



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

CRIMINAL APPEAL NO.676 OF 2019

Appellant : Kishor s/o Maniram Dhurve,
 Aged about 49 years,
 R/o. Dewhadi, Tah. Tumsar, Distt. Bhandara.
 – Versus –

Respondent : The State of Maharashtra,
 Through Police Station Officer,
 Police Station, Tumsar, Tah. Tumsar, Distt. Bhandara.

 Ms. Himani Kavi h/f Ms. P.D. Rane, Advocate (appointed) for the Appellant
 Mr. A.R. Chutke, A.P.P. for the Respondent/State

CORAM : **ANIL L. PANSARE & M.M. NERLIKAR, JJ.**
RESERVED ON : **31st JULY, 2025.**
PRONOUNCED ON : **6th AUGUST, 2025.**

J U D G M E N T : *(Per M.M. Nerlikar, J.)*

01. The instant criminal appeal is filed challenging the judgment and order dated 07/01/2016 passed by the learned Additional Sessions Judge, Bhandara in Sessions Trial No.45/2008, wherein the present appellant was convicted for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code (I.P.C.) and sentenced to suffer rigorous imprisonment for life and also to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months. The present appellant

was also convicted for the offence punishable under Section 452 read with Section 149 of I.P.C. and sentenced to suffer rigorous imprisonment for five years and also to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for three months.

02. **Brief facts:**

- i. First Information Report No.65/2008 (F.I.R.) was lodged by Pradip Ganrajsingh Thakur alleging that the appellant-Kishor Dhurve and other accused persons came to his house on 28/03/2008 at about 11:00 p.m. The appellant had knife in his hand so also Murli Dhurve, Virendra Fule and one another person had swords in their hands. It is further alleged that the appellant and Murli caught hold the hands of Lalita and dragged her out of her room. The appellant gave a knife blow on her abdomen. When the relatives and others started gathering, all the accused ran away from the spot. After registration of F.I.R. for the offences punishable under Sections 452 and 307 read with Section 34 of I.P.C., investigation was carried out.
- ii. During investigation, spot-panchnama was drawn and the statements of eye-witnesses were recorded. Since, Lalita died

at 06:15 a.m. on 29/03/2008, offence under Section 307 was converted into the offence under Section 302 of I.P.C.. The dead-body was sent for postmortem. After arrest of the accused, knife was recovered at the behest of accused No.1 i.e. the present appellant, under Section 27 of the Indian Evidence Act and the clothes of the appellant were seized. After completion of investigation, charge-sheet was filed against the accused persons.

- iii.** Out of six accused persons, accused No.4 absconded and accused No.6 died and, therefore, the trial of accused No.4 was separated vide order dated 18/03/2015 and the trial against accused No.6 stood abated.
- iv.** Charges were framed against accused No.1 i.e. the appellant, accused No.2, accused No.3 and accused No.5. The charges were explained to the accused persons in vernacular language and they pleaded not guilty and claimed to be tried and, accordingly, they were tried for the offences charged against them. The defence of the appellant was of total denial and false implication.

- v. After considering the evidence led by the prosecution and defence of the accused persons, the trial Court vide its judgment and order dated 07/01/2016 was pleased to convict the present appellant and accused No.2-Murli for the offences punishable under Sections 452 and 302 read with Section 149 of I.P.C. Further, the present appellant and accused No.2-Murli were acquitted for the offence punishable under Section 135 of the Bombay Police Act. However, accused No.3-Virendra and accused No.5-Sanjay were acquitted for the offences punishable under Sections 147, 148, 149, 452 and 302 of I.P.C. read with Section 135 of the Bombay Police Act. The trial Court has directed that the sentences shall run concurrently and further set off was also provided to the appellant and accused No.2 for the period of detention undergone by them.
- vi. Against the judgment and order, accused-Murli preferred Criminal Appeal No.225/2016 against his conviction and the State also preferred Criminal Appeal No.443/2016 against the acquittal of accused No.3-Virendra, before this Court. Both the criminal appeals were heard by the Division Bench of this Court and vide judgment dated 22/12/2020 dismissed

Criminal Appeal No.225/2016 filed by accused-Murli and allowed Criminal Appeal No.443/2016 filed by the State against the acquittal. The sentence awarded to Murli was maintained and accused No. 3 was held guilty for the offence punishable under Section 302 read with Section 34 of I.P.C. and was thereby directed to suffer sentence of life imprisonment. However, acquittal of Virendra was maintained to the extent of the offences punishable under Section 147, 148, 149 and 452 of I.P.C.

03. We have heard the learned Counsel for the appellant and the learned A.P.P on behalf of the State. The learned Counsel for the appellant vehemently submitted that the present appellant has been falsely implicated in the crime and there is no sufficient evidence to convict the appellant. Further, there are several omissions and contradictions in the evidence of eye-witnesses and in the cross-examination, material omissions were brought on record. However, the trial Court has failed to appreciate the evidence in its true perspective. Even all the eye-witnesses, which were examined, are relatives and interested witnesses and no independent eye-witnesses were examined by the prosecution even though they were available.

04. On the other hand, the learned A.P.P. vehemently opposed the submissions of the learned Counsel for the appellant by relying on the testimonies of eye-witnesses. He submits that the death was homicidal and is duly proved by the prosecution. He placed reliance on the testimony of four eye-witnesses, who have witnessed the incident. According to him, the testimony of eye-witnesses or relatives cannot be brushed aside merely by saying that they are interested witnesses. It is further submitted by the learned A.P.P. that in catena of judgments of the Hon'ble Supreme Court, it has been held that the testimonies of relatives of the deceased, who are eye-witnesses, are admissible in law. However, as a rule of caution, the Hon'ble Supreme Court held that strict scrutiny is required when the witnesses are closely related to the deceased. It is further contended by the learned A.P.P. that the present appellant has assaulted deceased-Lalita with a big knife on her abdomen and upon seeing the relatives gathering, the accused persons ran away from the spot. Therefore, the learned A.P.P. supported the judgment and order passed by the trial Court and prayed for dismissal of the appeal.

05. We have considered the rival submissions. We have also gone through the entire ocular as well as documentary evidence on record. Following points arise for our consideration. We have recorded our findings thereon for the reasons to follow:

Sr.No.	Points	Findings
1.	Whether the death of deceased Lalita was homicidal?	Yes
2.	Whether the prosecution proved that appellant-Kishor Dhurve, accused No.2-Murli Dhurve, accused No.3-Virendra Fule, accused No.4-Ganesh @ Suresh Lede, accused No.5-Sanjay Potbhare and accused No.6-Shankar @ Pandya Buddhe have committed murder of deceased-Lalita on 28/03/2008 at about 11:15 p.m. at village Dewhadi by stabbing her on her abdomen by the knife and thereby committed an offence punishable under Section 302 read with Section 149 of I.P.C.?	Yes

REASONS

As to Point No.1:

06. In order to prove death of Lalita as homicidal, the prosecution has examined PW-8 Dr. Avinash Nanhe, who has conducted autopsy on the dead-body of deceased-Lalita. It has come in the evidence of PW-8 that he found following external injury viz. stab wound of size 7 cm x 6 cm x 14 cm on left umbilicus region of abdomen 5 cm above and lateral to umbilicus. The margin of stab wound are clear-cut. The direction of wound is medially downward going to right side of abdomen. The age of

the injury was more than 6 hours as the colour of wound is dark reddish. The cause of injury may be due to sharp edged blade and pointed object. The intestine is seen to have come out through the wound. Further, on examination of dead-body, he found the following internal injuries:

- I. At inner side of wall of injury haematoma present. The peritoneum ruptured at left side of umbilicus 5 cm above and lateral to umbilicus. Clotted blood present. Peritoneal contains clotted blood and hemorrhagic fluid of about 3 to 4 liters present.
- II. On liver, there is a lacerated wound of size 5 cm x 1 cm x 3 cm is present over inferior side of liver of left lower lobe. Clotted blood present inside the wound.
- III. He opined that the probable cause of death may be due to hemorrhagic shock because of excessive hemorrhage on account of injuries to the vital organ.

07. Thus, the injuries were antemortem and were on vital part of the body. Further, the evidence of eye-witnesses depicts that the appellant assaulted deceased Lalita with the help of knife on the abdomen. The blood mixed with soil was also found on the spot. Therefore, we have no hesitation in saying that the death of the deceased Lalita is a homicidal

death and the prosecution has duly proved the death of Lalita as a homicidal death.

As to Point No.2:

08. Before appreciating the evidence, it is necessary to clarify that so far as accused No.2-Murli and accused No.3-Virendra are concerned, the conviction of accused-Murli has been maintained by this Court and acquittal of accused-Virendra has been set aside by convicting him for the offence punishable under Section 302 read with Section 149 of I.P.C. by this Court. Further, the accused No.4-Ganesh is absconding, accused No.5-Sanjay was acquitted by the trial Court and accused No.6- Shankar passed away during the trial. Therefore, at present, we are considering the evidence only to the extent of present appellant-Kishor.

09. Now, it is necessary to find out, whether there is sufficient evidence to connect the present appellant with murder of deceased Lalita and in that context, we have appreciated the evidence of the eye-witnesses. In order to prove the guilt of the appellant, the prosecution has examined as many as four eye-witnesses i.e. PW-3 Pradip, who is the informant, PW-4 Jaiprakash, PW-5 Ramprasad, who is an injured eye-witness and PW-10 Nilu Kumbhre.

10. PW-3 has deposed at Exh.140 that the incident took place on 28/03/2008. He has stated that on 28/03/2008 at about 11:00 p.m., Kishor Dhurve, Murli Dhurve and Viru Fule came to their house. Kishor and Murli entered into the house and Viru waited in the varandah. Kishor had large knife (sura) and Murli had sword in their hands. Viru also had sword with him. Murli abused Lalita. Kishor and Murli dragged Lalita up to the door. Kishor stabbed Lalita with a knife on her abdomen. Ramprasad and Jaiprakash came there on hearing hue and cry. Ramprasad tried to snatch the knife from the hands of Kishor. On gathering of the public, Kishor, Murli and Viru ran away. Ramprasad sustained injury on the thumb of his hand. Accordingly, Ramprasad went to the Police Station and brought police. Lalita sustained bleeding injuries. Jaiprakash tied towel around her wound. Police took Lalita to the hospital. He filed complaint in the Police Station. He deposed that the complaint bears his signature. He also admitted the contents of F.I.R. (Exh.141) as true and correct. The large knife, which was shown to this witness, was identified by him, which was in possession of Kishor.

11. PW-3 was cross-examined at length. Some omissions and contradictions were tried to be brought on record by the Counsel for the accused in order to suggest that there may be a possibility of reasonable doubt even though there are houses adjoining to the house of Lalita, no

independent eye-witnesses were examined. It was also contended that even though there may be eye-witnesses, one cannot be oblivious to the fact that at the time of incident, there was a load shedding and, therefore, the eye-witnesses were not able to see the accused persons.

12. The second eye-witness i.e. PW-4 Jaiprakash Kumbhre was examined at Exh.145, wherein he has deposed that he heard the shouts of accused Kishor saying that “Lalita Bahar Niklo” and, therefore, he and his brother Ramprasad came out of the house. He saw accused Kishor, Murli and Virendra standing in the varandah of Lalita. Kishor had knife, Murli and Virendra had swords in their hands. Murli dragged Lalita out of the house and Kishor assaulted her by knife on her abdomen. When his brother Ramprasad tried to rescue or separate Lalita and Kishor, at that time Ramprasad also sustained injury on his left hand thumb. He further deposed that he tied towel around her wound. During cross-examination of this witness, the suggestion as mentioned during the cross of PW-3 with regard to the absence of independent eye witnesses and load shedding was put by the defence. However, only omissions to the extent of shouting by the appellant to Lalita “Bahar Niklo” and Murli dragging Lalita out of the house were brought on record.

13. PW-5 Ramprasad Kumbhre at Exh.146 deposed that the incident took place at about 28/03/2008 at about 11:00 p.m. At the time of incident, he and his brother Jaiprakash were in the house. At that time, they heard the shouts “Lalita Bahar Niklo”. Therefore, they came out of the house. He saw accused Kishor assaulting to Lalita and Murli holding the hand of Lalita. When he went to separate Lalita, Kishor assaulted him by knife on his left hand thumb. Accused No.2-Viru was also present there having sword in his hand. He further deposed that accused-Kishor assaulted Lalita by knife on her abdomen. He also deposed that at the time of incident, electric lights were on. He saw the incident in the electric lights. He further deposed that Lalita was initially taken to the Government Hospital, Tumsar and then to the General Hospital, Bhandara. Lalita died on the next day morning at about 06:00 a.m. During his cross-examination, some omissions that there was a load shedding at the time of the incident; due to which there was no electricity lights and the omission to the extent of shouting “Lalita Bahar Niklo” were brought on record.

14. PW-10 Nilu Kumbhre deposed at Exh.165 that Lalita was her aunt i.e father’s sister. She knows accused-Kishor as he was residing by the side of the house of Lalita. The accused was doing the business of selling liquor in the vacant railway quarter. The incident took place on 28/03/2008 at about 10:45 p.m. At that time, she along with daughter of

Lalita viz. Bela and Sandeep Thakur were present in the house. At that time, electricity was on. They heard the noise of pushing door and abuses. Accused-Kishor shouted “Lalitabai Bahar Nikal”. The door could be opened by kicking on it. The present appellant and accused-Murli came inside the house. Kishor had knife and Murli had sword in their hands. Kishor and Murli lifted Lalita and brought her near the door. Murli caught the hands of Lalita and Kishor assaulted Lalita by the knife on her abdomen. Her brother Ramprasad, who was in adjoining room, came there. Kishor raised knife on Ramprasad, which struck on the right thumb of Ramprasad. Jaiprakash, her another brother, tied towel on her wound. Lalita sustained bleeding injury. It is further deposed that one more person was present at the door of the house of Lalita at the time of incident. He was also having sword in his hand. She was cross-examined and during her cross-examination, it was tried to be brought on record that there was a load shedding from 04:00 p.m. to 12:00 midnight. However, the said suggestion was denied by her.

15. The other witness i.e. PW-12 Doctor Vikas Meshram deposed at Exh.171 that initially the deceased was taken to Hospital at Tumsar and he was the Medical Officer at Sub-District Hospital, Tumsar. He has deposed that he has examined deceased Lalita Thomas and found stab wound over abdomen and abrasion on left leg and abrasion on the left

hand. However, he has referred her to Government Hospital, Bhandara for further treatment. He has issued Medical Certificate at Exh.175, wherein his signature appears. He admits the contents of that certificate as true and correct. He further deposed that he has also examined Ramprasad Kumbhare on the same day at about 03:45 p.m.. and found one incised wound on his left thumb palmer aspect caused by sharp and cutting object.

16. PW-1 Hira Balpande, witness to the spot-panchnama, turned hostile. PW-7 Sachin Thaokar, who is panch to the memorandum recorded under Section 27 of the Indian Evidence Act of accused-Kishor also turned hostile. The other witnesses viz. PW-9, PW-11 and PW-13 supported the case of the prosecution. PW-14 Mrs. Sweta Khedkar, who was the Investigating Officer of the case, deposed at Exh.183.

17. In order to prove the guilt of the appellant, the prosecution relied on the testimonies of the important four eye-witnesses, who deposed against the present appellant Kishor. On appreciating the evidence of PW-3, PW-4, PW-5 and PW-10, the prosecution has duly proved the factum of the day of the incident i.e. the incident has occurred on 28/03/2008 at about 11:00 p.m. The prosecution has also proved that three persons i.e. the present appellant and other two accused came to the house of deceased Lalita; Murli and the present appellant dragged her up to the door. The

present appellant gave knife blow on her abdomen and upon seeing people gathering, they ran away. The testimonies of these eye-witnesses are consistent so far as the assault by the present appellant on deceased Lalita with the help of knife on the abdomen is concerned, which is a vital part of the body. It has also come in the evidence that the size of the knife is quite big which has caused external injury of 7 cm x 6 cm x 14 cm and it has caused inner injury as her peritoneum ruptured at left side of umbilicus 5 cm above and lateral to umbilicus. The injury has also damaged the liver as there was lacerated wound of size 5 cm x 1 cm on the liver over inferior side.

18. It is the argument of the learned Counsel for the appellant that a single blow is not sufficient to gather the intention of the present appellant to cause death of deceased Lalita. Therefore, at the most, the offence would fall under Section 304 Part-II of I.P.C.

19. We do not accept the said submission. The intention can be gathered from the fact that the present appellant along with others came to the house with deadly weapons like knife and swords and the injury caused itself depicts that it was a forceful blow which has damaged the internal vital part of the body.

20. The Hon'ble Supreme Court in the case of *Singapagu Anjaiah vs. State of Andhra Pradesh – (2010) 9 SCC 799* has held that inflicting a single blow by the accused on the head of the deceased with crowbar causing multiple fractures of skull is sufficient to attract the provisions of Section 302 of I.P.C. against the accused. Therefore, there is no force in the submission of the learned Counsel for the appellant that a single blow is not sufficient to attract the provisions of Section 302 of I.P.C.

21. We find that the eye-witnesses were present at the time of incident and thereby witnessed the incident. One of the witnesses i.e Ramprasad was injured in the scuffle and, therefore, his testimony would stand at a higher pedestal. The testimonies of the eye-witnesses were unshaken in the cross-examination except for certain omissions and contradictions, which were tried to be brought on record which are discussed *supra*. However, those are not material contradictions and omissions in order to discard the testimonies of the eye-witnesses. Therefore, we hold that the evidence of eye-witnesses Nos.3, 4, 5 and 10 inspires confidence and it can be held that none other than the present appellant is the author of the injury caused to deceased-Lalita and the present appellant has committed the murder of deceased-Lalita.

22. Further, apart from this ocular evidence, the prosecution has also brought on record certain circumstances to support the ocular evidence like the C.A. report at Exh.17, which goes to show that the clothes of accused No.1-Kishor were stained with human blood having blood group "A". It further shows that the blood group of deceased Lalita belonged to group "A". Exh.22, as per the C.A. Report at Exh.19, shows the blood group of Kishor as "O" and, therefore, the presence of blood group "A" on the clothes of the present appellant is another circumstance to connect the appellant with the crime, he has also failed to explain the same in his statement recorded under Section 313 of the Code of Criminal Procedure. Further, the Investigating Officer also found the blood stained earth on the spot and the C.A. report at Exh.17 goes to show that it was human blood. Further, the C.A. report at Exh.17 shows that the big knife, which was recovered, was having human blood belonging to blood group "A". It is worthwhile to mention at this juncture that under Section 27 of the Indian Evidence Act, the discovery of knife at the behest of present appellant was duly proved and the said knife was sent for examination by PW-14, who is the Investigating Officer.

23. Considering the over all discussions as above, on the basis of ocular as well as documentary evidence, we find that the prosecution has duly proved the death of deceased Lalita is a homicide and the present

appellant, who is the main accused, has inflicted the fatal blow by knife on the deceased. It is further proved that the eye-witnesses were present on the spot, who have seen the appellant while stabbing deceased Lalita. There was recovery of weapon having blood stains of blood group "A", which is of deceased Lalita, has also been duly proved. Therefore, considering the direct evidence against the present appellant, we do not find any error committed by the trial Court while convicting the present appellant. The case is proved beyond reasonable doubt and, therefore, the trial Court was justified in awarding the sentence to the present appellant.

24. Hence, the appeal is dismissed.

25. Professional fees of the learned Counsel appointed on behalf of the appellant be quantified and paid as per rules.

(M.M. Nerlikar, J.)

(Anil L. Pansare, J.)