Exhibit-20 cotton, Exhibit-21 half pant, Exhibit-22 sando banian of the deceased and Exhibit-23 underwear are stained with human blood. As per Exhibit-86, the blood group of the accused is "A". As the blood group on the articles was not ascertained, the articles were sent for DNA examination. The DNA report shows that DNA profile obtained from the blood detected on Exhibit-8 bed sheet, Exhibit-21 half pant, Exhibit-22 sando banian, Exhibit-24 full shirt and Exhibit-25 jeans full pant are identical and from one and the same source of male origin matched with the DNA profile obtained from blood of the deceased. DNA profile obtained from the blood detected on Exhibit-11 load cover is of female origin and matched with DNA profile obtained from the blood of PW3 Kusum. Mixed

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DNA profile obtained from the blood detected on Exhibit-11 load cover and Exhibit-24 underwear matched with DNA profile obtained from the blood of the deceased and blood of PW3 Kusum.

39. Thus, the scientific evidence shows that the bloods stains found on various articles, seized from the spot of the incident, seized from the accused and on the clothes of the accused, are of the deceased. The blood stains found on Exhibit-11 are of injured PW3 Kusum.

40. Thus, after appreciating the evidence, it is apparent that the entire prosecution case is relied upon the direct evidence of PW2 Ashwini and PW3 Kusum who witnessed the accused assaulting the deceased. PW3 Kusum is not only an eyewitness but also she is an injured in the alleged incident. The evidence of PW2 Ashwini and PW3 Kusum categorically states about the alleged incident. The accused is not unknown to them. The evidence of these witnesses shows that the accused previously visited their house. So, the accused is well aware about the topography of the house. The evidence of PW1 Ashish, PW2 Ashwini, and

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PW3 Kusum shows that the accused used to harass PW2 Ashwini and, therefore, prior to the incident, the complaint was lodged by PW2 Ashwini against the accused on 19.2.2013 at Hudkeshwar Police Station. The filing of the report on 19.2.2013 is not only proved by PW1 Ashish and PW2 Ashwini but it was proved by PW15 Kishor Laxmanrao Shegaonkar also who has obtained the said report when he was attached to the Hudkeshwar Police Station.

41. Thus, from the evidence it reveals that the accused was harassing PW2 Ashwini whenever she was proceeding outside, the accused was insisting her to talk with him. As he threatened her on 17.2.2013, she immediately lodged report on 19.2.2013 and on the basis of which NC report was registered.

42. Insofar as the incident took place in the intervening night is concerned, the evidence of PW2 Ashwini and PW3 Kusum, which was carefully analyzed by us, shows that as PW2 Ashwini was not talking with the accused, he got annoyed and entered into the house of the deceased by breaking open the door and the latch and assaulted the

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deceased by means of sharp weapon like knife as well as used the weapon like desi katta. The injuries found on the person of the deceased are 25 injuries. The injury No.1 found on the person of the deceased was fire arm injury that is wound of entry of fire arm over left forehead 5 cms to left of middle line and 3 cms above left eyebrow of size x 0.5 cms with scalp issue deep. Injury No.2 is also by fire arm injuries. Thus, the evidence of these two witnesses shows that the accused entered into the house with a deadly weapons like fire arm desi katta as well as the knife. The desi katta and live cartridges are seized from the accused immediately after the incident at the spot itself. The accused was caught at the spot itself. The presence of the accused at the spot was witnessed by PW5 Pankaj @ Sachin Tejram Nakhate and PW11 Jagdish Uddhaorao Andhare. The fact that the accused was caught at the spot was also established by the evidence of investigating officer PW14 Ajit Balkrishna Jadhav. The defence has attempted to show that the accused was one of the persons from the crowd which was gathered after the incident. It was further suggested that PW2 Ashwini was having love affairs with one boy and the said boy has

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committed the act. However, to save the boyfriend, PW2 Ashwini has called the accused and implicated him in the alleged incident. Admittedly, the defence is not corroborated by any evidence. On the other hand, the accused was caught at the spot of the incident along with the fire arm was supported by the evidence of the independent witnesses. No cogent reason came forward to implicate the accused falsely. On the other hand, the previous complaint lodged by PW2 Ashwini on 19.2.2013 sufficiently shows that the accused has a motive to commit the crime. Learned Judge of the trial court held that the charge is proved beyond reasonable doubt.

43. The law is a well settled that while appreciating the evidence of witnesses, approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed then undoubtedly it is necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether

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earlier evaluation of evidence is shaken as to render it unworthy of belief. The material thing which is to be seen whether those inconsistencies go to the root of the matter.

44. The Honourable Apex Court in case of **Shamim vs. State of Delhi** in Criminal Appeal No.56/2018 decided on 19.9.2018 observed that while appreciating evidence of witness, approach must be whether evidence of witness read as a whole, inspires confidence. Once that impression is found, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks, infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

45. Here, in the present case, the evidence of eyewitnesses PW2 Ashwini and PW3 Kusum shows that the accused was harassing PW2 Ashwini and, therefore, she lodged the report against the accused. On intervening night of 2nd and 3rd April of 2013, the accused entered into the

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house of the deceased and assaulted the deceased and PW3 Kusum. The evidence of these two witnesses is also corroborated by the medical evidence of PW8 Dr. Pradip Gangadhar Dixit who noticed 25 injuries on the person of the deceased corresponded by the internal injuries. The cause of death is shock and haemorrhage caused by the injury to vital organs caused by fire arm and stab injuries. The injuries sustained by PW3 Kusum are proved by the medical officer PW18 Dr. Sunil Pundlikrao Vairagade, who specifically stated that the injuries were life threatening injuries and can be fatal if timely treatment was not given to patients. He specifically stated that because of these injuries, the patient is still under his treatment.

46. The evidence of these two eyewitnesses is further corroborated by the evidence of PW1 Ashish who is the son of the deceased who testified that PW2 Ashwini made a phone call to him about the incident. The fact of phone call was also narrated by PW2 Ashwini and PW3 Kusum. The evidence of PW1 Ashish further discloses that as he could not contact the police, he called his friend PW5 Pankaj @ Sachin Tejram Nakhate and narrated the incident to him and requested him

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to go to his house. The evidence of PW5 Pankaj @ Sachin Tejram Nakhate also shows that as soon as he received the call of PW1 Ashish within five minutes he reached at the house of the deceased. The evidence further shows that he witnessed the accused and PW2 Ashwini on the terrace of the house. At the relevant time, the accused was holding the desi katta and was threatening that he already killed two persons and now would kill Ashwini. The accused was caught by PW9 Rahul Pramod Hiware. He further stated that he witnessed PW3 Kusum in an injured condition and the deceased in a pool of blood. The evidence of PW11 Jagdish Udhavrao Andhare also shows that he witnessed the accused along with PW2 Ashwini on the terrace holding the desi katta in his hands and was threatening. Thus, not only the evidence of PW2 Ashwini and PW3 Kusum but also the evidence PW5 Pankaj and PW11 Jagdish shows that it was the accused who was holding PW2 Ashwini by his hands and also having the desi katta in his hands. Thus, the presence of the accused along with the weapons is established by the prosecution. Though PW9 Rahul Pramod Hiware has not supported the prosecution case to the extent of presence of

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the accused on the terrace, the evidence of investigating officer PW14 Ajit Balkrishna Jadhav also shows that it was Rahul Hiware who caught hold the accused by bringing him from the terrace of the house to the ground floor. There is reasonable cause for not supporting the prosecution by PW9 Rahul as the accused was his tenant at the time of the incident. The evidence shows that the accused was also residing in the same premises at the time of the alleged incident.

47. The direct evidence is further corroborated by the evidence of PW7 Krushna Pancham Lad which shows that the ladder which he has kept in his terrace was found at the spot of the incident. Thus, it is apparent that the accused has used the said ladder to enter at the house of the deceased. The entry of the accused in the house is further proved by the prosecution by examining PW10 Dr.Prashant Shalikramji Kadu and investigating officer PW14 Ajit Balkrishna Jadhav who narrated that at the spot of the incident while drawing the spot panchanama, they observed the latch of the door was open and the latch was lying on the floor. They further observed that latch of the door at the terrace was also

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broken. They further observed empty cartridge shell cap lying on the floor which proves that the fire arm weapon was used in the alleged incident. They have collected the blood samples from the spot of incident. To connect the accused with the alleged incident, the evidence of PW4 Gulab Harbaji Wankar shows that the accused was present in the police station wearing black shirt having white and blue checks and blue jean pant. He observed blood stains on the shirt and the pant. The said clothes were seized in his presence by providing another clothes to him. The banian of the accused was also seized which was also having the blood stains. The clothes of the accused are forwarded to the chemical analyzer. The chemical analyzer's report Exhibit-84 shows that the blood stains found on articles full open shirt, jean full pant, and sando banian which are clothes of the accused were stained with the human blood. Exhibit-88 is the DNA report which shows that the DNA profiles obtained from the blood detected on Exhibit-8 bed sheet, Exhibit-21 half pant, Exhibit-22 sando baniyan which are clothes of the deceased, and Exhibit-24 open shirt, Exhibit-25 full pant which are clothes of the accused are identical and blood stains found on

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the clothes of the accused and Exhibits-8, 21 and 22 are from the one and the same source male origin and matched with the DNA profile obtained from blood of the deceased. Thus, the blood stains found on the clothes of the accused are of blood group of the deceased. The said circumstances are not explained by the accused during his statement under Section 313 of the Code of Criminal Procedure. Not only the blood stains are found on the clothes of the accused but also the blood stains are found on the desi katta seized from the possession of the accused. The recovery of the desi katta from the accused was also proved by PW10 Dr.Prashant Shalikramji Kadu who acted as a pancha on the spot panchanama. The incriminating article knife was also seized by the investigating officer during the spot panchanama. The articles are identified by the eyewitnesses.

48. It is well settled law that where the account of eyewitnesses is found credible, the minor consistencies are not fatal. The evidence of eyewitnesses would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged on the basis of minor variations. The evidence must be tested for

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its inherent consistency and the inherent probability of the story.

49. In the present case, the evidence of PW3 Kusum and PW2 Ashwini shows that the deceased as well as PW3 Kusum were assaulted by the accused by means of fire arm and the knife. The said evidence was corroborated by the medical evidence as well as the scientific evidence. The motive is also apparent from the evidence. The presence of the accused is established by the prosecution by the reliable evidence.

50. After appreciating the entire evidence, we have no hesitation to hold that the prosecution has proved that there was a motive behind the said crime. The intention of the accused is proved with the circumstances that the accused came on the spot along with the deadly weapons. The direct evidence of the witnesses is corroborated by the independent witnesses. The seizure of the weapons from the person of the accused and the accused was caught hold by the witnesses sufficiently show his involvement in the alleged incident. Thus, the cumulative effect of the entire

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prosecution evidence shows that it was the accused who entered into the house with an intent to cause the death of the deceased. The manner in which the deceased was assaulted by the accused shows the brutality of the incident.

51. Testing on the anvil and touchstone of the aforesaid principles laid down by the Honourable Apex Court in catena of decisions, we find that the evidence adduced by the prosecution sufficiently proves the charge against the accused.

52. Learned Judge of the trial court has considered the entire evidence and held that the prosecution has proved the charge against the accused. No ground is made out by the accused to show that he is falsely implicated in the alleged incident. It is well settled that the prosecution has to prove the charge against the accused beyond reasonable doubt. The proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course, it is possible the case is proved beyond reasonable

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doubt. The doubts would be called reasonable if they are free from a zest for abstract speculation. The doubts must be actual. A reasonable doubt is not an imaginary or merely a possible doubt, but a fair doubt based upon reason and common sense.

53. Thus, we see no reason to interfere with the findings of learned Judge of the trial court as in our opinion learned Judge of the trial court after appreciating the evidence, has rightly convicted the accused by holding that the prosecution has proved its case beyond reasonable doubt. As the appeal is devoid of merits, the same deserves to be dismissed and is dismissed.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

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