

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

CRIMINAL APPEAL NO.747 OF 2019

Laxman Pandurang Pawar,
Aged about 35 years, occupation labour,
R/o Pandhurna (Bu.) taluka Ghatanji,
District Yavatmal. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
Through PSO Ghatanji,
District Yavatmal. **Respondent.**

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Shri R.M.Patwardhan, Counsel Appointed for the Appellant.
Shri M.K.Pathan, Additional Public Prosecutor for the Resp./State.
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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.
JUDGMENT CLOSED ON : 19/12/2022
JUDGMENT PRONOUNCED ON : 13/01/2023.

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

1. By this appeal, the appellant (accused) challenges judgment and order of conviction dated 25.4.2019 passed by learned Sessions Judge, Yavatmal in Sessions Trial No.39/2018 whereby learned Judge convicted him for offences punishable under Sections 449 and 302 of the Indian Penal Code.

For offence punishable under Section 449 of the Indian Penal Code, he was sentenced to suffer rigorous imprisonment for

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ten years and to pay fine Rs.500/- and in default of payment of the fine amount to suffer rigorous imprisonment for three months.

For offence punishable under Section 302 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for life and to pay fine Rs.500/- and in default of payment of the fine amount to suffer rigorous imprisonment for three months.

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

2. Brief facts leading to the prosecution case are summarized as follows:

Chhaya Kisan Pawar, who is informant and wife of deceased Kisan Pawar, has lodged a report with Ghatanji Police Station, Yavatmal on allegation that accused Laxman Pandurang Pawar is her brother-in-law. Her marriage with the deceased was performed and she is having three daughters from the said wedlock. As there was matrimonial dispute, she was residing separately in the same village along with her daughters. On 9.4.2018, at about 5:00 am, Ishwar Sakharkar approached to her and disclosed that her husband is not well and, therefore, she immediately went at the

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house of her husband and witnessed that her husband was lying in a pool of blood on the bed and he sustained injuries on his chest. At the spot, villagers namely Janrao Masulkar, Raju Pendor, Amar Masulkar, and Sanjay Sarode were present. They disclosed to her that her brother-in-law i.e the accused assaulted her husband on 9.4.2018 at about 4:30 am by a knife and committed his murder. She further alleged that the accused was suspecting illicit relation between his wife and the deceased and, therefore, he committed murder of her husband.

3. On the basis of the said report, the police have registered the offence vide Crime No.135/2018 under Sections 302 449 of the Indian Penal Code. After registration of the crime, wheels of investigation started rotating. During investigation, it revealed to Investigating Officer that the alleged incident is witnessed by villagers namely Janrao Masulkar, Raju Pendor, Amar Masulkar, and Golu alias Sanjay Bajirao Sarode and, therefore, he recorded their statements. The accused was caught by these three witnesses by chasing and handed over to the police. Therefore, Investigating Officer arrested the accused by drawing arrest panchanama in presence of panchas. The accused has thrown the knife near "Futane Pan Stall" on Ghatanji Akola Bazar Road which was seized by Investigating Officer in presence of panchas by drawing panchanama. The Investigating Officer had also visited the

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alleged spot of incident and drawn spot panchanama. He collected blood samples from the spot and also obtained photographs. The clothes of the deceased as well as clothes of the accused are seized. The Investigating Officer has also collected the blood samples of the deceased and the accused. All incriminating material was forwarded to Chemical Analyzer along with a requisition. After completion of investigation, he submitted charge-sheet against the accused.

4. Learned Magistrate has committed the case to the Court of Sessions. Learned Sessions Judge framed charge Exhibit-3. The accused pleaded not guilty and claimed to be tried.

5. To substantiate the charge against the accused, the prosecution examined in all seven witnesses namely PW1 Yogiraj Nathuji Khantale, (Exhibit-14), pancha on spot; PW2 Chaya Kisan Pawar, (Exhibit-22), informant and the wife of the deceased; PW3 Janrao Madhaorao Masukar, (Exhibit-25), eyewitness; PW4 Amar Banduji Masulkar, (Exhibit-26), who had seen the accused running with knife; PW5 Golu @ Sanjay Bajirao Sarode, (Exhibit-29), who chased the accused and caught him, PW6 Dr. Leena Namdeorao Musale, (Exhibit-30), Medical Officer, and PW7 Amol Vilas Koli, (Exhibit-37), Investigating Officer.

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6. Besides the oral evidence, the prosecution relied upon spot panchanama (Exhibit-16); panchanama obtaining the custody of the accused (Exhibit-17); inquest panchanama (Exhibit-18); seizure of knife and clothes of the accused by seizure memo (Exhibit-19); seizure memo regarding blood samples of the accused (Exhibit-22); seizure memo regarding clothes of the deceased (Exhibit-21); report (Exhibit-23); First Information Report (Exhibit-24); postmortem report (Exhibit-32); query report (Exhibit-34); arrest panchanama (Exhibit-41), and Chemical Analyzer's Reports (Exhibits-47-50).

7. Learned Judge below recorded the evidence and on the basis of the evidence, after hearing the prosecution as well as the defence, was pleased to convict and sentenced the accused as indicated above in this judgment.

8. Heard learned counsel Shri R.M.Patwardhan appointed for the appellant – accused and learned Additional Public Prosecutor Shri M.K. Pathan for the respondent – State.

9. Learned counsel for the accused vehemently submitted that learned Judge below has not properly appreciated the evidence in its proper perception. The alleged incident has occurred early in morning in darkness. There was no opportunity for the alleged eye

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witnesses to identify the accused. The eye witnesses are brought up witnesses. Learned Judge below failed to see that the alleged incident occurred at about 4:00 am and in absence of any proof of sufficient light it is difficult to identify the accused for the eyewitnesses. On that count alone, learned Judge below ought to have extended benefit of doubt to the accused. He further submitted that learned Judge below wrongly relied upon the evidence regarding the recovery of knife. The alleged recovery is from open space and the said recovery is not discovery under Section 27 of the Indian Evidence Act and, therefore, no importance could have been attached to the said evidence. The motive suggested by the wife of the deceased that the accused was suspecting illicit relation of his wife with the deceased is also baseless. The said motive is not proved by the prosecution. The evidence of the prosecution witnesses is not cogent, reliable, and is liable to be discarded. Hence, learned counsel for the accused prayed that the appeal be allowed.

10. On the other hand, learned Additional Public Prosecutor submitted that the entire case of the prosecution is relied on the evidence of three witnesses PW3 Janrao Masukar, PW5 Golu @ Sanjay Sarode, and PW4 Amar Masulkar. PW3 Janrao Masukar who have witnessed the incident that it was the accused who gave a knife blow on the chest of the deceased when the deceased was

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sleeping outside his house in varanda. The said witness was residing near to the house of the deceased. He witnessed that the accused gave a blow of knife on the chest of the deceased. He shouted after witnessing the incident and also awakened PW5 Golu @ Sanjay Bajirao Sarode and chased the accused. PW4 Amar Banduji Masulkar has also witnessed the accused running with the knife. The accused was caught by all these three persons by chasing him and handed over to the police. Their evidence further shows that they insisted the accused to throw knife near "Futante Pan Shop" where the accused was caught. The Investigating Officer has seized the said knife which was lying near the said pan stall in presence of panchas. The direct evidence is also corroborated by the evidence of PW1 Yogiraj Khantale who acted as a pancha on spot panchanama as well as pancha on seizure of knife. The alleged spot of incident is the varanda of the house of the deceased. The police collected the blood stains as well as blood stained blanket from the spot of incident. All incriminating articles are forwarded to the Chemical Analyzer. The Chemical Analyzer's Reports show that Blood Group of the deceased is "A" and blood stains of human blood are found on knife as well as on the clothes of the accused. Regarding the blood stains found on the clothes of the accused, no explanation is put forth by the accused in his statement under Section 313 of the Code of Criminal Procedure. He further

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submitted that the evidence of eyewitness is consistent and also corroborated by the circumstantial evidence and medical evidence. As entire case of the prosecution is relied upon direct evidence, the motive takes back seat. He has submitted that the prosecution has proved the guilt of the accused. Hence, no interference is called for the judgment and order of conviction impugned in the appeal and it be dismissed.

11. In order to establish homicidal death of the deceased, implicit reliance is placed on the evidence of Medical Officer PW6 Dr. Leena Musale. She testified that she was working as Medical Officer in Rural Hospital at Ghatanji. On 9.4.2018, the dead body of deceased Kisan was referred for autopsy along with requisition. Accordingly, she started the postmortem examination at about 2:00 pm and completed at 3:00 pm. On external examination, she found following injuries on his person:

"(1) stab wound present over right side of chest over 2nd and 3rd rib anteriorly, measuring about 6 cms x 5 cms x 4 cms. Inverted margin, triangular penetrating, from back side margins are everted. Measuring about 3 cms x 2 cm x 1 cm. Triangular in shape.

(2) stab wound over right side of chest over 5th intercostal space, below right nipple, measuring around 6 cms x 3 cms x 2 cms triangular in shape, 3 cms deep, inverted margins.

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(3) stab wound over left side of chest over area of heart, measuring about 5 cms x 3 cms x 3 cms inverted injury.

(4) there was a fracture on the right side of 2nd and 5th ribs anterior in position."

During the internal examination, Dr. Leena found following injuries:

"(1) injuries over chest wall, cartilage, right 2nd, 5th rib anteriorly.

(2) Pleura was ruptured and haemothorax was seen within thorax.

(3) the right upper and lower lobe of lungs were rupture at the side of stab anteriorly, measuring 3 cms x 0.5 cm x full length. The colour of the right side lung was changed to blackish colour, measuring 2 cms x 2 cms x 1 cm. The rest of lung was pale. Thoracic cavity was full of blood.

(4) pericardium was full of blood and clot. The shape of the heart was normal with large amount of blood in heart cavity and periphery. There was a clot measuring 8 cms x 8 cms x 6 cms. there was incised cut on the apex of heart measuring 6 cms x 2 cms x 2 cms."

Dr. Leena further opined probable cause of death is shock and hemorrhage due to sustained injuries on the vital organs. Accordingly, she prepared the postmortem notes and also drawn rough sketch. She further deposed that the injuries sustained by

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the deceased are possible by the weapon like knife which was referred to her. During her evidence, she further testified that she described the clothes of the deceased in the postmortem reports. The clothes of the deceased brown underwear, white baniyan stained with blood and tore at 3 places over chest margin measuring 7x6x4 cms right side, 7x3x4 cms right side, 6x4x4 cms left side. Her evidence further shows that the weapon of the offence was referred to her for opinion. The knife was in a sealed condition. The knife was a metallic knife with metallic blade. The dimension of blade is 9.5 inches x 2 inches x 0.5 cms thick. The measurement of hilt is 4.5 cms x 1 inch x 0.5 inch. The total length of knife is 14 inches with one margin of sharp edge. The blade is tapered at one end and stained with blood over the sharp margin.

12. The Medical Officer is cross-examined at length, but regarding the injuries sustained nothing is elicited during her cross examination. The evidence of the Medical Officer remained intact during the cross examination.

13. Besides the medical evidence, the prosecution also relied upon the inquest panchanama which is at Exhibit-18. The recital of the inquest panchanama also shows that the deceased had sustained injuries on his chest. The said panchanama is proved by PW1 Yogiraj Khantale. He also testified that the panchanama was

drawn in his presence. He also narrated about the injuries. Thus, the factum of homicidal death of the deceased is proved by the prosecution. Though the defence has cross-examined the Medical Officer, no other reason is brought on record to show that the deceased had died due to any other reason. Thus, the prosecution has proved that the death of the deceased is homicidal one.

14. The implicit reliance is placed by the prosecution on the evidence of PW 3 Janrao Madhaorao Masukar, who is examined vide Exh.-22. As per the prosecution PW 3 is the eye witness of the alleged incident. He testified that he is residing adjacent to the house of deceased Kisan Pawar. On 9.4.2018 at about 4.30 a.m. when he was sleeping in front of courtyard of his house he heard the shouts of deceased Kisan. Immediately, he rushed to the house of Kisan and saw that accused Laxman Pawar was giving a blow of knife on the chest of Kisan Pawar by sitting on his chest and immediately after giving blow accused ran away along with the knife. His evidence further reveals that he chased the accused, at the relevant time one Raju Pendor and Golu Sarode also joined him to chase the accused. They caught the accused along with the knife near the Pan Stall of one Futane. After catching hold of the accused they asked the accused to throw the knife near the said Pan Stall. They brought accused in the house of deceased Kisan Pawar. Deceased Kisan Pawar was lying in the pool of blood on wooden cot

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and he had sustained injury on his chest. PW 3 is cross-examined at length. During his cross-examination nothing incriminating is brought on record to falsify his version. Some omissions are brought on record such as he has not stated before the Police that they all have caught hold the accused. Rest of the cross-examination is only in the denial form. Thus, the material evidence of PW 3 regarding the nature of alleged incident is not challenged during the cross-examination.

15. To corroborate the version of PW 3 prosecution also placed reliance on the evidence of PW 4 Amar Banduji Masulkar examined vide Exh.-26 and PW 5 Golu @ Sanjay Bajirao Sarode. The evidence of PW 4 Amol Banduji Masulkar shows that on the day of incident he woke up in the morning at about 4.15 a.m. and went outside to answer the nature's call. When he was returning he saw that accused Laxman Pawar was running with knife in his hand and PW 5 Golu Sarode as well as his grand-father i.e. PW 3 Janrao and Raju Pendor were chasing him. Golu Sarode inquired with him whether he has seen the accused Laxman Pawar and he informed that he saw him with knife. He also chased the accused. They caught hold the accused on Akola Bazar to Ghatanji road near Futane Pan Stall. They asked him to drop the knife therefore the accused thrown the knife on the road. They brought him in the house of Kisan Pawar. They saw deceased Kisan Pawar was lying in

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the pool of blood. Kisan Pawar has sustained injury on his chest. The evidence of PW 5 Golu @ Sanjay Bajirao Sarode also reveals that on the day of incident he was sleeping in front of his house at about 4.30 a.m. Raju Pendor and PW 3 Janrao Masulkar came near to him, they awakened him and informed him that accused Laxman assaulted Kisan by means of knife. Therefore, they chased the accused. He took Y shape wooden stick along with him. Amar Masulkar met them as he was returning from answering the nature's call. They inquired with him and he informed that accused was running away with knife. They caught Laxman near the Pan Stall of Futane. Thus, the evidence of PW 3 Janrao, PW 4 Amar and PW 5 Golu @ Sanjay is consistent that after the assault accused was running, they chased him and they caught him with knife. Though PW 4 and 5 are cross-examined at length, nothing incriminating is brought on record. PW 4 though admitted that when he went to answer the nature's call there was dark outside. But PW 3 specifically admitted that he had seen the accused in the light. PW 5 is also cross-examined at length, but nothing incriminating is brought on record during his cross-examination. The omissions are brought on record only to the extent that he has informed the wife of deceased on phone. The omissions which are brought on record are not the material omissions which are affecting the core of the case.

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16. Thus, the evidence of eye witness PW 3 Janrao Masukar shows that he had witnessed the accused giving blow on the chest of deceased Kisan by knife. The evidence of PW 4 and 5 shows that they seen the accused running with knife and they caught the accused when he was holding the knife in his hand. The medical evidence which is already discussed also support the oral evidence as PW 6 narrated about the injuries sustained by the deceased. The deceased has sustained in all four injuries, out of which two are the stab injuries over right side of chest. The Medical Officer has also observed the internal injuries which are corresponding to the external injuries. The cause of death is shock and haemorrhage due injuries on the vital parts. Besides the oral and medical evidence prosecution has also relied upon circumstantial evidence like spot panchanama wherein deceased was found in the pool of blood. To prove the spot panchanama prosecution has examined PW 1 Yogiraj Nathuji Khantale vide Exh.-14. As per his evidence he acted as a panch on the spot panchanama. The spot was house of deceased Kisan Pawar. The exact spot of incident was in front of house i.e. varanda. The dead body of Kisan Pawar was lying on the wooden cot. There was red colour quilt on the wooden cot. The blanket was stained with blood. The blood was also spread below the wooden cot. The deceased was wearing baniyan and underwear. Police collected the blood on the cotton swab and also seized the blanket

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and drawn the panchanama. Regarding the spot panchanama no material cross-examination is carried out by the defence. The evidence of PW 1 also shows that after spot panchanama two persons, who have caught hold one person handed over the said person to the Police. The person has disclosed his name as Laxman Pandurang Pawar and the persons who brought Laxman were Golu @ Sanjay Sarode and Janrao Masulkar i.e PW 3 and PW 5. At the relevant time accused was wearing half light yellow colour shirt and mehendi colour pant. The pant was stained with blood. In his presence accused was arrested by drawing arrest panchanama Exh.-17. In his presence Police also seized the clothes of the accused. In presence of PW 1 Police have also went at Akola Bazar to Ghatanji road wherein the accused has thrown the knife. Police have seized the said knife which was stained with blood in presence of panchas by drawing separate panchanama Exh.-19. In presence of PW 1 Police have also seized the clothes of deceased and his blood samples by drawing panchanama Exh.-21. Thus, the evidence of PW 1 Yogiraj Nathuji Khantale shows that alleged spot of incident was the house of deceased Kisan Pawar. At the spot Police have collected the blood sample with the help of cotton ball. The accused was brought in his presence by PW 3 and PW 5 and arrested in his presence by drawing arrest panchanama. He also witnessed blood stained clothes on the person of the accused which was seized by

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the Police. In his presence the knife which was thrown by the accused near Futane Pan Stall was also seized which was blood stained. The clothes of the deceased was also seized in his presence. From his cross-examination an attempt was made to show that as PW 1 was working as a Forest labour, his duty hours are 8.00 a.m. to 6.00 p.m. and therefore it is not possible for him to act as a panch. But he denied the same. He admitted that he did not read over the contents of spot panchanama. He further admits that there was no fencing where the knife was lying. He admits that Akola Bazar to Ghatanji road is a traffic road. In the background of the above cross-examination it is necessary to see the timing of spot panchanama. Spot panchanama was drawn on 9.4.2018 at about 8.00 a.m. to 9.00 a.m. Accused was taken into custody at about 10.15 a.m. The knife was seized by the Police on the same day immediately. The evidence of Investigating Officer PW 7 also narrates about the investigation carried out by him. He also testified that the custody of the accused was handed over to him by PW 3 Janrao and PW 5 Golu @ Sanjay. He seized the said knife which was thrown by the accused on Ghatanji Akola Bazar road. He also seized the clothes of the accused and knife. He collected the blood samples of accused as well as deceased and forwarded to CA. The requisition to the C.A. is at Exh.-45 dated 17.4.2018 by which all the articles were forwarded to C.A. C.A. reports at Exhs.-47

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to 50. As per C.A. report Exh.-47 articles Baniyan and underwear i.e. the clothes of the deceased and baniyan of the deceased was found soaked with human blood. The human blood is also found on the iron knife and clothes of the accused. The human blood is also found on the cotton swab and blanket which was seized by the Police from the spot of incident. As per the C.A. report Exh.-49 blood group of the accused is 'A'. The evidence of Medical Officer PW 6 shows that accused was also referred to her for collecting the blood sample and she has collected the blood sample and handed over to the Police.

17. On the basis of abovesaid evidence prosecution claimed that prosecution has proved its case beyond reasonable doubt. Learned Advocate Mr. R.M. Patwardhan vehemently submitted that there was no opportunity for PW 3 to see the accused giving blow as alleged incident has occurred at about 4.30 a.m. in a darkness. The submission of the learned counsel for the appellant accused is not acceptable as PW 3 specifically stated that he had seen the accused in the light. The panchanama i.e. spot panchanama also shows that at the house of the deceased there was electric connection. The Investigating Officer has also narrated regarding the availability of the light at the spot of incident. It is pertinent to note that the accused is not the unknown person for the witnesses. The witnesses have observed the accused day to day and therefore it is

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not difficult for them to identify the accused in the darkness. The material circumstance is that the accused was caught by these witnesses along with knife in his hand and they brought the accused and handed over the Police. Therefore, no separate identification is required to connect the accused with the alleged offence.

18. Admittedly, in the present case entire prosecution case is rested on direct evidence. Learned counsel Mr. Patwardhan further submitted that though PW 2 has shown the motive that accused has committed the murder of the deceased as he was suspecting illicit relations between the deceased and his wife, which is not proved by the prosecution. It is well settled that when direct evidence is available, the motive takes back seat and it is not required to prove the motive. We have considered the submissions and appreciated the evidence on record. Admittedly, the testimony of the eye witness PW 3 is not shaken during the cross-examination. The evidence of eye witness is further supported by the evidence of PW 4 Amar and PW 5 Golu, who chased along with PW 3 and caught hold him. The said direct evidence of PW 3 Janrao PW 4 Amar and PW 5 Golu is further substantiated by the medical evidence of PW 6 Dr. Leena. The circumstance that blood stains found on the clothes of the accused are not explained by the accused during his statement under Section 313 of the Criminal Procedure Code. Thus, the circumstances that accused was immediately caught along with

the weapon i.e. knife, the knife was blood stained, blood stained clothes of the accused are seized for which accused has not given any explanation. The C.A. report shows the human blood on the clothes of the accused which is not explained by the accused. Thus, the direct evidence as well as circumstantial evidence clearly establishes the guilt of the accused. Thus, the prosecution by leading cogent evidence has proved that the accused has committed murder of the deceased. Thus, there is ample evidence in the form of direct evidence as well as circumstantial evidence which points out the guilt of the accused. Hence, accused cannot be extended benefit of doubt in the light of the above said evidence. PW 3, PW 4 and PW 5 are the independent witnesses. There is no reason for them to implicate the accused falsely in the alleged offence. The accused has also not shown any reason why he is falsely implicated in the alleged crime. The question would always arise as to what would the reason for these witnesses to implicate the accused with whom they have no grudge. There is absolutely no reason for them to let the real culprit go scot free.

19. In the aforesaid circumstances, no perversity appears in the findings recorded by the learned trial Court in the impugned judgment. Hence, appeal must fail. Hence, the order.

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ORDER

- (i) Appeal stands dismissed.
- (ii) R. & P. be sent back to the trial Court.
- (iii) Fees of the appointed counsel be paid as per rules.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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