

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

CRIMINAL APPEAL NO.769 OF 2023

Sandeep Rameshchandra Pandey

.....Appellant

Versus

The State of Maharashtra
and another

.....Respondents

.....

**WITH
INTERIM APPLICATION NO.4477 OF 2025
IN
CRIMINAL APPEAL NO.769 OF 2023**

Mr. Chandrakant K. Talekar, Advocate a/w. Rohit Rajbhar for the Appellant.

Ms. Mahalakshmi Ganapathy, Addl. P.P. for the Respondent No.1-State.

Mr. Gaurav Devdhekar, i/b. Ameeta Kuttikrishnan, Advocate through Legal
Aid for the Respondent No.2.

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

DATE : 05th & 06th MAY, 2026

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

1. The Appellant has challenged the judgment and order dated 3.5.2023 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Sessions Case No.189/2014. The Appellant was convicted for commission of the offence punishable under Section 302 of IPC. He was sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer RI for one month. The Appellant was

granted set-off under Section 428 of Cr.P.C. for the period which he had undergone in custody from 17.7.2014. The fine amount, if any, was directed to be paid to the complainant under Section 357(1) of Cr.P.C..

2. Heard Mr. Chandrakant Talekar, learned counsel for the Appellant, Ms. Mahalakshmi Ganapathy, learned Addl. PP for the Respondent No.1-State and Mr. Gaurav Devdhekar, learned counsel for the Respondent No.2.

3. The prosecution case is that the deceased in this case Nitesh was on friendly terms with a girl in whom the Appellant was also interested. There was enmity between the Appellant and Nitesh on that ground. On 16.7.2014 at about 4.00 p.m., Nitesh was talking with his friends. The Appellant came towards him carrying a knife. He gave a blow on Nitesh. Before the Appellant gave blow to the deceased, there was a quarrel between them. A crowd gathered there. Nitesh's brother Ajay was in the vicinity. He rushed there. He saw the Appellant giving blow with a knife on Nitesh. Nitesh's friend Pradip saw the assault. Nitesh fell down. The Appellant ran away. Ajay and Pradip Yadav helped Nitesh walk some distance to a rickshaw. He was taken to a hospital. He was

immediately taken for surgery. Nitesh succumbed to his injury. His brother Ajay lodged the FIR vide C.R. No.236/2014 at Kurar Police Station, Mumbai on 16.7.2014 at 10.20 p.m.. The investigation was carried out. The dead body was sent for postmortem examination. The Appellant was arrested on 17.7.2014. Different panchnamas viz., the inquest panchnama, the spot panchnama etc. were carried out. The statements of witnesses were recorded. The clothes of the deceased were seized. The clothes of the Appellant were also seized. The Appellant expressed willingness to show the place where he had concealed the knife. He led the police and the panchas to his house and pointed out the place where he had concealed the knife. It was recovered and seized. The articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Session.

4. During trial, the prosecution examined eleven witnesses including the brother and the friend of the deceased who had seen the incident and had taken the deceased to the hospital, the panchas, the medical officers and the investigating officers. The defence of the Appellant was as follows :

In June 2014 he had been to Assam. His wife had passed away in 2013. After completion of the last rites and rituals of his wife, he came to Mumbai for work. He was working as a watchman. Some boys were consuming liquor or ganja nearby. Therefore, he made complaints against them to the Chairman of the building. Those boys threatened him not to interfere in their business. On the day of the incident, he was proceeding towards his house. When he crossed Lokhandwala Building Kandivali (East), a police jeep came and stopped there. The police officer brought him to Kurar police station. The police obtained his signatures on 3 to 4 blank papers and kept him in the lock-up. It was a false complaint lodged against him and the false charge-sheet was submitted against him.

5. The learned Judge considered the evidence on record. He held that there was no delay in lodging the FIR. He relied on the evidence of the eye witnesses. He took into consideration the fact that Nitesh's brother Ajay's signatures were on the medical papers showing his presence in the hospital. He relied on the evidence of recovery. He accepted the other evidence in the form of spot panchnama, seizure panchnama, and recovery of weapon. He disbelieved the defence of the Appellant. Thus, the learned

Judge on the basis of his conclusion, convicted and sentenced the Appellant as mentioned earlier.

6. PW-1 Ajay Yadav was brother of the deceased Nitesh. He deposed that he knew the Appellant as they resided in the same area. About two to three months prior to the incident, Nitesh had told him that the Appellant used to quarrel with Nitesh. PW-1 had discussed the issue with Nitesh and had told him to keep away from the quarrel. After that there was no dispute between Nitesh and the Appellant. On 16.7.2014, PW-1 had gone to his office for work at 11.30 a.m.. One Ganesh Sharma was his friend. Ganesh's father Kailas was in the business of selling coconut-water. His shop was situated near Sai Baba Temple, Gokul Nagar, Kandivali (East). On 16.7.2014 at about 3.30 p.m., PW-1 went to Kailas's shop to help him as he normally did. He used to help Kailas in his business. PW-1 heard a commotion. Some people were shouting. He ran towards that place. He saw that a crowd had gathered there. He went to the spot and saw the Appellant giving blow of knife on the stomach of his brother. The Appellant ran away. He saw that Nitesh had suffered bleeding injury on the stomach. The Appellant had carried the knife with him when he escaped. PW-1 and Pradip

Yadav (PW-3) hired a rickshaw and took Nitesh to Doctor Babasaheb Ambedkar Hospital, Kandivali (West). At that time Nitesh was able to speak. PW-1 asked Nitesh about the incident. Nitesh told him that he used to talk with one girl who was a friend of the Appellant and, therefore, the Appellant assaulted him. PW-1 further deposed that after reaching the hospital, he came out to make a phone call to his elder brother Umesh. PW-1 informed the incident to his brother Umesh who came to the hospital. Within seven to ten minutes a ward-boy had taken Nitesh in the casualty ward of the hospital. The formalities of paperwork were completed. They gave their consent for performing surgery on Nitesh. When PW-1 and others were arranging for blood, the doctor told them that Nitesh had passed away. After 9.30 p.m, the police came to the hospital. PW-1 narrated the incident to the police. The police took him to the police station. He lodged his report. It was treated as an FIR. It is produced on record at Exhibit-29. He identified the Appellant in the Court. PW-1 had shown the spot of incident to the police. He identified the knife produced in the Court as the murder weapon. He also identified the clothes of the deceased. Similarly, he identified the clothes of the Appellant which

the Appellant was wearing at the time of incident.

In the cross-examination, he stated that he was a technician and was working in a private industry at Kandivali (East). The working hours were from 9.00 a.m. to 6.00 p.m. When his work was over, he left his work place. No entry was made on that particular date when he left his workplace. He could not explain why his FIR did not mention that there was a quarrel between Nitesh and the Appellant three months prior to the incident and that he had told Nitesh to stay away from that situation. He further stated that he had told the Medical Officer as to how the injury was caused to Nitesh. He denied that the person who had brought Nitesh to the hospital, had run away from the hospital. He denied that some unknown person had brought Nitesh to the hospital. PW-1's own clothes were having blood stains as he had helped the deceased and had brought him to the hospital. PW-1's clothes were not seized by the police. He stated that from the time of the admission till Nitesh's death, PW-1 was in the hospital. According to him, the murder weapon was a knife and not a sword. The distance between his house and the spot of incident was hardly about four to five minutes walking distance. The spot of incident

was in a crowded area. There were chawls on both sides of the road. The rickshaw stand was hardly two to three minutes walking distance from the spot of incident. The deceased Nitesh had walked from the spot of incident upto the rickshaw stand. At that time, the injury was still bleeding. He further deposed that when he reached the spot Nitesh was lying on the ground. Ten to twelve persons had gathered around him. When PW-1 reached the spot, the Appellant was running away but PW-1 did not make any attempt to catch him. PW-1 used to go to the shop of Ganesh Sharma everyday between 3.30 p.m. to 4.00 p.m. but he had not told the police that he used to go to that shop everyday. He was cross-examined as to whether he was in a position to see the spot of incident. He could not explain as to why his FIR did not mention that he came out to make a phone call to his elder brother Umesh and within seven to eight minutes the ward-boy took Nitesh in the casualty ward of the hospital.

7. The FIR, produced on record, substantially corroborates the deposition of PW-1. It shows that the FIR was lodged at 10.20 p.m. on 16.7.2014 and the police station received the information at 9.20 p.m. on 16.7.2014.

8. PW-3 Pradip Yadav was the other eye witness. He deposed that he knew the Appellant, as they were residing in the same area. He also knew Nitesh. They were friends and residing in the same area. On 16.7.2014 from 12.00 p.m. PW-3 himself, one Rahul Mishra and one Arjun Yadav were standing near a paan-stall. At about 1.30 p.m., Nitesh came there. At around 4.15 p.m., the Appellant came near them. He asked Nitesh as to why Nitesh had abused the Appellant's girlfriend. Nitesh denied having met or abused the Appellant's girlfriend. PW-3 further deposed that the Appellant took out a knife from his back pocket of the pant and assaulted Nitesh on his arm and abdomen. The Appellant ran away towards the rickshaw stand. PW-3 shouted loudly. Nitesh's brother Ajay on hearing the noise came there. According to PW-3, PW-1 Ajay was already present at a distance of about thirty to forty meters. PW-3 and PW-1 Ajay brought Nitesh to Shatabdi Hospital by a rickshaw. During their travel in the rickshaw, Nitesh told PW-1 Ajay that the Appellant had assaulted him. PW-3 further stated that after some time, he returned back to his house. On the same day, Nitesh succumbed to his injuries. The police recorded his statement.

In the cross-examination, PW-3 denied that Nitesh was his relative. He knew Nitesh from 11th standard. They were in different colleges. PW-3 was attending the morning college. From 12 noon to about 4 to 5 p.m., he used to just pass time and used to wander around. There was no fixed place for him during that time. On the next day of the incident, PW-3 and his other friends i.e. the aforementioned Arjun Yadav and Rahul Mishra had gone to the police station. At that time he disclosed the incident to the police for the first time. Before visiting to the police station on the next morning, he had not met the police. They reached the hospital at 5.30 p.m.. PW-1 picked up the injured Nitesh and put him on the stretcher. PW-3 did not help him in keeping Nitesh on the stretcher. In the rickshaw, Nitesh was sitting between PW-1 and PW-3. He further deposed that his clothes were stained with blood but they were not seized by the police. He volunteered that there were not many blood stains on the clothes. He was in the hospital for five to ten minutes. During that period, he did not meet any police officer and he did not disclose the incident on his own. He denied the suggestion that some unknown person had brought the injured to the hospital. When he left the hospital, PW-1 was still in the

hospital. Shatabdi Hospital is at Kandivali (West). He reiterated that Nitesh was his best friend. But he did not know the native place of Nitesh. He admitted that Nitesh was having close friendship with one girl which developed into a love affair. He did not know the relationship between that girl and the Appellant or whether the said girl had severed her relations with the deceased Nitesh. He accepted that because of that girl, the relations between the Appellant and Nitesh were strained. The spot of incident was surrounded by thick population. There was continuous traffic on the road. Sai Baba Temple was near the spot. He deposed that right in front of the temple after crossing about 1 km there was a rickshaw stand at the turn. After the incident, PW-1 and PW-3 shifted Nitesh to the hospital by a rickshaw from that rickshaw stand. After the incident, the rickshaw was not called to the spot of incident. He volunteered that the injured was taken to auto-rickshaw stand. After the incident, PW-1 and PW-3 gave support to Nitesh and all of them went to the auto-rickshaw stand by walking. After PW-3 left the hospital, he returned to his house around 7.00 p.m.. He did not go to the house of the injured Nitesh to inform his family about the incident. His attention was drawn to

his police statement where he had not stated that after the incident he had shouted loudly and hence PW-1 Ajay rushed to the spot and that Ajay was at a distance of 30 to 40 meters. He could not assign any reason as to why this fact was not mentioned in his police statement. While describing the incident, he further deposed that when the Appellant and Nitesh were quarreling with each other before the incident, nobody interfered. Their conversation turned into a quarrel. He volunteered that there was no time to interfere. Both of them were abusing each other. PW-3 did not stop the Appellant even when the Appellant removed a knife from his back pocket. He denied the suggestion that he was not present at the spot at the time of incident.

9. PW-4 Gyanchand Yadav was a pancha for the spot panchnama. It was conducted on 17.7.2014 between 1.40 p.m. to 2.15 p.m. The panchnama is produced on record at Exhibit-39. The spot of incident was on the road in front of Amarnath Yadav Chawl. There was a Sai Baba Temple at a distance of 50 ft. from that spot.

In the cross-examination, he stated that he and the others had attended Nitesh's funeral.

10. PW-5 Sunil Kanojiya was a pancha for seizure of clothes

of the deceased. The panchnama is produced on record at Exhibit-43. That panchnama was conducted at the police station. The clothes of the deceased were produced by the police constable Samadhan Patil. The medical officer from the hospital had handed over those clothes to him.

11. PW-2 Anand Dubey was a pancha for recovery of knife at the instance of the Appellant. He deposed that on 20.7.2014, the police officers of Kurar police station asked him to attend the police station to act as a pancha. He went to the police station at around 2.30 p.m.. The police showed him the Appellant. PW-2 deposed that the Appellant was residing in the same area where he was residing. The Appellant made a statement that the knife used by him was concealed by him and that he was ready to show that place. The police recorded the disclosure statement. PW-2 put his signature on it. It is produced on record at Exhibit-32. The Appellant then took the police and the panchas to his room in Gokul Nagar. The door was opened by the Appellant's uncle Ashok Pandey. One more lady was present in the room. She was the Appellant's sister-in-law. PW-2 further deposed that the Appellant took out the knife from the loft. The police conducted the seizure

panchnama. It is produced on record at Exhibit-33. In the panchnama itself it is mentioned that the Appellant had pointed towards the loft above the bathroom. He climbed the kitchen platform. The panchas also climbed the platform. The Appellant took out a knife which was concealed in the place between a plastic drum and one gunny bag. It was having handle of 12 cm. The breadth was 2.5 cm and the blade was 16.2 cm long. The length of the entire knife was 28.2 cm. It was blood stained. The knife was seized and sealed. The panchnama got over at around 6.10 p.m..

In the cross-examination, he admitted that he was on cordial terms with the family of the deceased. He denied the suggestion that the police had told him that they had to recover weapon from the house of the Appellant as he had already disclosed the place to them. He stated that when they reached the Appellant's house, at that time, the Appellant was in handcuffs and a rope was held by the police. When they reached the Appellant's house it was not locked. The loft was at about 3 to 3.5 ft from the kitchen platform.

12. PW-9 Jayshankar Yadav was a pancha for seizure of the Appellant's clothes. On 17.7.2014 he was called to Kandivali police

station. The police showed him the Appellant. The Appellant was asked to change his clothes. The clothes which he was wearing at that time were seized under a panchnama. It is produced on record at Exhibit-53.

In the cross-examination, he denied the suggestion that the clothes were lying on the table and the same clothes were seized by the police.

The inquest panchnama was admitted by the defence. It is produced on record at Exhibit-40. It mentions that the deceased was around 20 years of age. There was an incision of seven and a half inches from the rib cage to his navel. On left side of that incision there was a three inch long injury. There was one more incised wound of the size 3 cm x 2 cm. It was a deep injury. There was a incised wound of the size 12 cm on the left arm.

13. The prosecution examined three medical officers in this case. PW-7 Dr. Prashant Lake has produced the medical papers of the deceased when he was admitted in the hospital. He deposed that he was serving as a medical officer in Shatabdi Hospital in Kandivali (West) since about seven months prior to his deposition. He deposed on the basis of the medical papers which were

available with his hospital. Those papers were prepared on the date of 16.7.2014. As per the papers, an unknown person had brought the injured Nitesh Yadav and that person had left the hospital. Dr.Gunjan and Dr.Kunal had treated that patient. During the treatment, they had conducted the abdominal operation. There was one more doctor but his name was not legible. The medical papers showed that there was severe injury to liver and there was loss of blood. During the operation, the patient had suffered a cardiac attack and therefore he was shifted to the ICU. He had died on the same day i.e. on 16.7.2014 at 9.20 p.m.. Both the doctors i.e. Dr.Gunjan and Dr.Kunal had left Shatabdi Hospital and, therefore, PW-7 had given evidence on the basis of the medical papers available in the hospital.

In the cross-examination, he admitted that he did not have personal knowledge about the patient and his treatment. He had not seen both those doctors and as per the history noted in the medical papers the injured was assaulted by one person by a sword. According to him, as per the medical papers, when Nitesh Yadav was taken to surgery at that time his relative was not present but the consent was obtained later on. The treatment was

given free of cost. As per the medical papers, there was no injury to the right ventricle or to the heart.

14. PW-8 Dr. Saumil Shah was working with Shatabdi Hospital from June, 2014 to August, 2014. On 16.7.2014, he was on duty. On that day, an emergency operation was conducted on Nitesh. PW-8 was called by other medical officer for surgery. He himself, Dr.Kunal and Dr.Gunjan jointly conducted the operation. The main operating surgeon was Dr. Kunal. After opening the abdomen, they found 3.5 liter blood inside the entire abdomen. There was 500 ml blood clots below the liver. There was laceration over left lobe of liver of the size 1 cm x 3 cm. There was one more laceration of the size 4 cm near callot's triangle. It was bleeding posterior to the callot's triangle. The stab injury to the abdomen was of the size 2 cm x 3 cm with omentum coming out. During the surgery, they sutured the laceration on the left lobe of liver and laceration near callot's triangle. However bleeding continued from posterior to the callot's region. At that stage, the patient suffered cardiac arrest on the operation table because of heavy bleeding. They tried their best to stop the bleeding. They gave chest compression but the patient died at 9.20 p.m. on the

same day. They had started the operation at around 6.00 p.m.. The true copies of the medical papers with an application at Exhibit-19 were shown to him. He had brought the original of those papers. The original papers were produced with the list at Exhibit-51. The first page of the set was the indoor patient's papers. The remaining papers were in the handwriting of Dr. Kunal and Dr. Gunjan. They included notings and treatment given to the patient. The deceased died due to cardiac arrest because of heavy bleeding on account of stab injury. At this stage it must be noted that Exhibit-19 was an application to produce the medical papers with the record of the case. However, neither the prosecution nor the accused asked the other side to admit or deny those papers under Section 294 of Cr.P.C.. They were not exhibited through any witness. The original papers were produced with the list at Exhibit-51.

PW-8 identified those papers and, therefore, the medical papers produced with list at Exhibit-51 are properly exhibited in this case.

In the cross-examination he stated that it was written in the medical papers that the patient was haemodynamically unstable. According to him, his opinion that the deceased died of

cardiac arrest was not a conclusive opinion but it was a probable cause of death. There was only one stab injury on the abdomen. The medical papers showed that the wound of the deceased was not opened. He stated that if the patient admitted in the hospital was not accompanied by a relative, then, in case of emergency, they used to obtain consent of the Chief Medical Officer on duty who takes a decision on dispensing with the expenses. When the deceased Nitesh was admitted, at the time of further treatment, his relative was not present. As per the medical papers of the deceased, the alleged history mentioned was assault by one person with sword and that the injured was brought by an unknown person. He further stated that there was no chance of survival as the loss of blood was heavy. Till his death, they could not detect the source of bleeding. The source of bleeding was the injury behind the liver but that injury could not be detected.

15. The medical papers produced with Exhibit-51 are important. They showed signatures of PW-1. Importantly there is a note regarding consent for surgery and anesthesia dated 16.7.2014. It specifically bears the signature of PW-1 above his name and he is described as the brother. Though on the backside of that consent,

there was requisition to AMO on duty seeking consent for urgent exploration as no relative was present. There is no further noting on that page but quite clearly there was the consent signed by PW-1 for emergency surgery and exploratory laparotomy for the stab injury over abdomen. The laceration on the liver was sutured using vicryl 2.0. Those papers also contained a carbon copy of the casualty No.20741. The copy mentions that the patient was self conscious. He was brought by an unknown person who fled after putting the patient in the casualty simply with history of assault by one person with sword approximately half an hour before he was brought to the hospital. The same information is written on the backside of the page at 5.20 p.m.. Significantly, none of the doctors examined by the prosecution identified the handwriting of the person who had taken those notes. Therefore, the source of information of these notes is not established.

16. PW-6 Dr. Lochan Patil had conducted the postmortem examination. He deposed that the dead body of the deceased Nitesh was sent for postmortem examination on 17.7.2014. On external examination he found the following injuries:

- i) Incised wound on anterior abdominal wall extending from

xiphisternum upto umbilicus, vertical slightly towards right side at lower end. The size was 22 cms x 2 cm x muscle deep.

- ii) Incised wound situated just above injury no.1, size 8 cm x 2 cm x muscle deep.
- iii) Incised stab wound on left upper abdomen in between above two injuries, size 3 cm x 2 cm x cavity deep. On dissection injury communicate with the incised wound of right ventricle of heart.
- iv) Incised wound on left arm outer side, size 12 cm x 1 cm x SC (sub cantalus) deep.

All injuries were with regular margin, reddish odematus. All injuries were found ante mortem.

On the internal examination, he found that the percardium was lacerated. The heart was normal in size and shape. There was incised stab wound over right ventricle, of the size 2 cm x 1 cm. communicate in left auricle and dissect the septum, margin reddish, odematus, blood and blood clots were seen.

According to him, the cause of death was death due to shock due to stab injury. He was shown the knife at Article-A in the Court. According to him, those injuries were possible by the said knife. He further deposed that the above injuries were sufficient in

the ordinary course of nature to cause death. The postmortem notes were produced on record at Exhibit-46.

From the above external injuries it can be seen that the injury Nos.3 & 4 were directly attributable to the assault and the first two injuries were related to the exploratory surgery.

In the cross-examination, he stated that the injury to the right ventricle was the main cause of death. The police had not shown him knife at Article A during the investigation. The external injury No.4 was simple in nature. He stated that the external injury Nos.1 and 2 were formed in surgery. He found the liver of the deceased intact.

17. PW-10 PSI Sajjan Landge was the first investigating officer. He was on duty when the information was received from Shatabdi Hospital that one person was stabbed with a *sura*. He went there. Nitesh was undergoing the treatment. He died during treatment at 9.20 p.m.. PW-10 recorded the statement of PW-1 and registered the FIR against the Appellant. The FIR is produced on record at Exhibit-29. As mentioned earlier, PW-9 prepared the inquest panchnama. He supervised the seizure panchnama of the clothes of the deceased. He supervised preparation of the spot

panchnama. He also supervised the panchnama of seizure of clothes of the Appellant. He had asked the Appellant's brother to bring the clothes for changing.

In the cross-examination, he stated that there was one constable at the hospital. He used to take entry in respect of the information received by him in the EPR register. PW-10 had not perused the entries in the EPR register. The information was received by the police station from the EPR constable. He did not collect the copy of the entry in the EPR register. He did not record the statement of the EPR Constable. The information in respect of death was received by the police station at 9.20 p.m. He confirmed the information after visiting the hospital. He did not recollect whether the names of the assailant and the deceased were mentioned in the EPR message received by the police. He did not recollect who was the constable who took the EPR entry and which constable took entry in the police station. He did not record the statements of those two constables. He did not remember the history given to the hospital but as per the history, the weapon of assault was a sword. The incident had taken place in a crowded place. He had not recorded the statement of the shop owner near

the spot. In the medical report, it was mentioned that the patient was brought by an unknown person. He had not seized the clothes of the witnesses.

18. PW-11 PI Sanjay Sawant was the next investigating officer. He supervised recovery of weapon panchnama. He had sent the articles for chemical analysis examination. After conclusion of the investigation, he had filed the charge-sheet. He produced the CA reports on record.

In the cross-examination, he accepted that during the course of the investigation he visited various places including the house of the Appellant. It was the same place from where the weapon was recovered. When the Appellant was arrested, he had given his residential address. The name of the informant, the deceased and the person who had admitted the deceased were not mentioned in the station diary. The extract of EPR register is not submitted with the charge-sheet. All the articles were kept in the police station before they were sent to FSL.

19. Besides this ocular evidence, the prosecution produced the CA reports on record which show that there was blood of B-Group on the clothes of the deceased and also on the weapon i.e.

knife. There was human blood on the jeans pant of the Appellant.

. This, in short, is the evidence led in the present case.

Submissions of Shri Talekar, learned counsel for the Appellant :

- i. The presence of PW-2 and PW-3 is not established by the prosecution beyond reasonable doubt. Both of them were interested witnesses. Their evidence is uncorroborated. There are major improvements in the evidence of PW-1 from his FIR. There was no reason for him to be present near the spot in Kailas's shop. It is a false story to show his presence at the spot.
- ii. In any case from where PW-1 was sitting, the spot of incident was not visible.
- iii. No independent witness from the locality was examined though it was a crowded locality.
- iv. Similarly there were major improvements from the police statement of PW-3 in his deposition particularly regarding as to how PW-1 came at the spot.
- v. There was inconsistency between the evidence of PW-1 and PW-3. According to PW-3, PW-1 came on the spot after

hearing the shouts. Whereas PW-1 claims to have seen the entire incident.

vi. The police have not seized clothes of PW-1 and PW-3 to establish that they were blood stained and it was blood of the deceased. This evidence could have established that both of them were present at the spot and had taken the deceased to the hospital.

vii. There was delay in lodging the FIR. The incident had taken place at around 4.30 p.m. and the FIR was lodged at 10.20 p.m.. The delay has remained unexplained.

viii. Shri Talekar heavily relied on the medical papers and in particular on the entry in the casualty department where it was mentioned that an unknown person had brought the injured to the hospital and that unknown person had fled away.

ix. Shri Talekar also relied on the noting that the assault was caused by a sword. He submitted that this entry is entirely inconsistent with the prosecution case. The police officer have admitted that there is Emergency Police Register in the hospital and it is maintained by the EPR Constable but in this

case neither the entry from that EPR register is proved nor the constable is examined.

- x. Shri Talekar further relied on the deposition that the medical officer tried to take permission from the Senior Medical Officer on duty for surgery because the relative of the injured Nitesh was not present.
- xi. The medical evidence is inconsistent. The doctor who had performed the surgery and the doctor who had produced the medical papers have not spoken a word about the injury to the right ventricle of the heart, whereas they have categorically stated that there was laceration on the liver which was sutured. But no such injury is shown on the liver in the postmortem notes.
- xii. Shri Talekar then criticized the recovery evidence regarding the weapon. He submitted that the police officers were knowing the address of the Appellant and had visited his house and it was surprising that they had not found the weapon; but at the instance of the Appellant the weapon was found from the same house. Therefore, there is doubt about the recovery of the weapon.

xiii. Shri Talekar further submitted that looking at the nature of injuries, it was not possible that the deceased could have walked at a distance of 1 km to sit in the rickshaw for going to the hospital.

xiv. Shri Talekar, in the alternative, submitted that it cannot be an offence punishable under Section 302 of IPC. The incident would fall within the Exception 4 to Section 300 of IPC. There was a sudden quarrel and only one blow was inflicted on the deceased. There was no intention to commit murder of the deceased and, therefore, at the highest it could be an offence punishable under Section 304 Part II of IPC.

Submissions of Ms. Ganapathy, the learned Additional PP. for the Respondent No.1 – State and Mr. Gaurav Devdhekar, the learned counsel for the Respondent No.2 :

20. On the other hand, the learned APP and the learned counsel for the Respondent No.2 opposed these submissions. According to them, the evidence of both the eye witnesses is consistent. Since they had given clear and consistent evidence, there was no necessity to examine any other witness. They submitted that though these witnesses were closely associated with

the deceased, that by itself does not mean that they were not describing the incident truthfully.

21. They submitted that there was no delay in registering the FIR. The deceased had died at 9.20 p.m. and the FIR was lodged at 10.20 p.m.. The recovery evidence is not doubtful. Though the police were knowing the address of the Appellant, the evidence does not show that they had visited the house of the Appellant before the Appellant had made any disclosure regarding concealment of the weapon.

22. They submitted that the ocular evidence is strong and consistent and, therefore, the prosecution has proved its case beyond reasonable doubt.

Reasons and conclusions :

23. We have considered these submissions. We have carefully perused the evidence of PW-1 and PW-3 who are the eye witnesses in this case. PW-1 was brother of the deceased. He had came to help his friend and his father in their shop where they were selling coconut-water. The spot of incident was very close to that shop. The shop was near Sai Baba temple and the spot of incident was also close from the temple. He heard the commotion

and rushed to the spot and at that time he saw the Appellant actually inflicting blow on the deceased. He had described the incident in detail. There is hardly any material brought out in the cross-examination which would discredit his deposition.

24. PW-3 Pradip Yadav is also an important witness. He was the friend of the deceased. The deceased had come to meet him and the other friends. At the spot of incident, they were talking with each other. They were present together since after about 12.30 p.m. upto the time when the incident took place. There is nothing brought out on record which would make his presence at the spot doubtful. He had described the incident in detail. He had given the history. He described that there was exchange of words and how the Appellant took out a knife and gave a blow on the abdomen of the deceased.

25. The ocular evidence of PW-1 and PW-3 is supported by the medical evidence showing that there was a stab wound on the abdomen and also on the left arm, which is consistent with the deposition of PW-1 and PW-3. Both of them have deposed that they helped the injured to walk upto the rickshaw and then he was brought to the hospital.

26. Though it was tried to be submitted by Shri Talekar that the rickshaw stand was at about 1 km away from the spot of incident and that it was not possible for the deceased to have walked that much distance; the fact remains that the deceased was taken to Shatabdi Hospital and there is nothing to doubt that he was brought in a rickshaw. PW-1 and PW-3 have deposed that both of them have helped the deceased to walk upto the rickshaw. PW-1, in particular, has stated that their walk was only for two to three minutes. Therefore, there is no substance in the submission that the injured and both these witnesses had to walk upto 1 km before they could sit in an rickshaw.

27. Much emphasis is laid by Shri Talekar on the entry made in the casualty department of the hospital. First of all that entry is not properly proved. Nobody has identified the handwriting on that entry. None of the doctors from the hospital has explained as to who had taken down that entry. The source of that information is totally absent. In any case, PW-1 has explained that when they reached the hospital he came out to make a phone call to his elder brother Umesh. Within seven to ten minutes, some ward-boy had taken Nitesh in the casualty ward of the hospital.

The formalities of filling up the forms were completed. PW-1 consented for the operation and when they were arranging for blood the doctor informed him that Nitesh had expired. This evidence shows that while he was completing the paper work, the ward-boy had taken the deceased in the casualty ward. Therefore, the exact source of information noted in the casualty papers is not established and is vague. It is not possible to give importance to this vague information which is not even proved properly, to discard the clear evidence of the two eye witnesses. The presence of PW-1 in the hospital is established through his signature on the consent form.

28. Though Shri Talekar has tried to contend that this particular explanation given by PW-1 in his deposition was not mentioned in the FIR, there was no occasion for PW-1 to have mentioned this fact in the FIR because the purpose of lodging the FIR was informing the police station about the incident and it was not necessary to give further details regarding what had happened in the casualty department.

29. As far as the discrepancy between the medical evidence is concerned, we do not find that it goes to the root of the matter.

The doctor who had performed the surgery had admitted that they could not locate the exact source of heavy bleeding. By the time they were in the process of stitching the liver and stopping the bleeding the patient suffered cardiac arrest and died. Their first effort was save the life of the deceased. Whereas, the medical officer who had conducted the postmortem examination had sufficient time to examine in detail as to what could have been the cause of death. At the time of postmortem examination, he had noticed the injury to he right ventricle. Therefore, we do not find any infirmity in the medical evidence led by the prosecution.

30. PW-6 Dr. Lochan Patil had clearly opined regarding the cause of death as death due to shock due to stab injury. He also stated that the injuries were sufficient in the ordinary course of nature to cause death.

31. In any case, there is consistency between the ocular evidence and the medical evidence that there was deep stab wound over the abdomen of the deceased. Thus, to that extent the ocular evidence and the medical evidence corroborate each other.

32. We do not find fault with the recovery of the knife. The evidence shows that the knife was concealed on the loft between

the narrow space between a gunny bag and the plastic drum. Since it was concealed, it was not easily visible. Only the Appellant knew where it was concealed and at his instance it was recovered. The CA reports show that there was blood of “B-Group” which was also on the clothes of the deceased. Therefore, this is another corroborating piece of evidence.

33. Shri Talekar tried to submit that it would not be an offence punishable under Section 302 of IPC, but, at the highest could be an offence punishable under Section 304 Part II of IPC. He submitted that the incident was a result of sudden quarrel. We are unable to agree with this submission. The deceased was standing with his friend at the spot. The Appellant had come to that spot. The Appellant had approached the deceased and had picked up a quarrel. Importantly, he had brought a big knife with him. It was obviously with an intention to stab the deceased. The nature of the injury also shows that it was a forceful stab wound which had penetrated from the abdomen upto the heart. So it was a quite a deep injury caused because of the forceful blow. The length of the weapon was also long. All this shows that there was premeditation as well as requisite intention and knowledge. Therefore, the

offence does not fall within any of the exceptions to Section 300 of IPC. All the ingredients of the offence of murder, as envisaged under Section 300 of IPC are made out.

34. As a result of the above discussion, we do not find any reason to interfere with the impugned judgment and order. Accordingly the Appeal is dismissed. With dismissal of the Appeal, the connected Interim Application is also disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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