



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 1094 OF 2019**

Santosh S/o Baburao Khandare

Age: 41 years, Occu: Labour,

R/o: Petkar Nagar, Sevli,

Taluka and District Jalna

... Appellant

**Versus**

The State of Maharashtra

Through the Police Station Officer,

Sevli Police Station,

Taluka and District Jalna

... Respondent

...

Mr. Satyajit S. Bora, Advocate for the Appellant

Mr. S. D. Ghayal, APP for the Respondent - State

...

**CORAM : R. G. AVACHAT &  
NEERAJ P. DHOTE, JJ.**

**Reserved on : 7<sup>th</sup> February, 2024**

**Pronounced on : 1<sup>st</sup> March, 2024**

**JUDGMENT : [PER NEERAJ P. DHOTE, J.]**

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 [for short 'Cr.PC'] against the Judgment and Order dated 26.09.2019, passed by the learned Additional Sessions Judge-3, Jalna, in Sessions Case No.167/2015 convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 [for short 'IPC'] and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer R.I. for six months.

2. Prosecution's case as revealed from the Police Report is as under:

2.1 The Informant – PW - 1 [Kaikaibai Santoba Agham] is a resident of Bhagdesawargaon in Jalna District. She and her deceased husband - Santoba Agham were engaged in the work of preparing wooden equipments used for the bullock-carts. There was weekly market [Bazar] at Village Sevli on 11.08.2015. He left the residence in the morning to go to the said weekly market to sell the said equipments. She was asked to reach the weekly market in the after-noon. The Informant, accordingly, went to the weekly market around 14:30 hours. She met her husband in the weekly market. He told her that their son – Dharma had called from Mumbai that he was sending Rs.20,000/- on his bank account and so he was going to bank for withdrawing the money. He asked her to purchase the vegetables in the meanwhile. The Informant did her purchasing and then reached near the shop of Laxman More. There she did not find her husband. She started searching for him. She saw that their relative deceased - Prakash Khandare was being brought on the hand-cart by Rasu Khandare, cousin brother - Baban Khandare and others. She noticed that deceased - Prakash Khandare was soaked in blood and unconscious. At that time, Baban Khandare informed her that her husband was lying behind the liquor shop. She rushed in that direction and saw that her husband was lying in the tin shade. She noticed the injuries and blood oozing from the body

of her husband and he was unconscious. She raised shouts. Thereafter, the people gathered and took her husband to the Hospital.

2.2 The Informant learnt that when her husband and their relative deceased - Prakash Khandare were passing from the backside of country liquor shop, Santosh Baburao Khandare i.e. the Appellant, met them and demanded money from her husband. When her husband refused to give money, quarrel took place between her husband and the Appellant. The Appellant removed sharp weapon and inflicted blows on the chest, ribs and hands of her husband. When deceased Prakash Khandare intervened in the said quarrel, the Appellant also assaulted him with the said sharp weapon. The Informant lodged the Report with the Sevli Police Station against the Appellant and Crime No.334/2015 came to be registered in the night of 11.08.2015.

2.3 The Police went to the Hospital. Both injured persons succumbed to the injuries. The Police prepared the inquest and sent the dead bodies for postmortem. The Police prepared the spot panchnama, seized the clothes of deceased and the Appellant, arrested the Appellant, recorded the statement of witnesses, seized the weapon at the instance of Appellant pursuant to discovery under Section 27 of the Indian Evidence Act, 1872 [for short 'the Act'], sent seized muddemal for chemical analysis and collected CA reports and on completion of investigation, the Appellant came to be Charge-sheeted.

3. The learned Trial Court framed the Charge against the Appellant for the offence punishable under Section 302 of IPC vide Exhibit-2, to which, the Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all sixteen (16) witnesses and brought on record the relevant documents. After Prosecution closed its evidence, the statement of the Appellant came to be recorded under Section 313(1)(b) of Cr.PC. He denied the Prosecution's case and evidence. Thereafter, the learned Trial Court passed the impugned Judgment convicting the Appellant for the offence as referred above in Paragraph No.1.

4. Heard Mr. S. S. Bora, learned Advocate for the Appellant and Mr. S. D. Ghayal, learned Additional P.P. for the Respondent – State. Perused the evidence on record.

5. It is submitted by the learned Advocate for the Appellant that though the Prosecution claims to have examined the eye witness to the incident, his evidence do not inspire confidence that he witnessed the incident. He further submitted that the version of witnesses that the oral dying declaration was made by deceased – Prakash Khandare gets falsified in view of the evidence that he was unconscious. He further submitted that the discovery of weapon at the instance of Appellant is a farce. He submitted that the other corroborative evidence on record do not support the case of Prosecution, therefore, the Appeal be allowed and the Appellant be acquitted.

6. It is submitted by the learned Additional P.P. that the evidence of PW – 6 [Prakash Rambhau Ambhore], who is an eye witness to the incident, is required to be considered in its correct perspective. The Investigating Officer explained the delay in recording his statement. He submitted that from the postmortem reports, the cause of death due to severe injuries on both the deceased has been proved. He submitted that the oral dying declaration was made by deceased - Prakash Khandare to PW - 2 [Mangal Prakash Khandare] and PW – 3 [Ranjana Baban Khandare] and that corroborates the evidence of PW – 6 [Prakash Rambhau Ambhore]. He submitted that the clinching evidence is that of blood of deceased – Santoba Agham on the clothes of Appellant. He submitted that the weapon used in the assault has been seized at the instance of the Appellant. He submitted that on the basis of proved evidence, no interference is called for in the impugned Judgment and Order and the Appeal be dismissed.

7. To prove the injuries and the cause of death of both the deceased, the Prosecution examined PW - 4 [Gajanan Tateba Palve] and PW – 5 [Vishnu Laxman Chole], who acted as the Panchas for inquest [Exhibit – 34] of deceased – Santoba Agham and PW – 7 [Dnyandeo Deorao Ghode] who acted as the Panch for inquest [Exhibit – 44] of deceased – Prakash Khandare. Their evidence show injuries on the dead bodies. The respective Panchanamas corroborate their evidence. There is no serious challenge to their evidence on that aspect by the

defence. The evidence of PW - 9 [Dr. Vikas Maroti Gatkal], Medical Officer and PW - 10 [Dr. Mohammad Sharif Bismilakh Khan Pathan] is in respect of cause of death of Santoba Agham and Prakash Khandare, respectively.

8. The evidence of PW – 9 [Dr. Vikas Maroti Gatkal] show that he performed the postmortem on the body of deceased - Santoba Agham on 12.08.2015 and he found the cause of death as **‘hemorrhagic shock caused by punctured incised wound to vital organ heart and left lung’**. The postmortem report at Exhibit – 52 is brought in his evidence. His evidence show the following injuries on his body:

*“Nature – nature of following described punctured – incised wound is dangerous - Position, dimensions and direction – single punctured - incised wound elliptical in shape. It is located in the left thorns lateral and below to the nipple, 45 cms for the top of head, and obliquely oriented with upper corner 12 cms, lower corner 4 cms away from midline to the left. It is 4 cms long and 1 cm wide at the skin surface, there is no abrasion or bruising at wound margin. Edge are some swollen and red. Track is 12.5 cms deep directed from left to right, front to back and angulate slightly downward. The track perforates the chest wall through fourth intercostal space, perforates ungula of upper lob of left lung, the pericardium sac, and penetrate the heart perforating the left lateral ventricle of dimensions 2x1x1 cm. The entire wound track is infiltrated with blood and 1200 ml of liquid and clotted blood is found in the left chest cavity clots are rubbery and firm. There is no exit wound.”*

9. The evidence of PW – 10 [Dr. Mohammad Sharif Bismilakh Khan Pathan] show that he performed the postmortem on the body of deceased - Prakash Khandare on 12.08.2015 and he found the cause of death as **“Death due to cardio respiratory arrest, due to hemorrhagic shock, due to massive**

**hemothorax with heart and lungs injuries, due to stab injury over chest wall”**. The postmortem report at Exhibit – 55 is brought on record in his evidence. His evidence show the following injuries:

*“1. Stab wound: over anterior chest Wall, size of injury was 3x6 cm, edges of injury were sharp, with bleeding from that particular site. Injury was communicating left thoracic cavity.  
2. Two stab injury over right chest wall. Posteriorly at 7<sup>th</sup> intercostal space. Size of first injury over right chest wall was 3x4 cm and size of second stab injury over right chest was 3x3 cm. Both these stab injuries were communicating to right thoracic cavity.”*

10. From the above discussed medical evidence, it is seen that the death of deceased - Santoba Agham and deceased - Prakash Khandare are due to the injuries found on their bodies. Even from the cross-examination of these two Doctors, it is seen that the said injuries and the cause of death are not seriously challenged. Thus, there is no difficulty in holding that the Prosecution has proved that deceased - Santoba Agham and deceased - Prakash Khandare died Homicidal deaths.

11. In establishing the Charge against the Appellant, the Prosecution’s case primarily rests upon the testimonies of PW – 6 [Prakash Rambhau Ambhore], who is examined as eye witness to the incident, PW – 3 [Ranjana Baban Khandare] and PW – 2 [Mangal Prakash Khandare] before whom the deceased – Prakash Khandare gave oral dying declaration and PW - 1 [Kaikaibai Santoba Agham] who is the Informant / wife of deceased – Santoba Agham.

12. PW - 6 [Prakash Rambhau Ambhore] belong to the Village of deceased - Santoba Agham. His evidence show that on 11.08.2015, there was weekly market day at Village Sevli and he had gone for purchasing in the said market. Deceased – Santoba Agham had also come to the weekly market for selling agricultural equipments. They met each other between 1:00 pm to 1:30 pm. While he was returning at about 4:00 pm, he noticed PW - 1 [Kaikaibai Santoba Agham] in the bullock-cart and he asked her whether she wants to return to the Village. PW - 1 [Kaikaibai Santoba Agham] asked him whether he had seen her husband. Therefore, he went in search of her husband. When he reached near the house of Appellant, which was near the country liquor shop, he heard that quarrel was going on in the house of Appellant and so he went near the house of Appellant and heard loud talking between the Appellant and both the deceased i.e. Santoba Agham and deceased - Prakash Khandare. He entered the house of Appellant. The Appellant went in the Chappar [front side room used for cooking] of the house and brought a knife. The Appellant stabbed in the stomach of deceased - Santoba Agham with the said knife and when deceased - Prakash Khandare went to intervene, the Appellant stabbed him on the neck, waist and chest with the said knife. Thereafter, the Appellant threw the knife and fled away towards weekly market.

13. PW – 6 [Prakash Rambhau Ambhore] got frightened and narrated the said incident to PW – 1 [Kaikaibai Santoba

Agham], who is also his maternal aunt. His maternal aunt and two other women rushed towards the spot of incident. The injured – Prakash Khandare was semi conscious and was taken to Hospital on the hand-cart and deceased - Santoba Agham was lying in the house of Appellant. As the injured – Prakash Khandare and Santoba Agham questioned the Appellant as to why he was behind Yamunabai [divorced wife of the Appellant], the Appellant committed the said crime. He knew the Appellant and identified him at the time of his evidence.

14. The cross-examination of PW – 6 [Prakash Rambhau Ambhore] show that, his evidence that, he entered the house of Appellant, the Appellant went in the Chappar of house and brought the knife, the Appellant stabbed on the right side of deceased - Santoba Agham [only to the extent of right side], the Appellant stabbed on the neck and waist of deceased - Prakash Khandare, the Appellant threw the knife in the house and ran away were the improvements/omissions, which were proved from the evidence of PW – 16 [Prakash Shamrao Sapkale], who was the Investigating Officer.

15. Though PW – 6 [Prakash Rambhau Ambhore] claims to be the eye witness to the incident and attended funeral of deceased – Santoba Agham on the next day, he did not inform anybody that he witnessed the incident. Though, Police visited his house on the next day of funeral of deceased – Santoba Agham and he met the Police, he did not narrate the incident

to the Police. Admittedly, his statement is recorded on 19.08.2015, which is after eight (08) days from the incident. Though deceased - Santoba Agham and he were related, he maintained silence about his witnessing the incident for eight (08) days. This is really strange.

16. The cross-examination of PW – 16 [Prakash Shamrao Sapkale], who investigated the crime, show that till 19.08.2015 no witness informed him about the presence of PW – 6 [Prakash Rambhau Ambhore] on the spot of incident. It has come in his evidence that on the next day of incident, he visited the village of PW – 6 [Prakash Rambhau Ambhore] and on that day, he did not inform him about the incident. The evidence further show that he inquired with PW - 6 [Prakash Rambhau Ambhore] about the delay of eight (08) days for giving statement and he told that as he was a poor person and patient of blood pressure, the delay was caused. His evidence show that PW – 6 [Prakash Rambhau Ambhore] on his own appeared before him for giving statement. The explanation put-forth by the Prosecution's witness for delay in giving statement is unacceptable.

17. Further, PW – 1 [Kaikaibai Santoba Agham] nowhere deposed that PW – 6 [Prakash Rambhau Ambhore] met her in the weekly market and conversation took place between them as deposed by PW – 6 [Prakash Rambhau Ambhore]. Thus, in the backdrop of the above discussed evidence available on record, the evidence of PW - 6 [Prakash Rambhau Ambhore]

that he witnessed the actual incident, is required to be seen with doubt.

18. The evidence of PW – 3 [Ranjana Baban Khandare] show that deceased – Santoba Agham was her maternal uncle and deceased - Prakash Khandare was cousin brother of her husband. The Appellant was also in their relation. The Appellant married one Yamunabai, however, there was divorce between the Appellant and Yamunabai. Even then, the Appellant used to go and meet his divorced wife – Yamunabai. On 11.08.2015 in between 4:45 pm to 5:00 pm, when she was in the house, she heard weeping of PW – 2 [Mangal Prakash Khandare]. So she herself and her husband went to the house of PW – 2 [Mangal Prakash Khandare] and inquired as to what happened. The PW – 2 [Mangal Prakash Khandare] informed her that the Appellant had beaten her husband. They all rushed towards the house of Appellant. Both the deceased i.e. Santoba Agham and Prakash Khandare were seen lying in the house of Appellant in a pool of blood. Her husband went towards the market and brought the hand-cart and took injured – Prakash Khandare on the hand-cart. On the way, they met PW - 1 [Kaikaibai Santoba Agham]. Her husband informed PW - 1 [Kaikaibai Santoba Agham] that her husband deceased - Santoba Agham was lying in the pool of blood.

19. Further, the evidence of PW – 3 [Ranjana Baban Khandare] show that, they brought injured – Prakash

Khandare to their house on the hand-cart. They noticed injuries on the chest of injured – Prakash Khandare and inquired with him about the same. *“Injured–Prakash Khandare narrated that he and deceased – Santoba Agham had been to the house of Appellant to convince him as to why he was wandering behind Yamunabai after divorce had taken place and deceased – Santoba Agham gave two slaps to the Appellant. Deceased – Santoba Agham and the Appellant entered in the house of Appellant. The Appellant brought the knife from his house and assaulted the deceased – Santoba Agham and when he intervened, the Appellant assaulted him”.*

20. Further, the evidence of PW – 3 [Ranjana Baban Khandare] show that they took deceased - Prakash Khandare to Hospital at Sevli and from there, he was referred to Government Hospital at Ner and thereafter, he was referred to Government Hospital, Jalna, where he was declared dead. Her statement was recorded before the learned Magistrate and Police. Her statement before the learned Magistrate under Section 164 of Cr.PC is brought on record at Exhibit – 28. She identified the Appellant at the time of her evidence.

21. It is seen from her cross-examination that on the day of incident though the Police visited her house and the spot of incident, she did not meet the Police. She was with injured husband – Prakash Khandare. However, the evidence of PW – 2 [Mangal Prakash Khandare] show that while recording her

statement which was on the day of incident, PW - 3 [Ranjana Baban Khandare] and her husband were present with her and the Police had interrogated with them. The PW - 3 [Ranjana Baban Khandare] admits in her cross-examination that on the day of incident, the Police visited her house and the spot of incident. If this is so, not disclosing about the incident by PW - 3 [Ranjana Baban Khandare] to the Police at that point of time creates doubt about her testimony that deceased – Prakash Khandare gave oral dying declaration to her.

22. The cross-examination of PW – 3 [Ranjana Baban Khandare] show that her evidence, she asked PW – 2 [Mangal Prakash Khandare] as to what happened, PW – 2 [Mangal Prakash Khandare] narrated that the Appellant had beaten to her husband, Santosh Agham and Prakash Khandare were seen lying in the house of Appellant [omission is restricted to the word ‘house’], they brought Prakash Khandare to their house on hand-cart [omission is restricted to word ‘to their house’], Santoba Agham and Appellant entered in the house, Prakash Khandare went to convince them, were improvements / omissions, which were proved from the evidence of PW – 16 [Prakash Shamrao Sapkale], who was the Investigating Officer.

23. The evidence of PW - 2 [Mangal Prakash Khandare] show that she was the wife of deceased – Prakash Khandare and they were residing together at Village Sevli. On 11.08.2015, when her husband deceased – Prakash Khandare and deceased

– Santoba Agham were sitting in her house, the Appellant abused one Santosh Munjaji Agham. The Appellant and his wife – Yamunabai were divorced, even then the Appellant used to visit the house of Yamunabai. The said Santosh Agham questioned the Appellant as to why he was doing so i.e. visiting his divorced wife – Yamunabai. Her husband deceased – Prakash Khandare and deceased – Santoba Agham went to the house of Appellant to convince him. She also went to the house of Appellant. Deceased – Santoba Agham was lying in the house of Appellant in a pool of blood. Her husband was coming from the county liquor shop and the Appellant stabbed on the left chest of her husband i.e. Prakash Khandare. She got frightened and came to her house and reported the incident to her father and mother-in-law. PW – 3 [Ranjana Baban Khandare] asked her as to what happened and she informed PW – 3 [Ranjana Baban Khandare] that deceased – Santosh Agham and her husband were lying in the pool of blood in the house of Appellant.

24. The further evidence of PW – 2 [Mangal Prakash Khandare] show that she, PW-3 [Ranjana Baban Khandare], her mother-in-law went to the house of Appellant. PW – 3 [Ranjana Baban Khandare] brought the hand-cart. Deceased – Prakash Khandare was brought to her house on the hand-cart where his shirt was removed. As deceased – Prakash Khandare was alive, she and PW – 3 [Ranjana Baban Khandare] asked him as to what happened. Her husband deceased – Prakash

Khandare clearly stated that the Appellant had beaten him. Thereafter, deceased – Prakash Khandare was taken to Government Hospital at Sevli and after the primary treatment, he was shifted to Ner Hospital and from Ner Hospital, he was shifted to the Civil Hospital, Jalna. She noticed the injuries on the back side of the head of her husband, who was declared dead at Government Hospital, Jalna. She identified the article Nos.20 to 22 as the clothes of deceased – Prakash Khandare. Her statement recorded before the learned Magistrate and brought on record at Exhibit – 24.

25. The cross-examination of PW – 2 [Mangal Prakash Khandare] show that her evidence that, her husband and Santoba Agham were sitting in her house, the Appellant abused Santoba Munjaji Agham, Santoba Agham was lying in the house of Appellant in the pool of blood, her husband was coming from country liquor shop, the Appellant stabbed on the left chest of her husband, by seeing such incident she got frightened, PW – 3 [Ranjana Baban Khandare] asked her as to what happened and she narrated that deceased – Santoba Agham and her husband were lying in the house of Appellant in the pool of blood, PW – 3 brought the hand-cart and her husband was alive, were the improvements / omissions, which were proved from the evidence of PW – 16 [Prakash Shamrao Sapkale] who was the Investigating Officer.

26. In her cross-examination, she admits that she told the

Police in Sevli Hospital, Ner Hospital and Jalna Hospital that her husband narrated her that the Appellant assaulted him. However, in the evidence of PW – 16 [Prakash Shamrao Sapkale], who was the Investigating Officer, he denies about the same.

27. Though PW – 3 [Ranjana Baban Khandare] and PW – 2 [Mangal Prakash Khandare] deposed that the injured – Prakash Khandare narrated about the assault by the Appellant i.e. dying declaration after he was brought to their residence on the hand-cart, the evidence of PW - 1 [Kaikaibai Santoba Agham] show that when she saw injured – Prakash Khandare on the hand-cart he was unconscious. Further, the evidence of PW - 10 [Dr. Mohammad Sharif Bismilahkhan] who was the Medical Officer at Civil Hospital, Jalna and conducted postmortem of deceased – Prakash Khandare show that due to the injuries on the dead-body, his death was possible within five minutes. In his cross-examination, it has further come that according to his opinion, after receiving such injuries, the patient may go into shock. Thus, the evidence in respect of oral dying declaration to PW - 3 [Ranjana Baban Khandare] and PW – 2 [Mangal Prakash Khandare] is required to be seen with doubt.

28. The versions of PW – 2 [Mangal Prakash Khandare] and PW – 3 [Ranjana Baban Khandare] in respect of oral dying declarations by deceased – Prakash Khandare are further required to be seen with doubt as there is no evidence about

the fitness of injured – Prakash Khandare in making the oral dying declaration. It has come in the cross-examination of PW – 3 [Ranjana Baban Khandare] that one Doctor, who was residing near her house, medically examined deceased – Prakash Khandare and the said Doctor was Dr. Bangali. Admittedly, the Prosecution has not examined the said Doctor Bangali.

29. Further, there is variance in their evidence about the dying declarations as according to PW – 2 [Mangal Prakash Khandare], injured – Prakash Khandare stated of assault by the Appellant only on him, whereas according to PW - 3 [Ranjana Baban Khandare], injured – Prakash Khandare gave detailed account of the entire incident. When PW – 2 [Mangal Prakash Khandare] and PW – 3 [Ranjana Baban Khandare] were together at the time of bringing deceased – Prakash Khandare on the hand-cart, there was no reason for glaring inconsistency in respect of the oral dying declaration of deceased – Prakash Khandare. This aspect also requires their testimonies to be seen with doubt.

30. If we consider the evidence of PW – 2 [Mangal Prakash Khandare] and PW – 3 [Ranjana Baban Khandare] who claims to have visited the spot of incident together and brought the deceased – Prakash Khandare on hand-cart, there is variance on material aspect. According to PW – 2 [Mangal Prakash Khandare], injured – Prakash Khandare was brought to her

house on the hand-cart, whereas PW – 3 [Ranjana Baban Khandare] deposed that injured – Prakash Khandare was brought on the hand-cart to their house. PW – 3 [Ranjana Baban Khandare] admits in her cross-examination that her house and the house of deceased – Prakash Khandare were separate.

31. According to PW – 2 [Mangal Prakash Khandare] as seen from her cross-examination, they reached the spot of incident around 6:30 pm, whereas according to PW – 3 [Ranjana Baban Khandare], deceased was taken to PHC Sevli between 6:00 pm to 6:15 pm. There is glaring inconsistency in respect of timings in the evidence of these two star witnesses of the Prosecution. Thus, in the light of the above discussed evidence, the testimonies of PW – 2 [Mangal Prakash Khandare] and PW – 3 [Ranjana Baban Khandare] in respect of dying declarations by deceased – Prakash Khandare are discarded.

32. The evidence of PW - 1 [Kaikaibai Santoba Agham] show that on 11.08.2015, deceased – Santoba Agham went to the weekly market at Sevli in the morning at 10:00 am and she went to the said weekly market at about 2:30 pm. She met deceased – Santoba Agham in the front of shop of Laxman More, who gave her Rs.500/- for purchasing. She went for purchasing vegetables and after purchasing the vegetables, she returned back to the shop of Laxman More. She did not found her husband – Santoba Agham and she kept the vegetables in the house of daughter of her brother i.e. PW – 2 [Mangal

Prakash Khandare]. She went in search of her husband – Santoba Agham. She noticed that deceased – Prakash Khandare was brought on the hand-cart in bloody condition and PW – 3 [Ranjana Baban Khandare] informed her that her husband was lying in the house of Appellant. She rushed to the house of Appellant and saw her husband deceased – Santoba Agham lying in the pool of blood in the house of Appellant. She then raised alarm till 7:00 pm. A vehicle came and her husband was taken to Hospital. She deposed that her husband died on the next day and she lodged the report with the Police Station, which was Exhibit – 20. Thereafter, her statement under Section 164 of Cr.PC came to be recorded. She identified the articles Nos.17 to 19 as the clothes of her husband deceased – Santoba Agham.

33. The evidence of PW – 1 [Kaikaibai Santoba Agham] show that she is not the eye witness to the incident. Her further evidence that the Appellant might have demanded money to her husband for consuming liquor and since her husband refused to give the money, the Appellant stabbed him on the left side of his chest with the knife, due to which, her husband became unconscious is hearsay in nature.

34. Her cross-examination show that her evidence that, she kept the vegetables in the house of daughter of her brother, PW - 3 [Ranjana Baban Khandare] informed her that her husband was lying in the house of Appellant in bloody condition, till 7:00 pm she was alone sitting there, the

Appellant stabbed on left side of chest of her husband with knife, are the omission / improvements, which were proved from the evidence of PW – 16 [Prakash Shamrao Sapkale] who was the Investigating Officer.

35. Her cross-examination show that in her report, she had stated that her husband was lying in tin shade behind the country liquor shop. Therefore, her evidence that her husband was lying in the house of Appellant is required to be seen with doubt. The evidence of PW – 15 [Ramesh Pralhad Rathod] show that he acted as spot panch. His evidence show that the spot was situated behind the country liquor shop in village Sevli. The spot panchnama is at Exhibit – 68, which show that the spot of incident was ‘Osari’ of one house behind country liquor shop. The evidence of PW - 16 [Prakash Shamrao Sapkale], who was the Investigating Officer show that the incident had taken place in the ‘Osari’ [front portion of the house of Appellant]. Even, PW – 1 [Kaikaibai Santoba Agham] in her cross-examination admits that the incident took place in the ‘Osari’ [front side] of the house and not in the house. From this, it becomes clear that, the incident had not taken place within the fore corners of wall inside the house of Appellant. There is nothing in the evidence to show that the entry to the said ‘Osari’ was restricted or the said Osari was enclosed. In such circumstances, the burden contemplated under Section 106 of the Evidence Act, cannot be placed on the Appellant.

36. The evidence of PW – 15 [Ramesh Pralhad Rathod] who acted as panch further show that from the spot of incident, one water pouch, Chiwda (Farsan) in plastic bag, one disposable glass used for consuming liquor, one purple colour plastic glass, two country liquor bottles, bank account pass-book of Maharashtra Bank, mud, simple soil and blood mixed soil were seized under the panchnama. This indicates that liquor consumption was going on at the spot of incident. Further, PW – 1 [Kaikaibai Santoba Agham] admits in the cross-examination that at the time of incident, number of persons were consuming the liquor in the liquor shop. One can imagine the scenario at such a place and creates room for hypothesis about involvement of third person in the incident.

37. The other evidence on record is that of discovery / recovery of weapon i.e. spear (Bhala) at the instance of Appellant from his house pursuant to the disclosure under Section 27 of the Evidence Act vide memorandum and seizure panchnamas at Exhibit 64 and 65, respectively. The evidence in respect of discovery of weapon at the instance of Appellant is liable to be discarded, in view of the evidence of PW – 1 [Kaikaibai Santoba Agham], wherein, she admits that at the same time i.e. while lodging the FIR, the Police had shown her weapon and told her that the Appellant assaulted her husband with the said weapon [Article – 23] and they have seized it. Even if the evidence in respect of discovery / recovery is considered, the said discovery / recovery is after seven (07)

days from the arrest of Appellant which further renders it doubtful.

38. The evidence of PW – 1 [Kaikaibai Santoba Agham] further show that before lodging the FIR, the Appellant was arrested by the Police. While lodging the FIR, she had seen the Appellant in the Police Station. The evidence of PW – 16 [Prakash Shamrao Sapkale], who was the Investigating Officer, show that the Appellant was found present near the Police Station at Sevli and so he arrested him under the panchnama at Exhibit - 74. This indicate that the Appellant was arrested on Suspicion before lodging the FIR. This aspect show that after arrest of the Appellant, the criminal law was set in motion.

39. The next evidence is in the nature of CA reports in respect of articles seized during the course of investigation. The said CA reports are at Exhibits 87 to 90. It show that the blood group of deceased – Santoba Agham was ‘A’, the blood group of deceased – Prakash Khandare was inconclusive and the blood group of Appellant was ‘B’. The CA report at Exhibit – 87 show that the clothes which were seized from the person of Appellant i.e. articles 15, 16, 17 and 18 i.e. full short shirt, full pant, nicker and spear blade were stained with human blood and only article – 15 i.e. full shirt of Appellant was having blood stain of group ‘A’. The said CA reports in respect of the articles will not be of any assistance to the Prosecution

as the evidence of PW - 16 [Prakash Shamrao Sapkale] – Investigating Officer show that till 21.09.2015 the muddemal was lying in the Police Station. The evidence of PW - 11 [Balu Vitthal Shette], who was the Policeman show that API – Sapkale handed over to him 21 and 3 sealed packets for depositing with the chemical analysis at Aurangabad and he deposited the same, accordingly. When the clothes of Appellant and weapon were in the Police custody for a period more than one (01) months and there being no evidence that they were immediately sealed, the CA reports by themselves will not be of any assistance to the Prosecution.

40. The other evidence is that of PW - 12 [Manoj Shrikishan Jaiswal] who was running country liquor shop near the place of incident, PW - 13 [Satish Sheshrao Lagame] who was working on the said liquor shop, PW - 8 [Kailash Rasu Khandare], in whose presence, the shirt of deceased – Prakash Khandare came to be seized under the panchnama at Exhibit - 50. This evidence do not take the case of Prosecution any further when the evidence of eye witness, the evidence of witnesses before whom the oral dying declaration was made and the evidence of discovery has been shattered.

41. On evaluation of evidence available on record as discussed above, the Prosecution has failed to establish that it was the Appellant who caused the injuries on deceased – Satoba Agham and Prakash Khandare, which resulted in their

death. At the most Suspicion is created against the Appellant for the reason that the dead bodies were found in the Osari of the house of Appellant. However, that is not sufficient to confirm the conviction. Resultantly, the impugned Judgment and Order passed by the learned Trial Court needs to be interfered with. Hence, we proceed to pass the following order:

**ORDER**

- (i) Criminal Appeal is allowed.
- (ii) The Judgment and Order dated 26.09.2019, passed by the learned Additional Sessions Judge-3, Jalna, in Sessions Case No.167/2015 convicting and sentencing the Appellant for the offence punishable under Sections 302 of IPC, is quashed and set aside.
- (iii) The Appellant stands acquitted for the offence punishable under Sections 302 of IPC.
- (iv) The Appellant be released, if not required in any other case.
- (v) The fine amount, if deposited by the Appellant, be refunded to him.
- (vi) The Record and Proceedings be sent back to the learned Trial Court.

**[NEERAJ P. DHOTE, J.]**

**[R.G. AVACHAT, J.]**