



Judgment

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

CRIMINAL APPEAL NO.833 OF 2019

Manoj Singh Panjabsingh Bhada,
detained in Central Prison Amravati,
C-5560, aged about 31 years,
occupation :- labour, r/o Bargaon, taluka Warud,
taluka and district Amravati. **Appellant.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
Police Station Benoda,
taluka Warud and district Amravati. **Respondent.**

**Shri Amol Hunge, Counsel Appointed for the Appellant.
Mrs. Shamsi Haider, Additional Public Prosecutor for the
State.**

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

**CLOSED ON : 26/09/2025
PRONOUNCED ON : 17/10/2025**

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this appeal, the appellant (accused) has
challenged judgment and order dated 16.5.2019 passed

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by learned Additional Sessions Judge-3, Amravati (learned Judge of the trial court), in Sessions Trial No.93/2015.

2. By the said judgment impugned in the appeal, the accused is convicted for offence punishable under Section 302 of the IPC and sentenced to undergo imprisonment for life for each murder and to pay fine Rs.1000/-, in default, to undergo further imprisonment for one month.

He is also convicted for offence punishable under Section 499 of the IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay fine Rs.500/-, in default, to undergo simple imprisonment for 15 days.

3. Facts of the prosecution case in a nutshell are as under:

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The accused is charged for committal of murder of three persons namely Panjabsingh Gulabsingh Bhada, who is father of the accused; Anjura Rameshwar Uike; and Gopal Birju Uikey. On 24.1.2015, Rajeshsingh Panjabsingh Bhada lodged a complaint at Benoda Police Station that the accused is his brother and deceased Panjabsingh is his father. They are residing at Bargaon, taluka Warud, district Amravati. In the said locality, another deceased Anjura Uikey was also residing along with her two children. There was illicit relationship between said deceased Anjura and the accused since last many days. Upon the said fact being known to deceased Panjabsingh, there used to be disputes between them and deceased Panjabsingh often used to give understanding to the accused. However, he did not pay any heed towards his father and used to quarrel with him. On 22.1.2015, his father deceased Panjabsingh disclosed to the

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informant that there was quarrel between deceased Anjura and the accused. On 23.1.2015, after taking meal, he went to sleep at about 8:00 pm. At about 11:30 pm to 12:00 am, he heard gun fire shot from a gun. Upon hearing the same, he and his wife Gagan came outside of the house whereat he saw his sister Savita Kour crying and the accused was coming out of the house holding a “Bharma Gun” in his hand and, therefore, he rushed to the house of deceased Panjabsingh and found deceased Panjabsingh in a pool of blood. At the relevant time, deceased Savita, residing in the same locality, came to his house and informed that his brother has killed deceased Anjura and her brother deceased Gopal. Thereafter, he went to the place of incident and saw deceased Anjura and deceased Gopal lying in a pool of blood. Thus, his brother the accused has killed his father deceased Panjabsingh as his father often used to scold

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him as there was illicit relationship between the accused and deceased Anjura and due to the said reason, in a fit of anger, the accused murdered his father deceased Panjabsingh by means of gun shot and also committed murders of deceased Anjura and deceased Gopal by means of knife suspecting character of deceased Anjura as deceased Anjura and deceased Gopal were seen together in the house.

4. On the basis of the said report, the crime came to be registered at Benoda Police Station vide Crime No.5/2015.

5. After registration of the crime, wheels of investigation started rotating. During the investigation, the investigating officer visited spot of the incident i.e. residential premises of deceased Panjabsingh as well as deceased Anjura and drawn spot panchanamas. He has

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also drawn inquest panchanamas on three dead bodies and, thereafter, dead bodies were sent for postmortem examination. From both the spots, he collected simple soil, blood stained soil, and blood stained clothes from the spots. The investigating officer has also seized 80 grams gun powder, 53 iron balls, and one bullet weighing 40 grams from the house of the accused by drawing seizure panchanama. The accused was arrested on 24.1.2015. On his arrest, clothes on his persons at the time of the incident were also seized. On the basis of the memorandum statement of the accused, “knife” and “Bharma Gun” were recovered. The seized muddamal was forwarded to the Chemical Analyzer. After completion of the investigation, chargesheet was filed against the accused.

6. Learned Additional Sessions has framed charge vide Exh.30 and additional charge vide Exh.87. The

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contents of charge are read over and explained to the accused. He pleaded not guilty and claimed to be tried.

7. In support of the prosecution case, the prosecution has examined in 7 witnesses, are follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Rajesh Panjabsingh Bhada	25
2	Savita Birju Uike, sister-in-law of deceased Anjura	27
3	Gajanan Kumare, pancha on memorandum and discovery panchanama	34
4	Dr.Pramod Potdar	43
5	Sagar Uike, son of deceased Anjura	57
6	Santosh Boyane, PSI, and	59
7	Mukund Thakare, I.O.	70

8. Besides the oral evidence, the prosecution placed reliance on arrest panchanama Exh.7, spot panchanamas of the houses of deceased Panjabsingh Exh.30 and deceased Anjura, inquest panchanama of deceased Panjabsingh Exh.31, inquest panchanama of

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deceased Anjura Exh.32, inquest panchanama of deceased Gopal Exh.33, memorandum statements of the accused Exh.35, recovery panchanama Exh.36, requisition to Tahsildar Exh.37, letter from the Tahsildar Exh.38, requisitions to the Medical Officer Exhs.44 to 46, postmortem report of deceased Panjabsingh Exh.47, postmortem report of deceased Anjura Exh.48, postmortem report of deceased Gopal Exh.49, requisition to the Medical Officer Exh.50, communications by the Medical Officer Exhs.50 and 51, query to the Medical Officer Exh.52, requisition to the Medical Officer for obtaining blood samples of the deceased Exh.53, seizure memo as to the clothes of the accused Exh.75, letter to CA Exh.80, CA Reports Exhs.80 to 91, and viscera reports Exhs.92 to 94.

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9. On the basis of the said oral as well as the documentary evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt.

10. Learned Judge of the trial court, after appreciating the evidence, held the accused guilty for triple murder and convicted him as the aforesaid.

11. Being aggrieved and dissatisfied with the judgment impugned, the present appeal is preferred on the ground that the alleged incident has taken place in the dark night. As far as the incident at the house of deceased Anjura is concerned, whereat no electricity facility is available. Therefore, there was opportunity for witnesses i.e. PW2 Savita Birju Uike to identify the accused. Though the spot of the incident is situated in a dense locality, no independent witness is examined by the prosecution. The evidence of PW2 Savita is not

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trustworthy. PW1 Rajesh Bhada has not supported the prosecution case and nothing incriminating revealed during his cross examination. The weapons are not forwarded to the ballistic expert. Thus, the entire prosecution case is suspicious and doubtful and, therefore, the conviction on the basis of the said evidence is liable to be discarded.

12. In support of his contentions, learned counsel for the accused has placed reliance on following decisions:

1. Shahjahan vs. State of UP, reported in 2022 LiveLaw SC 597;

2. The State of Maharashtra vs. Bhatu Narayan Patil and ors, reported in 2017 ALL MR (Cri) 3648;

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3. Pralhad s/o Gunwant Madhar and anr vs. State of Maharashtra, reported in 2018 ALL MR (Cri) 1838;

4. The State of Maharashtra vs. Dashrath s/o Vishwanath @ Anangrajya Pawar and ors, reported in 2017 ALL MR (Cri) 3838;

5. State of UP vs. Ashok Dixit and anr, reported in (2000)3 SCC 70;

6. Bhagwan Babu Ghotkar and ors vs. The State of Maharashtra, reported in 2001 ALL MR (Cri) 1569;

7. Ashok s/o Raghunath Bawane and ors vs. State of Maharashtra, reported in 2007 ALL MR (Cri) 2554;

8. Sunil s/o Chokhoba Shambarkar and anr vs. State of Maharashtra, reported in 2008 ALL MR (Cri) 360;

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9. Anton Luis Peidade Fernandes vs. State and Anr, reported in 2012 ALL MR (Cri) 2446;

10. Hamza vs. Muhammadkutty @ Mani and ors, reported in 2014 ALL MR (Cri) 1108 (SC);

11. Lakhwinder Singh and ors vs. State of Punjab, reported in 2003 CriLJ 3058;

12. The State of Maharashtra vs. Pramod s/o Dhanraj Gajbhiye, reported in 2018 ALL MR (Cri) 1863;

13. Ashraf Hussain Shah vs. State of Maharashtra, reported in 1996 CriLJ 3147;

14. Vikram Babasaheb Jadhav vs. The State of Maharashtra, reported in 2012 ALL MR (Cri) 2548;

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15. Shivaji Satuppa Gavade-Patil vs. The State of Maharashtra, reported in 2013 ALL MR (Cri) 579, and

16. Ramkrishna s/o Sitaram Darwate vs. The State of Maharashtra, reported in 2018 ALL MR (Cri) 3855.

13. *Per contra*, learned Additional Public Prosecutor for the State vehemently submitted that the entire prosecution case is rested upon direct as well as circumstantial evidence. Though PW1 Rajesh Bhada has turned hostile and has not supported the prosecution case, the evidence of PW2 Savita Birju Uike and PW5 Sagar Uike, son of deceased Anjura, who have witnessed the incident, categorically stated about involvement of the accused. The circumstantial evidence, in the nature of recovery of the weapons at the instance of the accused, recovery of clothes on the basis of his memorandum

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statement, and opinion of analyzer who examined the weapons, sufficiently shows involvement of the accused in the alleged offence.

14. In support of her contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of State of **Madhya Pradesh vs. Balwir Singh**, reported in 2025 Cri.L.J. 1526.

15. After hearing both the sides, there is no dispute as to fact that death of three deceased, i.e. deceased Panjabsingh, deceased Anjura, and deceased Gopal, is caused.

16. Whether the death of all three deceased is homicidal death or not, requires to be considered on the basis of evidence of PW4 Dr.Pramod Potdar, examined vide Exh.43,

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17. PW4 Dr.Pramod Potdar, testified that on 24.1.2015 he was posted at Rural Hospital, Warud as Medical Superintendent. He received three requisitions from Benoda Police Station for conducting postmortem examination and taking blood samples of the deceased. These requisitions are at Exhs.44 to 46. On examination of deceased Panjabsingh, he found injuries as gun shot entry wound 1 inch in diameter over the lateral aspects of chest 3 inch below the axila and 1 cm lateral to the mid axillary line, surrounding tissues shows size of burns over the right side of entry wound; gun shot injury of 1 cm in diameter over the middle part of the arm 3 inches lateral to the shoulder joint left side, and burn injury of 3x1 cm over the arm laterally corresponding to the injury No.1. Age of the injury is 12-24 hours back.

All three injuries are antemortem injuries.

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On internal examination, he found irregular injury over the wall side of plura corresponding to the injury No.1 of column No.17 and fracture 3rd rib right side. The right lung liquified and burnt. There was hemothorax burn right side. He opined that cause of death is due to the injury to lung and accordingly he prepared postmortem notes Exh.47.

His evidence further shows that on the same day, he conducted postmortem examination of deceased Anjura and on examination, he found following external injuries on her person :

- 1) incise wound of 4 inch x ½ inc over the right wrist joint anteriorly;
- 2) incise wound of 1 inch x ½ inch below the strnoclavicular joint, left side of chest;
- 3) incise wound of 1 inch x ½ inch, 4 inch below the strnoclavicular joint, over the left side of the chest,

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4) incised wound of 2 cm x 1 cm 7 inch below the strnoclavicular joint, over the left side of the chest, and

5) incise wound of 1 inch x 1/2 inch over the left shoulder joint anteriorly.

He opined that the age of all the injuries are 12-24 hours. All the injuries are antemortem injuries. On internal examination, he found percolation of walls and plura at the corresponding injuries mentioned in column No.17. Hemothorax was present. There is perforation injury over the apex of heart.

After both examination, internal and external, he opined that death was caused due to injury to heart and he forwarded viscera to CA for chemical analysis. The postmortem report is at Exh.48.

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He further opined that the internal and external injuries mentioned in the postmortem report are sufficient to cause death of deceased Anjura.

On the same day, he also performed the postmortem examination deceased Gopal and on examination, he found total 11 injuries on his person, as follows:

1. in inch x 1/2 inch over the lateral aspect of arm;
2. 1 x 1/2 inch over the cubital fossa;
3. 1 and 1/2 inch just below the injury No.2;
4. 2 x 1/2 inch laterally 2 cm below the elbow joint; and
5. 3 x 1 inch laterally over the middle of 5 cm above the wrist joint;
6. 1 x 1/2 inches laterally to the middle arm left side;

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7. 1 and 1/2 inches anteriorly middle part left side;

8. Stab wound of 1/2 x 2 inches over the right side just side with sturnum 2 inches below strnoclavicular joint right side;

9. stab wound of 1 inch x 1/2 inch x 2 inch, 5 inch below the strnoclavicular joint right side;

10. 1 x 1 x 2 inches stab wound 1 inch wide of zyphoid process right side, and

11. stab wound of 1 x 1 x 2 inches 8 inch below the strnoclavicular joint left side.

He opined that all the above injuries are antemortem injuries and on internal examination, he found perforation of walls and plura corresponding to the injury mentioned in the column No.17. Hemothorax was present on both sides. Both lungs were congested having perforating injuries corresponding to the injury

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mentioned in the column No.17 and also found the perforation of apex of heart.

He opined, after the internal and external examination, that death was caused due to injury to lungs and heart and forwarded the viscera to the CA. Accordingly, he prepared postmortem notes Exh.49.

He further stated that the internal and external injuries mentioned in the postmortem report are sufficient to cause death of deceased Gopal.

His further evidence shows that he has also received requisition to ascertain whether deceased Anjura was pregnant. After examination, he opined that she was not pregnant at the time of postmortem examination. Accordingly, he gave his opinion which is at Exh.51. He collected the blood samples of the deceased as well as the accused. The requisition which he received

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for collecting the blood samples of the deceased and the accused is at Exh.53.

His evidence further shows that he has also examined the accused and on examination, he found reddish congestion over the conjunctiva left eye. No other injury was found on his person. He opined that reddish congestion over the conjunctiva left eye was due to the spillage of gun powder. The age of the injury was two days' old and within three days. The injury note is at Exh.54.

18. Besides the medical evidence of PW4 Dr.Pramod Potdar, the prosecution has also placed reliance on the inquest panchanama of all three deceased, which are at Exhs.31 to 33.

19. Perusal of Exh.31, which is admitted by the defence, shows that it is of dead body of the deceased

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Panjabsingh on which pancha witnesses have observed gun shot injury on chest and blood is oozing from the same.

Exh.32 is inquest panchanama as to deceased Anjura, which is also admitted by the defence and recital of the panchanama shows that she had sustained injuries on below her neck, below the left side breast and upper portion of right hand palm and left shoulder.

Exh.33 is the inquest panchanama as to third deceased Gopal.

Recital of the panchanama shows that he has sustained injury on his right side of head, on right hand, on left hand shoulder, and wrist and on his chest as well as on his back.

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20. Thus, as far as injuries sustained by the deceased are concerned, the same are corroborated by the medical evidence as well as the inquest panchanama.

21. The cross examination of the Medical Officer shows that he admitted that he did not find any gun powder on the body of deceased Panjabsingh. He further admitted that he has not mentioned whether those injuries were of shot range or long range. He explained that he did not felt necessary to mention whether the injuries were of shot range or of long range. He admitted that he cannot state now whether the injuries were caused from the shot range or long range. He further admitted that when deceased Panjabsingh was admitted in the hospital, he was alive and he treated, but during treatment, he succumbed to the injuries. He further admitted that reddish congestion over conjunctiva left eye can be caused by many reasons which includes bacterial

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infection, viral infection, and foreign body. He further admitted that he has not mentioned at Exh.54 that any gun powder was found in his left eye. He further admitted that reddish congestion over the conjunctiva left eye of the accused could be caused due to flue and infection or entry of foreign body.

Thus, an attempt was made to show that there cannot be the only reason to have reddish congestion over the conjunctiva due to the gun powder, but there are reasons also.

As far as cause of death of deceased Anjura and deceased Gopal is concerned, nothing incriminating is brought on record.

22. On going through the entire evidence on record, especially PW4 Dr.Pramod Potdar and inquest panchanama, the death of these deceased appears to be

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caused due to the injuries sustained by them. The evidence shows that deceased Panjabsingh has sustained injury due to the firing of the bullet by gun, whereas deceased Anjura and deceased Gopal have sustained injuries due to the blows by sharp weapon. The extent of the injuries sustained by all three deceased, are especially narrated by the medical witness PW4 Dr.Pramod Potdar.

23. Now, it is well settled that the evidence of PW4 Dr.Pramod Potdar is not only the opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see the injuries of the person of the deceased.

24. A medical witness who performs a postmortem examination is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex

Court in the case of **Smt. Nagindra Bala Mitra and v. Sunil Chandra**, reported in 1960 SCR (3) 1 wherein it has been observed that, “the value of a medical witness is not merely a check upon the testimony of eye witnesses; it is also independent testimony because it may establish certain facts quite apart from the other oral evidence. If a person is shot at a close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of his. Similarly, 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 victim's person.”

25. In the case of **Anuj Singh @ Ramanuj Singh @ Seth Singh v. State of Bihar**, reported in 2022 LiveLaw (SC) 402 which dealt with the evidentiary value of the

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medical evidence and held that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

26. In the case is hand, the evidence of PW4 Dr.Pramod Potdar clearly states that all the injuries attributed to deceased Panjabsingh are due to gun shot injuries, whereas injuries attributed to deceased Anjura and deceased Gopal are possible by weapon like knife.

27. The death of these three persons is caused due to the injuries sustained by them and this observation is

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sufficient to show that the death of the deceased is caused due to the injuries sustained by them and, therefore, it can be held that the death of all these three deceased is homicidal one.

28. The entire case of the prosecution is based on the evidence of two eyewitnesses and the evidence of PW1 Rajesh Bhada who has witnessed the accused holding a gun in his hand.

29. There is no dispute that deceased Panjabsingh is the father of the accused and the informant Rajesh is the brother of the accused.

30. Regarding the said incident, PW1 Rajesh Bhada has lodged the FIR, but being he is the brother of the accused, has left loyalty towards the prosecution and turned hostile. His evidence shows that the accused is his brother and he also acquainted with deceased Anjura.

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However, he has denied the rest of the contentions. He has also denied that there was any type of relationship between the accused and deceased Anjura.

During his cross examination, it came on record that he as well as the accused and his parents were residing separately from each other. During the cross examination on behalf of the accused, he admitted that several cases were pending against his father in various police stations pertaining to the offence under Sections 302, 307, and 326 of the IPC. He further admitted there was inimical terms of his father with the villagers residing nearby.

Thus, an attempt was made that deceased Panjabsingh was having inimical terms with several persons.

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31. The implicit reliance is placed on the evidence of PW2 Savita Birju Uike and PW5 Sagar Uike, who, as per the prosecution, are eyewitnesses to the incident.

PW2 Savita Birju Uike, testified that deceased Gopal is her brother and deceased Anjura was her sister-in-law and PW5 Sagar Uike is son of deceased Anjura and her nephew. The deceased Anjura is wife of Rameshwar who is brother of Savita. As per the evidence, since last 25 years, they are residing at Bargaon. She is acquainted with the accused and they were having talking terms with the accused and his parents. She further deposed that the incident occurred prior to three years between 11:00 pm to 12:00 am. She was sleeping in house. While she was sleeping in the house, deceased Gopal awaken her and firstly, he went outside the house and, thereafter, she followed him. When she came out of the house of her sister-in-law who was found dead. Apart from her sister-

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in-law, she found the accused to be present on the spot. The children were crying on the spot. Her brother deceased Gopal asked the accused as to why he came in the house at belated night to which the accused assaulted to her brother by means of knife and due to the said assault deceased Gopal succumbed to the injuries. She stated that her sister-in-law was also assaulted by means of knife and the accused ran towards his house. As they were scared, she along with the two kids of her sister-in-law went under the bridge to hide themselves. She could not assign reasons as to why the accused came at belated night hours to the house of her sister-in-law. Her evidence further shows that the house of deceased Panjabsingh is at the distance of 2-3 houses from her residence. When she along with Sagar and Amit came outside the house, she heard sound of gun fire from the house of the accused. She also heard the voice of sister

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of the accused that he has killed his father. She gave phone calls to her brother and father who were in the agricultural field and disclosed to them that the accused has killed her sister-in-law and brother.

During her cross examination, some omissions are brought on record that she has not stated before the police that deceased Gopal woke her up from the sleep on the day of the incident. She has stated that she came out of the house and saw that Sagar and Amit were present and her brother deceased Gopal asked the accused why he came at the belated night hours on which deceased Gopal was assaulted by means of knife. The proved omissions are brought on record that her brother deceased Gopal along with his parents used to reside in the field of one Pravin at Morshi. Her further cross examination shows that the house of deceased Anjura had large courtyard and there is a small room inside.

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The surrounding near the house of deceased Anjura is slum area and there are 60-70 houses in the said slum area and all the houses are adjoining to each other. It further came in her cross examination that there is only one pakka constructed house of Panjabrao at the distance of 200-300 feet from the house of deceased Anjura. She admitted that she is aware about the fact that if some one had assaulted to the nearest relatives, she should shout and call others for the help. She stated that she called for help. She further admitted that when she reached at the spot, she saw her sister-in-law lying dead and blood was oozing from her body. However, she stated that it did not so happen that when she went there, her sister-in-law was lying dead and her brother was also lying dead in the house. It further came in her cross examination that her brother has sustained the knife injuries and her sister-in-law has also sustained the knife injuries and as she was

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afraid, she along with Sagar and Amit went outside the house.

Her cross examination further shows that the police of the Benoda Police Station came to Bargaon village at 1:00 to 1:30 am and drawn panchanamas, till 8:39 am of 24.1.2015. Then the police carried out panchanamas, the people from village Bargaon gathered on the spot including her father, brother, and other relatives. She further admitted that the police asked the persons gathered there including herself, but none has informed about the said incident. She stated that the police noted down her name and names of Sagar and Amit.

Thus, from her cross examination, an attempt was made to bring on record that despite opportunity, at

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the initial stage, she has not informed anything about the incident.

32. Now, coming to the evidence of PW5 Sagar Uike, who is son of deceased Anjura and child witness, who deposed that deceased Anjura was his mother. He is acquainted with the accused whose name is Manoj and he is also resident of Bargaon. Deceased Gopal is his uncle and he is also resident of Bargaon and deceased Gopal's house is backside to their house. He further stated that around 12:00 am in the midnight, he was sleeping in his house wherein the accused gave kick to the door of his house by his leg and, thereafter, his mother woke up and opened the door. He was also awakened at that time and saw the accused was giving knife blows to his mother and blood started oozing therefrom. On hearing the shouts, his uncle deceased Gopal came to the house and the accused also gave blows

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to his uncle deceased Gopal and blood was started oozing from his body. He has identified the accused as assailants who has assaulted his mother as well as his uncle.

During his cross examination, he has admitted that he has not stated before the police that after seeing the blood oozing from the body of his mother, he shouted and on hearing such shouts, his uncle deceased Gopal came there. At the time of the incident, he was in 4th Std. and his younger brother was in 3rd Std.. He has also admitted that the entire village consists of slum area and there is only one pakka house in the village. There are several houses surrounded towards his house and there are several children of his age who play together. He further admitted that after the death of his mother, on the subsequent day, the police were found to be in his house. At that time, when the police came to his house, his both uncles, aunts, and grandparents came to his house and he

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witnessed them. He further stated that on the same day the police had enquired about the incident from his uncles, aunts, and grandparents and they also enquired with him and his younger brother about the incident. His evidence further shows that after 6-7 days, they again enquired from him and at that time, his aunt Savita was also along with him. He further admitted that he came to know that the accused had killed his mother. His house consists of courtyard attached with three rooms. It further came in his evidence that on the day of the incident, he, his mother, and his younger brother were sleeping inside the room. On the day of the incident, it was very cold and as per their usual time, they slept at 9:00 pm. He further admitted that due to the cold, he had quilt on his body, but he specifically stated that though he was in quilt, he was not in a deep sleep in the midnight. He denied that due to the cry of his mother, he

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woke up from the sleep. He stated that his mother was lying in a pool of blood in the courtyard near the door side. He further admitted that after he woke up, after some time, he went outside the room and found that his mother lying in the courtyard. He further admitted that he and his brothers and his aunt went and concealed themselves under the bridge, but he denied that he has not witnessed the said incident.

On the basis of this cross examination, an attempt was made to show that this child witness is not eyewitness to the said incident.

33. Besides the direct evidence, the prosecution further placed reliance on the medical evidence. As far as injuries on the person of three deceased are concerned, the same are already discussed in earlier part of this judgment. The further evidence of the medical officer

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shows that a requisition was sent to him by the investigating officer on 29.1.2025 for examination of the weapon. The said requisition is at Exh.55. By that requisition, he received two weapons in a sealed condition. He has broken the said seal and examined the weapons. The weapon No.1 "Bharmar Gun" is having pipe of diameter of 2 cm. The injuries mentioned in the postmortem report in respect of deceased Panjabsingh, column N.17, are possible by this weapon. The weapon No.2 is knife. The type of weapon is sharp object. Dimension length of the weapon is 18 cm, length of the handle is 11.21 cm. The injuries mentioned in the postmortem report as to deceased Gopal and deceased Anjura in column No.17 are possible by the said weapon. The opinion is at Exh.56. As far as this opinion is concerned, nothing incriminating is brought on record during the cross examination.

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34. The evidence of Investigating Officer PW6 Santosh Boyane shows that during the investigation, on the basis of the memorandum statement of the accused, weapons gun and knife were seized by him in presence of panchas. He has also seized 80 grams gun power, 53 iron balls, and one bullet weighing 40 grams from the house of the accused. All the said articles were forwarded for the analysis along with requisition Exh.80. Exh.82 is analysis report as to the various articles. Exh.A1 is blood sample of the accused. Exh.A2 is clothes of the accused. Exh.A3 is knife seized from the accused. Exh.A6 is cotton swab from which nails of the accused were cleaned. Exh.B1 is blood sample of deceased Panjabsingh. The sleeve banian which was cut is also of deceased Panjabsingh. The full pant and underwear (Exh.B2) are also of deceased Panjabsingh. The mattress and dupatta, Exh.B3, were collected from the spot, i.e. the house of

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deceased Panjabsingh, where dead body of deceased of Panjabsingh was lying. The cement concrete piece was collected from the house of deceased Panjabsingh. The cement concrete pieces collected from the spot at the house of deceased Panjabsingh are Exhs.B4 and B5. Whereas, blood sample Exh.C1 is of deceased Anjura. Exh.C2 is of clothes of deceased Anjura. Exh.C3 is of simple soil and blood stained soil where the dead body of the deceased Anjura was found. The blood sample of deceased Gopal and his clothes are at Exh.D2. The bed sheet, mattress, and blanket at Exh.B3 are seized from the place where dead body of deceased Gopal was found. As far as the analysis report is concerned, it shows that on analysis of the clothes of the accused, Blood Group "B" was found. On knife seized from the accused Blood Group "B" was found. The cloth cotton used for cleaning nails of the accused was also having Blood Group "B"

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and clothes of deceased Panjabsingh were having human blood.

35. On the clothes of deceased Gopal, Blood Group “B” was found. Exhs.36 and 37 soil from which dead body of deceased Gopal was lying was containing Blood Group “B”. The cotton used to clean nail of the accused was having Blood Group “A”. The clothes of deceased Panjabsingh was having Blood Group “A”. Whereas, Blood Group “O” was found of deceased Anjura on her clothes.

36. Thus, the knife which was seized at the instance of the accused was having Blood Group “B” which is of deceased Gopal. Blood Group “B” was also found on the clothes of the accused also and the said Blood Group “B” was also found on the cotton used for cleaning the nails of the accused.

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37. Thus, Exhs.6 and 7 the clothes of the accused Exh.8 knife, Exh.32 sando banian of deceased Gopal, Exh.33 jeans pant of deceased Gopal, Exh.34 underwear of deceased Gopal, Exh.35 bed sheet wherein dead body of deceased Gopal was lying, Exh.36 mattress wherein the dead body of deceased Gopal was lying, and Exh.37 blanket which was near the dead body of deceased Gopal are stained with Blood Group "B". Whereas, Exh.9 cotton swab used for cleaning the nails of the accused, Exh.13 sleeve banian of deceased Panjabsingh, Exh.14 full pant of deceased Panjabsingh, Exh.15 underwear of deceased Panjabsingh, Exh.16 mattress whereat dead body of deceased Panjabsingh was lying, Exh.17 dupatta, Exhs.18 and 19 mattress and Exh.20 cement concrete piece collected from the house of deceased Panjabsingh are stained with Blood Group "A". Whereas, Exh.23 saree, Exh.24 blouse, Exh.25, bracier, Exh.26 petticoat

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are stained with Blood Group “O” which is of deceased Anjura.

38. Exh.91 is another analysis report as to Exh.1 one single muzzle loading gun having wrapped in cloth, Exh.2 black powder, Exh.53 iron balls, Exh.4 one cylindrical lead piece, Exh.5 blood sample, Exh.6 half T-Shirt, Exh.7 full pant, Exh.8 knife, Exh.9 cotton swab, and Exh.10 turbid liquid, Exh.11 turbid liquid, Exh.12 blood samples of deceased Panjabsingh, Exh.13 sleeve banian, Exh.14 full pant, Exh.15, underwear of deceased Panjabsingh, Exh.16 mattress, Exh.17 dupatta, Exh.18 mattress collected from spot where dead body of deceased Panjabsingh was found, Exh.20 concrete piece, Exh.21 cement concrete piece, Exh.22 blood, Exh.23 saree of deceased Anjura, Exh.24 blouse, Exh.25 bracier, Exh.26 petticoat, Exh.27 underwear, Exh.28 full sweater, Exh.29 soil, Exh.30 soil, Exh.31 blood sample of deceased

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Gopal, Exh.32, sando banian of deceased Gopal, Exh.33 jeans pant, Exh.34 underwear of deceased Gopal, Exh.35 bed sheet, Exh.36 mattress, Exh.37 blanket collected from the spot where the dead body of deceased Gopal was lying and simple soil and soil with blood stains collected from the spot where the dead body of the deceased was lying were analyzed and result of analysis shows that Exh.1 is single barrel muzzle loading gun in working condition. Residues of fired gun powder were detected in the barrel washings of Exh.1 showing that the muzzle loading gun was used for firing prior to its receipt in the laboratory. The charge consisting of 20 grams of lead bullets and 10 grams gun powder were successfully test fired through the muzzle loading gun Exh.1, Exh.2 i.e. live gun powder in a plastic powder, Exh.3 iron balls weighing 44.12390 grams, Exh.4 lead piece weighing 40.1368 grams respectively. The gun powder in Exh.2

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together iron balls in Exh.3, lead piece in Exh.4 can be used as charge to fire muzzle loading gun like in Exh.1. Nothing of notes in relevance to the fired gun shot residues were detected on the cotton swabs in Exh.9, turbid liquid in Exh.10 and Exh.11.

39. Presence of blackening, burning, powder residues and detection of metallic lead around the periphery of encircled shot hole on the banian in Exh.13 are consistent with the passage of lead projectiles having been fired from closed range of the weapon. The shot hole was not observed on the clothes in Exhs.6, 7, 14-19, 23-28, and 32-37. Exhs.92 to 94 viscera report do not reveal any poison in the viscera of all three deceased.

40. Coming to the next circumstantial evidence, the evidence of PW3 Gajanan Kumare, pancha on memorandum and discovery panchanama. As per his

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evidence, he was working as Talathi at Bargaon. He received a letter from his superior to remain present as a pancha witness. The another pancha was also present. They were asked to visit the Benoda Police Station. On reaching the police station, they met officer Khapre. The accused was present in the Lock-Up of the police station. He was taken out of the Lock-Up. He has shown his willingness to show the knife and gun which he had hidden. Accordingly, memorandum panchanama was drawn. Thereafter, the memorandum was reduced into writing which is at Exh.35. Thereafter, the accused led them towards thorny bushes where the knife and gun were hidden which was shown by the accused. He produced the same. Accordingly, panchanama was drawn which is at Exh.36. He identified the articles gun and knife. During the cross examination he admitted that no mud was found on gun Article-A. He further admitted

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that in Exh-37 it is mentioned that the accused has admitted to show the weapons used in the commission of the offence and, therefore, requested to give panchas and it was addressed to the Tahsildar.

It is specifically came in his evidence that before signing the memorandum, he read over the contents. He further admitted that prior to recording of the memorandum panchanama of the accused, he knew that the gun and knife are to be seized from the accused. On the basis of this cross examination, an attempt was made to show that the investigating officer was knowing as to the nature of the weapons which are to be seized. However, perusal of Exh.37 it nowhere mentions that the gun and knife are to be seized. It is only mentioned that the accused wants to show the weapons and that is to be seized.

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41. PW6 Santosh Boyane and PW7 Mukund Thakare are police witnesses.

As far as PW6 Santosh Boyane is concerned, his evidence is to the extent that between 24.1.2015 and 25.1.2015 he was present in the police station. One Rajeshsingh Bhada had come to the police and lodged the report. He has recorded the report. The report is at Exh.60 and FIR is at Exh.61. Though he stated date 24.1.2015 to 25.1.2015, it is intervening night of 23.1.2015 and 24.1.2015. The information received at the police station is at about 24.1.2015 at about 2:10 am and the occurrence was of 23:30 pm to 24:00 a.m.

PW7 Mukund Thakare, has carried out the investigation being the Investigating Officer. He narrated about the investigation carried out by him. The sum and substance of his evidence is that on 24.1.2015

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Rajeshsingh Bhada lodged the report. At the relevant time, PW6 Santosh Boyane was working as PSI. Thereafter, he conducted the investigation and drawn inquest panchanamas. He has also drawn spot panchanamas. From the spots, he collected blood stained soils and simple soil and blood stained clothes. He has also seized gun powder, iron balls, and one bullet from the house of the accused. On the basis of the memorandum statement of the accused, he has seized weapons as well as he has seized clothes of all three deceased and after completion of the investigation, he submitted that chargesheet against the accused. During the cross examination, he stated that it is mentioned in the panchanama the source of light from which the light has been taken is mentioned. He also admitted that in the spot panchanama, there is no mention as regards to the lights in the houses of deceased Anjura and deceased

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Gopal. He has admitted that the light was available only in the house of deceased Panjabsingh and, therefore, he has mentioned the same in the panchanama and also given the meter numbers. He has mentioned in the arrest panchanama as to the injuries of the accused. He admitted that there was no injury on his person at the time of his arrest. Except this cross, nothing incriminating is brought on record.

42. Learned counsel for the accused vehemently submitted that the entire incident has occurred during the night hours. No electricity was available as far as the place of the incident where dead body of deceased Anjura and deceased Gopal were lying. So, there was no opportunity for witnesses to identify the accused. He further submitted that PW2 Savita Birju Uike and PW5 Sagar Uike are not at all eyewitnesses. They came at the spot after the incident was over and, therefore, they

cannot be treated as eyewitnesses. He further submitted that the weapons are not forwarded to the ballistic expert and, therefore, the entire evidence is doubtful.

As far as his submission is concerned, that presence of these witnesses at the scene of occurrence in such a situation assumes importance, he placed reliance on the decision in the case of **Shahjahan** *supra*. However, considering the fact that deceased Anjura and deceased Gopal were residing at that place, presence of PW5 Sagar Uike is quite natural being the son of deceased Anjura. The presence of PW2 Savita Birju Uike being the sister of deceased Gopal and sister-in-law of deceased Anjura is also natural. As such, the said submission of learned counsel for the accused is not sustainable.

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43. Admittedly, the implicit reliance is placed on the evidence of PW2 Savita Birju Uike and PW5 Sagar Uike as PW1 Rajesh Bhada has left the loyalty towards the prosecution. As far as their presence at the spot of the incident is concerned, the same is natural one. The presence of PW5 Sagar Uike along with deceased Anjura is quite natural as he is her son. His evidence is further criticized being he is child witness and, therefore, there is possibility of tutoring. Admittedly, no suggestions are given to this witness as far as tutoring is concerned. It is vehemently submitted that PW5 Sagar Uike, who is minor, when appeared before the court was 12 years old. His evidence was recorded after ascertaining his competency. He is cross examined at length and his demeanor was observed by the trial court also. The testimony of PW5 Sagar Uike remained unshaken in spite of the child witness faced lengthy cross

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examination. Though he is cross examined at length, an attempt was made to bring on record that he is not the eyewitness of the incident. But, he specifically deposed that he was sleeping in the house along with his mother and the accused opened the door by giving kick to the door and, therefore, he woke up. He specifically stated that though he was in sleep, he was not in deep sleep.

44. Section 118 of the Evidence Act governs the competence of persons to testify which also includes a child witness. The evidence of child witness and its credibility would depend upon the facts and circumstances of each. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only

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precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one. The evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is settled principle of law that a child witness can be a competent witness when his evidence is reliable, truthful, and is corroborated by other prosecution evidence. The court, in such circumstances, can safely rely upon the statement of child witness and it can form a basis for conviction as well. Further the evidence of child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of child witness is that the witness must be

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reliable one and his/her demeanor must be like any other competent witness and there exists so likelihood of being tutored. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is child, his evidence shall be rejected even if it is found reliable.

45. Learned counsel for the accused placed reliance on various decisions as far as child witness is concerned i.e. **State of UP vs. Ashok Dixit and anr** *supra*; **Vikram Babasaheb Jadhav vs. The State of Maharashtra** *supra*, and **Anton Luis Peidade Fernandes vs. State** *supra* wherein also the same principle is laid down.

46. Learned Additional Public Prosecutor for the State also placed reliance on the decision in the case of **Madhya Pradesh vs. Balwir Singh** *supra* wherein also the Hon'ble Apex Court has considered the appreciation of the evidence as to the child witness and observed that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether

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the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.

47. Thus, the cross examination of this witness itself shows that he has witnessed the incident as he specifically stated that he has witnessed that the accused opened the door by giving kick on the door and, thereafter, assaulted his mother and after giving shouts, his uncle another deceased Gopal came there. His evidence is further corroborated by PW2 Savita Birju Uike who is also cross examined at length. The nature of the

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cross examination of PW2 Savita Birju Uike was towards drawing home the point that she had no opportunity to observe the incident. It was elicited in the cross examination that she had not stated in her statement before the police as well as before the Magistrate that it was deceased Gopal who has awaken her from sleep on the day of the incident. Though she admitted to have stated before the police and the magistrate that when she came out of the house, she saw PW5 Sagar Uike and Amit were present. Her brother deceased Gopal asked the accused as to why he has come at belated night hours to which the accused assaulted him by means of knife. However, she has not assigned any reason as to why the said fact does not appear in her statement before the police. PW2 Savita denied the suggestion that when she went there, her sister-in-law and her brother were lying dead in the house, but admitted that her brother and

sister-in-law had sustained knife injuries. Her evidence shows that when she went at the spot of the incident, she has witnessed her sister-in-law in an injured condition, but her evidence further shows that the knife blows were given on her brother in her presence and she has witnessed the same. Therefore, as far as assault on deceased Gopal is concerned, she has witnessed the incident.

48. Now, it has to be seen whether there is any corroboration to the evidence of PW2 Savita Birju Uike and PW5 Sagar Uike from the other circumstantial evidence.

49. The prosecution placed reliance on the evidence of discovery of fact that the accused has concealed the weapons and on the basis of the memorandum statement, the said weapons are recovered

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at the instance of the accused. To prove the said fact, implicit reliance was placed on the evidence of PW3 Gajanan Kumare, pancha on memorandum and discovery panchanama, who categorically stated about the memorandum statement made by him. His evidence shows that when he was called at the police along with other pancha, the accused has shown his willingness to show the place where he has concealed the knife and gun. Accordingly, his statement was recorded and, thereafter, the accused led them towards the said place and shown the place of thorny bushes where the gun and knife were concealed and recovered the same at the instance of the accused. The cross examination shows that an attempt was made to bring on record that the police were already knew about the place as it was mentioned in the requisition letter which was issued to the Tahsildar. However, perusal of the said letter shows

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that it only reveals that the Tahsildar was informed that two employees are required to act as panchas as the accused shown his willingness to show the weapon used in the commission of the offence. Therefore, this cross examination is not sufficient to show that the investigating officer was already knew about the said place and, therefore, the submission of learned counsel for the accused that recovery of the weapons is not as per Section 27 of the Evidence Act is not sustainable. This evidence of the said pancha is further corroborated by investigating officer PW7 Mukund Thakare who has also stated that the accused has given memorandum statement wherein he stated that he would show the knife and gun, by which he has assaulted, and place where he has concealed both the weapons in the village itself under bushes and he is ready to produce the same.

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Accordingly, he led them and the weapons were recovered at his instance.

50. As far as the evidence as to the recovery is concerned, 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.

51. 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

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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. As far as the evidence as to the recovery is concerned, 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.

52. In the light of the above proposition of law, if the evidence of PW3 Gajanan Kumare, pancha on memorandum and discovery panchanama and investigating officer PW7 Mukund Thakare is appreciated, it proves the recovery at the instance of the accused on the basis of his memorandum statement. This evidence of recovery is further corroborated by the fact

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that CA Report Exh.82 shows that the knife recovered at the instance of the accused bears Blood Group "A" i.e. of deceased Gopal. It further corroborates that the gun, seized at the instance of the accused, is single barrel muzzle loading gun which was in working condition. The residues of fired gun powder were detected in the barrel washing of Exh.1 showing that muzzle loading gun was used for firing prior to its receipt in the laboratory. It further shows residues and detection metallic lead around the periphery of encircled shot whole on the banian in Exh.13 are consistent with the passage of lead projectiles having been fired from closed range of the weapon. The said banian is of deceased Panjabsingh. Thus, this Exh.91 analysis report further establishes that the gun was used from closed range to fire the bullet on deceased Panjabsingh as shot whole was found on banian Exh.13.

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53. The evidence of PW2 Savita Birju Uike and PW5 Sagar Uike is further criticized by learned defence counsel on the ground that the alleged incident occurred in the midnight between 11:30 pm and 12:00 am. As far as house of deceased Anjura is concerned, no electricity facility is available to identify the assailant during the night hours and, therefore, identification by PW2 Savita Birju Uike and PW5 Sagar Uike is improbable and unacceptable. The facts on record show that all three deceased and the prosecution witnesses are residents of the same area. On the contrary, recital of the FIR itself shows that there was illicit relationship between deceased Anjura and the accused and there was quarrel between them on that day and the said relationship was not accepted by father of the accused and, therefore the accused has committed his murder. The further case of the prosecution that there was quarrel between deceased

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Anjura and the accused on the day of the incident and, therefore, he committed murder of deceased Anjura.

54. The evidence of PW2 Savita Birju Uike shows that she is acquainted with the accused. The evidence of PW5 Sagar Uike also shows that the accused is resident of the same area and on the day of the incident he saw the accused opening the door by giving kick on the door. It is nowhere the case of the defence that these witnesses are completely stranger and there is remote possibility for these witnesses to identify the accused.

55. Learned defence counsel placed reliance on various decisions as far as submission that there is remote possibility of the present witnesses to identify the accused in the darkness. He more specifically placed reliance on the decision in the case of **The State of Maharashtra vs.**

Dashrath s/o Vishwanath @ Anangraja Pawar and ors
supra.

56. The consistent view taken by the Hon'ble Apex Court in various decisions is that even on full dark night there is never total darkness. There can be other means to identify another through the shape of his body, clothes, gait, and on walking etc.

57. In the case of **Kedar Singh and ors vs. State of Bihar, reported in MANU/SC/2016/1997**, the Hon'ble Apex Court observed that even on a full dark night there is never total darkness. There can be other means to identify another through the shape of his body, clothes, gait, manner of walking etc. and identification is possible by voice too.

58. In the case **Kalika Tiwary and ors vs. State of Bihar, reported in MANU/SC/0548/19979** wherein it has

been held that visibility capacity of Urban people who are acclimatized to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light. visibility capacity of Urban people who are acclimatized to fluorescent lights or incandescent lamps is not the standard to be applied to villagers whose optical potency is attuned to country-made lamps. Their visibility is conditioned to such lights and hence it would be quite possible for them to identify men and matters in such light.

The similar view has been adopted by the Hon'ble Apex Court by referring the decision in the case of **Machhi Singh and ors vs. State of Punjab, reported in AIR 1983 SC 957** and observed that visibility of the

villagers is conditions to such lights and hence it would be quite possible for them to identify men and matters in such light.

59. In the case of **Augustine Saldanha vs. State of Karnataka, reported in MANU/SC/0638/2003** it has been held that undisputedly the incident took place in the dark night when visibility was poor, but identification was possible because victims of the assailants were known to each other. Therefore, there is nothing wrong in PW1 identifying the accused persons. The fact remains that in the dark night obviously one cannot move without a torch or some other lighted object.

60. The Hon'ble Apex Court in the case of **S.Sundershan Reddy and ors vs. State of Andhra Pradesh, reported in MANU/SC/3139/2006** by referring the decision in the case of **Nathuni Yadav and ors vs. State of**

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Bihar and anr, reported in MANU/SC/0424/1997 it is observed that under what circumstances the lack of moon light or artificial light does not per se preclude identification of the assailants. It was noted that even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were not strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume

that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them.

61. The Hon'ble Apex Court in the case of **Bharasi and ors vs. State of M.P., reported in MANU/SC/0774/2002** observed that in relation to the identification of the accused in the darkness, the accused were known to the witnesses and could be identified even in darkness.

62. In the case of **Sunder Lal vs. State of Rajasthan, reported in MANU/SC/2197/2007**, the Hon'ble Apex Court held that though the occurrence took place at night, the existence of light, however, feeble has been established. The accused and the were well known to each other. So, identification by the deceased, since he was seeing him from close quarters, is possible. If

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persons are known to each other, from the manner of walk, talking and peculiar features of gait identification is possible. The courts below have rightly held that the deceased could have easily identified the accused persons.

63. In the case of **Pruthviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala and ors, reported in MANU/SC/0475/2021**, the Hon'ble Apex Court has considered that identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also. Therefore, we do not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of doubt.

64. Thus, the consistent view taken by the Hon'ble Apex Court is that if the witnesses and the accused are

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acquainted with each other and considering the visibility capacity of the urban people, who are acclimatized to florescent lights or incandescent lamps is not standard to be applied to the villagers and their visibility is conditioned to such lights. The consistent view is further that when the accused and the deceased are acquainted with each other and the prosecution witnesses are also acquainted with the accused, identification by the deceased and witnesses since they were seen the accused from closed quarters is possible.

65. In the present case in hand, undisputedly, the incident took place in the dark night when visibility was poor, but the accused is resident of the same area, there is acquaintance between them and, therefore, the contention that identification was not possible because it was the dark night, is not accepted.

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66. The evidence of the prosecution witness, especially the evidence of PW5 Sagar Uike, is further commented on the ground that his statement was recorded belatedly and independent witnesses are not examined. The alleged incident taken place on 23.1.2015. Whereas, the statement of the said witness was recorded on 29.1.2015. Admittedly, the cross examination shows that the police have drawn the spot panchanamas and inquest panchanamas and also enquired with the persons gathered there, but the evidence further shows that the children of the deceased were so scared that they saved themselves and concealed themselves under the bridge along with PW2 Savita Birju Uike.

67. It is well settled that the prosecution case cannot be rejected solely on the ground that the independent witnesses have not been examined, but

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perusal of the evidence on record, the court finds that the case putforth by the prosecution is trustworthy. When the evidence of other witnesses are trustworthy and corroborated by other circumstantial evidence, mere fact that the statement was recorded belatedly, is not sufficient to discard the evidence of the witnesses.

68. As far as the present case is concerned, admittedly, PW5 Sagar Uike is a small child in whose presence his mother was brutally assaulted by the accused and committed her murder and, therefore, he was scared and the evidence of PW2 Savita Birju Uike and PW5 Sagar Uike shows that immediately after the incident, they fled away from the spot of the incident and concealed themselves under the bridge and when the police came there, they came out from the bridge. Therefore, the court cannot start with presumption that as the statement was recorded belatedly and, therefore,

there is an embellishment. During the cross examination, possibility of tutoring is also not brought on record and there is no other reason for these witnesses to implicate the accused falsely.

69. Learned counsel for the accused though placed reliance on the decisions in the cases of **Anton Luis Peidade Fernandes vs. State** *supra*; **The State of Maharashtra vs. Pramod s/o Dhanraj Gajbhiye** *supra*, **Ashraf Hussain Shah vs. State of Maharashtra** *supra*, and **Vilas @ Hari Om vs. State of Maharashtra**, it is held that if delay is not explained, implicit reliance cannot be placed on the evidence.

70. It is observed by the Hon'ble Apex Court in the case of **Gunnana Pentayya alias Pentadu & ors vs. State of Andhra Pradesh**, reported in 2008 ALL MR (Cri) that mere delay in recording the statement is not of witnesses

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is not fatal unless a specific question is put to the investigating officer regarding reason for delay.

71. In **Firoz Khan Akbarkhan vs. State of Maharashtra**, reported in 2025 SCC OnLine SC 627, the Hon'ble Apex Court has held that delay in recording the statements of witnesses more so when the said delay is explained, will not aid an accused. Of course, no hard-and-fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it.

72. In the present case, the investigating officer is not cross examined on the aspect that why there was delay in recording the statement of PW5 Sagar Uike and, therefore, this ground is also not sustainable.

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73. Further issue raised by learned defence counsel is that though the alleged incident has taken place in a dense locality, no independent witness is examined. The evidence of PW2 Savita Birju Uike and PW5 Sagar Uike shows that after the incident, people gathered there. Neither the prosecution nor the defence has brought on record that at the time of the incident the people gathered there. Admittedly, the alleged incident has occurred in the midnight and, therefore, witnessing the incident by any independent witness is remote possibility.

It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court,

unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused.

74. In the case of **Guru Dutt Pathak vs. State of UP, reported in (2021)6 SCC 116**, the Hon'ble Apex Court held that one another ground given by the learned trial Court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there are clinching evidence of eyewitnesses, mere non-examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.

75. In the case of **Manjit singh vs. State of Punjab, reported in (2019)8 SCC 529**, the Hon'ble Apex Court held that reliable evidence of injured eyewitnesses cannot

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be discarded merely for reason that no independent witnesses could not be examined.

76. In the case of **Surinder Kumar vs. State of Punjab, reported in (2020)2 SCC 563**, also the Hon'ble Apex Court observed that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.

77. Thus, the consistent view of the Hon'ble Apex Court is that merely because independent witnesses are not examined, the same is not fatal to the prosecution case and it is not requisite requirement and, therefore, this submission of learned counsel for the accused is also not helpful to the prosecution.

78. Having considered this aspect and after going through the entire evidence on record, the evidence of

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eyewitnesses corroborated by the medical evidence and scientific evidence as well as the circumstantial evidence like recovery of the weapons at the instance of the accused and blood stains found on the weapon knife of Blood Group of deceased Gopal, connects the accused with the alleged offence.

79. For the reasons discussed above, on consideration of the direct evidence and circumstantial evidence and other proven facts, in our considered view, the accused had quarrel with deceased Anjura on that day and, therefore, he came to the house of deceased Anjura, committed murder, on asking by deceased Gopal why he committed murder of deceased Anjura, deceased Gopal was also eliminated and as his father was objecting his relationship with deceased Anjura, he was also eliminated by the accused. These proved circumstances if considered individually, the evidence of PW2 Savita Birju

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Uike corroborated by PW5 Sagar Uike, the medical evidence shows that the death of deceased Anjura and deceased Gopal is caused due to the injuries on the vital parts of the body by knife blows and death of deceased Panjabsingh is due to bullet shot injury. The evidence of the medical officer further shows that he has examined the weapons gun and knife and the injuries found on deceased Panjabsingh as well as deceased Anjura and deceased Gopal are possible by the said weapons. This evidence is further substantiated by the scientific evidence that the knife seized at the instance of the accused was containing Blood Group "B" which is of deceased Gopal. The scientific evidence also supports the prosecution case.

80. While appreciating the evidence, the law does not require that a fact requires to be proved on absolute terms bereft of all doubts. What fact contemplates is that

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for a fact to be considered proven, it must eliminate any reasonable doubt. A reasonable doubt does not mean any trivial, fanciful or imaginary doubt. But doubt based on reason and common sense growing out of the evidence in the case. A fact is considered proved if the court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

81. It is well settled that the prosecution has to prove all circumstances beyond all reasonable doubts against the accused to prove the case against him. To say that burden of proving a crime is generally on the prosecution does not conclude all questions. What degree or quantum of proof is needed: is it mere likelihood or certainty or something in between these two extremes. This question in turn raises a fundamental of a

penal policy. The proof beyond reasonable doubt does not mean proof beyond shadow of doubt. If the evidence is so strong against a man as to leave only, a remote possibility in his favour, which can be dismissed with sentence “of course is possible”, but not in the least probable, the case is proved beyond reasonable doubt.

82. It is cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. However, burden on the prosecution is only to establish the case beyond all reasonable doubts and not all doubts.

83. In the case of **State of UP vs. Krishna Gopal and anr, reported in (1988)4 SCC 302**, the Hon’ble Apex Court observed that doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To

constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

84. Keeping in mind the aforesaid position of law, if the evidence adduced in the present is considered and proved considered individually and taken together do not indicate involvement of anyone else other than the accused. In the circumstances so proved, the possibility of any other person being responsible for the death of three deceased persons, being ruled out, it can be safely the prosecution has been able to prove the charges against the accused beyond all reasonable doubts. There

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can, thus, be no doubt that no one else other than the accused could have committed the crime.

85. For the foregoing reasons, we are of the view that no material illegality has been committed by learned Judge of the trial court in appreciating the evidence against the accused nor it can be said that any gross injustice has been caused to the accused by the judgment impugned in the appeal by ignoring any material evidence. We are, therefore, satisfied that the conviction of the accused by learned Judge of the trial court does not warrant any interference and, therefore, the appeal deserves to be dismissed and the same is **dismissed**. The judgment and order dated 16.5.2019 passed by learned Additional Sessions Judge-3, Amravati in Sessions Trial No.93/2015 is **upheld**.

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86. Fees of learned counsel appointed for the accused are quantified and the same be paid to him as per rules.

87. The R&P be sent back to the trial court.

Appeal stands **disposed of**.

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

!! BrWankhede !!