



Judgment

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

CRIMINAL APPEAL NO.445 OF 2016

Anand Prakash Aadtani,
aged about 29 years,
occupation nil,
r/o plot No.47, 'Shivshakti,
Kasturba Nagar, Jaripatka,
Nagpur. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through Police Station Officer,
Police Station : Jaripatka,
district Nagpur. **Respondent.**

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The Appellant in-person.
Shri P.R.Agrawal, Amicus Curiae
Shri N.S.Rao, Additional Public Prosecutor for the State.
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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 23/12/2022

PRONOUNCED ON : 22/06/2023

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

1. Appellant – Anand Prakash Aadtani is assailing judgment dated 14-10-2016 rendered by the learned Principal District and Sessions Judge, Nagpur in Sessions Trial 350/2013 whereby the appellant is convicted for offence punishable under Section 302 of the Indian Penal Code (IPC) and is sentenced to suffer rigorous imprisonment for life and

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to payment of fine of Rs. 5000/- (Rupees Five Thousand) and in default of payment to suffer further rigorous imprisonment for three months.

2. Along with appellant, his brother Suraj Prakash Aadtani (A-2) and his mother Madhu Prakash Aadtani (A-3) faced trial. A-2 and A-3 are acquitted.

3. **The prosecution case :**

Deceased Ramesh Govindram Chandi was the father of Kanchan (PW4) who is married to A-2 Suraj. Accused were residing jointly. Appellant is married to Mahak and the couple were pursuing the Chartered Accountant (C.A.) course. Kanchan and the appellant and his wife Mahak did not see eye to eye on domestic issues and quarreled frequently. In the fit of anger, Kanchan used to often go to her parental house at Jaripatka, Nagpur.

4. The prosecution narrated all the backdrop and the incidents resulting in the death of Ramesh Chandi, as discernible from the report lodged by Smt. Kanta (P.W.1), the widow of the deceased is thus :

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The entire family of the accused used to pick up altercations with Kanchan who was forced to stay with her parents on 7-8 occasions. Fifteen days prior to 21-4-2013, which is the date of incident, Kanchan came to her parental home. At 4.30 p.m. on 21-4-2023, A-2 Suraj came to the parental house of Kanchan and persuaded her to return to her matrimonial home. Kanta called her daughter Kanchan after 30 minutes to enquire whether she was comfortable. Kanchan started crying and she implored Kanta to take her back to the parental house. Kanta and her son Karan went to the house of the accused. A-2 Suraj asked them to take Kanchan along, however, Kanta and Karan assuaged the feelings of Kanchan and did not take her back with them. After returning home, Kanta and the deceased went to Hotel Tuli to attend the party. After the party, while returning home, Kanta called Kanchan to check whether she was fine and again Kanchan started crying and insisting that she be taken back to her parental home immediately. Kanta and the deceased reached the house of the accused in their Fiat Punto car MH-31/DC-5249 at approximately 11.15 p.m. While Kanta and the deceased were proceeding the house of

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the accused, Kanchan came at the main gate, she was followed by her mother-in-law, appellant and Suraj. Kanchan's mother-in-law was speaking in enmity and offensive manner. Kanchan asked the deceased to go home and made him to sit in the car and asked her mother Kanta to get in the car. While Kanta was about to take her seat in the car, suddenly, the appellant pushed Kanchan aside and assaulted Ramesh on the cheek, neck and chest with a knife which he had kept hidden in his hand. The appellant struck repeated blows and A-2 and A-3 were instigating the appellant. Since Ramesh was bleeding profusely, Kanta and Kanchan, who were frightened and shocked, removed him from the driving seat and made him lie on the rear seat. Ramesh was taken to the Udasi Hospital where the doctor advised that he be immediately taken to the Mayo Hospital. In the meanwhile, Kanta's brother Kamal Manwani arrived and it was in his Tavera car that Ramesh was taken to the Mayo Hospital where he was declared dead.

5. On the basis of the report lodged by Kanta, Crime 179/2013 was registered at 1.00 a.m. on 22-4-2013 for

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offence punishable under Section 302 read with Section 34 of the IPC. API Alka Nikalje visited the spot and prepared spot panchanama (Exhibit 56). She collected samples of the plain earth and blood mixed earth and a pen from the spot. Appellant and A-2 were arrested. PI Umesh Besarkar recorded the statements of witnesses and seized the vehicle and one pillow and the mat drenched in blood from the vehicle. PI Umesh Besarkar also collected the samples of blood from the door of the vehicle and prepared seizure panchanama (Exhibit 68).

6. The weapon of offence was recovered on 23-4-2013 at the instance of the appellant and recovery panchanamas (Exhibits 76 and 76-A) were recorded. PI Umesh Besarkar collected and seized blood samples of the accused which were brought by Police Head Constable Sanjay from Mayo Hospital. The blood stained clothes of the appellant and A-2 were seized (Exhibits 78 and 79). The weapon of offence and the autopsy report was sent for forensic opinion and forensic report (Exhibit 62) was obtained. The clothes of the deceased were also seized. The

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seized articles were sent for chemical analysis vide requisition, Exhibit 81. PI Deepak Khobragade conducted further investigation and sent the weapon and blood stained shoe for chemical analysis. It is PI Deepak Khobragade who filed the charge-sheet against the accused in the Court of the jurisdictional Magistrate who committed the case to the Sessions Court.

7. **Trial** :

Learned Sessions Judge (LSJ) framed charge (Exhibit 32). The accused abjured guilt and claimed to be tried in accordance with law.

8. The prosecution examined 8 witnesses. P.W.1 is Kanta Ramesh Chandi, who is the wife of the deceased. P.W.2 Prem Manwani is panch to the spot panchanama. P.W.3 Dr. Mulchand Gedam conducted the autopsy. P.W.4 Kanchan Suraj Aadtani, who is the daughter of the deceased. P.W.5 Omkar Manohar Dhole is the panch to recovery panchanama. P.W.6 Alka Nikalje is the Police Officer, who registered the crime and conducted the initial investigation.

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P.W.7 PI Umesh Besarkar and P.W.8 PI Deepak Khobragade are the Investigation Officers.

9. The accused did not examine any witness in defence, which is of total denial of the prosecution case. The appellant, however, stated that Kanchan wanted him to marry her cousin, however, the appellant was already in relationship with Mahak, who was also liked by the family, and therefore, the appellant married Mahak, who was a meritorious student, worked as a teacher and had cleared one group of the C.A. Final Course. According to the appellant, since Kanchan was a housewife though she was MBA, she was jealous of Mahak and due to frustration, she has deposed against the accused. LSJ framed the points for determination and recorded findings thereon which we extracted below.

	<u>Points</u>	<u>Findings</u>
(1)	Does the prosecution prove that the death of Ramesh Chandi is homicidal death ?	In the affirmative.

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(2)	Does the prosecution prove that Accused No. 1 to 3 in furtherance of their common intention committed murder of Ramesh Govindram Chandi with the help of knife ?	. . Only proved against accused no. 1 Anand Adtani.
(3)	What order ?	. Accused no. 1 is convicted and accused no. 2 & 3 are acquitted as per final order.

10. Point no. 1 supra is answered in the affirmative on the premise that apart from the fact that the defence did not dispute that the death was homicidal, the inquest panchanama (Exhibit 37), the autopsy report (Exhibit 61) and the ocular account of the witnesses proved beyond doubt that Ramesh Chandi met with homicidal death.

11. **Judgment of the conviction :**

LSJ held that it is the appellant who is the author of the crime. The case of the prosecution is substantially founded on the ocular account of P.W.1 Kanta and P.W.4 Kanchan an respectively. LSJ found the testimonies of P.W.1 and P.W.4 reliable. P.W.2 Prem Manwani is the witness to the spot panchanama (Exhibit 56), related to P.W.1, whose

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testimony is believed. LSJ observed that considering that the spot panchanama was recorded at midnight, the likelihood of availability of an independent witness was rare, and in any event, witness cannot be disbelieved *ipso facto* in view of the relationship. LSJ noted that P.W.4 noticed blood stains on the road and it was in his presence that the police seized sample of plain earth and earth mixed with blood from the spot and one pen on which "Amrapur Asthan Jaipur" was written, which P.W.1 Kanta identified as the pen belonging to her deceased husband.

12. LSJ then considered the evidence of P.W.3 Dr. Mulchand Gedam who conducted autopsy and noted as many as 18 injuries which he testified, are of antemortem injuries. These external injuries which P.W.3 noticed are :

- 1) Incised wound present over the chin on sub mental region in mid line of size 4cm x 1 cm x muscle deep, vertically placed.
- 2) Stab wound present over antero - lateral aspect of left side of neck below angle of mandible, vertically placed of size 5 cm x 1 cm into cavity deep.
- 3) Incised wound present over antero - lateral aspect of neck 6 cm from injury no. 2 and

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laterally of size 1.5 cm x 0.5 cm x muscle deep, vertically placed.

4) Incised wound present over antero lateral aspect of right side of neck, horizontally placed extending 2 cm from midline of size 4 cm x 0.5 cm x cavity deep.

5) Incised wound present over chest on supra clavicular region in medical aspect of size 3 cm x 0.5 cm x muscle deep, 6 cm below the above-said injury no. 4 and seen vertically placed.

6) Incised wound present over right side of chest on supra clavicular region on lateral aspect of size 4 cm x 1 cm x muscle deep.

7) Incised wound present over chest 3 cm lateral to midline vertically placed of size 4cm x 1.5 cm x cavity deep. The lung tissues were seen deep.

8) Stab wound present over left side of chest 5 cm lateral to the aforesaid injury no. 7 of size 2 cm x 1 cm x cavity deep.

9) Incised wound present over chest on left side, vertically placed 5 cm medial to anterior auxiliary line of size 1.5 cm x 0.5 cm x muscle deep.

10) The scratch-abrasion present over left side of the chest, extending from above injury no. 9 going obliquely downward and medially of size 12 cm x 0.3 cm and seen red in colour.

11) The abrasion present over the chest extending from injury no. 5 going horizontally and towards left side of the chest of size 7.15 cm x 0.2 cm and seen red in colour.

12) Abrasion present over the neck, extending from injury no. 2 going obliquely upward and

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towards midline of the neck of size 11 cm x 0.2 cm, red in colour.

13) Abrasion present over the sub mandibular region mixed with above injury no. 12, going upward towards lateral side of chin of size 6 cm x 0.2 cm and red in colour.

14) Abrasion present over the neck and joins to injuries no. 4 and 5, vertically placed of size 5 cm x 0.2 cm red in colour.

15) Abrasion present over right side of neck on lateral aspect, vertically placed of size 3 cm x 0.2 cm and red in colour.

16) Stab wound present over right upper arm in middle 1/3 of medial aspect on anterior side of size 3 cm x 1.5 cm x through and through deep.

17) Stab wound present over right upper arm in middle 1/3 for anterior lateral aspect of size 0.5 cm x 0.2 cm x through and through deep.

18) Incised would present over left thumb of left arm on distal pharynx of size 1 cm x 0.3 cm x muscle deep.

P.W.3 told the LSJ that during the course of internal examination, it was found that the right lung was punctured due to the wound present over right lung tissue of size 3 cm x 1 cm corresponding with external injury 7. P.W. 3 also noticed that the left lung was punctured due to the wound on the tissue of size 2 cm x 1cm corresponding to

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external injury 8. P.W.3 told the LSJ that death was due to hemorrhagic shock, due to multiple stab wounds on the neck and chest and that the said injuries on the neck and chest were sufficient to cause death in the ordinary course of nature. P.W. 3 told the LSJ that the assailant is likely to have dealt more than 10 blows with force, which explains the penetrating injuries. P.W. 3 further told the LSJ that he and his associate Dr. Tayade examined the weapon referred by the police, and arrived at the conclusion that the injuries noticed could be caused by similar weapon. P.W. 3 identified the knife, Article 1 as the same weapon which he and Dr. Tayade examined. P.W. 3 denied the suggestion that he described injuries 7 and 8 without minutely examining the dead body and measuring the injuries. P.W.3 further denied the suggestion that the internal punctured injuries to the right and left lung are not possible unless the ribs and cartilages were cut by sharp edged weapons. P.W. 3 explains that since there were cut injuries to the ribs, the punctured wounds to the lungs must have been through the inter-coastal region. P.W. 3 deposed that considering the nature of

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the injuries, the patient might have survived for half an hour or thereabout.

13. The defence tried to make a capital of the discrepancies in the measurement of the weapon in memorandum panchanama, Exhibit 76-A and query report, Exhibit 62. The LSJ appears to have accepted the explanation of PI Umesh Besarkar that instead of measurement unit "inch", the measurement unit "centimeter" was inadvertently mentioned in Exhibit 76-A.

14. The independent witness to the recovery, P.W.5 Omkar Dhole did not support the prosecution. The LSJ however, held that the recovery panchanama is proved by P.W.7 PI Besarkar, who testified that on 23-4-2013, the appellant voluntarily expressed willingness to show the place where the knife is concealed, and it was pursuant to such discovery that the knife was found concealed in the shrub in front of the house of the appellant.

15. The LSJ noted that the blood group of the accused is Group A [Chemical Analyser (C.A.) reports, Exhibit 90 and

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Exhibit 93] while blood group of the appellant is "B". The blood group of A-2 Suraj is "O". The LSJ noted the testimony of P.W.7 PI Umesh Besarkar that the vehicle was drenched in blood and that he seized one pillow of the vehicle which was soaked with blood vide seizure panchanama (Exhibit 68). The C.A. report (Exhibit 92) is that the blood group of the blood found on the pillow, mat and the blood collected, is Group "A", which is the blood group of the deceased. The LSJ then note that human blood is detected on the knife and pair of shoes seized and the blood detected on the clothes of appellant is Blood Group "A", which is the blood group of the deceased.

16. The LSJ noted that although P.W.5 Omkar Dhole, who is the panch witness did not support the prosecution, he did state that at the police station, there was one vehicle Fiat of black colour and he saw blood stains on the front and the rear seats, and that the car was seized by police in his presence.

17. The LSJ then analyzed the testimony of P.W.6 API Alka Nikalje who deposed that after receiving information

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from the control room that one person is injured at Kasturba Nagar, she proceeded to the spot and since the injured was taken to the Mayo Hospital, she and her staff reached the Mayo Hospital where the victim was already declared dead. P.W.6 deposed that on the basis of report lodged by P.W.1 Kanta, she registered Crime No.179/2013 and prepared the spot panchanama. It was argued on behalf of the defence that the medical papers of the Mayo Hospital referred to Police Constable Sachin as the person who brought the victim to the hospital, which is inconsistent with the testimony of P.W.6. The LSJ reasons that it is well known that in emergency, the injured is first treated and the papers are prepared later on. She reasoned that at the time of preparation of the papers, it is possible that Police Constable Sachin made to have mentioned his name as the person who brought the victim to the Mayo Hospital.

18. The defence did argue that the seized clothes of the accused were not sent and were in the custody of the Investigating Officer from 23rd to 26th April, 2013 and were not deposited in the Malkhana. It was further argued that

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failure of the prosecution to examine Dr.Udasi to whose hospital injured Ramesh was taken initially is a serious lacuna. The LSJ did not find substance in the said submissions and it is further observed that in any event, irregularity or lacunae in investigation cannot *ipso facto* be the basis of acquittal.

19. To sum up, the conviction is based on the ocular account of the eye witnesses P.W.1 and P.W. 4, which evidence we shall consider and analyze in detail at an appropriate stage, and corroboration is sought from the spot panchanama, the recovery of the weapon of offence at the instance of the accused, the detection of blood of Group A, which is the blood group of the deceased, on the clothes of the appellant-accused and the medical and other scientific evidence on record.

20. **Submissions canvassed on behalf of the accused :**

Appellant Anand Aadtani insisted that he shall argue in-person. While we have heard appellant Anand Aadtani patiently and have given due consideration to the

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handwritten submissions running into as many as 80 pages and the further submissions placed on record referred to as "Addendum", we deem it appropriate to appoint learned Advocate Mr.P.R.Agrawal, who is well versed in criminal law, to assist us on behalf of the appellant. Mr.Agrawal has also placed on record synopsis which is in the nature of written submissions highlighting the salient aspect of the case.

21. Learned Additional Public Prosecutor Mr.Rao has also placed on record written submissions. Several decisions are placed on record by appellant Mr.Anand Aadtani, Mr. Pravin Agrawal and Mr.Rao which we shall consider only to the extent relevant.

22. We have endeavored to separate the argumentative and the irrelevant part of the handwritten submissions placed on record by the appellant, and to cull out and summarize the relevant grounds on which the judgment of conviction is assailed.

23. It is submitted that the ocular account of P.W.1 and P.W.4 suffers from omissions, contradictions,

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embellishments, inconsistencies and is not confidence inspiring. Referring to the second First Information Report (FIR) lodged by P.W.4, five days after the incident, on the basis of which the appellant, A-2 Suraj, father of appellant and Suraj, Prakash Aadtani and A-3 Madhu Prakash Aadtani were charged with offences punishable under Sections 498-A, 406, 294, 506 and 323 read with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, and the subsequent acquittal in the trial in RCS 3578/2013, it is submitted that in the said criminal trial, P.W.4 levelled allegations of dowry demand and harassment, which she did not speak of in the subject trial, which renders P.W.4 an unreliable witness. It is submitted that the evidence on record is not sufficient to prove that there was a matrimonial dispute, and that P.W.4 Kanchan was at the receiving end on domestic issues.

24. Reference is made to the statement of A-2 Suraj recorded under Section 313 of the Code of Criminal Procedure (Code) to argue that the prosecution version that on the date of the incident, Kanchan was residing at her

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parental home and she was persuaded to return to her matrimonial home by A-2, is not proved.

25. It is submitted that the prosecution version that after P.W.4 arrived at the house of the accused, there was a verbal altercation between P.W.4 and the appellant and his wife, is unreliable and an improvement. It is further submitted that on the said aspect, P.W.1 does not corroborate the version of P.W.4.

26. It is submitted that the version of P.W.1 that she and the deceased were attending party at Hotel Tuli, and that she made a phone call to P.W.4 Kanchan etc. is not substantiated particularly since the CDR is not produced much less proved.

27. It is submitted that the Fiat Punto vehicle is registered in the name of A-2, and since it was A-2, who took the injured Ramesh to the hospital in the car, he was the last person possessing the car, and therefore, the version of P.W.1 and P.W.4 that the car belongs to P.W.1 is falsified. The explanation of the submission is that since the Fiat Punto car

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is owned by A-2, it is extremely doubtful whether P.W.1 and the deceased arrived at the house of the accused in that car.

28. The seizure of the car at Jaripatka Police Station is questioned on the ground that the car was unlocked and vulnerable to tampering, the seizure was not from the spot where the car was found inasmuch as the car seizure panchanama mentions that the car was left at Dr.Udasi Hospital with the keys and was brought by Police Constable Sonwane to Jaripatka Police Station where the seizure was effected. The pillow, blood on the door and the matting were seized on 22-4-2013 and were deposited in the Police Malkhana on 26-4-2013 and P.W.5 Omkar Dhole, who is the panch to the seizure memorandum did not support the prosecution. It is emphasized that no blood stains are found on the driving seat or the steering wheel or the upholstery and the dash board.

29. It is submitted that the presence of P.W.1 and P.W.4 on the spot is extremely doubtful inasmuch as neither P.W.1 nor P.W.4 shifted the injured Ramesh from the driving seat to some other seat of the car and P.W.4 Kanchan admits

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in the cross-examination that neither she nor her mother P.W.1 took the deceased to Dr.Udasi Hospital, which is an unnatural conduct.

30. It is further submitted that the evidence of PW1 Kanta and PW4 Kanchan is not at all consistent as it does not corroborate the version of each other as PW4 Kanchan nowhere states about the arguments taking place between the present appellant and the deceased. As per the evidence of PW1 Kanta, the appellant attacked deceased only on being instigated and not owing to any arguments with the deceased. It is submitted that the evidence of PW1 Kanta and PW4 Kanchan is inconsistent and implicated the appellant falsely. In fact, their presence at the spot of the incident itself is doubtful.

31. It is further submitted by the defence that as per the prosecution case, the deceased was initially taken to Dr.Udasi, who is not examined. None of medical officers is examined from the Mayo Hospital also. Thus, the evidence of PW1 Kanta and PW4 Kanchan, who neither visited Dr.Udasi Hospital nor Mayo Hospital, is highly improbable. They have

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also not informed the incident to the nearest police station immediately. The police received information at 11:30 pm, yet no action of investigation was initiated till the filing of the First Information Report at 1:00 am. The independent witnesses from whom the police got information, were also not examined. The maternal uncle Kamal Manwani, who according to PW1 Kanta and PW4 Kanchan arrived at the spot of the incident, was also not examined. Thus, the entire prosecution case is doubtful.

32. The appellant further contended that as far as the spot of the incident is concerned, the prosecution has examined PW2 Prem Manwani to prove the spot panchanama, who is the nearest relative of PW1 Kanta and PW4 Kanchan. Thus, he is interested witness. The spot panchanama is absolutely fake. The place of the incident stated by PW2 Prem has no support from any other circumstances. The seizure of the clothes and seizure of the knife at his instance is also doubtful. Learned trial Judge held that the recovery was proved by police witness, however the police witness shall not be relied upon as the very

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purpose of requiring a pancha to draw the recovery panchanama is with intention to seek the corroboration from independent witnesses. The expression of fact discovered, as envisages under Section 27 of the Indian Indian Evidence Act, embraces the place from which the object was produced. The weapon was recovered from open place and, therefore, the said recovery is not admissible in the evidence.

33. The appellant further submitted that the prosecution failed to prove the motive to commit the said offence. The unnatural conduct of the witnesses creates a doubt. The recovery of articles is also doubtful. The medical evidence and the ocular evidence is contradictory as the injuries on left side of the body of the deceased are not possible because when any person would lean on opposite side of attackers, the person would receive injuries on the right side which is exposed to attack. Thus, the entire evidence of the prosecution is doubtful and liable to be discarded.

34. In support of the contentions of the appellant, learned counsel Shri P.R.Agrawal, who is appointed for the

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appellant to assist the appellant, submitted that even the prosecution case is considered as it is, the act of the appellant covers under culpable homicide not amounting to murder. He submitted that admittedly, the alleged incident occurred as there was a sudden quarrel between the parents of PW4 Kanchan and mother of the appellant. There was no preparation, premeditation and in a sudden fight in a heat of passion the alleged incident had taken place and, therefore, the case covers under Section 304 Part-II of the Indian Penal Code. In support of his contentions, he placed reliance on following judgments:

1. Iqbal Singh vs. State of Punjab, reported in AIR 2008 SC (Supp) 587;
2. Manke Ram vs. State of Haryana, reported in (2003)11 SCC 238;
3. Shivappa Buddappa Kolkar @ Buddappagol vs. State of Karnataka and others, reported in AIR 2004 (SC) 5047;
4. Mohd.Rafiq alias Kallu vs. State of Madhya Pradesh, reported in (2021)10 SCC 706;
5. Ajmal vs. State of Kerala, reported in (2022)9 SCC 766, and
6. Nazimoddin Mohammaddin alias Nasiroddin vs. The State of Maharashtra, through the Police

Station, Bhagyanagar, Nanded Taluka and District Nanded, reported in 2020(1) Mh.L. (Cri) 393.

35. The appellant has also relied upon following judgments:

1. Shyamal Saha and another vs. State of West Bengal, reported in (2014)12 SCC 321;
(*the decision on circumstantial evidence*)

2. K.A.Kotrappa Reddy and anr vs. Rayara Manjunatha Reddy @ N.R.Manjunatha and ors, reported in 2015 Cri.L.R. (SC) 1172;

3. Arshad Hussain vs. State of Rajasthan, reported in (2013)14 SCC 104;

4. Tomaso Bruno and another vs. State of Uttar Pradesh, reported in (2015)7 SCC 178;
(*the decision on circumstantial evidence*)

5. Jaiprakash vs. State of Uttar Pradesh and others, reported in (2020)17 SC 632;

6. Amar Singh vs. State (NCT of Delhi), reported in (2020)19 SCC 165;

7. Mahavir Singh vs. State of Madhya Pradesh, reported in (2016)10 SCC 220;

8. Golbar Hussain and ors. vs. State of Assam and anr, reported in 2015 ALL MR (Cri) 2477 (SC);

9. Bhimapa Chandappa Hosamani and others vs. State of Karnataka, reported in 2006(3) ALL MR (Cri) 3572;

10. Mousam Singha Roy and others vs. State of W.B., reported in (2003)12 SCC 377;
(*the decision on circumstantial evidence*)

11. Pohlu vs. State of Haryana, reported in (2005)10 SCC 196;

12. Krishnegowda and others vs. State of Karnataka, reported in (2017)13 SCC 98;

13. Hem Raj and ors vs. State of Haryana, reported in (2005)10 SCC 614;

14. M.B.Suresh vs. State of Karnataka, reported in (2014)4 SCC 31;

15. Kishor Shamrao Bhoyar vs. State of Maharashtra and ors, reported in 2020 All MR (Cri) 306;

16. The State of Maharashtra vs. Dattatraya Tukaram Kadam, 2018 All MR (Cri) 1448;

17. Suryabhan s/o Dattu Kharat vs. State of Maharashtra, reported in 2016 (2) Bom CR (Cri) 437;

18. State of Maharashtra vs. Ramesh Jijeba Lahane, reported in 2015 ALL MR (Cri) 3835;
(*the decision is on circumstantial evidence*)

19. State of Maharashtra vs. Pramod Dhanraj Gajbhiye, reported in Law Finder document ID 971433;

20. Hasankhan and ors vs. State of Maharashtra, reported in (2022) (3) AIR Bom.R (Cri) 149;

21. Bhaurao Maroti Keskar vs. State of Maharashtra and another, reported in 2018(1) Mh.L.J. (Cri) 673;

22. Makhan Singh vs. State of Haryana, reported in (2015)12 SCC 247, and
(the decision is as regards search and seizure under the NDPS Act)

23. Pardeshiram vs. State of Madhya Pradesh, reported in (2021)3 SCC 238.

36. *Per contra*, learned Additional Public Prosecutor Shri N.S.Rao for the State submitted his written submissions and submitted that it is well settled position of law that eyewitnesses, who are related witnesses, are not always interested. He submitted that evidence of PW1 Kanta and PW4 Kanchan is consistent on material particulars and corroborated by the medical evidence. Though the defence argued that there are serious infirmities, the defence could not point out the said infirmities and, therefore, the submission is not sustainable. The direct evidence adduced by the prosecution is also corroborated by recovery of the blood stained clothes, the recovery of the "knife" at the instance of the accused. The spot panchanama is also proved by the prosecution from which the blood stains are seized. The car seized by the investigating officer also

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supports the prosecution case as the blood stains are found on the matting, near the driver seat. The police have seized the said blood stains. The blood stains further found on the front door, near the driver seat, which are also collected. Thus, the circumstances also support the case of the prosecution. The evidence of the prosecution further proves that the death of the deceased is caused at the hands of the appellant. The appellant has caused as many as 18 injuries and, therefore, the said act of the appellant does not cover under any exceptions. The act of the appellant is culpable homicide amounting to murder. He submitted that as learned trial Judge has rightly appreciated the evidence and rightly convicted the appellant, no interference in the judgment and order of conviction is warranted.

37. In support of his contentions, learned Additional Public Prosecutor Shri N.S.Rao for the State has placed reliance on following judgments:

1. Waman and ors vs. State of Maharashtra, reported in 2011 AIR SCW 4973;

2. Dhanpal vs. State (NCT of Delhi), reported in (2020)5 SCC 705;

3. Daleep Singh vs. State of U.P., reported in AIR 1997 SC 2245;
4. Maranadu and anr vs. State of Tamil Nadu, reported in (2008)16 SCC 529;
5. Nirmal Singh vs. State of Bihar, reported in (2005) Cri.L.J. 672;
6. Umesh Singh vs. State of Bihar, reported in (2013)4 SCC 360;
7. Pawan Kumar alias Monu Mittal vs. State of UP and another, reported in (2015)7 SCC 148;
8. Anter Singh vs. State of Rajasthan, reported in AIR 2004 SC 2861;
9. State of Madhya Pradesh vs. Chhaakkilal and anr, reported in (2019)12 SCC 326;
10. V.K.Mishra vs. State of Uttarakhand and anr, reported in (2015)9 SCC 588;
11. State of Haryana vs. Sher Singh and ors, reported in AIR 1981 SC 1021;
12. Motiram Padu Joshi and ors vs. State of Maharashtra, reported in (2018)9 SCC 429;
13. Virsa Singh vs. State of Punjab, reported in AIR 1958 SC 465;
14. Arun Nivalaji More vs. State of Maharashtra, reported in (2006)12 SCC 613, and
15. State of A.P. vs. Rayavarapu, reported in AIR 1977 SC 45.

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38. To prove the homicidal death of the deceased, the prosecution has examined PW3 Dr.Mulchand Gedam. As per his evidence, on 22.4.2013 he has conducted the postmortem and noted the injuries mentioned in paragraph No.5/2. On appreciation of the evidence of the Medical Officer, though he is cross examined at length, the defence has not brought any material on record to show that these injuries are possible by some other reasons. The evidence of the medical officer shows that he has also noted internal injuries which were corresponding to the external injuries. As per the defence, the portion of mid line mentioned while describing injury No.7 was and part of sternum which is bony structure between two lungs. The medical officer denied that internal punctured injuries shown to the right and the left lung mentioned in column No.20 are not possible without cutting the ribs. He explained that the punctured wound to the lungs would be possible due to stab wound received to the inter-costal region. He further explained that there were cut injuries to the ribs and, therefore, the punctured wound received to the lungs must have been through the inter-costal region. Thus, from the cross examination, though the

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defence attempted to bring on record that the injuries are not possible by the alleged weapon, same is denied by PW3 Dr.Gedam. The evidence of PW3 Dr.Gedam further shows that the weapon was referred to him seeking an opinion about its nexus with the alleged stabbed injuries. He along with Dr.Tayde examined the weapon and opined that the injuries in the postmortem report could be caused by the similar kind of weapon and accordingly issued their opinion. Thus, the postmortem report is at Exhibit-61 and the query report is at Exhibit-62. The query report is not denied during the cross examination. Thus, the evidence of PW3 Dr.Gedam, regarding the injuries sustained by the deceased and his subsequent opinion, shows that the death of the deceased is caused due to the loss of blood due to multiple stab wound over the neck and the chest. His evidence further shows that the deceased has sustained the injuries on vital part of the body that is the neck and the chest.

39. Now, it is a well settled legal position of law that evidence of medical officer is not only an opinion evidence

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but also in the nature of direct evidence as he had an opportunity to see injuries on the person of deceased.

40. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported in 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 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

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safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

41. 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.

42. In the case at hand, PW3 Dr.Mulchand Gedam has clearly stated that all the injuries attributed to the deceased are possible by the weapon like knife. Thus, the evidence on record sufficiently shows that the death of the deceased is

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caused as he had sustained multiple injuries on vital parts like the neck and the chest having corresponding injuries mentioned in column No.20 of the postmortem report. Thus, the death of the deceased is due to massive bleeding and due to sustaining punctured wound over right lung tissue and the left lung tissue. Thus, the prosecution has proved that the death of the deceased is homicidal one.

43. The entire case of the prosecution is based on two eyewitnesses i.e. PW1 Kanta Ramesh Chandi, who is the wife of the deceased, and PW4 Kanchan Suraj Adtani, the daughter of the deceased. From their evidence, it is apparent that PW4 Kanchan is the sister-in-law of the appellant. There was matrimonial dispute between the brother of the appellant and PW4 Kanchan. Prior to the incident, PW4 Kanchan had been to her parental house and stayed there for 15 days. As per the evidence of PW1 Kanta, PW4 Kanchan was ill-treated by the mother of the appellant and PW4 Kanchan had filed complaint under Section 498A of the Indian Penal Code against her husband Suraj and other family members, after the incident. On the day of the

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incident, i.e. on 21.4.2013, co-accused Suraj took PW4 Kanchan at his house at about 4:00 pm to 4:30 pm and, thereafter, PW1 Kanta verified whether everything is smooth between them and, therefore, she called PW4 Kanchan and it revealed to her that PW4 Kanchan is not comfortable at her matrimonial house and was insisting her to take her back. In the evening, PW1 Kanta and the deceased had been to a party and while returning home, they have again called PW4 Kanchan and it revealed to them that PW4 Kanchan, who is weeping, insisted them to take her back. Thereafter, they came at the house of their daughter. At the relevant time, the appellant was there. As per the evidence of PW1 Kanta, during altercation between her, the deceased and the mother-in-law of PW4 Kanchan, the accused came there and he gave blows by knife on the neck and the chest of the deceased. The said blows were given when the deceased was about to sit in his car. Due to the said blows, the deceased sustained multiple injuries and Suraj, the husband of PW4 Kanchan, took the deceased in the hospital of Dr.Udasi and, thereafter, shifted to Mayo Hospital, however the deceased was declared dead.

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44. The evidence of PW1 Kanta and PW4 Kanchan is challenged by the appellant on various grounds. One of grounds is that the ocular evidence of PW1 Kanta and PW4 Kanchan suffers from omissions, contradictions, embellishments, and inconsistencies. It is further the submission of the appellant that the evidence of PW1 Kanta and PW4 Kanchan, that there was verbal altercation between PW4 Kanchan, the appellant, and the wife of the appellant, is unreliable and is an improvement which is not corroborated by PW4 Kanchan. It is further submitted that the evidence that PW1 Kanta has called PW4 Kanchan is not substantiated by the CDR. The car seized is owned by the brother of the appellant and, therefore, the car belongs to PW1 Kanta is also falsified. It is further submitted that the seizure of the car is also doubtful as the car was left at Dr.Udasi Hospital and the car was brought by Police Constable Shri Sonwane and effected the seizure is unacceptable as pancha PW5 Omkar Dhole has not supported. The evidence of PW1 Kanta and PW4 Kanchan is further challenged on the ground that the deceased was about to sit on driver seat, but the blood stains are not found on steering wheel. Moreover, PW1 Kanta

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and PW4 Kanchan have not accompanied the injured, who was taken to Dr.Udasi Hospital, is an unnatural conduct. The evidence of PW1 Kanta and PW4 Kanchan is further challenged by the appellant on the ground that they are the interested witnesses. As their evidence is not corroborated by any independent witnesses, the said evidence is liable to be discarded.

45. On appreciation of the evidence of PW1 Kanta and PW4 Kanchan reveals that their evidence, regarding the sequence of the incident, has corroborated to each other. Though the appellant vehemently submitted that there are omissions and contradictions in their evidence, perusal of the cross examination nowhere reveals that the omissions brought on record are touching to the core of the incident. PW1 Kanta had admitted that she has not stated to the police in her report that on the day of the incident, the party at Hotel Tuli was arranged by her relatives. She has not stated that they left the said hotel at 10:45 pm. She further stated that she does not remember whether she reached at the house of the accused between 11:00 pm to 11:15 pm and

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saw her daughter standing at the entrance gate of the bungalow and was weeping and insisting her to take her back. Thus, all these omissions are not about the actual incident and not touching to the core of the incident. Perusal of the cross examination of PW4 Kanta also reveals some omissions are brought on record which are in the nature that whether she has stated before the police that the appellant and his wife were pursuing the CA Course and she has to do to the entire domestic work at matrimonial home. She stated that she does not remember whether she has stated about the quarrel and the troubles between herself and the appellant and the wife of the appellant on account of domestic work. Thus, these omissions are also not regarding the actual incident. If the evidence of PW1 Kanta and PW Kanchan P4 is taken into consideration, they both have stated that on 21.4.2013 PW4 Kanchan was brought by her husband Suraj from her parental house for cohabitation. There was altercation between PW4 Kanchan and the appellant. She received a phone call from her mother and she insisted her mother to take her back. Admittedly, PW1 Kanta has not stated that when she called her daughter.

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There was altercation between her and the appellant. However, she stated that her daughter insisted to take her back from matrimonial home. Thus, there is no material variance in the evidence of both these witnesses. Insofar as the incident is concerned, the evidence of both these witnesses shows that PW4 Kanchan received the call of her mother i.e. PW1 Kanta and she insisted her mother to take her back and, therefore, her parents came at home and at about 11:00 pm to 11:15 pm.. There was altercation of words between them and the accused persons and during the altercations, PW4 Kanchan insisted her father to sit in the car and at the relevant time, the appellant came armed with a weapon which was in his hands and gave blows of the weapon on the neck and the chest of the deceased. PW1 Kanta stated that at the time of the incident, her husband had occupied the driver seat. Whereas, as per the evidence of PW4 Kanchan, her father sat on the driver's seat and at that time the appellant gave blows of the knife on the neck and the chest and her father sustained injuries. As far as incident of assault is concerned nothing is elicited from cross examination to shatter the prosecution version.

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46. The evidence of these two witnesses, PW1 Kanta and PW4 Kanchan, is challenged on the ground that both these witnesses have not accompanied the injured, the deceased, when the deceased was taken to the hospital. The evidence of PW1 Kanta shows that the brother of the appellant, i.e. Suraj, who is her son-in-law, escorted the deceased to the house of Dr.Udasi and Dr.Udasi clinically examined her husband i.e. the deceased. During her cross examination, it came on record that in the hospital of Dr.Udasi, she was outside the premises and, therefore, she is not aware about the conversation with Dr.Udasi regarding the cause of injury to her husband.

The evidence of PW4 Kanchan shows that her husband Suraj, immediately took her father to the hospital and, thereafter, her mother gave information telephonically about the incident to her maternal uncle and other relatives. Her maternal uncle and other relatives, who were present in the Hotel Tuli, came at her home and, thereafter, they went to the hospital of Dr.Udasi.

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Thus, only the variance in the evidence is that PW1 Kanta has not stated that she subsequently went to the hospital of Dr.Udasi. Whereas, PW4 Kanchan stated that subsequently they followed the deceased and rushed to the hospital of Dr.Udasi. This variance is not sufficient to doubt the prosecution case. The evidence of both these witnesses, PW1 Kanta and PW4 Kanchan, shows that though they both went to the hospital of Dr.Udasi, not with the deceased, but subsequently. As such, their conduct cannot be said to be an unnatural. It is submitted that both the witnesses have not informed the incident to the police immediately. The FI.R was lodged belately at about 1:00 am. The witnesses who are close relatives are likely to be traumatized having seen family member brutally assaulted. No straight jacket formula can be applied to test the conduct of such witness. Different persons react differently in similar situation. Therefore submission of the appellant that conduct of P.W.1 and P.W.4 is unnatural not sustainable. It is submitted both the witnesses have not informed the incident to the police immediately. The FI.R was lodged belatedly at about 1:00 am.

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In fact, the core of the incident is not affected though an extensive cross examination is carried out.

47. The appellant further raised a contention that the alleged vehicle seized is in the name of Suraj, who is his brother and, therefore, the evidence of PW1 Kanta and PW4 Kanchan that her parents came in their vehicle is falsified. Admittedly, Suraj is son-in-law of the deceased and, therefore, possessing of the vehicle of the son-in-law by his in-laws is not an unnatural.

48. The evidence of both these witnesses, PW1 Kanta and PW5 Kanchan, is also challenged by the defence on the ground that both these witnesses are interested witnesses and not corroborated by independent witnesses, is also not sustainable.

49. Learned Additional Public Prosecutor Shri N.S.Rao for the State, has placed reliance on the decisions of the Honourable Apex Court in the cases of **Waman and ors vs. State of Maharashtra; Daleep Singh vs. State of U.P., and Maranadu and anr vs. State of Tamil Nadu**, cited *supra*

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wherein it is held that when testimony of relating witnesses found to be convincing and trustworthy about incident, there is no reason to disbelieve their statements merely because there are some omissions in their statements under Section 161 of the Code of Criminal Procedure and their evidence before the court.

It is observed by the Honourable Apex Court in the case of **Daleep Singh vs. State of U.P.** cited *supra* that evidence of eyewitnesses, found to be clear, consistent, and cogent, is to be accepted.

It is also held by the Honourable Apex Court in the case of **Maranadu and anr vs. State of Tamil Nadu** cited *supra* that merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. It is further held that Relationship is not a factor to affect credibility of a witness. It

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is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person.

Even, the Honourable Apex Court in the case of **Jaiprakash vs. State of Uttar Pradesh and others** cited *supra*, relied by the appellant, has held that contradictions, inconsistencies, exaggeration or embellishment – minor discrepancies not touching upon core of the prosecution case, would not affect credibility of witnesses or prosecution case.

50. Here, in the present case, the defence has not pointed out material discrepancies which would affect the prosecution case.

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51. The defence placed reliance on the decision of the Honourable Apex Court in the case of **Amar Singh vs. State (NCT of Delhi)**, cited *supra* wherein the Honourable Apex Court considered the facts before it and held that conduct of deceased two brother in not making even slightest attempts to save the deceased from assault by three assailants held as unnatural. In the cited case, presence of eyewitnesses itself was doubtful.

Admittedly, PW4 Kanchan, is the sister-in-law of the appellant. Her presence at her matrimonial house is narrated by her as well as her mother. There is no cross examination to show that she was residing at her parental house. The presence of the parents, after telephonic call to her by her mother PW1 Kanta, is natural. No material came forward before the court to doubt their presence.

52. As regards appreciation of the evidence and non examination of maternal uncle, Kamal Manwani, of PW4 Kanchan, is not fatal to the prosecution as evidence of both eyewitnesses sufficiently shows involvement of the appellant in the alleged incident.

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53. 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.

54. 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.

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

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earlier evaluation of evidence is shaken as to render it unworthy of 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.

56. 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.

57. 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

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corroborated to a 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.

58. 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.

59. 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

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trustworthy. The said evidence only requires scrutiny with more care and caution.

60. 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.

61. Thus, after appreciation of the evidence, the material thing is to be seen, whether omissions brought on record 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 Kanta and PW4 Kanchan, on the

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actual incident of the assault, is consistent and corroborated and, therefore, the said evidence is to be accepted and there is no reason to discard the evidence of the said witnesses.

62. The evidence of these witnesses, PW1 Kanta and PW5 Kanchan, is further corroborated by the medical evidence. Their evidence, that the deceased was assaulted on his vital part of the body, i.e. the neck and the chest, is corroborated by the postmortem report which shows that the deceased has sustained injuries on the chest and the neck, which were multiple in nature.

63. The appellant has also challenged the prosecution evidence on the ground that the prosecution miserably failed to prove the seizure of the vehicle, i.e. Maruti Car.

As per the evidence of Investigating Officer PW7 Umesh Besarkar, he has seized the said car during the investigation.

Admittedly, PW5 Omkar Dhole has not supported that the car was seized in his presence.

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However, Police Inspector PW7 Umesh Besarkar testified that he had seized the vehicle in the crime vide seizure panchanama in presence of two panchas. The vehicle was drenched in blood and he had seized one pillow drenched in blood from the vehicle. He also seized a mat stained with the blood and collected blood stains from the door of the vehicle.

Though the seizure of the car was challenged by the defence, during the submissions, the seizure of the car was not challenged during the cross examination of Police Inspector PW7 Umesh Besarkar.

As per recital of the seizure panchanama, the said car was lying at Dr.Udasi Hospital, which was brought by Police Head Constable Sanjay. The blood stains found inside the vehicle, on matting, and on pillow seized from the vehicle Articles-8 and 9 stained with the blood of Blood Group "A" which is of the deceased as per Chemical analysis report.

Admittedly, the evidence shows that Dr.Udasi referred the deceased to the Mayo Hospital. The deceased

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was taken to the Mayo Hospital in the Tavera car of maternal uncle of P.W. 4 and, therefore, the car was lying in the premises of Dr.Udasi Hospital.

64. It is a well settled law, that when pancha witness has not supported prosecution case, recovery of material object can be proved through investigating officer.

65. Another incriminating evidence, on which the prosecution relies upon, is, recovery of incriminating article "knife" at the instance of the accused.

66. PW5 Omkar Dhole, who acted as a pancha on a memorandum statement, has not supported the case of the prosecution and left loyalty towards the prosecution.

67. Investigating Officer PW7 Umesh Besarkar, testified that on 23.4.2013, the appellant gave a voluntary statement in presence of two panchas that he will show the knife which he had concealed. He recorded the statement and obtained signature of the appellant and the panchas and he also signed. In pursuance of the said statement, Exhibit-76, the appellant led them in front of his house and took out

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the knife concealed in shrub in front of his house. The said knife was domestic knife with blood stains. He seized the said knife by drawing panchanama, Exhibit-76-A.

Though this witness, Investigating Officer PW7 Umesh Besarkar, is cross examined by the defence, nothing incriminating came on record. Though he admitted that measurements of the weapon in Exhibit-76-A and in Exhibit-62 are different, but the knife article-1 was measured before the trial court and it was having full length as 7 inches, length of its blade was 3 inches and width of the blade was half inch. The seizure panchanama shows the length of the knife as 7 cms, handle 3 cms, and width half cm. Exhibit-62 is an opinion given by the medical officer, which shows description of the knife as blade is of 8 cms, thickness is 2 mm. On measurement before the trial court, description narrated by the Investigating Officer is found to be correct.

It further came in his cross examination that he has wrongly mentioned the description and he voluntarily stated that the units used are centimeters in place of inches.

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He denied that he has changed the weapon while sending it with query as the weapon was matching with the injuries.

It further came in his cross examination that the seized articles were deposited on 26th in Malkhana.

As per Exhibit-76-A, the knife was seized on 23.4.2013 and, thereafter, admittedly, it was referred to the Medical Officer seeking opinion.

The medical evidence shows that on 24.5.2013 the Medical Officer received the query letter from the Police Station and, thereafter, he immediately given opinion and, thereafter, the said weapon was forwarded to the Chemical Analyzer.

The Chemical Analyzer's Report shows that the knife was received on 19.6.2013. There is no suggestion to Investigating Officer PW7 Umesh Besarkar that he has tampered the seized article by sprinkling the blood samples of the deceased. The knife was seized on the basis of voluntary statement of the appellant. Though the appellant has challenged the said recovery, on the ground that

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independent witness has not supported the prosecution case, as observed earlier that the evidence of the Investigating Officer is sufficient to prove the recovery, merely because the independent witness has not supported the prosecution case, is not sufficient to discard the evidence as to the recovery. The only reason, that the Investigating Officer though seized article knife on 23.4.2023 and deposited the same in malkhana on 26.4.2023, is not sufficient to discard his evidence unless it is shown that there was any ulterior motive.

68. In the recent judgment, in the case of **Subramanya vs. State of Karnataka**, reported in 2022 **LiveLaw (SC) 887**, the Honourable Apex Court considered, "how the law expects investigating officer to draw discovery panchnama as contemplated under Section 27 of the Evidence Act." The Honourable Apex Court, in paragraph No.81, held that conditions necessary for applicability of Section 27 of the Act are broadly as, (1) discovery of fact in consequence of an information received from accused; (2) discovery of such fact to be deposed to; (3) the accused

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must be in police custody when he gave information, and (4) so much of information as relates distinctly to the fact thereby discovered is admissible.

69. The Honourable Apex Court has referred the judgment of the Constitution Bench in the case of **State of Uttar Pradesh vs. Deoman Upadhyaya, reported in AIR 1960 SC 1125** wherein in paragraph No.71 explains position of law as regards the Section 27 of the Indian Evidence Act, 1872. The said paragraph No.71 is reproduced below:

"71. The law has thus made a classification of accused persons into two : (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the first category the law has ruled that their statements are not admissible, and in the case of the second category, only that portion of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says; "I pushed him down such and such mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft."

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70. Learned counsel Shri P.R.Agrawal, vehemently submitted that the recovery is from an open place which is accessible to all. The evidence of Investigating Officer PW7 Umesh Besarkar shows that the appellant led them and produced the incriminating article from shrubs. Insofar as the recovery of the knife is concerned, there is no material to show that the place from which the recovery was made was accessible to all. The fact, that the recovery was made from the shrub, itself sufficiently shows that it was recovered from the place, surrounded by the shrubs, which was not visible. There is no cross examination to show that the place, from which the article was seized, was from the open place easily accessible to all.

71. The decision of the Honourable Apex Court, in the case of **Manke Ram vs. State of Haryana** cited *supra*, on which the appellant placed reliance, is in respect of search and seizure under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985.

72. Learned Additional Public Prosecutor Shri N.S.Rao for the State has placed reliance on the decision in the case

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of **Pawan Kumar alias Monu Mittal vs. State of UP and another** cited *supra* wherein the Honourable Apex Court expressed phrase "fact discovered" and held that the "fact discovered" as envisaged under Section 27 of the Evidence Act embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. It is further held by the Honourable Apex Court that in the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. It is further held that it is settled principle of law that statements made by an accused before police official which amount to confession is barred under Section 25 of the Indian Evidence Act. This prohibition is, however, lifted to some extent by Section 27 of the Evidence Act. In the light of Section 27 of the Indian Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded

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under 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 in a search made on the strength of any information obtained from a prisoner that the information supplied by the prisoner is true.

73. In the present case, the knife was seized on the basis of information by the appellant. The appellant has produced the object and knowledge of the appellant as to it is proved by the prosecution. Thus, the evidence adduced by the prosecution as to the recovery is not falsified during the cross examination. As far as recovery from open place is concerned -the test is not whether the place is open or accessible to others but whether it is ordinarily visible. Here in the present case evidence on record shows that accused produced the knife from shrubs. P.W. 7 Umesh Besarkar is not cross examined to show that alleged place of recovery was open place. Only suggestion is given to him that place was open place which he denied.

74. Also, in the decision in the case of the **Anter Singh vs. State of Rajasthan** cited *supra*, relied by learned

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Additional Public Prosecutor Shri N.S.Rao for the State, the Honourable Apex Court held that the interpretation and scope of Section 27 of the Evidence Act has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It is held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses. As observed by the privy council, in the case of **Pulukuri Kotayya vs. Emperor**, reported in **AIR 1947 PC 67**, various requirements of Section can be summed up as, (1) the fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible; (2) the fact must have been discovered; (3) the discovery must have been in consequence of some information received from the accused and not by accused's own act; (4) the persons giving the

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information must be accused of any offence, and (5) he must be in the custody of a police officer.

75. Thus, the doctrine, therefore, if founded on the principle that if any fact is discovered after the search is carried out on the search of any information obtained from the prisoner, such a discovery is guaranteed that the information supplied by the Prisoner is true. The recovery of articles at the instance of the accused admittedly has to be proved.

76. Thus, in the present case, what emerges from the evidence of the Investigating Officer is that the accused has shown his willingness to make a statement and in presence of panchas he made a memorandum statement that he will show the place where he concealed the weapon and in pursuance of the said statement he produced the said article, which is sufficient to show the compliance under Section 27 of the Indian Evidence Act.

77. Here, in the present case, the recovery of the weapon is proved by the prosecution through the

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Investigating Officer. Not only the recovery but also to connect the weapon, used in the commission of the crime in question, with the alleged offence, the prosecution placed reliance on the Chemical Analyzer's Report. The Chemical Analyzer's Report Exhibit-91 shows that the knife was received with the forwarding letter dated 19.6.2013. The knife article is stained with blood on blade. Admittedly, the blood group is not determined. However, it is a human blood.

78. It is a well settled law, that when pancha witness has not supported the prosecution case, recovery of material object can be proved through investigating officer.

79. In the decision in the case of **Modan Singh vs. State of Rajasthan**, reported in (1978) 4 SCC 435, the Honourable Apex Court observed that if evidence of investigation officer, who recovered material objects, is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support prosecution version.

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The similar observation has been expressed by the Honourable Apex Court in its decisions in the cases of **Mohd.Aslam vs. State of Maharashtra, reported in (2001)9 SCC 362** and **Anter Singh vs. State of Rajasthan**, cited *supra* wherein it is further held that even if a pancha witness turns hostile, which happens very often in criminal cases, evidence of person, who effected recovery, would not stand vitiated

80. The Honourable Apex Court in the case of **Kishore Bhadke vs. State of Maharashtra, reported in 2017 ALL MR (Cri) (SC) 1316** held that the presence of human blood on the clothes is recovered at the instance of the accused and mere absence of the evidence as to the blood group cannot be fatal to the prosecution. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure by recording question No.110 and the accused has not given any explanation as to the said blood stains on the blade of the knife which was recovered at his instance. Thus, the evidence as to the recovery of the knife at the instance of the accused is proved by the prosecution and corroborated by the Chemical Analyzer's Report.

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81. The another incriminating evidence adduced by the prosecution is the seizure of the clothes of the appellant at his instance. Investigating Officer PW7 Umesh Besarkar, during his evidence, testified that he has seized the clothes of the appellant in presence of the panchas. The seizure memo is of dated 22.4.2013. The said clothes were, one sky blue colour t-shirt, and one barmuda. The said clothes were forwarded to the Chemical Analyzer vide letter dated 3.5.2013. The Chemical Analyzer Report Exhibit-92 shows that T-shirt and barmuda, the clothes of the appellant, at serial Nos.4 and 5 are stained with blood. The blood detected on article-4 is human blood. However, the blood group is not determined. The appellant has not given any explanation regarding the blood stains on his clothes. When the appellant has not given any explanation, as to the blood stains on his clothes, which is an additional circumstance against him, question No.106 is recorded as to seek his explanation to which he has only replied by saying false. Thus, the circumstance, that the blood stains appearing on the clothes of the appellant are not explained by him, is the additional circumstance against the appellant. As observed

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earlier, that when the blood stained clothes are recovered from the appellant, mere absence of the evidence regarding the blood group cannot be fatal to the prosecution.

82. During the investigation, the clothes of the deceased are also seized and forwarded to chemical analysis and blood stains of blood group "A" found on the said clothes which is of deceased.

83. The appellant has challenged as to the spot of incident. As per the evidence of PW1 Kanta, the alleged incident has taken place at the house of the appellant. She testified that when they reached at the matrimonial house of their daughter, PW4 Kanchan, her daughter was standing at the entrance gate of bungalow, i.e. matrimonial house. The appellant was standing at the door of the house. The alleged incident took place when there was an altercation between them and the mother of the appellant. No cross examination is carried out of PW1 Kanta as to the exact spot of the incident.

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As per the evidence of PW4 Kanchan, when her parents alighted from the vehicle and came upto the entrance gate of the compound wall of her house, after seeing her parents, she came out of the house and her brother-in-law, i.e. the appellant, also followed her and came in the courtyard of the house. Thus, as per her evidence, the alleged incident has taken place near the entrance gate in the courtyard of the house.

Thus, the evidence of PW1 Kanta and PW4 Kanchan shows that the alleged incident has taken place at the entrance gate of the house.

The appellant has challenged the spot of the incident on the ground that the blood mixed with soil seized from the spot has no blood. No memorandum is recorded regarding the article seized. The date is not mentioned in the panchanama. The spot panchanama is proved through PW2 Prem Manwani, who is the nearest relative of the informant.

84. We have perused the evidence of PW2 Prem Manwani. As far as relationship is concerned, he denied that

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he is the brother of the informant. He admitted that she is his distant relative. At the same time, he admitted that the appellant is also his relative. As per his evidence, the alleged spot panchanama was drawn in front of the house of one Aadtani located at Kasturba Nagar. There were blood stains on the road and earth aside the road. The police have collected the said soil stained with blood and simple soil. Accordingly, panchanama was drawn. Except the cross examination that he is the relative of the informant, no cross examination is drawn by challenging the spot of the incident. During the cross examination of this witness, the defence has not challenged the spot of the incident. The said blood stained soil was forwarded to the Chemical Analyzer. Admittedly, no blood is detected on articles-11 and 12 that is blood stained soil and simple soil. PW6 Alka Nikalje, who has carried out the initial investigation, also corroborated the evidence of PW2 Prem Manwani as regards the spot panchanama.

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85. Thus, though the defence has challenged the spot of the incident, during the submissions, it has not suggested that the alleged incident has not taken place at the said spot.

86. The appellant further submitted that the independent witnesses are not examined by the prosecution.

Admittedly, it is neither the case of the prosecution nor of the defence that at the time of the alleged incident some persons were gathered there. The evidence of PW1 Kanta and PW4 Kanchan shows that only the deceased, PW1 Kanta, PW4 Kanchan, members of matrimonial house of PW4 Kanchan i.e. her husband and mother-in-law, and the appellant, who is her brother-in-law, were present. Thus, the presence of any other witness at the time of the incident was not brought on record. Neither PW1 Kanta nor PW4 Kanchan was cross examined to show the presence of the independent witnesses and, therefore, the submission of the appellant is not sufficient to discard the evidence of the prosecution.

87. The evidence of Police Inspector PW8 Deepak Khobragade is only to the extent that he forwarded the

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weapon knife and shoes or Chemical Analysis. The Chemical Analyzer's Report, Exhibit-90, shows that the blood group of acquitted accused Suraj is "O". As per the Chemical Analyzer's Report, Exhibit-91, human blood is found on the blade of the knife and a pair of shoes. As per Exhibit-92, Articles-1 to 3, the clothes of the deceased are having blood stains of Blood Group "A". The human blood is found on the Article-4, the T-shirt of the appellant. The blood stains found on pillow, matting seized from the car are of Blood Group "A" which is of the deceased. The pen seized from the spot, which is of the deceased, is stained with Blood Group "A".

88. The appellant further challenged the judgment and order of the conviction and the sentence on the ground that the motive is not proved.

89. It is well settled legal position that when direct evidence is available, motive takes back seat and, therefore, mere absence of motive is not sufficient to discard the evidence of the prosecution. In fact evidence on record shows that there was dispute between the PW4 Kanchan and the appellant and his family members. The alleged incident

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has taken place on account of the said matrimonial dispute which is sufficient to show the motive of the appellant.

90. Learned counsel Shri P.R.Agrawal, submitted that even considering the prosecution case as it is, insofar as the role of the appellant 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 decisions in the cases of **Iqbal Singh vs. State of Punjab**, **Manke Ram vs. State of Haryana**, **Mohd.Rafiq alias Kallu vs. State of Madhya Pradesh**, and **Nazimoddin Mohammaddin alias Nasiroddin vs. The State of Maharashtra** cited *supra*. We have gone through the facts of the cited case. The Honourable Apex Court in the cases cited *supra* considered Exception-4 to Section 300 of the Indian Penal Code and observed that Exception-4 to Section 300 of the Indian Penal Code covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by Exception-1. The Exception is founded upon the said principle, for in both there is absence of premeditation. It is held that while in the case of Exception-1, there is total

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deprivation of self control. Whereas, in case of Exception-4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do.

91. In the light of the decisions cited *supra*, if the facts of the present case are examined, it is apparent that the deceased had sustained as many as 18 injuries on vital parts of the body, the chest and the neck. The evidence on record shows that the appellant came out of the house with a weapon in his hands and gave repeated blows on the person of the deceased. The deceased has sustained 18 injuries and there was instantaneous death. It is not the case that the weapon was lying near the spot of incident which was picked up by the appellant and gave a single blow. However, the evidence shows that repeated blows were given.

92. In the facts and circumstances, if the principle underlined, that culpable homicide amounting to murder and not amounting to murder, is considered, admittedly, it is not the case that suddenly the appellant has picked up the weapon lying there and gave a single blow. However, the

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evidence shows that repeated blows were given on the vital parts of the body of the deceased.

93. 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; 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

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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 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.

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94. 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 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,

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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.

95. 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

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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.

96. By applying these facts, if the evidence on record 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 Exhibit-62, shows that the knife was of 7 inches in length having 3 inches handle. The sketch of the knife drawn by the Medical Officer shows that the weapon is sharp at one side. The

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Medical Officer opined that the possibility of injuries are mentioned in the postmortem report caused by such similar type of object. Thus, the weapon used is a sharp weapon. Now, the nature of injuries sustained by the deceased shows that out of 18 injuries, injury Nos.1,3,4,5,6,7, and 9 are incised wounds and injury Nos.2 and 8 and 16 and 17 are stab wounds. The deceased has also sustained internal injuries corresponding to the external injuries that the right lung was seemed punctured due to the wound present over right lung tissue. The left lung was also seen punctured and the death of the deceased is caused due to the loss of blood due to multiple injuries. The injuries are on vital parts of the body. Thus, the nature of the injuries shows that the repeated blows are given on vital parts which resulted into rupture of the lungs. It was certainly an act by taking advantage of the situation. 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 with an intention to commit the murder of the deceased.

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97. Thus, after appreciating the evidence on record, the evidence of two eyewitnesses, PW1 Kanta and PW4 Kanchan, is cogent, reliable on the material aspects, and not shattered during the cross examination. The direct evidence of these two witnesses is corroborated by the circumstances like medical evidence, the blood stains found inside the vehicle, on matting, and on pillow seized from the vehicle Articles-8 and 9 stained with the blood of Blood Group "A" which is of the deceased. The prosecution evidence is further corroborated by the circumstances that the blood stains found on the clothes of the appellant are not explained by him. The evidence is further corroborated by the circumstance of recovery of the knife having blood stains on the blade.

98. Thus, after appreciation of the evidence, if the evidence of the witnesses is read as a whole which inspires confidence, the deficiencies draw back pointed out by the defence are not touching to the core of the incident or is not affecting the root of the incident. The omissions and contradictions pointed out are not in respect of the actual

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incident. If the evidence of two eyewitnesses, PW1 Kanta and PW4 Kanchan, is tested on the touchstone of credibility, it inspires confidence.

99. Testing on the anvil and touchstone of the aforesaid principles laid down by the Honourable Apex Court, we find that while appreciating the evidence of the witnesses, approach must be whether the evidence of the witnesses read as a whole inspires confidence. Once that impression is found, undoubtedly, it is necessary for the court to scrutinize the evidence and if it is found that the evidence is credible, trustworthy, it can be acted upon. While appreciating the evidence of relatives, great weightage is to be given to them on the principle that that there is no reason for them not to speak the truth and shield the real culprit.

100. In the present case also, the evidence of PW1 Kanta and PW4 Kanchan is credible. The conviction and the sentence imposed upon the appellant by the trial Judge is on the basis of the legal evidence and on proper appreciation of the same and, therefore, the conviction and the sentence is

not erroneous in law as the findings are supported by valid and cogent reasons.

101. For the above reasons recorded, there is no reason to interfere with the judgment and order of conviction and the sentence dated 14.10.2016 rendered by learned Principal District and Sessions Judge, Nagpur in Sessions Trial No.350/2013. Hence, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DEO, J.)

!! BrWankhede/wasnik !!