

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

CRIMINAL APPEAL NO. 1376 OF 2023

Akash Dilip Uttekar

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 3333 OF 2025
IN
CRIMINAL APPEAL NO. 1376 OF 2023**

Mr. Sachin Hande a/w. Poonam Pal for Appellant.
Ms. Supriya Kak, APP for State/Respondent.

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

DATE : 29 & 30 APRIL 2026

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 08.09.2023 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No.251 of 2016. There were eight accused in the trial. The Appellant was the original Accused No.2.

2. At the conclusion of the trial, all the accused, except the present Appellant i.e. the Accused No.2, were acquitted. The

Appellant was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- and in default to suffer S.I. for 15 days. He was also convicted for commission of the offence punishable U/s.324 of the IPC and was sentenced to suffer R.I. for one year and to pay a fine of Rs.500/- and in default to suffer S.I. for 15 days. Both the sentences were directed to run concurrently. He was given set off U/s.428 of the Cr.P.C. The Appellant was acquitted from the charges of commission of the offences punishable under sections 307, 143, 144, 147, 148 and 149 of the IPC.

3. Heard Mr. Sachin Hande, learned counsel for the Appellant and Ms. Supriya Kak, learned APP for the State.

4. The prosecution case, in brief, is as follows:

One Gulchand Nikam had frequent quarrels with his wife. He was addicted to liquor. He was staying on the second floor of his building. On 14.04.2016, there was an incident where Gulchand had slapped his wife. On 15.04.2016, his wife's relatives

i.e. her father, brother, sister and brothers in law came to the house of Gulchand. They started questioning him. Gulchand was assaulted with fist blows. His brother Jayesh was residing on the 5th floor. He called his friends to resolve the dispute. It is the case of the prosecution that, at least four to five friends of Gulchand's brother Jayesh entered the room and tried to pacify the quarrel. The Appellant was brother of Gulchand's wife. He picked up a scissor lying in that room. He assaulted some of Jayesh's friends. He gave a forceful blow to one Sameer who suffered grievous injury on his chest. The witnesses took Sameer to a hospital, but he succumbed to the injuries. Jayesh then lodged his F.I.R. at Mumbra police station vide C.R.No.188 of 2016. It was registered in the night between 15.04.2016 to 16.04.2016 at about 1:35a.m. The investigation was carried out. The dead body was sent for the postmortem examination. The Accused were arrested, the spot panchanama was conducted, the statements of the witnesses were recorded and the articles were sent for the chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During trial, the prosecution examined 19 witnesses, including Gulchand, his brother Jayesh who had lodged the F.I.R., the injured eye witnesses, other eye witnesses including the father of the deceased, panchas, the Medical officers and the investigating officers. Some of the eye witnesses turned hostile and did not support the prosecution case. The defence of the Appellant was of total denial. According to him, the police had falsely implicated him and his family members.

6. The learned trial Judge considered the evidence on record. He observed that the evidence of PW-1 Jayesh was sufficiently corroborated by the evidence of PW-5 Gulchand. The learned Judge also relied on the evidence of PW-4 Akash Raut and PW-2 Pradeep Tambe. Based on their evidence, he reached his conclusion. At the same time, the learned Judge observed that, there was no convincing evidence against the other accused. No witnesses had taken their names properly and had not attributed a specific role to a particular accused. The learned Judge then acquitted the other accused and convicted the Appellant, as mentioned earlier.

7. PW-1 Jayesh was the first informant and an eye witness to the incident. He deposed that, Gulchand was his elder brother. Gulchand was residing on the second floor of the building where PW-1 himself was residing. There was occasional dispute between Gulchand and his wife, and because of that reason Gulchand was residing separately from PW-1 and his family. On 15.04.2016, PW-1 returned from his job at around 9:00p.m. He was going to his room by climbing the staircase. He heard the quarrel from Gulchand's house. He called his friend Akash Raut telephonically and informed him about the quarrel. PW-1 called him and suggested that they would go to the police chowky. PW-1 called Akash to his residence. Accordingly, Akash came to his house. One Pradip Tambe had accompanied Akash. PW-1 told them about the quarrel. At that time, his mother Sarita also came there. She informed that, Gulchand's father in law was beating him. At the same time, PW-1's other friend Sunny Pawar also came there. They all went to Gulchand's house to see what was happening. The door was closed. He knocked on the door. The door was opened. He saw his brother's father in law, two brothers in law, sister in law and

two co-brothers were present inside. They abused PW-1 and his mother. They were not willing to listen to him. Gulchand's co-brothers were beating him with belt and others were beating him with fist and kicks blows. PW-1 then took Gulchand to the ground floor. After that, PW-1, his friends and one of his friend's father again went to Gulchand's house to have discussion with the accused. Akash Raut was trying to speak with them. At that time, the Appellant assaulted PW-1's friend Akash Raut with a scissor on his head causing bleeding injury.

Incidentally, name of the Appellant is Akash Uttekar and name of PW-1's friend was Akash Raut. While narrating the incident in the deposition, PW-1 named the Appellant as 'Akash'.

8. He further narrated that, his friend Sunny Pawar tried to intervene, but the Appellant assaulted him with a scissor on his chest. Gulchand's sister in law sat on Sunny Pawar's person and started beating him. At that time, the other accused had caught Sunny Pawar's legs. At that time, PW-1's friend Sameer (deceased in this case) went there to save Sunny. At that time, the Appellant

assaulted Sameer on his chest with a scissor causing bleeding injury. At that time, Sameers' father was behind Sameer. The Appellant caused injury on the head of Sameer's father. Sameer started vomiting. PW-1 picked him up and saw that Sameer had sustained bleeding injury on his chest. After that, PW-1 took Sameer to Dhanwantari Hospital at Diva. The doctors advised them to take Sameer to another hospital, therefore, he was taken to Hardev hospital at Diva. But at that hospital, Sameer was declared dead. PW-1 identified the Appellant before the Court. He further deposed that, he lodged the report with the police station against the accused. The F.I.R. is produced on record at Exhibit-68. He added that, a day prior to the incident, there was a quarrel between Gulchand and his wife. They had gone to the police station. The police had told them to keep peace. On the next day, Gulchand's wife called her father and other accused and then this incident had taken place. PW-1 also identified the scissor shown to him in the Court. He identified the Appellant. He further deposed that, he was called to the Central Jail for test identification parade (for short 'TIP') held on 07.06.2016. He had identified all the

accused including the present Appellant in the TIP.

In the cross-examination, he stated that, he was a resident of village Khed and the accused were also from the same village. They belonged to the same community. Gulchand's wife Priti was also one of the accused in this case; she was Accused No.7. They had got married in 2011. Therefore, he knew the accused since 2011. He used to meet the accused in public functions and during festivals. He accepted that, in his F.I.R., he has not named the Accused persons. But he had described them as relatives of Gulchand. The other witnesses had accompanied him for the TIP. His mother was also knowing the accused persons. His friends had not seen the accused in any function prior to the incident. Priti-Accused No.7 had lodged a complaint in the police station on 14.04.2016. At that time, she had named PW-1's mother, as well. On the day of the incident i.e. on 15.04.2016, PW-1 had reached his house at around 8:30p.m. A religious function was going on in his building. About eight to nine families resided on the ground floor. He got information about the quarrel at about 8:45p.m. The police chowky was at ten minutes walking distance

from their building. He deposed that, his friends had no concern with the quarrel between Gulchand and Priti. As per their suggestion, he kept waiting on the ground, while his friends went to Gulchand's house. Other people from their building also came to the spot. He had carried the injured Sameer with the help of his friends from Gulchand's house to the hospital. Therefore, there was some blood on PW-1's clothes which were seized by the police. He deposed that, during the course of the quarrel, Gulchand had left the house. He added that, at the time of the incident, Gulchand was standing outside the door. At that time, Gulchand was not assaulted by the accused. He further deposed that, at the time of alleged incident, Gulchand came down from the building and was standing there. The accused Dilip had sustained injury on his hand, but other accused had not sustained any injury. The weapon scissor was used in cutting the cloth. He accepted that, the scissor was always available in Gulchand's house because he was doing stitching jobs. When he lodged the complaint, Gulchand was present at Diva post police chowky. Gulchand had not lodged the complaint in the police station before PW-1. He accepted that, he

had not mentioned the Appellant's name in the F.I.R., but had stated that, Gulchand's brother in law had assaulted the deceased. He accepted that, names of the other accused were not mentioned in the printed FIR. He came to know from others that Gulchand was present at the spot. The names of other accused mentioned in the printed FIR were told to him by others who had gathered at the spot of the incident. He further deposed that, at the time of the incident, the electricity in the passage near the spot of the incident was switched off.

9. PW-2 Pradeep Tambe is another eye witness. He deposed that on 15.04.2016 he was standing near his building along with his friends. At that time, Sameer (the deceased) came there. PW-2 was talking with him. In the meantime, Akash Raut came there running and told them that, there was a quarrel going on in the house of PW-1 Jayesh. Sameer and Akash Raut went to the house of PW-1 Jayesh. PW-2 also followed them. When they reached PW-1's building, they saw a crowd had gathered there. Jayesh's mother came down and told others that Gulchand's in-laws were quarreling and they had abused her. PW-2, Jayesh's maternal uncle

and others including Sunny Pawar and Akash Raut went to Gulchand's room on the second floor. They all entered Gulchand's room. Jayesh's uncle tried to have conversation with Gulchand's father in law. PW-2 and others also started pacifying them, but Gulchand's in-laws were not willing to listen to them. Jayesh's uncle and Gulchand's father in law exchanged abuses. There was a scuffle between them. Akash Raut and Sunny Pawar tried to intervene. He further deposed that the accused then assaulted Akash Raut. The brother in law of Gulchand took out an iron scissor and assaulted on the head of Akash Raut; causing bleeding injury. Other accused overpowered Sunny Pawar. Gulchand's sister in law instigated others to kill him. Gulchand's brother in law started assaulting Sunny with an iron scissor and caused bleeding injury. Sunny tried to save him. At that time, Sameer's father came there. He tried to intervene, but the accused tried to assault him with the same weapon. After that, Sameer came to save his father, but the Appellant (PW-2 named the Appellant as 'Akash') assaulted Sameer with the same scissor on his chest causing bleeding injury. After that, PW-2 and Akash Raut rushed to the police station to

lodge the complaint. Initially, Sameer was taken to Dhanwantari Hospital, then to Hardev Hospital; but he was declared dead. PW-2 was called for TIP on 07.06.2016. He identified all the accused. After the TIP, the accused gave their names. PW-2 further deposed that the person who had assaulted the deceased with a scissor was present before the Court and his name was 'Akash'. He similarly identified the other accused and attributed roles to them.

In the cross-examination, he deposed that, at the time of the incident, at least thirty to forty persons were gathered near the building. A quarrel was going on for about half an hour. He himself had not sustained any injury in the incident. He did not know the names of the accused, but he came to know their names when he attended the TIP. He accepted that, when the police recorded his statement, he had not given the names of the accused. He added that, he was not knowing the names of the accused during the period of those two months. His statement was recorded by the police on 17.04.2016. Akash Raut had told the names of the accused. He deposed that, at the time of the incident, Gulchand was not present in the room and he did not know

whereabouts of Gulchand at that time. Jayesh had tried to pacify the quarrel. He denied the suggestion that, Sameer fell on an iron scissor and sustained injury on his chest.

10. PW-4 Akash Raut is another injured eye witness. He deposed that the deceased Sameer was his best friend. He described the incident in the same manner as is described by PW-2 Pradeep. After describing how initially they gathered on the ground near the building, he described the incident. He himself and his friends went to Gulchand's room No.201. A quarrel was going on between Jayesh's mother and one of the accused. PW-4 and others tried to pacify both of them. The accused rushed towards PW-4 and others to beat them. PW-4 received a blow with scissor on his head from the back side. According to him, the assault was caused by the Appellant. PW-4 sustained bleeding injury on his head. He saw that, Sunny was also assaulted by the accused. Sameer entered the room. At that time, Gulchand's brother in law caught Sameer. PW-4 then described that the Appellant assaulted Sameer on his chest with a scissor. Sameer's father tried to save him by dragging him out of the room, but the

Appellant assaulted Sameer's father on his hand with scissor causing injuries. After that the injured was taken to the hospital. The police came at the spot. They apprehended the accused who was present in the room. PW-4's statement was recorded by the police. He also attended the TIP at Thane Jail. He deposed that, he identified all the accused in the said TIP. He identified the accused before the Court. He identified the weapon.

In the cross-examination, he stated that, he had seen some of the accused persons before the day of the incident. At that time, he was not knowing their names. Initially, when the quarrel was going on they thought about going to the police station, but nobody went to the police station. In the meantime, Jayesh's maternal uncle reached there and then all of them went to the room where the incident took place. When PW-4 reached that room, the door was closed. He knocked on the door. The door was opened. PW-4 and Sunny entered the room. He deposed that, at that time, Gulchand was not there. He deposed that, Gulchand was addicted to liquor and it was the cause of the quarrel. At the time of the incident, the electricity was not cut off. He was not knowing

the names of the accused before the TIP was held. At the time of TIP, the first witness was brought outside the room by the police officers attached to the Jail. The remaining witnesses were also taken by the police officers to the room one by one. He further deposed that, Gulchand had sustained injury in the incident, but Jayesh had not suffered any injury. PW-4 himself was admitted to Halدار Hospital for one night. He denied the suggestion that, at the time of the incident, his friends cut off the electricity and then assaulted the accused and at that time, the deceased Sameer had suffered injuries.

11. PW-5 Gulchand Nikam is an important witness in this case. His name is recorded as 'Fulchand' by the learned Judge in his deposition. He deposed that the accused Dilip was his father in law. The Appellant Akash Uttekar and Ganesh Uttekar were his brothers in law. He also described the relations with other accused. The accused Priti was his wife. He along with his wife and their young daughter resided on the second floor in flat No.201 in the building known as Om Sai Dham. His parents were residing on the fifth floor. He got married with the accused Priti in 2012. There

used to be quarrels between his mother and his wife. Therefore, PW-5 and his wife started residing separately. Finally they came back to stay on the second floor in the same building. There was a quarrel between PW-5 and his wife when he had slapped his wife. She went to the police chowky for lodging the complaint. This was the precursor to the commission of the incident dated 15.04.2016. On that day, when he returned home, the accused were already present in the house. The Appellant questioned him about the quarrel with PW-5's wife. One of his co-brothers started beating him with a belt. The Appellant and the other brother in law Ganesh started beating him with kicks and fist blows. After some time, PW-5's mother, brother, uncle and others came to the house. They questioned PW-5's father in law. PW-1 Jayesh was accompanied with his friends Sunny and Akash Raut (PW-4). They tried to pacify the quarrel, but the accused were not willing to listen. He then deposed that the Appellant assaulted Akash Raut with a scissor on his head causing a bleeding injury. Sameer entered the room. The Appellant assaulted Sameer with the scissor on his chest. Sameer's father Mangesh Devalkar was also assaulted

by a knife by Ganesh. Sameer was then taken out of the room and was taken to the hospital. After that, PW-5 went to the police chowky. He narrated the incident to the police. Other injured were in Haldar hospital. Sameer was declared dead. The police recorded his statement. He identified the weapons i.e. scissor and belt in the Court.

In the cross-examination, he deposed that, there were strained relations between his wife and mother. A small dispute was raised between himself and his wife. He admitted that, occasionally he used to consume liquor. He was facing money problem and, therefore, his wife's ornaments were mortgaged. His wife was doing stitching work to help him financially. His father in law had given him some amount for paying the deposit of the room. He accepted that on 14.04.2016 his wife had lodged a complaint against him in the police chowky on the allegations that their daughter was taken away from her. After that, he, his wife and daughter had returned home together. He accepted that on 14.04.2016, he had slapped his wife. His statement was recorded by the police on 16.04.2016. At the time of the incident, about

twenty to twenty five people had gathered. Jayesh was one of them. The quarrel went on for about twenty to twenty five minutes. About thirty people had entered the hall. He admitted that, the electricity was not available for near about fifteen minutes. It was cut off only in his room. But he did not know the reason. At the time of the incident, his daughter was with his mother. After the incident, he was admitted in the hospital. He admitted that Jayesh had brought his friends to save him from the assault caused by the accused. He could not explain as to why his police statement did not mention that Sameer entered the room to save Sunny and that Sameer's father Mangesh was assaulted by the accused Ganesh. His statement was recorded by the Magistrate U/s.164 of the Cr.P.C. on 05.05.2016. It is produced on record at Exhibit-137. His statement sufficiently corroborates his evidence.

12. Apart from these main eye witnesses who had supported the prosecution case, there are other eye witnesses including some injured eye witnesses who had turned hostile.

13. PW-6 Mangesh Devalkar was the father of the deceased. He was declared hostile. He deposed that, he received the information about the quarrel. He went to Gulchand's house. He saw that his son Sameer had sustained injury on his chest. He deposed that, he received the information from the people gathered there. He also got information that his son was already admitted in the hospital. He deposed that, he did not know as to how his son sustained injury on his chest. He did not know who caused that injury. When he entered Gulchand's room to search for his son Sameer, at that time, he himself had sustained injury on his head. He was not supporting the prosecution case, therefore, he was declared hostile.

Learned APP cross-examined him. He stuck to his deposition that, he did not know who had assaulted his son Sameer. The contrary portion marked 'A' from his police statement was shown to him. He denied that the statement was true.

In the cross-examination conducted on behalf of the accused, he stated that at the time of the incident there was

darkness and, therefore, he did not know how the incident had taken place. In short, he did not support the prosecution at all.

14. PW-12 Sunny Pawar was another injured eye witness who was declared hostile. He described the quarrel. Because of that, he and others went to the room on the second floor. He saw the quarrel. He tried to intervene. At that time, suddenly the electricity was switched off. For five minutes there was no electricity. During that period he sustained injuries on his back and on his head. His wound required stitches. He came to know that, Sameer had also sustained injury. He did not describe as to how the incident had taken place. Therefore, he was declared hostile. He was not supporting the prosecution case.

In the cross-examination conducted by the learned APP, he admitted that, he had attended the TIP in the jail and at that time, he had identified the accused persons.

In the cross-examination conducted on behalf of the accused, he stated that the police had shown him the photographs of the accused and had informed him that the person in the first

photograph had assaulted him.

15. PW-13 Balwant Sawant, according to the prosecution case, was also present at the time of the incident, but he did not support the prosecution case. He only stated that, in the incident Sameer died, Sunny Pawar, Mangesh Devalkar and Akash Raut sustained injuries. He deposed that, he had not seen the incident personally. He did not identify the accused before the Court.

In the cross-examination conducted by the learned APP, he denied having made the statement with reference to portions marked 'A' and 'B' in his police statement.

16. PW-14 Narayan Shiravale was Gulchand's maternal uncle. But he had also turned hostile. He categorically deposed that he did not know anything about the alleged incident.

In the cross-examination conducted by the learned APP, he accepted everything as per the prosecution story. He also described that Akash Uttekar i.e. the present Appellant assaulted Akash Raut with a scissor and caused grievous hurt on his head. Thereafter, he deposed that Akash Uttekar i.e. the present

Appellant and Santosh Ghatage assaulted Sunny Pawar. But he maintained that, he had not seen Akash Uttekar causing stab injury on the stomach of Sameer. His statement was recorded U/s.164 of the Cr.P.C. But the prosecution did not invite his attention specifically to the contrary portion in his statement recorded U/s.164 of the Cr.P.C.

In the cross-examination conducted on behalf of the accused, he stated that, he had given his statement U/s.164 of the Cr.P.C. as per the say of the police.

In short, he is an unreliable witness.

17. PW-15 Sarita Nikam was Gulchand's mother. She did not support the prosecution case and was declared hostile. She denied having knowledge as to whether the Appellant assaulted Akash Raut, Sunny Pawar and Sameer with a scissor. The contrary portion in her police statement marked as portion marked 'A' was denied by her in the Court. She accepted that her statement was recorded U/s.164 of the Cr.P.C., but the contrary portion from that statement was not shown to her. She admitted that, there was

settlement between the accused and herself.

In the cross-examination conducted on behalf of the accused, she stated that, during the incident the electricity was switched off, therefore, there was darkness. Thus, it can be seen that, even this witness is unreliable.

18. PW-9 Yogesh Khedekar was a pancha for seizure of clothes of the injured Sunny Pawar, Mangesh and Akash Raut.

In the cross-examination, he admitted that he was a friend of the deceased Sameer.

19. PW-3 Mahendra Jadhav was a pancha for the spot panchanama. He has proved the spot panchanama. The spot panchanama is produced on record at Exhibit-89.

20. PW-10 Deepak Patil was a pancha for seizure of the clothes of the accused. That panchanama is dated 17.04.2016, but he had turned hostile and did not support the prosecution case.

21. PW-11 Ajinkya Jadhav was a pancha for seizure of clothes of the deceased. He had also turned hostile and did not

support the prosecution case.

22. PW-7 Dr. Milind Patil had examined PW-5 Gulchand for his injuries and the other accused for their injuries. He deposed that, Gulchand had suffered the following four injuries:

- i) Contusion below right eye 3 x 2 cm.
- ii) Contusion inter-scapular region 4 x 3 cm.
- iii) Contusion inter-scapular region back 4 x 3 cm.
- iv) Contusion below left scapula 3 x 2 cm.

The injuries were simple, but the patient was referred to Orthopedic expert. The medical certificate is produced on record at Exhibit-101. He also produced the medical certificates in respect of the accused Priti Nikam, Dilip Uttekar, Ganesh Uttekar, Vijay Shinde and Swati Jadhav. More importantly, he produced the injury certificate of the Appellant Akash Uttekar at Exhibit-104. The Appellant Akash had sustained abrasion on the right palm of the size 0.5 x 0.1 cm. It was a simple injury.

23. PW-19 Dr. Shashank Fanade had examined the injured Sunny Pawar, Mangesh Devalkar, Akash Raut and also the

deceased Sameer.

Sunny Pawar had suffered following injuries:

- i) CLW over right side of chest of size 0.5 x 0.5 x 0.5 cm.
- ii) CLW over left side of medial aspect of arm over left axillary region of size 0.5 x 0.5 x 0.5cm.
- iii) Abrasion over both right and left side of shoulder.
- iv) CLW over left side of back of size 0.5 x 0.5 x 0.5 cm.
- v) CLW over left side of forehead of the size 0.5 x 0.5 x 0.5cm.

Mangesh Devalkar had sustained CLW over left forearm of the size 8 x 4 x 4cm.

Akash Raut had abrasion over parietal region of the size 1 x 1cm.

Sameer Devalkar the deceased had suffered following injuries:

- i) CLW on left arm of the size 3 x 1 x 1cm.
- ii) CLW over left index finger of the size 1 x 1 x 1cm.
- iii) Stab wound at epigastric region of the size 2 x 2 x 4cm.

24. PW-8 Dr. Rajeshwar Pate had conducted the postmortem examination. He found following external injuries on the dead body of Sameer.

- i) Stab wound present over chest at xiphisternal region 9cm. below sternal angle at 6th and 7th postal region on right side of size 3 x 1 x cavity deep, obliquely placed, upper angle acute and lower angle slightly blur, directed medially upward, track of wound skin-subcutaneous-issue through costal cartilage of 6th and 7th rib pierced pericardium pierce to and through heart at right ventricle.
- ii) Stab wound over left arm lower 1/3rd laterally of size 1 x 2.5cm x muscle deep oblique angle acute.
- iii) Stab wound over left arm middle 1/3rd posteriory of size 0.5cm x 0.2cm x muscle deep, vertical angles acute.
- iv) Incised wound over left palm at hypothenar region 1.5cm x 0.5cm x muscle deep oblique.
- v) Incised wound over base of index finger of left hand palmar aspect 1cm x 0.5cm x bone deep horizontal.
- vi) Incised wound over palmar aspect of left ring finger at middle phalanx 0.5cm x 0.3cm x muscle deep.

Internal injuries on the dead body of Sameer are as follows:

- i) Costal cartilage of 6th and 7th rib cut on right side corresponding to injury No.1 on column No.17 with extravasation of blood in surrounding tissue.
- ii) Pericardium – cut mark present on right side corresponding to injury No.1 of column No.17.
- iii) Cavity filled with blood and blood clots.
- iv) Heart – purporting stab wound through and to over right ventricle lateral surface with blood infiltration at margin present, rest arteries and valves patent cavity contains blood and blood clots.

25. He deposed that the injuries were caused by a sharp edged pointed weapon, and were sufficient to cause death in ordinary course of nature. Internally, 6th and 7th rib was cut. Pericardium was penetrated and cavity was filled with blood. The stab wound passed through and over the right ventricle. There was blood infiltration. The postmortem notes were produced on record at Exhibit-109. He deposed that the injury No.1 was possible by a scissor.

26. PW-16 Nilesh Bhosale was the Special Executive Magistrate who had conducted the TIP on 07.06.2016. He deposed that the police officers of the Jail had brought six witnesses for the

TIP. He directed the authority to produce eight accused along with six dummies. There were two accused who were ladies. He then described the actual parade. He had put one accused with six dummy persons. There were six such rows for male accused. The witness PW-4 Akash Raut identified all the accused. PW-6 Mangesh Devalkar identified the Accused Nos.1 and 4. PW-12 Sunny Pawar and PW-13 Balwant Sawant identified all the accused.

In the cross-examination, he gave some important admissions. He deposed that the witnesses and panchas had come to the Jail together. He admitted that after identification the witnesses left the spot, however, he could not verify as to whom those witnesses met and what was discussed. This is an important admission which shows that sufficient precaution was not taken. He further admitted that the Jailor was identifying each accused and each dummy. He also added that he himself, panchas and the Jailor were knowing exactly at what place the accused were standing. He had directed the Jailor to call a witness and the Jailor asked the concerned police officer to bring that witness. But he had not mentioned in the panchanama that the Jailor used to

inform the police constable to bring the witness. He also admitted that he used to direct the Jailor to call the witnesses and the Jailor himself used to bring the witnesses.

27. At this stage, it is necessary to comment on the procedure of the TIP. It is quite clear that the procedure adopted was not above suspicion. PW-16 the Special Executive Magistrate had not taken sufficient precaution to see that the witness after identifying the accused did not meet the other witnesses outside the identification room and did not have any discussion. This was the basic precaution which was required to be taken. He had not verified whether or not the identifying witness had informed the other witnesses about the proceedings going on inside the room. He admitted that the Jailor was bringing the witnesses in the identification room. The panchas were not used for that purpose and the Jailor knew exactly at what spot the accused were standing. The other witnesses were brought by the police officer and the Jailor inside the identification room. Thus, the prosecution has failed to prove that sufficient precaution was taken to see to it that the witnesses did not interact with each other after every

identification by a particular witness. It is to be noted that, all the six male accused persons were put in the same TIP in six rows. The Special Executive Magistrate could have taken care to put only two accused in one parade at a time with six dummies each for every suspect. The cumulative effect of all these infirmities is that the TIP evidence is not beyond reasonable doubt and, therefore, cannot be used to assist the prosecution case.

28. PW-17 PSI Girish Gaikwad was the first investigating officer. He deposed that, on receiving the information on 16.04.2016, he visited the hospital. He recorded the FIR of PW-1 Jayesh. He commenced the investigation. He carried out the inquest panchanama and the dead body was sent for the postmortem examination. The spot panchanama was conducted and the articles were seized from the spot including the scissor.

29. PW-18 PI. Manikrao Jadhav was the second investigating officer. He recorded the statements of the witnesses. He deposed that the accused were already arrested by PSI Gaikwad and PSI Agam. He seized the clothes of the deceased. He proved the

contrary portions of the witnesses from their police statements. Those contrary portions are produced on record at Exhibits-158 to 161.

All these statements show that these hostile witnesses had seen the incident and some of them had even suffered injuries. The other important aspect is that in none of the statements the names of the accused are mentioned. But the incident is described in detail even by the hostile witnesses in their police statements.

30. PW-18 then sent all the articles for CA examination. He collected the injury certificate. He identified all the accused before the Court.

In the cross-examination, he stated that, he visited the spot of the incident in the evening. He accepted that the names of the accused persons were not mentioned in the FIR. The seized scissor was kept near the sewing machine in the house where the incident had taken place.

31. The prosecution also produced the CA report on record which shows that the scissor showed presence of human blood, but

the blood group was inconclusive. The clothes of the deceased had blood of 'A' group. The clothes of the Appellant showed presence of human blood, but the blood group was inconclusive.

This, in short, is the evidence led by the prosecution.

32. The learned Judge relied on the evidence of the eye witnesses. He held that, there was no common object and held that the accused No.2 i.e. the present Appellant was solely responsible for committing the offence punishable U/s.302 of the IPC. He thus, convicted and sentenced him.

SUBMISSIONS OF MR. SACHIN HANDE, LEARNED COUNSEL FOR THE APPELLANT

33. There are too many contradictions interse between the depositions of the eye witnesses. The important eye witnesses i.e. the father of the deceased, the uncle and the mother of Gulchand have not supported the prosecution case. They were the aggrieved persons, and since they have not supported the prosecution case, an adverse inference is required to be drawn against the prosecution case. He submitted that the TIP was not conducted properly and, therefore, the identification of the accused by the

witnesses loses its significance. It is an admitted fact that, except Gulchand none of the eye witnesses had given the names of the accused, and, therefore, the identification of the accused by those witnesses assumes great importance. There is evidence to show that during the crucial period of the actual assault, the electricity was cut off and, therefore, there was total darkness in the room. In that case, it was not possible for the witnesses to have seen the incident. Even assuming that the in-laws of Gulchand including the Appellant being the brother in law were present in the room, that does not mean that the accused/Appellant himself had caused the assault. There were other people in the room and any one of them could have committed the assault. The witnesses could not have seen that, because there was no light in the room and the electricity was cut off for some time. Alternatively, he submitted that the offence could not be that of murder, because there was no intention to commit murder. The Appellant did not have enmity with the deceased, therefore, there was no motive.

34. Learned counsel for the Appellant relied on the Judgments of the Hon'ble Supreme Court in the case of *Surain*

*Singh Versus State of Punjab*¹ and *Atul Thakur Versus State of Himachal Pradesh and others*². Based on these judgments, he submitted that, it would not be a case U/s.302 of the IPC, but it would be the case U/s.304(II) of the IPC, as at the highest knowledge can be attributed to the Appellant and not the intention.

SUBMISSIONS OF MS. SUPRIYA KAK, LEARNED APP FOR THE STATE

35. Learned APP submitted that, while it is true that, the other witnesses had not named the accused, but the evidence of PW-5 Gulchand is important. He was knowing the Appellant and other accused. His presence at the spot cannot be doubted because the incident had taken place in his room, though, other witnesses at some place have deposed that Gulchand was not there. It is clear that the accused have tried to settle the matter, some of the witnesses have turned hostile and the witnesses may have wanted to help the accused. In any case, she submitted that the evidence of PW-5 Gulchand is strong enough on which the conviction can be safely based.

1 (2017) 5 Supreme Court Cases 796

2 (2018) 2 Supreme Court Cases 496

REASONS AND CONCLUSION

36. We have considered these submissions. As discussed above, there are many eye witnesses to the incident, but five eye witnesses i.e. PW-6 Mangesh Devalkar, PW-12 Sunny Pawar, PW-13 Balwant Sawant, PW-14 Narayan Shiravale and PW-15 Sarita Nikam have turned hostile. They have not supported the prosecution case. The prosecution has proved the contrary portions from their police statements. The other witnesses have not named the accused, but PW-15 Sarita was Gulchand's mother, and hence, was knowing the accused by names. She had given the names of the accused in her police statement. In her contrary portion proved by the I.O., she had described the incident in detail. She has elaborately described the incident by ascribing the role of assault with the scissor to the Appellant. However, the hostile witnesses are not reliable witnesses.

37. The prosecution case, therefore, rests on the evidence of PW-1 Jayesh Nikam, PW-2 Pradeep Tambe, PW-4 Akash Raut and PW-5 Gulchand. Out of them, except PW-5 Gulchand, none of the

witnesses including PW-1 Jayesh had named the accused in their police statements. Therefore, their evidence will have to be tested in the background of the TIP. As we have already discussed above, the evidence of TIP in this case is not beyond reasonable doubt. The TIP was not conducted with due care and caution. Therefore, it is not possible to place reliance on the identification of the accused, including of the present Appellant, by these witnesses i.e. PW-1, PW-2 and PW-4. Having said that, the evidence of PW-5 Gulchand is the most important evidence in this case. It cannot be said that PW-1, PW-2 and PW-4 have with reasonable certainty identified the accused.

38. The fact remains that all these three witnesses have specifically described that Gulchand's wife's relatives were present in the room and that they had committed this offence. Therefore, even if they may not know the names, but their description is that, Gulchand's in-laws had committed this offence. In addition, they have identified those accused in the Court. In this background, the evidence of PW-5 Gulchand is very important.

39. PW-5 Gulchand is the most natural witness in this case. The incident had taken place in his room. It started with the accused quarreling with Gulchand for his aggressive approach towards his wife. He was initially beaten by kicks and fist blows and a belt. After that, PW-1 Jayesh and his friends entered the room. Then this incident had taken place. Therefore, PW-5 Gulchand in this case is a natural witness. He has described the incident right from the inception till the deceased was taken to the hospital. He had given his statement U/s.164 of the Cr.P.C. which sufficiently corroborates his deposition before the Court. We have carefully perused his deposition and we do not find any infirmity in his statement. Though, he had fairly accepted that for some time there was no electricity in the room, but he has specifically described the incident when the Appellant had given a blow with scissor on the deceased. The defence could not bring out any contradictions from his police statement. His statement U/s.164 of the Cr.P.C. corroborates his deposition. Therefore, we do not see any reason to disbelieve this important witness. His deposition, to some extent, is supported by the version of PW-1, PW-2 and PW-4

who have described that, the in-laws of Gulchand had committed this offence. While it is true that PW-2 Pradeep Tambe and PW-4 Akash Raut at one place have stated that Gulchand was not present, however, PW-4 has further deposed in the cross-examination that, Gulchand had sustained injury in the said incident, but Jayesh did not suffer any injury. Thus, even this witness had accepted the presence of Gulchand at the time of the incident. PW-1 Jayesh had not deposed that Gulchand was not present. Thus, there is no reason to disbelieve PW-5 Gulchand, whose evidence is sufficient to establish that the present Appellant had assaulted the deceased with a scissor.

40. The next question is, whether the offence is of murder or is a lesser offence. In both the judgments relied on by the learned counsel for the Appellant, there was a sudden fight and, therefore, the Hon'ble Supreme Court had considered *Exception 4* to Section 300 of the IPC. In the present case, there was no sudden fight between the deceased and the Appellant. In fact, the deceased had no connection or no concern with the accused at all. The Accused had come to question Gulchand about his behaviour with his wife.

There was a quarrel between Gulchand and his in-laws. The other witnesses including Jayesh, his friends and the deceased had entered the room to pacify the quarrel. Therefore, it cannot be said that the incident of assault was a result of sudden quarrel or fight. The accused themselves had come to the room with intention to question and assault Gulchand.

41. In this case, the nature of the injuries assumes importance. The intention can be seen from the nature of injury in this case. The murder weapon was easily available. The scissor was regularly used by Gulchand as a part of their livelihood of stitching clothes. There is absolutely nothing to show that the deceased Sameer had anything to do with the dispute between Gulchand and the accused. It is not the case of the Appellant that, Sameer or any other witnesses posed any threat giving rise to apprehension in his mind of causing any grievous hurt or serious injury to him. The witnesses including the deceased were unarmed. In that case, neither of the Exceptions mentioned in Section 300 of the IPC is available in defence of the appellant. The assault on the deceased was not an isolated assault. The Appellant, at the first instance,

assaulted Akash Raut on his head, then he assaulted Sunny Pawar and then he assaulted the deceased. There was blow on Akash Raut's head as well. The injury certificates corroborate the version of the eye witnesses and in particular that of PW-5 Gulchand. The postmortem notes show the severity of blow inflicted by the Appellant on the deceased. It was quite a forceful blow cutting the cartilages of two ribs. It penetrated the body of the deceased at some length. The heart was pierced. Therefore, it is clear that the Appellant did not have any other intention than to commit murder of the deceased. While it is true that, there was no motive, but the act itself falls within all the ingredients mentioned U/s.300 of the IPC. In this view of the matter, it is difficult to hold that the offence committed by the Appellant would not be that of 'murder' but would be one possible U/s.304(I) or U/s.304(II) of the IPC.

42. The deceased was not carrying any weapon. He was unarmed. He unnecessarily lost his life. He had not given any provocation to the Appellant. In this view of the matter and in the facts of the case, the offence of murder is proved by the prosecution beyond reasonable doubt. With the result, we do not

find any reason to interfere with the impugned judgment and order.

43. The Appeal is accordingly dismissed. With the disposal of the Appeal, the connected interim application is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)