



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

CRIMINAL APPEAL NO. 202 OF 2020

Kawadu @ Kavish S/o Shankarrao Kshirsagar
aged about 30 years,
R/o Gajanan Nagar, Mauli Tekdi, Wardha
Tahsil and District - Wardha

} .. Appellant

Versus

The State of Maharashtra,
Through Police Station Officer, Police Station,
Ramnagar, Wardha,
Tahsil and District - Wardha

} .. Respondents

Mr. R.M.Daga, Advocate for appellant.
Mr. S.S.Doifode A.P.P. for respondent.

**CORAM : ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBARE, JJ.**

**RESERVED ON : SEPTEMBER 29, 2025
PRONOUNCED ON : OCTOBER 10, 2025**

JUDGMENT (Per : Siddheshwar S. Thombre, J.)

(1) Heard Mr.R.M.Daga, learned counsel for the appellant and Mr.S.S.Doifode, learned APP for the respondent-State.

(2) Present appeal is filed against the judgment and order of conviction dated 14/02/2020 passed by the District Judge-1 and Additional Sessions Judge, Wardha in Sessions case No. 110/2016, whereby the appellant/accused was convicted for offences punishable under Sections 450, 302, 326 and 201 of the Indian Penal Code (IPC).

The facts of prosecution's case, in brief, are as under :-

(3) The informant PW-2 Mamta filed a complaint stating therein that on 29/08/2016 at 8.30 a.m. when she was present with her sister Sangita at her house, the accused-appellant came in front of her house and started abusing her for not returning his money. Thereafter the accused entered the house of Sangita and stabbed her with a knife on her neck and stomach. When informant Mamta tried to rescue her, he assaulted her also and again assaulted her sister on her hand and blade of knife pierced her left wrist. Thereafter the informant Mamta and her sister Sangita ran outside the house in order to save their lives, however, the accused pulled Sangita by her hair, dragged and pushed her on the floor outside the house, lifted a huge stone which was kept there and banged it on her head four times, due to which Sangita died on the spot.

(4) After the receipt of report from informant Mamta, FIR No.148/2016 came to be registered under Sections 452, 302, 326 and 504 of the IPC. Initially investigation was carried out by API Nilesh Eknath Kele and thereafter, PI Mr.Vijay Ruprao Magar, conducted further investigation and Charge-Sheet was filed before the learned Judicial Magistrate First Class. As the offences are exclusively triable by the learned Sessions Court, the case was committed to the Sessions Court.

(5) Charge was framed against the accused-appellant for the offences punishable under Sections 450, 302, 326 and 201 of IPC and the same was read over to him in vernacular, to which the accused appellant pleaded not

guilty and claimed to be tried.

(6) To prove the guilt of the accused the prosecution has examined PW-1 Manoj Dhanraj Shende (panch witness to recovery proceedings u/s. 27 I.E.Act), PW-2 Mamata Ramesh Dhamankar (complainant / injured eye-witness), PW-3 Parasram Motiram Nande (panch witness to inquest panchnama), PW-4 Ranjeet Govardhan Patankar (panch witness), PW-5 Bahaddursingh Shyamlalji Panchale (panch witness to arrest form), PW-6 Poonam Mangesh Rakhunde (eye-witness), PW-7 Dnyaneshwar Manikrao Wat (eye-witness), PW-8 Shailendra Namdeorao Deshmukh (Revenue Inspector), PW-9 PC Dinesh Ramdhan Chavan (carrier), PW-10 Dr. Kalpana Nanaji Sunatkari (examined the injured / complainant), PW-11 Dr. Indrajeet Laxmanrao Khandekar (treated complainant / injured), PW-12 Dr. Sunil Pandurang Ghadge (treated complainant / injured), PW-13 PC Sagar Rameshwar Sangole (clicked photographs Exh.96 to 113), PW-14 Dr. Shrikant Govind Indurkar (Prepared PM report Exh.116 and Query report Exh.118), PW-15 API Nilesh Eknath Kele (IO) and PW-16 PI Vijay Ruprao Magar (IO).

The prosecution also relied upon the documentary evidence. Statement of the accused under Section 313 of Cr.P.C. was recorded and after considering the evidence led by the prosecution, learned trial Court convicted the accused for the offences punishable under Sections 450, 302, 326 and 201 of the IPC and thereafter, the appellant preferred the appeal before this Court.

(7) Learned counsel for the appellant submitted that from the

evidence adduced by the prosecution, it has failed to prove its case beyond reasonable doubt. It was further submitted that learned trial Court has not appreciated the evidence in its proper perspective. It has not taken into consideration the defence of false implication raised by the appellant. It was the defence of the accused that there was a love affair between husband of Sangita and PW-2 Mamta. On the date of incident, Mamta caught hold of Sangita and decided to get rid of her. Therefore, the husband of Sangita assaulted her and has falsely implicated the appellant in the present case.

(8) Learned counsel for the appellant submitted that evidence of PW-2 Mamta is full of omissions and contradictions. He further stated that she did not inform the police about the details of loan transaction. The conduct of PW-2 was highly suspicious and looking at her evidence, it can be said that she was an eye witness to the incident being relative of the deceased.

(9) Learned counsel for the appellant further submitted that PW-6 Poonam Rakhunde has deposed against the accused and her statement was recorded on 01/09/2016 and as per her version, Mamta had informed that the accused-appellant had assaulted Sangita by means of knife. He further submitted that PW-7 Dnyaneshwar Wat, deposed against the appellant and his statement was recorded on 01/09/2016. There was no reference of the presence of PW-6 and PW-7 either at the time of or after the incident. He further invited our attention to the statement of PW-14 Dr. Shrikant Indurkar, who performed the postmortem of Sangita who deposed that other injuries were caused due to scuffle. He further stated that PW-15 API Kele deposed that deceased's dying

declaration Exh.148 dated 27/08/2016 in which Sangita had stated that she was having love affair with the appellant/accused and the motive behind crime was money borrowed by Sangita's husband.

(10) Learned counsel for the appellant further argued that there is delay in recording the statement of witnesses which has not been explained. From the testimony of witnesses PW-6 and PW-7, it can be said that they are not reliable and he submitted that the appeal be allowed and appellant be acquitted from the charges.

(11) On the contrary, learned APP submitted that the prosecution examined in all 16 witnesses and proved the motive for committing the offence. He submitted that PW-2 Mamta, who was also injured witness, narrated the entire incident. He further submitted that the accused came with premeditation and assaulted with intention and with the knowledge that such bodily injury is likely to cause death. Furthermore, he submitted that the learned trial Court has considered all these aspects of the matter and he prayed to confirm the order of conviction passed by the trial Court.

(12) Having heard learned counsel for the parties, following points arise for our consideration :-

1. Whether the prosecution proved that the death of the deceased Sangita is homicidal ?
2. Whether the act of appellant causing bodily injury is with an

intention amounting to a murder punishable under Section 302 of the IPC ?

3. Whether the accused on 29/08/2016 at 8.30a.m. committed the offence of trespass under Section 450 of the IPC by entering in the building in possession of the Sangita ?
4. Whether the prosecution proved that the accused caused grievous hurt by means of dangerous weapon to Mamta PW-2 and thereby committed an offence punishable under Section 326 of the IPC ?
5. Whether prosecution proved that the accused committed an offence punishable under Section 201 of the IPC ?
6. Whether any interference is required in the impugned judgment ?

As to point No.1 :-

(13) The prosecution examined PW-14 Dr. Shrikant Indurkar, along with gynaecologist Dr. Krishna Shende who prepared the postmortem report. As per the postmortem report, following injuries were recorded :-

"1) CLW left temporal parital area 8 cm 8 cm bone deep.

2) CLW over root of nose 2 x 0.5 cm bone deep.

3) CLW over left orbit lateral aspect 2 x 1.5 cm.

4) Stab wound 4 cm. x 2 cm. heart deep.

5) Stab wound 2 cm. below to lateral injury no.4. Right side 3.5 cm x 2 cm. Liver deep

6) CLW over left forearm anterior area 3 x cm.2 cm.x 2 cm.

7) Stab wound upper 2/3 lower 1/3 junction left forearm. (Piercing injury through dorsal to volar aspect (dorsal 3 x 1 cm. Communicating with volar wound 2 x 1 cm. and the knife was in situ).

8) CLW left ulnar border lower 1/3 4 cm x 2 x 3 cm.

9) CLW left upper 2/3 lower 1/3 area arm dorsal aspect 5 x 2 x 0.5 cm.

10) Depressed fracture temporo parietal aspect left side.

11) Depressed fracture maxilla along with roof of mouth separating upper jaw in two halves from upper incisors,

12) Incise wound over neck horizontal below thyroid cartilage 8 cm x 4 cm x muscle deep.

2. On examination of brain and skull, I found extradural haematoma. Left temporal parietal area 2 cm x 1 cm. Cerebral laceration over left parieto temporal lobe. 3 cm x 2 cm x 1 cm. with intra cerebral bleed.

3. On examination of thorax, I found haemo-thorax around pericardium (around the heart). The pericardium (covering of heart) was torn at apex and there was incise wound over apex 3 x 2 cm. full thickness.

4. On examination of the abdomen, I found that the abdominal cavity is filled with blood. Stomach was filled with partly digested food. There was incise wound over right lobe of the liver antero superior aspect 2 x 1 x 1 cm.

Upper jaw was fractured splitting in to two halves from incisors."

(14) On perusal of the postmortem report Exh.116, the cause of death was head injury with fracture of temporo parietal bone (left) with cerebral laceration over parieto temporal lobe left side with extra dural haematoma with intra cerebral bleeding with stab injury to heart with haemo-thorax with liver injury with haemo peritonium with multiple CLWs over left forearm, neck, chest and face with fracture maxilla with shock due to above injuries. All these injuries were antermortem in nature.

(15) PW-14 Dr. Shrikant Indurkar, in his examination in chief, has stated that they handed over knife that was inserted in the wrist of the deceased, as well as her cloth to the Police Officer after sealing them. He further stated that he received a letter dated 06/09/2016 from Police Station, Ramnagar for giving query report. Along with this letter, stone and knife used in the offence were also given to him in sealed condition along with postmortem report. PW-14 further stated that he examined knife, which was brought by the police constable Vijay on 07/09/2016 and stated that it was sharp, pointed and dangerous kind of weapon. He also examined weapon and stone. He opined that the injury sustained by the deceased were possible by the above two weapons and injuries mentioned in the postmortem report were sufficient in the ordinary course of nature to cause death and accordingly, he issued query report at Exh.118. He further admitted that the stab injuries mentioned in the postmortem report can be caused by knife which was sharp and pointed. In cross-examination he has stated that it is him who removed the knife blade from the wrist and it was full of blood and defence has not brought any evidence to disbelieve the testimony of this witness. It is not the case of the appellant that deceased suffered accidental or suicidal death, therefore, point No.1 is answered in the affirmative.

As to points No.2 to 5 :-

(16) We are referring to Section 299 and Section 300 of IPC to determine whether prosecution proved that the appellant/accused assaulted the deceased with an intention that such bodily injuries can cause death and with knowledge that his act of assault amounts to culpable homicide, amounting to

murder.

(17) Section 299 of the IPC deals with culpable homicide which reads as under :-

“299. Culpable homicide.—

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) *A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.*

(b) *A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.*

(c) *A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.*

Explanation 1.— A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented.

Explanation 3.— The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that

child has been brought forth, though the child may not have breathed or been completely born.”

(18) Section 299 of the IPC explains culpable homicide as, causing death by doing an act with the intention of causing death or with the intention of causing such a bodily injury as is likely to cause death, or with the knowledge that the act committed is likely to cause death. The first two categories require an intention to cause death or likely to cause death. While the third category confines itself to the knowledge that the act committed is likely to cause death. In view of the facts of this case, the offence of culpable homicide is clearly made out.

(19) We further need to refer Section 300 of IPC, which reads as under :-

“300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.— If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.— If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.— If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.— When culpable homicide is not murder.—
Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

*The above exception is subject to the following provisos:
First— That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

Secondly— That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly— That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as

much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.— Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the

advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.— Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder."

(20) Section 300 of IPC, explains murder and it provides that culpable homicide is a murder, if the act by which the death is caused, is done with the intention of causing the death, or the act complained of, is so eminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death.

(21) PW-2 has narrated the entire incident. She had stated that two days prior to the incident, there was quarrel between accused-appellant and husband of deceased Sangita on the ground of borrowed money. She had further stated that on the day of incident she was present in the house, the accused-appellant came in front of her house and started abusing her for returning his

money and assaulted Sangita by means of knife. He stabbed the knife on her neck and stomach. When the informant tried to rescue her, he assaulted her also and again assaulted her sister on her hand, due to which blade of knife pierced her left wrist. The informant and her sister ran outside the house in order to save their lives, however, the accused pulled Sangita by her hair, dragged her and pushed her on the floor outside the house, lifted a huge stone which was kept there and banged it on her head four times due to which Sangita died on the spot. When PW-2 Mamta tried to save her, he also assaulted her right palm and little finger of left hand. Though in cross-examination, the defence has brought some omissions, but those omissions are restricted to the word 'waist' only. Even it was tried to suggest that the PW-2 was having a love affair with the deceased Sangita's husband and on that count it was suggested that Sangita's husband committed a murder. Except bare suggestion, nothing incriminating was brought by the defence to disbelieve the testimony of PW-2 and therefore, being injured eye witness of the incident her testimony is trustworthy. Even her statement under Section 164 of Cr.P.C. is also corroborated and more particularly, her testimony is corroborated by the testimony of PW-6 and PW-7.

(22) The intention of the accused to assault on vital parts of the body of the deceased has been proved and the bodily injury inflicted on the deceased, was in the ordinary course of nature to cause of death. Hence, the prosecution proved the case under Section 302 of the IPC.

(23) PW-6 Poonam Rakhunde deposed that she knew the deceased Sangita. She used to reside beside her house and stated that on the day of

incident at about 8.30a.m. to 8.45a.m. when she was at her house, she heard a loud screaming and shouting and when she came to her house, she saw Kawadu dragging Sangita out of her house and pushing her and banging the stone two to three times on her face and head. Her sister Mamta (complainant) was also there and was calling out for help. At that time people (including Atul Ghonge, Dnyaneshwar Wagh, Mukesh Masaram etc.) had also gathered there. The accused-appellant abused and fled away after seeing them. When she went near Sangita, she saw that Sangita had injuries on her head, stomach, wrists, face and neck and knife blade was inserted across her left wrist. Her statement was recorded under Section 164, which was duly proved. The prosecution has brought on record that the conduct of the PW-2 is natural one and considering the nature of the assault, it has been proved by the prosecution that she tried to intervene and save her and in that attempt she suffered injuries, which were duly proved by the prosecution. Even as per the discovery of the clothes of the accused and his act of fleeing away from the spot, prosecution has duly proved the offence under Section 202 of the IPC.

(24) The defence has not brought any incriminating material to disbelieve the testimony of PW-6. In fact being neighbor, she is a natural and independent witness, who narrated that when she came out of her house, she saw that the accused assaulting the deceased Sangita and therefore, her testimony is trustworthy.

(25) The prosecution examined PW-7 Dnyaneshwar Wat, who deposed that he knew Sangita, who used to reside near his house and he

identified accused Kawadu before the Court and stated that he used to reside just 10 feet away from his house. On the day of incident at about 8.00a.m. to 8.30a.m. when he was at his house, he heard loud screaming and shouting and he came out, he saw that accused Kawadu dragging Sangita out of her house. He pushed her on the ground and lifted stone and smashed it on her head two to three times. People gathered there and accused fled away from the spot. He admitted that Sangita's sister PW2 was present there and she was calling out for help and when he went near Sangita he saw that her face and head was smashed due to stone injuries, she had stab injuries on wrist and neck. A knife blade was inserted across her left wrist. She was lying in a pool of blood. His statement under Section 164 of Cr.P.C. was duly proved at Exh.63. In his cross-examination, defence has not brought any material to discard the testimony of witness. Like PW-6, he is also an independent witness and being a neighbor who deposed about the actual incident which took place on the said date and therefore, testimony of PW-7 is trustworthy and reliable.

(26) In view of the statement of PW-2, PW-6 and PW-7, the prosecution has proved that the accused committed murder of the deceased Sangita. Prosecution has brought on record the motive, intention of the accused-appellant that he caused bodily injury which is sufficient in the ordinary course of nature to cause death and which in all probability would cause death. PW-14 Medical Officer, conducted the postmortem and prepared the report. Coupled with testimony of PW-2, PW-6 and PW-7 along with PW-14 the intention and knowledge of the accused is clearly established.

(27) The prosecution has proved the recovery through the PW-1 Manoj Shende under Section 27 of the Indian Evidence Act. PW-3 Parasram Nande, was a panch witness to the inquest panchnama. PW-4 Ranjeet Patankar, PW-5 Bahaddursingh and PW-8 Shailendra Deshmukh are panch witnesses. PW-9 is a Police Constable Dinesh Chavan and PW-13 is a Police Constable Sagar Sangole, who clicked the photographs. As far as testimony of PW-4 and PW-5 are concerned, the prosecution has proved memorandum of statement and therefore, PW-1 has proved seizure memo/panchnama of the burnt shirt of the accused, as well as the blood-stained jeans which were recovered at the instance of the accused as per procedure under Section 27 of the Indian Evidence Act.

(28) The inquest panchnama and spot panchnama are duly proved by testimony of PW-3 Parasram, who has categorically deposed that the spot of incident was shown by Mamta Dhamankar. On reaching the spot, they saw the handle of a knife and a big stone lying on the floor. Blood stains were present on the spot. Thereafter, they entered the house and saw the blood stains at various places inside the house also. He has described the furniture items at the spot which are in consonance with the photographs of the spot. The blood stains were present in the kitchen and another room. The police in his presence seized blood-stained mud, simple mud, blood-stained piece of broken flooring, knife handle and the stone from the spot in the presence of panchas and sealed all the above articles in different plastic pouches as per seizure memo (Exh.38).

(29) PW-9 PC Dinesh Chavan, deposed that he deposited muddemal article for C.A. and submitted the C.A. report dated 09/03/2017. As per C.A.

report, human blood was detected on all the articles such as knife blade, blouse, petticoat, saree and nicker of the deceased, frock and leggings of the injured, jeans of the accused which were recovered at his instance apart from earth, pieces of concrete and knife handle. Even as per the DNA profiling report, the blood found on the stone and knife matches with the blood of the deceased.

(30) The prosecution proved the spot of incident through PW-8 Shailesh Deshmukh at Exh.70 and in cross-examination this witness has deposed that he drew map of the spot on the basis of the information given by the police.

(31) The prosecution has proved through PW-14 Medical Officer, who recovered knife which was pierced in the wrist of deceased while performing postmortem as well as PW-15 API Nilesh Kele, who immediately reached on the spot and subsequently PW-16 PI Vijay Magar, who conducted the investigation and through PW-16, prosecution proved the recovery of the weapon, discovery of the cloths and therefore, after going through the evidence led by the prosecution it has been proved that only the accused i.e. appellant herein who has committed the murder of deceased Sangita.

(32) It has come in the evidence of PW-2 Mamta, who is injured eye witness that when she tried to save the deceased Sangita, the accused has assaulted her and the same thing has come in the evidence of PW-10 Dr.Kalpna Sunatkari, who examined injured complainant, as well as PW-11 Dr.Indrajit Khandekar, who examined the injured complainant and PW-12 Dr. Sunil Ghadge, who treated the injured. It has come in the evidence of PW-10 Dr. Kalpana

Sunatkari, Medical Officer at General Hospital, Wardha, that on 29/08/2016, injured Mamta was referred by Police Station, Wardha and she examined her and found following injuries :-

- 1) A CLW on right palm near wrist joint, size 3cm x 0.5cm.*
- 2) Left little finger CLW 4 cm x 1 cm. deep till bony involvement.*
- 3) Swelling at left little finger.*

After examination, she suggested Orthopedic Surgeon's opinion and X-ray vide Exh. 80. She treated her for her injuries and prepared injury report (Exh.81).

(33) The prosecution has further examined PW-11 Dr. Khandekar, who stated that on 30/08/2016 PW-2 Mamata was admitted to his hospital, he examined her and issued final report at Exh.84 and found following injuries :-

- 1) Fracture of phalanges of left 5th digit. The injury was grievous in nature.*

He had also examined her X-ray reports which he received from the department of Radiology. She was initially treated at General Hospital, Wardha. The discharge summary is at Exh.85.

(34) The prosecution has also examined PW-12 Dr. Ghadge, who submitted a report at Exh.91 and he stated that Mamata had suffered a fracture of 5th proximal and middle phalynx near base.

(35) Prosecution proved that the accused committed house trespass in order to commit offence punishable with imprisonment for life and ingredients are proved for the offence under Section 450 of the IPC. The prosecution has proved that the accused did commit trespass in order to commit offence and also

proved disappearance of evidence by virtue of destroying/burning shirt and tried screening himself from the offence. As per the testimony of PW-2 who is injured eye witness corroborated by virtue of testimony of PW-10, PW-11 and PW-12 coupled with injury medical certificate report Exhs.81, 84, 85, and 88 the prosecution proved that the accused caused grievous hurt to the complainant by dangerous weapon (knife) which was caused death of the deceased. The ingredients of offence under Section 326 of IPC are proved.

(36) We have considered the submissions of the appellant and the defence taken and after going through the same it is evident that the prosecution through PW-2, who is eye witness, has clearly proved that the accused assaulted the deceased by means of daily weapon which has also been corroborated by the testimony of PW-6 and PW-7. Therefore, the defence raised by the appellant that the PW-2 has not taken any efforts to save her life and the evidence of PW-2, PW-6 and PW-7 are doubtful is liable to be rejected.

(37) Learned counsel for the appellant raised the defence that the deceased was having illicit relations with the husband of the PW-2 and to get rid of her, her husband committed murder. But in view of the fact that PW-2 herself was an injured witness and the defence has not brought any incriminating evidence to discard her testimony, this defence is also liable to be rejected and same is rejected.

(38) As regards motive and intention is concerned the prosecution has proved it by establishing that the deceased was having illicit relation and

consequently she was not on talking terms with the appellant. Based on the suspicion in the mind of the appellant that deceased was having illicit relation with another, he went to her house carrying knife and assaulted the deceased Sangita by stabbing it into her neck and stomach. Therefore, the prosecution has proved that appellant had intention and motive to commit murder of deceased Sangita. The contention of the defence that there is no motive or intention is also liable to be rejected, and therefore, we answer points No.2 to 5 in affirmative.

As to point No.6 :-

(39) Having answered points No.1 to 5 in affirmative there appears no reason to interfere with the judgment and order of conviction passed by learned Trial Court, which has considered all the attending circumstances and has passed a well reasoned order. Point No.6 is accordingly answered in negative. Hence, we proceed to pass the following order :

ORDER

1. The Criminal Appeal is dismissed.
2. The judgment and order dated 14/02/2020 passed by the District Judge-1 and Additional Sessions Judge, Wardha in Sessions Case No.110/2016 is hereby confirmed.

(SIDDHESHWAR S. THOMBRE, J.)

(ANIL L. PANSARE, J.)

KOLHE