

MHTH270024542023



Presented on : 06.05.2016

Registered on : 06.05.2016

Decided on : 28.07.2025

Duration : 09 Years
02 Months
22 Days.

Exh. 130

FORM NO. XXXII

Part 'A'

(Title Page of Judgment)

[Para 44(i) of Chapter VI of Criminal Manual]

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BELAPUR

Present :- Parag A. Sane, Addl. Sessions Judge, Belapur.

Sessions Case No.

09/2023

**Old Thane Sessions
Case No.167/2016**

FIR/Crime No.

I-380/2015

Police Station :

Rabale Police Station

Complainant/
Prosecution

State of Maharashtra, through Rabale
Police Station, Navi Mumbai.

Represented by -
Accused

Ld. A.P.P. Shri. Yogendra Patil.

Abbas Lalmohammad Nadaf

Age- 31 years,

R/at-Room no.14, Dnyanraj Building,
near Gunali Talav, Chinch Ali, Ghansoligaon,
Navi Mumbai.

Represented by

Ld. Adv.Smt. Anuradha Paradeshi for accused

Part 'B'
[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	09.11.2015
Date of FIR	10.11.2015
Date of Charge-sheet	03.02.2016
Date of framing of Charges	20.03.2017
Date of commencement of Evidence	20.06.2019
Date of which judgment is reserved	-----
Date of the Judgment	28.07.2025
Date of Sentencing the order, if any	As per final order

Accused Details

Sr. No.	Name of accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428
1	Abbas Lalmohammad Nadaf	10.11.2015	---	u/s. 302 & 201 of IPC	Convicted	As per final order	From 10.11.2015 till today

Part 'C'
[Para 44(ii) of Chapter VI of Criminal Manual]

List of prosecution/Defence/Court witnesses.

A Prosecution :

Rank	Name	Nature of Evidence.
P.W.1	Shivram Maruti Ranpise (Exh.20)	Witness on inquest panchanama
P.W.2	Ajay Balu Patil (Exh.28)	Witness
P.W.3	Rambharose Sonilal Pandey (Exh.30)	Witness
P.W.4	Maruti Vitthal Surawase (Exh.33)	Driver
P.W.5	Dr. Bhushan Vilasrao Jain (Exh.36)	Medical officer who has done autopsy a
P.W.6	Ajay Mishra (Exh.40)	Panch witness
P.W.7	Purnachandra Behera (Exh.56)	Witness
P.W.8	Dr.Vijayalaxmi Sakolkar (Exh.57)	Medical Officer
P.W.9	Arun Vilas Deore (Exh.59)	Photographer
P.W.10	Rani Namdeo Vhotkar (Exh.67)	Mother of deceased
P.W.11	Dr. Sushant Andhale (Exh.70)	Medical Officer
P.W.12	Vijay Eknath Shinde (Exh.77)	Witness
P.W.13	Raju Dada Adagale (Exh.86)	Police officer
P.W.14	Vivekanand Sakharam Raut (Exh.118)	Investigating Officer
P.W.15	Dharmendra Gopalprasad Choube (Exh. 119)	First informant & witness

B. Defence witnesses, if any :

Rank	Name	Nature of Evidence.
	NIL	--

C. Court Witnesses, if any :

Rank	Name	Nature of Evidence.
	NIL	--

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS.**A. Prosecution :**

Sr. No.	Exhibit	Description
1	Exh.21, PW1	Inquest Panchanama
2	Exh.34, 35 PW4	Seizure Panchanama
3	Exh.38, PW5	Cause of death cum death certificate
4	Exh.41 PW 6	Seizure panchanama of clothes of deceased
5	Exh.42 PW6	Spot Panchanama
6	Exh.43 to 47 PW6	Envelopes of samples
7	Exh.58 PW8	Carbon copy of Chemical Analysis Form-II
8	Exh.60, 61 PW9	Photographs of spot and of dead body
9	Exh.71 PW 11	Medical Certificate of Nitin
10	Exh.72 PW11	Medical Certificate of Rubina
11	Exh.73, 74 PW11	OPD papers & Bills
12	Exh.78 PW12	Letter of Nodal Officer
13	Exh.79 PW12	CDR and certificate with copy of customer
14	Exh.80 PW 12	Certificate u/s 65(b) of Evidence Act
15	Exh.81 PW12	CDR details
16	Exh.82,83 PW12	Application Form & election card of subscriber

17	Exh.87 PW13	Arrest Form
18	Exh. 88, 89, 90, 91 PW13	Muddemal Receipts
19	Exh.92, 93, 94, 95 PW13	Letters to FSL & its acknowledgments
20	Exh.96, 97 PW13	Letter to Medical Officer & its acknowledgments
21	Exh.98 PW 13	Letter to DCP about CDR & SDR
22	Exh.99 & 100 PW13	Notices to Nodal Officer to provide CDR
23	Exh.101 PW13	Letter to NMMC for medical papers of deceased
24	Exh.102, 103 to 116 PW13	CA report & labels on all the envelops
25	Exh.122 PW14	Muddemal receipt.
26	Exh.123 PW 14	Spot panchanama
27	Exh.124 PW14	Muddemal Receipt
28	Exh.120, 121 PW15	Complaint, FIR
29	Exh.129	C.A. report

B. Defence :

Sr. No.	Exhibit	Description
	Nil	--

C. Court Exhibits :

Sr. No.	Exhibit	Description
1.	Exh.09	Charge.
2	Exh.10	Plea of Accused
3	Exh.125	Statement of accused u/s.313 of Cr.P.C.

D. Material Objects:

Sr. No.	Material Object number	Description
1	P-1	Sky blue coloured torn frock
2	P-2	One gray coloured shirt
3	P-3	Knife
4	P-4	Black coloured four buttons of a shirt.
5	P-5	Blood stained short pant of accused.
6	P-6 to P-11	One blue jeans pant and shirt having lable of top gun, one black full shirt smerd with blood, one black belt, one pair of black sandles, brown underwear.
7	P-12	One gown of parrot green colour.
8	P-13	One petticoat of parrot green colour.
9	Z-1	Seven photographs

J U D G M E N T**(Delivered on :- 28th day of July, 2025)****01]** Accused is charge-sheeted for the offence punishable under

Section 302 and 201 of the Indian Penal Code.

02] Case of the Prosecution, in brief, is as under :

Crime is registered on the basis of report filed by first informant Dharmendrakumar Gopalprasad Choube on 10.11.2015, whereby it is contended that, he is in occupation as driver. He is residing in room no.13 in Dhanraj Niwas building, Chinch Ali, behind rationing shop Ghansoli gaon, Navi Mumbai. He is residing with his family members. He is working in transport company. In the adjacent room no.14, where he is residing, one person along with his wife and one daughter of 8 years old are residing there since 20 to 22 days. On 09.11.2015, wife of first informant was not feeling well hence, he did not go to his work. He went to sleep at about 11.30 pm. At 11.45 pm he heard the noise from room no.14 that somebody is knocking the door of that room, hence, he rushed to that room and heard that, small girl was crying. Moreover, he found that neighbours named Rambharos Pandey, Thakur, Sinha and other persons had gathered there. Door of room no.14 was closed from inside. As they found that, something was happening wrong in that room and girl was crying hence, all of them knocked the door. Then the person who was present in that room opened door. He was holding knife in his right hand and there was a blood on that knife. Thereafter, they entered the said room and found that one unknown person was lying on floor in blood. The wife and daughter of the person who opened the door were crying. Moreover, the person who opened the door was abusing the person who was lying on the floor and was also assaulting him by kick blows and his wife was trying to stop him.

03] Thereafter, Rambharos Pandey called owner of that room namely Balu Patil. They saw that the person who was lying on floor was injured and blood was oozing and the person who was residing in that room went inside another room. In order to take injured person to hospital, landlord called rickshaw and all of them took that person in auto rickshaw and was taken to NMMC hospital Vashi. The first informant also visited Vashi hospital, but doctor told that the said person, who was injured, was dead.

04] After sometime, they visited along with landlord to room no.14 and the lady who was residing in that room told the name of the deceased as Nitin Vatkar and the husband of that lady is Abbas Nadaf. The police saw the dead body of Nitin Vatkar who was having several injuries of stabbing on his body. He was around 32 years old. Thus, as per the first informant, Abbas Nadaf committed murder of said person and on the strength of this report, crime came to be registered.

05] During the course of investigation, investigating officer prepared inquest panchanama, spot panchanama, seized clothes, weapon knife, recorded the statement of witness and also seized clothes of the accused. Accused was also sustaining injuries and his clothes were also having blood stains. The investigating officer sent sample for chemical analysis and arrested the accused. During the course of investigation, it is transpired that accused Abbas Nadaf committed murder of deceased and then on completing the investigation, the Investigating Officer submitted charge-sheet against accused in the Court of JMFC.

06] The offence is exclusively triable by Court of Sessions, hence, in view of section 209 of Cr.P.C., the Ld. JMFC, committed case to this Court.

07] On hearing both the sides, my learned predecessor framed charge at Exh.09. Contents of the charge were read over and explained to the accused in vernacular to which accused pleaded not guilty.

08] Prosecution has examined witnesses.

09] Statement of accused under Section 313 of Cr.P.C. is recorded. As per his contention and his defence, he has not committed any offence and he is falsely involved in this case.

10] In defence, the accused has not led any evidence.

11] Considering the case of prosecution, evidence led by the prosecution, theme of cross-examination, answers given by accused while his statement under Section 313 of Cr.P.C. and considering the argument canvassed by Ld. APP Yogendra Patil and Ld. Counsel Smt. Paradeshi for the accused following points arise for my determination to which I have recorded my findings before them for the reasons discussed there below. :

Sr. No.	POINTS	FINDING
1	Whether the prosecution proves that on 09.11.2015 at about 23.45 hours at R.No.14, Dnyanraj Building, Near Gunali Talav, Chinch Ali, Ghansoligaon, Navi Mumbai, accused committed murder intentionally or	

	knowingly causing the death of Nitin Vatkari and thereby an offence punishable u/s. 302 of I.P.C.?	... Proved
2	Whether the prosecution proves that accused on the above mentioned date, time and place, knowing that certain offence i.e. murder is punishable with death or imprisonment for life having been committed, did cause certain evidence of said offence to disappear, to wipe out blood over the ground of deceased Nitin Vatkari with the intention of screening himself from legal punishment and thereby accused committed an offence punishable under Section 201 of IPC ?	... Not proved
3	What order?	As per final order.

: R E A S O N S :

AS TO POINTS NO. 1 TO 3 :-

12] It is the case of the prosecution that, the wife of the accused is having illicit relation with the deceased and on that count on the day of the incident, quarrel took place in room no.14, Dnyanraj building, at Ghansoligaon, Navi Mumbai and the accused committed murder of the deceased.

13] In order to discuss the entire evidence of the prosecution, first, it requires to be discussed the death of deceased Nitin Namdev Vatkari.

According to the prosecution, due to the injuries sustained by deceased Nitin, he died. Thus, it has to be pointed out whether the death of Nitin is homicidal death or otherwise.

14] Prosecution has examined **PW.5 Dr. Bhushan Vilasrao Jain (Exh.36)**, who is the medical Officer working in NMMC Hospital, Vashi, who has conducted autopsy of deceased Nitin. It is seen from the evidence of witness that he is a qualified MBBS holding diploma in forensic Medicine and toxicology having vast experience of 18,000/- post mortems.

15] This witness has stated that, on 10.11.2015 when he was on duty, he received inquest panchanama from Rabale police station along with dead body of Nitin Namdev Vatkar, male 32 years at 01.00 pm. He conducted post-mortem along with Dr. Ganvir between 01.15 to 02.15 pm. The witness has further opined that, during the course of autopsy, he found number of injuries on the deceased and the injuries were abrasion and the important injuries as such stab injury on the right side of the chest. There was also cut fracture. There were also stab injuries on the part of abdomen and there were in all 8 injuries on the body of the deceased which are mentioned in column 17 of the post mortem report. The witness has further stated that so far as internal injuries which are mentioned in column 19, there were in all 5 injuries and all injuries were co-related to the injuries mentioned in column 17 of PM report which is at Exh.37.

16] The witness has further stated that, on doing the post mortem obtaining samples he first came to the conclusion that all injuries are anti mortem in nature and sufficient to cause death in normal course of nature.

He further opined that cause of death is hemorrhage and shock due to multiple stab injuries. He has also issued provisional cause of death and further he has stated that, the injuries are possible by the weapon knife P3 in this case. The witness is duly cross-examined whereby he has stated that when he received the dead body, it was naked in condition and no time of death is mentioned in post-mortem report. He stated that, injury no.01 and 02 to be the old injuries sustained prior to 7 to 8 days. And injury no.3 and 4 are possible by only pointed object. It is required to be noted that, injury no.1 and 2 are particularly seen to be abrasion and injury no.2 is on the neck which is 7 cm. The witness has further stated that he cannot state whether all injuries can be caused by an assault committed by more than two persons.

17] Considering the evidence of this witness here, it is only to be ascertained regarding the death of the deceased. Rest of the factors as regarding the charge of murder those are discussed in coming discussion.

18] In this regard, it is to be noted that from the evidence of this witness, nothing has come from his cross-examination in order to discard or disbelieve his evidence. Thus, by virtue of evidence of this witness it has been successfully established that the death of deceased Nitin is a death resulted due to the injuries on his person and more particularly stab injuries. Thus, there is a reason to believe that the death of Nitin is a homicidal death.

19] Now, before discussing the evidence of the prosecution, it is necessary to consider arguments canvassed by both the sides.

20] Ld. APP Yogendra Patil while canvassing the argument submitted that, PW 15 first informant has personally seen the accused holding knife in his hand when door of room no.14 was opened by the accused. He submitted that he has witnessed that the accused has given kick blows to the deceased who was lying on the floor. The first informant was also accompanied with other witnesses at the relevant time and he further stated that, thus the evidence of this witness is well corroborated. Motive of the accused is established and he has intentionally committed murder of the deceased. He submitted that there is no inconsistency in the evidence of the prosecution witnesses, accordingly, it is submitted that, the prosecution has successfully proved beyond the reasonable doubt that the accused has committed murder of the deceased, hence, he submitted that charge is proved.

21] During the course of argument, Id. Counsel for the accused Smt. Paradeshi vehemently submitted that spot panchanama is not proved by the prosecution. She also submitted that the owner of the said building is not examined by the prosecution. She submitted that, here is inconsistency in the evidence of prosecution witnesses and furthermore, she submitted that there is no cogent evidence that the accused has committed murder. She also submitted that, the case is based on the circumstantial evidence and the chain is not established. It is also submitted that, the weapon is not established. Wife of he accused and daughter who could be the best witnesses are not examined by the prosecution. Accordingly, she submitted that, the charge is not proved beyond reasonable doubt. She has also submitted several aspects regarding the

evidence are discussed while appreciating the evidence.

22] During the course of arguments, Id. APP and Id. Counsel for the accused submitted case laws which are discussed at the relevant places.

23] In view of the arguments canvassed by both the sides now, it is necessary to see evidence led by the prosecution.

24] In this case, the police machinery was pressed into motion on the basis of report filed by **PW 15 Dharmendra Gopalprasad Choube at Exh.119**. This witnesses, in his evidence, stated that the incident occurred on 09.11.2015. He is residing in a building whereby room no.14 was adjacent room and one family was residing in room no.14 and that they were, husband, wife and daughter. On 09.11.2015, at 11.45 p.m, he went to sleep and at that point he heard cries of small child from outside of their house. Thereafter, he came outside and saw that crowd had gathered in front of room no.14 and the neighbours namely Pandey, Thakur, Singh were present. After few minutes, door of room no.14 was opened, they all saw one person was lying in the house and other person was holding a blood-stained knife and he was standing. Wife and daughter of the said person who was holding a knife were crying. The person who was holding a knife was abusing the person who was lying on the ground and was also kicking him. The wife was trying to pacify him.

25] One neighbour called landlord Balu Patil and informed about the incident. The person who was holding knife went inside his house and hide himself. The person who was lying on the ground in pool of blood

had sustained bleeding injuries. Injured was moved to the hospital by himself, the landlord and the neighbours. Doctor declared him brought dead. Subsequently, police and wife of accused arrived in hospital. The neighbour subsequently told the name of the person holding a knife in his hand as Abbas. Police made inquiry with him and he narrated the incident and accordingly, crime came to be registered and the said FIR is at Exh.120, printed FIR is at Exh.121. He further stated that, the knife article P3 is the same which was held by the accused. He further identified the accused and stated that he was the person who was holding blood-stained knife and kicked the person lying on the ground.

26] The witness is duly cross-examined and it is coming on record that he is residing in the same building named Dhanraj Niwas, six months prior to the incident. There were also tenants in the said building, he did not furnish any document as of residence proof. He admitted that, he was not called for identification parade. When he visited hospital, he was accompanied with other 3-4 persons. Balu Patil also visited hospital. His clothes were not seized by the police. He does not remember for how much time he was in hospital and he denied that he did not lodge the report. In his further cross-examination, he has submitted that P3 knife is easily available in market and there is no specific mark on article. Rest of the suggestions which are given on the side of the accused are denied by this witness.

27] The Id. Counsel for the accused while canvassing the argument submitted that the present witness has admitted that, he has not been called for the identification parade and that's why the evidence of this witness is to be discarded. In this regard it is to be noted that, this witness has

particularly stated that, at 11.55 p.m, when he went to the door of room no.14, at that time, after opening the door the present accused was standing there holding knife in his hand which was having blood stains and deceased Nitin was lying on floor in blood pool and the accused was abusing him and was also giving kick blows to Nitin. Thus, the fact requires to be noted that, the present witness had the occasion to witness the accused at the relevant time. From his entire cross-examination, there is nothing coming on record as such to disbelieve the said fact that, he witnessed the accused at the relevant time, so it is not the fact that, this witness has firstly identified the accused in Court. Thus, in such contingencies, the evidence of this witness particularly shows that the incident occurred in room no.14 and that too, the present witness is residing in the same building in the adjacent room of room no.14.

28] Now, traveling further, the prosecution has examined **PW7 Punchandra Bhimsen Behera at Exh.56**. It is coming from the evidence of witness that, he is residing in Dnyanraj building in room no.12 on first floor. Room no.14 is opposite to his room and in that room one couple was residing with a baby girl and they had started residing there just 15 to 20 days prior to incident. The witness has further stated that on 09.11.2015 at 11.55 pm, he heard crying of a small girl, hence, he opened the door and came outside in passage, thereafter they knocked door of room no.14 and saw that one person was holding knife in his hand and another person was lying on the ground who was having bleeding injuries on his chest. The person who was holding knife threw the knife and sat inside the room. His wife and child also went inside the room. One occupant Mr. Pandey called

the landlord. Thereafter, the injured was taken to hospital and on next day morning he came to know that, the injured died. He stated that, he came to know name of deceased as Nitin Vatkar. Police made inquiry with him. The witness has stated that he is able to identify the accused as he was seen on the first day of incident. He stated that almost the accused is the same person whom he had seen on the night of the incident inside the room.

29] In his cross-examination, he stated that, he is unable to read and write Marathi but he can understand orally. His statement was recorded after one or two days. After the incident, police regularly visited the spot of incident. His statement is recorded on 11.11.2015. According to him, there might be around 25 to 40 rooms in the said building and there are tenants in it. He further admitted that crowd had gathered outside the room after the incident and he denied that he knocked door of room no.15. He admitted that he has not given any description of the person to whom he saw with knife in his hand inside room no.15. In this regard, it is argued on the side of accused that, this person is confused regarding room number, it is important to note that, the witness has particularly denied that he knocked the door of room no.15 and so this complex question does not play any material aspect. He further stated that when he visited the hospital, he was shown the accused. He admitted that, he had seen the accused for the first time on the night of the incident. He admitted that he only had glimpsed of a person holding a knife and therefore, he is not sure whether the accused is same. No doubt this witness has given this admission but that does not mean that his entire evidence has to be discarded. It is to be noted that, PW 15 Mr. Choube who is the first informant has categorically

stated in his evidence that, he has seen he accused in room no.14 holding the knife in his hand with blood stains and that too the accused was kicking injured Nitin who was lying in a blood pool. The evidence of this witness is considered, from his entire evidence there is nothing to disbelieve that on the 09.11.2015, he was present at 11.45 pm when they knocked the door of room no.14 and they saw that one person was holding knife in his hand and deceased Nitin was lying on floor in a blood pool. So, the evidence of this witness as regards to the situation of the spot of incident is well corroborated to the evidence of PW15 Mr. Choube.

30] Prosecution has examined **PW3 Rambharos Sonilal Pandey at Exh.30**. As per this witness, he is residing in Tukoba building in room no.15 on rental basis along with K.K. Singh and G.M. Thakur. There are 4 rooms on each either side. Son of landlord was residing in the adjacent building. In room no.14 a new tenant was residing, there were three members i.e. husband, wife and one daughter.

31] On 09.11.2015, when he went to sleep at about 12 a.m, he heard a noise of crying of baby, so he came outside. Door of room no.14 was opened and when he peeped inside, he saw one person was having a knife in his hand and was holding another person. One person was lying on ground. He cannot say who was not knowing that person, because he was unknown. He saw the knife in the hand of the husband. He further stated that, thereafter they informed son of the landlord, injured was taken to hospital by landlord. Police made inquiry with him. He is unable to identify the knife which he saw on the night of the incident. He has further

stated that, he has seen a knife in a spur of moment and therefore, he could not identify. He further stated that, later on he came to know that, injured person died. **In his further evidence, he has identified the accused and stated that he is the said person who was holding knife in room no.14 on the alleged day of incident.**

32] The witness in his cross-examination, has particularly stated that, he is not acquainted with Marathi language, police used to visit spot of incident after the incident. His duty hours is between 7.30 a.m to 7.30 p.m. There are in all 100 rooms in 4 building and there are tenants. He admitted that, he is not able to see who were the tenants on the alleged day in room no.14. He has denied that when there was a crowd outside room no.14, he has stated that the husband was holding knife. He admitted that the word 'husband' is not mentioned in his statement. He also made omission, that he saw that the door of room was opened. He has further stated that, police did not call to identify the accused neither he was called to identify the deceased. He admitted that he did not know who were the visitors in room no.14, 16 and other. He admitted that, he has never seen the accused prior to the day of incident. He further stated that on the next day accused was shown, but he denied that he has not seen the accused in room no.14 holding a knife in his hand. He has denied that, at the instance of police he is identifying the accused.

33] Thus, considering the evidence of this witness, it is coming on record that, he is residing in the said building where the incident took place. On the day of incident and about 12.00 a.m, when he heard the noise, he went near room no.14 and saw the accused who was holding a knife in his

hand and one person was lying on the floor, sustained injury. No doubt this witness has not identified the knife, but it is important to note that he has identified the accused who was holding the knife in room no.14. Thus, considering the entire evidence of this witness, there is a reason to believe that the accused was residing in the said room and moreover, it is seen that the accused was present at relevant time holding knife in his hand and one person was lying on the floor who was sustaining injuries. Thus, the evidence of his witness is well corroborated to the evidence of the above witness which is discussed at length.

34] Now, turning to the evidence of **PW2 Ajay Balu Patil at Exh. 28.** The witness is stating that he is residing in Tukoba Niwas with his family. They are having 5 to 6 rooms in building. 5 rooms are given on rental basis. Dnyanraj Niwas is owned by his father and there are 5-6 rooms. That is given on the rental basis. Both the buildings are adjacent to each other. In Dnyanraj Niwas, there is one room no.14 and he does not know the name of the tenant who are residing as a tenant in the said room in the year 2015. On 09.11.2015, he was at Tukoba Niwas. One Pandey came there knocked his door informed him that quarrel took place in room no.14 in Dhanraj Niwas. Therefore, he immediately rushed there by informing his father. When he visited, he found that, one injured person was removed from the room by neighbours. That injured was taken to the hospital by him. There was no auto rickshaw available, so police was informed and they came there took injured in the hospital. He further stated that thereafter they came to home. Then constable took his mobile number and early in the morning his father and he himself were called to

police station. He does not remember whether police inquired with him. He further stated that, later on he came to know that, the injured died due to the injuries. The police were regularly visiting the said building. He has stated that the said person was murdered in that room. He is not aware whether accused Abbas has murdered that person. The witness is cross-examined by the prosecution as he resiled from his statement whereby he admitted that, Choube, Pandey, Thakur, Singha all are the tenants in Dnyanraj Niwas building. He is not aware whether the accused was tenant in room no.14 of Dnyanraj Niwas building. He admitted that, soon after the incident, tenant Pandey and others visited his house. He denied that, Pandey told him that, accused who is tenant in room no.14 has stabbed one person by knife. He has denied the suggestion given by Ld. APP. It is during cross-examination, on the side of accused, he admitted that he will not be able to identify the accused. He is not aware who has committed murder of deceased. He admitted that he came to know from police that the accused who is tenant in Dnyanraj building committed murder of deceased in room no.14, he admitted that transactions of Dhanaraj building were looked and managed by his father.

35] Considering the evidence of this witness, it is submitted that, this witness is not supporting the prosecution case. His father is the landlord who is looking after the affairs of the building as regards the tenant. It is also submitted that the present witness has not identified the accused and thus it is submitted that, the evidence of this witness is to be discarded.

36] Considering the evidence of this witness, it is to be noted that when the witness turned hostile, that does not mean that his entire evidence has to be discarded. In such contingencies, relevant evidence can be taken into consideration and considering this aspect there is nothing to disbelieve that the said incident occurred in room no.14 of the building Dnyanraj niwas. It is important to note that considering the evidence of this witness it is seen that, after the incident took place, the tenant informed the present witness and thereafter, he visited the said place. Furthermore, it is seen from his evidence that, the injured was taken to the hospital and later, he and his father was called to police station. So, all these material aspects particularly show that, there is building Dnyanraj niwas, his father is the owner of he said building and the incident took place in room no.14. No doubt but this witness has not seen the accused in room no.14 but ultimately, he is not the person who can say that the accused has committed murder. Thus, the relevant portion of evidence of this witness is well corroborated to the evidence of PW15 Choube coupled with evidence PW7 Behera and PW3 Rambharos Pandey. So there is consistency in the evidence of all these 3 - 4 witnesses and there is reason to believe that, the incident took place in room no.14 at Dnyanraj Niwas.

37] It is important to note that, father of PW2 Ajay who is the owner of said building is not examined by the prosecution. The Id. Counsel for accused submitted that for this reason the evidence has to be discarded. In this aspect, it is to be noted that, it is nowhere coming on record that the father of PW2 i.e. Balu Patil has witnessed the incident. No doubt, being the landlord, he would be in a position to tell who is the tenant in the

particular room, however non-examination of Balu Patil, I am of view that it will not destroy the entire case of the prosecution in light of evidence of PW15 Choube, PW7 Behara, PW3 Pandey as their evidence is well corroborated to each other.

38] It is significant to note that from the evidence of aforesaid witnesses what is coming on record is that, when PW15 knocked door of room no.15, they saw the accused holding knife in his hand and one person was lying on floor in blood pool. So, this aspect of PW15 Mr. Choube is well corroborated by other witnesses discussed above. Thus, it is crystal clear that, they witnessed the accused in room no.14 in side along with his wife and daughter and the injured was lying on the floor. This aspect plays an important role in analyzing the evidence because the accused is found in the room and not in a open place. So, this plays a significant and crucial aspect as regards the last seen together theory.

39] It is important to note that when these witnesses have identified the accused in said room no.14 having a knife and the person who was lying on the floor was injured and the accused gave kick blow to the person lying on floor, so in such contingencies, it is for the accused to give the explanation for the same. It is so because from the evidences of PW15 Choube and other witnesses, it is crystal clear that when they knocked the door of room no.14, the door was opened by the accused. So, this fact is particularly established that in fact the door of room no. 14 was closed and on knocking the door by PW15 Mr. Choubey, accused opened the door. Thus, in such contingencies, the facts which are inside room no.14 are within the personal knowledge of the accused. Accordingly, he

has to explain in what contingencies and circumstances deceased Nitin was found injured and that too he was having stab injuries on his person and blood was oozing. Moreover, from the evidence of PW15 Choube and the evidence of the other witnesses discussed above, there is a reason to believe that the accused was present at the relevant time in room no.14 holding knife in his hand and Nitin was lying on the floor and the accused also gave kick blows to the Nitin.

40] It is the case of the prosecution that the deceased Nitin was having illicit relations with the wife of the accused and resulting the quarrel on the same ground, he accused has committed murder of deceased Nitin. So it is submitted on the aspect of motive.

41] In this regard, now it is necessary to see the other evidence to that extent. In this regard, the prosecution has examined **PW10 Smt. Rani Vatkar at Exh.67.** The said witness, in her evidence, has particularly stated that, she knows the accused who was working with her son. Her son used to drive the vehicle, as well as he was working as a labour in a construction site. Accused was married and he was having one daughter and name of wife is Rupali. Accused used to visit her house occasionally. She further stated that, deceased son was staying in a rented room since last 4-5 years prior to the incident. 2-3 months prior to the incident she came to know about relationship between wife of accused and her son deceased Nitin that they were having love affair. She tried to cajole her son to stop affair as he was unmarried and the girl was married to the accused. But he was not listening. Thereafter, they decided to look a girl to fix a marriage during Diwali. She further stated that, Rupali used to regularly speak with

her son on mobile.

42] On 12.09.2015, there was a fight between accused and the deceased. Accused stabbed deceased by means of knife and sustained injury on his back and in the same incident, Rupali also sustained injury on her right-hand finger both were admitted in NMMC Hospital at Vashi.

43] She further stated that on 09.11.2015, her deceased son left the house in morning and thereafter, till late night he did not return. Hence, in the morning her husband tried to take search of their son, but later, her relatives informed her that the dead body of her son was lying in civil Hospital Vashi, and that was informed to him by Rabale police. She came to know that, deceased was murdered by the accused. She stated that she can identify the accused.

44] The witness is cross examined. In her cross-examination, she admitted that, she does not know the place of work of her son. Her husband was working as a driver. The accused was also doing the same work. As well as he was also working at welding factory. Her son was in habit of drinking liquor. She was aware that, wife of accused and her son were regularly talking on mobile. She denied that, she was not knowing regarding love affair of her son and the wife of accused. She is not aware about the friends of her deceased son. She admitted that there is no complaint lodged to the police for the incident dated 12.09.2015 but she stated that, they visited police station but complaint was not registered. She admitted that, she visited hospital at the relevant time with her son. She denied that, nothing happened on 12.09.2015.

45] The witness, in her further cross-examination admitted that, she received information on 09.11.2015 about death of her son. She does not remember when her statement was recorded. She admitted that, she came to know from the other person that the accused caused death of her son. Rest of the suggestions are denied by this witness.

46] Considering the evidence of this witness, in order to substantiate the incident dated 12.09.2015, the prosecution has examined **PW 11 Dr. Sushant Tanaji Andhale at Exh.70.** It is coming from the evidence of this witness that he is MBBS and working as a Medical Officer in NMMC Hospital at Vashi. He stated that on 12.09.2015, when he was on his duty, at about 02.30 p.m, two patients named Nitin Namdeo Varkar and Mrs. Rubina A Nadaf visited hospital and they had sustained injuries. According to this witness, Nitin sustained injury on his back and nature of injury was a stab injury and abrasion. Nitin gave history of assault by one person by sharp weapon i.e. cutter. He found injury and that was within 6 hours and accordingly, he issued the certificate which is at Exh.71.

47] The witness has further stated that he examined Rubina who had accompanied Nitin. She had history of assault by one person by sharp weapon. She had injury of CLW on her right hand between ring finger and little finger. It was a fresh bleeding injury within 6 hours. Accordingly, he issued certificate which is at Exh.72. He further stated that, accordingly OPD papers were prepared which is are Exh.73 and 74.

48] The witness is cross-examined whereby he admitted that, police were not accompanied with them. He further stated that the name of

the doctor is Vijayalaxmi Salkolkar. He admitted that, in Exh.71 and 72 name of patient Rubina is mentioned as alias Rupali. He admitted that, on the medical certificate Exh.71 it is not specifically mentioned as bleeding injury.

49] Thus, considering the evidence of **PW10 Rani Vatkar who is the mother of deceased**, she has particularly narrated regarding the incident dated 12.09.2015, that the accused assaulted her son Nitin and Rupali. As per this witness, her son deceased **Nitin and Rupali/Rubina i.e. wife of accused were having love affair**. Moreover, so far as the quarrel at the relevant time, by virtue of evidence of PW 11 Dr. Andhale, there is a reason to believe that deceased Nitin and Rupali/Rubina were injured in incident dated 12.09.2015. The evidence of this witness particularly shows that, there was the love affair between deceased Nitin and Rupali/Rubina who is wife of the accused. So, this aspect particularly shows that, the said incident is just around two months before the incident dated 09.11.2015. Thus, the evidences of these two witnesses support the case of the prosecution on the aspect of love affair between Rupali/Rubina, wife of the accused with the deceased Nitin and thus **here, it establishes motive**.

50] The important aspect which also supports the contentions of the prosecution through the evidence of Dr. Jain who has been examined as PW5 at Exh.36. He has particularly stated in his evidence and more particularly in the cross-examination that two injuries on the deceased i.e. injury no. 1 and 2 are the blood injuries sustained 7 to 8 days prior to the incident. So, this aspect also shows the injuries on the deceased rather than

the injuries sustained by him on the day of the incident.

51] Now, turning to the evidence of **PW1 Shivram Maruti Ranpise at Exh.20**. This witness is stating that, on 10.11.2015, he visited Vashi hospital to meet his relative. He was in the hospital since night of 09.11.2015. In morning of 10.11.2015, police from Rabale police station came there in hospital. They brought one person. Police officer requested him to assist as panch. That police officer was Mr. Adgale. They introduced one person Dhamendra Choubhe who was complainant and one dead body was lying on stretcher in hospital. The clothes of the dead body were removed. He observed that there were penetrating stabbing injuries on various parts of the body of deceased. Police and doctor removed purse from the pant pocket of the deceased. One PAN card and other documents were found. Name of deceased was Nitin. Accordingly, inquest panchanama was prepared which he has signed which is at Exh.21.

52] He has further stated that thereafter, they visited the spot of incident at Ghansoli along with police and complainant. The spot of the incident was in room no.14 of Dhyani building Chinch Ali, Ghansoligaon and the police were present there. They entered the said room. It was the hall and one room was annexed to it. They saw blood was lying on the ground. They saw jeans shirt, 4 buttons were also lying, one white-coloured mobile was there. One knife with one side sharpness and one frock of small girl was lying. The witness has identified all the articles shown to him. He identified the knife and that panchanama is at Exh. 23 to 26 respectively.

53] In his cross-examination, he admitted that, he has acted as a panch in 2-3 cases. He has further stated that, the surrounding area of the spot is a residential area. He stated that when he reached near the spot of incident, there was no one besides police. He admitted that the police has not made inquiry from the people gathered there. He admitted that knife P3 is used for domestic purpose and there is no specific identification mark on knife P3.

54] Considering the evidence of this witness, there is nothing to disbelieve that the inquest panchanama is prepared on 10.11.2015 which is at Exh.21. Further, from his evidence he has particularly stated that room no.14 i.e. spot of incident in a building named Dnyanraj building. From his evidence, he is stating that at the relevant time knife was seized, clothes were seized and panchanama is prepared. The Id. Counsel for the accused while canvassing the argument stated that hand sketch of the room is not prepared. Accordingly, she submitted that for these reasons, the evidence has to be discarded. Here it is to be noted that, this witness has categorically stated the situation of room no.14 and the facts which he has noticed as such the knife, blood-stained clothes, mobile at the said place. The place of the incident is also well corroborated from the evidence of PW15 Choube, PW 7 Behera and PW3 Rambharos Pandey. Thus, from the evidence of these witnesses coupled with the evidence of this witness and that too of the investigating officer there is nothing to disbelieve the spot of incident. Thus, by virtue of this evidence the prosecution has successfully established the spot of incident where the incident has taken place on 09.11.2015 at night. Thus, only on the count that, Balu Patil is not been

examined, that does not mean that, the spot panchanama is not proved because the thing is that, from the evidence discussed above, there is a reason to believe or in other words there is nothing to disbelieve regarding the presence of the accused in room no.14 at the relevant time. Moreover, the accused was holding knife in his hand and Nitin was lying on floor. As discussed above, one witness has stated different name of building. But that does not mean that the entire evidence is to be discarded because the rest of the contents duly establish the spot of the incident. Furthermore, after 8 years, that witness is examined. So there might be some variance. Thus, by virtue of above discussion, inquest panchanama and spot panchanama are duly established by the prosecution.

55] PW 4 Maruti Vitthal Survase, a panch witness at Exh.33, in his evidence stated that, on 10.01.2015 he was called by police officer Adagale in Rabale police station. He visited police station, whereby he was informed regarding crime no.380/2015 a offence punishable u/sec 302 of Indian Penal Code. Accused who was in their custody. The accused was also having some bleeding injury on his neck and he was ready to handover his clothes. Accordingly, one pant was seized which was having blood stains. Short pant was seized, seizure panchanama is prepared which is at Exh.34.

56] He further stated that, on 11.11.2015, he was again called at Rabale police station to seize the clothes of deceased. Police were in possession of the clothes of the deceased and those was shown to him. It was blue jeans pant and blue shirt which were having blood stains. One black waist belt, one black sandal having blood were seized and

panchanama was prepared. It also bears his signature, and of accused and Adagala. It is at Exh. 35.

57] The witness has identified blood-stained short pant which was seized from the accused which is Article P5. He has also identified the other articles which are Article P(6 to 11).

58] The witness is cross-examined. In his cross-examination, he denied that, he is acquainted with police. He admitted that he is not aware who brought clothes of accused after post-mortem or since when they were in possession of police. He admitted that such clothes may be available in market. Witness has particularly stated that in market it would be new clothes but these are the used clothes. He denied rest of the suggestions.

59] Considering the evidence of this witness, it is important to note that, there is coming from his evidence that the clothes of the accused were seized at the relevant time. Furthermore, he is not aware from where the clothes of deceased were brought but, in this regard, we have already discussed the evidence of PW1 Ranpise, whereby he has stated that a dead body was lying on stretcher and clothes of dead body were removed.

60] **PW6 Ajay Mishra at Exh.40.** This witness is stating that, on 10.11.2015 he was called by police. There was one lady who handed over one gown and petticoat having blood stains that was seized and panchanama was prepared which is at Exh.41. He has identified the said panchanama and he has stated that he can identify clothes.

61] On 11.11.2015, he visited police station. At that time, he worked as a panch witness to visit to spot. He was accompanied with government officers of FSL, police officers, photographer, they visited the spot at Dnayanraj building, there was one room and photographs were snapped. Blood samples of blood stains by scratching the blood stains from floor, table, wall, carpet were collected in different packets. According to him panchanama, was prepared which is at Exh.42. He further stated that, he has identified the gown of parrot-green colour which is article P12. He has also identified petticoat which is at Article P13. He has also identified the samples which are at Exh.43 to 47 and his panchanama.

62] In his cross-examination, he admitted that, the spot of the incident was about 20 minutes from police station, his personal search was not taken. The door of the room was closed. Around the spot there is residential area. He has denied ready-made panchanama.

63] Thus, considering the cross-examination of this witness and the entire evidence of this witness, there is nothing to disbelieve that he visited spot of incident and where the samples were collected, panchanama is prepared. Thus, by virtue of evidence of this witness the above fact could not be disbelieved.

64] Now, turning to the evidence of **PW8 Dr. Vijayalaxmi Sakolkar**, she has stated in her evidence that on 10.11.2015, she was working on casualty duty in NMMC hospital. On that day, she examined Lalmohammad Nadaf who was brought by police, she obtained blood, hair and nail sample and handed over to police, that letter is at Exh.58. This

witness is not cross-examined by the accused as the accused declined to cross examine. So, there is a reason to believe that the present witness has obtained samples of blood, hair and nails of the accused.

65] Prosecution has examined **PW9 Arun Vilas Deore, a photographer**. He has stated that, he is a photographer by profession. On 10.11.2015, the police staff visited his studio for developing photo snaps in mobile. There were in all 15 to 20 photos, he copied in computer and developed the same. He has also issued receipt for development charges. On the same day, police again came to his studio and asked him to accompany them, in order to visit Ghansoli. So, he took his digital camera and snapped photographs at the spot of the incident. On 11.11.2015, he also visited NMMC Hospital and obtained photographs of the dead body which was kept in mortuary and on next day, he handed over the said photographs which were developed. There are in all 15 photographs, of which 9 are from spot of the incident, 6 of dead body which are collective at Exh. 60 and 61.

66] The witness in his cross-examination stated that he cannot state the name of police staff who brought photos clicked in mobile phone. He has denied rest of the suggestions.

67] Considering the evidence of this witness, he is stating in his evidence, in two parts; first part is relating to photographs which were brought by police and another part is that, he himself clicked photograph at the spot of the incident and of the dead body at mortuary. So far as second aspect is considered, there is nothing to disbelieve as there is nothing

coming from his cross-examination to that extent. But as regards to the first part in order to support his contention, there is no supporting evidence. Thus, considering the evidence of this witness there is a reason to believe that he visited the spot of incident and clicked photographs and of dead body at mortuary.

68] The prosecution examined **PW14 Vivekanand Sakharam Raut at exh. 118** who was working as API at Rabale MIDC Police Station. On 09/11/2015, he was on night duty. On 10/11/2015, in the early morning, at about 5.00 a.m., Dharmendra Gopaldas Choube visited the police station and filed report that in his neighbouring house, Mohammad Abbas committed assault and gave blow of knife in the abdomen in his house. He further stated that accordingly, he recorded statement of the complainant. The complaint is at exh. 120. Printed FIR is at exh. 121 and it is registered against the accused for the offence punishable u/sec 302 of IPC. Thereafter, he prepared inquest panchnama in the hospital, found injuries on the chest, abdomen, waist and other portion of the deceased. Inquest panchnama is at exh. 21. A chocolate-coloured wallet was found in the pant pocket, PAN card, ID card was found. Accordingly, it was found that the deceased Nitin was working in Global Pvt. Ltd. at Airoli. All these articles were seized and the panchnama is prepared. He further stated that with the help of private photographer, photos of the deceased were snapped in the hospital which are at article Z1. He further stated that he visited the spot of the incident with two panch witnesses, photographer Arun Devre and prepared spot panchnama. The place of the incident was Room no. 14, Dnyanraj Building Chinch Ali, Ghansoli Gaon, Navi Mumbai. The said

house was possessed by the accused and his family on rental basis. There was one room, doormat, water bottle, one frock of small child sustained with blood, other household articles. He has further stated that they found one knife on the ground which was suspected and was seized. Clothes, knife all were having blood marks over it and that panchnama was prepared which is at exh. 123. Muddemal receipt is at exh. 124. He has identified all the articles which were seized. He has also identified the accused. According to him, further investigation is carried out by police officer Adagale on 10/11/2015.

69] The witness is cross examined whereby he denied that the first informant is Balu Patil. He admitted that the first informant took the deceased to the hospital. Landlord also visited the hospital. It is nowhere mentioned in the inquest panchnama that the photographer was present. It is also not mentioned in inquest panchnama that the accused is residing on rental basis where the incident took place. So far as the article P3 – knife packet is concerned, label over it bears signature of PI Adagale. Similarly, other packets wherein frock of small girl was seized, it was having blood over it and label over it is signed by Adagale. He admitted that he has not prepared hand sketch. He denied that nothing was seized from the spot of the incident.

70] From the evidence of this witness, there is a reason to believe that he prepared the inquest panchnama. We have already discussed the evidence of PW1 Shivram who is a panch witness on inquest panchnama which is at exh 21 and it is important to note that the inquest panchnama is prepared in NMMC hospital at Vashi. The deceased was identified by first

informant Choube (PW15). It is further coming that at the preparation of inquest panchnama, they found several injuries on the person of the deceased. The suggestion which was given to this witness that in the inquest panchnama, there is no reference of photographer as well as there is nowhere mentioned that the deceased was residing in a rented house. In this regard, it is to be noted that the inquest panchnama is related to the dead body and so it is not expected that the rest of the aspects are required to be mentioned in it. Even though, the rest of the aspects are not mentioned in inquest panchnama, that does not mean that inquest panchnama requires to be discarded.

71] Further considering his entire cross-examination, while canvassing the argument, the learned counsel for the accused submitted that Balu Patil who is the landlord has set police machinery into motion by providing first information. However, this suggestion is denied by this witness and it is important to note that considering the evidence of all the witnesses that after noticing the situation in room no. 14, immediately, they called the police. Moreover, it is coming from the evidence that the said police station is at a distance of 10 minutes from the spot of the incident. Here considering the entire evidence, there is nothing coming in order to substantiate the contention of the learned counsel for the accused that landlord Balu Patil has lodged the report. But it is seen that PW15 Dharmendra Choube has lodged the report. Moreover, from the evidence of this witness, there is nothing to disbelieve that the weapon knife is seized from the spot of the incident and the spot of the incident was in room no. 14 of Dnyanraj building.

72] **PW12, Vijay Eknath Shinde at exh. 77** – as per this witness, at the relevant time, he was working as a Nodal Officer is Idea Cellular Company. He received a letter from the police to provide tower location and CDR of mobile number 8652312876 for the period 01/11/2015 to 11/11/2015. He provided the same and that mobile is named and subscribed to the accused. Accordingly, he submitted the data alongwith the certificate u/sec 65B of the Evidence Act which is at exh. 80. CDR is at exh. 81 and consumer subscriber application is at exh. 82. According to him, exh. 79 and 80 bear the signature of Rahul Bhasme. In his cross-examination, he admitted that he is not having any document to show that Rahul Bhasme was authorised to issue certificate. He is not aware who operated the main server while obtaining the CDR. It is to be noted that from the evidence of this witness, except the bare contention that he provided the details, there is nothing coming on record about the tower location. So the evidence of this witness does not have more weightage.

73] Now turning to the evidence of **PW13 Police Inspector Raju Dada Adagale at exh. 86**. As per this witness, this crime was handed over to him for investigation. He took investigation on 10/11/2015. He went through FIR, inquest panchnama, spot panchnama, investigation papers. Accordingly, on 10/11/2015, he arrested the accused from the spot of the incident and that panchnama is at exh. 87.

74] On 11/11/2015, he seized clothes of the deceased from NMMC Hospital, Vashi and there were blood marks on those clothes. That panchnama is at exh. 35. He has identified those articles which are at P6 to P11.

75] He has further stated that on 10/11/2015, he seized clothes of the accused and that panchnama is at exh. 36. That receipt is at exh. 89 and that article is article P5. According to him, he seized blue-coloured half pant of the accused.

76] He recorded statement of the wife of the accused, seized her clothes i.e gown, petticoat – article P12 and P13 which had blood stains on them. That muddemal receipt is at exh. 90. He further stated that on 11/11/2015, he recorded statement of the daughter of the accused and the statements of relevant witnesses.

77] On 11/11/2015, he issued a letter to FSL in order to collect blood sample on earth. Mr. Arun Devre took photographs in the house of the accused. Samples from floor, table and carpet were taken and panchnama prepared which is at exh. 42. Samples of viscera, blood was sent for FSL and that letter is at exh. 92. He has particularly stated that with carrier Dhangade, clothes of the deceased with blood stains, one jeans, shirt of daughter of the accused, one frock with blood stain, knife, four shirt buttons, sample of nail clipping, hair of the deceased, clothes of the accused having blood stains and blood samples from the spot, clothes of the wife of the accused; all was sent for FSL by a letter which is at exh. 93. He stated that during the investigation, it is revealed that the deceased Nitin was resident of Vartak Nagar. His post-mortem report was obtained. The accused was arrested whose samples were obtained from medical officer. He obtained CDR and SDR of mobile of the accused and his wife which is at exh. 98 collectively. Notice given by DCP to Nodal officer is at exh. 78. The information received from nodal officer is at exh. 99 to 100. Medical

papers of the deceased are produced. He made enquiry with the neighbours of the accused, PW2 Ajay Patil. He further stated that during the course of investigation, it was revealed that wife of the accused and deceased had illicit relation and they were in the same vicinity. The accused had ill-feeling against him and out of that grudge, he committed murder of the deceased Nitin on 09/11/2015 at 11.45 p.m. At that time, the accused, his wife and his daughter were in the house. It has been further transpired that when the accused came home, he saw the deceased in the house and accordingly, he assaulted him by knife and thereby caused death of the deceased. He filed chargesheet against the accused. CA report is at exh. 102. He has admitted all the articles which are at article P1 to P13 which are marked as exh. 103 to 116. He further stated that during the investigation, it was found that during the quarrel, the accused committed murder of the deceased by knife.

78] The witness is duly cross-examined whereby he admitted that already inquest panchnama, spot panchnama was prepared before he started the investigation. Dead body of the deceased was on the spot where panchnama was prepared. He admitted that he did not feel it necessary to record supplementary statement of Dharmendra Choube. He denied that Dharmendra Choube did not lodge report. On 16/11/2015, he recorded statement of police naik – Devidas Gaikwad. He admitted that no identification parade was conducted in this crime. He denied that Balu Patil lodged first FIR as he informed about the incident to the police. He admitted that photographs were developed by Arun Devre and that mobile on which the photographs were obtained is not seized. He admitted that he

did not collect any document regarding room no. 14. In this regard, the learned counsel for the accused submitted that no document is produced on record to show that Balu Patil has given room no. 14 on rent to the accused. So, she submitted that there is no proof that the said room was given to the accused. Here it is important to note that even though there is no material regarding the fact that the said room is given on rent to the accused but considering the spot panchnama, evidence of PW15 Choube, PW7 Behera, PW3 Rambharose Pande, PW2 Ajay Patil who is the son of Balu Patil; considering all these aspects, there is nothing to disbelieve that the accused was residing in the said room with the family members. Thus, I found no substance in the said submission that non-production of the document showing relationship as a tenant between the accused and Balu Patil would be fatal to the prosecution.

79] Now, turning further to cross-examination of this witness, it is coming on record that on 17/11/2015, he sent articles for chemical analysis. He admitted that outward number on letter at exh. 92 and 93 is one and the same. However, I am of the view that that does not mean that the evidence is to be discarded.

80] The crucial aspect which is coming is that the present witness admitted that the weapon knife was not sent for analysis of finger-print expert. In this regard, the learned counsel for the accused submitted that the weapon knife is seized from the house room no. 14 and it is not the case of the prosecution that at the instance of the accused, this knife is seized. Accordingly, it is submitted that it creates a doubt whether this knife is used in commission of offence. Here in view of the panchnama discussed

above, it is seen that article 8 in exh. 102 i.e B3 is the knife and as per the chemical analysis report, it is having blood on it and it is a human blood. Here it is important to note that the said knife is seized from the house of the accused and it is already discussed above that the accused was found in his room no. 14 along with his wife and daughter and it is coming from the evidence of PW15 Choube and the other witnesses that when they heard crying of small girl, they came out of their house. When they came out of their room, they noticed that the said noise was from the house of the accused i.e. room no. 14. When the door was knocked, the accused opened the door, he was holding knife in his hand, Nitin was lying on the floor in a blood pool. The accused assaulted Nitin by kick blows and they found that Nitin had sustained injuries. So, all these aspects are considered, following points are very crucial in this case. Those are:

- 1) In room no. 14, the accused, his wife and small daughter and Nitin were present,
- 2) The door of room no. 14 was closed,
- 3) When PW15 Choube knocked the door, the accused opened the door,
- 4) Mr. Choube and the rest of the witnesses found that the accused was holding knife in his hand, there was blood stain on knife, on the clothes of the accused,
- 5) The deceased Nitin was lying on floor in a blood pool having injuries on his person,
- 6) There was no other door in order to exit from room no. 14,
- 7) According to all the witnesses, the accused, his wife and daughter were in that room,
- 8) There is nothing coming on record that except the accused, his wife, his

daughter and Nitin, anyone else was present in that room,

9) There is a cogent and consistent evidence that Nitin succumbed due to the stab injuries sustained on him,

10) Spot panchnama, seizure panchnama, photographs of the spot of the incident are considered, FSL report at exh. 102 particularly states that the list at sr. no. 1 to 5 i.e A1 to A5 are the clothes on the deceased. CA report states that it is having blood stains and blood is human blood grouping AB. Items at article B1 to B3 are the clothes of daughter of the accused which are seized from the spot which also human blood grouping AB. Article 8, B3 – a knife which is seized from the spot is having blood on it, article 10, D1 – clothes of the accused which are seized which were used at the time of the incident; the CA report states that there is blood on it and it is human blood. Moreover, article E is the samples collected from the spot of the incident – all are having blood stains on them grouping AB.

81] All these factors when considered, it is significant to note that the blood which was found in room no. 14 is group AB on all the articles. Another significant aspect is that the CA report of blood sample of the accused at Exh.129 particularly shows that his blood group is B. Naturally, in such contingencies, when there is a blood stain on the clothes of the accused, it is for the accused to explain in what circumstances, there are the blood stains on his clothes and furthermore, that what was the reason that Nitin was lying in blood pool in room no. 14 which was occupied by the accused and at the time of the incident, when the door was closed and only the accused, his wife, daughter and Nitin was there, the burden is on the accused to explain the circumstances under which Nitin sustained stab

injuries on his person and was lying in a blood pool that resulted into his death. For this explanation, the accused is absolutely silent. The evidence of PW15 Choube who is a star witness and the other evidence particularly establishes that they have last seen the accused, his wife, daughter and deceased Nitin together. So, this establishes the theory of last seen together and now section 106 of the Evidence Act is pressed into motion and it was for the accused to explain the circumstances thereon that how Nitin sustained injuries that resulted into his death and for which the accused has miserably failed to either explain the same in order to say that it would be believable.

82] No doubt, there is no finger-print expert opinion on weapon knife – article P3 but by virtue of evidence of PW15 Choube coupled with the other evidence which is specifically coming on record that P3 knife was in the hands of the accused and PW5 Dr. Bhushan Jain has particularly opined that injuries on the deceased like stab injuries are possible by the knife P3. So all these factors are well connected to each other and it gives no room to say that anyone else other than the accused is involved in the crime. All the evidence pin point that the accused has committed the murder of the deceased. Moreover, from the evidence of mother of the deceased i.e PW 10 Rani and evidence of PW 11 Dr. Andhale, it fully establishes that on the count of love affair of the wife of the accused and the deceased, there was a quarrel on 12/09/2015. So, this fact particularly establishes the motive behind the incident that the accused was having grudge in the mind against the accused. Thus, here it is important to note that all the evidence is considered as there is a cogent and consistent

evidence and the witness has identified the accused. I am of the view that in the particular set of facts, identification parade is not required. The purpose of the identification parade is to find out whether the investigation is going in the right direction. Here in the case, the witness has identified the accused. They had the occasion to see him in room no. 14 at the time of the incident and they have particularly identified the accused in the court. So, in such contingencies, there is nothing to disbelieve their evidence that the accused was holding the knife in his hand in his house.

83] During the course of argument Id. Counsel for accused cited case law of Hon'ble Parent High Court in *State Vs. Sagar, Criminal appeal no.20./2016*, in that case the fact was that, the deceased was lying motionless with injuries on his face in the back portion of the house. The accused used to work in a garden of the deceased and was present on the previous day. In that case it was observed that, there were 3 to 4 persons including Sagar working in the garden of Patrick Uncle. In that situation, there is a question regarding the proper identification of the accused. In the case in hand, the facts are totally different. Here, the witness has seen the accused in room no.14 immediately at the time of incident and also, they have identified him in Court.

84] She has also cited case law of Hon'ble Apex Court in *Tomaso Bruno Vs.State of U.P. Criminal Appeal no.142/2015* in that case there were the improvements made at the various stages. In that case there was a question regarding CCTV Footage and the circumstantial evidence is not been proved. The said facts are entirely different than the facts in the case in hand.

85] In *State of Himachal Pradesh Vs. Rajkumar MANU/SCC 0323/2014*, the case was based on extra judicial confession and weapon was not proved i.e. not the case in the case in hand.

86] In *Karakkattu Muhammad Basheer Vs. State of Kerala, MANU/SC/1169/2024*, in this case there was lack of evidence. It is observed that the onus of the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for charges framed against him/her, and such evidence should establish a chain of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of the accused.

87] In *Raju Prasad Vs. State of Rajasthan, AIR 2022 Supreme Court 4397*, wherein in that case there was no direct evidence recorded indicating involvement of accused person in alleged crime. No evidence that accused person were seen last together with deceased. No evidence that, happened after deceased went to room and had gone to sleep. Here in the case in hand the situation is altogether different. Here, in this case it is coming on record that, at 11.45 pm on the day of the incident when PW 15 knocked door of room no.14, the accused himself opened the door and that too he was holding knife in his hand and Nitin was lying on the floor in a blood pool. So, it crystallized the situation at the relevant time.

88] In *Arun Bhakta @ Thulu Vs. State of West Bengal, AIR 2009 SC 1228*, it has been observed that, when the case is based on circumstantial evidence and last seen together in that case accused was

charged of killing wife. Prosecution case is that, accused used to reside in his laws' house. Accused and deceased slept together on fateful night, family members of deceased however, giving dramatically opposite version as to whether accused and deceased were seen together in the house. Thus, in that situation charge was improved. Facts in this case are entirely different than the facts in the case in hand.

89] Ld. APP while canvassing argument cited case law in *Kailas Vs. State of Maharashtra, Criminal Appeal no.853/2015*. In that case, apart from direct evidence the evidence of the witness was trust worthy and consistent and corroborative to each other and on that count, it has been observed that, there was the sufficient evidence. In *Mikhala Vs. State of Andhra Pradesh, Criminal Appeal No.2016/2013* wherein the Hon'ble Apex has observed that when there is ample ocular evidence corroborated by medical evidence, mere not recovery of weapon from appellant would not materially affect case of prosecution. If testimony of eye witness is otherwise found trust worthy and reliable, same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared in to his testimony.

90] He has also cited case law of Hon'ble Apex Court in *State Vs. Laly @ Manikandan & Anr.*, in that case it has been observed that, if there is direct evidence in form of eye witness, even in absence of recovery of weapon accused can be convicted. Similarly, in the case of some contradictions with respect to time of lodging FIR of the complainant cannot be a ground to acquit accused when prosecution case is based upon deposition of eye witness. There can be conviction on the basis of

deposition of sole eye witness, if the witness is found to be trustworthy and/ or reliable.

91] Here, in the case in hand it is argued on the side of the accused that, the wife of the accused and the daughter of the accused were present at the relevant time according to the prosecution. But the prosecution has not examined those persons who would be the best evidence. And that evidence has been withheld by the prosecution and thus she submitted that for this reason the case of the prosecution fails. Here, against this submission Id. APP submitted that, the evidence of the prosecution witnesses is well corroborated and there is nothing to disbelieve their evidence. He submitted that, entire chain has been established by the prosecution by which the charge against the accused has been proved beyond reasonable doubt. So, he submitted that in such contingencies non-examination of these two witnesses could not be fatal on the part of the prosecution.

92] Considering the submissions, it is discussed above regarding the entire evidence of the prosecution witnesses more particularly the evidence of PW 15 Choube and the other evidence which is discussed above. In these contingencies, I am of the view that non-examination of these two witnesses would not destroy the creditability and evidentiary value of these witnesses there is nothing coming on record as such to discard and disbelieve evidence of these witnesses.

93] When the case is based on the principle of last seen together a truthful aspect to refer the case law of Hon'ble Apex Court in *Ramgopal*

Vs. State of Madhya Pradesh, Special Writ petition(Criminal)9221/2018 wherein the Hon'ble Apex Court has observed that, it may be noted that, the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he has parted the company of the deceased. It is true that the burden to prove the guilt of accused is always on the prosecution; however, in view of Section 106 of Evidence Act, when any fact is within the knowledge of any person, the burden of proving the fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused. Nonetheless, it is also equally settled legal position that, if the accused does not throw any light on the facts which are proved to be within his personal knowledge, in view of section 106 of Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or not furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as preponed by the prosecution was proved against him.

94] In the said case law, the Hon'ble Apex Court has also considered case in *Rajender Vs. State (NTC of Delhi)* and in case of *Satpal Vs. State of Haryana*. Thus, the Hon'ble Apex Court has observed that, the chain has to be established by the prosecution and once it has been established and there is a reason to believe the evidence of prosecution witnesses regarding he last seen together theory and it has been established then the burden shifts on the accused to give reasonable explanation for the

same.

95] In view of the above discussion, it has been particularly established that, in room no.14 the accused who was holding knife in his hand, Nitin was lying on floor having injuries on his person, the point when this aspect was noticed by PW15 Choube, it is required to be noted that when the witness knocked the door of room no.14 the above episode is seen by this witness and the fact is that, accused, his wife, daughter and injured Nitin were within the house/ room no.14. Nitin was lying on the floor with injuries on his person and in the blood pool. Rest of the evidence discussed above which particularly shows that there are blood stains on the clothes of the accused. Medical evidence particularly establishes the death of Nitin occurred due to stab injuries. In such contingencies, when all these facts are took place in room no.14 where the accused was present with his wife, small daughter and Nitin and the witness particularly states that the accused who was holding knife in his hand was abusing Nitin who was lying on floor and was kicking him. So, all these factors particularly state that it was well within the knowledge of the accused. On going through 313- statement he was brought incriminating evidence as regards to the incident stated by PW10 Rani. He has denied the incriminating evidence. So far as the incriminating evidence as on the day of the incident, he has only denied the facts. However, it is important to note that the accused has not given any explanation for what reasons the deceased was lying in his room when PW 15 and the witnesses saw the accused and Nitin in room No.14. The accused has not given any explanation except the bare denials.

96] When the case is based on the circumstantial evidence, the Hon'ble Apex Court has set out guiding principles in *Sharad Bidrichand Sarda Vs. State of Maharashtra, MANU/SC 0111/1984*, wherein 5 Panchsheel Principles are to be considered when the case is based on the circumstantial evidence those principles are:

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, i.e. to say, they should not be explainable or any other hypothesis except that the accused is guilty.
- (3) The circumstances should be of a conclusive nature and tendency.
- (4) They should exclude every possible by hypotheses except the one to be proved.
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion, consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

97] While considering the aspects as such the last seen theory, no doubt , it is weak piece of evidence but the facts requires to be considered is that, time of last seen together and the incident, here in the case in hand it is required to be noted that, **when the accused and the deceased were seen last together in room no.14 it was the time when the incident took place and Nitin was lying in the room of the accused having stab injuries on his person and was lying in pool of blood, so there is no gap of time between the last seen together and the incident.** Moreover, as discussed

above the evidence of the prosecution witnesses i.e. PW15 Choube, PW 7 Behara, PW3 Pandey, PW2 Ajay Patil all evidence particularly speak the situation at the spot of the incident. By virtue of evidence of PW6 Mishra, PW 4 Survase, PW1 Shivram, who are the panch witnesses as regards to the spot of incident, seizure of clothes of deceased and of the accused as well as article P3 knife the evidence of witness and more particularly, all panchanamas are well corroborated to the situation and it is also having a corroboration from Chemical Analysis report at Exh.102. Further, traveling it has been established by virtue of evidence of PW10 Rani and PW 11 Dr. Andhale that, there was previous quarrel between the accused, his wife and the deceased. At that time, the accused assaulted his wife and Nitin (deceased) which establishes the aspect of the motive. Further, by virtue of evidence of PW5 Dr. Bhusahan Jain which particularly established the death of Nitin, is a homicidal death and by virtue of stab injuries sustained by him. From the C.A. report, Article P3 knife is having blood stains and more particularly, the clothes which have been seized at the relevant time i.e. article D i.e. half pant of accused, which is at serial no.10 in CA report 102, which is having blood stains which also connect the accused at the relevant time. So, taking the stock of the entire evidence, the entire evidence is well corroborated to each other.

98] Taking the stock of the entire evidence, this is the perfect case which fully establishes that the accused was with the deceased, daughter and his wife in room no. 14. Nobody else was present in room no. 14 when the door of the room was opened when PW15 Choube knocked the door and witnessed these things. Thus, at that point of time, the accused was

having blood stains on his clothes, knife was in his hands, Nitin was lying on the floor with stab injuries and in the blood pool. So, the only inference is that the accused caused the death of the deceased by stabbing him by sharp weapon knife that resulted into death of the deceased Nitin. There is no other possibility to doubt the prosecution case or there is no possibility coming on record to throw any light showing the innocence of the accused. Per contra, each and every fact, each and every circumstance relating to the death of Nitin fully establishes that with a grudge in mind against Nitin on the count that Nitin was having illicit relation with his wife, the accused assaulted the deceased by the weapon knife that resulted into death of Nitin. So, all these factors have been proved beyond reasonable doubt.

It has been established that death of Nitin is homicidal death and by virtue of the above evidence discussed in length, it establishes beyond the doubt that there is a culpable homicide. So, the ingredients of section 299 of IPC are proved.

99] Now the question is that whether the present case and the facts in it fall within the ambit of exception provided to section 300 in order to say that culpable homicide not amounting to murder. In this regard, there is no defence on the side of the accused. Moreover, there is nothing coming on record to say that any of the exception of section 300 of IPC is established. Thus, it excludes the said exceptions of section 300 and taking the stock of the entire evidence, it is proved beyond the reasonable doubt that on the count of grudge against the deceased that he was having illicit relations with the wife of the accused, the accused committed murder by stabbing the deceased intentionally and that caused death of the

deceased and thus, the ingredients of section 300 of IPC are proved by the prosecution beyond the realm of reasonable doubt. Thus, the charge levelled against the accused for the offence punishable u/sec 300 of IPC that he has intentionally committed murder of the deceased and thus, the charge u/sec 302 of IPC is proved beyond the reasonable doubt. Hence, I answer point no. 1 as proved.

100] In view of the above discussion, considering the entire evidence, there is nothing coming on record as such that the accused wiped out the blood of the deceased on the floor and thus, point no. 2 is not proved by the prosecution beyond reasonable doubt. Hence, point no. 2 is answered as not proved.

101] In view of the findings to point no. 1 as proved, I hereby take a pause to hear the accused on quantum of sentence as he is liable to be convicted for the offence punishable u/sec 302 of IPC.

Date: 28/07/2025
CBD Belapur

(P. A. Sane)
Additional Sessions Judge,
Belapur

102] I have heard the accused and the learned counsel Smt. A. S. Jagtap for Adv. Pardeshi on the point of sentence. The accused submitted that he is not having parents. This is the first offence. Thus, it is implored for taking lenient view while imposing the punishment.

103] On the other side, the learned APP Shri. Yogendra Patil has submitted that the present case does not fall in the category of rarest of rare case. Therefore, he requested to convict the accused according to the law.

104] Having carefully gone through the record, I find that there is sufficient evidence to show that the accused intentionally committed murder of Nitin with a particular motive in his mind. However, the case does not fall in the category of rarest of rare case. Therefore, in such circumstances only punishment remains regarding section 302 of IPC is life imprisonment. In view of this, no punishment below the life imprisonment can be imposed on the accused. In such given facts and circumstances, following punishment would meet the ends of justice. In the result, following order is passed.

ORDER

1. The accused Abbas Lalmohammad Nadaf is hereby convicted for the offence punishable u/sec 302 of IPC, in view of provision of section 235(2) of Criminal Procedure Code and he is sentenced to suffer **Rigorous Imprisonment for life and** to pay a fine **of Rs. 500/- (Five Hundred only)**, in default to suffer **Simple Imprisonment for a period of one month.**

2. The accused is acquitted for the offence punishable u/sec 201 of IPC in view of provision of section 235(1) of Criminal Procedure Code.

3. The accused is in jail since 10.11.2015 till today. As such, in given set of facts and circumstances, the accused is entitled to get benefit of set off, subject to provisions of section 433 and 433 A of Code of Criminal Procedure regarding such period.

4. Seized muddemal clothes, knife, being worthless, it be destroyed after the appeal period is over.

5. Copy of this judgment be given to the accused free of cost.

(Judgment is dictated and pronounced in the open court.)

Date: 28/07/2025
CBD Belapur

sd/-
(P. A. Sane)
Additional Sessions Judge,
Belapur

Note:

1. The understanding is given to the accused that in case, he is not in agreement with the aforesaid finding, expressed in this judgment, then he has every right to approach to the Honourable Appellate Forum to redress his grievances by preferring appeal.

2. It is also explained to the accused that in case, he is in need of legal aid for appeal to the Honourable High Court, the legal aid will be provided to him free of cost from concerned Legal Services Authority.

Date: 28/07/2025
CBD Belapur

sd/-
(P. A. Sane)
Additional Sessions Judge,
Belapur.