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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.341 OF 2017**

Vinayak Madhav Chavan
Age 38 years,
R/o. 1122, Sadashiv Peth,
Pune 411 037
(At present detained at
Yerawada Central Prison, Pune)

... Appellant
(Org. Accused No.4)

V/s.

1. State of Maharashtra
Through Vishrambaugwada Police Station,
Pune City, Pune
 2. Sughandha Maruti Kudale
R/o. Bandivan Maruti, Somanth Kachi Building,
Raviwar Peth, Pune
Currently R/o. Rashtrabushan Chowk,
2nd Floor, Khandakamal Bhaji Market, Pune
 3. Sambhaji Shivrulal Lahare
Age 60 years, Occ : Business
R/o Survey Nos.4, 5, Waghzai Pathak,
Dhanak Wadi, Pune
 4. Sunil Narayan Chavan
Age 62 years, Occ : Painter,
R/o 737, Ganjpeth, Pune
- ... Respondents

**WITH
CRIMINAL APPEAL NO.474 OF 2017
WITH
INTERIM APPLICATION NO. 1500 OF 2021
WITH
INTERIM APPLICATION NO.653 OF 2025
IN
CRIMINAL APPEAL NO.474 OF 2017**

Ghansham Dattatraya Tambde
 Age 22 years, Occ : Education
 R/o. 1122, Sadashiv Peth,
 Pune 411 037
 (At present detained at
 Yerwada Central Prison, Pune)

... Appellant
 (Org. Accused No.3)

V/s.

1. State of Maharashtra
 Through Vishrambaugwada Police Station,
 Pune City, Pune
 2. Sughanda Maruti Kudale
 R/o. Bandivan Maruti, Somanth Kachi Building,
 Raviwar Peth, Pune
 Currently R/o. Rashtrabushan Chowk,
 2nd Floor, Khandakamal Bhaji Market, Pune
 3. Sambhaji Shivilal Lahare
 Age 60 years, Occ : Business
 R/o Survey Nos.4, 5,
 Waghzai Pathak, Dhanak Wadi, Pune
 4. Sunil Narayan Chavan
 Age 62 years, Occ : Painter,
 R/o 737, Ganjpeth, Pune
- ... Respondents

**WITH
 CRIMINAL APPEAL NO.1540 OF 2018**

Dattatraya Ramchandra Tambde
 Age 61 years, R/o.1122, Sadashiv Peth,
 Pune 411 037.
 (At present detained at
 Yerawada Central Prison, Pune)

... Appellant
 (Org. Accused No.1)

V/s.

1. State of Maharashtra
 Through Vishrambaugwada Police Station,
 Pune City, Pune

2. Sughanda Maruti Kudale
R/o. Bandivan Maruti, Somanth Kachi Building,
Raviwar Peth, Pune
Currently R/o. Rashtrabushan Chowk,
2nd Floor, Khandakamal Bhaji Market, Pune
3. Sambhaji Shivilal Lahare
Age 60 years, Occ : Business
R/o Survey Nos.4, 5, Waghzai Pathak,
Dhanak Wadi, Pune
4. Sunil Narayan Chavan
Age 62 years, Occ : Painter,
R/o 737, Ganjpeth, Pune ... Respondents

**WITH
CRIMINAL APPEAL NO.908 OF 2024**

Sagar Dattatraya Tambde
Age 36 years, Occ : Education
R/o. 1122, Sadashiv Peth,
Pune 411 037
(At present detained at
Yerawada Central Prison, Pune)

... Appellant
(Org. Accused No.2)

V/s.

1. State of Maharashtra
Through Vishrambaugwada Police Station,
Pune City, Pune
2. Sughanda Maruti Kudale
Age : 70 years,
R/o. Rashtrabhushan Chowk,
2nd Floor, Khandakamal Bhaji Market, Pune
3. Sambhaji Shivilal Lahare
Age 60 years, Occ : Business
R/o Survey Nos.4, 5, Waghzai Pathak,
Dhanak Wadi, Pune
4. Sunil Narayan Chavan
Age 62 years, Occ : Painter,
R/o 737, Ganjpeth, Pune ... Respondents

Mr. Chaitanya Pendse with Ilsa Shaikh for the Appellant in Appeal No.341/2017.

Mr. Satyavrat Joshi with Shivani Kondekar and Mr. Ishan Paradkar for Appellant in Appeal Nos. 474/2017 and 1540/2018.

Dr. Yug Mohit Chaudhry with Mr. Hasan Nizami with Mr. Anush Shetty for the Appellant in Appeal No.908/2024.

Mr. Tanveer Khan, A.P.P. for the Respondent-State.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 18th NOVEMBER, 2025
PRONOUNCED ON : 26th MARCH, 2026**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.]

“A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

State of Punjab Vs. Jagir Singh And Ors¹,

¹ (1974) 3 SCC 277

1) A simple question to Accused No.1 by one of the three deceased as to why the former had installed his roadside business stall at the business place of the latter, probably, as a concern to earn his bread-and-butter, became reason of the anger of Accused No.2 leading him to brutally kill the deceased and two other innocent to meet their maker, well before their time. According to the prosecution, the Accused No.1, Accused No.3 and Accused No.4 were also equally responsible for these barbaric deaths. This Court is therefore called upon to examine the correctness of the guilt of all four accused, because, as alleged, the murders were committed in furtherance of the common intention of the all.

All these Appeals are being decided by this common judgment as the Appeals arise from the same Judgment and Order dated 29/03/2017, in Sessions Case No.830 of 2012, passed by the learned Additional Sessions Judge, Pune. Thereby the Appellants – Original Accused Nos.1 to 4 (“**A-1, A-2, A-3 and A-4**”) were convicted for the offences punishable under Sections 302 and 34 of the I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/- each and in default, to suffer R.I. for one year, by giving benefit of set off under Section 428 Cr.P.C. Out of fine amount, an amount of Rs.5,000/- was directed to be paid to the spouse of each deceased as compensation under Section 357 Cr.P.C. If the deceased had no spouse, the money to be paid to either of their parents.

2) The prosecution case is, on 18/07/2012, the informant Ms. Sheetal Santosh Kudale (PW-4) filed a Report/Complaint (Exh.73) with Vishrambaug Police Station, entered in the General Diary at 16:05 hours. wherein it is stated that PW-4's husband Santosh and brother-in-law Sachin were doing a ladies garment business in a tin-stall (*pathari*), on the road side, at Tulshibaug. On 18/07/2012, at about 12 noon, PW-4 took her children Sakshi and Smruti to *Nutan Marathi Vidyalyaya* and son Sarthak to *Ranade Balak Mandir*. She then came to their stall alongwith her brother Sagar. There, Sachin's friend Kailas Chavan met them and told that A-1, a fruit vendor, assaulted Sachin on face and neck, and that, Sachin was seated in a corner of the footpath near Vishrambaug Chowk. Immediately, they went to Sachin and noticed bleeding injuries on his neck and lip. On enquiry, Sachin told her that when he asked Dattatray Tambde (A-1) as to why he installed his roadside business stall (*Pathari* stall) at his place, Dattatray Tambde (A-1) and his one associate, who was fat and wearing specs, assaulted him. At about 12.30 pm, Dattatray Tambde (A-1), his son Sagar Tambde (A-2), another son Ghanshyam Tambde (A-3) and one fat person wearing specs (A-4) came near them at the corner of Vishrambaug Wada and all the four accused started to abuse and threaten PW-4, Sagar and Kailas. The fat person wearing specs namely Sagar Tambde (A-2) removed a knife and stabbed Sagar in his stomach and neck. PW-4 and

Kailas went to rescue him. However, they pushed her. Consequently, she suffered a scratch to her hand. The accused persons then assaulted Kailas by kicks and fist blows and the fat person wearing specs Sagar Tambde (A-2) stabbed Kailas in his stomach and in the neck. PW-4 again tried to resolve the quarrel by pushing A-2. But, Ghanshyam Tambde (A-3) threatened her not to talk much, otherwise, he would kill her too. Sagar Tambde (A-2) then stabbed Sachin in his chest and stomach, who was lying at the said corner.

The traffic police (PW-5), who was nearby and present on duty, rushed to the spot and informed the incident to the Police Control Room. PW-4 phoned her father Sambhaji Lahare and informed him about the incident. Around the same time, Vishrambaug Police arrived and removed Sachin to Sassoon Hospital in an ambulance, which was passing from there. At that time, PW-4's father came at the spot and removed deceased Sagar to Surya hospital in an auto-rickshaw. She removed Kailas to Sassoon hospital in another rickshaw where the police arrived. Later on, PW-4 learnt that her father had admitted Sagar at Surya hospital. Therefore, she went there. Meantime, the Police (PW-8) came to Surya Hospital. She then came to the Police Station alongwith (PW-8) to file the Report. At that time, the A-1 to A-3 were shown to her by the Police (PW-10). She pointed at them and identified Dattatray Tambde as (A-1), Sagar Tambde as (A-2) and

Ghanshyam Tambde as (A-3); that, said accused raised a quarrel on account of they were asked as to why they occupied their place of *pathari*/stall; that, said accused and one more person (A-4) associate with them assaulted Sagar and Kailas with kicks and fists, abused and threatened them; that, Sagar Tambde (A-2) stabbed them in the stomach and at waist, caused them grievous injuries, attempted to commit their murder and committed murder of Sachin by stabbing him in the neck, chest and stomach.

2.1) Arjun Sakunde (PW-8), then Senior Police Inspector recorded the Report (Exh.73) as narrated by PW-4. The Police registered that Report as FIR bearing Cr. No.199 of 2012 under Sections 302, 326 and 34 of I.P.C. against A-1 to A-3 and one unknown fat person.

3) Before filing of the Report (Exh.73), Police Constables Gajanan Jadhav (PW-6) and Mr. Naik, who were nearby and present on duty, had received a message from the Police Control Room. Immediately, PW-6 went to the spot and apprehended the A-1 to A-3. PW-10 PI Khade went to the spot, took the A-1 to A-3 into his custody from PW-6 and brought them to the Police Station. After filing of the Report (Exh.73), A-1 to A-3 were arrested by PW-10. The blood stained clothes on the person A-1 to A-3 were seized by him under separate Arrest Panchnama. One mobile phone and one blood stained knife found on the person of A-2 and one Nokia mobile was found on the person of A-3 were also seized. Police Officer Mr.Nikumbh

recorded the Spot Panchnama (Exh.49). PW-8 conducted the investigation and recorded the statement of the witnesses. The blood stained clothes of PW-4 came to be seized. Deceased Sagar died on the same day and Kailas died in Surya Hospital on 29/07/2012. After Inquest Panchnamas of the three bodies its postmortem examination was conducted. The clothes of the three deceased were seized. PW-8 referred the *muddemal* articles to the FSL for the purpose of CA. Investigation revealed that A-1 to A-3 alongwith A-4 committed the murder of the three in furtherance of their common intention. Hence, charge sheet was submitted against A-1 to A-3 under Sections 302, 307, 326 and 34 of I.P.C. as A-4 was not arrested at that time.

4) On 26/02/2014, the trial Court framed the charge against A-1 to A-3 under Sections 302, 325 and 34 of I.P.C. Later on, A-4 was arrested on 20/11/2014 and supplementary charge-sheet was filed against him. Hence, fresh charge was framed on 22/12/2014. The accused pleaded not guilty to the charge and claimed to be tried. The defence of the accused was of denial and false implication. It was their specific defence that the deceased used to collect *hafta*/extort money from the stall owners at Tulshibaug with the aid of PW-4's husband. All the stall owners were against the three deceased. Therefore, some unknown stall owners committed their murder.

5) To prove the charge, the prosecution examined 10 witnesses

which include the informant, spot panch, seizure panch, the police who immediately rushed to the spot, removed the injured to hospital and apprehended the accused, medical officers and investigation officers.

After considering the oral and the documentary evidence including the CA Report, the trial Court accepted that evidence, and hence, convicted and sentenced the accused as noted in the paragraph 1 above.

6) We have heard Mr. Pendse, the learned Counsel for the Appellant in Appeal No.341 of 2017, Mr. Joshi, the learned Counsel for the Appellants in Appeal Nos.474 of 2017 and 1540 of 2018, Dr. Chaudhry, the learned Counsel for the Appellant in Appeal No.908 of 2024 and Mr. Khan, learned A.P.P. for the Respondent-State. Peruse the record.

7) Here it is necessary to note that the date, time and place of the incident was not disputed by the defence. The defence has admitted the Inquest Panchnamas and did not dispute the homicidal death of the three deceased. However, they have disputed the weapon allegedly used by A-2.

8) PW-9 Dr. Jaysing Shinde has testified that he has done M.B.B.S. & M.S. Since 1985, he was Founder Director and Chief Surgeon of Surya Hospital Pune. Deceased Sagar Lahage was admitted in his hospital on 18/07/2012, at 1.30 p.m., with history of assault disclosed to the Casualty Medical Officer. He was in a critical state. Accordingly, MLC was reported to Vishrambaug Police Station at 1.45 p.m. He deposed that he had examined

the patient at 1.45 p.m. He had multiple stab injuries as under :-

- i) Cut throat 10 cm x 1 cm (stab muscles, sternomastoid cut open with bleeding from all superficial veins),
- ii) Penetrating chest wound 2 cm x 1cm,
- iii) Open abdominal stab wound with bowel and omentum protruding 10 cm x 3 cm,
- iv) Penetrating wound 2 cm x 1 cm on right hip.

9) PW-9 has deposed that the injuries were operated and sutured. However, the patient expired at 5.30 p.m on the same day. In this regard, PW-9 has referred the medical papers (Exh.145 colly.) and deposed that its contents are in his handwriting, bears his signature and the same are true. All the injuries referred above were sufficient in ordinary course of nature to cause the death. The said injuries were possible by the knife (Art.2).

10) He has further deposed that deceased Kailas was admitted in the same hospital on 23/07/2012, at about 10.50 a.m., with the history of assault. Earlier, he was treated at Sassoon Hospital. At the time of the admission, the patient was serious, unconscious, not responding and painful stubbly. He had examined the patient and found following injuries :

1. stab wound over abdomen. (23 stitches in situ),
2. Wound near right shoulder (4 stitches in situ),
3. C.L.W. over Lt-index-finger, (8 stitches in situ),
4. C.L.W. just below occipital region Rt side (4 stitches in situ),
5. C.L.W over Rt-Neck (7 stitches in situ).

PW-9 has deposed that the patient succumbed to the injuries

on 29/07/2012, at 4.55 a.m. In this regard, PW-9 has referred the medical papers Exh.146 (colly). He has deposed that all the injuries referred above were sufficient in the ordinary course of nature to cause death. Said injuries were possible by the knife (Art.2).

11) PW-7 Dr. Harish Tatiya has deposed that on 18/07/2012, between 5.00 p.m. to 6.00 p.m., he and Dr. A. B. Shinde had jointly conducted the postmortem examination of the dead body of Sachin and noted following external injuries :

Nos.	Particulars of the injuries
1	Stab wound over sternal region in mid line, size 3 x 2 cm cavity deep, oblique left inferior, 4cm below suprasternal notch, angles acute underlying sternum cut, reddish, margins clean cut.
2	Stab wound over pectoral region, on left side 3cm above nipple, size 5 x 2 cm x cavity deep oblique right inferior, size 6 cm from mid line underlying fourth and fifth ribs cut, margins clean cut, reddish, angles acute.
3	Stab wound over pectoral region on left side, 1 cm lateral to injury no.2, size 3.5 x 2 cm x cavity deep, underlying forth and fifth rib, cut vertical margins clean cut, angles acute, reddish.
4	Stab wound over left side of pectoral region, 1 cm below and lateral to nipple, 9 cm from mid line, size 3 x 2 cm by cavity deep, oblique lateral inferior, underlying 6 th rib cut, margins clean cut, reddish, angles acute.
5	Incised wound 3 cm above and lateral to injury no.3, size 3 x 1 cm by muscle deep oblique left inferior, margins clean cut, reddish.
6	Stab wound over left lateral of chest in anterior axillary line, 3 x 2 cms by cavity deep, vertical underlying 6 th rib cut, margins clean cut, reddish.

- 7 Incised wound over left side of chest, 9 cm from mid line, 6cm above costal margins in mid-clavicular line, 2 x 1 cm by tissue deep, margins clean cut, reddish.
- 8 Incised wound over right side of chest, horizontal 7 cm from mid line, 10 cm from sub costal margin, in anterior axillary line, 3 x 1 cm by tissue deep, margins clean cut, reddish.
- 9 Stab wound over sternal region in mid line, 8 cm below injury no.1, 3 x 2 cm by cavity deep, oblique left inferior, underlying sternum cut, margins clean cut, angles acute, reddish.
- 10 Incised wound over left elbow, antero laterally, 5 x 2 cm by tissue deep, oblique lateral upwards, margins clean cut, reddish.
- 11 Incised wound over left forearm, middle third, ventrally, 2 x 1 cm by tissue deep, vertical margins clean cut, reddish.
- 12 Incised wound over dorsum of right hand at base of fourth finger, 3 x 1 cm by tissue deep, oblique inferior medially margins clean cut, reddish.
- 13 Incised wound over, occipital region, on right side, 2 x 1 cm by bone deep, vertical margins clean cut, reddish.

12) The internal injuries noted by PW-7 were as under :

Nos.	Particulars of the injuries
1	Ribs, sternum, and plura cut corresponding to external injuries, as mentioned under column no.17 of the postmortem report.
2	Stab wound was over lower lobe of left lung, corresponding to said external injury no.6, 3 x 2 cm margins clean cut, reddish, rest of lung pale. Pericardium cut corresponding to said external injury nos.2 and 3, 5 x 2 cm and 3 x 2 cm respectively, margins clean cut, reddish.
3	Stab injuries over left ventricle corresponding to said external injury nos.2 and 3, 5 x 2 cm and 3 x 2 cm respectively, cavity deep, margins clean cut, reddish.

- 4 Peritoneum and diaphragm cut corresponding to said external injury no.9, 3 x 2 cm margins clean cut, reddish.
 - 5 Stab wound over left lobe of liver, anteriorly 3 x 2 x 2 cm, margins clean cut, reddish, corresponding to said external injury no.9.
- 13) PW-7 has opined that, all the injuries were ante-mortem in nature. The internal and external injuries were sufficient to cause death in ordinary course of nature. Deceased Sachin had died because of shock and haemorrhage due to multiple stab injuries. Accordingly, they had issued the postmortem report (Exh.116). It bears his and Dr. Shinde's signature. The contents are true and correct. They had preserved the viscera, finger nail clippings and scalp hairs for chemical analysis. The aforesaid injuries were possible by the knife (Art.2).
- 14) PW-7 has deposed that on 19/07/2012, from 10.45 am to 11.45 am., they had conducted the postmortem examination of the dead body of Sagar Lahare and they had noted following injuries on his body :

Nos.	Particulars of the injuries
1	Stitched wound over right lateral aspect of chest, in fifth intercostal space, 2 stitches in situ, in anterior axillary line, attached with 1 liter blood bag, containing blood, (intercostal drain)
2	Stitched wound over abdomen in mid line, 1 stitch in situ in mid line two liter blood bag attached containing blood (abdominal drain),
3	Stitched wound over left iliac region, one stitched in situ attached with blood bag (pelvic drain),
4	Stitched wound over anterior of neck, horizontal, eight stitches in

situ, 16 cm in length, 4 cm from adam's apple and 6 cm from suprasternal notch on removal of stitches underlying muscles stitched in layers underlying jugular vessels cut, trachea cut margins clean cut, reddish

- 5 Stitched wound over right side of chest, below right nipple, four stitches in situ, oblique upwards laterally, 4 cm in length, four stitches in situ in fifth intercostal space, on removal of stitches margins clean cut, reddish,
- 6 Stitched wound over abdomen in epigastric region and right hypochoandriac region, horizontal 15 cm in length, eight stitches in situ, on removal of stitches underlying muscles stitched in layers, margins clean cut, reddish, cavity deep,
- 7 Incised wound over right gluteal region, laterally, size 4X3 cm by muscle deep, oblique upwards laterally reddish,
- 8 Abrasion over right knee, size 3X2 cm irregular, reddish.

15) PW-7 has deposed that, on internal examination, they had noted following injuries :-

Nos.	Particulars of the injuries
1	Rib no.5 cut over upper margin, plura cut corresponding to said external injury nos.1 and 5.
2	Trachea cut corresponding to said external injury no.4, margins clean cut, reddish.
3	Stab wound present over lower lobe of right lung, laterally, size 2 x 1 cm and 2 x 2 cm clean cut, reddish, rest of lung pale.
4	Stitched wound present over, pyloric end of stomach and over duodenal part of small intestine, 5 stitches in situ reddish, about 250 ml blood present in cavity, reddish.

16) In the opinion of PW-7, all the injuries were antemortem in

nature. The internal and external injuries were sufficient to cause death in the ordinary course of nature. The deceased Sagar died due to shock and hemorrhage due multiple injuries. Accordingly, they had issued the postmortem report (Exh.118). It bears his and Dr. Shinde's signatures. The contents are true and correct. They had preserved the viscera, finger nail clippings and scalp hairs for chemical analysis. The aforesaid injuries were possible by the knife (Art. No.2).

17) PW-7 deposed that, on 29/07/2012, he and Dr. A.A. Taware together had conducted the postmortem examination of the dead body of deceased Kailas. The following external injuries were present on the body :

Nos.	Particulars of the injuries
1	Stitched wound over the nape of neck on right side, obliquely with two stitches in situ, 2 cm below occiput, 1 cm from mid line,
2	Stitched wound over nape of neck, 2 cm below injury no.1 horizontal, four stitches in situ, 4 cm from mid line,
3	Stitched wound two stitches in situ present over posterior aspect of right shoulder, 3 cm right to injury no.2, 7 cm from vertebra prominence,
4	Abrasion present over, mid line forehead, over nasion, size 2X1 cm brownish scab,
5	Stitched wound, five stitches in situ, 3 cm in length, 3 cm above clavicle in right supra clavicular region,
6	Stitched wound of 3 cm, three stitches in situ, present over right shoulder anteriorly,
7	Stitched wound of 3 cm over right anterior triangle of neck, four stitches in situ,

- 8 Stitched wound of 1 cm length, in right fifth intercostal space, in mid axillary line, 15 cm from mid line, two stitches in situ, evidence of intercostal drain,
- 9 Incised wound of one and half cm in length, in left intercostal space, in mid axillary line, 14 cm from mid line, evidence of intercostal drain,
- 10 Stitched wound with 16 stitches in situ, present over abdomen in mid line, extending from xiphisternum to umbilicus 18 cm in length vertical,
- 11 Stitched wound horizontal with 7 stitches in situ, starting from middle of injury no.10 running towards right horizontally of length 11 cm,
- 12 Evidence of lumbar drain in right lumbar region of abdomen, 5 cm above iliac crest in anterior axillary line, 2 cm in length, 10 cm from mid line,
- 13 Stitched wound, three stitches in situ, two and half cm in length, present 2 cm above injury no.12 in mid axillary line,
- 14 Stitched wound four stitches in situ, 3 cm in length, present obliquely 1 cm above and posterior to injury no.13,
- 15 The evidence of lumbar drain in left lumbar region of abdomen 5 cm above iliac crest, in anterior axillary line, 2 cm in length, 11 cm from mid line,
- 16 Multiple abrasions present over back of left shoulder, over an area of 24 x 15 cm varying in sizes from 3 x 2 cm to 1 x 1 cm brownish black with scab,
- 17 Multiple abrasions present over left anterior triangle of leg, varying in sizes, from 1 x 1 cm to 1 x 0.5 cm brownish with scab,
- 18 Stitched wound with 8 stitches in situ, 5 cm in length. over left index finger, dorso laterally,
- 19 Incised wound over the left index finger on medial aspect, 3 x 2 x 0.5 cm,
- 20 Abrasion over right knee, size 2 x 1 cm brownish scab present,

- 21 Abrasion over lower third of right leg, medially, 2 x1 cm brownish scab present,
- 22 Injection mark over, left forearm, extensor aspect of middle third, (therapeutic),
- 23 Injection mark over right antecubital fossa, (therapeutic),
- 24 Injection mark present over left neck in anterior triangle (therapeutic).

18) PW-7 has deposed that, on internal examination, they had noted the following injuries:

There was evidence of laparotomy procedure with stitches over right lobe of liver. All the injuries were ante-mortem, sufficient to cause death in the ordinary course of nature, and individually, external injury nos.10 and 11. In their opinion, the deceased Kailas died due to shock and hemorrhage due multiple stab injuries. Accordingly, they had issued the postmortem report (Exh.120). It bears his and Dr. Taware's signature. The contents are true and correct. They had preserved the viscera, finger nail clippings and scalp hairs for chemical analysis. The aforesaid injuries were possible by the knife (Art.2).

19) The aforesaid testimonies of PW-9 and PW-7 are very consistent with each other and the medical record they had referred in their evidence. In the cross-examination of PW-7, an attempt was made to show that the injuries sustained by the three deceased were not caused by the knife

(Art.2) but by different weapons. However, in cross-examination of PW-7 itself, it has come that, while withdrawing the knife (Art.2) from the injury/body, internal organs must have been drawn alongwith with the blade. That is why, as deposed by PW-7, the bowel and omentum protruded from the external injury No.4 sustained by deceased Sagar. Therefore, we hold that the injuries sustained by the three deceased were possible by the knife in question. Moreover, there is nothing in the cross-examination of PW-9 and PW-7 to disagree with their expert opinion as to the weapon by which the said injuries could have been caused. Looking at the nature of the injuries of the deceased persons, it is apparent that, said injuries were inflicted with an intent to cause the death of all three deceased but without any excuse. As such, the finding recorded by the trial Court that their death was homicidal and amounting to murder, cannot be disagreed with.

20) Now, the question is, whether it has been proved by the prosecution that the Appellants in furtherance of their common intention committed the murder of all the three.

21) In this regard PW-4 Sheetal Kudale has deposed that, since 5 to 6 years prior to the incident, she used to reside at *Rashtra Bhushan Chowk, Khadakmal Aali*, Pune, alongwith her in laws and three children. Deceased Sagar Lahare was her brother. Deceased Sachin Kudale was her brother-in-law (husband's brother). Sachin used to reside with them and he was doing

the business of ladies wear at *Pathari* Chowk/Chal, Tulshibaug, Pune. deceased Sagar was running a fruit stall in *Mandai* and deceased Kailas was running a stall at Tulshibaug. Deceased-Kailas was a friend of deceased-Sachin. PW-4 has deposed that she knew all the accused.

PW-4 has deposed that, on 18/07/2012, at about 12 p.m., she had taken her children Sakshi and Smruti to their school near S.P. College. She then dropped her son Sarthak at *Ranade Balak Mandir*. On the way, she and deceased Sagar met with deceased Kailas, who told them that, A-1 had assaulted deceased Sachin, he had sustained injuries behind the ear and neck and Sachin was seated on the footpath, near Vishrambaug Wada. She and deceased Sagar went there, and noticed that, Sachin had injuries on his neck and his lip was torn. On inquiry, deceased Sachin told them that when he had asked the accused as to why the stall was stationed on his place, A-1 and A-2-Sagar Tambde, who was wearing specs, assaulted him. PW-4 has deposed that, meanwhile, A-1 to A-4 came there and abused them. A-2-Sagar Tambde then took out a knife and stabbed in the abdomen and the neck of deceased Sagar. She and Kailas tried to intervene but the accused pushed them, due to which she had sustained an abrasion to her hand. She has deposed that the accused assaulted Kailas with fist and kick blows. A-2-Sagar Tambde stabbed Kailas in his abdomen and the neck. She again tried to intervene in the quarrel, but, A-3 threatened her to stay

away, otherwise, he would kill her. A-2-Sagar Tambde then went to deceased Sachin, who was lying at the corner of Vishrambaug Wada and stabbed him in the chest and in the abdomen.

PW-4 has deposed that a traffic police (PW-5) came to the spot. People had gathered there. She informed about the incident to her father Sambhaji Lahare on mobile phone. PW-5 telephonically informed about the incident to other police. PW-5 stopped one Ambulance that was passing by the road and removed deceased Sachin to Sassoon hospital. Meanwhile, her father Sambhaji Lahare came there and removed deceased Sagar to a hospital in an auto-rickshaw. She removed deceased Kailas to Sassoon hospital in another auto-rickshaw. At Sassoon hospital, she learnt that deceased Sachin had expired and her brother Sagar was taken by her father to Surya hospital. She, therefore, went to Surya hospital. The police were present in Surya hospital. She then came to Faraskhana Police Station and filed the Report (Exh.73), it bears her signature and, its contents are true and correct. The printed report (Exh.74) bears her signature. PW-4 has identified the A-1 to A-3 and deposed that they were shown to her in Police Station. She had asked the police about the whereabouts of A-4. PW-4 has deposed that after lodging the Report, she had shown the spot of the incident to the police. The police recorded the spot panchnama. Her clothes were stained with blood. She handed over her blood stained clothes to the

police which the police had seized. She has identified the knife (Art-2) as the same weapon of the offence and her seized clothes (Arts.23 to 25). She has deposed that the Magistrate had recorded her statement.

22) In the cross-examination, PW-4 has deposed that, S.P. College is at a distance of 10 to 15 minutes from *Rashtra Bhushan Chowk, Khadakmal Aali*. She can not tell the distance between S.P. College and *Ranade Balak Mandir*. She has admitted that, one requires about 10 to 15 minutes to reach Tulshibaug from *Ranade Balak Mandir*. *Mandai* was at further walking distance of 5 minutes from Tulshibaug. At the time of incident, the school timings of her daughters were 12 noon to 5 p.m. and the timings of the nursery of her son *Sarthak* were from 12 noon to 3 p.m.

PW-4 has admitted that, one year prior to the incident, her husband Santosh was in jail. She used to be busy in household work, looking after the children and their studies. Her occupation as 'housewife' shown in the Report was correct. She has not stated in her Report (Exh.73) and the statement u/Sec.164 of Cr.P.C. that she used to assist in the business of the brother of her husband. She has denied that, at the time of incident, she and her children were dependent on the income of deceased Sachin and her mother-in-law. She has admitted that her another bother-in-law Sunil was running a tea stall. She had stated in her statement under Section 164 of Cr.P.C. that before her husband was in jail, he and his

brother were running a stall (*pathari*). A contradiction has been brought on record by confronting PW-4 that she had stated in her Report (Exh.73) that, after her husband had gone to jail, their business was given on rent to one Mr. Shagir. She has denied having stated that fact (portion 'A'), claiming that, it was not correct, but, she cannot assign any reason as to why said fact was recorded in the Report. She has denied that since the stall was given to Shagir on rent, she had no occasion to go to Tulshibaug area.

PW-4 has admitted that, Tulshibaug area was connected with three main roads. At places, there were traffic signals on the said roads. There were footpaths abutting the three main roads. Stalls called as *Pathari* were installed on the footpaths. The shops and stalls in Tulshibaug area were adjacent to each other. Licences were given to the stall owners from Tulshibaug area. She did not give the licence of her stall to the police. She has voluntarily deposed that it was not issued at the time of the incident. She has denied that she was not running the stall at the time of incident and therefore she had no licence. She has denied that her husband and deceased Sachin were not running any stall at Tulshibaug. She has denied that A-1 was shown to her in the Police Station, by the police. She has denied that she has falsely filed the Report against A-1 after police gave her his name, address and occupation. She has denied that A-1 had not assaulted with fists and kicks blows. She has denied that she has not

witnessed the incident. She has denied that she has deposed false on the say of police and her relatives.

23) PW-4 has admitted that her husband and deceased Sachin used to run the stall at Tulshibaug. It was started about 10-12 years prior to the incident. There was a stall of Shiva on one side of their stall, and of Sagar Kamble, on the other. She daily used to go to the stall. PW-4 has admitted that, on the day of the incident, she had left her house at about 11.00 to 12.00 hours. Deceased Sagar had come to her place by an auto-rickshaw about half an hour before they had left the house. Deceased Sagar used to come to her place daily and then he used to go to his stall. Deceased Sagar used to proceed to start his stall at about 12.30 p.m. On the day of the incident, she had gone to her son's school by an auto-rickshaw and after dropping her son there, she and deceased Sagar came walking towards their stall. Deceased Kailas had met her at Tulshibaug near her stall, which was already opened. She cannot tell the distance between her stall and the place where deceased Sachin was lying injured. She has admitted that Kailas was running a garment stall near their stall. She did not give attention whether Shagir was present near the stall. She cannot tell the distance between her stall and the fruit stall of A-1, and since how many years A-1 was running the stall in Tulshibaug. She has denied that A-1 alone was running the stall.

An omission is elicited that PW-4 has not stated in her Report (Exh.73) that she knew all the four accused and she cannot assign any reason as to why the said fact was not specifically recorded in the Report. She has admitted that she did not disclose the names of all the four accused. She has voluntarily deposed that she had disclosed the names of three accused. She had disclosed the description of the fourth accused that he was wearing thick specs. She had given the names of the persons (accused) whom she knew and she gave the description of the person (accused) whom she did not know by name. She has admitted that the other stalls were operating and there were people on the road. There was a traffic signal at a distance of 50 ft. from their stall. There was a road intervening/in-between the place where deceased Sachin was lying and the stall of A-1 and their stall. She had talked with deceased Sachin for about 20 minutes at the place where he was lying injured, Sachin had bleeding injuries and blood was oozing from it. People did not gather at the spot.

PW-4 has admitted that, at the time of incident, she was using a mobile phone. But, she does not remember that it was 976****194. She had given a phone call to her father before the lady police (PW-5) had arrived at the spot. She did not tell her father that she was taking injured Sachin to Sassoon hospital. She did not ask her father as to which hospital he was taking the injured Sagar Lahare. She has admitted that police were

not present in Sassoon hospital when she had reached there. She cannot tell the time when she had reached at Surya hospital. The police had visited at Surya hospital after she had reached there. She had immediately gone to the Police Station from Surya hospital. She did not talk with the police in Surya hospital. Her father was present at Surya hospital but she had no talk with him. Besides her father, there was nobody of her acquaintance in Surya hospital. Nobody was shown to her before recording her Report. After filing of the report, she left the police station. She has admitted that while lodging the Report she had stated that there was one fat person wearing thick specs. She had asked the police about the fourth person. She has admitted that her narration in the Report that the person wearing thick specs was A-2-Sagar Tambde, was correct. She has admitted that she had stated before the police that she knew the fourth assailant. She cannot assign any reason as to why the said fact was omitted in her statement before the Magistrate.

24) PW-4 has admitted that she was having the same clothes when she had gone to Sassoon hospital and then to Surya hospital. The Police had inquired with her as to how her clothes got blood stained. Her father was present with her in Surya hospital. But the Police did not record her father's statement. She does not remember whether she had given the description of the fourth person to the Police while filing the Report and before the

Magistrate. She has denied that she has identified the A-4 as he was shown to her outside the Court by the Police. She has denied that deceased Sagar, Sachin and Kailas used to collect *hafta*/extort money from the stall owners at Tulshibaug with the aid of her husband. She has denied that all the stall owners were against the three deceased. She has denied that some unknown stall owners had committed the murder of the three.

25) The testimony of PW-4 is supported with the testimony of PW-5 Sandhya Kale. At the relevant time, PW-5 was attached to Faraskhana Police Station at Traffic Branch. On 18/07/2012, from 9 a.m. to 9 p.m., she was carrying out her duty on a tempo to lift the vehicles parked in “No Parking Zone”. She has deposed that, at about 12 to 12.30 noon, after fueling the tempo, she was proceeding from Kulkarni Petrol Pump at Laxmi Road. When the tempo had stopped at the signal in Seva Sadan Chowk, she saw that people were running from Vishrambaug Wada side towards Seva Sadan Chowk. She inquired with one person as to what happened, who told her that some untoward incident took place near Vishrambaug Wada. She got down from the tempo and went towards Vishrambaug Wada. PW-5 has deposed that three persons were lying in pool of blood on the spot and four persons were beating the said three persons. One of the four assailants had specs, he was holding a knife and he was giving knife blows to the injured persons. The assailants moved aside when they saw her. She called the

Police Control Room with her mobile phone. PW-5 has deposed that she stopped one auto-rickshaw and made two injured persons to sit in it. PW-4 was present there. PW-4 was requesting for help but nobody from the mob helped her. PW-5 has deposed that the third injured was removed to the hospital in an ambulance. The clothes of the assailants were blood-stained. *Vishrambaug* Police arrived at the spot and took the assailants in custody. PW-5 has deposed that she then went to her office as she was frightened. On a phone call she had attended at *Vishrambaug* Police Station. The three assailants who were caught at the spot, were brought to the Police Station. Said assailants had told their names as Dattatraya Tambde, Ghanasham Tambde and Sagar Tambde. The Police recorded her statement. PW-5 has identified the accused persons before the Court including A-2, stating that, A-2 was holding the knife.

26) In the cross-examination of PW-5, admissions have been elicited that for the first time, she had seen such a horrifying incident; that, she was little frightened but not disturbed; that, about 15 minutes time had passed since her arrival at the spot till she went to *Vishrambaug* Police Station; that, she did not give the description of the assailants in her statement. She cannot assign any reason as to why it was not recorded in her statement before the police and the Magistrate that she had inquired with one person as what had happened. The four persons to whom she had

seen at the time of incident, were not acquainted to her. She had seen them for the first time at the time of incident. She was not called for a test identification parade. She has denied that the accused were shown to her in the Court, and therefore, she has deposed that the accused before the Court were the same. She has denied that she did not witness the incident.

PW-5 has admitted that, after her call, Police Constables Gavade and Jadhav had come to the spot. She did not give the description of the clothes and age group of the assailants either before the police or the Magistrate. An omission is elicited that she had not stated in her statement before the Magistrate that the assailants were beating the three persons when she had arrived at the spot. She has admitted that she had gone to the Police Station at about 1.00 p.m. Her statement was recorded by Police Shri. Sakunde at about 1.00 p.m. She had stated before the police that the accused persons had given their names. She cannot assign any reason as to why the said fact was not specifically mentioned in her statement. She has admitted that huge crowd had gathered at Vishrambaug Wada Chowk.

PW-5 has admitted that always, there used to be traffic at Vishrambaug Wada Chowk. Out of the four persons, only one had specs and only one assailant had held a knife. Said four persons were from different age group. There was one elderly/old person. It did not happen that the person who was elder/old and had white clothes, was holding the knife. A

contradiction has been brought on record that she had stated before the Magistrate that one aged person had a knife and he had wore white colour clothes. She cannot assign any reason as to why the said fact was recorded in her said statement. She has admitted that the incident was going on for about five minutes before her. The distance between two injured was about 15 to 20 feet. The third injured was at a distance of 4 to 5 feet from another injured. She was at Vishrambaug Wada Chowk up-to 3.15 p.m., after she had attended there. Immediately, she had called the control room after she had reached there. She had informed the control room that three injured persons were lying at Vishrambaug Wada and to send help. She does not remember whether the two injured taken in the rickshaw were conscious or unconscious. After removing the two injured to the Sassoon Hospital, police from Shaniwar Chowky had come there. She had stopped one ambulance which was passing from there. The third injured was sent in that ambulance to Sassoon Hospital. No police officer was sent alongwith the ambulance.

27) Now coming to the testimony of PW-6 Gajanan Jadhav, who, at the time of incident, was attached to Vishrambaug Police Station. PW-6 has testified that, on 18/07/2012, from 9.00 hours to 21.00 hours, he and Police Constable Mr. Naik were on Marching Duty at *Mandai* and Shaniwar Police Chowky. When they were at *Manda* Lodge, at about 13.15 hours, they received a call from the Police Control Room that some incident had

occured at Vishrambaug Wada and directed them to immediately go there. Accordinlgy, he and Police Gavade proceeded to the spot on a motorcycle. When they arrived at *Phadatare* square on the way, there was traffic jam and it was not possible to take the motorcycle ahead. So, he alighted from the motorcycle and walked towards Vishrambaug Wada. There was mob of people. One person was lying injured at the corner of Vishrambaug Wada. He was sent to the hospital in an ambulance. One person with blood stains on his clothes was present there. A-2 before the Court was the same person. PW-5 was present there. PW-5 and others told him that A-2 and three others with him had assaulted the injured person. He apprehended the A-1 to A-3. They gave their names as Dattatray Tamble, Sagar Tambde and Ganesh Tamble. The fourth person had fled away from the spot. He took the A-1 to A-3 to Vishrambaug Police Station in the Government vehicle. He then went to his patrolling duty. PW-6 has deposed that, on the same day, the police recorded his statement. PW-6 has identified the A-1 and A-3 as the same persons, who were present with A-2 at the spot. He could not identify the fourth person because of the mob.

28) In the cross-examination, PW-6 has admitted that he had arrived at Vishrambaug Wada at about 1.30 p.m. The distance between Vishrambaug Wada and Shanipar Chowk was about 200 feet. The said road was having heavy traffic. The ambulance was at Shanipar Square and the

police were trying to move the other vehicles to give way to the ambulance. He was at Vishrambaug Wada Square for about half hour. After about 15 minutes Constable Gavade came there. The accused were standing by the side of the injured at a distance of about 5 feet. PW-5 was at a distance of about 5 feet from the injured. He had apprehended the accused under the belief that they had committed this crime. He himself had lifted the injured. The distance between *Mandar* lodge to Vishrambaug Square was about half a kilometer. He might have taken about 15 minutes to reach at the spot. He had learnt that the other two injured were already removed to the hospital. He remained at the spot till 2.30 p.m. to 2.45 p.m.

29) The testimony of PW-4, PW-5 and PW-6 is supported with the testimony of PW-10 Lalchandra Khade, Police Inspector, who had taken the A-1 to A-3 in his charge from the spot, brought them to the Police Station and arrested. In this regard, PW-10 has deposed that on 18/07/2012 he was working as Police Inspector at Vishrambaug Police Station. As ordered by his superior, he had gone to the spot. PW-5 Ms. Kale, Bit martial Jadhav (PW-6) and Mr. Gavade were present there. The injured were removed to the hospital. At that time, PW-6 had apprehended the A-1 to A-3 at the spot. PW-10 deposed that, he brought the three accused to the Police Station. After about an hour, the Senior Police Inspector alongwith PW-4 came to the Police Station. He then produced the A-1 to A-3 before them and later

on arrested them in the presence of the two panchas. PW-10 has deposed that first he had arrested the A-2 and conducted his body search. One knife (Art.2) stained with blood and one mobile of Samsung Co. (Art.26) were found on his person. The clothes on the person of A-2 (Arts. 3 to 5) were stained with blood. He had seized the said knife, the clothes and the mobile phone. He then arrested the A-1 and seized the clothes (Arts. 6 to 8) on his person. Lastly, he had arrested the A-3 and seized the clothes on his person and the mobile of Nokia Co. found in his possession (Arts. 9, 10 and 27 respectively). Accordingly, he had recorded the Arrest-cum-Seizure Panchanamas in the presence of panchas (Exhs.68, 69 & 70 respectively). He has deposed that the clothes of A-1 and A-3 were stained with blood. He had packed and sealed the aforesaid articles with wax. He has deposed that after carrying out the arrest and seizure procedure, he had submitted the Report (Exh.149). He has deposed that, on 19/07/2012, PW-4 had produced her blood stains clothes (Arts.23 to 25). He had seized the same in presence of two panchas under Panchanama (Exh.150). PW-10 has identified the aforesaid articles.

30) In the cross-examination, PW-10 has deposed that, in the Report (Exh.149), there is no mention about receiving the information from the Control Room at 1.50 p.m.; that, he had proceeded to the spot as per the order of the superior; that, PW-8, the Senior Police Inspector had gone

to the hospital from the spot; that, PW-8 alongwith PW-4 had come to the Police Station after an hour; and that, he had then produced the A-1 to A-3 before them. He has denied that the said panchnamas were not recorded in the presence of panchas and nothing was seized under said panchnamas.

31) PW-5 and PW-6 both have deposed that when A-1 to A-3 were apprehended at the spot, their clothes were blood stained. In support of this evidence, PW-3 Chandrashekhar Sangulkar has deposed that on 18/07/2012 the Police had called him and co-panch Vishal Dhumal. A-1 to A-3 were arrested in his presence. First, Police had arrested the A-2 and took his person search. There were no injuries on the person of A-2, but, the clothes on his person were blood-stained, *i.e.*, blueish pant, brown colour shirt and banian (Arts.3 to 5). One blood stained knife (Art.2) and mobile handset of Samsung co. (Art.26) were found on the person of A-2. The police seized the said knife, clothes and the mobile phone, packed it in separate papers, sealed the same with label bearing signature of the panchas and recorded the seizure Panchnama (Exh.68), accordingly. He has identified the seized articles. He deposed that in the similar manner the Police had carried out the arrest of the A-1 and A-3, seized the blood stained clothes which were on their person (Arts.6 to 8 and Arts. 9 & 10) including a Nokia mobile phone (Art.27) found on the person of A-3. He has deposed that those articles were also packed and sealed in the same

manner, and accordingly, separate Panchanams were recorded (Exh.69 & Exh.70). He has identified the A-1 to A-3, their seized clothes and the mobile phones. This evidence of PW-3 is very consistent with the evidence of PW-10, who had effected the arrest and the seizure.

In the cross-examination, PW-3 has deposed that the area of Tulshibaug was of heavily trafficked and crowded. Approximately, there were 3 signals from Tulshibaug to Vishrambaug. Vishrambaug Police Station is not abutting the road, but one has to go inside from the road. He was called by the police at about 3.00 p.m. to 3.15 p.m. He has denied that he was well acquainted with Lehare and Kudale families from Vishrambaug; that, the Panchanamas Ex.68, 69 and 70 were not prepared in his presence; that, he has signed the same on the say of the relatives of the deceased; and that, he has deposed false. There is no cross-examination of PW-3 on behalf of A-2 and A-3 since the adjournment was refused and the cross-examination for the A-4 was declined. It is not pointed out from the record that thereafter PW-3 was recalled for the cross-examination.

32) The testimony of the spot panch PW-1 Prashant Pangal shows that on 18/07/2012, the police had recorded the spot Punchnama (Exh.49) in presence of him and co-panch Shankar. The spot was shown by PW-4. The Police took the samples of the blood found at the spot and seized one broken goggle lying there. Said samples and the goggle were packed and

sealed with wax and signature of the panchas. PW-1 has identified the Spot Panchnama and the signatures thereon.

In the cross-examination, PW-1 has admitted that a CCTV camera was installed on the pole near the spot. There was a traffic signal near the spot. The place of the occurrence was visible from *Chitale* Shop. Traffic Police used to stay in front of *Chitale* shop. He knew Santosh Kudale and deceased Sachin Kudale. However, he has denied that he has signed the Spot Panchnama in the Police Station on the say of Santosh Kudale.

33) PW-2 Vinayak Mahendre, the panch, has proved the seizure of the blood stained clothes (Arts.19 to 22) of deceased Sagar under Seizure Panchnama (Exh.66).

34) PW-8 Arjun Sakunde, then Sr. Police Inspector has deposed that on 18/07/2012 he was present at the Police Station. At about 1.15 p.m., he had received the information of this incident from the Police Control Room. He had visited the spot. Traffic Police and Marshal were present there. PW-8 has deposed that, there he came to know that the injured were removed to the hospital; that, the injured had quarreled with A-1, A-2, A-3 and one unknown person; and that, A-2 had assaulted the injured persons with a knife. He then went to the Sassoon Hospital. PSI Khade (PW-10) had apprehended the A-1 to A-3 and taken them to the Police Station. After visiting the Sassoon Hospital, he went to see the injured at Surya Hospital.

PW-4 was present there. He took her to the Police Station and recorded her Report (Exh.73) and sent that Report for registration of the crime with his letter (Exh.124). Accordingly, this crime was registered. PW-8 has deposed that PW-10 arrested the accused and recorded the Arrest Panchanamas. He had seized the knife from A-2. This evidence of PW-8 appears very natural and it is in line with the testimonies of PW-4, PW-5, PW-6 and PW-10.

35) PW-8 has deposed that, as directed by him, PSI Nikumbh had visited the spot and recorded the Spot Panchanama (Exh.49). On the same day, Police Naik Mr. Gavade had produced the clothes of deceased Sachin (Arts.11 to 14) and of Kailas (Arts.15 to 18) and Police Naik Mr. Pathan had produced the clothes of deceased Sagar Lahere (Arts.19 to 22). He had seized the said clothes in the presence of panchas under the Panchanama (Exhs.76 and 66 respectively). He has identified the said clothes. On 20/07/2012, he had referred the accused persons to the hospital alongwith his letter (Exh.127) to obtain their body samples. On 21/07/2012, he had forwarded the seized *muddemal* articles to the FSL alongwith his letter (Exh.128), for purpose of C.A. On 23/07/2012, he wrote a letter (Exh.129) to the Sassoon Hospital and obtained the samples of nail clippings, blood and hair of A-1, A-2 and A-3. He then sent the said samples for C.A. with his letter Exh.130/131.

36) PW-8 has deposed that on 24/07/2012, A-4 Dablya @ Vinayak

Chavan was called at the Police Station through staff. PW-4 was also called at the Police Station. PW-4 had identified to A-4. Therefore, he recorded her supplementary statement. However, A-4 was not arrested as he had complained of blood pressure and giddiness. On 25/07/2012 he had called for the CDR of the mobile phone of PW-4 and her father Sambhaji. He had obtained the duty register extract of the traffic police from PI. Traffic Branch, Pune City along with his letter (Exh.133). He had recorded the statement of the witnesses from time to time and obtained the statements of witnesses recorded under Section 164 of the Cr.PC. He received the C.A. Reports (Exhs.134 to 137). On completion of investigation, he had filed the charge-sheet. Another police officer had filed the additional charge-sheet.

37) In the cross-examination, PW-8 has admitted that he had referred the medical papers of deceased Sagar which he had obtained from Surya Hospital. He does not know whether the injured had narrated the history of the assault to the doctor. He has denied that, on the basis of the history of the assault, he had opined that, initially, the FIR of the injured was against unknown persons. He has denied that after reading the medical paper (Exh.138), it was transpired that, the FIR was against unknown persons. He has denied that after reading the Inquest Panchnama (Exh.80), it was transpired that deceased Kailas had died due to stabbing by 7 to 8 persons. He had recorded the statement of Munna Shaikh, who was witness

to the incident. He had tried to obtain the CCTV footage. He has denied that the CCTV footage was not favourable to the prosecution, therefore, he has not produce the same. He has denied that A-1 has been falsely implicated in this case.

38) PW-8 has admitted that the information of this incident was received from the Police Control Room through wireless. The entry of information received from the control room was taken. When information of a cognizable offence is received, the Police Station Officer has to enter it in the station diary. He has not obtained the copy of the such station diary. The copy of extract "K" was not enclosed with the charge-sheet. He has denied that the said information was not favourable, therefore, he has not produced it on record. He has admitted that the Bank of Maharashtra was in front of the spot of the offence. But he has not recorded the statement of the bank employees and the employees of *Chitale* Sweet Mart. He had not taken the identification parade of the A-4. He has denied that he has deposed false that on 24/07/2012, he had called the PW-4 and she had identified to A-4. He has admitted that in the report PW-4 had not stated that she had identified the A-4; that, the A-4 had come near her at Vishram Baug Wada; and that, she had seen blood stains on the person of A-4. PW-6 Gajanan Jadhav had not stated in his statement that the fourth person/accused had ran away and he was not found.

39) PW-8 has admitted that the spot of the incident was at a walking distance of 5 to 10 minutes from Vishrambaug Police Station. He stayed at the spot for about 10 to 15 minutes. After leaving the Sassoon Hospital, within half an hour he had reached at Surya Hospital. There, he had stayed for about 30 to 45 minutes. He had met with PW-4 in Surya Hospital. She was in a position to give a statement. He then reached to the Police Station within 15 - 20 minutes alongwith PW-4. He did not verify the timing of bringing the accused at the Police Station by PW-10 PSI Khade and its entry in the station diary. PW-10 had not reported him about the arrest. He has admitted that the description of the fourth accused was given as "fat person having specs". It is true that he had received the information that the said person had stabbed the victims. He has admitted that while recording the FIR, the informant pointed at accused, the accused disclosed their names and those names were recorded in the FIR. It is true that based on the description of the fourth accused, he was traced. The "Portion A" marked in the Report (Exh.73) was narrated by PW-4. Her occupation was recorded as per her say. She did not state that she knew all the accused since long. He has admitted that the CCTV cameras were installed at the spot of the offence by the Corporation. He did not call for its footage from the concerned authority, in writing. He has denied that he has charge-sheeted the accused without any material.

40) In view of the aforesaid evidence, the learned Counsel for the Appellants have made the following submissions :

- In the Report (Exh.73), PW-4 stated that she was a 'housewife', and that, the place of the business of her husband was given on rent to one Mr. Shagir. As such, PW-4 had no reason to come to the spot the incident, a place of business. Therefore, PW-4 has falsely deposed her occupation was a 'housewife' and 'business'.
- The evidence of PW-4 and PW-5 indicates that, prior to the incident, they were not acquainted with any of the accused. As mentioned in the admission history (Exh.138) of deceased Sagar, recorded at Surya Hospital on dated 18/07/2012, at 1.15 p.m., the following report submitted to PW-8/the Police Station (Exh.139) and the Inquest Panchnama dated 29/07/2012 (Exh.80) in respect of deceased Kailas, 7 to 8 unknown persons had assaulted the deceased Sagar and committed his murder. Said history was given by the father of PW-4 before she filed the Report (Exh.73). That was the neutral and first information in the case. Said history was maintained even till 29/07/2012 (11 days) *vide* Exh.80. Thus, it clearly contradicted the evidence of PW-4. The father of PW-4 was not examined as witness, for the best reasons known to the prosecution. The CCTV footage of the CCTV installed on the pole near the spot of the incident is suppressed. As such, an adverse inference is permissible that the said history was given by PW-4 to her father and it was only the fact.
- There is material inconsistency in the testimony of PW-4 and the medical evidence.
- PW-4 has admitted that, PW-5 had arrived at the spot after the

incident was over. Moreover, the timeline given by PW-5 that she had fueled the tempo at about 1:00 p.m. and then came to the spot at about 1:10 p.m. does not match with the evidence of PW-4. Therefore, PW-5 cannot be accepted and relied as the eyewitness.

- There is inconsistency in the evidence of PW-4, PW-5 and PW-6 as to whether the three deceased were removed to the hospital in two vehicles or three vehicles.
- PW-4 was available to record the prompt Report/FIR, however, her Report (Exh.73) was recorded belatedly at 16.05 hours of 18/7/2012, that too after showing her the A-1 to A-3. But before that, PW-5's statement was already recorded at about 1.00 p.m. Yet, the said statement was not treated as the FIR. Thus, the delay in filing the FIR makes the prosecution version doubtful.
- Admittedly, the incident had occurred in the broad day light and at a crowded place. However, not a single independent witness is examined in by the prosecution. Considering the evidence as a whole, PW-4, PW-5 and PW-6 were interested witnesses.
- PW-4 is relative of the two deceased and had vested financial interest in the place of the business of A-1 to A-3. Said interest was to be easily served with the conviction of the accused. Therefore, PW-4's evidence needs to be treated with great caution, carefully scrutinized and subjected to corroborated. Her evidence has failed on these tests.
- Mr. Joshi, the learned Counsel for the A-1 submitted that there is no evidence that A-1 had assaulted to any of the deceased.
- Dr. Chaudhry and Mr. Pendse, the learned Counsel for A-2 and A-4 submitted that as stated in the Report (Exh.73), initially, A-1

and one fat person wearing specs had assaulted Sachin. And later on, A-2 Sagar Tambde, who was fat and wearing specs, had assaulted the three deceased and one fat person wearing specs, *i.e.*, A-4 was associated with A-1 to A-3. However, in the cross-examination, PW-4 has admitted that she had described the fourth accused/person as the person wearing thick spectacles. PW-4 has admitted that her narration in the Report that the person wearing thick specs was A-2-Sagar Tambde, was correct. As admitted by PW-5, out of the four persons (assailants), only one had spectacles and only one assailant was holding a knife. The said four persons were from different age group. Before the Magistrate, PW-5 had stated that he was aged man wearing white clothes who was holding a knife, which fact completely contradicts the evidence of PW-4. However, this ambiguity was not removed by holding a TIP during the investigation, although, A-4 was unknown to PW-4 and PW-5. Nor the prosecution evidence is of any help to remove that ambiguity.

- The claim of PW-4 that she knew the accused persons is omission in the Report and her statement u/Sec.164 Cr.PC. This fact couples with the other circumstances indicate that the assailants were unknown to PW-4. The accused were not acquainted with PW-5 prior to the incident. There is no dock identification of the accused persons by PW-4 and PW-5 during the course of their deposition. In the absence of such identification and TIP evidence, the prosecution case is collapsed.
- The remaining evidence as to the seizure of the clothes of the accused persons and the knife in question is not sufficient to convict them because there is no evidence of proper sealing of the

muddemal parcels and the result of the CA for blood grouping was inconclusive.

- The learned Counsel for A-1, A-3 and A-4 submitted there is no sufficient evidence by the prosecution to establish that the A-1, A-3 and A-4 had directly or indirectly participated in the assault and the murders. Hence, they cannot be convicted taking aid of Sec. 34 I.P.C.
- Thus, according to the learned Counsel for the accused PW-4, PW-5 and PW-6 are not “sterling witnesses”. There are various infirmities in the prosecution case and it created a reasonable doubt about the involvement of the accused persons in this crime. The trial Court, however, ignored the said weaknesses and shortcomings in the prosecution evidence. As such, the impugned Judgment and Order is not sustainable in law and it may be quashed and set aside.

41) In contrast, Mr. Tanveer Khan, the learned APP submitted that there is sufficient evidence by PW-4 that when she had arrived at her stall, deceased Kailas met her and told that deceased Sachin was assaulted by A-1 at his stall. PW-4 then went to deceased Sachin and inquired with him. Deceased Sachin told her that the A-1 and A-2 had assaulted him. Soon thereafter, as deposed by PW-4 and PW-5, the A-1 to A-4 jointly attacked on deceased Sagar and Kailas during which, A-2 gave them stabs leading to fatal injuries. Lastly, the A-2 again stabbed deceased Sachin and caused his death. This testimony of PW-4 is supported with the testimonies of PW-5,

PW-6 and other witnesses including the C.A. Reports. The accused persons have not explained their presence at the spot and the human blood found on the clothes which were on their person at the time of the incident. All this evidence was properly considered by the learned Judge of the trial Court before handing over them the conviction and the sentence. Thus, in short, according to the learned APP, interference with the impugned Judgment is unwarranted in view of the abundant evidence on record.

42) We have considered these submissions and carefully scrutinized the oral and the documentary evidence adduced by the prosecution. On such a scrutiny, we find that, the testimony of PW-4 is very consistence with her Report (Exh.73), which was lodged very promptly. This aspect is also supported with the testimony of PW-8 who had recorded her Report. Considering the testimony of PW-4, her presence at the time and spot of the incident appears natural. Because, her children were small. The schools were little far from their home and the children were required to pass through traffic/crowd to reach the schools. It is natural that small children need their mother's help to safely reach the school. The school timing stated by PW-4 was not disputed. As come in the cross-examination of PW-4, there was just 10 to 15 minutes walking distance from *Ranade Balak Mandir* to Tulshibaug, where the incident had occurred.

43) Attempt was made in the cross-examination of PW-4 to show

that, as her husband was in jail, his business place was given to one Mr. Shagir on rent. This fact was stated by PW-4 in the Report (Exh.73). However, the Report also mentions that, deceased Sachin was doing the garments business at Tulshibaug. In the cross-examination of PW-4, it has come that, her husband and deceased Sachin used to run the stall at Tulshibaug. It was also suggested to PW-4 that, at the time of incident, she and her children were dependent on the income of the deceased Sachin and her mother-in-law. Thus, the defence has conceded that Sachin was running the business stall to earn. Just 8 days before the incident, PW-4's husband was released from jail. Therefore, and looking at the size of the family of PW-4, it was probable that, she/her family would do some business to earn their livelihood. Otherwise, PW-4 had no reason to unnecessarily go to Tulshibaug.

44) The testimony of PW-4 that deceased Kailas had met her and deceased Sagar and Kailas told them about the first assault on deceased Sachin by A-1 and his associate appears very probable. Because, as came in the cross-examination of PW-4, Kailas was running a garment stall near their stall. So, naturally, Kailas would be the first person to witness that assault on deceased Sachin and inform to his close relatives.

45) As noted in the admission history (Exh.138) of deceased Sagar recorded at Surya Hospital on dated 18/07/2012, at 1.30 p.m., the episode

of the assault on the three had occurred in the presence of PW-4 and it was seen by her. Same fact was recorded in the following report (Exh.139) submitted to PW-8/the Police Station. Said two documents were referred to PW-8 in his cross-examination by the defence, hence, were admitted in the evidence. Thus, said documents also confirmed that at the time of the incident, PW-4 was present at the spot and she had witnessed the incident.

46) No doubt, the admission history and the following police report (Exhs.138 & 139) mention that the alleged history of the assault was given by Sambhaji Lahare that said assault was made by 7-8 unknown persons at around 1.15 p.m. Even the Inquest Panchnama dated 29/07/2012 (Exh.80) in respect of deceased Kailas mentions that 7 to 8 unknown persons had assaulted the three deceased at the time and place of the incident. In view thereof, the learned Counsel for the accused persons submitted that said history was supplied to Sambhaji Lahare by PW-4, and accordingly, the former had told to the doctor on duty. It was the first contemporaneous record made without deliberation. Although PW-4 has deposed that she knew all the four accused, she has omitted that fact in her Report (Exh.73). In the backdrop, the learned Counsel urged that since the assailants were unknown to PW-4, therefore, it was not possible for her to file the Report naming the A-1 to A-3 therein with their alleged role in the crime. But to salvage this difficulty, first, the accused were shown to PW-4 and were

required to tell their name, and accordingly, the Report (Exh.73) was recorded. According to the learned Counsel, this inference is permissible, because, PW-8 has candidly admitted that while recording the FIR (Report), the informant (PW-4) had pointed at the accused, the accused disclosed their names and those names were recorded in the FIR. Therefore, the learned Counsel submitted that the claim of PW-4 that the accused were the assailants, is not reliable. To buttress these submission Dr. Chaudhry has relied upon the decision in *Gurja Bedia And Others Vs. State of Bihar*². Therein, there was a possibility to state the name of the assailants in the FIR, but, they were not so named. The FIR was filed against 5/6 unknown persons. Therefore, the prosecution case was not accepted on account of that infirmity. Additionally, reliance is placed on the decision in *Ram Kumar Pande Vs. The State of M.P.*³. Therein it is held that omission of important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

These submission look attractive at the first blush, however, we are not agreeable to said submissions, because, in the case in hand, in the Report (Exh.73) PW-4 has specifically stated the names of the A-1 to A-3 and their role in the occurrence. In the cross-examination of PW-4 it has come that she had disclosed the names of the persons whom she knew and

2. 1990 (Supp) SCC 521

3. (1975) 3 SCC 815

she had given the description of the person whom she did not know. Further, she has voluntarily deposed that she had disclosed the names of the three accused. This is what exactly intelligible on a simple reading of her Report (Exh.73). Considering the evidence, it appears that, since deceased Sachin knew the A-1, he could, therefore, tell PW-4 that, initially, A-1 and his associate had assaulted him. And soon after that first assault, the three deceased were assaulted during which A-1 was present at the spot with the other accused. The Report (Exh.73) was filed very promptly and was entered in the General Diary at 16.05 hours.

As against this, the history of the assault recorded in the admission history (Exh.138), was given to the doctor by the father of PW-4 and not by her. Considering the timings recorded in the admission history (Exh.138), it appears that, the said history was given by the father of PW-4 before she had reached Surya hospital from the Sassoon hospital. However, since her father was not running any business stall near the disputed place at Tulshibaug, probably therefore, he could not reproduced the names of the assailants before the doctor. In view thereof, we find it difficult to accept that the deceased were assaulted by 7-8 unknown persons.

47) PW-4 has deposed that deceased Sachin had injury over lip. This assertion does not find support from the evidence of the doctors PW-7 and PW-9. Highlighting this inconsistency, Dr. Chaudhry, the learned

Counsel submitted that it is doubtful that PW-4 was present at the spot and she had talked with deceased Sachin. To accept this submission, he has relied upon the decision in *State of Rajasthan Vs. Bhanwar Singh*⁴. Therein the medical evidence was at total variance with the ocular evidence. Therefore, it is held that, though ocular evidence has to be given importance over medical evidence, where the medical evidence totally improbables the ocular version that can be taken to be a factor to effect credibility of the prosecution version.

However, this principle cannot be applied here for a simple reason that deceased Sachin had sustained a serious injury over the occipital region (near the neck), and therefore, it was probable that blood oozed from that injury had flown up-to his lips, due to which, PW-4 might have confused that deceased Sachin had the injury on his lip.

48) It is apparent that the testimony of PW-5 is very consistent with the testimony of PW-4 and the Report (Exh.73). The evidence of PW-5 indicates that, when the incident occurred, she had come close to the spot of the incident. Therefore, she could reach at the spot, when the assault on the victims was going on. PW-5 was an independent Police who had neither any closeness with the victim side nor any enmity with the accused persons. PW-5 had not reason to depose false against the accused. As such, the claim

4. (2004) 13 SCC 147

of PW-5 is reliable that in all four persons were involved in the assault on the three deceased.

In the cross-examination of PW-4, it has come that the Police Constable had reached at the spot after the incident was over. Therefore, the learned Counsel for the accused submitted that PW-5 was not an eyewitness. However, this admission cannot be related to PW-5, because, no further question was put to PW-4 to clarify as to who was the said Police Constable as both PW-5 and PW-6 were the Police Constable. Moreover, from the evidence it is clear that it was PW-6 who had come to the spot after the assault was over.

49) The learned Counsel pointed that, according to PW-4, two deceased were removed to the hospital in separate auto-rickshaw and one in the ambulance. PW-5 has deposed that two deceased were removed in one auto-rickshaw and one deceased by ambulance. However, considering the evidence as a whole, this inconsistency is not material because it relates to the post incident situation, and therefore, it is not sufficient to disbelieve the presence of PW-4 and PW-5 at the spot at the time of the incident. Moreover, while appreciating the evidence, it is necessary to keep in mind that there is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of material dimension, the same should not be used to

jettison the evidence in its entirety. In other words, trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

50) PW-5 has clearly deposed that, as soon as she arrived at the spot, she had informed the incident on phone to the Police Control Room. The testimony of PW-6 shows that, like PW-5, he and another Police with him were not far from the place of the occurrence. Therefore, PW-6 could immediately reach the spot on getting the wireless message of the incident. Further, PW-6 apprehended the A-1 to A-3 at the spot and detained them. This evidence is well supported with the evidence of PW-10 who has categorically deposed that, when he had arrived at the spot, said accused were in charge of PW-6 and he took them in his charge and brought them to the Police Station. Said evidence of PW-10 has remained unchallenged in the cross-examination and received support from the testimony of PW-8. In fact, there is no denial to PW-10's evidence that, immediately after the incident, he went to the spot, took the A-1 to A-3 in his custody from PW-6 and he then brought them to the Police Station. Even a suggestion of denying said fact was not put to PW-5 and PW-6. In the cross-examination of PW-6, it has come that he had apprehended the accused persons on the belief that they had committed this crime. Thus, the defence has conceded the fact of apprehending the A-1 to A-3 at the spot. The A-1 to A-3 have not explained as to why they were present at the spot when PW-5, PW-6 and

PW-10 had come there. It is not the case of the A-1 to A-3 that, at the relevant time, they were at different place/s, they were apprehended from different place/s and then brought to the Police Station. Therefore, the said testimony of PW-6 and PW-10 cannot be brushed aside.

51) No doubt, PW-5 has admitted that her statement was recorded at about 1.00 p.m. by Shri.Sakunde/PW-8. But, in further cross-examination of PW-5, it has come that she was at Vishrambaug Chowk till 3.15 p.m. and she was called at Vishrambaug Police Station at about 3.45 p.m. to 4.00 p.m. Around the same time the Report (Exh.73) was recorded and entered in the General Diary at 16.05 hours. As deposed by PW-8, he had received the information of the occurrence at about 1.15 p.m. and he then went to the spot. As such, till 1.15 p.m. recording of the statement of PW-5 was not possible. Hence, on the basis of such a stray admission by PW-5 it cannot be held that there was delay in filing the Report (Exh.73).

52) Now coming to the circumstantial evidence. On the strength of the testimonies of PW-3 and PW-10 the prosecution has proved the seizure of the clothes of A-1 to A-3. The panch witness to the Panchnama (Exh.150) as to seizure of the clothes of PW-4 was not examined and that Panchnama was proved by PW-4. Nevertheless, Mr. Chaudhry, the learned Counsel submitted that there is no evidence as to sealing the alleged clothes parcels with wax. He submitted that the contents of the panchnama (Exh.150)

were in form of a statement recorded u/Sec.161 Cr.PC. and proving its contents through PW-10 was in violation of Section 162 Cr.PC. Therefore, the evidence as to the proof of the seizure of the said clothes is not lawful and of no avail to the prosecution.

To make these submissions acceptable, first, reliance is placed on the decision in *Arjun Rangrao Patil Vs. State of Maharashtra*⁵. Therein there was no satisfactory evidence that the clothes of the accused on their seizure were immediately sealed and were in the same condition in which they were received by the C.A. The panch witness has admitted that the wax seal had not been put on the clothes which have been seized. Therefore, the Division Bench of this Court observed that the prosecution, did not rule out the possibility of the clothes being tampered with. There was no evidence on record to indicate that the clothes, which were seized, were, in fact, the clothes belonging to the accused and were the same clothes which had been worn by the accused at the time of the incident. None of the eye witnesses had identified the clothes of the accused to be the same clothes which were worn by the accused at the time of the incident. Therefore, it was held that mere discovery of the clothes would not lead to an irresistible inference or hypothesis that there were the same clothes which the accused had worn at the time of the incident. As such,

5. 2015 SCC OnLine Bom 184

and in the absence of strong and satisfactory evidence regarding sealing of the clothes, it was held that implicit reliance on the report of the C.A. cannot be placed. Another decision cited is ***Rajesh And Another Vs. State of Madhya Pradesh***⁶. Therein it is held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violating Section 162 Cr.PC. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.PC. However, it is also observed that, the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.

Yet, in the facts of the case in hand, we have to disagree with the said submissions. Because, the testimonies of PW-3 and PW-10 on the point of seizure of the blood stained clothes of A-1 to A-3 is very consistent with the Arrest Panchnamas of the respective accused. There is nothing in the cross-examination of PW-3 and PW-10 to reject the seizure of the clothes as aforestated. Even no specific suggestion of denying the fact that

6. (2023) 15 SCC 521

said clothes were on the person of A-1 to A-3 and said clothes were seized, was put to these witnesses. PW-10 has specifically deposed that he had sealed the said clothes with wax seal and said fact was specifically recorded in the respective Seizure Panchnamas. As noted above, PW-3 was not cross-examined on behalf of A-2 and A-3. That apart, unlike in the case of *Arjun Rangrao Patil* (supra), the clothes of A-1 to A-3 were seized immediately after the incident. Said clothes were identified by PW-3 and PW-10. In so far as the seizure of the clothes of PW-4 is concerned, her testimony to that effect and identification of her clothes by herself, is not at all challenged in her cross-examination. Moreover, PW-10 has supported her. There is nothing indicating that it was a created evidence.

53) PW-8 has specifically deposed that on 21/07/2012, he had forwarded the seized *muddemal* articles to the FSL alongwith his letter at Exh.128, for CA purpose. The Report of the CA (Exh.136) clearly mentions that human blood was found on the clothes of the PW-4, A-1 to A-3 and the seized knife. The A-1 to A-3 had not explained the presence of human blood on their clothes and the A-2 on seized the knife. Theses circumstances supported the testimonies of PW-4, PW-5 and PW-6. In the backdrop, it is safe to conclude that the A-2 had assaulted the three deceased by the said knife; that, during said assault, A-1 and A-3 had pushed PW-4 and Kailas and assaulted Kailas with fist and kick blows, therefore, the clothes on the

person of A-1 to A-3 and the said knife got stained with the human blood.

54) Considering the evidence of PW-4, it is acceptable that there are some omissions and contradictions in her evidence. As held in the cited decision between ***Ramesh Baburao Devaskar And Others Vs. State of Maharashtra***⁷, when the FIR contradicts the subsequent statement before Police and the evidence, it raises doubt on the entire investigation. However, it is significant to note that minor embellishment, there may be, but that itself cannot be allowed to be a foundation to discard the evidence of the eye witnesses when it is confidence inspiring and quite dependable.

55) PW-4 is close relative of deceased Sagar and Sachin. Deceased Kailas was friend of deceased Sachin. In the decision ***State of Maharashtra Vs. Ahmed Shaikh Babajan And Others***⁸, cited by the learned Counsel Dr. Chaudhry, it is held that a close relative, though not characterised as an interested witness, may be held so, if he had oblique and animus motive to somehow convict the accused. However, in the another cited decision ***Anil Phukan Vs. State of Assam***⁹, it is enunciated that, in the normal course a close relation would be the last person to spare the real assailant and implicate a false person. However, the possibility that he may also implicate some innocent person alongwith the real assailant cannot be ruled out.

7. (2007) 13 SCC 501

8. (2009) 14 SCC 267

9. (1993) 3 SCC 282

Therefore, as a matter of prudence, Court should look for some independent corroboration of his testimony to decide about the involvement of the other accused in the crime. Dr. Chaudhry, emphatically submitted that looking at the quality of the evidence on record, PW-4 cannot be rated as a “sterling witness” as enunciated by the Hon’ble Supreme Court in *Rai Sandeep Alias Deepu Vs. State (NCT of Delhi)*¹⁰ in paragraph 22 and it reads :

“22. In our considered opinion, the “sterling witness” should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the

10. (2012) 8 SCC 21

version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

In the case in hand, when we tested the testimony of PW-4 on the touchstone of the aforestated principles, we find that, she has passed all the said tests. Because, her testimony is very consistent with her Report (Exh.73), which was lodged very promptly, thus, completely ruled out the possibility of deliberation and concoction. Secondly, her testimony was corroborated with PW-5, PW-6, PW-10, PW-8 and the Report of C.A. None of these witnesses had an Axe to grind against the accused. The A-1 to A-3 have failed to explain their presence at the spot, in particular, the A-2 with the knife in the hand and human blood stains on his clothes. Thus, PW-4 can be rated as the “sterling witness”, and therefore, she cannot be disbelieved merely because she was close relative of the deceased.

56) It is fact that besides relative witness PW-4, no other civilian who had seen the incident was examined by the prosecution. However, in view of Section 134 Evidence Act, no particular numbers of witness shall in any case, be required for the proof of any fact. Evidence to be weighed and not counted. The testimony of single witness is sufficient to establish any fact, if it inspires confidence. In the case in hand, the testimony of PW-4 has been strongly supported by two police – PW-5 and PW-6, who were neutral to both sides. Therefore, non-examination of any member from the crowd who had witnesses the incident is of no consequence in this case or say fatal to the prosecution case.

57) It is obvious from the evidence that PW-4 was not acquainted with A-4 and PW-5 was not acquainted with any of the four accused. Dr. Chaudhry, submitted that, therefore, TIP was necessary to be held by PW-8 during the investigation. However, no such TIP was held. He submitted that during their deposition PW-4 and PW-5 have not identified the accused persons in the dock by pointing at them. The evidence of PW-4 that she knew all the four accused is an omission in her Report (Exh.73) as well as the statement before the Magistrate. Therefore, there is no substantive identification of the individual accused in the Court. As a result, the entire prosecution case has collapsed. To support this submission Dr. Chaudhry has relied upon the decision in *Tukesh Singh And Others Vs. State of*

Chhattisgarh¹¹. Therein it is held that in the situation where the eyewitness did not know the accused before the occurrence, in the normal course, it is necessary to hold the TIP. If it is not held, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Another decision cited is ***Renuka Prasad Vs. State Represented by Assistant Superintendent of Police***¹². If there was an identification at the stage of investigation, as per the precedents, it only aids the investigation and cannot lead to conviction, unless the accused are identified in the box at the time of trial in Court.

In this context we have noticed that PW-4 has not stated in her Report (Exh.73) and in the statement before the Magistrate that she knew all the four accused. Similarly, PW-5 was not acquainted with any of the accused. Nevertheless, these circumstances are not sufficient to hold that the identity of A-1 to A-3 was not established. Because, PW-4 has specifically deposed that, just before the assault, all the four accused had come close to her and to the three deceased. PW-5 has specifically deposed that she had seen all four accused while assaulting the three deceased and identified the accused persons before the Court as the same persons whom she had seen at the spot. The incident had occurred in the broad day light. It is common experience that such incidents create a long lasting impression

11. 2025 SCC OnLine SC 1110

12. 2025 SCC OnLine SC 1074

on one's mind. PW-6 has specifically deposed that when he had arrived at the spot, A-1 to A-3 were present there. PW-5 had told him that A-2 and three others with him had assaulted the injured persons. He, therefore, apprehended the A-1 to A-3. They gave their names as Dattatray Tamble, Sagar Tambde and Ganesh Tamble respectively. PW-6 has identified the A-2 as the same person who was present at the spot holding a knife and had blood stains on his person and that, the A-1 and A-3 were the same persons who were present there with the A-2. It is significant to note that PW-5 and PW-6 both were police. Hence, they must have seen the A-1 to A-3 for sufficient time. Therefore, according to us, it cannot be maintained that the identity of the A-1 to A-3 was not established before the trial Court.

58) As noted above, deceased Sachin was attacked twice. As regards the first attack, PW-4 has deposed that, when she had enquired with deceased Sachin about the first attack, he had told her that A-1 and A-2-Sagar Tambde who was wearing specs had assaulted him. This evidence, however, is not sufficient to conclude that, it was A-2 who was associated with A-1 when deceased Sachin was assaulted for the first time. Because, in the Report (Exh.73), PW-4 had stated that when she had enquired with deceased Sachin, he had told her that as he had asked Dattatray Tambde (A-1) as to why he installed his stall at his place, Dattatray Tambde (A-1) and his one associate, who was fat and wearing specs, assaulted him. At

this part of the Report (Exh.73), PW-4 has not referred to the name of A-2. Secondly, in the said Report, both A-2 and A-4 were referred to as the fat person with specs. However, there is no evidence to establish the identity of the fat person wearing specs who was associated with A-1 at the time of the initial assault on Sachin.

59) PW-4 has admitted that she had described the fourth accused as the person wearing thick spectacles. PW-4 has admitted that, her narration in the Report that the person wearing thick specs was A-2, Sagar Tambde, was correct.

Nevertheless, the said admissions are not sufficient to hold that the prosecution has failed to establish as to who from the A-2 and A-4 had assaulted the three deceased during the subsequent assault. Because, on a careful reading of PW-4's Report (Exh.73), it can be seen that, when A-2 had assaulted deceased Sagar with the knife, PW-4 had referred the A-2 as "the fat person wearing specs namely Sagar Tambde (चष्मा घातलेल्या जाड इसम सागर तांबडे याने)". Similarly, when A-2 had assaulted deceased Kailas with the knife, PW-4 had referred the A-2 as "fat – specs wearing Sagar Tambde (जाड चष्मेवाल्या सागर तांबडे याने)". Thus, never PW-4 had referred the A-2 with/using words "thick specs". As such, in our view, the mistaken admissions stated in the opening of this paragraph are of no avail to the defence. In this regard following observations in case of *Jayshri Yadav Vs.*

State of U.P.¹³ are relevant and it reads: “When a witness is subjected to lengthy and arduous cross-examination over a lengthy period of time, there is always a possibility of his committing mistakes which can be termed ‘omission’, ‘improvements’ and ‘contradictions’.” Thus, in the words of the Hon’ble Supreme Court, those infirmities have to be appreciated in the background of the entire relevant material and not in isolation.

As admitted by PW-5, the said four persons (assailants) were from different age group. Before the Magistrate, PW-5 had stated that he was aged man wearing white clothes who was holding a knife. However, these circumstances are also not sufficient to doubt the veracity of the prosecution case. Because, the evidence of PW-4, PW-5, the Report (Exh.73) and the C.A. Reports only pointing at A-2, who was fat, had specs and had assaulted the three deceased and committed their murder. Moreover, A-2 is son of A-1 and the dispute about the place of the business had arisen between the A-1 and the deceased Sachin.

60) However, we find it difficult to accept that the identity of A-4 was satisfactorily proved by the prosecution as one of the co-accused who had accompanied with the rest accused and shared the common intention to commit the murders. Because, in the report (Exh.73) PW-4 had not stated that she knew the A-4. Admittedly, A-4 was unknown to PW-4 and

13. AIR 2004 SCC 1443

PW-5. However, the prosecution has not clarified as to on what basis PW-4 has deposed that she knew the A-4. Although PW-5 has identified the A-4, he had fled away before he could be apprehended. In this background, the PW-8 should have held the TIP to confirm the identity of the A-4 as one of the co-accused. However, the TIP was not held. On the contrary, as deposed by PW-8, after apprehending the A-4 he was shown to PW-4 to confirm his involvement in the crime and then charge-sheet was filed against him. This, according to us, was not proper. Therefore, it would be risky to hold that the A-4 was the same person who was associated with the other accused at the time of the assault on the three deceased and that he had also participated in the assault.

61) In view of the above discussion, we conclude that, at the relevant time and place of the incident, first, deceased Sachin was assaulted by A-1 and his associate who was fat and wearing specs and later on all the three deceased were assaulted by A-2 and at that time, A-1, A-3 and an unknown accused were present with him.

62) Now, the question is whether the A-1 to A-3 and the unknown accused in furtherance of their common intention had committed the murder of the three. As noted from the evidence of PW-4, in the first assault, Sachin had sustained only one injury on the neck. It should be the external injury No.13, *i.e.*, "Incised wound over, occipital region, on right

side, 2 x 1 cm by bone deep, vertical margins clean cut, reddish.” The statement made by deceased Sachin before PW-4 immediately after the first assault was in the nature of a dying declaration as against A-1 and his associate who was fat and wearing specs. Independently, the said injury was not sufficient to cause the death of Sachin in the ordinary course of nature. However, it must be noted that when Kailas met PW-4, he had also told her that A-1 had assaulted deceased Sachin. Said disclosures by deceased Sachin and Kailas were relevant u/Sec. 6 of The Evidence Act. Soon after, the first assault, all three deceased were assaulted by A-2 when A-1 was also present there. This presence is relevant u/Sec.8 of the Evidence Act.

62.1) Next, we have noted that, immediately after the first assault, when PW-4 and Kailas were enquiring with deceased Sachin, the A-1 to A-3 and the unknown accused came there and abused to PW-4, deceased Sagar and deceased Kailas. At that very juncture, A-2-Sagar Tambde took out a knife and stabbed deceased Sagar in the abdomen and the neck. However, the rest accused persons did not stop the A-2 and he continued inflicting the injuries which are 8 in numbers including one abrasion. Additionally, the attempt of PW-4 and Kailas to rescue deceased Sagar was foiled as the accused persons had pushed them and assaulted Kailas with fist and kick blows. And A-2, Sagar Tambde stabbed Kailas in the abdomen and the neck. Therefore, PW-4 again tried to intervene in the quarrel, but now, A-3 had

stopped her threatening to stay away, otherwise, he will kill her. A-2 Sagar Tambde then stabbed Sachin in the chest and abdomen. However, the other accused persons even did not think it to intervene and stop him from causing the fatal injuries to Kailas and Sachin. Consequently, Kailas and Sachin had suffered large number of knife injuries. In other words, the rest three accused let the barbaric murder happen in their presence, thus, abetted the A-2 for the same. The testimony of PW-5 also indicates that when the A-2 was assaulting the three deceased, the rest accused were beating them. Therefore, we are of the considered view that the A-1, A-3 and the unknown accused had shared the common intention with the A-2 for committing the murder of deceased Sagar, Kailas and Sachin.

63) The conspectus of the above discussion is that A-2 was guilty of offence of Section 302 I.P.C. for committing murder of the three deceased and the A-1 and A-3 were guilty under Section 302 and 34 I.P.C. as they alongwith an unknown accused had shared the common intention with the A-2 to commit the murders. However, there is no sufficient evidence to hold that A-4 was the same unknown accused who was associated with A-1 to A-3. Yet, the trial Court failed to appreciate the evidence on record with that perspective and therefore, erroneously held the A-4 guilty of the three murders by virtue of Section 34 I.P.C. As such, the impugned Judgment is

suffering from infirmity to that extent and liable to be set aside, accordingly.

In the result, the Appeals by A-1, A-2 and A-3 are liable to be dismissed and the Appeal by A-4 deserve to be allowed. Hence, we pass the following Order :-

- (a) Criminal Appeal No.1540/2018 filed by Dattatraya Ramchandra Tambde (Accused No.1), Criminal Appeal No.908/2024 filed by Sagar Dattatraya Tambde (Accused No.2) and Criminal Appeal No.474/2017 filed by Ghansham Dattatraya Tambde (Accused No.3) are dismissed.
- (b) Criminal Appeal No. 341/2017 filed by Vinayak Madhav Chavan (Accused No.4) is allowed.
- (c) The impugned Judgment and Order of conviction and sentence dated 29/03/2017, passed in Sessions Case No.830/2012 by the learned Additional Sessions Judge, Pune is upheld against Accused Nos.1 to 3 and quashed and set aside to the extent of Accused No. 4.
- (d) The Appellants - Vinayak Madhav Chavan (Accused No.4) is acquitted of the offence punishable under Sections 302 and 34 of the I.P.C.
The fine amount, if paid by Accused No. 4, shall be returned.
- (e) Record indicates that, presently Appellant - Vinayak Madhav Chavan (A-4) has been lodged in Yerwada Central Prison, Pune.

Hence, the Appellant - Vinayak Madhav Chavan (A-4), shall be released from the prison forthwith, if not required to be detained in any other crime/case.

- (f) Appellant - Vinayak Madhav Chavan (A-4) shall execute a P.R. Bond in the sum of Rs.50,000/- each with one surety in the like amount under Section 437A of the Cr.PC.(corresponding to Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023) for his appearance, in case an Appeal is preferred.

64) The Appeals are disposed of. As a result, pending Interim Applications does not survive and stand disposed off, accordingly.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)