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

CRIMINAL APPEAL NO.688 OF 2018

Dewa s/o Dulichand Barewar,
Aged about 23 years, occupation – labour,
R/o Gahlatola, tahsil Goregaon,
District Gondia.
(At present in custody kept at
Central Jail, Nagpur). **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
Through PSO Goregaon Police
Station, District Gondia. **Respondent.**

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Shri E.W.Nawab, Counsel for the Appellant.
Shri N.S.Rao, Additional Public Prosecutor for the Respondent/
State.

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

CLOSED ON : 13/12/2022

PRONOUNCED ON : 31/03/2023

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

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 7.9.2017 passed by learned Sessions Judge, Gondia in Sessions Trial No.07/2016.

Learned Trial Judge convicted the accused of the offence punishable under Section 302 of the Indian Penal Code, and sentenced him to suffer rigorous imprisonment for

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life and to pay fine Rs.1000/- and in default of payment of the fine amount to suffer further rigorous imprisonment for six months.

The accused is further convicted of the offence punishable under Section 37(1) read with Section 135 of the Bombay Police Act, and sentenced him to suffer imprisonment for six months and to pay fine Rs.500/- and in default of payment of the fine amount to suffer further imprisonment for two months.

Brief facts which are necessary to dispose of the appeal are as under:

Informant Deul Zanaklal Gautam, is the nephew of Dinesh Beniram Bopche (deceased). On 24.10.2015, dinner was arranged on a religious function at village Gahlatola for all villagers. The accused as well as the deceased, informant Deul, Rahul Mulchand Katre and Rajesh Beniram Bopche were present in the said function. On account of serving food, differences took place between the accused and Rajesh, who is the brother of the deceased. The deceased Dinesh inquired

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with the accused why he is abusing his brother Rajesh and took the accused at left side of a temple and tried to convince him. However, the accused got angry and took out a knife and gave blows of knife on the chest, the neck, the head, and caused grievous injuries to the deceased. Due to the severe injuries sustained by the deceased, he died on the spot. The alleged incident was witnessed by Rahul Mulchand Katre (PW2), informant Deul (PW5) and others. The villagers shifted the deceased near Sharda Mandir Square. The deceased was about to be taken to the hospital for treatment, but it revealed to the villagers that he is not alive. After the incident, the accused fled away from the spot of the incident.

2. Regarding the alleged incident, Deul Zanaklal Gautam had lodged the report at Goregaon Police Station, district Gondia. On the basis of the said report, the police have registered the offence vide Crime No.86/2015 under Section 302 of the Indian Penal Code.

3. After registration of the offence, wheels of the investigation started rotating. The Investigating Officer has visited the alleged spot of the incident as well as the spot

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wherein the dead body of the deceased was shifted subsequently and collected blood samples from both the places. He had drawn spot and inquest panchanamas. The accused was arrested on 25.10.2015. The accused made a voluntary statement in presence of panchas and in view of the said statement, incriminating article knife was seized in presence of panchas. All the articles seized by the Investigating Officer were forwarded to the Chemical Analyzer along with the letter. After completing the investigation, the Investigating Officer filed chargesheet against the accused.

4. As the offence punishable under Section 302 of the Indian Penal Code was triable by the Court of Sessions, learned Magistrate has committed the case to the Court of Sessions for its adjudication. Learned Sessions Judge framed charge vide Exhibit-7. The accused has pleaded not guilty and claimed to be tried.

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

1. PW1 Bhuvanlal Bhaiyyalal Gautam, vide Exhibit-19, pancha on spot and inquest;

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2. PW2 Rahul Mulchand Katre, vide Exhibit-29, eyewitness;

3. PW3 Beniram Kodu Bopche, vide Exhibit-30, the father of the deceased;

4. PW4 Dr.Purushottam Kashiram Patle, vide Exhibit-31, Medical Officer;

5. PW5 Deul Zanaklal Gautam, vide Exhibit-34, eyewitness and the informant;

6. PW6 Rajesh Beniraj Bopche, vide Exhibit-37, eyewitness;

7. PW7 Ramkrushna Waturam Ghasle, vide Exhibit-39, pancha on memorandum statement and the discovery panchanama, and

8. PW8 Bharat Pandharinath Karade, vide Exhibit-47, Investigating Officer.

6. Besides the oral evidence, the prosecution further relied upon the following documents:

1. arrest panchanama, Exhibit17;

2. spot panchanama, Exhibit-21;

3. inquest panchanama, Exhibit-22;

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3. seizure memo of articles collected from the spot, Exhibit-23;
4. seizure memo of samples of the deceased, Exhibit-24;
5. seizure memo clothes of the deceased, Exhibit-25;
6. postmortem report, Exhibit-32;
7. report lodged by the informant, Exhibit-35;
8. first Information Report, Exhibit-36;
9. memorandum statement of the accused, Exhibit-41;
10. discovery panchanama, Exhibit-42;
11. seizure memo of knife, Exhibit-43;
12. query report, Exhibit-44;
13. letter to the Chemical Analyzer, Exhibit-49;
14. Chemical Analyzer's Reports, Exhibits-52 and 53.

7. All the incriminating evidence is put to the accused to obtain his explanation by recording his statement under Section 313 of the Code of Criminal Procedure. The defence of the accused is of total denial and of false implication.

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8. Heard learned counsel Shri E.W.Nawab for the appellant/accused and learned Additional Public Prosecutor Shri N.S.Rao for the respondent/State.

9. Learned counsel Shri E.W.Nawab for the appellant/accused submitted that learned Trial Judge had illegally and erroneously placed reliance on the witnesses who are related and interested witnesses. Learned Trial Judge had not considered that witnesses improved their versions and material omissions brought on record affected the case of the prosecution. There was no previous enmity between the accused and the deceased. Even if the alleged incident is taken into consideration, it was the result of a sudden fight and a sudden quarrel, which is also ignored by learned Trial Judge. Thus, the conviction and the sentence imposed by learned Trial Judge upon the accused is on the surmises and conjectures and, therefore, the conviction and the sentence are liable to be quashed and set aside.

10. *Per contra*, learned Additional Public Prosecutor Shri N.S.Rao for the respondent/State supported the judgment rendered by learned Trial Judge and submitted that

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mere fact that witnesses are related witnesses is not sufficient to discard their evidence. PW2 Rahul Katre, PW5 Deul Gautam, and PW6 Rajesh Bopche Rajesh are eyewitnesses. Though some omissions are brought on record, which do not affect the entire core of the prosecution, the accused is rightly convicted by learned Trial Judge. The oral evidence is also supported by the circumstances that the incriminating article knife was seized at the instance of the accused. The Chemical Analyzer's Reports show that the blood stains are found on the said article. The Blood Group "A" was determined during chemical analysis on the clothes of the accused and the said circumstance is not explained by the accused. Thus, the evidence on record is sufficient to prove the charges levelled against the accused. As the accused is convicted on the basis of cogent and reliable evidence, no interference is called for in the judgment and the order of the conviction and the sentence impugned in the appeal.

11. After hearing both sides and after considering the evidence on record, it has to be seen whether the prosecution

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succeeded in proving the case against the accused beyond reasonable doubt.

12. Insofar as the homicidal death of the deceased is concerned, the material evidence adduced by the prosecution is the testimony of PW4 Dr.Purushottam Kashiram Patle, examined vide Exhibit-31. He testified that the dead body of the deceased was sent to him when he was attached to the Goregaon Rural Hospital for postmortem examination. On external examination of the dead body, he noted following injuries on the person of the deceased:

- i) lacerated wound – neck left side sternocleidomastoid middle third 1.5 cm x 4 cm x 4 cm deep directed anteromedially;
- ii) lacerated wound – chest left side just medial and inferior to left nipple 2 cm from the nipple, 3 cm x 1.5 cm x 0.7 cm deep;
- iii) lacerated wound – chest left side lateral inferior to left nipple 3 cm from the left nipple of size, 2.5 cm x 1.5 cm deep into the thoracic cage directed posteromedially;
- iv) lacerated wound – forehead above left eyebrow 4 cm of the size, 2 cm x 0.5 cm x 0.3 cm deep, and
- v) fractured left fifth rib in direction and continuation of the injury No.3.

13. Besides the external injuries, he also noted internal injuries on the person of the deceased. On examination of the head, he noted lacerated wound on forehead above eyebrow. On examination of thorax, he noted fifth rib fractured lateral and below of left nipple. He further noted the injury perforated 2cm x 1cm just above the lower end of pericardium. He further noted the injury that is perforated just above the lower end just above the heart 1.7 cm x 0.4 cm x 0.5 cm deep. It was piercing the heart and the said injury then travelled upto stomach. The injury No.3 mentioned in column No.17 resulted in fracture of left fifth rib. All the above injuries were antemortem in nature. He opined that the death of the deceased was caused due to hemorrhage leading to shock due to stab injury over neck, left lateral side, stab injury on heart lower aspect, and stab injury over stomach. Accordingly, he prepared the postmortem notes, Exhibit-32. He had also collected the blood samples and handed it over to the police. He further opined that injuries Nos.1 and 3 mentioned at column No.17 are individual and

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are sufficient to cause death. During his cross-examination, only suggestion was given to him that he has not conducted the postmortem properly. The evidence of the Medical Officer is not shattered during the cross-examination of the defence.

14. Besides the medical evidence, the prosecution further placed reliance on the evidence of PW1 Bhuvanlal Bhaiyyalal Gautam, examined vide Exhibit-19, who acted as a pancha on the inquest and Investigating Officer PW8 Bharat Pandharinath Karade, examined vide Exhibit-47, who has drawn the inquest panchanama. The evidence of both these witnesses shows that the deceased had sustained the injuries on his head and the chest. Though both these witnesses are cross-examined, there is no cross-examination to the extent of injuries sustained by the deceased. Thus, the medical evidence as well as the evidence of PW1 Bhuvanlal Gautam and Investigating Officer PW8 Bharat Karade sufficiently shows that the deceased has sustained the grievous injuries which resulted into his instantaneous death. Thus, the prosecution has proved that the death of the deceased is homicidal one.

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15. As per the prosecution theory, the deceased was assaulted by the accused when one public gathering was in the village and all villagers were gathered together to have dinner at the temple. To prove that the deceased died of homicidal death, besides the medical evidence, the prosecution relied upon eyewitnesses PW2 Rahul Mulchand Katre and PW5 Deul Zanaklal Gautam. PW2 Rahul Katre, as per the prosecution, is the eyewitness of the incident. He categorically narrated about the incident and deposed that on 24.10.2015 he was present at the time of the alleged incident. The accused was abusing Rajesh, the brother of the deceased, while serving the food to the villagers. Thereupon, the deceased asked him why he is abusing his brother and took him at the side at some distance from the temple to convince him. PW2 Rahul Katre has also followed him along with PW5 Deul Gautam. They both witnessed that the accused took out a knife and gave blows of the knife on the chest, the neck and the head of the deceased. PW5 Deul Gautam had also deposed in unison about the alleged incident. Though PW1 Bhuvanlal Gautam and PW2 Rahul Katre have not stated about the presence of PW6 Rajesh Bopche at the time of the

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incident, PW6 Rajesh Bopche had also deposed that he was present in the temple at the time of the incident. PW2 Rahul Katre was cross-examined and during his cross-examination some omissions are brought on record. The omissions are to the extent that he has not stated before learned Magistrate that the accused took out the knife and stabbed the deceased. He has also not stated that he rushed to the temple and the accused ran away. The omission is to the extent that he had not stated before the police that there was a dinner at the Sharda Temple and the accused was serving the food. He had also not stated to the police that he and Deul ran behind the deceased and the accused and saw that the accused took out the knife and stabbed Dinesh on the chest, the neck, and the head. The further omission is brought on record that he had not stated before the police that the accused ran away and the distance between the spot of the incident and the Sharda Square is about 25 feet. Perusal of the statement of PW2 Rahul Katre recorded under Section 164 of the Code of Criminal Procedure shows that though he had not stated in the manner that the accused took out the knife and stabbed Dinesh, he had stated that the accused assaulted the

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deceased by a sharp weapon on his neck, the head, and the chest. Thus, the sum and substance of the incident is already stated by PW2 Rahul Katre before learned Magistrate. It is stated in a different manner. Therefore, these omissions are not at all omissions in the manner of contradictions which would affect the prosecution case. The statement of PW2 Rahul Katre is recorded by the police wherein also he has stated the sum and substance of the incident in a different manner and, therefore, the core of the case is narrated by him while recording the statement by the police as well as by learned Magistrate. The portions, which are brought on record in the manner of omissions, are not at all omissions as the said portions are stated by the said witness in a different manner.

16. Here, in the present case, though some omissions are brought on record by suggesting that these facts are not narrated before learned Magistrate, the statement Exhibit-66 recorded under Section 164 of the Code of Criminal Procedure shows that the circumstances and facts are narrated by the witness and, therefore, it does not amount to contradiction.

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17. As far as the evidence regarding the alleged incident is concerned, except denial, nothing incriminating is brought on record to shatter the evidence of PW2 Rahul Katre. The cross-examination nowhere falsifies that PW2 Rahul Katre was the eyewitness of the incident.

18. PW5 Deul Gautam is the another eyewitness who lodged the First Information Report about the incident. He has also categorically testified about the alleged incident that on 24.10.2015 at about 8:00 pm he along with the accused was serving the food to the villagers at the Sharda Temple. The accused was abusing Rajesh, the brother of the deceased. Rajesh was also present and serving the food. On hearing the abuses by the accused, the deceased questioned him the reason behind the abuses and took him at some distance to convince him. However, the accused took out the knife and inflicted the blows of knife on the deceased on his head, neck and chest. Due to the repeated blows, the deceased was in a pool of blood and the accused ran away from the spot. He along with PW2 Rahul Katre shifted the deceased near the Sharda Temple so that he could be treated. However, Dinesh

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immediately died after the assault. He lodged the First Information Report about the said incident. PW5 Deul Gautam is also cross-examined and attempt was made to bring on record that he has not narrated the facts that he was serving the food to the villagers along with Rajesh, Dinesh, and Rahul. He had not stated that he used to come to his maternal uncle's place in summer vacation. Thus, the omissions brought on record are not touching to the core of the incident. Further omissions are brought on record that he had not stated before learned Magistrate that he was serving the food to the villagers along with Rajesh, Dinesh, and Rahul. These omissions are also of minor in nature. In fact, he had narrated about the incident before the police as well as before learned Magistrate in a different manner. Thus, the defence relied upon the omissions which are in fact not material omissions which would affect the prosecution case.

19. The use of statements under Section 162 of the Code of Criminal Procedure is only for the purpose of contradicting witnesses and omissions to state of fact or circumstance in the statement referred to in sub-section (1) of

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Section 162 may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omissions occur and whether any omission amounts to contradiction in the particular context shall be a question of fact.

20. Here, in the present case, the omissions, which are brought on record, which according to the defence amount to contradiction, in fact, are not contradictions as those are not significant. The sum and substance and facts and circumstances are already stated in the statement.

21. As far as statements under Section 164 of the Code of Criminal Procedure are concerned, the law is settled regarding the use of the said statements. The statements recorded under Section 164 of the Code of Criminal Procedure can never be used as substantive evidence of truth of facts, however it may be used for contradictions and corroborations of witnesses who made it. The statements made under Section 164 of the Code of Criminal Procedure can be used to cross-examine the maker of it and result may be to show that

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the evidence of the witnesses is false. It can be used to impeach the credibility of the prosecution witnesses

22. PW6 Rajesh Bopche is also the witness to the fact that the accused was abusing him. As per his evidence, there was a quarrel between him and the accused and the accused started abusing him and, therefore, he left the place and returned home. He further deposed that the deceased approached him and the accused and requested not to quarrel. Though he is cross-examined, nothing incriminating came on record to shatter his evidence.

23. After appreciating the evidence on record of these three witnesses PW2 Rahul Katre, PW5 Deul Gautam, and PW6 Rajesh Bopche, it is crystal clear that PW2 Rahul Katre and PW5 Deul Gautam both were present at the time of the alleged incident. PW6 Rajesh Bopche was present prior to the incident and party to the quarrel with the accused. He also stated that the deceased approached him as well as the accused and requested not to quarrel. Learned counsel Shri E.W.Nawab for the appellant/accused vehemently submitted that all these three witnesses are relatives and interested

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witnesses. Their evidence is not reliable. Though independent witnesses were available, the prosecution has not examined them and only interested witnesses are examined. He further submitted that the evidence of PW2 Rahul Katre and PW5 Deul Gautam is suffering from improvements which affects the prosecution case. In support of his contentions, he placed reliance on the following decisions:

(1) Dilip Ramaji Kakde vs. State of Maharashtra, reported in 2000(1) Mh.L.J. 549, wherein this Court held that material witnesses who took the injured victim to the hospital are not examined. Non-examination of material witnesses would make court to draw an inference against the prosecution;

(2) Amar s/o Ramesh Lohkare vs. State of Maharashtra, reported in 2016 ALL MR (Cri) 4699 ;

(3) State of Rajasthan vs. Teja Singh, reported in 2001 ALL MR (Cri) 994 wherein it is held that interested eyewitnesses are examined. No independent corroboration available not relied upon;

(4) State represented by Inspector of Police, T.N. vs. Manikandan and ors, reported in 2015 ALL MR (Cri) 2473 (SC);

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

(6) Mahadu Harchand Tirmale vs. The State of Maharashtra, reported in 2001 ALL MR (Cri) 2371;

(7) Dilip and another vs. State of M.P., reported in 2001 ALL MR (Cri) 2377;

(8) Raghunath vs. State of Haryana, reported in AIR 2003 SC 165;

(9) Kunju Muhammed alias Khumani and another vs. State of Kerala, reported in 2004 SCC (Cri) 1425;

(10) Bashir Shah and others vs. State of Rajasthan, reported in 1994 CRI. L.J. 2526, and

(11) Majenderan Langeswaran vs. State (NCT of Delhi) and another, reported in (2013) 7 SCC 192;

On the basis of the catena of decisions, learned counsel for the appellant/accused submitted that the entire evidence of these eyewitnesses is suffering from inconsistencies, exaggerations, and embellishments and, therefore, their evidence deserves to be discarded.

24. It is a well settled that "*falsus in uno, falsus in omnibus*" (false in one thing, false in everything) is neither a sound rule of law nor a sound rule of practice. It is not applicable in criminal cases in India, as witnesses may be partly truthful and partly false in their evidence. The experience shows that the evidence of many witnesses

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

25. This Court in the case of Dilip Ramaji Kakde vs. State of Maharashtra cited *supra* held that the material witnesses who took the injured to hospital were not examined and, therefore, non-examination of material witnesses is not fatal to the prosecution.

26. The Honourable Apex Court in the case of State of Rajasthan vs. Teja Singh cited *supra* observed that facts showing that PW6 was a very old person having weak eye

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sight and evidence of PW9 was also weak as his statement was recorded after five days and, therefore, the Honourable Apex Court disbelieved the said witness.

27. The Honourable Apex Court in the case of **State represented by Inspector of Police, T.N. vs. Manikandan and ors** cited *supra* 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.

28. This Court in the case of **Mahadu Harchand Tirmale vs. The State of Maharashtra** cited *supra* held that testimony of interested witnesses has to be approached with caution.

29. 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

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evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether 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 shed the real culprit.

30. 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.

31. 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

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be laid down as an invariable rule that interested evidence can never form the basis of conviction unless 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.

32. 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.

33. 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.

34. Testing on the anvil and touchstone the aforesaid principles laid down by the Honourable Apex Court, we find that witnesses PW2 Rahul Katre and PW5 Deul Gautam, who are close relatives of the deceased, have really not embellished or exaggerated their versions. Their presence at the spot of the incident is also natural and there is nothing on record to doubt their presence at the scene of the crime. Their versions are consistent and nothing is on record to show that they are having inimical terms with the accused. During cross-examination, there is even no suggestion that there was any enmity between the witnesses and the accused. Though some omissions are brought on record, which are of minor discrepancies and not touching to the core of the incident, it is not sufficient to discredit the story of the prosecution.

35. Besides the direct evidence of the above witnesses, the prosecution also relied upon the circumstantial evidence to prove the spot panchanama. PW1 Bhuvanlal Gautam, examined vide Exhibit-19, acted as a pancha on the

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spot panchanama. His evidence is only to the extent that he was called at the Sharda Square and there were blood stains on the spot. The police collected the blood stains as well as simple soil in his presence. Admittedly, he has not narrated about the exact spot of incident. During his cross-examination, he admitted that the Sharda Square is populated locality. Though this witness has not stated exactly about the spot of the incident, Investigating Officer PW8 Bharat Karade has specifically stated that panchanama of the spot was drawn at two places. He has also not clarified those two places. However, during cross-examination, it came on record that the spot is from the village. From the evidence of Investigating Officer PW8 Bharat Karade it is crystal clear that the panchanama was drawn at two places and blood stains are collected from two places. This evidence can be taken into consideration in the light of the evidence of PW2 Rahul Katre and PW5 Deul Gautam who stated that the alleged incident has occurred towards the left side of the temple at some distance and after the incident, they shifted the deceased at the Sharda Square. PW1 Bhuvanlal Gautam also stated that in his presence blood stains are collected from the Sharda

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Square. It means that the police have drawn the spot panchanama at the spot where the alleged incident has taken place and the place where subsequently the dead body was shifted.

36. The another circumstance, on which the prosecution has relied upon, is the memorandum statement of the accused and the discovery of incriminating articles at the instance of the accused.

37. PW7 Ramkrushna Ghasle, examined vide Exhibit-39, has testified that he was called by the police at the police station wherein the accused was present. In his presence, the accused made a memorandum statement that he will show the place where the weapon was kept. Thereafter, the accused led them towards a canal and took out the knife from the grass. The said knife was seized by the police. Accordingly, panchanama was drawn. The memorandum statement is at Exhibit-41 and discovery panchanama is at Exhibit-42. During his cross-examination, he admitted that the place from where the knife was recovered was open place, but he denied that the land owners were using the pathway

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near the canal. Investigating Officer PW8 Bharat Karade has also stated that on 28.10.2015 the accused shown his willingness to show the place where he concealed the weapon. The said memorandum was recorded in presence of panchas and, thereafter, the accused led them adjacent to the canal and took out one knife kept in the grass. The only cross-examination was that the knives seized as per Exhibits-42 and 43 are different which is denied by Investigating Officer PW8 Pandharinath Karade. Thus, the cross-examination on the aspect of memorandum statement and discovery is only by way of suggestion that the knives shown in the discovery panchanama and seizure memo are different which is denied by Investigating Officer PW8 Bharat Karade.

38. Insofar as the memorandum statement under Section 27 of the Indian Evidence Act is concerned, the law regarding the same is well settled. The requirement of the said Section is that the fact of which the evidence is sought to be given must be relevant to the issue, the fact must have been discovered, the discovery must have been made in consequence of some information received from the accused

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and not by the accused's own act, a person giving the information must be accused of any offence and he must be in custody of the police officer.

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

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

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

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

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

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

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

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witnesses to the place where he had concealed the articles is not indicative of the information given.

41. In the light of the well settled legal position, it is to be seen whether the evidence adduced by prosecution witnesses PW7 Ramkrushna Ghasle and Investigating Officer PW8 Bharat Karade is sufficient to prove the discovery at the instance of the accused. Perusal of the evidence of these two witnesses, reveals that the accused made a voluntary statement and on the basis of the said statement articles were recovered. Though PW7 Ramkrushna Ghasle admitted that the knife was found and produced from the grass, which was open place, he denied that the adjoining field owners were using the pathway near the canal which is sufficient to show that it was not the place accessible to all and, therefore, the contention of learned counsel for the appellant/accused, that the knife was seized from the open place is sufficient to discard the evidence of recovery, is not acceptable. Though evidence of P.W. 6 shows recovery of knife is from open place, but it was place not visible to all. The denial by PW7 Ramkrushna Ghasle itself is sufficient to show that article was

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recovered from the place which was not accessible and the said article was found in a concealed condition.

42. The evidence of PW1 Bhuvanlal Gautam further shows that in his presence the police have seized the clothes of the accused which were shirt and pant having red colour stains, vide Exhibit-25. In his presence, clothes of the deceased which were on his person were also seized vide Exhibit-23. As per the evidence of Investigating Officer PW8 Bharat Karade, all these incriminating articles were forwarded to the Chemical Analyzer along with letter Exhibit-49. The Chemical Analyzer's Report Exhibit-53 shows that blood stains of Blood Group "A" were found on Articles-2 and 4, soil collected from the spot Articles-5 and 6, T-shirt of the deceased Article-7, jeans pant of the deceased Article-8, half T-shirt of the accused Article-11, and full jean pant of the accused Article-12. Thus, the Blood Group "A" was found on the clothes of the accused. The knife Article-13 was also stained with blood, but the blood group was not detected. As per Exhibit-52, Blood Group of the deceased was "A". Thus, the Blood Group of the deceased was found on the clothes of

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the accused. The accused has not explained the incriminating circumstance finding of the blood on his clothes. Admittedly, Blood Group regarding the blood stains found on the weapon knife is not ascertained, but merely because the blood group is not ascertained that cannot be fatal to the prosecution.

43. The Honourable Apex Court in the case **Kishore Bhadke vs. State of Maharashtra**, reported in **2017 ALL CRI 1316** held that presence of human blood on clothes is recovered at the instance of accused and mere absence of evidence regarding blood group cannot be fatal to the prosecution.

44. Thus, after appreciating the entire evidence on record, it shows that PW2 Rahul Katre and PW5 Deul Gautam are eyewitnesses of the incident. Their evidence is consistent, cogent, and reliable. Though some omissions and discrepancies are brought on record, which are not sufficient and not affecting the core of the case of the prosecution, in fact, those omissions brought on record are not omissions as both witnesses have narrated the relevant facts and circumstances in a different manner. The evidence of these

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two eyewitnesses is corroborated by the medical evidence. The medical evidence shows that the death of the deceased is caused due to the assault by the sharp weapon. Learned counsel for the appellant/accused raised the defence that the incriminating article weapon of the offence was not shown to the Medical officer. Exhibit-44 is the letter issued by the police to the Medical Officer which shows that the weapon was forwarded to the Medical officer for obtaining the opinion. Thus, though opinion was not sought, the weapon was earlier shown to the Medical Officer. Mere non-showing of the weapon to the doctor, at the time of his deposition in the Court, is inconsequential and in no manner weakens the prosecution case when eyewitness account is supporting the case of the prosecution. There is no reason brought on record by the defence to show that there was any other reason for these witnesses to implicate the accused falsely. The defence was not raised or witnesses were not cross-examined to show that there was any previous enmity.

45. Learned counsel for the appellant/accused has placed reliance on the decision of the Honourable Apex Court

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in the case of Raghunath vs. State of Haryana cited *supra* and submitted that there was a group rivalry.

The Honourable Apex Court, while considering group rivalry, held that injuries on accused are not explained.

But, here in the present case, the defence of group rivalry was not suggested to the eyewitnesses.

Learned counsel for the appellant/accused further submitted that the First Information Report is lodged at a belated stage. The alleged incident has taken place on 24.10.2015 at about 8:00 pm and the First Information Report is lodged at about 11:21 pm. The place of the incident is situated at a distance of 3 kilometers from the Goregaon Police Station. A judicial notice can be taken that after the incident, the persons associated with the deceased, would first made an attempt to give a medical treatment to the injured.

Here, in the present case, the injured died instantaneously and, thereafter, PW5 Deul Gautam approached to the police station and lodged the First Information Report. The First Information Report is lodged

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within 3 hours of the incident. It cannot be expected from the relatives of the deceased that they would leave the dead body at the spot and approach to the police station to lodge the report.

46. Learned counsel for the appellant/accused has placed reliance on various judgments *supra* to show that the delay in lodging the First Information Report is fatal to the prosecution. He has placed reliance on the decision of this Court in the case of Dilip Ramaji Kakde vs. State of Maharashtra cited *supra* wherein the First Information Report is lodged after 11 hours after the incident. In the case of Amar s/o Ramesh Lohkare vs. State of Maharashtra cited *supra* the First Information Report was lodged after inordinate delay at about 1:30 pm when the police station was hardly one kilometer away and incident was occurred at about 10:30 am to 10:45 am. In case of State of Rajasthan vs. Teja Singh cited *supra* there was delay in sending the First Information Report in the Court.

Thus, the above decisions cited *supra* to show the delay in lodging the First Information Report is fatal to the

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prosecution is not applicable to the present case as facts are not identical.

47. The discussion above makes it clear that the evidence of PW2 Rahul Katre and PW5 Deul Gautam is trustworthy and reliable. Moreover, their evidence is supported by the medical evidence as well as the circumstantial evidence like discovery of incriminating article knife at the instance of the accused. The blood stained clothes of the accused are analyzed having Blood Group "A" which of the deceased. The said incriminating circumstance is not explained by the accused. The evidence further supported by the medical evidence. The evidence on record shows that the deceased was assaulted by the accused with an intention to commit his murder. The blows of the knife are given on the vital parts of the body. The deceased had sustained the injuries on the neck, the chest, and the abdomen. The nature of the injuries sustained by the deceased shows that the deceased has sustained lacerated wound just medial and inferior to left nipple which resulted into the fracture of fifth rib. The injury No.1 was 4 cm deep and has pierced left

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carotid artery. The injury No.3 lacerated wound chest left side was just below the left nipple and the same was deep into lower aspect of the heart. It was piercing to the heart and then travelled upto stomach. It was resulted into fracture of left fifth rib. Thus, the nature of injuries shows the force used by the accused giving the blows. To attract the intention of the accused, admittedly, direct evidence would not be available. The intention of the accused to be gathered from the surrounding circumstances like nature of the weapon selected, part of the body selected, and force used by the accused. Here, in the present case, the weapon selected by the accused is a sharp weapon, the part of the body selected is also a vital part of the body, and the nature of injuries shows the force used by the accused. From the above circumstances, the intention of the accused to commit the murder is clear.

48. Whether the case of the accused covers under exception 4 of section 300 of the Indian Penal Code, a sudden fight and sudden quarrel is to be seen from the circumstances. Admittedly there was no quarrel between the

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deceased and accused as deceased was intervener. The exception 4 of Section 300 of the Indian Penal Code covers acts done in a sudden fight. The said exception deals with a case of the prosecution not covered by the first exception, after which its place would have been more appropriate. Exception 4 of Section 300 of the Indian Penal Code deals only if there is heat of passion, the person acts while losing his self control. It deals with cases in which a blow may have been struck or some provocation given in the origin of the disputes. A sudden fight implies a mutual provocation. The help of exception 4 of the said Section can be invoked if death is caused, (a) without premeditation, (b) in a sudden fight, (c) without the offender having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been without the person killed.

49. Here in the present case, the facts on record shows that accused was abusing brother of deceased, therefore deceased intervened and took accused at some distance and was convincing him. At the relevant time accused took knife and gave blow on deceased on vital parts

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of body. It is not the case that accused took out knife from spot but facts and evidence on record shows he was possessing knife. The deceased sustained 8 injuries on vital parts of body such as neck, chest. The internal injuries sustained by the deceased shows injury sustained on chest was piercing heart and travelled upto stomach. The nature of injuries sustained shows with force blows are given on vital parts of body. The intention of accused can be gathered from the circumstances like weapon used, parts of body chose by the accused.

50. The culpable homicide is defined in Section 299 of the Indian Penal Code whereas murder is defined in Section 300 of the Indian Penal Code. The every act of homicide falls within the definition of culpable homicide in Section 299 of the Indian Penal Code. As per Section 300 of the Indian Penal Code, homicide is murder. However, there are five exceptions in the said Section and those 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.

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51. Considering evidence on record definitely the case of the accused does not cover under exception 4 of Section 300 of Indian Penal code.

52. In a criminal case, the prosecution is obliged to prove charges beyond reasonable doubt. The standard of proof required is higher standard. Though it is submitted that the evidence of eyewitnesses is suffering from discrepancies and inconsistencies, as we have already observed, the discrepancies and the inconsistencies are trivial in nature and not affecting the case of the prosecution. It is submitted that the accused is entitled for benefit of doubt.

53. The Honourable Apex Court in the case of State of Punjab vs. Jagir Singh and others, reported in 1973 AIR 2407 observed as "a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused

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charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

54. Thus, a reasonable doubt must be based upon reason and common sense. It should grow out of evidence in the case. The concept of proof beyond all reasonable doubts cannot be stretched too much to mean proof of rigid mathematical precision and, therefore, we do not find any merit in the submissions canvassed by learned counsel Shri E.W.Nawab for the appellant/accused. Hence, we are of view that the accused is rightly convicted for the offence punishable under Section 302 of the Indian Penal Code on the basis of the direct evidence of PW2 Rahul Katre and PW5 Deul Gautam corroborated by the circumstantial evidence and the medical evidence.

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55. In the result, since we find no merit in the appeal and the appeal deserves to be dismissed, we pass following order:

ORDER

(1) The Criminal Appeal is **dismissed**.

(2) The judgment and order of conviction and sentence dated 7.9.2017 passed by learned Sessions Judge, Gondia in Sessions Trial No.07/2016 is hereby maintained.

With this, the criminal appeal is **dismissed** and **disposed** of.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

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