IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1088 OF 2024
WITH
INTERIM APPLICATION NO. 4010 OF 2024
IN
CRIMINAL APPEAL NO. 1088 OF 2024

Vinod Narasa Mane]
An Indian inhabitant aged about 32 years]
Residing at Room No. 201,]
Aman Darshan Building,]
Opp. Indiaan Bank,]
Chandavarkar Road, Borivali (W),]
Mumbai]
(At present is in Thane Central Prison)] … Appellant/ Applicant

Versus

1. The State]
(at the instance of Borivali Police Station)] … Respondent

Mr. Prashant Pandey along with Ms. Ridhima Mangaonkar, Mr. Dinesh Jadhwani, Ms. Sumati Gupta, Mr. Nikhil Sonar, Mr. Hitesh Gupta and Mr. Vipul Makwana i/b W3 Legal LLP, for the Appellant/ Applicant.

Ms. Supriya Kak, A.P.P. for the Respondent-State.

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

DATE : 29th JANUARY, 2026.

JUDGMENT : [PER SANDESH D. PATIL, J.]

1. The present Appeal is directed against the Judgment and Order dated 31/08/2024 passed by the learned Additional Sessions Judge, Sessions Court, Borivali Division, Dindoshi, Goregaon (East), Mumbai in Sessions Case No. 305/2018, whereby the Appellant was convicted for the commission of offence punishable under Sections 302 of Indian Penal Code (IPC) and was sentenced to suffer rigorous imprisonment for life and also fine of Rs.10,000/- in default of payment of fine, to suffer one year rigorous imprisonment for the offence punishable under Section 302 of IPC. The Accused No.1 was also convicted under Section 323 of IPC and was sentenced to suffer rigorous imprisonment for one year and also fine of Rs.1,000/- in default of payment of fine, to suffer rigorous imprisonment for two months for the offence punishable under Section 323 of IPC. The Accused Nos.2 and 3, the Co-Accused, were however acquitted for the offence.

2. The case of the Prosecution is that, the deceased was residing

at Borivali and the Accused No.1 used to live in the same area. Nearly four months ago from the date of incident, the first informant-Mohan Pawar (deceased) and the Accused No.1 had quarrel on petty grounds. It is further stated that PW-2-Dilip Babulal Chavan who was the cousin brother of the deceased had come to meet him on 06/06/2018. They both went to a beer shop to purchase beer. At that time, Accused Nos.1 and 2 had exchanged certain acrimonious signs and gestures. It is further stated that on 07/06/2018 at about 2:00 a.m., the deceased along with his cousin-PW-2 had been to a place named Tilak Nagar. At that time, the Accused Nos.1 to 3 came there. The Accused No.2 caught hold of the deceased and the Accused No.1 kicked the deceased. The Accused No.3 had also caught hold of the deceased and threatened him. The Accused No.1 thereafter gave a blow of knife on the chest and the thigh of the deceased. PW-2 tried to intervene but he was also assaulted by the Accused persons. As a result of which PW-2 sustained injuries on back and on his left ear. Thereafter, the deceased collapsed on the ground. His friends took him to Shatabdi Hospital, Kandivali where he was admitted in ICU. The statement of the

deceased was recorded by PW-5. On the basis of the said statement, F.I.R. was lodged for the offences punishable under Sections 307, 323 read with Section 34 of Indian Penal Code (IPC) which was registered vide C.R. No.284 of 2018 on 07/06/2018. Subsequently, the injured succumbed to the injuries and therefore, offence under Section 302 of IPC was added. Pursuant to the F.I.R. the investigation commenced, the chargesheet was filed and the case was committed to the Court of Session. All the Accused pleaded not guilty and therefore, were sent to trial. The Prosecution in support of their case examined 10 witnesses.

3. The Prosecution examined PW-2-Dilip Babulal Chavan who was cited as an eye-witness. PW-2 stated that he and the deceased-Mohan Pawar were cousin brothers. He was residing at Malad. He stated that on 06/06/2018 (mentioned as 06/07/2018 in evidence), the deceased and he himself went to a beer shop at Borivali. At that time, the Accused was present there. The Accused and the deceased had exchanged inimical gestures. He further stated that he and the deceased went to Borivali. Accused No.1 started beating his cousin brother i.e. the deceased. He stated that he tried to rescue his brother

but was beaten too. Thereafter, Accused No.1 stabbed Mohan by knife. Mohan received bleeding injuries on his chest and fell down on the road. Some of the friends of Mohan gathered there. The friends who gathered along with the PW-2 took the deceased to Shatabdi Hospital. The Police present in the Hospital recorded the statement of Mohan (deceased). On the next day, Mohan succumbed to his injuries. After four to five days, police inquired with PW-2 and recorded his statement. He identified the Accused Nos.2 and 3 before the Court. Accused No.1, however was not produced before the Court physically nor through VC. PW-2 therefore, did not identify the Accused No.1. In the cross-examination, the said witness stated that he had been to the house of the deceased on 06/06/2018 (mentioned as 06/07/2018 in evidence). He further stated that he was present at the beer shop at about 11:00 p.m. He further stated that, thereafter he and the deceased went to take dinner at a Chinese stall from where they went to a pub. He further stated that till around 1:30 a.m. to 2:00 a.m. they were in the pub. He stated that he could not describe the area where the quarrel between the deceased and the Accused persons took place.

He stated that there was light on the road. However, on the spot of incident there was dim light. He also stated that the spot of incident was situated in a residential area. He stated that he tried to rescue Mohan however, he did not raise shout for help. He denied the suggestion that Mohan was drunk and fell down on a pointed object and sustained injury. He also stated that he was knowing the Accused by face but their names were mentioned by the Police. He stated that the Police made inquiry with him about the incident on that day, but the statement was not recorded. He further stated that he had not seen any weapon in the hands of Accused. He stated that his statement was recorded after four to five days.

4. Another witness which is examined by the Prosecution is PW-1-Manish Natha Solanki. PW-1 stated that on 06/06/2018 himself, Sachin, Siddhu, Sagar and Umesh had been to one hotel at Ghodbunder. At about 2:00a.m. to 2:30 a.m. (mentioned as 2:00 p.m. to 2:30 p.m. in evidence), they returned to Borivali. The moment they entered in their galli at Tilak Nagar, he saw Mohan coming towards them and suddenly fall down. He further deposed that they had a auto

rickshaw with them and they took Mohan to Shatabdi Hospital. He further stated that the Police asked him to act as a Panch on an inquest panchanama. The signature on inquest panchanama was identified by him. The said inquest panchanama was marked as **Exhibit-63**. The clothes of the deceased however, were not identified by him. The said witness was declared hostile and hence cross-examination was conducted by the learned A.P.P.

In his cross-examination, he stated that he had received a call from Accused-Sunil and that he was telling about the quarrel with Mohan. He further stated that he had asked Accused-Sunil not to quarrel and maintain peace. He stated that when he received the call from Sunil, they were drinking liquor.

5. The Prosecution examined PW-3-Ganesh Tukaram Pawar, Father of the deceased. PW-3 stated that he received a call from a friend of Mohan informing that Mohan had sustained injury. They immediately rushed to Shatabdi Hospital where Mohan was shifted. He stated that Mohan was conscious and was able to speak. He

further stated that on inquiry with him, Mohan had disclosed that he was beaten by three persons by the name Kapil, Sunil and Vinod. He also told him that one of them had stabbed him with a knife. He stated that he was not knowing the three persons. He further stated that at about 9:00 a.m. Mohan succumbed to the injuries.

In the cross-examination, he denied that there was no conversation between him and Mohan. He further denied that Mohan was unconscious when he went to the hospital. He further denied the suggestion that there was no conversation between him and Mohan regarding the incident. He, however, admitted that upon inquiry by Police, he had not stated what Mohan had told him about the incident.

6. The F.I.R. was lodged through PW-4-Archana Shivaji Khambe. PW-4 is the Police Officer who had recorded the F.I.R. It is through her the said F.I.R. was produced on record and marked at **Exhibit-82**. Nothing much was put to her in her cross-examination.

7. The Prosecution examined PW-6-Doctor Vivek Vishwanath Salvi. The said witness is the Medical Officer who was treating the deceased- Mohan. He stated that on 07/06/2018, a patient named Mohan Pawar was brought to the Hospital in an injured condition. At about 3.30 a.m., he found one stab injury at middle of the chest and stab injury over right side thigh. He further stated that at about 7:00 a.m., the Police Officer requested him to examine the patient and give his opinion whether the patient was in a position to give the statement. He stated that he examined the patient and found that he was conscious and in a position to give statement. He stated that the Police Officer recorded the statement. Thereafter, he made an endorsement that the patient was conscious and well oriented. The said witness stated that patient succumbed to the injuries at 9:30 a.m. He stated that the injuries found on the body were a stab injury in the middle of the chest of the size 6x4x1.5 cm with fracture of sternum with gush of air pleural breach. According to him, the injury was possible by sharp edged substance. Because of said stab injury, there was possibility of injury to the lung. The stab injury over the right side

of thigh was of the size 5x4x3 cm. He stated that because of the stab injury over the chest, they had put inter coastal drain to avoid saturation of blood inside the chest. He stated that almost one litre of blood was drained. He stated that saturation of blood in this quantity suggested injury to the lungs. He produced the original medical papers at **Exhibit-95**.

In his cross-examination, he denied that the patient was not able to speak. He further denied the suggestion that when the Intercostal Drainage (I.C.D.) was in progress, the patient i.e. the injured was unconscious. He however, stated that at 5:00 a.m. when the treatment was going on, the injured had lost lot of blood. He stated that the blood group of the injured was not available in the hospital as well as in nearby hospitals. He stated that because of loss of heavy blood, the injured might have died. He stated that at 7:00 a.m. he asked the relatives of the patient whether to continue with the treatment when the blood is not available for transfusion. He stated that at about 7:00 a.m. the patient's condition was critical but he was in a oriented state of mind. He further stated that he made an

endorsement after the Police recorded the statement **(Exhibit-90)**. He stated that at about 7:00 a.m. he had inquired with Nair Hospital about availability of blood. He denied the suggestion that Police did not record the statement of the injured till 7:00 a.m. because the patient was not conscious.

8. PW-5- Dadabhau Bhimaji Vidhate is a Retired Police Officer. The said witness stated that he was on Beat duty at that relevant time. He stated that after receiving the telephonic message from station duty officer, Borivali Police Station that, some quarrel had taken place at Babhali Naka and the injured was shifted to Shatabdi Hospital, Kandivali. He himself and one Constable of his Beat went to Shatabdi Hospital. At that time, patient namely Mohan was admitted in I.C.U. He took permission of the Doctor to record his statement. He stated that the Doctor made an endorsement on the statement that the injured was in conscious and oriented state of mind. He also obtained thumb impression of the injured. After recording the statement, he then sent the statement to Station House Officer for registration of the F.I.R. The said statement is exhibited at **Exhibit-90**.

In his cross-examination he stated that he had received the telephonic message at about 4:00 a.m. on 07/06/2018. He stated that, except the injured, the Doctor and other patients there was no other person present when he visited the hospital. He stated that the father of Mohan was not present in the hospital. He stated that he recorded the statement of injured-Mohan between 5:00 a.m. to 6:00 a.m. He stated that the injured Mohan Pawar was not able to sign the statement at **Exhibit-90**. He stated that in the I.C.U., family members of the injured were not present but they might be present outside the hospital. He denied the suggestion that the thumb impression of injured-Mohan Pawar was taken after his death. The said witness PW-5 was recalled for the purpose of recording the omitted contents of the F.I.R. which was left out to be asked to the witness and to testify regarding the spot panchanama. This recall of witness was ordered as per the Order dated 15/07/2024 at **Exhibit-121**.

In the examination in chief which was conducted after recalling the said witness (PW-5), he stated that on that night of 06/06/2018 the PI was one Mr. Rego. He further stated that the injured- Mohan told

him that a quarrel took place between him and Accused No.1 four months prior to the incident. Mohan told him that his cousin brother Dilip Chavan came to meet him on that day at about 10:00 p.m. Mohan stated to the said witness that there was a quarrel between himself and Accused No.1. He stated that Sunil Mane and Kapil Mane caught him by hand and Vinod Mane (Accused No.1) kicked him first and assaulted him on the chest and the right thigh by knife. PW-5 stated that the treatment to the deceased was going on in the hospital. He further stated that he, PI Rego, their staff along with PW-2 proceeded towards the spot of incident. Spot panchanama was conducted by PI Rego in his presence. The said Spot panchanama was recorded by him and marked at **Exhibit-124**.

In his cross-examination, he stated that he doesn't remember who was with him on patrolling duty. He stated that he didn't know whether or not any relative of the informant were present in the hospital. He stated that he directly went to the I.C.U. room. Outside I.C.U. room no relatives of the informant were present. He stated that after reaching the hospital he started to record the statement within

10 minutes. He further stated that he had not inquired with any of the relatives before recording the statement of the informant. He stated that the informant died at about 10:00 a.m. to 10:30 a.m. He stated that one Constable and Doctor were present while recording the statement of the informant. He further stated that he went to the spot in the police jeep. He denied that the Doctor had stated to him that the deceased had lost blood tremendously.

9. The Prosecution also examined PW-7- Doctor Shantanu Madan Chavhan who was the Medical Officer. Said PW-7 was the Medical Officer who had conducted postmortem on the dead body of Mohan Pawar. He stated that on 07/06/2018, dead body of Mohan Pawar was brought to the Postmortem Centre at 4:00 p.m. He stated that on external examination of the dead body, he noticed certain injuries namely;

1) Stab wound above the epigastric region, lower chest, middle part, red colour, 6 x 1 cm x organ dip, 5 stitches;

2) Abrasion left laterally eye 5x2 cm, red colour;

3) Abrasion left side, forehead 2x1 cm, 1x0.5 cm, 1.5x0.5 cm, red colour;

4) Nose abrasion 4x1 cms (Anteriorly), red colour;

5) Stab wound, right laterally nipple line 2x05x2 cm, red colour;

6) 4 cm 'L' shape stab wound, right laterally, buttock

i) 4x05 cms x 1.5 cms and

ii) 3x0.5 cms x 2 cms, red colour.

He stated that all the injuries were antemortem in nature and he has mentioned the same in Column No.17 of the postmortem report. He stated that the postmortem report was in his own handwriting. The said postmortem report was marked at **Exhibit-99**. He stated that, in his opinion, the probable weapon to cause the injuries mentioned in the postmortem was sharp edged. He stated that the knife in the mudddemal shown to him was sufficient to cause the injury.

In his cross-examination, he stated that the injury nos.2 to 4 in Column No.17 of the postmortem report are possible due to fall. He

stated that injuries nos.5 and 6 in the postmortem report, alone are not sufficient to cause death. He stated that if treatment was received in time, there was a possibility that the person would be alive.

10. PW-8-Namdev Hari Bhogale was a retired PSI. He stated that Inspector Rego had handed over 9 sealed packets and had asked him to hand over the same to the Forensic Laboratory. He stated that Inspector Rego had also given him the letter requesting the Laboratory to accept the articles and to examine the same. The said letter was exhibited through him and marked at **Exhibit-102**. Nothing much was asked in cross-examination to the said witness.

11. PW-9- Pawan Mahadev Singh is a panch witness. He stated that on 12/06/2018, he was called by Borivali Police Station to act as panch. He stated that at that time, one person namely Vinod Mane (Accused No.1) was sitting in the Police Station. The said person told him that he was willing to show where the knife is kept. Thereafter, himself, Vinod Mane, two or three police officers and another panch

proceeded towards house of Accused-Vinod Mane. He further stated that, Accused No.1-Vinod Mane showed the way towards his house and led them towards a heap of cement bags near one building. He took out the knife from the heap of empty cement bags by putting his hands inside and gave the knife to the police officer. The knife was kept in an envelope. The police prepared the panchanama. The panchanama was marked at **Exhibit-106**. He was asked in examination-in-chief the following question:

> Question : Whether anything was written in the police station?
>
> Answer : Yes, but I do not remember what was written, but I had signed the said.
>
> He had identified the knife which was sealed.

In the cross-examination, he denied the suggestion that he was made aware of the knife in the police station itself. He stated that he did not remember whether the disclosure statement and recovery panchanama were written on single paper or otherwise. He stated that

the Accused No.1 was handcuffed. He stated that the building was occupied. He stated that he did not see any watchman in the said building.

12. The next witness is PW-10- Sachin Kisan Waghela. The said witness stated that he was working in BMC. He stated that the police had asked him to act as panch for the inquest panchanama. He stated that he saw the body and noticed bleeding injuries; one on the chest and one on the hip. He stated that the panchanama was prepared in his presence and in the presence of another panch witness-PW-1-Manish Solanki. Nothing much was put to him in cross-examination.

13. In the statement recorded under Section 313 of the Accused No.1 he had stated that he was innocent and was falsely implicated. All the prosecution witnesses are friends of deceased and therefore were deposing against him.

14. The learned trial Court after hearing the arguments of the

parties by the impugned Judgment and Order dated 31/08/2024 convicted the Accused No.1. The learned Sessions Judge however, was pleased to acquit the Accused Nos.2 and 3. While acquitting Accused Nos.2 and 3, the learned Sessions Judge held that there is no consistency in account of prosecution's witnesses in regard to Accused Nos.2 and 3. The learned Sessions Judge further held that due to inconsistency in account of the prosecution's witnesses, the benefit of doubt should be given to the Accused. The learned Sessions Judge had found inconsistency between eye-witnesses PW-2 and PW-5 in respect of involvement of Accused Nos.2 and 3. The learned Judge therefore, held that the evidence against Accused Nos.2 and 3 was insufficient and acquitted the Accused Nos.2 and 3. As far as Accused No.1 is concerned, the learned Judge relied upon the dying declaration recorded by PW-5. The learned Judge also relied upon the medical evidence. The learned Sessions Judge observed that PW-5 is a Police Inspector who is an independent witness and has no grudge against the Accused. The learned Sessions Judge while adverting to the oral dying declaration recorded by PW-3 stated that the said witness has

not narrated entire episode or specific role of the Accused. The learned Sessions Judge also believed the evidence of PW-6-Doctor who had made the endorsement on dying declaration.

15. The learned Advocate appearing for the Appellant had argued that the eye-witness PW-2 was not a credible witness. He argued that said witness was an interested witness. He further argued that the statement of the said witness is recorded nearly after seven days. He argued that the PW-2 did not know the Appellant prior to the incident. He further argued that PW-2 had not identified the Accused No.1 in as much as the Accused No.1 was not present in the Court nor was produced through VC. He further argued that PW-2 did not admit that he did not see any weapon in the hands of Accused. He argued that the said witness stated that at the time of recording the dying declaration, he was present however, PW-5 does not state the same. The learned Counsel also argued that other persons namely Sachin, Sagar, Sandesh are not examined. He submitted that though the area was a residential area, no evidence of an independent witness

was recorded. He vehemently argued that the said witness has not identified the weapon as the weapon was not shown to him in the Court. As far as PW-1 is concerned, he submitted that, the witness has turned hostile. As far as PW-3 is concerned, the learned Counsel for the Appellant argued that the oral dying declaration is not reliable. He submitted that the said witness had admitted in his cross-examination that he had never told the Police about the dying declaration. As far as the evidence of the PW-5 is concerned, the learned Counsel for the Appellant argued that the statement was not recorded before the Special Executive Magistrate. He submitted that the said PW-5 was recalled only to cover up the lacuna. He argued that there was an inconsistency in the narration of different witnesses regarding persons who were present for the purpose while recording dying declaration. As far as PW-6 to PW9 are concerned, he submitted that the evidence of medical officer is also relevant. He submitted that PW-6 has stated that the statement was recorded at 7:00 a.m. whereas PW-5 states that the statement was recorded at 5:00 a.m. He submitted that the dying declaration recorded by the PW-5 does not inspire confidence, it

doesn't appear to be voluntary or truthful. He submitted that in any event, guilt of the Accused is not proved beyond a reasonable doubt. He prayed for allowing the Appeal.

16. The learned A.P.P. argued there was oral dying declaration given to PW-3 by the deceased. She submitted that in the same dying declaration PW-3 had narrated as to how the deceased informed him that the Accused No.1 had assaulted him. She further submitted that in addition to this there is a dying declaration which is recorded by PW-5. She submitted that PW-5 is a Police Officer and an independent person and there is no reason why he had grudge against the Appellant. She submitted that there is a recovery panchanama. She submitted that the recovery was effected at the behest of the Accused No.1 from a cement bag. She submitted that the recovery may be proved under Section 27 of the Evidence Act and she has also submitted that if all the things are taken into consideration, the learned Sessions Judge was right in convicting the Appellant. She submitted that the Judgment and Order is reasoned and proper and

that there is no perversity and hence urged to dismiss the Appeal.

17. In the present case, there is a dying declaration which is in the nature of oral dying declaration which is made to PW-3-the father of the deceased. It is however, required to be mentioned that in the cross-examination the said PW-3 admits that he had not stated to the Police about the said statement made by the deceased. Thus, the oral dying declaration becomes doubtful. Had it been that there was such a dying declaration then he would have mentioned the same to the Police first at that point of time. However, he has not mentioned the same to the Police, the said dying declaration therefore, cannot be believed. The said dying declaration becomes doubtful.

18. As far as the dying declaration given to PW-5 which was recorded by him is concerned, it is pertinent to note that in the entire dying declaration the time of giving the dying declaration is not mentioned. The Doctor i.e. PW-6 stated that the statement of the deceased was recorded at 7:00 a.m. and the deceased succumbed to death at 9:30 a.m. PW-5 however, states that the statement was

recorded between 5:00 a.m. to 6:00 a.m. Thus, there is variance and inconsistency between the time of recording the dying declaration. Such inconsistency is more important taking into consideration the fact that the deceased died immediately within a couple of hours i.e. at 9:30 a.m. This fact coupled with the fact that in the examination of the PW-6 he states that lot of blood had flown out of the deceased that because of this they had done Intercostal Drain (I.C.D.) on the body of the deceased. He also states that almost 1 litre of blood was drained and the saturation of the blood in this quantity suggests that there was injury to the lungs. He also stated there was a stab injury on the middle of the chest. He stated that at 5:00 a.m. when treatment was going on, the injured had lost lot of blood. He stated that the blood group of the injured was not available in the hospital as well as in the nearby hospitals and because of loss of heavy blood the injured might have died. The said PW-6 had also stated that there was heavy blood loss. Taking into consideration all these circumstances, coupled with the fact that there was a stab injury to the lungs, it is very difficult to believe that a person who has sustained such a serious injury to the

lungs and who has lost such substantial quantity of blood could make such a long statement. The statement which is recorded runs into about two pages in detail. It is just like a statement given in police station and the said statement recorded does not seem to be natural. It is also required to take into consideration that the cause of death is mentioned as death due to be hemorrhage i.e. loss of blood which further raises doubt upon the veracity of such dying declaration.

19. Taking into consideration all these factors cumulatively, it is not possible to believe beyond doubt that such a dying declaration was made by the deceased to PW-5. As far as the endorsement by the Doctor is concerned, the Doctor had given the endorsement not at the beginning of recording of the statement but after the statement was recorded. In his examination-in-chief as well in cross-examination, he stated that the endorsement was made after the statement was recorded. On perusal of the endorsement on the dying declaration what is important to note is that the Doctor had made a remark that *"the patient is conscious and in condition to give valid*

consent". The Doctor however, does not say that the patient was in a position to give the statement. Thus, there is no proper endorsement about the medical fitness of the witness to give the statement. The endorsement is made after the statement was recorded which does not inspire confidence about the mental and physical state of the deceased at that time of recording the said statement. It is also pertinent to note that, there is no time mentioned of recording of the dying declaration. This aspect of time not being recorded on the said document at **Exhibit-90** is relevant, especially in the light of the fact that the medical evidence shows that the patient's health was very precarious. He had lost lot of blood and that his lungs had collapsed. Further, the fact that the deceased died immediately within a gap of one or two hours shows that the timing was very important. It has also come in the evidence that the deceased used to sign however, only the thumb impression of the deceased was taken on the dying declaration. As a result of which, the dying declaration does not inspire confidence and that it is not possible to base the conviction on the basis of the dying declaration.

20. As far as the aspect of recovery of weapon is concerned, the said recovery panchanama was recorded at **Exhibit-106**. PW-9 Pawan Mahadev Singh was the panch witness. He stated that the Accused No.1 had showed him the place where the weapon was traced. He thereafter, took him and the Police Officers to a place in the building from where the said weapon was recovered from the empty bags of cement. However, in the examination-in-chief, PW-9 was asked whether anything was written in the police station, he answered in the affirmative and stated that he did not remember what was written. This statement on part of PW-9 is sufficient to disbelieve the memorandum statement. It raises serious doubt about the recovery. For the reasons mentioned above, the recovery of weapon becomes doubtful.

21. As far as the evidence of PW-1-Manish Solanki is concerned, although he has produced the inquest panchanama, he was declared hostile. Even otherwise he states that at that time, PW-2 was not present at the spot.

22. As far as eye-witness PW-2 is concerned, he stated that he was present on the spot and he tried to save the deceased. However, he has not identified the Accused in the Court. It is pertinent to note that the identification of the Accused in the Court was one of the most important substantive piece of evidence which ought to have been produced by the Prosecution. The learned A.P.P. would submit that the learned Advocate for the Accused had given a pursis which was below **Exhibit-65** stating that the Accused No.1 is in Thane Central Jail therefore, the pursis is filed stating that the trial in the matter maybe concluded even in absence of the said Appellant. Our attention is brought to the said document at **Exhibit-65** however, what is important to note is that the said pursis only gives consent for proceeding with the trial in absence of the Accused No.1. There is no pursis or consent given by the Accused No.1 for the purpose of not keeping the Accused present before the Court, physically or through V.C for the purpose of identification before the Court. It is pertinent to note that the said Accused No.1 was not even produced through video conferencing. Thus, in absence of identification of the Accused

No.1 by the PW-2, the entire evidence of PW-2 *qua* the Accused No.1 loses significance. Admittedly, PW-2 was not knowing the Accused No.1 right from the inception and even test identification parade was not conducted in this case. It is further important to note that the said witness admits that although the Accused No.1 stabbed the deceased, he did not raise any shout for help. The very fact that the entire incident occurred in a residential area which was populated, it is difficult to believe that, after the deceased was stabbed for more than one occasion, the PW-2 would keep quite and not even raise a shout. Coupled with this, the statement of the said witness was recorded after 7 days. He also admits that he had not seen any weapon in the hands of Accused No.1. All these things read in conjunction leads to an inevitable inference that, this witness cannot be believed.

23. As far as the evidence of PW-7-the Doctor who conducted the postmortem is concerned, he has exhibited the Postmortem Report below **Exhibit-199**. The said Report contains the injuries and the nature and extent of the injury caused to the deceased. However, the Prosecution has miserably failed to prove that it was the Accused No.1

who had caused the said injury.

24. Another important facet of this matter is that, the injuries which are caused to the deceased are mentioned by the said medical officer in his evidence. The Postmortem Report also shows that the injury was in following nature:

17. Surface wounds and injuries- Their nature, position, dimensions (measured) and directions to be accurately stated- their probable age and causes to be noted. If bruises be present what is the condition of the subcutaneous tissues? (N. B-When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed) P.M.no./SMC/261/18	1) Stab wound above the epigastric region, lower chest, middle part, red colour, 6 x 1 cm x organ dip, 5 stitches; 2) Abrasion left laterally eye 5x2 cm, red colour; 3) Abrasion left side, forehead 2x1 cm, 1x0.5 cm, 1.5x0.5 cm, red colour; 4) Nose abrasion 4x1 cms (Anteriorly), red colour; 5) Stab wound, right laterally nipple line 2x0.5x2 cm, red colour; 6) 4 cm 'L' shape stab wound, right laterally, buttock i) 4x0.5 cms x 1.5 cms and ii) 3x0.5 cms x 2 cms, both red colour.

25. Taking into consideration the nature of the injuries which are caused, it is evident that the injuries were very serious and on vital

organs of the body. It is difficult to believe that a person who has been injured to such an extent would be in a position to give elaborate and detailed dying declaration, and that too, in a manner which is recorded by the police. All these aspects cast a serious doubt about the case of the Prosecution.

26. Another important facet is that, while acquitting the Accused Nos.2 and 3, the learned Sessions Judge while relying upon the same set of evidence had stated that there was inconsistency in the evidence of PW-2 and PW-5. Admittedly, the learned Sessions Judge had acquitted the Accused Nos.2 and 3. The said Judgment has attained finality in as much as it is not challenged by the Prosecution. Taking into consideration all the facts and circumstances of the case, we are of the opinion that the Prosecution could not prove the guilt of the Appellant-Accused No.1 beyond reasonable doubt. For the reasons mentioned above, following Order is passed:

ORDER

(i) The Criminal Appeal No.1088 of 2024 is allowed.

(ii) The Judgment and Order dated 31/08/2024 passed by the learned Additional Sessions Judge, Sessions Court, Borivali Division, Dindoshi, Goregaon (East), Mumbai in Sessions Case No. 305/2018 convicting and sentencing the Appellant for commission of offence punishable under Sections 302 and 323 of the IPC is hereby quashed and set aside.

(iii) The Appellant is acquitted from all the charges. He be released forthwith, if he is not required in any other offence.

(iv) The Appellant before being released, to execute personal bond in the sum of Rs.15,000/- under

Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for his appearance in case an Appeal is preferred.

(v) Accordingly, the Criminal Appeal No.1088 of 2024 is disposed of.

(vi) In view of disposal of Appeal, the connected Interim Application No. 4010 of 2024 is also disposed of.

(SANDESH D. PATIL, J.) (SARANG V. KOTWAL, J.)