

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 855 OF 2024

Rahul Yadav @ Kaindi Ramsahay Yadav	]
Age : 50 yrs. Occupation : Nil	]
R/o. Deshraj Yadhav Chawl,	]
Room No.1, Savarkar Nagar	]
Thane (West)	]
(Presently at Nashik Central Prison)	]... Appellant

Versus

State of Maharashtra,	]
Through P.I. Vartak Nagar Police Station,	]
(Notice to be served on Public Prosecutor High	]
Court Mumbai)	] ... Respondent

**WITH
INTERIM APPLICATION NO. 3069 OF 2025
IN
CRIMINAL APPEAL NO. 855 OF 2024**

Ms. Gurpreet Kaur Sahota	]
(Sister of deceased victim Tarsensing Sohta alias	]
Bobby)	]
Age: 35 yrs, Occupation : Professor	]
R/at Vijay Park, 18/704, Kasarvadvli,	]
Ghodbunder Road,	]
Thane West 400615	]... Applicant

Versus

The State of Maharashtra,	]
Through Vartaknagar Police Station, Thane	]... Respondent

**WITH
CRIMINAL APPEAL NO. 206 OF 2025**

AshishKumar Nishad @ Lalla Ramchandra Nishad]
Age : 22 years, Occupation : Education,]
R/at Nisahd Flour Mill, Indiranagar,]
Rupadevi Pada No.1, Road No.33,]
Near Raigad Galli, Wagle Estate Thane (W)]
(Appellant lodged in Thane Central Prison)]... Appellant

Versus

The State of Maharashtra,]
(Through Vartaknagar Police Station, Thane)]... Respondent

**WITH
INTERIM APPLICATION (ST.) NO. 24674 OF 2025
IN
CRIMINAL APPEAL NO. 206 OF 2025**

Ms. Gurpreet Kaur Sahota]
(Sister of deceased victim Tarsensing Sohta alias]
Bobby)]
Age: 35 yrs, Occupation : Professor]
R/at Vijay Park, 18/704, Kasarvadvli,]
Ghodbunder Road,]
Thane West 400615]... Applicant/
Intervenor

Versus

The State of Maharashtra,]
(Through Vartaknagar Police Station, Thane)]... Respondent

**WITH
CRIMINAL APPEAL NO. 687 OF 2025**

Shivam Vedprakash Tiwari	]	
Age : 28 years, Occupation : Student	]	
R/at : Plot No.57, Room No. B-2 Shanti Niwas	]	
Mhada Vasahat Sawkar Nagar	]	
Jekegran Thane	]	
(At present Nashik Road Central Prison)	]	... Appellant

Versus

State of Maharashtra,	]	
(Vartaknagar Police Station, Thane)	]	... Respondent

**WITH
INTERIM APPLICATION NO. 4799 OF 2025
IN
CRIMINAL APPEAL NO. 687 OF 2025**

Shivam Vedprakash Tiwari	]	
Age : 28, Occupation : Student	]	
R/at Plot No.57, Room No. B-2, Shanti Niwas	]	
Mhada Vasant Sawkar Nagar	]	
Jekegran Thane, Maharashtra	]	
(Presently lodged at Thane Jail)	]	
	]	... Applicant

Versus

State of Maharashtra,	]	
(Vartaknagar Police Station, Thane)	]	... Respondent

**WITH
INTERIM APPLICATION (ST.) NO. 23709 OF 2025
IN
CRIMINAL APPEAL NO. 687 OF 2025**

Ms. Gurpreet Kaur Sahota	]
(Sister of deceased victim Tarsensing Sohta alias	]
Bobby)	]
Age: 35 yrs, Occupation : Professor	]
R/at Vijay Park, 18/704, Kasarvadvli,	]
Ghodbunder Road,	]
Thane West 400615	]... Applicant/ Intervenor

Versus

The State of Maharashtra,	]
(Through Vartaknagar Police Station, Thane)	]... Respondent

Ms. Prabha Badadare, for the Appellant in APEAL/855/2024.

Mr. Niranjana Mundargi a/w Mr. Ameyprasad Atigre i/b Keral Mehta,
for the Appellant in APEAL/206/2025.

Mr. Ankur Pahade a/w Ms. Ujwala Moholkar, Mr. Sanjay Kokane, for
the Intervenor in all Appeals.

Mr. Niranjana Mundargi a/w Mr. Ravi Dwivedi, for the Appellant in
APEAL/687/2025.

Ms. Mahalakshmi Ganapathy, Addl. P. P. for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 18th FEBRUARY, 2026.

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. All these three Appeals are decided by this common judgment. For convenience, the Appellants in these Appeals are referred to by their original status before the trial Court.

2. Criminal Appeal No.687 of 2025 is preferred by the original Accused No.1-Shivam Tiwari. The Criminal Appeal No.206 of 2025 is preferred by the original Accused No.2-Ashishkumar Nishad and Criminal Appeal No.855 of 2024 is preferred by the original Accused No.3-Rahul Yadav. The Appellants faced the trial before the learned Additional Sessions Judge, Thane in Sessions Case No.151 of 2018. They were convicted and sentenced as follows:-

- (i) All of them were convicted for commission of offence punishable under Section 302 read with Section 34 of Indian Penal Code (IPC). They were sentenced to suffer life imprisonment and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer rigorous imprisonment for three months.

- (ii) All of them were convicted for commission of offence punishable under Section 307 read with Section 34 of IPC. They were sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.10,000/- each and in default of payment of fine to suffer simple imprisonment for three months.

- (iii) They were also convicted for commission of offence punishable under Section 201 read with Section 34 of IPC and were sentenced to suffer simple imprisonment for three years and to pay fine of Rs.2,000/- each and in default of payment of fine to suffer simple imprisonment for one month.

All the sentences were directed to run concurrently. They were acquitted from the charges of commission of offence punishable under Section 324 read with Section 34 of IPC. There were granted set off under Section 428 of the

Code of Criminal Procedure, 1973 **(Cr.P.C.)**.

3. Heard Ms. Prabha Badadare, learned Counsel for the Appellant in Criminal Appeal No.855/2024, Mr. Niranjan Mundargi, learned Counsel for the Appellant in Criminal Appeal No.206 of 2025, Mr. Niranjan Mundargi along with Mr. Ravi Dwivedi, learned Counsel for the Appellant in Criminal Appeal No.687 of 2025, Mr. Ankur Pahade, learned Counsel for the Intervenor in all Appeals and Ms. Mahalakshmi Ganapathy, learned Addl. P. P., for the State-Respondent

4. The Prosecution case in brief is as follows:-

5. The deceased Tarsim Singh Sahota alias Bobby was having close friendship with PW-8. She was also on good terms with the Accused No.1-Shivam Vedprakash Tiwari. On 05/11/2017, PW-8 had gone for outing with Accused No.1-Shivam and their friends. Tarsim Singh was not with them. At that time, Accused No.1-Shivam made certain wrong comments regarding the deceased. PW-8 told the

deceased about the comments. He got angry. On 06/11/2017, he telephonically called the Accused No.1-Shivam. They had a heated discussion. They decided to meet. In the late evening at around 9:00 p.m., the deceased and his friends including PW-1-Ajay Singh and PW-2-Mahesh Soni went to the spot to meet the Accused No.1-Shivam. After sometime, Accused No.1-Shivam came there with the other two Accused. It is the Prosecution's case that the Accused No.1-Shivam and Accused No.2-Ashishkumar Nishad assaulted the deceased with the knives which they were carrying. Accused No.3-Rahul had fought with PW-1-Ajay Singh. According to the Prosecution's case Accused No.1-Shivam gave blow with knife on PW-1-Ajay Singh. The deceased fell down at the spot. His friends took him to a hospital but he was declared dead. The Accused absconded and went to Uttar Pradesh. PW-1-Ajay Singh in the meantime, gave his statement before the Police in the hospital. It was treated as F.I.R. The offence was lodged at Vartaknagar Police Station vide C.R. No.I-317 of 2017 about 10:50 p.m. on 06/11/2017. The investigation was carried out. The postmortem examination and the spot panchanama were conducted.

Statements of various witnesses were recorded. The Accused were apprehended in Uttar Pradesh on 11/11/2017. During the course of the investigation, two knives were recovered at the instance of the Accused No.1-Shivam. The Police collected the CCTV footage from the society. The incident had taken place near that society. After conclusion of the investigation, the chargesheet was filed and the case was committed to the Court of Session.

6. During trial, the Prosecution examined 15 witnesses including PW-1-Ajay Singh, eye-witnesses, PW-8, panchas, Medical Officers and the Investigating Officer. The defence of the Accused No.1 was that PW-8 had given wrong information to the deceased because of which the deceased got angry and decided to kill the Accused No.1-Shivam. He had called Accused No.1-Shivam at the spot. He had brought his friends and had also carried a knife. In the scuffle his own knife had caused injuries to him. The defence of the Accused No.3-Rahul was the same. According to the Accused No.3 since he was with Accused No.1-Shivam, he was implicated. According to the Accused No.2-Ashish, he had no connection with the incident and was falsely

implicated.

7. PW-1-Ajay Singh is an important witness. He was the first informant. He himself was injured in the incident. He deposed that the deceased was his childhood friend. PW-8 was a friend of PW-1 and the deceased. PW-1 knew the Accused persons. The deceased and PW-8 were also knowing the Accused No.1-Shivam and Accused No.3-Rahul. PW-1 deposed that on 06/11/2017 at about 7:00 p.m. the deceased came to his house and informed him that the Accused No.1-Shivam and the Accused No.3-Rahul were telling some lies about the deceased. The deceased told him that the Accused had made a phone call and had called him to meet them at a juice centre near Dnyanoday School. The deceased asked PW-1 to accompany him. They went to that place on a motor cycle. They reached that place at around 9:00 p.m. In the meantime, the deceased had received a phone call from the Accused No.1-Shivam. There was some open space in front of the juice centre. When the deceased was parking his motor cycle, they saw the Accused No.1 and the Accused No.3 along with one more person near the juice centre. The Accused No.1 came near them and he gave a

blow of knife on right side of PW-1's stomach. The Accused No.3-Rahul pulled his tee-shirt. PW-1 then was pulled towards Accused No.3-Rahul. At that time, the Accused No.1-Shivam and the Accused No.2-Ashish assaulted the deceased with a knife. During that time, scuffle took place between PW-1 and the Accused No.3-Rahul. The deceased sustained injuries on his chin, chest and left arm. According to PW-1, the three Accused were having knives with them. The deceased fell down. The Accused No.2 threatened PW-1 with the knife and asked him to leave Accused No.3-Rahul. At that time, PW-2 came near PW-1 and told him that the deceased had fallen down. PW-1 went near the deceased. PW-3-Mujahid also came there. People gathered. The Accused ran away. The knife used by the Accused No.3-Rahul had fallen on the ground. It was lying there. PW-1 and the deceased were taken to Lokmanya Hospital. Some primary treatment was given to them. Both of them were then taken to Vedant Hospital but Tarsim Singh died in Vedant Hospital. The doctors put stitches on PW-1's abdomen and admitted him in ICU. At around 9:30 p.m. to 10:00 p.m. police came to Vedant Hospital and recorded his

statement. He gave description of the third person which according to the Prosecution's case was the Accused No.2-Ashish. PW-1 was admitted in the hospital for about 5 days. He was operated. He required 44 stitches on his injury. Police seized his clothes. PW-2-Mahesh and PW-3-Mujahid told him the name of the Accused No.2-Ashish. The statement given by him was treated as F.I.R. It is produced on record at Exhibit-35. He identified the Accused in the Court. He deposed that he had no prior dispute with the Accused. Even after getting discharged from the hospital, he had to take further treatment.

In the cross-examination, PW-1 deposed that the deceased was doing some marketing jobs but he was not aware of the details. PW-1 had come to know PW-8 through the deceased. He had seen the Accused No.1 and Accused No.3 but never had an occasion to have conversation with them. Some portions from his F.I.R. was shown to him. According to him, he had not stated those portions to the police however, these contradictions are quite minor. He accepted that the deceased had told him that on the previous day, PW-8 had gone to

one hotel at Kalyan with Accused Nos.1, 3 and their common friends. According to PW-1, the deceased had got a phone call from the Accused No.1-Shivam at 8:40 p.m. At that time, the Accused No.1-Shivam had asked the deceased to come near the juice centre. PW-1 was with the deceased since 7:00 p.m. PW-3-Mujahid and one Santosh met PW-1, PW-2 and the deceased near one Gymnasium. At that time, Mujahid and Santosh had asked the deceased as to why he had made a phone call to Shivam. The deceased had explained that Accused No.1-Shivam was talking irrelevant things about him to PW-8. In the cross-examination, he reiterated that when he and the deceased went near the juice centre, the Accused No.1, Accused No.3, one unknown person, Mujahid and Santosh were present there. PW-2-Mahesh had already reached there. He went near them and told them not to quarrel. The deceased parked his motor cycle at about 1 ft. distance from the juice centre. He stated that a scuffle took place between himself and the Accused No.3-Rahul. Both of them had caught each other. At that time, a third person i.e. Accused No.2-Ashish came to save the Accused No.3-Rahul. At the same time, a

scuffle was going on between the deceased and the Accused No.1-Shivam. They were beating each other. The scuffle was going on for 10 minutes. The deceased fell down. PW-1 was called by the police after 6 to 7 days from the incident to see the CCTV footage. He saw the footage. He saw the footage of the quarrel involving the deceased. He denied the suggestion that the deceased had made a phone call to Accused No.1 and had called him near the juice centre. He denied the suggestion that at the time of incident, the deceased had knife with him. He also denied the suggestion that since they had gone to beat the Accused No.1-Shivam, false F.I.R. was lodged. He identified the knives produced in the Court. He identified his clothes. He added that he had identified himself, the deceased and the Accused who were seen in the CCTV footage. This was done in the presence of panchas. The F.I.R. produced on record at Exhibit-35 substantially corroborates his version. It shows that the F.I.R. was lodged at 10:50 p.m. on 06/11/2017. The F.I.R. specifically names the Accused Nos.1 and 3. The description of the third person is mentioned.

8. PW-2-Mahesh Soni was another important eye witness. He

knew the deceased, PW-1, PW-8 as well as all the three Accused. On 06/11/2017 at 7:30 p.m. the deceased called him near Dnyanoday School and informed him that PW-1 was with him. The deceased told him about the quarrel with the Accused No.1. PW-2 went near Dnyanoday School. PW-1 and the deceased were there. The deceased made a phone call to the Accused No.1 but it was unanswered. Then they went towards the house of the deceased. After sometime, they met their friends Mujahid and Santosh. The deceased told Santosh that he should ask that the Accused No.1 to apologize and to stop the dispute. Santosh said that he would tell the Accused No.1 by a telephone call. After sometime, the Accused No.1 made the phone call to the deceased and called him near Dnyanoday School. The deceased and PW-1 went towards the juice centre on a motorcycle. PW-2 also went there on a motor cycle. All the three Accused were near the juice centre. PW-2 told them not to quarrel. When the deceased and PW-1 reached there, the Accused No.1-Shivam abused PW-1. The Accused No.1-Shivam had a knife. The Accused No.2 was also having a knife. The Accused No.2 gave a blow of knife on the left side of the

deceased. The Accused No.1-Shivam pushed the deceased and gave a blow of knife on the deceased. PW-1 told the Accused No.1 not to assault. The Accused No.3 held PW-1's tee-shirt and pulled him towards himself and started beating him. The Accused No.2 wielded a knife and started threatening. PW-1 then kicked the Accused No.2 who fell down. In the meantime, the Accused No.1 gave blows of knife on the deceased. PW-2 then deposed that the Accused No.1 picked up a coconut and gave a blow and hit the deceased with. However, in the cross-examination he clarified that the deceased picked up the coconut and hit the Accused No.1 on his head. PW-1 further deposed that the deceased went near the Accused Nos.2 and 3 and he hit the Accused No.2 with his hand on his head and gave fist blow on his head. The Accused No.2 turned towards the deceased and gave a blow of knife on his chest. The Accused No.2 was about to give a blow of knife on PW-2 but PW-1 pushed him aside. The blow landed on the PW-1's abdomen. In the meantime, the deceased fell down. The Accused ran away from the spot. PW-2 and his friends took the deceased to Lokmanya Hospital and then to Vedant Hospital but the

deceased was declared dead. PW-1 was admitted in Vedant Hospital. PW-2 had shown the spot of incident to the Police in the night itself. They found one knife at the spot which was seized. The motorcycle of Accused No.1 was also seized. The Police prepared spot panchanama.

In the cross-examination, PW-2 deposed that after the incident, the Police met him at the hospital. PW-1 was also in the hospital. Police did not made inquiry with PW-2 at that time in the hospital. He admitted that he had attended the Court at the time of his deposition with the sister of the deceased and before that also he had attended the Court for about 10 to 15 times with the sister of the deceased. He was in the hospital in the night till morning. He had gone to the Police Station for half an hour. He went home at about 9:00 a.m. Then again he went to the Police Station at about 10:00 a.m. For the entire day, he was with the Police. They recorded his statement on the next date of the incident. PW-1's statement was not recorded in his presence. PW-2 himself had not sustained any injury. PW-2 further accepted that when he had reached near the juice centre, he had seen PW-3-Mujahid and Santosh were talking with

Accused No.1-Shivam. At that time the juice centre was open. PW-2 accepted that the Accused No.1-Shivam and the deceased abused each other and then the beating started. PW-2 further stated in the cross-examination that after the scuffle, the deceased was assaulted with a knife. As mentioned earlier, PW-2 further clarified that the deceased had given a blow with a coconut lying nearby on the head of Accused No.1.

9. PW-3-Mujahid Rais Ahmed Ansari was another eye witness but he did not support the Prosecution's case and was declared hostile. PW-3 deposed that he was acquainted with all the three Accused through one Santosh and through one Akhil Menon he got acquainted with the deceased and PW-2-Mahesh Soni. On 06/11/2017 at about 8:30 p.m., Santosh made a phone call to him and told him about the quarrel between the deceased and the Accused No.1. He told him that they had to settle the quarrel. PW-3 started going near Gymnasium. PW-3 met the deceased, PW-1 and PW-2. The deceased told him about his grievance regarding the Accused No.1 telling some lies to PW-8. PW-3 further deposed that he pacified the deceased and told them not

to escalate the dispute. Then PW-3 and Santosh went near Dnyanoday School on a motorcycle. All the three Accused were already present there and they were angry. The Accused No.1 told PW-3 that there was quarrel during a telephonic conversation between him and the deceased regarding PW-8. By that time, the deceased, PW-1 and PW-2 came there on motorcycle. A fight took place between both sides. PW-3 fell down and so he went in a lane. Within some time, he saw that the deceased was lying near a building gate, he had sustained injury and his clothes were stained with blood. PW-3 along with PW-1 and PW-2 took the deceased to Lokmanya Hospital. He deposed that he could not see as to how the deceased had sustained injuries. He denied having seen the Accused assaulting the deceased with knife. Since he did not support the Prosecution's case, the learned A.P.P. cross-examined him but nothing further was elicited in the cross-examination except that his statement was recorded by the Magistrate on 06/12/2017. The contrary portions in that statement were shown to him. He denied having made those statements but those statements were not proved as the learned Magistrate was not

examined. The portion in the police statement that was contrary to his deposition was shown to PW-3. It is proved and produced on record at Exhibit-124. The said portion mentions that the Accused Nos.1 and 3 removed knives from their waist and started assaulting the deceased. They assaulted the deceased on his chin, chest, arm, armpit, arms and back. When the Accused No.3 went to assault PW-1-Ajay, Accused No.3-Rahul was caught by PW-1. To free him from PW-1's clutches, the Accused Nos.1 and 2 gave blows with knives on PW-1, out of which one blow was on the stomach.

In the cross-examination conducted by the defence, PW-3 accepted that the deceased had told him angrily that he would not spare Accused No.1. At that time, PW-3 had told the deceased that he should not do any such wrong thing.

10. PW-4-Hariom Sanjay Singh was another eye-witness who was hostile to the Prosecution and was cross-examined by the learned A.P.P. While describing the incident, PW-4 deposed that, the Accused No.1 had told him that the deceased and four to five persons were

searching him to kill him. PW-4 then had met the deceased and PW-1 in front of one wine shop. At that time, the deceased told him not to interfere. According to him, they were discussing about killing the Accused No.1. Therefore, PW-4 made a phone call to Accused No.1 and told him not to come there. After 10 to 15 minutes, PW-4 went near Dnyanoday School, he saw all the three Accused present there. They were talking with each other. PW-2 had a talk with them. He tried to make them understand the situation. Santosh and Mujahid came after some time. They also talked with the Accused. After some time, the deceased, PW-1 and PW-2 came on their motorcycle, at that time, the quarrel started. The deceased beat Accused No.1-Shivam by hand. According to PW-4, the deceased had a knife near his waist. People gathered there. After that, PW-4 could only see a hand with a knife in the crowd and he could not see who had held the knife. He did not see the actual incident of stabbing. After sometime, when the crowd dispersed, he saw that the deceased was lying down.

In the cross-examination conducted by the learned A.P.P., PW-4 accepted that the Police had caught him and he had told the Police

about the incident. PW-4 accepted that Santosh and PW1 to PW-3 were trying to settle the quarrel. He was shown Portion marked 'A' in his police statement which was contrary to his deposition. He denied having made that statement to the Police, that portion was proved through the Investigating Officer. It was exhibited at Exhibit-125. The said portion mentions that the Accused No.1-Shivam and Accused No.3 removed the knives from their waist and started assaulting the deceased. They were waving the knives in the air as well.

11. PW-8-Diksha Pujari was not an eye-witness but she is an important witness because the quarrel started regarding some statements made to her by the Accused No.1. She deposed that the Accused Nos.1, 3, PW-1 and the deceased were her friends. The deceased was doing share market trading business. The others were studying in college. PW-1 was in a shipping company. On 05/11/2017, PW-8 and her friends had gone for a party to a hotel in Kalyan. They were there from 6:30 p.m. to 10:00 p.m. At that time, the Accused No.1 was also there. He made some derogatory comments about the deceased and his friends. Accused No.1 told her not to talk with them

and not to go out with them. On the next day, PW-8 told everything to the deceased who asked the phone number of the Accused No.1 but she did not have it. After some time, the deceased called her and told her that he had got the phone number of Accused No.1 and he had talked with Accused No.1. He added that, the Accused No.1 had called him and has asked to meet. She categorically stated that the deceased had told her that the Accused No.1 had threatened him that he would kill the deceased. She received a message at 8:40 p.m. from the deceased that the Accused No.1 had not come. After that, there was no communication between her and the deceased. On the next day, PW-8's statement was recorded. She was shown the copy of the messages exchanged between her and the deceased. Those messages are produced on record as Article-1.

In the cross-examination, PW-8 stated that she knew the deceased since 2016. She denied the suggestion that when he made a phone call on 06/11/2017, he was angry. The defence tried to bring some portions from her police statement on record suggesting that the Accused No.1 was threatened by the deceased but the learned Judge

has rightly observed that the said portion was contested by both the sides and therefore that portion was not proved. PW-8 admitted that at 7:20 p.m. the deceased had sent her a message telling her that he would cause harm to Accused No.1.

12. PW-15-Santosh Mudliyar was a treasurer of the society which was situated near the spot of the incident. He has produced the CCTV footage captured in the incident and he had given the certificate under Section 65B of the Evidence Act, 1872. The certificate is produced on record at Exhibit-135.

In the cross-examination, PW-15 stated that the said certificate was prepared when he had gone to the police station. He knew Marathi but he did not know Marathi typing. The certificate mentions about the workable condition of the CCTV footage devices and all other details. This CCTV footage was shown to PW-1 in presence of PW-13-Deepak Sarkar. PW-13 described the contents of the CCTV footage. He described the footage with the help of identification made by PW-1 in his presence. Though he referred to Accused No.1 as

Satish Tiwari but he corrected himself and deposed that he was referring to the Accused No.1-Shivam Tiwari. He described the incident of stabbing and he also described that the Accused Nos.2 and 3 had kept something in their pockets by removing something from their bag. According to the Prosecution's case, they had carried their knives in the bag and had kept them in their pockets. Thereafter, the incident had taken place. The CCTV footage describes that the Accused Nos.1 and 2 had stabbed the deceased. PW-1 was attacked by Accused No.3. He was asked about the CCTV footage as the video recording was played on the laptop in open Court. He accepted that the faces of the persons appearing in the video could not be identified. He clarified that he had not identified those persons but they were identified by the informant-PW-1-Ajay Singh.

13. PW-6-Yogesh Shivaji Kurade was a panch for spot panchanama which is produced on record at Exhibit-66. The spot of incident is not in doubt. The panchanama shows that one blood stained knife was seen near the tree. It was seized. The blood stained soil was also seized.

14. PW-5-Ajay Ashok Atre was a panch for recovery of two knives at the instance of Accused No.1-Shivam. He deposed that he was called by the Police on 19/11/2017. The Accused No.1-Shivam made a statement in his presence that he would show the place where he had concealed the knife used by him. The statement was recorded before the police and the panchas inside Khopat bus stand. Then he took out two knives from the trunk of one Ashoka tree. One knife was 27 cm long and the other was 22 cm long. They were stained with blood. They were seized. The memorandum panchanama and seizure memo is produced on record at Exhibit-63 and Exhibit-63/1 respectively.

15. There is hardly any effective cross-examination of this witness. The knives were taken out from inside the hollow part of a tree. The memorandum panchanama was recorded at 4:25 p.m. and the seizure panchanama was conducted between 4:45 p.m. to 6:00 p.m. on 19/11/2017.

16. PW-7-Bipin Surendrakumar Mishra was a panch in whose presence clothes of the Accused were seized on 18/11/2017. He was called at Vartaknagar Police Station. He went there at about 8:00 p.m. on 18/11/2017. The Accused were given different clothes to wear. Their clothes were taken and seized. The panchanama is produced on record at Exhibit-71. PW-7 denied the suggestion that the clothes were not seized in his presence.

17. PW-9-Dr. Savita Babaso Kalel had conducted the postmortem examination on the dead body. The postmortem notes are produced on record at Exhibit-74. PW-9 had found following injuries on the dead body:-

(i) Stab injury on middle part of sternum. Oval in shape Size (1.5 cm x 1 cm cavity deep), oblique vertical in direction, upper and lower angle acute, edges are sharp and clear, reddish in colour, blood clots.

(ii) Stab injury over left side of lower chest just below and medial to mammary region, oblique, vertical in

direction, oval shape, lower angle acute, upper angle circular, reddish in colour.

(iii) Stab injury over Left arm lower third on anterior direction, horizontal, 1 cm x 0.5 cm. X muscle deep, reddish in colour.

(iv) Stab injury over left forearm, upper 1/3, anterior oblique, horizontal direction, oval shape, 1.5 cm x 0.5 cm, muscle deep, reddish colour,

(v) Stab injury over left forearm, middle one third on posteriorly, vertical in direction, oval shape, lower angle acute, upper angle circular size 4 cm x 2 cm x Muscle deep, reddish in colour.

(vi) Incised wound on left forearm, upper third, medial in direction, oblique, horizontal, oval shape, size 6 cm x 2 cm x muscle deep, edges are clear, reddish in colour.

(vii) Contused abrasion over left Shoulder on anterior aspect of size 3 cm x 0.5 cm.

(viii) Stab injury over left arm middle third, on posterior aspect, vertical in direction, lower angle acute, upper angle circular, edges are clear, size 5 cm x 2 cm x muscle deep, reddish in colour.

(ix) Stab injury over left side of chest on lateral infra axillary region, vertical oblique, lower angle acute, upper angle circular. Size 4 cm x 3 cm x muscle deep, reddish in colour.

(x) Stab injury over back on spinal region, 9 cm just medial border of scapula, horizontal and oval in shape. Both angle acute, edges clear, reddish in colour.

(xi) Contused abrasion on left knee, anterior aspect, 4 cm x 0.5 cm.

All the injuries were ante mortem in nature. The cause of death according to her was due to haemorrhagic shock due to injury to vital organs. According to her, the injuries were possible due to sharp and pointed object and there could be more than one weapon used.

18. PW-12-Dr. Deepak Somnathappa Belure had examined PW-1 in Vedant Hospital. He was on duty when PW-1 was admitted. Dr. Vaibhav Lokhande had performed surgery of PW-1. He had stab injury of the size 3 cm x 3 cm x 5 cm in the right side of the abdomen. There was bleeding injury of 5 cm on right hypochondriac region and below costal margin. He was admitted in the hospital for 5 days. Initially, he was admitted in ICU and then was shifted to general ward. The Police had recorded PW-1's statement on 06/11/2017. At that time, he was conscious.

In the cross-examination conducted on behalf of the defence, PW-12 explained that PW-1's condition was critical as there was bleeding inside the abdomen.

19. PW-10-PSI-Dattatray Eknath Gode had conducted the initial part of the investigation. He deposed that he was attached to Vartaknagar Police Station as PSI. On the night between 06/11/2017 to 07/11/2017 he was on duty as PSO. He received a report from Vedant Hospital about the incident. He went to the hospital and met the doctor. PW-1 was being treated there. He inquired with PW-1 about the incident and recorded the statement. The doctor gave opinion that he was in a position to give statement. PW-1 made his signature on that statement. Based on that statement, the F.I.R. was registered vide C.R. No.317/2017 under Sections 302 and 307 read with Section 34 of IPC. The F.I.R. proforma is produced on record at Exhibit-35. He supervised conducting inquest panchanama and the spot panchanama. He also seized the clothes of the informant and the deceased in the presence of the panchas. All these facts are undisputed and hence there is hardly any relevant cross-examination on these aspects. He however, proved the contrary portion from the statements recorded by him.

20. PW-11-PI-Shivraj Tirshingrao Bendre was attached to Crime

Branch, Unit No.5 who had conducted the parallel investigation. According to their information, they went to Uttar Pradesh and arrested the Accused Nos.1 to 3 on 11/11/2017 at Rainbasera, Nurrullah Road, Purani Chungi, Illahabad, Uttar Pradesh in the presence of the panchas. The panchanama is produced at Exhibit-106. The articles on the person of the Accused were seized. After that the Accused were taken to Khultabad Police Station. They were produced before the Chief Judicial Magistrate at Allahabad and obtained their transit custody remand was obtained. The Accused were brought to Vartak Nagar Police Station. The arrest panchanama has some relevance. It is produced on record at Exhibit-106. It mentions that the Accused No.3-Rahul had some abrasions on his forehead. The Accused No.2 had a sign of injury due to knife on the backside of his head. The Accused No.1-Shivam did not have any signs of injuries.

21. PW-14-PSI- Balasaheb Sakharam Tambe was the Investigating Officer in this case. He had conducted the investigation from 07/11/2017 onwards. He had recorded statements of witnesses. The contradictory portions made by PW-3 and PW-4 were proved through

this witness which are produced on record at Exhibits-124 and 125. After the Accused were arrested, their custody was handed over to this Investigating Officer. He supervised the recovery of knives at the instance of Accused No.1-Shivam. The Accused No.3 had shown willingness to show the spot where he had thrown his clothes but nothing was found at the spot. Similarly, Accused No.1 had also shown willingness to show the place where he had thrown his clothes but even at that spot nothing was found. On 18/11/2017, he seized their clothes in presence of panchas as mentioned earlier. He obtained CCTV footage from the adjoining co-operative housing society. The articles were sent for chemical analysis.

In the cross-examination, PW-14 stated that the spot from where the Accused No.1 took out the knives was a crowded place but he denied the suggestion that the knives seized from the spot were not sealed. He himself had seen the CCTV footage. Significantly, PW-14 had sent all the three Accused for taking their blood samples for examination, etc. He has produced those papers on record. Those medical papers specifically mention that there were no external

injuries. These medical papers are cumulatively produced on record at Exhibit 131. This witness filed the chargesheet in the Court.

22. Apart from this oral evidence, the Prosecution produced the CA Certificates on record. Those certificates show that the pant seized from the person of the Accused No.1 showed presence of blood of 'Group AB'. One of the knives recovered at the instance of Accused No.1 showed presence of blood of 'Group AB'. There was presence of human blood on the clothes of the other two Accused. There was blood on the knife recovered at the instance of Accused No.1 but the blood group was inconclusive. The blood on the clothes of the deceased showed presence of blood of 'AB Group'. The knife found at the spot was also having human blood. The chappals found at the spot had blood of 'AB Group'. The blood stained soil also showed presence of blood of 'AB Group'.

This in short is the evidence led by the Prosecution.

Submissions on behalf of the Appellants :

23. Learned Counsel Mr. Niranjan Mundargi appearing for the Accused Nos.1 and 2 made the following submissions:-

None of the Accused had any motive to commit the murder of the deceased. On the other hand, the evidence shows that the deceased himself had sufficient reasons and hence there was motive to commit murder of the Accused No.1 in particular. There was a quarrel because PW-8 had told the deceased that the Accused No.1 had made some derogatory comments against him to her. Admittedly, the deceased had got angry. Even as per the Prosecution case, it is the deceased who had called the Accused No.1 at that particular spot where the incident had taken place, therefore, the deceased was the aggressor. He had not gone to the spot alone but he had carried a knife as is deposed by PW-3. He also had gone there with his friends therefore, his intention was clear. The messages show that the deceased had told PW-8 that he would cause harm to the Accused No.1-Shivam. Therefore, even as per the Prosecution's case, the deceased was the aggressor. He had gone to the spot after calling the

Accused No.1 to the spot. Thereafter, the scuffle had taken place and in that scuffle the deceased had suffered injuries. Therefore, the Prosecution case itself shows that the Accused have not committed the offence. PW-1 had deposed something more than what he had stated in the police statement. All these omissions from the police statement were important. It was the deceased who had traced the Accused No.1's phone number and had called him. It was not the Accused No.1 who had called the deceased at that spot. There is no reason to disbelieve PW-3 and PW-4. Their evidence will have to be taken into consideration. The Prosecution has not chosen to examine any independent witnesses. The incident had taken place in a crowded locality. A crowd had gathered according to PW-3 and therefore, the police had enough witnesses who could have deposed about the incident. That was not done in this case. The Prosecution deliberately examined only the friends of the deceased who had willingly accompanied the deceased to the spot knowing fully well that the deceased was angry with the Accused No.1. Hence, all the eye-witnesses were interested witnesses. Learned Counsel Mr. Niranjan

Mundargi laid emphasis on the fact that the arrest panchanama showed some injuries on the person of Accused Nos.2 and 3. The Prosecution witnesses had not explained any of these injuries and therefore, according to the learned Counsel the Prosecution has suppressed the genesis of the incident. In support of this contention, he referred to the observations of the Hon'ble Supreme Court in case of *Kumar Vs. State Represented by Inspector of Police (2018 7 SCC 536)*. He referred to paragraph 29 in particular wherein it was observed that, in that case admittedly the accused was also injured in the same occurrence and accused was admitted in the hospital. But the prosecution did not produce his medical record, nor the Doctor was examined on the nature of injuries. The trial Court did not seek proper explanation from the Prosecution and simply believed the Prosecution's witnesses. In that case, the benefit was given to the Accused.

Learned Counsel submitted that in the present case also, it was necessary for the Prosecution's witnesses to have explained the injuries suffered by the Accused Nos.2 and 3. He submitted that the

Investigating Officer was aware that the Accused were injured but he did not explain those injuries. He did not deliberately produce the medical records regarding the injuries. According to learned Counsel, PW-2 had accepted that the deceased had given a blow with coconut on the head of the Accused No.1 and surprisingly there is no such indication of any injury on the head of the Accused No.1. Thus, the Prosecution's witnesses themselves are not telling the truth or at least their version is not supported by the circumstances and in particular, by the medical evidence.

24. He further submitted that there was no consistency in description of the incident between the version of PW-1 and PW-2. In any case, both of them were close friends of the deceased and had gone to the spot together with the deceased.

25. He relied on the messages exchanged between PW-8 and the deceased wherein there was indication that the deceased had told her that he would cause harm to the Accused No.1.

26. He submitted that it was not possible to believe that the Accused would be wearing the same clothes for about more than 11 days as their clothes were seized on 17/11/2017. The incident is dated 06/11/2017. Therefore, though the CA Report showed presence of human blood on the clothes and in particular the pant of the Accused No.1 showed blood of 'AB Group', it is not possible to believe that the Accused were wearing the same clothes when they travelled from Mumbai to Uttar Pradesh and then back to Mumbai. They were brought to Mumbai on 14/11/2017 and yet the clothes were seized only on 17/11/2017. Therefore, that particular circumstance is not incriminating.

27. The recovery at the instance of the Accused No.1 is not in consonance with the parameters of Section 27 of the Indian Evidence Act. Admittedly, the place from where those two knives were recovered was a crowded place. It was open to public and therefore, this is not a recovery pursuant to the statement under Section 27 of the Indian Evidence Act. He submitted that the deceased himself had carried the knife and due to scuffle, these injuries were caused to him.

The evidence shows that the Accused had no intention to commit the murder of the deceased. It was only because the deceased had taken out the knife, the scuffle took place and in the scuffle, the deceased as well as PW-1 had suffered injuries with the deceased's own weapon.

28. Learned Counsel further submitted that, this case would not fall within the meaning of Section 300 of IPC because firstly, there was grave and sudden provocation given by the deceased himself and secondly, at the highest the Accused could be attributed only the knowledge and not the intention and therefore, it would be a case falling within the part II of Section 304 of IPC.

29. Learned Counsel Ms. Prabha Badadare, appearing for the Accused No.3 made only one submission. According to her, no specific role was attributed to the Accused No.3-Rahul either of assaulting the deceased or assaulting PW-1. He was not even attributed the weapon-knife and therefore, he deserves to be acquitted from all the charges.

Submissions in favour of the Prosecution :

30. On the other hand, Ms. Mahalakshmi Ganapathy learned A.P.P. and the learned Counsel appearing for the sister of the deceased made the following submissions:-

Though, the deceased himself was angry, the evidence shows that there was a quarrel between the deceased and the Accused No.1 during their telephonic conversation. The Accused No.1 had called the deceased at the spot. The deceased only had intention to have heated exchange with him but the Accused went there well prepared by carrying arms. The very fact that one knife was found at the spot and two knives were recovered at the instance of Accused No.1 shows that they had gone to the spot armed with weapons. Therefore, their intention was clear. The CA Report shows presence of blood on the knives. As mentioned earlier, one of the knives recovered at the instance of the Accused No.1 showed presence of blood of 'AB Group'. PW-1 is the most important witness. He was the injured witness. His presence at the spot is not even disputed and cannot be disputed. He has described the incident in detail. He himself had

suffered serious injuries. The description of the incident given by PW-1 and PW-2 is quite consistent except as to how PW-1 had suffered injuries. The medical evidence supports the ocular evidence. Even under Section 313 of Cr.P.C. the defence has admitted their presence at the spot.

Reasons and Conclusion :

31. We have considered these submissions. From the evidence discussed hereinabove, it is quite clear that the incident had taken place at that particular spot and the deceased, PW-1, PW-2 and all the three Accused were present at the spot. Their presence at the spot is admitted by both the sides and in any case there is sufficiently cogent evidence to show their presence at the spot. The only line of argument which has been seriously pursued was that the deceased was the aggressor and he had motive. He had called the Accused No.1 at the spot and therefore, he was the perpetrator of the crime in which he himself became the victim during the scuffle. This submission will have to be considered seriously.

32. There is no doubt that the deceased was angry with the Accused No.1 because PW-8 had told the deceased that the Accused No.1 had told something bad about him to PW-8. When there was telephonic conversation between the deceased and the Accused No.1, there was a quarrel between them and both had decided to meet at a particular spot. The Article-1 shows the messages exchanged between the deceased and PW-8. One of the messages indicates that, the deceased was so angry that he had told PW-8 that he would cause harm to Accused No.1 but the following conversation mentions that PW-8 had tried to pacify the deceased and he had told her that he would have a normal conversation provided the Accused No.1 was also decent with him. The conversation also shows that the deceased had told her not to have any further conversation or contact with the Accused No.1. That indicates that the deceased never intended to commit murder of the Accused No.1; but he wanted to pick up a fight with him. Beyond this, the conversation does not indicate anything. Therefore, though the deceased was angry and had first called the

Accused No.1 but from that point onwards the Accused No.1 had taken things in his hands. He had gone to the spot with his friends.

33. More importantly, the evidence shows that there were three knives involved. It is not possible to accept the submission that the deceased himself had carried the knife and he himself fell prey to the attack with the same knife. There were three injuries near the chest and one on the back. All these injuries were grave and on vital parts. The other injuries on the arm were defence injuries which shows that he was attacked and assaulted. Those injuries could not have been caused if he was the aggressor in the scuffle.

34. Though the CCTV footage panchanama explains that the Accused Nos.1 and 2 had taken out something from their bag and had kept those things in their pants, the evidence also shows that the CCTV footage was not very clear. The learned Judge has also not relied on the CCTV footage but even otherwise there is strong evidence of two eye witnesses-PW-1 and PW-2 describing the incident in detail. Their evidence takes precedence more particularly, since PW-

1 himself was injured. He was the best person to explain his own injuries. It is not possible to believe that the deceased carried the weapon and in the scuffle, not only he suffered the injuries but even PW-1 suffered the injury with the same knife. The injuries suffered by the deceased and PW-1 were only possible when they were attacked. The evidence shows that the Accused No.3 had pulled PW-1 towards him and in the meantime, the deceased was assaulted by the Accused Nos.1 and 2. Subsequently also when PW-1 was trying to intervene and save the deceased, he was attacked and the Accused No.1 had given blow with knife on his stomach as is deposed by PW-1. There is direct evidence of these two important eye-witnesses.

35. As far as PW-3 and PW-4 are concerned, they were declared hostile. The contrary portions from their statements given to the Police are duly proved. Those portions actually support the Prosecution's case but since both these witnesses are not reliable their evidence is not helpful either to the Prosecution or to the defence.

36. The evidence of PW-1 and PW-2 is duly supported by the

medical evidence led by PW-9 and PW-12. The description given by both these eye-witnesses matches with the medical evidence. This is a strong corroboration to their evidence.

37. Apart from the ocular and medical evidence, there is other corroborative piece of evidence in the form of recovery of two knives at the instance of the Accused No.1. Though those knives were recovered from a tree in a place which was accessible to the public but those knives were taken out by the Accused No.1 which were concealed inside a trunk of a tree. Therefore, it is not possible to accept the submissions that the requirements of Section 27 of Evidence Act are not followed. There is authorship of concealment and the exclusive knowledge on the part of the Accused No.1. There is no infirmity in this recovery evidence. Both the knives showed presence of blood and one of the knife showed presence of blood of 'AB Group' which was the blood group of the deceased. This is yet another circumstance against the Accused No.1 in particular.

38. As far as the blood on the clothes of the Accused are

concerned, that evidence can be ignored because it is difficult to believe that the Accused would be wearing the same clothes for about 11 days.

39. The next main submission which is required to be considered seriously is about the non-explanation of the injuries suffered by the Accused. First of all it must be noted that there is absolutely no evidence that the Accused had suffered any serious injury. There is only a reference in their arrest panchanama that the Accused No.3 had abrasion on his forehead and Accused No.2 had some injury on the back side of the head caused by knife. However, they were absolutely minor injuries. The abrasion need not be taken into consideration at all. As far as the injury on the head is concerned, it was also a minor injury because the record shows that they were produced for the blood samples before the Medical Officers and at that time there is clear remark by the Medical Officers that there were no signs of any external injuries. Thus, there is no basis even to argue that the Accused had suffered such injuries which needed to be explained by the Prosecution witnesses. The observations of the Hon'ble Supreme

Court in the case of *Kumar* are is not helpful to the Appellants. In paragraph 29 of the said judgment it was observed that on account of eye-witnesses there were atleast three different versions which substantially weakened the prosecution's case. Moreover, paragraph 29 mentions that in that case, admittedly, the accused was injured in the same occurrence and he too was admitted in the hospital. The facts in that case are materially different from the facts of this case. There is no evidence whatsoever to show that the Accused had suffered any injuries which the Prosecution's witnesses failed to explain.

40. We are also not inclined to accept that there was grave and sudden provocation. Both the sides knew that there was quarrel between the parties. The Accused had come at the spot prepared and armed with knives which they have used immediately. They caused serious assault on the deceased with knives. It is also not possible to hold that the deceased could have suffered those many injuries including four serious injuries on the vital parts during the scuffle. Those injuries are not possible unless he was intentionally assaulted on

the vital parts. Significantly, even PW-1 had suffered a very serious injury. This cannot be an accidental injury caused during scuffle. That injury was also intentional. All the Accused had acted in pursuance of their common intention. Though learned Counsel for the Accused No.3 submitted that the Accused No.3 was not attributed any role, that is not the case borne out from the evidence. The Accused No.3- Rahul had pulled PW-1 away from the deceased. They were holding each other. In the meantime, the deceased was assaulted. The Accused No.3 had come with the other two Accused. The Accused were armed with knives. There were three knives involved. One was found at the spot and the other two were recovered at the instance of the Accused No.1. All this shows that there was meeting of minds on the part of all the three Accused and the offence had taken place in pursuance of their common intention.

41. As a result of the above discussion, we do not find any reason to interfere with the well reasoned judgment and order passed by the trial Court and therefore, the Appeals are dismissed. Accordingly, we pass the following order:-

ORDER

(i) The Criminal Appeal Nos.855 of 2024, 206 of 2025 and 687 of 2025 are dismissed.

(ii) The Accused No.2-Ashishkumar Nishad is on bail. He shall surrender forthwith before the Prison Authorities. His bail bond shall stand cancelled.

(iii) In view of disposal of Appeals, the connected Interim Application Nos. 3069 of 2025, 4799 of 2025 and Interim Application (ST) Nos. 24674 of 2025, 23709 of 2025 are also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)