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

CRIMINAL APPEAL NO. 707/2019

Pankaj Moreshwar Dikonwar @
Pankaj Tanaji Kusalkra, aged
about 25 yrs., Occ. Student,
R/o. P.S.C. Road, Wadarpura, Kondhali,
Tah. Katol, Dist. Wardha.

...APPELLANT

VERSUS

State of Maharashtra, through
Police Station Officer, Police Station
Karanja (Gh.), Tah. Karanja (Gh.),
Dist. Wardha.

RESPONDENT

Mr. S.S. Das, Advocate (appointed) for appellant.
Ms. S. Haider, APP for respondent/State.

CORAM : NITIN B. SURYAWANSHI AND PRAVIN S. PATIL, JJ.

DATE ON : 25th FEBRUARY 2025

ORAL JUDGMENT : (PER: NITIN B. SURYAWANSHI , J.)

1. The appellant is convicted under Sections 302, 307, 449 of the Indian Penal Code ("IPC") in Sessions Case No. 65/2016 by

Additional Sessions Judge, Wardha and sentence of life imprisonment is imposed on him and he is directed to pay fine of Rs. 60,000/-.

2. The prosecution case in short is that, PW-3 Sadhana Patel lodged First Information Report ("FIR") (Exh.37) alleging that she was staying along with her father Pandurang, mother Rekha and two brothers at Karanja (Dh.). Her elder sister Sharda was married 4 years prior to incident to Kishor Kusalkar (resident of Kondhali). She used to talk to her brother-in-law's younger brother Pankaj. There was love affair between them. Three weeks prior to the incident, she eloped with Pankaj and they went to Shegaon and Pune. Her parents called her on the phone and asked her to come back and they will marry her with Pankaj. Therefore, she and Pankaj returned within two days to house of Pankaj. After they returned, her parents refused to get her married to Pankaj. Two days prior to the incident, Pankaj called her on mobile phone of one of her neighbours and told her not to deceive him and she should marry with him in the Court. She told him that she would marry as per her parents' wish.

3. On 19.04.2016, she was sleeping at home with parents, her grand mother Shakuntala (mother's aunt) and her two grand-

daughters Poonam and Monika in the same room. The door of the house was open. At about 04.00 a.m. she woke up with the noise of her parents screams and saw Pankaj assaulting her father on the bed with knife. Thereafter, her mother went to nab Pankaj and he assaulted her mother also with a knife, due to which she fell down. Then her father got up, however Pankaj again assaulted him with knife. When she tried to interfere, Pankaj assaulted her with a knife on her right wrist and under arm. Therefore, she ran away out of the house and shouted for help. Her neighbour Amol Charde came out along with his family members. In the meanwhile, Pankaj ran away out of their house, however Amol and his father got the better of him and nabbed him. Other people from the vicinity also gathered due to commotion. Amol with the help of people took her parents in his Matador to Rural Hospital, Karanja (G). Her mother succumbed to the injuries in the hospital, her father was sent to Nagpur for treatment. Pankaj assaulted her parents as they refused to marry her with him. On the basis of this report, crime No. 188/2016 was registered with Police Station Karanja (Gh), Tah. Karanja (Gh.), Dist.

Wardha. On completion of investigation, charge-sheet was filed and the case was committed to the Sessions Court.

4. Accused was charged under Sections 302, 307 and 449 of the IPC. He pleaded not guilty. In support of its case, prosecution examined 26 witnesses. Defence of the accused was of total denial. He examined one defence witness and claimed that he is falsely implicated in the crime. According to him, somebody else had entered the house and assaulted parents of Sadhana i.e. Pandurang and Rekha. Trial Court found him guilty and convicted him as aforesaid, hence, this appeal.

5. Heard learned Advocate for the appellant, learned APP for State.

6. Learned Advocate for appellant assailed the judgment of conviction on multiple grounds. According to him, the evidence of eye-witnesses, Sadhana (PW-3) and Shakuntala (PW-5) is not believable. Sadhana (PW-3) has read her statement before deposition which amounts to tutoring. Taking into consideration the omissions in the statements of Sadhana (PW-3) and Shakuntala (PW-5), they are unreliable witnesses, they have changed their version from time to

time. Two statements of Shakuntala (PW-5) were recorded, however, the prosecution has brought only one statement on record and therefore, adverse inference needs to be drawn against the prosecution. In view of the omissions in the evidence of Sadhana (PW-3) and Shakuntala (PW-5), they cannot be said to be eye witnesses. Shakuntala (PW-5) in his deposition has not stated about the light which was burning in the house, at the time of incident. The sequence of events given by PW-4 Amol Charde differs from sequence given by Sadhana (PW-3) and Shakuntala (PW-5). Blood stained clothes of Amol were not seized, which renders his evidence doubtful. Eye-witnesses Sadhana (PW-3), Amol Charde (PW-4) and Shakuntala (PW-5) do not state that accused came out after the incident and threw both the knives on roof of Sadhana's (PW-3) house. The recovery of knife at the instance of accused is therefore, doubtful. The memorandum statement of accused recorded under Section 27 of the Evidence Act, was not read over to him and therefore, it should be disbelieved. None of the Panch witnesses have stated about sealing of the articles recovered at the instance of accused/applicant. Due procedure is not followed while taking photographs and video

shooting of the alleged dying declaration made by deceased Pandurang. According to him, seizure of articles is not properly proved and therefore, no reliance can be placed on the same. He further submits that there is difference in timing when Sadhana (PW-3) and Shakuntala (PW-5) reached home from hospital. First Information Report is lodged belatedly. He submits that though PW-4 Amol Charde claims to have called Police Inspector at the time of incident, sequence of incident given by him differs from the sequence of incident given by PW-3 Sadhana and PW-5 Shakuntala. His blood stained clothes were not seized and therefor, his version is doubtful. He has also not stated in his evidence that accused after coming out from the house of Pandurang, threw the knife on the roof of the house. Sealing of knife is not stated by panch Yogesh (P.W.6). Memorandum statement of the accused was not voluntarily recorded and it was not read over to panchas and accused. Similarly, seizure panchanama was not read over to the panchas and therefore their contents are not proved by the prosecution. The panchanama also does not give description of knives. Proper procedure is not followed at the time of seizure of the knives. Procedure was also not followed

while taking photographs and video recording of dying declaration. Police did not give their personal search before seizure of articles, panchas have not stated about the sealing of the seized articles and therefore seizure of the articles becomes doubtful. Prashant Watkhede (P.W.13) Police Constable Carrier does not say that he carried the articles in sealed condition. Injury certificates of accused, Sadhana (PW-3) and Shakuntala (PW-5) are not properly proved by the prosecution. Dying declaration of Pandurang needs to be disbelieved in view of the manner in which the same is recorded. The video in which dying declaration was recorded was not displayed in the Court and therefore that video needs to be discarded. Pawan Kadve (P.W.24) has admitted in his evidence that he had three persons as a staff in his shop and all the three had access to the computer on which the video was downloaded. Therefore, all the three could have tampered the video and could have made changes to the photos and videos. According to him, one line dying declaration of Pandurang is recorded. Taking into consideration the injuries suffered by him he was not in a position to give dying declaration. He further submitted that if at all Pandurang was in a fit state of mind to give dying

declaration, he would have given a detail dying declaration and not cryptic oneline dying declaration. This create doubt about the dying declaration and the same should not be relied upon. There is no station diary entry about the dying declaration.

7. Investigating Officer has deposited the muddemal on the next date and not on the same day. He submits that taking into consideration these serious lacuna's in the prosecution case, conviction of the accused is not sustainable and the same is liable to be quashed and set aside and accused is entitled for acquittal.

8. Per contra, learned Additional Public Prosecutor supported the judgment of conviction passed by the Trial Court. She submits that there are three eye witnesses whose evidence is consistent, cogent and reliable. Dying declaration has been proved by the prosecution. So-called lacuna's pointed by the learned advocate for the accused are not fatal and they do not demolish the prosecution case. She submits that accused was arrested on the spot, at that time, his clothes were blood stained. Blood stained knives were recovered at his instance and blood found on knives and clothes of the accused are of the blood group of deceased. The accused has committed two murders and

injured two eye witnesses. Scientific evidence i.e. DNA report so also the medical evidence supports the prosecution case. Therefore, the trial Court is justified in convicting the appellant accused. In support of her submission, she relied upon ***Shahaja @ Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra*** reported in ***2022 ALL MR (Cri) 3035 SC*** and ***Molai and another Vs. State of M.P.*** reported in ***(1999) 9 SCC 581***.

9. With the assistance of the learned advocate for the appellant and learned Additional Public Prosecutor, we have perused the record.

10. Sadhana (PW-3) and Shakuntala (PW-5) are the injured eye witnesses. Sadhana (PW-3) has deposed that accused is brother-in-law of her elder sister Sharda. She and accused used to talk to each other and later they both fell in love. They used to go to each other's house. On 26th March, 2016 she eloped with accused and first went to Amravati and then to Shegaon and Pune. Her brother-in-law and parents insisted that they should come back and they will get them married. Thereafter they both came from Pune to Kondhali at her brother-in-law's house. Her parents were present there. They said that they have already given one daughter in that house and they will

not give her in the same family. Then they brought her to Karanja. Her parents opposed her marriage. Before the incident accused made a phone call to one Ranjit who gave phone to her. Accused told her not to ditch him and that she should do Court marriage with him. She told him that she will marry as per parents wish.

11. Incident took place on 19th April, 2016 at about 3.00 to 4.00 am, she along with her parents, mother's aunt Shakuntala and her grand-daughters Poonam and Monika were sleeping. Her father was sleeping on bed and rest of them were sleeping on the floor, in the same room. They always used to keep house door open and on that day also it was open, light bulb was on. They all were fast asleep and suddenly she heard the screams of her parents. She saw accused holding two knives in both hands and stabbing her father. She and her mother went to rescue him, accused started stabbing her mother with both the knives. When her father went to rescue her mother, he again stabbed her father with both the knives. Due to the stab injuries, her mother collapsed. When she went to save her mother, accused stabbed her with the knife on her right hand wrist and under arm. When her grand-mother Shakuntala also came to help, accused

stabbed her with knife. Shakuntala then ran away from the spot. Accused also fled and then she ran behind him. She came out and shouted for help that her parents have been assaulted. Her neighbours Amol Charde and his father Shantaram Charde came out and nabbed accused outside the house. Her father sustained several injuries on his body including face and neck. Her mother sustained injuries on her chest, on both sides of stomach due to which her intestine come out. Thereafter they took her parents and admitted them in Government Hospital at Karanja. She also accompanied them. Her mother succumbed to the injuries during treatment and her father was referred to the Hospital at Nagpur. She was also treated and stitches were given to her. Police came to the hospital and from Hospital she went to the Police Station Karanja and lodged report (Exhibit 37). On the basis of report, First Information Report (Exhibit 38) was registered. Police seized her blood stained clothes. She identified her clothes and the knives (Articles 27 and 28), which were used by the accused for stabbing her, her parents and grand-mother. Her statement was recorded on the same day and after five

days her statement was recorded under Section 164 of the Code of Criminal Procedure (Exhibit 40).

12. In her cross-examination following omissions were brought on record.

a. "My parents told the accused that we will not give the second daughter to him".
b. "Pankaj told me not to ditch him".
c. "The incident had taken place between 3.00 to 4.00 am".
d. "We used to always keep our door open".
e. "We were 'fast' asleep".
f. "Pankaj had knives in both his hands and was attacking my father with both the knives".
g. "The accused had assaulted my mother with two knives".
h. "That day the electricity (bulb) was on in our house".
i. "When me and my mother went to rescue my father, the accused assaulted my mother with 'both' the knives".
j. "When my father went to rescue my mother, the accused assaulted him with both the knives".
k. "When my father had gone to save my mother, at that time he was assaulted by the accused with knives".
l. "When I went to 'rescue my mother', Pankaj also attacked me with knife".
m. "When my grand-mother went to save, she was also assaulted by Pankaj with knife".
n. "My grand-mother ran out and Pankaj ran thereafter and I ran behind him".
o. "I came out of the house and shouted that my parens have been assaulted".
p. "Amol Charge had nabbed the accused Pankaj and retained him outside the house".

q. “My father sustained several injuries on his body including his face and neck”.
r. “My mother sustained injuries on her chest and on both sides of the abdomen, due to which even her intestine had come out.”
s. “My father had sustained injuries in several parts of the body”.
t. “My mother’s intestine had come out.”
u. “My clothes which were stained with blood were seized by the police”.

13. She admitted that police, her grand-mother and brother had accompanied her to give statement before the learned Judicial Magistrate First Class and they were sitting outside while her statement was being recorded in the Court Hall. All the three seized knives looked similar. She denied the suggestion that on the day of incident one thief entered her house and assaulted her parents and as her parents did not want to marry her with accused is falsely implicated in the crime.

14. Shakuntala (P.W.5) has stated in her evidence that incident occurred on 19th April, 2016 at 4 am. Suddenly she woke up from her sleep with the sounds of Pandurang (deceased) saying “Baap re Pankaj ! What wrong have we done and why are you injuring us.” She saw that Pandurang and Rekha were lying down and Pankaj was stabbing them with knives with both of his hands. She also

demonstrated the action of stabbing. Sadhna (P.W.3) went to the accused to stop him, he assaulted her with the knife on her under-arm and wrist. When she went to stop Pankaj, he assaulted her with knife on her right arm. Her hands started bleeding. Accused again threatened to attack her with knife and gestured to stab her. At that time, she fled from the house and started screaming. Then she went to house of Dyaneshwar Bhandekar, (brother of Pandurang Bhandekar) and informed him the incident. Then, she came back to Pandurang's house along with Dyaneshwar.. When they reached Amol had nabbed accused and brought him there. Thereafter, Amol with the help of others put Rekha and Pandurang in the matador and took them and Sadhana to the Government Hospital, Karanja. She also went to the hospital with Dyaneshwar. Doctor treated her and Sadhana also. Pandurang had stab injuries on his face, chest stomach and back. Rekha had stab injuries on both sides of her stomach, chest and even her intestine had come out. Rekha succumbed to the injuries in the hospital. Pandurang was taken to hospital, at Nagpur. On the same day, Pandurang succumbed to his injuries. She came back to Rekha's house. Police made inquiry with her there and recorded her statement

on the same day. She showed the spot of incident to the police. Her clothes were seized vide panchanama (Exhibit 45). Her statement was recorded under Section 164 of the Code of Criminal Procedure in the Karanja Court on 25th April, 2016 (Exhibit-46).

15. In cross-examination, she stated that police were at the spot for about 15-20 minutes and seized all the articles from there. She was unable to state exact time when she reached the hospital. She might be at hospital at about 5 to 5.30 am. Police made inquiry with her as to how she sustained injuries. Sadhana also came back from hospital along with her. Police had told her that they had erroneously recorded her statement on previous day and therefore they have to re-record it. Following omissions are brought on record in her depositions-

A. "Sadhana went to the accused to stop him from assaulting her parents, however, he stabbed her on her under-arm and wrist".
B. "My hand started bleeding".
C. "My son-in-law and daughter have been murdered".
D. "It takes 15 to 20 minutes to reach his house by running".
E. "Amol Charde had nabbed Pankaj and brought him"
F. "Thereafter, I went to the hospital with Dnyaneshwar"
G. "Police had also brought Pankaj to the said hospital, doctors treated me and Sadhana also".
H. "I came back to Rekha's house".
I. "Bapre Pankaj what wrong have we done and why are you injuring us".

J. "Sadhana went to the accused to stop him from assaulting her parents, however, he stabbed her on her under-arm and wrist".

Following omissions from her statement under section 164 of the Criminal Procedure Code are brought on record.

K. "I screamed that my son in law and daughter have been murdered and you all please come / wake up"
L. "It takes 15 to 20 minutes to reach his house by running"
M. "Amol Charde had nabbed Pankaj and brought him"
N. "Thereafter I went to the hospital with Dnyaneshwar"
O. "Thereafter, I went to the hospital with Dhyaneshwar".
p. "Police had also brought Pankaj to the said hospital, doctors treated me and Sadhana also".
Q. "I came back to Rekha's house".
R. "Police had come for inquiry at Rekha's house; police had recorded my statement on the same day; I showed the spot of the incident to the police, they inspected the blood soaked clothes and took the blood soaked Wakal (Blanket) with them; I was called to the police station on the same day; police seized mine, Monika & Poonam's clothes from me".

She could not assign any reason as to why the above facts were not reflected in her statement under Section 164 of Cr.P.C".

16. Amol Shantaramji Charde (P.W.4) is the neighbour of deceased Pandurang. He deposed that incident is dated 19th April, 2016 in the wee hours at 4 am in the night on 18th April, 2016 he and his mother were sleeping inside the house while his father was

sleeping outside in the courtyard. Later on at about 3.00 to 3.30 am, his father came inside the house to sleep. At about 4 am they heard sounds of screaming from the house of Pandurang. They went outside, he called up PI Chaudhari at Karanja Police Station. He saw Maushi of deceased Rekha running out from the house. Behind her he saw young man coming out of the house of Pandurang and running behind her Maushi. Behind him Sadhana (P.W.3) came crying from the house. He and his father chased the said boy and brought him near their house. His house and Pandurang's house are adjacent to each other and they have a common courtyard. His father tied hands and feet of the accused, so that he cannot flee. He was wearing black T-shirt and his clothes were stained with blood. Thereafter, they went to Pandurang's house and saw that Pandurang and his wife were soaked in blood and were writhing in pain. He came back to his house and took his Matador and took Pandurang and Rekha to Government Hospital Karanja. Rajendra Kangale and Deepak Chougule and others helped him in putting Pandurang and Rekha inside the vehicle. Pandurang had sustained stab injuries on his face, chest, stomach and back. Rekha had sustained injuries on her chest and stomach and even

her intestine had come out. Rekha succumbed to the injuries immediately and Pandurang was taken to Hospital at Nagpur. In the meanwhile, police came with the accused to the Hospital. He had injury on his hand and he was treated by Doctor. Then he came back to home. He identified accused Pankaj in the Court. On 2nd May, 2016, his statement under Section 164 of the Code of Criminal Procedure (Exhibit 43) was recorded.

17. In cross-examination, he has stated that while taking victim to the hospital, some blood stains might have come on his clothes. His clothes were not seized by police.

18. Following omissions were brought on record during his cross-examination.

i. "I came out and continued to hear the sounds of screaming and called up P.I. Chaudhari at Karanja police station. Immediately, I saw the Maushi of deceased Rekha running out from the house"
ii. "We have nabbed the accused and brought him 'near our house'."
iii. "Both our houses share the same courtyard."

19. By examining panch witnesses Yogesh (P.W.6), prosecution has proved memorandum statement of accused under Section 27 of

the Evidence Act (Exhibit 53) and panchanama of seizure of two knives from the roof of the house of deceased Pandurang (Exhibit 54). Spot panchanama (Exhibit 22) and Inquest Panchanama (Exhibit-33) are not disputed by the defence.

20. Sheetal Ambudare (P.W.8) has proved the attachment of articles and clothes of deceased Rekha. Laxman Rajghare (P.W.9) is pancha of attachment of blood stained clothes of Sadhana. Pandurang Giradkar (P.W.10) and Rahul Nasare (P.W.11) have turned hostile.

21. Prashant Watkhede (P.W.13) police constable, Chandrakant Bhavare (P.W.14) naik police constable, Amol Nagrale (P.W.15) police constable, Umesh Khamankar (P.W.16) police constable have carried seized articles to Forensic Science Laboratory ("FSL"). Chandrakant Bhavare (P.W.14) has carried query report with two knives to Medical College and then to FSL. Umesh Khamankar (P.W.16) has accompanied the accused to hospital and also carried the weapons used in the crime to the hospital. Sachin Rokade (P.W.17) police constable was on emergency duty at the police station, when Amol (P.W.4) had called up.

22. Dr. Rishikesh Pathak (P.W.18) is the Associate Professor of Government Medical College, Nagpur. He conducted postmortem examination on the dead body of Pandurang and gave report Exhibit 113. He found 32 incised and stab wounds on the body. He has stated that injuries are possible by pointed sharp edged weapon. He has given opinion of death is "stab injuries to chest".

23. By examining Dr. Sachin Khond (P.W.25), prosecution has proved postmortem report (Exhibit 163) of deceased Rekha. He noticed five stab injuries on the body of deceased Rekha. He has also proved injury certificate (Exhibit 157) of Shakuntala (P.W.5) and injury certificate (Exhibit 155) of Sandhana (P.W.3). He has also proved injury certificate (Exhibit 161) of accused Pankaj.

24. Pradipkumar Rathod (P.W.19), PSI has prepared spot panchanama (Exhibit 22).

25. Pawan Kadve (P.W.24) is the photographer and he has recorded video of dying declaration given by deceased Pandurang. In cross-examination he admitted that API Chaudhari did not seize memory card from him. He voluntarily stated that he transferred the

data of memory card into pendrives. He deposed that his studio is famous and crowded and he has two assistants in his studio, all three of them handle the computer and there is one computer in his studio. Changes can be made in a video recording as well as photos. He volunteered that no changes were made in the above photos and video recording. There is no seperate identification marks on the pendrives identified by him.

26. Vinod Chaudhari, Police Inspector (P.W.26) is the Investigating Officer who has recorded the dying declaration of Pandurang (Exhibit 178). He has proved the requisitions forwarded by him and the Chemical Analyzer's reports (Exhibits 217, 218, 219, 220, 221, 223, 224) and also DNA report (Exhibit 225).

27. Gopal Dhiran (P.W.22) is the shop keeper from whom on 18th April, 2016 accused has purchased two knives. He identified knives (Articles 27 and 28) sold to the accused. Similar knife was seized by police from his shop vide panchanama (Exhibit 75). This panchanama is proved by PW-12 Durgesh Bhise.

28. In cross-examination, he admitted that approximately 100 to 125 customers visited his shop daily. However, he denied that it is not possible to remember who purchased the items. He did not know the name of accused earlier. He came to know name of accused from police. There is no CCTV camera in his shop. He has given details of all the items sold by him. However, no bill was given to the accused. Police had brought photographs of knives with them and compared them with the knife in the boxes of his shop. These photographs are not mentioned in the seizure panchanama.

29. Accused has examined his brother Kishor Kusulkar as defence witness (D.W.1). He deposed that on 19th April, 2016 he received a phone call at about 9 to 9.30 am that his parents-in-law, sister-in-law and her grand-mother were assaulted by a thief with a knife. His wife was scared and she insisted for going to Karanja immediately. Thereafter, he along with wife and Pankaj left for Karanja and reached at Karanja bus stop between 10.30 am to 10.40 am. Thereafter, Pankaj went to attend nature's call and fell down on pieces of glass and injured his palm. Police saw Pankaj at Karanja bus stop and arrested Pankaj. Pankaj had blood on his hands.

30. In cross-examination, he admitted that for the first time he is stating what happened on 19th April, 2016 in the Court. He did not lodge any complaint or application stating that his brother has been falsely implicated. He further admitted that when he and his wife reached in his law's house, he came to know that every body gone to hospital and that Pankaj was also taken to the hospital. He admitted love affair between Sadhana and Pankaj and that they had eloped. His in laws had opposed the wedding of Sadhana and Pankaj. He admitted that after Pankaj and Sadhana returned to his house, his in-laws refused to marry Sadhana with Pankaj. He also admitted that Pankaj did come to his house in the night on 18th April, 2016. He then explained that he meant to say that Pankaj was at home.

31. Homicidal death of Pandurang and Rekha is not disputed by the accused. Prosecution has proved homicidal death of Pandurang by examining PW-18, Dr. Rishikesh Pathak. He found 32 incised and stab wounds on the dead body of Pandurang. Cause of death is stab injuries to chest. He has stated that the injuries are possible by pointed sharp edged weapon and are possible by two knives recovered at the instance of the accused. Post Mortem report of

deceased Rekha (Exhibit-163) is proved by PW-25 Dr. Sachin Khond. He found 5 stab injuries on the dead body of Rekha. He has opined that Rekha died due to *"Hemorrhagic shock due to internal bleeding due to multiple stab injuries".* The prosecution has established that Pandurang and Rekha both have died due to multiple stab injuries inflicted on them. Thus, the prosecution has proved that Pandurang and Rekha have suffered homicidal death.

32. In assessing the value of evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situation as would make it possible for them to witness the fact deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence (Vide ***"Shahaja @ Sahahanan Ismail Mohd. Shaikh V/s State of Maharashtra" 2022 ALL MR Cri 3035 (SC)***).

On applying aforesaid principles to the evidence of the eye-witnesses Sadhana (PW-3) and Shakuntala (PW-5), who were injured in the incident, their presence at the scene of occurrence is natural, as PW-3 is daughter of deceased Pandurang and Rekha and PW-5 is her grand mother, being maternal aunt of deceased Rekha. They have categorically deposed that the accused assaulted Pandurang and Rekha with knives in both of his hands. When they tried to intervene, accused assaulted them, hence, they suffered injuries. Injury Certificates of PW-3 and PW-5 prove their presence at the time of the incident. Evidence of both these eye-witnesses is not shaken in the cross-examination. Though, few omissions are brought on record, those do not go to the root of the matter and render their testimony highly suspicious and doubtful. Their evidence is further corroborated by Amol (PW-4). He has nabbed the accused immediately after the incident and at that time cloths of the accused were stained with blood. Evidence of Dr. Pathak and Khond also supports the prosecution case. They have stated that the injuries suffered by both the deceased are possible by knives recovered from the accused. Medical evidence, in the form of postmortem reports, and injury

certificates of PW-3 and PW-5 corroborate the version of the eye-witnesses.

33. In ***Shahaja @ Shahajan Isamil Mohd. Shaikh Vs. State of Maharashtra*** reported in ***2022 ALL MR (Cri) 3035 (SC)*** it is observed :

> *"VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.*
> *VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.*
> *VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.*
> *IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*
> *X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable*

estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness."

28. To put it simply, in assessing the value of the evidence of the eye- witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently

improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

29. There is nothing palpable or glaring in the evidence of the two eye-witnesses on the basis of which we can take the view that they are not true or reliable eye-witnesses. Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eye-witnesses.

30. In the aforesaid context, we may refer to a decision of this Court in the case of State of U.P. v. Anil Singh, AIR 1988 SC 1998, wherein in para 15, it is observed thus :

> *"15. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the*

main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other Both are public duties which the Judge has to perform."

34. On applying aforesaid principles to the ocular evidence led by the prosecution, we find that the evidence of eye-witnesses, PW-3 Sadhana, PW-5 Shakuntala and PW-4 Amol Charde, read as a whole, appears to have a ring of truth and the same is rightly believed by the Trial Court.

35. The prosecution has established recovery of various incriminating articles from the accused. All these articles were sent to FSL. Its reports are at Exhibits-213 to 224. Forensic evidence in the form of CA reports reveals that that, blood detected on the clothes of

the accused is human blood and it was of the blood group of deceased Pandurang and Rekha.

In the aforesaid context, we may refer to the decision of the Apex Court in ***"State of Rajasthan V/s Teja Ram" reported in 1999 (3) SCC 507***, wherein it is held that *"it would be an incriminating circumstance if the blood on the weapon was found to be of human origin"*. Therefore, the forensic evidence also confirms involvement of the accused in the Crime.

Scientific evidence in the form of DNA report (Exhibit-225) further corroborates prosecution case, as the blood detected on the clothes of the accused and on the knives used by him, matches with the blood group of the deceased Pandurang and Rekha.

36. Much emphasis is laid by the defence about not properly sealing or labeling the articles seized by the Investigating Officer. For that by itself does not create doubt about the seizure of the articles and forwarding them to the forensic laboratories and the reports received from Forensic laboratory about finding of blood of deceased and injured from the articles as well as knives. Medical evidence and the scientific evidence supports the prosecution case.

37. The prosecution has also proved the dying declaration Exhibit 158, wherein deceased Pandurang has stated that he was assaulted with knife by Pankaj. Though the defence has tried to allege that it is only one line declaration. Considering the injuries received by Pandurang, he could not be said to be in a position to give dying declaration, we do not agree. Doctor has given an endorsement (Exhibit 159) that patient is conscious and fit for statement and patient has given statement in his presence. When the expert gives his opinion that patient was conscious and fit for statement, we have no reason to disbelieve him. Dying declaration further corroborates the evidence of eye witnesses that accused has assaulted Pandurang.

38. Thus, the prosecution has proved that, in the fateful night, accused assaulted Pandurang and Rekha with knives and when Sadhana (P.W.3) and Shakuntala (P.W.5) tried to intervene, he assaulted and injured them, beyond a reasonable doubt. The Trial Court has properly appreciated evidence and is justified in convicting the appellant-accused. We find no merit in the appeal and hence, the same is dismissed.

39. Fees of the learned appointed Advocate Shri S.S.Das, be quantified as per Rules and be paid to him within four weeks from the date of uploading of the judgment.

(PRAVIN S. PATIL, J.) (NITIN B. SURYAWANSHI, J.)

Gohane/Nair

Signed by: Mr. J. B. Gohane
Designation: PA To Honourable Judge
Date: 01/04/2025 17:50:05