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

CRIMINAL APPEAL NO.695 OF 2019

1. Sanjay s/o Ashok Suradkar,
Aged about 30 years,
Occupation : labour.

2. Manisha w/o Sanjay Suradkar,
Aged 27 years, occupation labour.

1 and 2 are the resident of Januna,
Taluka and district Buldhana (presently at
district prison Buldhana).

3. Banti @ Mahendra Bhimrao Kakde,
Aged 23 years, occupation education.

4. Manglabai w/o Bhimrao Kakde,
Aged 45 years, occupation agriculturist.

3 and 4 are resident of Samrat
Ashok Nagar, Ulhas Nagar, Mumbai,
(presently at district prison
Buldhana).

..... **Appellants.**

:: V E R S U S ::

State of Maharashtra,
Through P.O. Dhad, district Buldhana. **Respondent.**

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Shri R.M.Daga, Counsel for Appellants.

Shri T.A.Mirza, Additional Public Prosecutor for the
Respondent/State.

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

CLOSED ON : 20/12/2022

PRONOUNCED ON : 17/04/2023

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

1. By this appeal, appellants (the accused persons)
challenge judgment and order of conviction and sentence

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dated 31.8.2019 passed by learned Additional Sessions Judge, Buldana in Sessions Case No.77/2016.

2. By the said impugned judgment and order, the trial court convicted the accused persons for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer imprisonment for life and to pay fine, as under:

Accused No.1 to pay fine Rs.3000/- and in default to suffer simple imprisonment for three months.

Accused No.2 to pay fine Rs.2000 and in default to suffer simple imprisonment for two months.

Accused Nos.3 and 4 to pay fine Rs.1000/- by each of them and in default to suffer simple imprisonment for one month by each of them.

3. The case of the prosecution in a nutshell is as under:

Accused No.1 Sanjay and Ganesh (deceased) are real brothers. Accused No.2 Manisha is the wife of accused

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No.1, accused No.3 Banti is the nephew of accused No.1, and accused No.4 Manglabai is the sister of accused No.2. The accused persons and the deceased were residing in the same house separately. On 12.5.2016, at about 4:00 pm, there was a dispute between the deceased's wife Namely Varsha and accused No.2 Manisha on account of keeping clothes' washing stone. After witnessing the quarrel between them, the deceased intervened and tried to convince accused No.2 Manisha. At the relevant time, accused No.1 Sanjay, the brother of the deceased, came there and abused the deceased. Accused Nos.3 and 4 also arrived there. During the quarrel, accused No.1 Sanjay got annoyed and went inside the house and returned armed with him a knife. All the other accused persons followed accused No.1 Sanjay when he approached to the deceased. As per the allegations, accused No.1 Sanjay got annoyed and gave blows of the knife on the person of the deceased on his stomach and other parts of the body. Due to the repeated blows, on the person of the deceased, the deceased sustained grievous injuries. He was immediately shifted to hospital. However, he was declared dead. It is further alleged by the prosecution that during the

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incident, accused No.2 Manisha and accused No.4 Manglabai thrown chilly powder on the person of the deceased as well as the prosecution witnesses and accused No.3 Banti took a bite to the deceased's wife Varsha. Regarding the said incident, Smt.Shobhabai Sitaram Pakhre, the mother-in-law of the deceased, approached to the Dhad Police Station, district Buldhana and lodged report. The police registered the offence vide Crime No.63/2016 under Sections 302, 324, 323, 504, and 506 read with Section 34 of the Indian Penal Code.

4. After registration of the crime, wheels of investigation started rotating. During the investigation, Investigating Officer had visited the alleged spot of the incident and drawn spot panchanama. During the spot panchanama, he collected blood stains samples, chilly powder, and a white colour polythene bag from the spot. He also obtained video shooting of the spot. He drawn inquest panchanama, seized blood stained clothes of the deceased, and blood stained clothes of the accused. The accused persons were arrested. Accused No.1 Sanjay has shown his readiness to make a memorandum statement. Accordingly, his memorandum statement was recorded and at the instance

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of the accused persons, incriminating article "knife" was seized. All the articles were forwarded to Chemical Analyzer. After completion of the investigation, chargesheet was submitted against the accused persons.

5. After committal of the case, learned Sessions Judge framed charge against the accused persons vide Exhibit-10. The contents of the charge are read over and explained to the accused persons and they pleaded not guilty and claimed to be tried.

6. In support of the prosecution case, the prosecution has examined in all six witnesses, as follows:

PW1 Shobhabai Sitaram Pakhare, Exhibit-18, informant;

PW2 Varsha Ganesh Suradkar, Exhibit-20, wife of the deceased and eyewitness of the incident;

PW3 Usha Ramesh Ingle, Exhibit-24, pancha on spot;

PW4 Ravindra Ganesh Tote, Exhibit-27, pancha on seizure of clothes, memorandum statement of accused No.1, discovery panchanama;

PW5 Dr.Suryakant Tejrao Lodhe, Exhibit-40, Medical Officer, who conducted postmortem examination, and

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PW6 Laxman Devaji Sonne, Exhibit-54,
Investigating Officer.

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

1. oral report Exhibit-19;
2. First Information Report Exhibit-19A;
spot panchanama Exhibit-26;
3. clothes seizure panchanama Exhibit-28;
4. clothes seizure panchanamas of clothes of
accused Nos.1 to 4 Exhibits-29 to 32;
5. house search panchanama of house of accused
No.1 Sanjay Exhibit-33;
6. memorandum statement of accused No.1
Exhibit-34;
7. discovery panchanama Exhibit-35;
8. postmortem report Exhibit-31;
9. letter to the Tahsildar to call employees as
pancha Exhibit-55;
10. inquest panchanama Exhibit-57;
11. extract of merg diary Exhibit-58;
12. letter to Medical Officer Exhibit-60;
13. arrest panchanamas of accused Nos.1 to 4
Exhibit-62 to 65;
14. muddemal receipts Exhibits-66, 67, and 70;

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15. map Exhibit-71;
16. letter to the Medical Officer Exhibit-73;
17. letter to the Chemical Analyzer Exhibits-74 to 77;
18. letter to the Medical Officer for medical examination of accused Nos.1 to 4 Exhibit-78;
19. medical certificate of accused Nos.1 to 4 Exhibits-79 to 82;
20. query report to the Medical Officer Exhibits-42 and 83;
21. letter to the Chemical Analyzer Exhibits-82 and 88;
22. the Chemical Analyzer's Reports Exhibits-92 to 99;
23. medical certificate of accused Nos.1 to 4 Exhibits-106 to 109, and
24. N.C.Report by accused No.2 Exhibit-110.

8. All incriminating evidence was put to the accused persons to obtain their explanations regarding the evidence appearing against them by recording their statements under Section 313 of the Code of Criminal Procedure. The defence of the accused persons is of false implication on account of previous enmity between the deceased and accused No.1 Sanjay on partition.

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9. On the basis of the medical as well as the oral evidence, the trial court held the accused persons guilty and convicted them as aforesaid. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused persons on the ground that the trial court has not considered the evidence on record and erroneously convicted the accused persons on the basis of surmises and conjectures. The prosecution has not examined any independent witnesses. Admittedly, there was a previous dispute between the deceased and accused No.1 Sanjay on account of partition of the house and, therefore, the accused persons are implicated in the crime falsely.

10. Heard learned counsel Shri R.M.Daga for the accused persons and learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State.

11. Learned counsel Shri R.M.Daga for the accused persons submitted that the previous enmity between the deceased and the accused persons was admittedly there on account of partition. Section 34 of the Indian Penal Code is not attracted as no chilly powder was found on the

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body of the deceased. At the most, even if the prosecution case is taken into consideration as it is, it covers under Section 304 Part-I. The initiation of the incident was on the trivial issue and role attributed to accused Nos.2 to 4 is after the assault. The evidence brought on record shows there was no meeting of mind and, therefore, common intention is not attributable to accused Nos.2 to 4. He further submitted that recovery of the incriminating article "knife" is also not proved by the prosecution. Thus, the prosecution failed to prove the charges levelled against the accused persons.

12. On the other hand, learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State submitted that the case is based on direct evidence. PW1 Shobhabai Sitaram Pakhare, the mother-in-law of the deceased, and PW2 Varsha, the wife of the deceased, both are eyewitnesses of the incident. Admittedly, there was a previous enmity between the deceased and the accused No.1 Sanjay, who are the real brothers, on account of partition. The N.C.Report lodged by accused No.2 Manisha also shows that there was a quarrel between the deceased and accused No.1 Sanjay. During the said quarrel, accused No.1 Sanjay went inside the

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house and brought the "knife" and assaulted the deceased. It shows that the incident was not occurred in a spur of moment, but accused No.1 Sanjay went inside and brought the weapon which shows preparation as well as intention of accused No.1 Sanjay. Accused No.3 Banti caught hold the deceased and accused No.1 Sanjay gave blows which shows that accused No.3 Banti shared common intention with accused No.1 Sanjay. Accused No.1 Manisha and accused No.4 Manglabai were also present there. To attract Section 34 of the Indian Penal Code, the meeting of mind prior to the incident is not required. The common intention can be formed at the spot itself. Thus, the evidence of these two witnesses sufficiently shows the involvement of all the accused persons in the alleged incident.

13. After hearing both the sides and after considering the evidence on record, admittedly, the entire case of the prosecution is based on the evidence of two eyewitnesses namely PW1 Shobhabai Sitaram Pakhare, the mother-in-law of the deceased, and PW2 Varsha Ganesh Suradkar, the wife of the deceased. Besides the evidence of these eyewitness, the prosecution is further relied upon the circumstantial evidence

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like recovery of the article at the instance of accused No.1 Sanjay, blood stained clothes of the accused persons, and medical evidence supported by the chemical analysis. Now, it has to be seen whether the evidence adduced by the prosecution witnesses sufficiently shows the involvement of the accused persons in the alleged incident.

14. Insofar as the homicidal death of the deceased is concerned, the material evidence adduced by the prosecution is the evidence of PW5 Dr.Suryakant Tejrao Lodhe, examined vide Exhibit-40. His evidence is to the extent that he was serving as Medical Officer on 13.5.2016. The dead body of the deceased was forwarded to him for postmortem examination along with inquest panchanama and requisition letter. On examination, he found following external injuries on the person of the deceased:

- (i) penetrating incised wound measuring 4x2 cms. at mid axillary line towards left side;
- (ii) penetrating incised wound measuring 4x1 cms. at mid axillary line towards left side;
- (iii) abrasion measuring 7 cms. long tempering both ends at mid axillary line, towards left side;

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(iv) three stab injuries. Out of them, two stabs measuring 2x0.5 cms. deep penetrating, bilateral to thoracic vertebra below 10 cms. from nape of neck, and

(v) one penetrating stab injury over right flank region measuring 2x0.5 cms.

Besides the external injuries, he had also noticed fracture of lower rib, penetration of pleura at left mid axillary line on two sides with collection of blood in pleural cavity. Penetrating injury with collapse of right lung. Injury at the posterior medial aspect, posterior to hilum at middle lobe. He further observed two penetrating injuries on middle and lower lobe laterally with collection of around 1.5 liters of blood in thoracic cavity. Both the lungs were found collapsed. He also noticed internal abdominal injuries as follows:

(i) there was penetrating injury over back at left flank region, measuring 4x2 cms;

(ii) peritoneum penetrated at mid clavicular line adjacent to last rib, measuring 5 cms. and 3 cms. respectively with collection of around 1.5 liters of blood in peritoneal cavity, and

(iii) injury to duodenojejunal junction.

He noticed that the spleen got injured at both the poles with sharp border sizes measuring 2x1 cms and 2x1 cms

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respectively. He further noticed rupture of left kidney at lower pole with capsule intact.

On the basis of the examination, the probable cause of death determined is hypovolemic shock due to massive internal bleeding due to multiple organs injuries. During the postmortem, he collected blood samples from the heart. Accordingly, he prepared the postmortem notes which are at Exhibit-41. His evidence further shows that on 17.5.2016 he received a letter from the police wherein he was asked to give his opinion in relation to the weapon. The weapon was forwarded to him and he opined that the death can cause with the weapon examined. It is possible that the injuries found over the dead body of the deceased while postmortem examination were caused by the weapon brought for examination. Thus, he opined that the injuries sustained by the deceased are possible by the weapon "knife" Article-A. The said "knife" was shown to him during his deposition also.

During his cross-examination, an attempt was made to bring on record that the width and length of the weapon were more than the length and the width of the

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injury. He admitted that penetrating injuries and incised wound can occur due to pointed and sharp weapon. He further admitted that the injuries observed by him are possible if any person falls on a pointed nail of bullock-cart and injuries may resemble like stab injuries. Except this cross-examination, nothing incriminating came on record.

15. Besides the medical evidence, the prosecution further placed reliance on the inquest panchanama which is drawn by Investigating Officer PW6 Laxman Devaji Sonne. His evidence is only to the extent that he collected AD Papers which include the inquest panchanama. Thus, nothing is narrated by him regarding the injuries observed on the person of the deceased at the time of the inquest panchanama.

16. Thus, the medical evidence of PW5 Dr.Suryakant Tejrao Lodhe shows that the deceased had sustained the injuries which were in the nature of penetrating injuries and stab wounds which are possible by the "knife" Article-A. The internal injuries are corresponding injuries to the external injuries. Thus, the evidence of the Medical Officer is to the

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extent that while conducting the postmortem, he noticed the said injuries.

17. Now, it is well settled that the evidence of PW5 Dr.Suryakant Tejrao Lodhe is not only the opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see the injuries on the person of the deceased.

18. 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 Mitraand 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 range was small, quite apart from any other opinion of his. Similarly, fractures of

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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.

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

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20. In the case at hand, PW5 Dr.Suryakant Tejrao Lodhe has clearly stated that all the injuries attributed to the deceased are possible by the weapon like "knife".

21. Thus, the evidence on record sufficiently shows that the death of the deceased is caused as he sustained penetrating incised wounds, stab wounds resulting into injury to the spleen and rupture of the kidney. The death of the deceased is due to massive internal bleeding due to multiple organs' injuries. This observation is sufficient to show that the death of the deceased is caused due to the loss of the blood as he sustained the injuries. Thus, the prosecution has proved that the death of the deceased is homicidal one.

22. The entire case of the prosecution is based on the evidence of two eyewitnesses.

23. There is no dispute that the deceased and accused No.1 Sanjay are real brothers. Not only the prosecution story but also the defence of the accused persons shows that there was previous dispute between the deceased and accused No.1 Sanjay on account of partition of the house.

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24. PW1 Shobhabai Sitaram Pakhare, is the mother-in-law of the deceased and was residing along with him at the time of the incident. She had lodged the report about this unfortunate incident. From her evidence it reflects that since the death of her husband, she is residing along with her daughter PW2 Varsha Ganesh Suradkar. As per her evidence, the alleged incident occurred on 12.5.2016 at about 4:00 pm, as there was a quarrel between accused No.2 Manisha and PW2 Varsha on account of keeping clothes' washing stone. During their quarrel, the deceased intervened and asked accused No.2 Manisha to keep the clothes' washing stone away which was placed in front of his house. There was verbal exchange between them. Thereafter, accused No.2 Manisha went in her house and PW2 Varsha was cleaning utensils. The deceased shifted the clothes' washing stone from verandah to the other place. At the relevant time, all the accused persons came running towards the deceased. Accused No.3 Banti caught hold the hands of the deceased and accused No.1 Sanjay gave repeated blows by means of iron knife on left side of the abdomen of the deceased. Accused Nos.2 and 4 Manisha Manglabai thrown chilly powder

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on the face of the deceased. At the relevant time, she and PW2 Varsha tried to rescue the deceased, however accused Nos.2 Manisha and 4 Manglabai threw chilly powder on their body, as well. Thereafter, they removed the deceased in the hospital, however he was declared dead by the Medical Officer. Regarding the said incident, she lodged the report at the police station.

25. During the cross-examination of PW1 Shobhabai Sitaram Pakhare, it came on record that there was a dispute between accused No.1 Sanjay and the deceased on account of family partition. The parents of the deceased and accused No.1 Sanjay are staying at Mumbai. It was suggested that the deceased was under the influence of liquor, but she has not admitted the same and shown her unawareness about the said fact. The defence further made an attempt to bring on record that the alleged incident occurred in a crowded locality which is denied by the witness. She admitted that accused Nos.3 and 4 Banti and Manglabai are residing at a long distance from the house of the deceased. It further came on record that the deceased and PW2 Varsha were residing in two rooms and accused No.1 Sanjay and accused No.2 Manisha

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were residing in other two rooms. The further cross-examination is in respect of omissions to the extent that she had not stated before the police about the initial verbal exchange of words between accused No.2 Manisha and the deceased.

Thus, the sum and substance of her evidence is that there was a previous quarrel between accused No.1 Sanjay and the deceased on account of partition of the house. On the day of the incident, the quarrel took place between the deceased and accused No.2 Manisha and due to the said quarrel accused No.1 Sanjay assaulted the deceased by means of the "knife". The evidence further shows that all the accused persons in furtherance of their common intention assaulted the deceased and caused his death.

26. To corroborate the versions of PW1 Shobhabai Sitaram Pakhare, the prosecution has examined PW2 Varsha Ganesh Suradkar, examined vide Exhibit-20. PW2 Varsha corroborated the versions of PW1 Shobhabai on a material aspect that the deceased shifted the stone and, therefore, accused No.1 Sanjay along with the other accused persons

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came at the spot holding the "knife" in his hand and gave blows of the "knife" on the body of the deceased. The other accused namely accused No.3 Banti hold the hands of the deceased and accused Nos.2 and 4 Manisha and Manglabai threw chilly powder on the person of the deceased.

Thus, all the accused persons by sharing the common intention, assaulted the deceased and caused his death.

During her cross-examination also, it is brought on record that there was dispute on account of partition between accused No.1 Sanjay and the deceased. But, she denied that the deceased was addicted to liquor and on account of that there used to be quarrels between the deceased and the other accused persons. She also denied that the deceased was having criminal antecedents and she was fed up with it. The omission is brought on record to the extent that she has not stated before the police that her mother had given understanding to the accused persons.

27. Thus, the evidence of both these witnesses, PW1 Shobhabai Sitaram Pakhare and PW2 Varsha Ganesh

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Suradkar, shows that the quarrel took place on account of shifting clothes' washing stone and accused No.1 Sanjay got annoyed and brought the "knife" and gave repeated blows on the person of the deceased which resulted into his death.

28. The medical evidence, which is already discussed, also corroborates the oral versions of PW1 Shobhabai Sitaram Pakhare and PW2 Varsha Ganesh Suradkar that the deceased has sustained the injuries in the nature of penetrating injuries and stab injuries which are possible by the weapon like "knife".

29. The alleged incident has taken place in front of the house of the deceased as well as accused No.1 Sanjay. To prove the spot panchanama, the prosecution has examined PW3 Usha Ramesh Ingle, who was serving as Talathi. She deposed that the alleged spot of the incident was in front of the house of the deceased. She has noticed that the blood was splattered on the verandah and red chilly powder lying there on the earth. Accordingly, the police have drawn the spot panchanama, Exhibit-26. Investigating Officer PW6 Laxman Devaji Sonne, had also narrated that at the spot of

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the incident they observed the blood stains, piece of match box, chilly powder, and a white colour polythene bag. He had collected sample of blood stains with the help of cotton. He had taken the blood samples from various places at the spot. These both witnesses are cross-examined.

During the cross-examination of PW3 Usha Ramesh Ingle, it is brought on record that an iron bullock-cart was lying at the spot. PW3 Usha Ingle further admitted that the Eastern side way in front of the house of the deceased is used by the villagers as access way. She further admitted that when she reached at the spot, people were assembled near the spot.

Investigating Officer PW6 Laxman Sonne, during his cross-examination, admitted that near the spot of the incident there were houses.

30. Thus, from the cross-examination of PW3 Usha Ingle and Investigating Officer PW6 Laxman Sonne the defence has attempted to bring on record that independent witnesses were available at the spot of the incident when the spot panchanama was drawn. The attempt was further made

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that one bullock-cart was lying on the spot to show that possibility that the deceased sustained injuries due to the fall on the said bullock-cart cannot be ruled out as PW5 Dr.Suryakant Tejrao Lodhe admitted that such type of injuries are possible if any person falls on a pointed nail of bullock-cart.

31. The another material circumstance on which the prosecution placed reliance on is, PW4 Ravindra Ganesh Tote, examined vide Exhibit-27, who acted as a pancha on seizure of the clothes of the deceased as well as the accused persons. He also acted as a pancha on memorandum statement and discovery at the instance of the accused sanjay. The evidence of PW4 Ravindra Tote shows that he was called by the police and in his presence the police seized one handkerchief and underwear of the deceased by drawing panchanama Exhibit-28. The police also seized the clothes of the accused persons in his presence which were having blood stains. Accordingly, panchanama Exhibit-29 was drawn. He has identified the clothes which were seized in his presence namely Articles-B and C, handkerchief and underwear of the deceased. Articles-D and E, the shirt and the pant of accused No.1 Sanjay,

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Article-F Saree of accused No.2 Manisha, Articles-G and H pant and shirt of accused No.3 Banti and Article-I saree of accused No.4 Manglabai. He also acted as a pancha on the panchanama on seizure of the chilly powder from the house of the accused persons by drawing Exhibit-33. His further evidence shows that in his presence the police have seized an iron knife from the custody of accused No.1 Sanjay. Accused No.1 Sanjay had taken out the knife from his meat shop. He further testified that accused No.1 Sanjay made a disclosure statement in his presence and disclosed that he is ready to take out the "knife" hidden in his shop. Accordingly, his statement Exhibits-34 and 35 are drawn. He identified Article-A the "knife". The evidence of PW4 Ravindra Tote regarding the seizure of the clothes is further corroborated by Investigating Officer PW6 Laxman Sonne who testified that during the investigation he seized the blood stained clothes of the deceased by drawing panchanama Exhibit-28. One handkerchief and one green colour underwear, having blood stains, Articles-B and C, are seized by him. He also produced on record the muddemal receipt Exhibit-61 to show the seizure. After arrest of the accused persons, he seized the

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clothes of the accused persons which are Articles-D to I. Accused No.1 Sanjay has given memorandum statement and on the basis of the said statement he led the police at his house wherein he was running the meat shop. From the said shop, accused No.1 Sanjay had produced one "knife" which was seized by him by drawing panchanama.

Thus, the evidence of PW4 Ravindra Tote and Investigating Officer PW6 Laxman Sonne, regarding the seizure of the clothes and panchanamas, is corroborating to each other.

PW4 Ravindra Tote, is cross examined and admitted that when he reached to the police station, the accused persons were in lock-up. He further admitted that he went at the spot of the seizure of the knife as per instructions of the police. However, he denied that the police have seized one knife from the shop of accused No.1 Sanjay out of three knives lying there. The "knife" was semi-circular "knife".

Though Investigating Officer PW6 Laxman Sonne was cross examined, nothing incriminating is brought on

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record to falsify the evidence of recovery. He has also admitted that the "knife" was semi-circled.

Thus, the description of the "knife" came on record through the cross-examination.

The evidence of the Investigating Officer PW6 Laxman Sonne further shows that he had collected Namuna Number 8-A showing the house property of the accused persons and the deceased, which are at Exhibits-68 and 69. During the investigation, he referred the accused persons for medical examination and for obtaining their blood samples.

32. The evidence of PW5 Dr.Suryakant Lodhe shows that he had collected the blood samples of the deceased and handed it over to the police. The blood samples of the deceased, blood samples of the accused persons, incriminating articles, clothes of the deceased, clothes of the accused persons, and the "knife" recovered at the instance of the accused persons are forwarded to the Chemical Analyzer. The Chemical Analyzer's Reports are on record at Exhibits-92 to 99. Exhibit-92, Article Nos.1 to 3 are cotton swabs by which blood stains are collected; Article No.4 is cement

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concrete stone, Article-5 is polythene bag, and Article-6 is match box cover. The Chemical Analyzer's reports show that the blood of Blood Group "O" was found on Articles-1 to 4, and 6. Articles-7 and 8 are underwear and dupatta of the deceased wherein also the blood stains of Blood Group "O" are detected. Articles-9 and 10 are clothes of accused No.1 Sanjay out of which blood stains of Blood Group "O" was found on Article-10 i.e. full pant. Articles-11 and 12 are clothes of accused No.3 Banti wherein also blood stains of Blood Group "O" was found and Article-13 is saree of accused No.2 Manisha wherein also blood stains of Blood Group "O" were determined. Except this, Article-6 match box cover and Article-9 full shirt of accused No.1 Sanjay were also stained with the blood, however the blood group was not detected.

33. The incriminating article "knife" was also forwarded to the Chemical Analyzer. The report Exhibit-93 shows that during examination of the "knife", blood of Group "O" was found on the said "knife". As per Exhibit-94, the Blood Group of the deceased is "O". As per Exhibit-95, the Blood Group of accused No.1 Sanjay is "A", the Blood Group of accused No.3 Banti, as per Exhibit-96, is "A". The Blood

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Group of accused No.2 Manisha is "O" and the Blood Group of accused No.4 Manglabai is also "O". The red chilly powder collected from the spot and seized from the house was also analyzed as "chilly powder" as per Exhibit-99. The accused persons, during investigation, were referred for medical examination. Their medical certificates are collected during the investigation. The medical certificates are at Exhibits-106 to 109. No injury is found on the person of the accused persons. Exhibit-110 is the N.C.Report filed by accused No.2 Manisha against the deceased and PW2 Varsha and her mother PW1 Shobhabai. This N.C.Report is also regarding the incident dated 12.5.2016 and time mentioned is 4:00 pm. Thus, this N.C.Report also supports the case of the prosecution to show that the alleged incident has taken place.

34. Learned counsel Shri R.M.Daga for the accused persons vehemently submitted that the prosecution has not examined any independent witnesses. The alleged incident is out of a sudden quarrel and, therefore, at the most the case covers under Section 304 Part-I of the Indian Penal Code. He further submitted that the evidence of these witnesses is not at all cogent and reliable as PW1 Shobhabai, the mother-in-

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law of the deceased, has narrated the incident differently than narrated in the First Information Report.

35. In support of his contention, learned counsel Shri R.M.Daga for the accused persons placed reliance on the decision of the Honourable Apex Court in the case of Ram Chander vs. The State of Haryana reported in AIR 1981 SC 1036 wherein the Honourable Apex Court has considered the aspect that witnesses resiling from their earlier statements – their testimony substantiated by the First Information Report – no ground to accept their evidence when the First Information Report is not sought to be consistent with prosecution case. The Honourable Apex Court held that no doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, the omissions of such important facts affecting the probabilities of the case are relevant under Section 11 of the Evidence Act. In a cited case, father of the murdered boy was knowing all important facts and he was bound to communicate. If his daughters have seen the appellants, father would certainly have mentioned in it, is observed by the Honourable Apex Court.

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36. Here, in the present case, the omissions, which are addressed during the cross-examination, are not regarding the actual assault. The omissions brought on record are not so material which would affect the prosecution case. Likewise, the omissions, during the evidence of PW2 Varsha, the wife of the deceased, are also of trivial in nature.

37. After appreciating the evidence on record, the accused persons have not denied the alleged incident. In fact, lodging of the N.C.Report by accused No.2 Manisha corroborates the prosecution version that there was quarrel between the deceased and accused No.2 Manisha on account of placing of the clothes' washing stone. The alleged incident has occurred on that count only. PW1 Shobhabai Sitaram Pakhare, the mother-in-law of the deceased, and PW2 Varsha, the wife of the deceased, both are eyewitnesses of the incident. Their presence at the spot of the incident is also natural as they are residing in the house. The alleged incident has taken place in front of their house. Not only the prosecution story but also the contention of the accused persons shows that the alleged incident occurred in front of the house in view of the N.C.Report. It is vehemently

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submitted that though independent witnesses are available, their statements are not recorded and they are not examined. Though during the cross-examination of PW3 Usha Ramesh Ingle it is brought on record that when she went at the spot of the incident, people were gathered there. But, the said admission nowhere shows that at the time of the incident also the other people were present. Investigating Officer PW6 Laxman Devaji Sonne is also examined and has admitted that there were houses near the house of the accused persons. However, PW1 Shobhabai and PW2 Varsha are not cross-examined to show that at the time of the alleged incident the villagers were also gathered there. The cross-examination is not to the extent that who are residing adjacent to the house of the accused persons. The evidence of PW1 Shobhabai and PW2 Varsha is corroborating to each other on material aspects. No reason is brought on record to doubt their versions. Some omissions ought to have occurred considering the rural background of the witnesses.

38. It is a well settled that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) is neither a sound rule of law nor a sound rule of practice. It is not

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applicable in criminal cases in India, as witnesses may be partly truthful and partly false in their evidence. The experience shows that the evidence of many witnesses contains a grain of untruth a some exaggeration or embellishment. This many a times happens perhaps due to fear in the mind of the witnesses that their testimony may not be accepted. Discrepancies in deposition of witnesses are always there due to normal error of observation, normal error of memory due to lapse of time, due to mental disposition etc. which needs to be ignored. The prosecution would fail only wherein inconsistency goes to the root of the case, otherwise it becomes the duty of the Court to shift truth from falsehood from the evidence of witnesses examined by the prosecution. At the most, inconsistent part of the version of the witnesses may be discarded and rest of his testimony is to be accepted.

39. This Court in the case of Dilip Ramaji Kakde vs. State of Maharashtra, reported in 2000(1) Mh.L.J. 549 held that the material witnesses who took the injured to hospital were not examined and, therefore, non-examination of material witnesses is not fatal to the prosecution.

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40. The Honourable Apex Court in the case of State represented by Inspector of Police, T.N. vs. Manikandan and ors, reported in 2015 ALL MR (Cri) 2473 (SC) specifically held that there is no bar on admissibility of statement by related witnesses, but it should stand trustworthy and corroborated by the other witnesses or documentary evidence of the prosecution.

41. This Court in the case of Mahadu Harchand Tirmale vs. The State of Maharashtra, reported in 2001 ALL MR (Cri) 2371 held that testimony of interested witnesses has to be approached with caution.

42. 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 earlier

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evaluation of evidence is shaken as to render it unworthy of behalf. The material thing which is to be seen whether those inconsistencies go to the root of the matter. While appreciating evidence of relatives, great weightage is to be given to them on the principle that there is no reason for them not to speak the truth and shield the real culprit.

43. The Honourable Apex Court in the case of Masalti vs. State of U.P., reported in AIR 1965 SC 202 has ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention names of other persons as responsible for causing injuries to deceased.

44. A three-Judge bench of the Honourable Apex Court in the case of Hari Obula Reddy and others vs, The State Of Andhra Pradesh, reported in AIR 1981 SC 82 has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting the evidence of relatives. It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a

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material extent in material particulars by independent evidence. All that is necessary is that evidence should be subjected to careful scrutiny and accepted with caution.

45. The Honourable Apex Court in the case of Kartik Malhar vs State of Bihar reported in 1996(1) SCC 614 has opined that a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason.

46. The Honourable Apex Court in the case of Pulicherla Nagaraju @ Nagaraja Reddy vs. State of A.P. reported in (2006)11 SCC 444 while dealing with liability of interested witnesses, who are relatives, has observed that it is a well settled that evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to deceased, if it is otherwise found to be trustworthy. The said evidence only requires scrutiny with more care and caution.

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47. Testing on the anvil and touchstone of the aforesaid principles laid down by the Honourable Apex Court, we find that witnesses, PW1 Shobhabai and PW2 Varsha, who are close relatives of the deceased, mainly the mother-in-law and the wife of the deceased, have really not embellished their versions. Their presence at the spot of the incident is also natural and there is nothing on record to doubt their versions. Their versions are consistent on material particulars.

48. 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.

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49. Thus, the material thing is to be seen whether those inconsistencies go to the root of the matter or pertain to insignificant aspect thereof. Though some omissions are brought on record, which are not touching to the core of the incident, in fact, the evidence of PW1 Shobhabai and PW2 Varsha on the actual incident of the assault is consistent and corroborative and, therefore, the said evidence is to be accepted and there is no reason to discard the evidence of these witnesses. Though there is previous dispute, no reason came forward which will show that they have a reason to implicate the accused persons falsely. In fact, it is well settled that the witnesses who are related to the deceased would not shield the real culprit and implicate any innocent person. Here also, there is no reason for the witnesses to implicate the accused persons falsely.

50. Besides the direct evidence of these two eyewitnesses PW1 Shobhabai and PW2 Varsha, the prosecution also relied upon the circumstantial evidence in the nature of the spot panchanama regarding the spot of the incident from which the blood stains are collected by Investigating Officer PW6 Laxman Devaji Sonne in presence of

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pancha i.e. PW3 Usha Ingle. There is no dispute that the alleged spot of the incident was situated in front of the house of the deceased, accused No1. Sanjay and accused No.2 Manisha. The evidence of PW3 Usha Ingle and Investigating Officer PW6 Laxman Sonne categorically states that the blood stains are found on the verandah as well as at various places which are collected with the help of cotton balls. The said collected blood stains, that is cotton swabs, were forwarded to the Chemical Analyzer and the Chemical Analyzer Report Exhibit-92 shows that the blood stains found on the cotton swabs Exhibits-A, B, and C at serial Nos.1 to 3 in Exhibit-92 were analyzed that it is having the Blood Group "O". The Blood Group of the deceased is also "O" as per Exhibit-94. Admittedly, none of accused persons received the injuries in the alleged incident and, therefore, only an inference can be drawn that the said blood stains are of blood group of the deceased. During the cross-examination, nothing incriminating came on record.

51. The circumstance, regarding the seizure of the blood stained clothes of the deceased and the accused persons, is also proved by witness PW4 Ravindra Ganesh Tote,

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who acted as a pancha on the seizure panchanamas, and Investigating Officer PW6 Laxman Sonne . The blood stains of Blood Group "O" are found on the pant of accused No.1 Sanjay, pant and shirt of accused No.3 Banti, and saree of accused No.2 Manisha. Though the Blood Group of Manisha, as per Chemical Analyzer's Report Exhibit-97, is also "O", during her medical examination, no injury is found on her person. No defence is raised by the accused persons that in the alleged incident they have sustained the injuries. The medical certificates of the accused persons vide Exhibits-106 to 109 also nowhere disclose any injury sustained by them. Thus, from the above said evidence, only an inference can be drawn that the said blood stains found on their clothes are of the Blood Group of the deceased. During their statements, though the accused persons were examined on Chemical Analyzer's Reports, they have not explained the circumstance appearing against them regarding the blood stained clothes as per the Chemical Analyzer's Reports.

52. During the investigation, accused No.1 Sanjay made a memorandum statement and the incriminating article "knife" was seized at his instance. To prove the said fact, the

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prosecution has examined PW4 Ravindra Ganesh Tote. His evidence discloses that accused No.1 Sanjay made a disclosure statement in his presence and disclosed that he is ready to take out the "knife" hidden in his shop. Accordingly, accused No.1 Sanjay led them in his shop which is in his house only and produced the "knife" which was having blood stains. The "knife", which was forwarded to the Chemical Analyzer, shows that during the analysis the blood stains found on the "knife" are of Blood Group "O". The evidence of Investigating Officer PW6 Laxman Devaji Sonne also corroborates the fact of seizure of the "knife" at the instance of accused No.1 Sanjay. Though both the witnesses are cross-examined, the evidence of these witnesses is not shattered to falsify the fact of the discovery and the recovery of the article. Thus, the direct evidence is not only supported by the fact of discovery of the place where the "knife" was concealed but also it is supported by the Chemical Analyzer's Reports Exhibit-93 which show that the blood stains found on the "knife" are of Blood Group "O" which is of the deceased. Thus, nothing is on record to disbelieve the evidence regarding recovery of the "knife" at the instance of accused No.1 Sanjay.

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53. The doctrine, therefore, founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

54. Section 27 of the Indian Evidence Act is interpreted by the Honourable Apex Court in the case of **Subramanya vs. State of Karnataka**, reported at **2022 LiveLaw (SC) 887** and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

It is further held by the Honourable Apex Court that what is admissible is the information and the same has to

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be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused, while in custody, which led to recovery of the articles, has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is a made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. It is further held by the Honourable Apex Court that mere statement that the accused led the Police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

55. Learned Additional Public Prosecutor Shri T.A.Mirza for the respondent/State vehemently submitted that the evidence, which is on record, sufficiently shows that the

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accused persons in furtherance of their common intention committed the murder of the deceased.

On the other hand, learned counsel Shri R.M.Daga for the accused persons submitted that after accepting the case of the prosecution as it is for the sake of argument, the prosecution nowhere establishes that the accused persons in furtherance of their common intention committed the act. Admittedly, the sudden quarrel started and in the said quarrel accused No.1 Sanjay, as per the allegation, brought the "knife" and assaulted the deceased. Mere presence of the other accused persons is not sufficient to infer that there was common intention. The only role attributed to accused No.2 Manisha and accused No.4 Manglabai is that they thrown chilly powder on the persons of the deceased. During the postmortem examination, no chilly powder was found on the face of the deceased. The chilly powder was also not found on the clothes of the deceased. Thus, this fact is not proved by the prosecution. Admittedly, the chilly powder was not found on the face of the deceased as there is no reference in the postmortem report regarding the chilly powder on the person of the deceased. Except the above said role, no overt act is

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played by accused No.2 Manisha and accused No.4 Manglabai. As far as accused No.3 Banti is concerned, he caught hold the deceased and accused No.1 Sanjay gave blows which is not sufficient to show that accused No.3 Banti shared common intention with accused No.1 Sanjay to commit the act, as there is no evidence as to meeting of minds between them.

56. The common intention contemplated by Section 34 of the Indian Penal Code presupposes prior concern. It requires meeting of minds and it requires a plan.

57. The Honourable Apex Court in the case of **Gadadhar Chandra vs. State of West Bengal**, reported in **(2022)6 SCC 576** in paragraph No.14 held as under:

“as consistently held by this Court, common intention contemplated by Section 34 of the Indian Penal Code presupposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly.”

58. Here, in the present case, there is no evidence on record to show that the plan was formed suddenly and in

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furtherance of that plan accused No.1 Sanjay gave blows of the “knife” to the deceased. As far as accused No.3 Banti is concerned, he played an act to assist accused No.1 Sanjay and accused No.1 Sanjay executed the act.

59. In another judgment, the Honourable Apex Court in the case of Jasdeep Singh alias Jassu vs. State of Punjab, reported in (2022)2 SCC 545 has dealt with the word “furtherance” and held that word “furtherance ” indicates the existence aid or assistance in producing an effect in future and thus it has to be construed as an advancement or promotion. It is further held that existence of common intention is obviously the duty of the prosecution to prove. However, the court has to analyze and assess evidence before implicating a person under Section 34 of the Indian Penal Code. A mere common intention *per se* may not attract Section 34 of the Indian Penal Code, *sans* an action in furtherance.

60. Thus, Section 34 of the Indian Penal Code creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in

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pursuance to the common intention. The onus is on the prosecution to prove the common intention to the satisfaction of the court. The evidence should be substantial, concrete, definite, and clear.

61. By applying the above said principle, here, in the present case, admittedly, there is no evidence to show that accused No.2 Manisha and accused No.4 Manglabai were sharing common intention. Insofar as the role of accused No.3 Banti is concerned, the prosecution witnesses alleged that he caught hold the deceased. The prosecution did not bring evidence that there was prior meeting of mind and accused No.3 Banti was having knowledge that accused No.1 Sanjay would assault the deceased with an intent to commit his murder on the vital parts of the body. The evidence adduced by the prosecution is not convincing to hold that accused No.3 Banti also shared the common intention with accused No.1 Sanjay.

62. Observing the inference of common intention is to be drawn from the conduct of the accused persons, the Honourable Apex Court in the case of Ramesh Singh @ Photti vs.

State of A.P., reported in (2004)11 SCC 305 held as under:

"12. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words,

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the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted."

63. In the light of the above principles, if the evidence adduced by the prosecution is considered to ascertain whether accused No.2 Manisha; No.3 Banti, and No.4 Manglabai had the common intention and acted in furtherance of the common intention, considering the role of accused No.2 Manisha; No.3 Banti, and No.4 Manglabai, the prosecution did not bring any evidence to show that there was prior meeting of mind or at the spur of moment there was any consultation, instigation, aiding by these accused persons to accused No.1 Sanjay and in furtherance of the common intention, accused No.1 Sanjay gave blows of knife repeatedly. There is no evidence to show that accused No.2 Manisha; No.3 Banti, and No.4 Manglabai were having knowledge that accused No.1 Sanjay would give repeated blows on the vital parts of the body with an intent to commit murder of the deceased.

64. The Honourable Apex Court in the case of **Balvir Singh vs. State of Madhya Pradesh**, reported in **AIR 2019 SC**

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2983 held that though the accused persons were present along with the main accused, they were not armed, they only caught hold of arms of the deceased and attacked on him. Prior meeting of minds and knowledge of accused persons that their brother was armed with Katta, not established conviction of accused persons under Section 302 read with Section 34 of the Indian Penal Code and is liable to be set aside.

65. Here, in the present case also, accused No.2 Manisha; No.3 Banti, and No.4 Manglabai were not armed with any weapons; they were not aware about the intention of accused No.1 Sanjay; accused No.2 Manisha and accused No.4 Manglabai have only allegedly thrown chilly powder which was not found on the person of the deceased, and accused No.3 Banti caught hold of the deceased. The evidence adduced by the prosecution is not convincing to hold that accused No.2 Manisha; No.3 Banti, and No.4 Manglabai also shared the common intention with accused No.1 Sanjay and, therefore, the conviction of accused No.2 Manisha; No.3 Banti, and No.4 Manglabai under Section 302 read with Section 34 of the Indian Penal Code is liable to be set aside.

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66. Learned counsel Shri R.M.Daga for the accused persons further submitted that even considering the prosecution case, as it is, as far as accused No.1 Sanjay is concerned, it covers under Section 304 Part-I of the Indian Penal Code that is culpable homicide not amounting to murder. In support of his contention, he placed reliance on the decision of the Honourable Apex Court in the case of Ramjit and others vs. State of U.P., reported in 2009 ALL MR (Cri) 495 (S.C.) wherein it is held that there was a sudden quarrel, exchange of hot words and while exchanging of hot words, the accused persons going inside and coming back well armed after less than couple of minutes, the conviction would not under Section 302 but under Section 304 Part-I of the Indian Penal Code.

67. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie. Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms;

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one is a graver offence which amounts to 'murder' and lesser one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act of homicide falls within the definition of culpable homicide under Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to

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that section, the offence is punishable under Section 304 of the Indian Penal Code. Once, it is held that the offence falls under Section 304 of the Indian Penal Code, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

68. Recently, the Honourable Apex Court determined the principles in the case of Ajmal vs. State of Kerala, reported in (2022)9 SCC 766 whether the offence is culpable homicide or murder and held that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts more than a century. The confusion is caused, if courts, losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to keep in focus. The key words used in the various clauses of Sections 299 and

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300 of the Indian Penal Code. It is further observed that the court should proceed to decide the pivotal question of intention with care and caution so that will decide whether the case falls under Section 302 or under Section 304 Part-I or Part-II of the Indian Penal Code. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the Accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302 of the Indian Penal Code.

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69. The Honourable Apex Court further held that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the Accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the Accused dealt a single blow or several blows. The above list of circumstance is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

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70. By applying these *facts*, if the evidence in the present case is assessed, the weapon used was a "knife". The description of the weapon described by the Medical Officer while giving his opinion on a query report vide Exhibit-42 shows that the "knife" was iron knife with pointed tapering. Edge one margin/edge sharp cutting. Another edge thick (thickness around 5 mm), blade is of brown colour, handle of the knife is iron, length of the knife is 34.5 cms along with the handle. The blade of the knife was 24.5 cms. Thus, the weapon used is a sharp weapon. Now, the nature of injuries sustained by the deceased shows that he sustained penetrating incised wound measuring 4x2 cms at mid axillary line. The mid axillary line originates in the axilla or armpit possesses vertically downwards. It is situated between the anterior axillary line and posterior axillary line. The deceased had also sustained penetrating incised wound 4x1 cm at mid axillary line and three stab injuries to thoracic vertebra. These injuries resulted into fracture of lower rib, penetration of pleura at left mid axillary line, penetrating injury with collapse of right lung. The injuries resulted into the injury to the spleen and rupture of left kidney. Thus, the nature of

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injuries shows that repeated blows are given on vital parts which resulted into rupture of spleen as well rupture of kidney. The evidence shows that the weapon was not picked from the spot, but accused No.1 Sanjay went inside the house and brought the knife. The injuries are inflicted with such a force to endeavour to end the life of the deceased. While giving the blows, no remorse is shown towards the deceased. It was certainly an act in a cruel manner taking advantage of the situation. Thus, there is no cause made out for application of exception 4 of Section 300 of the Indian Penal Code.

71. Sympathy for the brother in such a scenario is miscarriage of justice. The deceased and accused No.1 Sanjay were real brothers. Accused No.1 Sanjay acted mercilessly while assaulting his own brother and, therefore, no ground is made out for application of exceptions of Section 300 of the Indian Penal Code.

72. Thus, for all the above said reasons, we do not find any merit in the submissions canvassed by learned counsel Shri R.M.Daga for accused No.1 Sanjay. The evidence of the prosecution witnesses is cogent and consistent and the

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inconsistencies are trivial in nature and do not affect the case of the prosecution. We are of view that accused No.1 Sanjay is rightly convicted for the offence punishable under Section 302. Accused No.2 Manisha, accused No.3 Banti, and accused No.4 Manglabai are entitled for acquittal of charges levelled against them.

73. In the result, since we find no merit in the appeal, insofar as accused No.1 Sanjay is concerned, the appeal deserves to be dismissed against him. However, the appeal, insofar as accused No.2 Manisha, accused No.3 Banti, and accused No.4 Manglabai are concerned, deserves to be allowed. Hence, we pass following order:

ORDER

(1) The Criminal Appeal is **partly allowed**.

(2) The judgment and order of conviction and sentence dated 31.8.2019 passed by learned Additional Sessions Judge, Buldana in Sessions Case No.77/2016 is maintained insofar as accused No.1 Sanjay is concerned.

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(3) The judgment and order of conviction and sentence dated 31.8.2019 passed by learned Additional Sessions Judge, Buldana in Sessions Case No.77/2016 is hereby quashed and set aside insofar as accused No.2 Manisha; accused No.3 Banti, and accused No.4 Manglabai are concerned.

(4) Accused No.2 Manisha; accused No.3 Banti, and accused No.4 Manglabai are acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

(5) The Bail Bonds of accused No.2 Manisha; accused No.3 Banti, and accused No.4 Manglabai stand discharged.

(6) Accused No.1 Sanjay, who is already in the jail, shall undergo imprisonment for life.

With this, the criminal appeal is **partly allowed**.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

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