

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

[1] CRIMINAL APPEAL NO.742 OF 2023

Kamlesh Narayan TalekarAppellant
Versus
The State of MaharashtraRespondent

.....
WITH

[2] CRIMINAL APPEAL NO.670 OF 2023

Sagar Ashok SalveAppellant
Versus
The State of MaharashtraRespondent

.....
WITH

[3] CRIMINAL APPEAL NO.674 OF 2023

Suraj Vijay SinghAppellant
Versus
The State of MaharashtraRespondent

.....
WITH

[4] CRIMINAL APPEAL NO.602 OF 2023

Sachin Keshav MargajAppellant
Versus
The State of MaharashtraRespondent

.....
WITH

[5] CRIMINAL APPEAL NO.640 OF 2023

**WITH
INTERIM APPLICATION NO.102 OF 2025
WITH
INTERIM APPLICATION NO.90 OF 2025**

Govind Kishan Waghela
Versus
The State of Maharashtra

.....Appellant

.....Respondent

Dr. Yug Mohit Chaudhry Advocate a/w. Anush Shetty for the Appellant in Appeal No.742/2023 and Appeal No.602/2023.

Mr. Gaurav Bhawnani, Advocate a/w. Khan Abdul Wahab, Mayanka S.R., Advocate for the Appellant in Appeal No.670/2023 and Appeal No.674/2023.

Mr. Amrish Salunke, Advocate a/w. Shraddha Shinde, Durgesh Pandey, Dipali Patil for the Appellant in Appeal No.640/2023.

Ms. Sangeeta D. Shinde, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 1st OCTOBER, 2025

PRONOUNCED ON : 14th OCTOBER, 2025

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. All these Appeals are decided by this common judgment because they arise out of the same Sessions Case and the same impugned judgment and order. For the sake of convenience, the Appellants are referred to by their status as the original accused before the trial Court. The Appellants were the accused in Sessions Case No.788/2015 before the learned Additional Sessions Judge, Greater Mumbai. The Appellant – Kamlesh Talekar in Criminal

Appeal No.742/2023 was the original accused No.1, the Appellant – Sagar Salve in Criminal Appeal No.670/2023 was the original accused No.2, the Appellant – Suraj Singh in Criminal Appeal No.674/2023 was the original accused No.3, the Appellant – Sachin Margaj in Criminal Appeal No.602/2023 was the original accused No.4 and the Appellant – Govind Waghela in Criminal Appeal No.640/2023 was the original accused No.5.

2. The learned Judge, vide his judgment and order dated 29.3.2023, convicted and sentenced the accused as under :

- i. They were convicted for commission of the offence punishable under Section 302 read with Section 149 of IPC and were sentenced to suffer RI for life and to pay a fine of Rs.5,000/- each and in default to suffer RI for six months;
- ii. They were convicted for commission of the offence punishable under Section 302 read with Section 34 of IPC and were sentenced to suffer RI for life and to pay a fine of Rs.5,000/- each and in default to suffer RI for six months;
- iii. They were convicted for commission of the offence punishable under Section 120-B of IPC and were sentenced to suffer RI for

life and to pay a fine of Rs.5,000/- each and in default to suffer RI for six months;

- iv. They were convicted for commission of the offence punishable under Section 143 of IPC and were sentenced to suffer SI for six months and to pay a fine of Rs.1,000/- each and in default to suffer SI for one month;
- v. They were convicted for commission of the offence punishable under Section 144 and were sentenced to suffer SI for one year and to pay a fine of Rs.1,000/- each and in default to suffer SI for one month;
- vi. They were convicted for commission of the offence punishable under Section 147 and were sentenced to suffer SI for one year and to pay a fine of Rs.1,000/- each and in default to suffer SI for one month;
- vii. The accused were acquitted from the charges of commission of the offence punishable under Section 324 of IPC.
- viii. All the substantive sentences were directed to run

concurrently. They were granted set off under Section 428 of Cr.P.C.

3. Heard Dr. Yug Mohit Chaudhry, learned counsel for the Appellants in Appeal Nos.742/2023 & 602/2023, Mr. Gaurav Bhawnani, learned counsel for the Appellants in Appeal Nos.670/2023 & 674/2023, Mr. Amrish Salunke, learned counsel for the Appellant in Appeal No.640/2023 and Ms. Sangeeta D. Shinde, learned APP for the Respondent-State.

4. The prosecution case is that the deceased in this case Ganesh Ghadigaonkar @ Babu, Gurdipsingh Nagpal and Shekhar Patil were arrested in connection with C.R. no.41/2015 registered at RCF Police Station on 11.2.2015 on the allegations of attempting to commit murder of the accused No.1 herein Kamlesh. Subsequently, they were released on bail. Therefore, there was enmity between Ganesh and Kamlesh. The incident, which is the subject matter of this case has occurred on 15.6.2015. In the night of 14.6.2015, Gurdipsingh, his friend Gaurav Kochar and one Ashish had met and were chitchatting. Ganesh met them. All of them decided to have a drinking session. They went to Rasika Bar at Ghatkopar. They spent

about three hours there. Ashish went home. They then decided to have food. Therefore, they came to Chembur Camp area. They first went to Zaika Hotel but food was not available there. Therefore, Gurdipsing went to Mayur Hotel. He ordered food. In the meantime, Ganesh saw his friend Shinde at Daryasagar Hotel. He went to meet him. Both the hotels were close to each other. While Gurdipsingh was coming out, he saw that the accused Nos.1, 2 and 3 had approached Ganesh. The accused No.1 gave a blow with a knife on the back of Ganesh's head. The accused Nos.4 & 5 also joined the other three accused. All of them assaulted Ganesh with the weapons like knives, guptis and a chopper. Ganesh was brutally assaulted. Initially Gurdipsingh tried to intervene, but, the accused No.3 tried to assault him with his weapon. It brushed against Gurdipsingh's elbow. He got frightened and went away at a short distance. He saw the incident from that place. Their friend Gaurav who had accompanied Ganesh and Gurdipsingh also witnessed the incident. He was also threatened. After the assault, all the accused left the spot on their motorbikes. Within a short time, a police van arrived there. Gaurav had left the spot out of fear but Gurdipsingh was present at the spot. He tried to help but by that time because of the

brutal assault, Ganesh had already succumbed to his injuries. After the police reached the spot, another vehicle was called and Ganesh was kept in that vehicle. He was taken to Rajawadi hospital. Gurdipsingh was taken to Chembur police station. His statement was recorded. It was treated as an FIR. The offence was registered vide C.R. No.157/2015 at Chembur police station. The FIR was lodged at 1.20 a.m. in the night on 15.6.2015. The investigation commenced. Gurdipsingh showed the spot of incident to the police. The spot panchnama was conducted. In the meantime, Gaurav was also called by the police. His statement was recorded. Ganesh was taken to Rajawadi hospital as mentioned earlier, but, he was already dead. Inquest panchnama was conducted. His clothes were seized. There was a small foldable knife in his hand. It was seized. His dead body was sent for postmortem examination. The investigation continued. The accused Nos.1 and 2 were arrested in the early hours on 15.6.2015.

5. The accused No.3 was arrested on 16.6.2015. The accused No.4 was arrested on 20.6.2015 and the accused No.5 was arrested on 26.6.2015.

6. During the investigation, the clothes of the accused were seized. The clothes of the accused Nos.1 and 2 were seized at the time of their arrest. The other accused produced their clothes from their house. Three sharp weapons were recovered at the instance of the accused No.1. Two weapons were recovered at the instance of the accused No.5. All the articles were sent for Chemical Analysis. The C.A. report shows that the clothes of all the accused, the clothes of the deceased, the seized weapons and the small knife found in the hand of the deceased were all stained with blood, but, the blood grouping was inconclusive. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

7. During the trial, the prosecution examined 22 witnesses. Out of them, two eye witnesses were important. The other witnesses were pancha witnesses, the medical officer and the police witnesses including the investigating officers and the carriers of the muddemal articles to the FSL Kalina.

8. The defence of the accused was of total denial. They examined one defence witness i.e. one Shinde who was a friend of

the deceased. According to him, he had seen the incident in which four to five unknown persons had assaulted the deceased. He was knowing all the accused as well as the two eye witnesses in this case, but, according to him the assault was caused by the unknown persons.

9. The learned Judge considered the evidence on record, the defence led by the accused and the arguments. The learned Judge believed the prosecution witnesses i.e. mainly the eye witnesses and also the evidence of recovery. He relied on the C.A. report showing presence of blood on the articles. He disbelieved the defence witness. The learned Judge, based on these circumstances and evidence convicted and sentenced the Appellants, as mentioned earlier.

10. In this case, undoubtedly, the evidence of all the eye witnesses is important. Two witnesses are examined by the prosecution and one witness is examined by the defence. Their evidence determines the decision of this case. Therefore, their evidence is required to be considered with greater care than the other evidence.

11. PW-1 Gurdipsingh Nagpal was the first informant and an eye witness. He deposed that the deceased Ganesh was his friend. On 14.6.2015, he was sitting with his friends Gaurav (PW-5) and Ashish near Gandhi market area. At about 9.00 p.m., Ganesh came there. He asked PW-1 as to why PW-1 was not meeting him. PW-1 told him that his father had told him to be cautious after he was released from jail. All of them had a little conversation and then at 10.30 p.m., Ashish suggested that they could go to have drinks. They went to Ghatkopar. They went to Rasika Bar at Ghatkopar. They were in the bar till 12.30 in the night. Ashish left from there itself. He went to Vikhroli. PW-1 along with PW-5 Gaurav and the deceased Ganesh went to Chembur at around 12.45 a.m.. First they went to Zaika hotel to have food but there was no food there at that time. Therefore, PW-1 and Ganesh crossed the road for going to Mayur hotel, which was across the road. Gaurav waited on one side of the road and Ganesh and PW-1 crossed the road. Ganesh saw his friend near Daryasagar Bar and he went to talk to him. PW-1 proceeded to take the food parcel from Mayur hotel. Ganesh met his friend Shinde. They were having conversation. PW-1 came out of Mayur hotel. He saw that the accused No.1 Kamlesh, the accused No.2

Double and the accused No.3 Bittu came there. They encircled Ganesh. The accused No.1 Kamlesh took out a knife from a bag and gave a blow on Ganesh's head. PW-1 tried to intervene but the accused No.2 took out some weapon like gupti from a wooden cover and assaulted PW-1. According to PW-1 it caused hurt to his hand as he escaped the blow. PW-1 has named the accused No.2 as 'Double' and the accused No.3 as 'Bittu'. These three accused started assaulting Ganesh. The accused No.4 Sachin and the accused No.5 Govind also came there. All of them assaulted Ganesh @ Babu with the weapons like knives, chopper and gupti. PW-1 got frightened and did not go near them. After that, all the assailants ran away. They ran towards Zama Sweets. The police vehicle arrived there from the other side. PW-1 informed the police that the assailants had run away towards Zama Sweets. The police took him to the police station. They called another vehicle to take Ganesh to the hospital. PW-1 lodged his complaint at about 1.20 a.m. in the night. It was treated as an FIR and it is produced on record at Exhibit-48.

12. PW-1 then showed the spot of incident to the police at about 3.30 to 3.45 a.m.. The spot panchnama was prepared. PW-1 identified the accused before the Court. He pointed out to each one

of them. He called their names as Sachin Margas, Govind. When he called the name 'Double', the accused No.2 gave his name as Sagar Salve. PW-1 named and pointed to the accused No.1 Kamlesh and he pointed to the accused No.3 and called him 'Bittu'. The accused No.3 told his name as Suraj Singh. The court has recorded that PW-1 had correctly pointed the accused before the Court.

13. PW-1 was shown the muddemal articles. He identified Article-A as the chopper which was in the hands of the accused No.3 Suraj Singh. According to him, there were three knives in the hands of the accused No.1 Kamlesh, the accused No.4 Sachin and the accused No.5 Govind. He identified the clothes but could not say which knife was in the hands of which accused. He identified a gupti which according to him was in the hands of the accused No.2 Sagar.

14. PW-1 was cross-examined at length. In the cross-examination, he stated that he did not go near the deceased after the incident. The police arrived within five minutes. He did not check whether Ganesh was dead or alive. He had a mobile phone but he did not inform the police. He volunteered to say that the police were seen coming there at that time. He could not say as to

whether anyone else was present there with the deceased and himself because according to him he was stunned by the incident. He could not say whether PW-5 Gaurav had checked whether the deceased had died by then. Both of them did not help the police to lift the deceased and put him in the vehicle. PW-1 was taken to police station but was not taken to the hospital. According to him, the deceased had died by the time he was taken to the hospital. PW-1 was at the police station for two hours. Then he was taken to show the spot. He left the spot at around 5.30 a.m. to 5.40 a.m. and then he went to Rajawadi hospital. He was there for about four to five hours. He stated that he had gone to another hospital for his medical examination, but, he did not remember the name of the hospital. That hospital was at Govandi. He did not know whether there was a knife found in one hand of the deceased. He could not remember whether there were blood stains on his clothes. He had not produced his clothes before the police. He went to the house of the deceased from the hospital at Govandi and then he went to the police station. According to him, the constable had already taken his medical report to the police station.

15. PW-1 was cross-examined about the earlier offence in

which connection he was arrested. It was in connection with C.R. No.41/2015 of RCF Police Station under Section 307 of IPC. PW-1 himself, the deceased and one Shekhar Patil were the accused in that case. The deceased's father Sambhaji had lodged another complaint against the accused No.1 Kamlesh vide C.R. No.64/2015. The subject matter of C.R. No. 41/2015 registered at RCF Police Station, Chembur, Mumbai was the incident dated 11.2.2015 regarding an assault on the accused No.1 Kamlesh. In that connection, Ganesh was arrested and he was released after about 20 days from PW-1's release on bail. After his release on bail in that connection, PW-1 had not met the deceased till the date of incident when the deceased Ganesh was assaulted to death. He stated that when they were travelling in Ashish's car, he had seen Ganesh @ Babu having a nail cutter in his hand. PW-1 could not tell the exact size. The evidence shows that it was a foldable knife having 7 cm long blade and 8 cm long handle. PW-1 could not state as to why the deceased was carrying that weapon. He had not seen that weapon in Ganesh's hand when PW-1 had tried to lift him. He was shown Article 'G' produced in the Court and he identified the same as a weapon which Ganesh was carrying when they were travelling together in Ashish's car. PW-1 further

stated that he had seen that knife in a folded condition. It was folded at the handle. He admitted that Article 'G' was a knife but he added that it looked like a nail cutter. It was in a folded condition. He did not know about the exact nature of dispute between the deceased and the accused No.1 Kamlesh. He was cross-examined regarding the exact spot where the deceased was lying. According to him, the deceased was lying in front of the Daryasagar Hotel. There were about five shops between Daryasagar Hotel and Mayur Hotel. When he came out of Mayur Hotel he had not seen where Gaurav was standing. PW-1 hid himself during the time when Ganesh was assaulted. He hid himself in a gap near Mayur Hotel. He could not say from where the assailants came to the spot. He further stated that he had seen only one gupti and not three guptis used in the incident. He was cross-examined regarding the number of guptis and number of knives used in the assault. According to him, a mob of persons had gathered when the police had arrived at the spot. He had not paid attention whether Gaurav came to the spot. But he had seen Gaurav at the police station subsequently. He did not know where Gaurav had gone after he came out of Mayur Hotel. After the incident, the police had taken him by a jeep to the police station.

The police had not sent him for medical examination. Some omissions from his FIR were put to him, but they were of minor nature. His FIR did not mention that Bittu had encircled the deceased or that the accused No.1 took out a knife from the bag. He could not explain why these statements were not mentioned in the FIR, though he had stated so before the police. These omissions are quite minor.

16. In the further cross-examination he stated that he was taken to the Municipal Hospital for his treatment at about 11.00 a.m.. He was specifically cross-examined on behalf of the accused No.3 regarding name of accused No.3 Suraj which he had mentioned in the FIR as 'Bittu'. He denied the suggestion that he came to know about the accused No.3's name as 'Bittu' only at the police station after the incident. According to him, he had told the police that the accused No.3 had a chopper in his hand. He could not explain why it was not specifically mentioned in his FIR. He had told the police that the accused No.3 had a gupti in his hand.

17. The FIR statement produced on record supports PW-1's deposition. He had attributed a knife to the accused No.1, a gupti to

the accused No.2 Sagar, a knife to the accused No.4 Sachin, gupti to the accused No.3 Bittu and accused No.5 Govind. He had referred to the weapons as knives and guptis. In his deposition, he had stated that all the assailants started assault by means of weapons like knives, chopper and gupti. In his FIR, he has not referred to chopper in particular. In his deposition he had stated that the chopper article 'A' was in the hands of Suraj Singh (accused No.3). The description of the Articles in Exhibit-31 mentions that length of the chopper was 38 cm with 12 cm handle and 26 cm blade. The knife was 31 cm long; and another knife was 29 cm long. One more knife was about 42 cm long. There was one gupti which was 47 cm long. Thus, all the weapons were having similar lengths.

18. PW-5 Gaurav Gochar was another important eye witness. He has described first part of the events viz going to Rasika Bar, coming back to Mayur Hotel and described it in the same manner as described by PW-1. He stated that Ganesh was talking to Shinde and PW-1 Gurdipsingh had gone to Mayur Hotel for picking up a food parcel. At that time all the accused came there. They encircled Ganesh. The accused No.1 Kamlesh gave a blow with knife on the back side of head of Ganesh. Gurdipsingh was near Mayur hotel. He

tried coming towards the spot but the accused No.2 Sagar took out a gupti and tried to assault PW-1 Gurdipsingh. Therefore, PW-1 did not intervene further. All the accused gave blows with knife, gupti and weapons like chopper on the deceased. The accused No.3 Bittu had stabbed Ganesh on his abdomen. After the assault, they went away from the spot on their motor-bikes. PW-5 then returned home out of fear. He identified all the accused by their names correctly before the Court. He identified the Article 'D' knife as the weapon used by the accused No.1 Kamlesh. He identified Article 'E' gupti used by the accused No.3 Bittu @ Suraj.

19. In the cross-examination, PW-5 was asked about his occupation. He was working as an electrician. He knew PW-1 since past seven to eight years, and the deceased Ganesh since past six to seven years. He was knowing that Ganesh and PW-1 were arrested in connection with assault on the accused No.1 in the past. They were released on bail. After the incident, he reached home at around 1.30 a.m. to 1.45 a.m.. The police came to his house at about 3.00 to 3.30 a.m.. He was asked to come to the police station. He went there. In the meantime, he had not informed anything to his family members. He stated that as he was frightened, he did not make any

enquiry about the deceased after the assault. He knew the house of the deceased. It was about five minutes walk but he did not go to the house of the deceased because he was frightened. He was standing on the side of the Inlaks Hospital. He did not go to the opposite side when the deceased fell down. He had not seen PW-1 running away. He himself stayed at the spot for about only one or two minutes and then left from there. He had seen PW-1 Gurdipsingh standing near Daryasagar Hotel. After PW-1 had sustained injury he was seen standing near Dubey Dairy. The sketch shows that Mayur Hotel was on left side of Daryasagar Hotel and Dubey Dairy was on the right side. He had not seen the police arriving at the spot till he was there. He further stated that he knew the difference between chopper, gupti and knife, but he could not say who had used the chopper. According to him, PW-1 Gurdipsingh had suffered some bleeding injury. He had not seen any knife in the hands of Ganesh, but, according to him he had seen a nail cutter in his hand. According to him, the deceased usually used to carry it in his hand. He did not remember whether Article 'G' was with the deceased at the relevant time. Article 'G' was a knife.

20. PW-5 was also cross-examined in respect of name of the

accused No.3. He did not remember whether he had stated name 'Bittu' or 'Suraj'. He did not remember whether he had referred the accused No.3 by his name Suraj while narrating the incident to the police. In further cross-examination, he stated that he could not explain exact difference between a chopper, a gupti and a knife. In the further cross-examination he accepted that the persons standing in front of Zaika Hotel and Inlaks Hospital could not see Daryasagar Hotel but, this question is put out of context. It was not asked to him as to when he was present in front of Zaika Hotel. PW-5 has clearly described where he was standing, and from that spot the incident was visible. After the incident, he went back to his house. His mother and sister were present in the house, but he did not inform them. He lay in bed between 1.00 a.m. to 3.00 a.m.. Then the police came and called him.

21. At this stage it is advantageous to refer to the defence witness DW-1 Shinde because he also claims to be an eye witness to the incident. He deposed that he was working as a Hotel Manager in Daryasagar Bar. He knew PW-5 Gaurav, PW-1 Gurdipsingh and the deceased Ganesh. He also knew all the accused by their names. He knew all of them because they used to come to his hotel to drink

liquor. He knew the deceased because he used to visit Daryasagar Bar frequently for having liquor. He then described the the incident. According to him, four to five unknown persons approached the deceased. There was hot exchange of words. There was a scuffle. Ganesh was pushed. He fell down and he took out a Chinese knife from his waist and assaulted one person in front of him. Two other unknown persons assaulted Ganesh by a chopper and a sickle repeatedly. Then they ran away. He went near the deceased Ganesh. He told this witness that those four to five assailants were unknown to him. He further told this witness that he assaulted them, and therefore they assaulted him. According to this witness, he used a phone of waiter Rajendra Gupta and dialed '100' and informed the police that Ganesh was assaulted. The police came within ten minutes. Ganesh was put on a stretcher and was taken to Rajawadi hospital. The police made enquiries with him. He told them about the incident. The police asked him who had accompanied Ganesh. This witness told them that Gurdipsingh Nagpal (PW-1) used to be with him. The police asked the address of PW-1. DW-1 showed PW-1's house to the police. The police gave two slaps to PW-1 and brought him to the police station. According to him at the time of incident PW-1 was

not present at the spot of the incident. He further deposed that, at the time of incident, none of the accused was present at the spot of incident. The police had recorded their statement. He identified Article 'G' as the Chinese knife used by the deceased Ganesh. In the cross-examination conducted by learned APP, he stated that the police had told him that he had to give evidence in the Court. The police had recorded his statement on two occasions. He admitted that he had not narrated this incident to anybody prior to coming to the Court for giving his evidence. He came to know that all the accused were arrested after the incident within four to five days. He did not go to Court from anywhere else but stated that the deceased was assaulted by some unknown persons and not by the accused. He denied the suggestion that since there were many cases pending against the accused he was under their fear and, therefore, was not giving evidence against them.

22. PW-10 Dr. Narendra Shinde had conducted the postmortem examination. The postmortem notes were produced on record at Exhibit-85. PW-10 has described the injuries caused to the deceased. There were multiple injuries from Sr. Nos.1 to 40. All these injuries were mainly on the head, neck, chest and abdomen.

There were incised wounds and stab wounds. Their size varied from 14 cm to 3 cm. They were of the length from range of 14 cm length it was 3 cm length. There was fracture of parital bone and fracture of base of skull. There was fracture to 3rd, 4th, 5th, 6th, 7th, 8th right ribs. Both the lungs were ruptured. The liver was ruptured. The cause of death was hemorrhagic shock due to head injury with skull fracture with multiple incise wounds with multiple stab wounds with rupture of vital organs. In short, it was a brutal murder.

23. These are the main witnesses in this case. There are other panch witnesses but the arguments were advanced before us mainly in respect of these eye witnesses. However, it is necessary to refer to the other evidence in the form of pancha witnesses. PW-2 Shekhar Patil was a pancha for inquest panchnama. He was knowing the deceased. He deposed that the deceased was in the habit of having a nail cutter with him. He had seen the same nail cutter in his palm even at the time of inquest panchnama. The inquest panchnama is produced on record at Exhibit-58. Exhibit-64 is a separate panchnama for seizure of clothes of the deceased and seizure of that particular knife which was found in the hand of the deceased. Said article was produced on record as Article 'G'. It is described as a knife

having 7 cm long blade and 8 cm long handle. It was a foldable knife. It had a small chain of 4 cm length. Thus, when it was folded into the handle the length was 8 cm..

24. PW-3 Ismail Shaikh was a hostile panch. He was connected with the panchnama for recovery of two knives at the instance of the accused No.5 Govind Waghela. According to the prosecution case, the two knives were taken out by him from a small place behind a rock. The two knives were measuring 31 cm and 29 ½ cm in length. He had also produced his clothes from his house. According to the prosecution case, those clothes were worn by him at the time of incident. PW-3 had not supported the prosecution case.

25. PW-4 Mansingh Rokade was present at the time of inquest panchnama when the instrument in the hands of the deceased was seized. He described that instrument as a nail cutter. The clothes of the deceased were recovered in his presence.

26. PW-6 PC Atul Sawant was a Muddemal Clerk. He had carried the muddemal articles seized till 18.7.2015 to FSL. He had carried those articles, viz., blood samples, hairs, nail clippings of the accused, knives, the clothes of the accused and the deceased to FSL,

Kalina.

27. PW-7 Vilas Ingole was a pancha for the panchnama under which the clothes of the accused No.3 were seized at his instance from his house. The panchnama is produced on record at Exhibits-76 & 76A. It does not specifically mention that there were blood stains on the clothes. But the pancha had explained in the cross-examination that the blood stains were not clearly visible and, therefore, it was not mentioned so. The C.A. reports show presence of blood on his clothes as well.

28. PW-8 Adhikrao Shinde had taken the deceased to Rajawadi Hospital. He deposed that he received a message on their wireless at about 1.30 a.m. on 15.6.2015 that a dead body was lying in front of Daryasagar Bar, Chembur. Their staff on wireless van went to the spot. The detection staff had already arrived there. They were waiting for PW-8's van. PW-8 and others took the dead body to Rajawadi Hospital. The doctor examined and declared him as dead. According to him, Gurdipsingh was present on the spot and he was asking the detection staff for help.

In the cross-examination, he deposed that he could not

give description of Gurdipsingh neither could he identify Gurdipsingh when his evidence was recorded.

29. PW-9 Police Nayak Sheshrao Tiwale was a muddemal clerk. He had carried 19 sealed packets to Kalina, FSL on 18.6.2015. Those articles were found at the spot. He also carried the clothes of the deceased and the clothes of the accused Nos.1,2 and 3.

30. PW-11 Satish Kamble was a pancha for the spot panchnama which is produced on record at Exhibit-93. He has deposed about the seizure of articles from the spot. According to the prosecution case, the footwear of the deceased and the footwear of the accused No.2 were seized from the spot. The spot of incident is not really in dispute.

31. PW-12 Shashi Pandey was a pancha, in whose presence, the clothes of the accused No.4 Sachin were seized on 26.6.2015. They were seized from his house at his instance. He identified the accused No.4 correctly in the Court.

32. PW-13 Atmaram Dait was a pancha, in whose presence the accused Nos.1 & 2's clothes were recovered, but, he did not depose about the same during his deposition. Therefore, his

signature on that panchnama was marked as Exhibit-101. He was not declared hostile and was not cross-examined by the learned APP. According to the prosecution, he was a pancha when accused No.4 had shown the place where he had hid himself at Ghansoli.

33. PW-14 Sampati Aldar was a pancha in whose presence the weapons were produced by the accused No.1, but, he did not support the prosecution case and he was declared hostile. The panchnama is produced on record at Exhibit-105A, which mentions that one gupti, one knife and one chopper were recovered at the instance of the accused No.1 from near Ashish Theater from the bushes. The gupti was 47 ½ cm long. The knife was 42 cm long and the chopper was 38 cm long.

34. PW-15 HC Nana Gophne was the driver of a mobile van. On that day, he was on patrolling duty at 1.30 a.m.. On 15.6.2015 ASI Patil received a message and directed this witness to take the vehicle to the spot where the dead body was lying. He helped other staff members to keep the dead body in the mobile van. PW-1 Gurdipsingh was present there. He informed about the incident to the police. The statement of PW-15 was recorded on 18.6.2015 and

at that time he had stated that PW-1 had told him that 2-3 persons, namely, Sagar and Sachin had assaulted the deceased.

35. PW-16 Rupesh Mohite was another pancha for recovery of weapons at the instance of the accused No.1, but, he had also turned hostile.

36. PW-17 API Salim Khan was attached to Chembur police station at the relevant time. He received information about the incident. He went to the spot. The detection staff was already present at the spot. PW-1 Gurdipsingh was present there. Sr. PI. instructed PW-17 to take Gurdipsingh to the police station. PW-17 recorded Gurdipsingh's statement at Chembur police station. In the meantime, he received a phone call that the deceased was declared dead by the doctors at Rajawadi Hospital. He recorded the complaint of Gurdipsingh and registered the offence vide C.R. No..157/2015 at Chembur police station mainly under Section 302 of IPC. He supervised the preparation of inquest panchnama. A small knife found in the right hand of the deceased was seized. He recorded the statement of Sushil Shinde (DW-1). He recorded statements of other witnesses including the police witnesses who had reached the spot.

He sent the articles for chemical analysis.

In the cross-examination, he stated that the phone call was received on the landline of Chembur police station at 1.15 a.m., but, he did not know who had made the phone call. PW-1 was with him when he went to the police station from the spot of incident. He had not sent PW-1 to the residence of Sambhaji Ghadigaonkar i.e. father of the deceased. He had not sent PW-1 for alcohol test. He admitted that the clothes of the eye witnesses needed to be seized. He had not sent PW-1 for medical examination. He admitted that PW-1 was injured but he had not made any request for medical help. He further volunteered that PW-1 told him that those were minor injuries and he would take medical help later on. He proved omissions from the FIR and the police statement. He had not seen the CCTV footage of any of the hotels at the spot. He did not know whether CCTV was installed there. He was there at the spot for about half an hour. PW-1 had not accompanied him to the hospital. In the cross-examination on behalf of the accused No.3 he stated that he had not asked PW-1 about the full name and address of the accused (referred to by PW-2 as Bittu). PW-1 had not referred to the name 'Suraj Singh' when he took the name of 'Bittu'. He denied the

suggestion that 'Bittu' and 'Suraj Singh' were two different persons.

37. PW-18 API Malhari Kokre was another investigating officer. He had gone to the spot. He had examined the spot. On 15.6.2015 he arrested accused No.3 Bittu @ Suraj Singh. On 17.6.2015 at the instance of Suraj his clothes were recovered from his house. On 24.6.2015 he had shown the place where he had concealed himself. On 26.6.2015, the accused No.4 Sachin Margaj's clothes were recovered at his instance. On 26.6.2015, the accused No.5 Govind was arrested. On 28.6.2015, the clothes and weapons were recovered at the instance of the accused No.5 Govind. In the cross-examination, he stated that the neighbours had confirmed that Suraj Singh was Bittu, but, he had not recorded the statements of neighbours because Suraj Singh had created terror and the witnesses were not ready to give the statements.

38. PW-19 Sharad Jadhav was a pancha witness in whose presence the clothes of the accused No.1 Kamlesh and the accused No.2 Sagar were seized.

39. PW-20 PI Dnyaneshwar Kolham was another investigating officer. Under his supervision, the weapons were

recovered at the instance of the accused No.1. The panchnama was produced on record at Exhibit-105. The plastic bag with weapons was recovered from the bushes near Ashish Theater. He identified those weapons before the Court. They were a chopper, a knife and a gupti.

40. PW-21 API Prakash Kalange had prepared the arrest panchnama of the arrested accused No.1 and 2 on 15.6.2015. Their clothes were seized in his presence.

41. PW-22 PI Viswanath Kolekar had completed the investigation and had filed the chargesheet. PW-22 has referred to the complaint dated 9.6.2015 made by the deceased Ganesh expressing apprehension to his life from the accused No.1 Kamlesh and the accused No.4 Sachin.

. This is the evidence led by the prosecution.

42. The defence counsel led by Dr. Yug Mohit Chaudhry made the following submissions:

- i. The entire prosecution case depends on the evidence of PW-1 and PW-5. PW-1 is not a reliable witness, which can be seen

from his evidence and his conduct. According to the prosecution case he sustained the injuries on his right hand but the prosecution has not produced any medical record to support that case. The evidence of an injured witness is always important and, therefore, if the prosecution was claiming that he had suffered injuries during the incident, it was necessary for the prosecution to have produced the medical certificate regarding his injuries to establish his presence at the spot.

- ii. PW-1 had a definite reason to implicate the accused falsely. PW-1 himself was an accused in the previous offence in which the accused No.1 Kamlesh was assaulted by the deceased and PW-1 himself. Therefore, he had a grudge against the accused No.1 and his friends. PW-1, therefore, was an interested witness, and his evidence needs close scrutiny and independent corroboration. Dr. Chaudhry relied on certain judgments in support of this contention. However, there is absolutely no quarrel about this proposition that the evidence of the interested witness needs close scrutiny, particularly when he has a vested interest in implicating the accused. The proposition submitted by Dr. Chaudhry in this behalf is

acceptable and, therefore, it is not necessary to refer to the judgments relied on by him in that behalf.

- iii. PW-1 has suppressed the genesis of the incident. A knife was actually found in one hand of the deceased which clearly meant that the incident was something else. The genesis was suppressed by PW-1. He has not said a word about the deceased using that knife against any of the assailants. PW-1 has deliberately described this as a nail cutter and not a knife. When he was shown the Article 'G' he had to admit that it was a knife and not a nail cutter. He had failed to explain why the deceased was carrying a knife in his hand at the time of assault.
- iv. PW-1 has given deliberately false answers in respect of the treatment he took for his injuries. First of all, no medical papers were produced by the prosecution. PW-1, at some stage, had stated that the medical papers regarding his injuries were with one police constable. He has not even given the name of the hospital where he had taken treatment for his injuries. Initially, he had gone to Rajawadi hospital to see the deceased.

He was present there for about 4-5 hours, but he did not take any treatment at Rajawadi Hospital. Instead, he claims to have gone to a hospital at Govandi at 11.00 a.m.. He insisted that the police did not send him for medical examination, but he did not explain as to why his medical papers were with one constable.

- v. The learned Judge has acquitted the accused for causing injuries to PW-1 and, therefore, all of them were acquitted from the charges of commission of an offence punishable under Section 324 of IPC.
- vi. The conduct of PW-1 was completely unnatural. He did not seek assistance from anybody after the assailants had fled from the spot. He had not helped his friend's body to be kept in the police van. He did not try to help him after the assailants had left the spot and by the time the police had reached there. His blood stained clothes were not seized. Those clothes could have established his presence. The spot where he actually hid himself is not clearly brought out by the prosecution. As per PW-5, PW-1 was in front of Dubey Dairy, which on the other

side of spot of incident compared to Mayur Hotel. PW-1 claims to have seen the incident from near Mayur Hotel.

vii. PW-1 has not described the weapons properly and he has given contrary answers regarding the nature of weapons.

viii. PW-5 was equally an unreliable witness. According to him, the incident could not be seen from Zaika Hotel which was inside the lane and he had admitted that from that spot Daryasagar Hotel was not visible. PW-5 has also suppressed the genesis of the incident, as he had not referred to the use of a knife by the deceased. He had also described that weapon as a nail cutter which was in the hands of the deceased. His conduct is absolutely unnatural. After the incident he immediately rushed back home. He lay on his bed between 1.00 a.m. to 3.00 a.m. until the police came to take him to the police station. He did not accompany his friend the deceased to the hospital. He did not inform the father of the deceased, who was staying nearby. He did not describe the incident in sufficient particulars. According to Dr. Chaudhary he was a got

up witness.

- ix. In addition to these statements, the learned Counsel Shri Bhawnani, appearing for the accused No.3, submitted that PW-1 had named accused No.3 as 'Bittu', but, there is no evidence that the accused No.3 was known as 'Bittu'. No independent evidence is led in that behalf. The prosecution, therefore, has not established the identity of the accused No.3 and that he was known as 'Bittu'.
- x. Learned counsel for the defence then referred to the evidence of DW-1 and submitted that his evidence is absolutely reliable and, therefore, based on this evidence the accused deserve to be acquitted. They submitted that DW-1 Shinde admittedly was present at the spot because his presence is mentioned by PW-1 and PW-5. DW-1 has stated that he was knowing all the accused by names. He was also knowing PW-1, PW-5 and the deceased by names. Therefore, if the accused Nos.1 to 5 had assaulted the deceased, and if he had seen the incident he would have definitely stated that the accused had assaulted the deceased; but his case is specific. He has stated that the

deceased was assaulted by unknown persons. He has not suppressed the genesis of the incident, as he has stated about the scuffle between the deceased and four to five unknown persons during which the deceased was pushed. He fell down. He got up. He took out his knife and gave a blow to one of the assailants. This incident is more probable. He was a natural witness because he was Manager at Daryasagar Hotel, which was near the spot. The incident had taken place in front of that hotel.

- xi. As far as recovery of weapons and the clothes is concerned, that evidence is innocuous because, though there was blood found on the clothes of the accused, the blood grouping was inconclusive. The prosecution has not established conclusively that the clothes of the accused had the blood of the deceased. The weapons were recovered from open space accessible to all. Most of the panchas have turned hostile and, therefore, this evidence cannot be used as a corroborative piece of evidence.

43. On the other hand, learned APP submitted that there is no reason to disbelieve PW-1 and PW-5. They were the natural eye

witnesses. PW-1 had escaped the blow, as can be seen from the evidence, and, therefore, there was no medical certificate mentioning the injury. There were threats to those who came to help the deceased and, therefore, the conduct of both PW-1 and PW-5 cannot be said to be unnatural as they had tried to hide themselves and could not help the deceased. The accused were carrying the deadly weapons. Therefore, it was not possible for either of these witnesses to have helped the deceased. The investigation had revealed that Bittu and Suraj Singh were the names of the same person. The neighbours and other witnesses could not be examined because of the fear created by Suraj Singh. PW-1 and PW-5 corroborated each other. They were the natural witnesses because they had accompanied the deceased. They were friends. Both of them spoke about the presence of each other. There is no evidence to show that the deceased had used that knife. Therefore, merely because the deceased was carrying a knife, it would not mean that there was some other incident and not the incident as described by PW-1 and PW-5.

44. PW-22 has stated that the deceased had lodged a complaint only six days prior to the incident, expressing fear at the

hands of the accused. There was a clear motive for commission of this offence because the deceased had assaulted the accused No.1 in the earlier case. There were 40 injuries on the dead body. It was a brutal murder. Therefore, the intention and design was clear, which had not occurred on the spur of the moment as submitted by learned counsel for the Appellants based on evidence of DW-1 Shinde as a retaliation of the blow given by the deceased. There is corroborative evidence of recovery of weapons and blood stained clothes. The C.A.. report shows blood on the clothes and the weapons. The defence witness is absolutely unreliable. He was under the fear of the accused and had given evidence to support the accused.

45. We have considered these submissions. As rightly submitted by learned counsel for the defence, the case depends on the quality of evidence of the eye witnesses. It is also rightly submitted that PW-1 at least can be termed as an interested witness. Therefore, we have scrutinized his evidence closely. Though his evidence is criticized by the learned defence counsel, we find that there is hardly any infirmity in his evidence. Evidence of interested witness, if found reliable can be accepted. PW-1 and PW-5 have consistently deposed that they had met the deceased in the night at

around 9.00 p.m., then all of them had gone to Rasika Bar and had a drinking session, one of their friend Ashish left from that place and after that the deceased with these two witnesses decided to have food at Chembur. PW-1 and PW-5 have consistently deposed about the same, and this story is not destroyed in the cross-examination. After that PW-1 went to Mayur Hotel to collect the food parcel. PW-5 waited across the road. The deceased and PW-1 had crossed the road. The deceased, then, went to Daryasagar Hotel, which was in the vicinity, to meet his friend Shinde i.e. DW-1. Though it was submitted by learned counsel for the defence that PW-5 could not have witnessed the incident as he had admitted that from the lane in front of Inlaks Hospital the spot in front of Daryasagar Hotel was not visible. However, that question is put out of context in the cross-examination. PW-5 has never stated that he had remained in the lane in front of Intaks Hospital and he had not gone with the deceased and PW-1 towards Mayur Hotel. PW-5 has clearly stated that he waited across the street and the deceased and PW-1 had crossed the street to go towards Mayur Hotel. Therefore, both PW-1 and PW-5 were in a position to witness the incident.

46. PW-1 and PW-5 both consistently deposed about the

incident in sufficient details. As the deceased was talking with DW-1 Shinde, all the accused came there. Initially, the accused Nos.1 to 3 assaulted him and then the accused Nos.4 & 5 also joined. After the first blow was given to the deceased, PW-1 tried to reach there to intervene but a blow was directed towards him, therefore, out of fear he went back from the spot. Much emphasis was laid by the defence counsel on the fact that the medical certificate showing his injuries is not produced by the prosecution on record but the evidence shows that he had not suffered a major blow on his hand. A blow was directed towards him but it is not described that he had suffered a serious bleeding injury worth mentioning. After that, PW-1 hid himself in a gap near Mayur Hotel, and PW-5 stopped where he was. During that time the deceased was assaulted. The assailants went away. After that, PW-5 got frightened and returned home. After witnessing the assault where not less than 40 injuries were caused to the dead body, it is not unnatural that the witness would get frightened. Therefore, there was nothing unnatural for PW-5 to rush home and not tell this incident to anybody. Only his mother and sister were at home and naturally he would not tell this incident to those ladies. It is not as if he had gone to sleep. He lay on his bed. It

was a night time, between 1.00 a.m. to 3.00 a.m., by which time the police came to call him. We do not find his conduct unnatural. Though the deceased was his friend, but the manner of assault would naturally cause deep fear in his mind. The important fact is that both of them had described the incident consistently.

47. Dr. Choudhary submitted that the sketch shows that PW-5 had stated that PW-1 was on one side of the spot of incident, i.e., near Dubey Dairy; whereas Mayur Hotel was on the other side of the spot of incident. However, as can be seen, PW-5 was totally under fear. He had clearly seen PW-1 and the deceased going towards Mayur Hotel and PW-1 then trying to help the deceased when the first blow was given. Therefore, it does not matter whether PW-5 had seen PW-1 after the incident. PW-1's presence was clearly stated by PW-5. Therefore, PW-1's presence at a short distance near Dubey Dairy would not make much dent to the prosecution case.

48. Further emphasis was laid on the description of the weapons and the confusion in the minds of both these witnesses. Here, it must be noted that the length of these weapons was almost similar as was mentioned earlier. Therefore, when five assailants

were assaulting the deceased with their respective weapons, it is hardly expected that PW-1 and PW-5 would differentiate and distinguish between a chopper, a gupti and a knife of same length and would describe them in a greater details and would ascribe a particular weapon to a particulate accused. Therefore, we do not find much infirmity about description of the weapons given by both the witnesses in their depositions and in the cross-examination as well as in the FIR of PW-1.

49. Though it was argued that PW-1 is an interested witness and in particular had vested interest because he was also an accused along with the deceased in the earlier case lodged for the offence of attempting to commit murder of the accused No.1, that by itself does not mean that his evidence cannot be termed as a reliable piece of evidence. In fact it shows the close friendship between the deceased and PW-1. It makes him a natural witness. This has to be seen in the light of the evidence of PW-5, who has described the incident right from its inception till the actual assault. PW-5 admittedly was not an accused in the previous case, in which PW-1 and the deceased were arrested. PW-5 definitely did not have any grudge against the accused. Therefore, though he was a friend of the deceased, he had

no reason to implicate all the five accused falsely.

50. We do not find much substance in the submission that the accused No.3 was not known as Bittu or at least no such evidence is brought on record by the prosecution. The investigating officer has given sufficient reasons as to why no witness in that behalf could be examined. It was explained that those who knew that the accused No.3 was known as 'Bittu' were the neighbours of the accused No.3 and were under his fear. Apart from that, the accused No.3 has not taken that specific defence in his statement under Section 313 of Cr.P.C.. that he was not known as 'Bittu'. It was only during the cross-examination that some suggestions were put that he was not known as Bittu. More importantly PW-1 had identified the accused No.3 correctly in the Court. Therefore, his identity as one of the assailants is clearly established in the Court. Since he was known to the accused there was no necessity to have conducted the test identification parade.

51. Another important feature in this case is that all the police officers have consistently deposed that when they reached the spot PW-1 was present there at the spot. In fact he was taken to the

police station from the spot itself and his FIR was immediately taken. The incident had taken at around 12.45 a.m.. The proforma of the FIR shows that the police station was informed about the incident at 1.20 a.m. and the FIR was actually registered at 2.30 a.m.. There is no time gap between the actual incident and registration of the FIR to enable PW-1 to concoct a false story to implicate all the five accused. No evidence is brought on record as to why he would implicate the accused Nos.2, 3, 4 and 5 though he had enmity only against the accused No.1.

52. The evidence of PW-22 also shows that the deceased had expressed clear apprehension only six days' before the incident that he was apprehending for his life at the hands of the accused No.1 Kamlesh and the accused No.4 Sachin. This is an added feature in favour of the prosecution. Therefore, the deceased always carrying a small knife for self protection is not unusual. That does not mean that he was the aggressor or that he had given the first blow to the assailants.

53. As against the eye witnesses examined by the prosecution, the evidence of DW-1 also calls for scrutiny and close

examination of his evidence. Admittedly, his presence was deposed by PW-1 and PW-5. Therefore, he was present at the spot. The question is whether he is deposing truthfully about the incident. According to the defence, he was knowing the deceased, PW-1, PW-5 and all the accused by names and, hence he was familiar with all the parties concerned. Therefore, when he deposed that four to five unknown persons assaulted the deceased, that would exclude the accused as the assailants. In this context some of the answers given by him in his cross-examination conducted on behalf of the prosecution are important. His statement was recorded by the police, but, he has admitted that he had not disclosed this incident to anybody before his evidence was recorded in the Court. This is quite unnatural. He has described that he had seen the incident right from the beginning. According to him, there was a scuffle between the deceased and four to five unknown persons resulting in the deceased giving the first blow and the assailants assaulting him thereafter. He has further deposed that after the assault, he went near the deceased and asked him about the incident. At that time the deceased told him that he had assaulted an unknown person and, therefore, the unknown persons assaulted him in retaliation. However, this part of

his deposition is absolutely unbelievable. Looking at the nature of injuries caused to the deceased, all over his vital organs, right from his head to his abdomen, it was not possible that the deceased would be in a position to utter anything. He had suffered injuries to his head, face, throat, neck, chest, and abdomen. All his vital organs were damaged. Therefore, it is simply impossible that he would describe the incident to this witness. Therefore, we find that DW-1 is not describing the incident truthfully. Therefore, we are not believing him at all.

54. Thus, we find that the prosecution has sufficiently established its case through the evidence of the eye witnesses. In addition, there are corroborative pieces of evidence in the nature of recovery of weapons and recovery of clothes. However, the recovery of weapon is from the place which was accessible to all and they were not from the spot which were exactly not visible. Therefore, not much importance can be given to the recovery of weapons.

55. As far as seizure of the clothes of the accused is concerned, the C.A. report shows presence of blood but the blood group is mentioned as 'inconclusive'. Therefore, it cannot unerringly

point to the only possibility that the blood on the clothes of the accused was that of the deceased. Therefore, not much reliance can be placed on the recovery of weapons and clothes. Resultantly this case only depends on the quality of the evidence of the eye witnesses. As discussed earlier, we are satisfied that the evidence of PW-1 and PW-5 is consistent, cogent and reliable. Based on their evidence, the prosecution has proved its case beyond reasonable doubt against all the accused. Therefore, we are not inclined to interfere with the judgment and order passed by the learned trial Judge in convicting and sentencing the Appellants. With the result, all the five Appeals are dismissed and the judgment and order dated 29.3.2023 passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No.788/2015, is confirmed. With dismissal of the Appeals, nothing survives in the pending Applications and the same are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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