



Judgment

504 apeal626.19

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

CRIMINAL APPEAL NO.626 OF 2019

1. Shri Vishwas @ Guddu Rajesh Dahiwalé,
aged about 32 years, occupation: private,
r/o New Indora, near Jaitwan Buddha Vihar,
lane No.1, Jaripatka, Nagpur.

2. Shri Kamlesh @ Kamya Kalidas Patil,
aged about 32 years, occupation: private,
r/o plot No.22, Hindustan Colony, Pulgaon.

3. Shri Suraj Raju Manwatkar,
aged about 25 years, occupation: private,
r/o Mahadula, Fule Nagar, near Gopche's
house, Nagpur.

..... **Appellants.**

:: V E R S U S ::

State of Maharashtra,
through Police Station Officer, Police Station,
Jaripatka, Nagpur.

..... **Respondent.**

**Shri Aniruddha Jaltare, Counsel for Appellant No.1.
Shri C.F.Bhagwani, Counsel for Appellant Nos.2 and 3.
Shri N.B.Jawade, Additional Public Prosecutor for the
State.**

**CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.**

CLOSED ON : 13/11/2025

PRONOUNCED ON : 01/12/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellants (the accused persons) have challenged judgment and order dated 16.7.2019 passed by learned Additional Sessions Judge, Nagpur (learned Judge of the trial court), in Sessions Trial No.48/2016.

2. By the said judgment impugned in the appeal, the accused persons are convicted for offence punishable under Section 302 read with 34 of the IPC and sentenced to undergo imprisonment for life and to pay fine Rs.50,000/-, in default, to undergo further simple imprisonment for one year..

3. Brief facts of the prosecution case are as under:

On 28.9.2015, Rakesh Ramteke (the deceased) had a quarrel with the accused persons who are residents

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of the same locality. During the said quarrel, the deceased was threatened to kill. On 29.9.2016, at about 11:00 pm, after dinner, the complainant and her children were about to sleep and the deceased was standing outside the house. Around 11:30 pm, the complainant heard the shouts from outside “मारु नका मारु नका” and, therefore, the complainant and her children immediately came out and witnessed that the accused persons are assaulting the deceased with log and wooden stumps in their hands. The complainant attempted to intervene, but she was threatened that if she intervenes, she has to face consequences. Accused Suraj gave blow of wooden rod on the head of the deceased. Whereas, accused Vishwas gave blow of log on the face of the deceased and accused Kamlesh also gave blow of wooden stumps on the head of the deceased. Due to the shouts, the complainant and her children and nearby residents

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gathered there. When the neighbours of the deceased made attempt to intervene, they were also assaulted. The accused persons gave 2-3 blows and, thereafter, they fled away. The deceased sustained bleeding injuries on the head and face. He was immediately taken to the hospital by neighbour Akshay and son Abhay, but he was declared dead. Therefore, the complainant has lodged the report.

4. After registration of the crime, wheels of investigation started rotating. The investigating officer has recorded complaint of the complainant. After registration of the crime, he has drawn spot panchanama and collected blood stained soil and simple soil from the spot of the incident. The accused persons were arrested. On the basis of the memorandum statement of the accused persons, incriminating weapons were recovered. The blood stained clothes of the deceased and the accused persons and blood stained weapons were

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forwarded to the Forensic Science Laboratory. After completion of the investigation, chargesheet was filed. As offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court. Learned Judge of the Court below has framed charge vide Exh.23. The contents of the charge are explained and read over to the accused persons. They pleaded not guilty and claimed to be tried.

5. In support of the prosecution case, the prosecution has examined in all 10 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Vaishali Raksh Ramteke, wife of the deceased	32
2	Priyanka Rakesh Ramteke, daughter of the deceased	38
3	Shubhangi Pritam Dongre, eyewitness	40
4	Abhay Rakesh Ramteke, eyewitness	42
5	Anil Shivcharan Bawangade, pancha on spot	46

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6	Adwin Ravi Danial, pancha on memorandum statements of accused persons	49
7	Dr.Chaitanya Tikne	66
8	Nitesh Pramodrao Khadekar, pancha on memorandum statements of the accused persons and recovery panchanamas	73
9	Bhushan Pandurang Sawant, the investigating officer, and	79
10	Keshav Dhondiba Wagh, investigating officer	84

6. Besides the oral evidence, prosecution placed reliance on report Exh.33, FIR Exh.34, spot panchanama Exh.49, seizure memo Exh.48, postmortem report Exh.67, requisition to the medical officer Exh.68, letter to C.A. Exh.81, arrest panchanamas Exhs.85, 88A, and 88B, memorandum statement of accused Vishwas Exh.86, recovery panchanama Exh.87, memorandum statement of accused Kamlesh Exh.89, recovery panchanama Exh.90, seizure memo Exh.91, memorandum statement of

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accused Suraj Exh.92, recovery panchanama Exh.93, seizure memo Exh.94, and C.A.Reports.

7. All the incriminating evidence is put to the accused persons by recording their statements under Section 313 of the CrPC. The defence of the accused persons is of total denial.

8. After hearing both the sides and appreciation of the evidence on record, learned Judge of the trial court came to conclusion that there is direct evidence in the nature of eyewitnesses supported by circumstantial evidence that blood stained weapons and blood stained clothes of the accused persons are seized and, therefore, held the accused persons guilty as the aforesaid.

9. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused persons.

10. Heard learned counsel Shri Aniruddha Jaltare for appellant No.1, learned counsel Shri C.F.Bhagwani for appellant Nos.2 and 3, and learned Additional Public Prosecutor Shri N.B.Jawade for the State.

11. Learned counsel for the accused persons submitted that the prosecution has made an attempt to portrait that wife of the deceased PW1 Vaishali Ramteke and daughter of the deceased PW2 Priyanka Ramteke are eyewitnesses. However, their cross examination shows that they reached the spot of the incident after the incident. Therefore, the evidence of these two witnesses absolutely not helpful to the prosecution. As far as independent eyewitness PW3 Shubhangi Dongre is concerned, during cross examination, her admission brought on record, shows that she is not eyewitness to the incident. Moreover, her statement was recorded belatedly and no explanation is put forth for the said explanation.

The memorandum statements of the accused persons and recovery at their instance is also not proved by the prosecution. There is delay in sending muddemal for analysis. The incriminating articles at the instance of the accused persons are seized on 2.10.2015 and 3.10.2015. Whereas, it is forwarded on 3.11.2015 i.e. after one month by the investigating officer. The DNA analysis is also done belatedly. Thus, the entire prosecution case is doubtful and, therefore, the judgment impugned in the appeal deserves to be quashed and set aside.

12. Learned counsel for appellant Nos.2 and 3 endorsed the said contentions and submitted that the evidence of these witnesses is not natural. In fact, accused Kamlesh was not present at the spot of the incident. The entire cross examination nowhere discloses any role of accused Nos.2 and 3 in the alleged incident. The witnesses, shown to be eyewitnesses, are not at all

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eyewitnesses. There is a delay in recording statements of eyewitnesses and the said delay is not explained. In view of that, the entire case of the prosecution becomes doubtful.

13. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned and invited our attention towards the evidence of wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, and PW4 Abhay Ramteke and submitted that they are natural witnesses. The alleged incident took place at a distance of 5 feet from the house of the deceased and, therefore, their presence at the spot is natural one and contention, that there is no opportunity for them to witness the incident, is not probable. In fact, by hearing shouts, neighbours also came there. The stray admission of wife of the deceased PW1 Vaishali Ramteke is not sufficient to

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discard her evidence totally. Though pancha witnesses PW6 Adwin Danial and PW8 Nitesh Khadekar have not supported the prosecution for proving the memorandum statement of the accused persons and discovery panchanama at their instance, it is proved by the investigating officer. There is not only a direct evidence but also there is circumstantial evidence which connects the accused persons with the alleged offence. As far as motive is concerned, the same takes back seat when there is direct evidence is available. The prosecution has established its case beyond reasonable doubt. In view of that, the appeal being devoid of merits is liable to be dismissed.

14. On hearing both the sides and on going through the entire record with the help of learned counsel for the accused persons as well as learned Additional Public

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Prosecutor for the State, question arises for consideration is, whether death of the deceased is homicidal one.

15. To prove the homicidal death, the prosecution has placed reliance on the evidence of PW7 Dr.Chaitanya Tikne examined vide Exh.66, who deposed that on 30.9.2015, he was posted as Assistant Professor, Department of Forensic Medicine, IGMCI, Nagpur. He received a requisition from the Jaripatka Police Station. Accordingly, as per the requisition, he examined the deceased. On external examination, he found clothes of the deceased were blood stained and torn at places. The face was flattened with anterior posteriorly. Blood was oozing through mouth and nose. Blood stains were present at the body at places.

On examination, following external injuries are found on his person:

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"1. Incised woking lacerated wound present over right parietal region of head situated 02 cm from midline and 09 cm. above right eyebrow of size 06 cm x 0.5 cm bone deep.

2. Incised woking lacerated wound present over right parietal region of head situated 03 cm lateral to injury no. 1 of size 8.5 cm 0.5 cm muscle deep. Posterior end of the injury intermingling with injury no. 1.

3. Incised woking lacerated wound present over occipital region of head on right side situated 03 cm from midline of size 5cm x 0.5 em muscle deep.

4. Incised woking lacerated wound present over left parietal region of head situated 02 cm from midline of size cm muscle deep. 6cm x 0.5 cm muscle deep.

5. Peri orbital contusion present around right eye of size 6 x 5 cm, red colour.

6. Peri orbital contusion present around left eye of size 5 x 5 cm, red colour.

7. Lacerated wound present over nose involving some part of upper lip on left side of size 07 x

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02 cm, oral cavity deep, underlying maxilla fractured.

8. Contusion present over dorsal aspect of lower 1/3 of left forearm of size 15 x 6 cm. red colour, confirmed on cut section.

9. Lacerated wound present over dorsal aspect of right great toe of size 05 x 01 cm, sub cutaneous tissues deep.

10. Lacerated wound present over dorsal aspect of left great toe of size 5 x 1 cm, bone deep.

11. Lacerated wound present over dorsal aspect of 2nd toe of left leg of size 02 x 01 cm, muscle deep.”

All injuries were fresh and ante mortem and are possible by impact with hard and blunt object.

On internal examination, he has found following injuries:

“Head: underscalp haematoma present over right frontal temporal parietal regions of size 18 x 12 cm., red colour.

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Skull vault : (1) Depressed comminuted fracture of parietal and temporal bones present of size 06 x 2.5 cm. (2) two linear fractures of right parietal bone present of size 05 cm and 06 cm. respectively, (3) linear fracture involving right parietal and right occipital bones present of length 14 cm.

Skull base: Anterior cranial fossa fracture extending on both sides of midline of length 11 cm.

Meninges: Subdural haematoma present over right front temporo parietal lobes weighing about 150 gram. Subdural hematoma present over left parietal lobe weighing about 80 gram Diffuse sub arachnoid hemorrhage present red colour.

Brain Multiple contusion present over right parietal lobe of size ranging between 01 x 01 cm. to 02 x 01 cm. red colour.”

His evidence further shows that injuries mentioned in column No.19 were corresponding with the injuries mentioned in column No.17. Injury Nos.1 to 4 and 7 are sufficient to cause death in ordinary course of

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nature as mentioned in column No.23 by him. These injuries are individually sufficient to cause death in the ordinary course of nature. The cause of death ascertained by him is the head injury. Accordingly, he prepared postmortem notes, which are at Exh.67. As far as nature of injuries are concerned, he received requisition from Jaripatka Police Station on 30.9.2015 to obtain his opinion whether these injuries are possible by hard and blunt object. Two wooden cricket stumps and one wooden log were referred to him for examination. He has identified Articles-C and D as cricket stumps and Article-E as wooden log.

His cross examination shows that hard and blunt object generally cause lacerated wounds, but he explained that if there is an impact by hard and blunt object in an area having bonny prominence, it may look like

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incised wound. Rest of the cross examination is in the denial form

16. Perusal of the evidence of the medical officer shows that he has witnessed in all 11 external injuries on the person of the deceased. He also noted corresponding internal injuries and opined that the death is due to head injuries and injuries which he has noted are sufficient to cause death in the ordinary course of nature. As far as cross examination is concerned, attempt was made to show that incised wound are not possible by hard and blunt object, but the medical officer has explained that if there is an impact by hard and blunt object in an area of bonny prominence, it may look like incised wound. Therefore, the said cross examination will not hamper the evidence of the medical officer.

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17. The proposition of law has been stated by the Hon'ble Apex Court in the case of **Smt.Nagindra Bala Mitranand vs. Sunil Chandra Roy and Anr., reported in in 1960 SCR (3) 1** wherein it is observed that the value of a medical witness is not merely a check upon the testimony of eye witness; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence . If a person is shot at closed range the marks of tattooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarity, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victims' person. Thus, testimony of the medical witness is very important and it can be safely accepted.

In another decision in the case of **Machindra vs. Sajjan Galfa Rankhamb and ors, reported in 2017(6) Mh.L.J. (Cri) SC 452** wherein also the above principle is reiterated and by referring the decision in the case of **Smt.Nagindra Bala Mitraand *supra***, it is observed that it is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person.

18. Thus, the testimony of the medical witness is important and it can be safely accepted.

19. The entire case of the prosecution is rested on the evidence of four eyewitnesses i.e. wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, independent eyewitness PW3 Shubhangi Dongre, and son of the deceased PW4 Abhay Ramteke.

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20. The evidence of wife of the deceased PW1 Vaishali Ramteke shows that on the fateful night i.e. 29.9.2015, she along with her children was present in the house. At about 11:00 pm to 11:30 pm, she heard noise of her husband as “मारु नका मारु नका”. She immediately came out of the house along with her children and witnessed accused Vishwas, accused Suraj, and accused Kamlesh who are residents of the same village assaulting her husband by means of wooden log and cricket stumps. She has specifically narrated the role of the accused persons. Due to the assault, the deceased sustained injuries. She further testified that she has made an attempt to intervene in the quarrel, but she was also threatened and after repeated 2-3 blows, the accused persons fled away.

During her cross examination, some omissions are brought on record that she has not disclosed before

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the police that accused Vishwas told her not to intercept. The accused persons have given blows on the head of the deceased. Accused Vishwas warned one Sakhare and Shubhangi not to interrupt. Her children Abhay and Priyanka raised shouting.

These aspects are brought on record in the nature of omissions.

During her cross examination, she admitted that she came out of the house, at that time, the assault was already made. On the basis of the said stray admission, an attempt was made to show that she has not witnessed the accused persons assaulting the deceased.

This admission is to be appreciated in the light of the fact that the alleged incident has taken place at distance of 5 feet from her house. Her presence along with children in the house is not disputed. Though she

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came from the hospital and police officers available at Mayo Hospital, she has not lodged the report. She stated that she has halted at Mayo Hospital for 15-20 minutes and her brother Deepak came afterward.

Thus, an attempt was to show that immediate FIR is not lodged by her regarding the assault on the deceased by the accused persons.

21. The evidence of daughter of the deceased PW2 Priyanka Ramteke, the eyewitness, is on similar line. In addition to that, she has stated that at about 11:00 pm, they were about to sleep after taking dinner. Her father was also at home. She heard call from outside as “काका काका”, that call was by accused Kamlesh. On hearing the call, her father went out of the house and, thereafter, she heard a noise as “मारु नका मारु नका”. Therefore, she along with her mother and brother came out of the house and

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witnessed the accused persons assaulting her father by means of rafter and stumps. She has specifically stated that accused Suraj was having wooden rod in his hand and accused Kamlesh and accused Vishwas were having wooden stumps in their hands. Her father has sustained the bleeding injuries. She has also made a call to her uncle Deepak on phone. Her evidence further shows that independent eyewitness PW3 Shubhangi Dongre made an attempt to intervene in the quarrel, but all the accused persons threatened her. As to identification, she specifically stated that as they are residents of the same village, she knows them.

Her cross examination shows that she has denied that her father goes for roaming after the dinner. However, she admitted that her father sleeps in another room. Whereas, she along with her mother and brother sleeps in another room. She has also admitted that after

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the incident, she has not visited the hospital. As far as her evidence on the point of assault by the accused persons is concerned, it is not shattered during the cross examination. Though some omissions are brought on record, the same are not in the nature which would affect the prosecution case.

As far as the incident is concerned, her evidence shows that it was accused Suraj who was having wooden rod in his hands and other two accused persons were holding stumps in their hands assaulting her father.

22. The evidence of independent eyewitness PW3 Shubhangi Dongre shows that she has also testified that she is knowing the deceased being he is neighbour. On 29.9.2016, at about 10:30 pm to 11:00 pm, when she was about to sleep, she heard shouts loudly “मारु नका मारु नका”. Therefore, she came out of the house and saw three

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persons assaulting the deceased. Those three persons Vishwas, Kamlesh, and Suraj residing in her locality are known to her and therefore, she knows them. Her evidence further shows that accused Suraj was holding wooden rod. Whereas, other two accused persons were holding stumps in their hands. They beat the deceased on his head and other parts of the body. Her evidence also shows that though she made an attempt to intervene, she was threatened.

Thus, her evidence is also consistent with the evidence of daughter of the deceased PW2 Priyanka Ramteke that after hearing shouts, they all came out of the house.

During her cross examination, an attempt was made to show that her initial statement was recorded, but it was suppressed by the investigating officer. As her

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statement recorded on 3.10.2015 is only on record. Admittedly, she admitted that her statement was not recorded on 3.10.2015 but she was enquired on the day of the incident also.

Perusal of the evidence, especially the cross examination, it only shows that on the day of the incident the police officer enquired her about the incident. It nowhere shows that her statement was also recorded on that day.

23. The evidence of son of the deceased PW4 Abhay Ramteke shows that he has narrated the similar incident that at about 11:00 pm to 11:30 pm, they heard the noise and, therefore, they came out of the house and saw that the accused persons assaulting his father. They tried to intervene, but they were threatened. His father

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fell down and he with the help of his neighbour took his father in the hospital.

His cross examination show that 2-3 years prior to the incident, he is having acquaintance with accused Vishwas. He admitted that on the day of the incident, he was not having any mobile. His mother was having mobile phone on the day of the incident. He has not phoned anybody. He admitted that blood was stuck to his hands and clothes, but his clothes were not seized by the police during the investigation. He also admitted that on the entry of the hospital, there is police out-post, but he has not informed the police about the said incident.

Thus, on the basis of this cross examination, an attempt was made to bring on record that though the deceased was taken to the hospital, the police were

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available, but no information was given to the police as far as the incident is concerned. Thus, there is a delay in disclosing the incident to the police.

24. Besides the oral evidence, the prosecution has placed reliance on the evidence of PW5 Anil Shivcharan Bawangade, who acted as pancha on spot panchanama. His evidence shows that the police have called him to act as pancha. In his presence, the police conducted the spot panchanama and seized blood stained soil and simple soil from the spot of the incident. Accordingly, the panchanama was drawn. He specifically denied that the police have seized knife from the house of the deceased in his presence. He denied that panchanama of the house of the deceased was not drawn in his presence. It further came in the cross examination that the police collected blood and soil from the spot and put it in a polythene bag.

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He admitted that the police have not obtained signature on the polythene bag.

Thus, as per the defence, the police have not sealed incriminating articles collected from the spot of the incident immediately.

25. Though the prosecution placed reliance on the evidence of PW6 Adwin Danial and Nitesh Khadekar, who acted as panchas on memorandum statements of the accused persons and at their instance the recovery of the articles, but they have not supported the prosecution case and, therefore, the prosecution placed reliance on the evidence of investigating officer PW10 Keshav Dhondiba Wagh, whose evidence shows that on 2.10.2015 accused Suraj gave statement that he will show the weapon and clothes used during the incident, which he had hidden at Indora ground. Accordingly, he recorded the statement

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and, thereafter, the accused led them to a public toilet and from the public toilet he recovered a white polythene bag and took out one wooden rod having blood stains on it. At his instance, one blue t-shirt with full sleeves having blood stains were also recovered and one blue colour jeans with light blood stains were also recovered which were seized in the presence of panchas vide panchanama Exh.93. His evidence further shows that accused Kamlesh also gave memorandum statement and led the panchas and at his instance, weapon i.e. wooden stumps with blood stains and one light violet shirt with blood stains and one pant of black colour were seized and the said articles were seized and sealed under the panchanama Exh.90. Accused Vishwas has also given memorandum statement in his presence of panchas and led them towards the spot and at his instance, one wooden stump was recovered from his

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house having blood stains on it and his blood stained clothes were also seized in presence of panchas.

As far as memorandum statement of the accused persons are concerned, the cross examination of accused Vishwas shows that as soon as muddemal is seized, it is to be deposited in the malkhana and property number and serial number of the malkhana register are noted down on the seizure panchanama. The investigating officer stated that it is not necessary to affix the said seal on the seizure panchanama.

26. As far as the cross examination of behalf of accused Kamlesh is concerned, it is only denial as to the statement by the accused and discovery at his instance is concerned.

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27. Similarly, the cross examination on behalf of accused Suraj is concerned, except denial that no such statement is given, nothing is brought on record.

28. Thus, as per the prosecution case, these memorandum statements and recovery at the instance of the accused persons are proved by the prosecution through the evidence of the investigating officer.

29. The evidence of PW7 Dr.Chaitanya Tikne, who is medical officer, is already discussed in earlier part of the judgment which shows that the death of the deceased is due to head injury. PW9 Bhushan Sawant and PW10 Keshav Dhondiba Wagh are investigating officers who have narrated about the investigation.

As far as PW9 Bhushan Sawant is concerned, his investigation is to the extent that he has recorded statements of Priyanka, Abhay, Deepak, Shubhangi, and

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Manoj. His cross examination shows that the deceased was admitted in the hospital by the family members but not by the police. Admittedly, he is not cross examined as far as delay in recording the statement of independent eyewitness PW3 Shubhangi Dongre is concerned. He has also admitted that during the cross examination, there is malkhana i.e. property room in our police station. One munshi is the incharge of the malkhana and he maintains the register of the properties. The muddemal receipt along with chargesheet shows that on 2.10.2015, one sealed envelope was deposited and entry regarding the same is taken on record. His cross examination further shows that stumps and clothes of accused Kamlesh were allegedly seized on 10.10.2015, but sealed property was dispatched to C.A. on 3.11.2015. He admitted that normally after seizure and seizing of the property, it is dispatched to the C.A. on the very next day. There is no

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reason in the chargesheet for the late dispatch of the muddemal to C.A. Laboratory. He voluntarily stated that it was delayed due to query reference to the medical officer. The query was requisitioned on 30.10.2015. Thus, it reveals that the weapons were referred to the medical officer on 30.10.2015 and the medical officer has given opinion on 30.10.2015 and, thereafter, the articles were forwarded to the C.A.. C.A. Reports are marked as Exh.A for the identification purpose as the trial court has not exhibited the same. All CA Reports are marked as Exh.A collectively. The CA Report dated 2.5.2017 shows that Articles marked as Exhs.A1 and A2 are clothes of accused Vishwas. Whereas, weapon stump recovered from accused Vishwas is marked as Article-A3. The weapon i.e. stump, recovered at the instance of accused Kamlesh, is marked as Article-B1 and his clothes are marked as Articles.B2 and B3. The wooden log recovered at the instance of accused

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Suraj is marked as C-1 and his clothes are marked as C-1 and C-2. The clothes of the deceased are marked as R-1 and R-2. The simple soil and blood stained soil seized from the spot are marked as E-1 and E-2. The analysis report shows that Exh.3 i.e. wooden stump recovered at the instance of accused Vishwas. Full shirt of accused Vishwas and jeans full pant of accused Vishwas was having blood stains. Whereas, wooden stump and wooden log seized at the instance of accused Kamlesh and Suraj and reddish colour liquid put in polythene bag are stained with blood. Exh.8 full T-shirt of accused Vishwas, Exh.9 is his full jeans, Exhs.10 and 11 clothes of the deceased are stained with blood of human blood is detected on the said clothes. As blood group was not detected, Articles were forwarded to the DNA Department and DNA Report is also placed on record, which is marked as Exh.B for

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identification purpose. The DNA Report which is admissible in evidence in view of Section 293 of the CrPC.

30. Section 293 of the CrPC states that any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. Sub Seciton (2) states that the Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report. Sub section (4) states that this section applies to the following Government scientific experts, namely; (a) any Chemical Examiner or Assistant Chemical Examiner to Government; (b) the Chief Inspector of Explosives; (c) the Director of the Finger Print Bureau; (d) the Director, Haffkeine Institute,

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Bombay; (e) the Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State forensic Science Laboratory; (f) the Serologist to the Government. (g) any other Government scientific Expert specified by notification by the Central Government for this purpose.

31. Thus, in view of Section 293 of the CrPC, this report is admissible in evidence. The DNA report shows that DNA profiles obtained from Exh.1 full shirt i.e. accused Vishwas, Exh.2 jean full pant of accused Vishwas and wooden stump recovered at the instance of Vishwas and Exh.10 barmuda i.e. of deceased are identical and from the one and same source of male origin and matched with DNA profile obtained from blood smaples of Rakesh Ramteke in BN-3836/2025. The report further shows that DNA profile obtained from blood detected on Exh.8 full shirt i.e. of accused Suraj and Exh.9 jeans full pant of

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accused Suraj in BN-4280/2015 are identical and from one and same source of male origin and matched with DNA profile obtained from blood sample of accused Suraj in BN-4083/2015. Thus, this report sufficiently shows that blood stains of Blood Group of the deceased are found on the clothes of accused Vishwas as well as accused Suraj.

32. After appreciating the evidence on record, the entire case, admittedly, rested on the direct evidence of wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, independent eyewitness PW3 Shubhangi Dongre, and PW4 Abhay Ramteke. Admittedly, in the evidence of PW1 Vaishali Ramteke some omissions are brought on record. However, the omissions would not affect the entire prosecution case.

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33. It is well settled in law that the maxim *falsus in uno, falsus in omnibus* (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence. The experiment shows that the evidence of many witnesses contains a grain of untruth some exaggeration or embellishment. This many a times happens perhaps due to the fear in the minds of the witnesses that their testimony may not be accepted. The discrepancies in depositions of witnesses are always there due to normal error of observation, normal error of memory due to lapse of time, due to mental disposition etc. which need to be ignored. The prosecution would fall only where inconsistencies go to the root of the case, otherwise it becomes the duty of the court to shift truth from falsehood from the evidence of witness examined by the prosecution. At the most, inconsistent part of the version

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of the witnesses may be discarded and rest of the testimony is to be accepted.

34. Thus, merely because some omissions are brought on record, that by itself are not sufficient to discard the evidence of wife of the deceased PW1 Vaishali Ramteke.

35. As far as the evidence of these witnesses, regarding the incident is concerned, which is consistent and is not shattered during the cross examination.

36. The law is well settled that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the

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evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy. The material thing which is to be seen whether those inconsistencies go to the root of the matter. While appreciating the evidence of relatives, great weightage is to be given to them on the principle that there is no reason for them not to speak the truth and shield the real culprit.

37. Now, it is well settled that, normally, close relatives of the deceased would not be considered to be interested witnesses who would also mention names of other persons as responsible for causing injuries to the deceased.

38. A three-judge bench of the Hon'ble Apex Court in the case of **Hari Obula Reddy and ors vs. State of Andhra Pradesh, reported in AIR 1981 SC 82** has held that the evidence of interested witnesses is not necessarily unreliable evidence. Even, partisanship by itself is not a valid ground for discrediting or rejecting the evidence of relatives. It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. On the contrary, a close relative who is very natural witness cannot be regarded as interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because

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he had some animus with the accused or for some other reason.

39. Testing on the anvil and touchstone on the aforesaid principles laid down by the Hon'ble Apex Court, we find that witnesses wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, and PW4 Abhay Ramteke, who are close relatives of the deceased, have really not embellished their versions. Their presence at the spot of the incident is also natural as the alleged incident has taken place at the distance of 5 feet from their houses and there is nothing on record to doubt their versions on material particulars.

40. The Hon'ble Apex Court in Criminal Appeal No.56/2018 decided on 19.9.2018 (**Shamin Ansari and ors vs. State (NCT of Delhi)**) observed that while

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appreciating the evidence of witnesses, approach must be whether the evidence of witness read as a whole inspires confidence. Once that impression is found, it is undoubtedly necessary for the court to scrutinize the evidence, more particularly keeping in view the deficiencies, drawback, and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against a general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

41. Thus, the material thing to be seen is, whether inconsistencies brought on record by the defence go to the root of the matter or pertain to insignificant thereto. Though some omissions are brought on record which are not touching to the core of the incident and, therefore, the evidence of wife of the deceased PW1 Vaishali Ramteke, on the actual incident of the assault, is

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consistent with the evidence of daughter of the deceased PW2 Priyanka Ramteke and PW4 Abhay Ramteke.

42. It is well settled that the witnesses related to the deceased would not shield the real culprit and implicate any innocent.

43. Here, also, there is no reason for the witnesses to implicate the accused persons falsely.

44. Besides the evidence of wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, and PW4 Abhay Ramteke, the evidence of independent eyewitness PW3 Shubhangi Dongre is also consistent with the evidence of PW1, PW2, and PW4. An attempt as made to canvass that as per the evidence of PW3, on the same day, her statement was recorded. Whereas, chargesheet shows that her statement was recorded on 3.10.2015. Perusal of her

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evidence reveals that she has stated during her cross examination that immediately after the incident, she was enquired. Her cross examination shows that “it is true that the police were making enquiry with wife of Rakesh and people were present there. She met the wife of Rakesh on the spot of the incident when police officials were present on spot. She has stated to the police that she has witnessed the incident”. Thus, her evidence nowhere shows that her statement was recorded on that day. It only shows that she was enquired by the police regarding the incident. Possibility that she was enquired on the day of the incident and her statement was recorded on 3.10.2015 cannot be ruled out. Merely because she has stated during the cross examination that the police enquired her on the same day is not sufficient to show that her statement was recorded on that day and it was suppressed by the prosecution. The evidence of

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the investigating officer sufficiently shows that he has recorded statement of independent eyewitness PW3 Shubhangi Dongre on 3.10.2015. Moreover, the investigating officer is not cross examined on this aspect that her statement was recorded on the day of the incident as well as on 3.10.2015 and her earlier statement was suppressed by the prosecution.

45. The evidence of independent eyewitness PW3 Shubhangi Dongre is further criticized on the ground that there is delay in recording her statement. Admittedly, on delay in recording the statement, PW9 is not cross examined.

46. The Hon'ble Apex Court in **Criminal Appeal No.116/2011 (Goverdhan and anr vs. State of Chhattisgarh)** decided on 9.1.2025 observed that delayed examination of certain witnesses, this Court in several

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decisions has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.

47. In the present case, we have also noted that no such question was asked by the defence to the investigating officer about delay in recording the statement of independent eyewitness PW3 Shubhangi Dongre. The witness was also not asked about it, which would have afforded an opportunity to the investigating

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officer to explain the reasons for such delay in recording of the statement.

48. The evidence of these eyewitnesses is further substantiated by the circumstantial evidence that blood stains of blood group of the deceased are found on the clothes of accused Vishwas and accused Suraj. As already observed that the said analysis report is admissible under Section 293 of the CrPC. Admittedly, the said incriminating evidence was not put to the accused in the trial court while recording their statements under Section 313 and, therefore, during the proceeding of the appeal before this court, the said incriminating circumstance was put to the accused persons by recording their additional statements and they have not explained the said incriminating circumstance. This circumstance regarding seizure of the blood stained clothes of the deceased and the accused persons is proved by investigating officer

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PW10 Keshav Dhondiba Wagh. Admittedly, pancha witnesses PW6 Adwin Danial and PW8 Nitesh Khadekar have not supported the prosecution. Therefore, the prosecution placed reliance on the evidence of the investigating officer. His evidence only shows that the accused persons made statements that they will show the place and accordingly the accused led them and the weapons are recovered at their instance. However, whether the statements were voluntary or not, it is nowhere questioned by the defence during the cross examination.

49. The doctrine underlined under Section 27 of the Indian Evidence Act is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

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50. Section 27 of the Indian Evidence Act is interpreted by the Hon'ble Apex Court in the case of **Subramanya vs. The State of Karnataka, reported in 2022 LiveLaw SC 887** and held that the conditions necessary for the applicability of Section 27 of the Act are that (1) Discovery of fact in consequence of an information received from accused; (2) Discovery of such fact to be deposed to; (3) The accused must be in police custody when he gave information; and (4) So much of information as relates distinctly to the fact thereby discovered is admissible. It has been further held that what is admissible is the information and the same has to be proved and the opinion form it by the police officer. It has been further held that In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused

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and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It is further held by the statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

51. The evidence of the investigating officer shows that the accused persons made statements in presence of panchas and, thereafter, led them and shown place where the articles were sealed.

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52. Thus, the evidence sufficiently shows that the accused persons made their statements and in pursuance of the said statements led panchas and the investigating officers and at their instance, the articles were seized. Admittedly, this evidence is not challenged by the defence on the point of voluntary statements or the place of recovery. Thus, the evidence of the investigating officer remained unchallenged.

53. Even, accepting that the recovery was not in view of Section 27 of the Evidence Act, the direct evidence sufficiently shows involvement of the accused persons in the alleged incident. Though pancha witnesses PW6 Adwin Danial and PW8 Nitesh Khadekar have turned hostile and not supported the prosecution, the evidence of the investigating officer is sufficient to prove the aspect of recovery at the instance of the accused.

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54. In **Modan Singh vs. State of Rajasthan**, reported in (1978) 4 SCC 435, the Hon'ble Apex Court observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version.

55. The similar view was expressed in the case of **Mohd.Aslam vs. State of Maharashtra**, reported in (2001)9 SCC 362 and in the case of **Antersingh vs. State of Rajasthan**, reported in (2004)10 SCC 657.

It was further held that even if the pancha witnesses have turned hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.

56. Thus, merely because the pancha witnesses have turned hostile, the same is not the ground to reject

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the evidence if it is based on the testimony of the investigating officer alone.

57. The prosecution evidence is further criticized by the defence counsel on the ground that though incriminating articles are seized on 1.10.2015, 2.10.2015, and 3.10.2015, the said articles are forwarded to the C.A. on 3.11.2015 i.e. after one month.

58. The evidence of the investigating officer is further criticized on the ground that the prosecution has not explained that during the said period, the muddemal articles were kept in a safe custody and there was no chance of tampering of the articles. Admittedly, the prosecution has to adduce the evidence that during that period, the articles were kept in a safe custody and there was no chance of tampering the same.

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59. Thus, the nature of the argument was that the investigation carried out by the investigating officer suggests that it was not taken place in proper and disciplined manner. Admittedly, the prosecution failed to adduce the evidence that during the said period, muddemal articles were kept in a safe custody and there was no chance of tampering of the evidence. However, endorsements on the C.A. Reports show that when the articles were received, the seals were intact. Even, accepting the contention of learned counsel for the accused persons, principle of law is crystal clear that on account of defective investigation, the benefit will not go to the accused persons on that ground alone. It is well within the domain of the court to consider the rest of the evidence which the prosecution has gathered such as statements of eyewitnesses and medical reports etc..

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60. It has been well settled principle laid down in various decisions that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds raised by the defence.

61. The trivial defects in investigation or process are not enough in themselves to disbelieve the evidence of the eyewitnesses or the prosecution case. To acquit solely on the ground of defective investigation would be adding insult to injury.

62. Perusal of the entire evidence reveals that the accused persons in furtherance of their common intention assaulted the deceased and his death. The common intention contemplated by Section 34 of the IPC

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presupposes prior concert. It requires meeting of minds and it requires a plan.

63. The Hon'ble Apex Court, in the case of **Gadadhar Chandra vs. The State of West Bengal, reported in (2022)6 SCC 576** held that as consistently held by this Court, common intention contemplated by Section 34 of the IPC presupposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly.

64. In the present case, the accused persons came at the spot by holding weapons in their hands. The arrival of the accused persons with weapons at the spot of the

incident itself is sufficient to show the intention on their part.

65. The Hon'ble Apex court has an occasion to interpret word "furtherance" in the case of **Jasdeep Singh @ Jassu vs. State of Punjab, reported in (2022)2 SCC 545** wherein it is held that word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyze and assess the evidence before implicating a person under Section 34 of the IPC. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the

satisfaction of the court. The evidence should be substantial, concrete, definite and clear.

66. By applying the aforesaid principles to the case in hand, the common intention of the accused persons is established by the prosecution on the basis of the evidence of eyewitnesses i.e. wife of the deceased PW1 Vaishali Ramteke, daughter of the deceased PW2 Priyanka Ramteke, independent eyewitness PW3 Shubhangi Dongre, and son of the deceased PW4 Abhay Ramteke.

67. Thus, after appreciating the entire evidence on record, we do not find any merit in the submissions of learned counsel for the accused persons. The prosecution established that the accused person by sharing common intention assaulted the deceased with wooden log and wooden rod and wooden stumps and caused his death beyond reasonable doubt. The evidence of the

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prosecution witnesses is cogent and consistent and inconsistencies are trivial in nature and do not affect the prosecution case.

68. In this view of the matter, as we find no merit in the appeal, the appeal deserves to be dismissed and the same is **dismissed**.

Appeal stands **disposed of**.

(NANDESH S.DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!