

MHJN010033512023



Presented on : 20.11.2023

Registered on : 20.11.2023

Decided on : 17.04.2026

Duration : 02 Ys/ 04 Ms/ 28 Ds

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, JALNA

(Presided over by Smt.N.S.Shaikh, Additional Sessions Judge-2, Jalna)

(Date of Judgment: 17.04.2026)

Sessions Case No.343 of 2023**Exh.No. 154**

(Crime No. 331/2023, Police Station Partur)

Part 'A'

PROSECUTION		State of Maharashtra Through Partur Police Station.
REPRESENTED BY		Smt.J.B.Solanke, the learned A.P.P for the State.
ACCUSED	1)	Shankar Dagaduba Patange , Age: 26 years,
	2)	Pandurang Narhari Rokade , Age: 36 years,
	3)	Pavan Narhari Rokade , Age: 26 years,
	4)	Narhari Bapurao Rokade , Age: 60 years,
		All r/o Amba, Taluka: Partur, District: Jalna
REPRESENTED BY		Shri.H.T.Kakade, the learned Advocate for accused No.1
		Shri.N.S.Ghanekar, the learned Advocate for accused Nos.2 to 4

Part 'B'

Date of Offence	08/08/2023
Date of FIR	09/08/2023
Date of Charge-sheet	02/11/2023
Date of framing of charges	29/01/2024
Date of commencement of evidence	29/05/2024
Date on which judgment is reserved	23.03.2026
Date of the Judgment	17.04.2026
Date of the sentencing order, if any.	17.04.2026

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charges with	Wither acquitted or convicted	Sentences imposed	Period of detention undergone during Trial for purpose of Section 428 of Cr.P.C.
1)	Shankar Dagaduba Patange	09.08.23	05.01.24	U/s.302, 307, 326, 120-B read with Section 34 of the Indian Penal Code.	Convicted	Accused Nos.1 to 4 are sentenced to suffer rigorous imprisonment for life	Set of is given to accused Nos.2 to 4 vide Sec. 428 of Cr.P.C., as they are in custody since 10.08.23 and 03.10.23 respectively and to accused No.1 from 09.08.23 to 05.01.24 & from 15.4.26 to 17.4.26
2)	Pandurang Narhari Rokade	10.08.23	UTP		Convicted		
3)	Pavan Narhari Rokade	10.08.23	UTP		Convicted		
4)	Narhari Bapurao Rokade	03.10.23	UTP		Convicted		

Part 'C'**(Appended to Judgment)****J U D G M E N T**

(Delivered on 17th of April, 2026)

. The accused stands prosecuted for the offences punishable u/s. 302, 307, 326, 120-B read with Section 34 of the Indian Penal Code.

The case of prosecution in succinct is as under;

2. Deceased Krushna Dhongde was son of the informant. He was running a medical shop at Selu Road. On 08/08/2023 he went to his shop at 10.00 A.M. At around 09.30 P.M, informant was at home with her daughter Suman and daughter-in-law Radha (wife of Krushna). At that time one Asif Shaikh came shouting that four persons were assaulting Krushna near Saibaba temple. Informant, Radha and Suman went running to the spot. Informant saw accused no. 1 to 4 armed with sickle like weapon, axe handle like rod and wooden stick were assaulting Krushna, who was screaming and his head was bleeding. Informant pleaded accused to stop assaulting Krushna. Accused no.1 kept assaulting Krushna with sickle saying that he will not stop till killing her son.

3. Krushna collapsed on the road due to severe head injury. Accused no.1 to 4 ran away from the spot. People gathered

at the spot and police were called. Police reached there and with help of crowd took Krushna to Government hospital at Partur. As Krushna was unconscious, he was sent to Jalna. At Jalna he was advised to be taken to Aurangabad. But he was taken to Kalawati Hospital, Jalna. Accused no.1 is father-in-law of and accused no.2 and 3 are brother-in-laws of Krushna. There was a dispute for one year between Krushna and accused over field water, due to which he was assaulted by accused persons.

4. Informant lodged the report on 09/08/2023. P.S.I Kendre recorded the report, registered crime no. 331/2023 under section 307, 326 read with 34 of IPC. As per the order of P.I Survase, investigation was handed to P.S.I Kendre. He issued letter to Taluka Agricultural Officer for assigning panch witness to perform spot panchnama. He visited the spot with panch witness and performed spot panchnama as shown by informant. He seized samples of plain soil, blood mixed soil and pair of sleepers. P.N Gadhave produced clothes of Krushna from hospital, which were seized in presence of panch and panchnama was performed. Accused no.1 to 4 were then arrested by performing arrest panchnama.

5. On 11/08/2023, P.S.I Kendre received information of the death of Krushna. He went to Government Hospital at Aurangabad and conducted inquest panchnama of the body. He then issued letter to Medical officer for performing post mortem. Accordingly, post mortem was conducted. P.S.I Kendre collected

provisional report of post mortem. The body of Krushna was handed to his sister Suman and receipt was obtained. DNA and forensic samples were collected from Medical officer. Offence under section 302 of IPC was added and investigation was handed to P.I M.T.Survase. The blood samples of accused persons were collected by medical officer.

6. On 11/08/2023 P.I Survase recorded memorandum statement of accused no.3; Pawan in presence of panch who produced pieces of broken fiber stick, which were seized under seizure panchnama. Again, on the same day accused no.2; Pandurang gave memorandum statement to produce fiber stick used in the offence, his statement was recorded in presence of panch and accused no.2 produced two pieces of fiber stick, which were seized under seizure panchnama. The clothes of accused no.2 were also seized by performing seizure panchnama in presence of panch witnesses.

7. On 12/08/2023, the clothes of accused no.1 were seized in presence of panch witnesses by performing seizure panchnama. Accused no.1 then gave his memorandum statement to produce stick used in the offence. Same was recorded by performing memorandum panchnama. Accused no.1 produced stick and seizure panchnama was performed. Similarly, on 14/08/2023 accused no.3 gave disclosure statement to produce motorcycle used. It was recorded in presence of panch. Accused no.3 produced motor cycle and it was seized under seizure panchnama. On

03/10/2023 accused no.4 was arrested, he produced one sickle with sharp edged iron blade and his clothes. They were seized under seizure panchnama. The fiber stick and sickle were sent to medical officer and his opinion about injury from weapon was collected.

8. PI Survase forwarded seized muddemal for chemical analysis. Map of the spot and 7/12 extract of the field of accused and deceased Krushna were collected. Deceased Krushna had filed report against accused which was registered as N.C no.493/2022 dated 14/09/2022 under section 504 and 506 of IPC, it was collected. The Tower location of the mobile phones of accused and deceased were also collected. After completion of investigation, Police Inspector Survase filed charge-sheet against the accused in the Court of learned Judicial Magistrate First Class, Partur. The offence under section 302 of Indian Penal Code being exclusively triable by the Sessions Court, the case was committed to this Court under section 209 of Criminal Procedure Code vide order dated 06/11/2023.

09. My learned predecessor framed charge (Exh.17) against accused Nos.1 to 4 U/sec. 302, 307,326, 120-B read with Section 34 of the Indian Penal Code. It was read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried. The plea of the accused persons was recorded at Exh.18 to Exh.21.

10. To substantiate the accusations levelled against the accused, the prosecution examined in all 17 witnesses, as mentioned hereafter.

11. After the prosecution closed its evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 were recorded at Exhibits 114 to 117. All incriminating circumstances appearing in the prosecution's evidence were put to the accused. All the accused denied the allegations in toto and contended that they are falsely implicated. They led no evidence in defence.

12. I have heard the learned Public Prosecutor Smt.J.B.Solanke for State, the learned Advocate Shri.H.T.Kakade for accused No.1 and Shri.S.N.Ghanekar the learned advocate for the accused Nos.2 to 4. On the basis of submissions made before me, the material on record and the charge framed, following points arise for my determination and my findings thereon are as under for the reasons to follow;

Sr. No.	POINTS	FINDINGS
1.	Whether the death of Krushna was homicidal?	In affirmative

Sr. No.	POINTS	FINDINGS
2.	Whether prosecution proves that, on 08.09.2023 at about 9.30 hours, behind Sai Baba Temple, near Gajanan Mangal Karyalaya, Partur, District: Jalna, all the accused, in furtherance of their common intention, committed murder of deceased Krushna by intentionally or knowingly caused severe bodily injuries which resulted into his death and thereby committed an offence punishable u/sec.302 r/w sec 34 of the Indian Penal Code?	In affirmative
3.	Whether prosecution proves that, on the aforesaid date, time and place of incident, all the accused indulged in criminal conspiracy to commit murder of Krushna and thereby committed an offence punishable under Section 120-B of the Indian Penal Code?	In affirmative
4.	Whether prosecution proves that, on the aforesaid date, time and place, all the accused, in furtherance of their common intention, did an act to wit to commit murder of Krishna, assaulted him by handle of axe, sickle and stick, such intention or knowledge and under such circumstances, if by that act, they all had caused the death of the informant, they all would have been guilty of murder and thereby committed an offence punishable	Does not survive

Sr. No.	POINTS	FINDINGS
	u/sec.307 r/w sec.34 of the Indian Penal Code?	
5.	Whether prosecution proves that, on the aforesaid date, time and place, all the accused, in furtherance of their common intention, voluntarily caused grievous hurt to deceased by means of handle of axe, sickle and stick which is an instrument for shooting and stabbing and thereby committed an offence punishable u/sec.326 r/w sec.34 of the Indian Penal Code?	Does not survive
6.	What order?	As per final order

REASONS

As to point No.1:-

13. It is not in dispute that the deceased Krushna succumbed to death due to the injuries sustained by him, particularly the head injuries. After the incident, the Krushna was taken to Rural Hospital Partur. Prosecution has examined Medical Officer Dr. Santosh Kale (PW.10). As per Dr. Kale on 08/08/2023, Krushna was brought to hospital in injured condition by his relatives with history of assault. Dr. Kale examined him and issued MLC No.28 (Exh.P-24/PW-10). He referred Krushna to Civil Hospital, Jalna.

14. Informant stated that, at Civil Hospital Jalna, it was informed that, Krushna was severely injured and therefore, he was taken to Kalawati Hospital, Jalna. On receiving MLC, P.I. Survase directed PN Ashok Gadve to visit injured and record his statement. As per PN Gadve (PW.12) on 09/08/2023 he went to record statement of injured Krushna. He issued letter to medical officer enquiring about condition of injured to give statement (Exh. P-33/PW-12). The medical officer opined that, patient was not in condition to give statement. On 09/08/2023 injured Krushna was shifted to Government Hospital, Aurangabad where he expired on 11/08/2023.

15. Inquest panchnama (Exh.46) of deceased was performed by PSI Kendre. He issued letter to medical officer for conducting post-mortem of the deceased Krushna. As per medical Officer Dr. Manohar Shelke he along with Dr. K.M. Choudhari and Dr. Sonali Kamble conducted the autopsy. The clinical diagnosis of deceased was mentioned as alleged history of physical assault with blunt trauma on head with subdural hemorrhage. On examination, the Dr. Shelke noted that on external examination following injuries were present and mentioned in column No.17 of post mortem notes (Exh. P-32/PW11):

1. Sutured laceration injury present over head, on left fronto-parietal region, of length 6 cm with 4 stitches in situ, antero-posterior, anterior end in midline and posterior end 4 cm left lateral to midline, margins covered with irregular brownish black scab.

2. Sutured Laceration injury present over head, on right frontal region, of length 6.5 cm with 9 stitches in situ, oblique upwards medially, margins covered with irregular brownish black scab.
3. Sutured laceration injury present over head, on left high parietal region, of length 3.5 cm with 4 stitches in situ, vertical, margins covered with irregular brownish black scab.
4. Sutured laceration injury present over head, on left occipital region, of length 4 cm with 5 stitches in situ, transverse, situated 1 cm behind left ear, margins covered with irregular brownish black scab.
5. Sutured laceration injury present over head, on left occipital region, of length 5 cm with 5 stitches in situ, vertical, situated 3 cm from midline, margins covered with irregular brownish black scab.
6. Sutured laceration injury present over head, on high parietal region, of length 4.5 cm with 5 stitches in situ, vertical, situated in midline, margins covered with irregular brownish black scab.
7. Sutured laceration injury present over head, on right occipital region, of length 5 cm with 4 stitches in situ, transverse, situated 6 cm behind right ear, margins covered with irregular brownish black scab.
8. Contusion present over left arm, middle third area. anterior aspect, of size 2cm x 2 cm, brownish in colour.

9. Multiple abrasions present over left elbow, on postero- lateral aspect, over an area of size 4 cm x 3 cm, sizes varying from 0.5cm x 1 cm to 0.2 cm x 0.2 cm, covered with irregular brownish black scabs.
 10. Abrasion present over right elbow, of size 2 cm x 2 cm. covered with brownish black scab.
 11. Abrasion present over right thigh, lower third area, antero- medial aspect, of size 0.5 cm x 0.5 cm, situated 1 cm above knee covered with brownish black scab.
 12. Multiple contusions present over back of neck, over an area of size 16 cm x 10 cm, varying in sizes from 2.5 cm x 1 cm to 5 cm to 2.5 cm, intermingling with each other, brownish in colour.
 13. Contusion present over left leg, middle third area, anterior aspect, of size 5 cm x 4 cm, brownish in colour.
 14. Therapeutic puncture marks present over both dorsum of hands, both cubital fossas and central line injection marks present over right subclavian region with 3 stitches in situ.
16. Dr. Shelke further states that, out of the 14 injuries mentioned in column No.17, all were antemortem injuries. Except injury No.14 which was therapeutic. The age of injuries was between 2 to 4 days before death. Probable weapon was hard and blunt weapon. He also mentioned about the internal injuries being found upon examination as below:

1. Antero-posterior linear fracture starting at right frontal bone running backwards crossing midline and extending on left frontal and parietal bones and ending on left occipital bone of length 28 cm.
2. Linear transverse fracture starting at right temporal bone, involving right parietal bone and ending at left parietal bone touching perpendicular to fracture no. 1 in middle part, of length 18 cm.
3. Antero-posterior linear fracture involving of right frontal and right temporal bone, of length 8 cm.
4. Fracture extending on skull bases on right anterior cranial fossa, right orbit and left middle cranial fossa.

17. As per Dr. Shelke the external injuries and corresponding internal injuries were sufficient to cause death in ordinary course of nature. He opined the cause of death as "head injury". Dr. Shelke also collected blood samples, scalp hair, teeth and nail clippings which were handed to the police. According to Dr. Shelke except the therapeutic injury, all other injuries were possible by stick and fiber rod if hard and blunt and with the blunt side of koyta (sickle). External injuries no.1 to 7 were possible by sharp edge of koyta. He stated it as probable since he saw the sutured injuries and margins could not be observed. Muddemal articles stick and sickle were shown to Dr. Shelke in evidence and he stated that, the injuries were possible by the articles.

18. The learned prosecutor argued that, Dr. Kale who examined the deceased first has also stated that, his opinion was sought about the weapons recovered. He examined two fiber rods and koyta. He opined that, the injuries were possible by the fiber rods and koyta. Learned defence counsel for accused no.1 argued that, in cross-examination, Dr. Shelke admitted that, investigating officer has not sought his opinion about weapon by showing him the seized weapons and the injuries were possible by any other hard and blunt object. However, Dr. Kale has specifically stated of receiving seized articles and issuing his opinion about it (Exh. P-26/PW-10 & P-28/PW-10).

19. The evidence of both medical officers Dr. Kale and Dr. Shelke about the presence of the injuries on the body of the deceased Krushna and cause of those injuries, has remained totally unshattered on record. The extent of injuries, especially which were caused on the head, leaves no doubt about cause of death was head injury. The nature of injuries is also such that they are not possible by accident or self-infliction. Hence, the only inference that can be drawn is that cause of death of deceased Krushna was homicidal in nature. As a matter of fact, the defence is also not seriously disputing in the face of the nature of injuries stated above that death was homicidal in nature. The inquest panchanama (Exh.46) is admitted in evidence, by Defence Counsel further fortify the conclusion that cause of death was none else but a homicidal in nature. Hence, I answer point no.1 in affirmative.

As to point No.2 to 5:

20. All these points require a discussion of same set of facts; hence, they are taken up for discussion together. Before advertent to the appreciation and marshaling of evidence regarding the involvement of accused persons, it would be necessary to ascertain whether accused persons in furtherance of their common intention, committed the culpable homicide amounting to murder of Krishna Dhongde. It would be beneficial to refer and reproduce the provisions of Section 299, 300 and 302 of Indian Penal Code. So also, to consider the ingredients required to constitute culpable homicide amounting to murder:-

Section 299 of IPC Culpable Homicide: Whoever causes death by doing an act with intention of causing death, or with intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1- A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by restoring to proper remedies and skillful treatment the death might have been prevented.

Explanation 3-The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Section 300 of IPC - Murder: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with intention of causing death, or

secondly—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of person to whom the harm is caused, or

thirdly - If it is done, with intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause the death, or

fourthly - If the person committing the act knows that it so imminently dangerous that it must, in all probability cause the death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1- Culpable homicide is not a murder if the offender, whilst deprived of power of self-control by grave and sudden provocation, causes the death of person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to following provisos: -

First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of powers of such public servant.

Thirdly - That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of person against whom he is exercising such right

of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3- Culpable homicide is not murder, if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes the death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. **Exception 4-** Culpable homicide is not murder, if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or taken the risk of death with his own consent.

Section 302 of IPC punishment for murder - Whoever commits a murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

21. In Section 300 of IPC, the definition of culpable homicide appears in an expanded form. Each of four clauses requires that the act which causes the death should be done intentionally, or with the knowledge or means of knowing that death is natural consequence of the act. An intention to kill is not always necessary to make out a case of murder. A knowledge that the natural and probable consequence of an act would be death will suffice for a conviction under Section 302.

22. An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. But an offence may amount to culpable homicide without amounting to murder. It does not follow that a case of culpable homicide is murder, because it does not fall within any of the Exceptions to Section 300 of IPC. To render culpable homicide as murder, the case must come within the provisions of clauses 1, 2, 3 or 4 of Section 300 of IPC and must not fall within any one of five Exceptions attached thereto.

23. The settled propositions of criminal law are as under:

- (A) Prosecution is required to prove its case beyond reasonable doubts by leading reliable, cogent and convincing evidence.
- (B) In order to prove its case, prosecution is supposed to stand on its own legs and it cannot derive any benefit whatsoever from the weaknesses, if any, in the defence of accused.
- (C) The burden of proof of the version of prosecution in a criminal trial throughout the trial is on the prosecution and it never shifts to accused.
- (D) The accused is entitled to the benefit of every reasonable doubt in the prosecution story and such doubt entitles the accused to acquittal.

Now the evidence will have to be examined and appreciated keeping in mind legal position as discussed in foregoing paragraphs.

24. The case of prosecution is fundamentally based on the evidence of eye witnesses i.e informant (mother of deceased), Radha (wife of deceased) and Asif Shaikh who on witnessing the incident informed the family of deceased Krushna. Thus, the evidence of witness Asif Shaikh is crucial. According to Asif Shaikh (PW.7), he knew Krushna who was friend of his employer Dipak Kadam. Asif has visited the house of Krushna on many occasions. About the incident, he state that on 08/08/2023 at 09.20 – 09.30 P.M, he was going home after filing petrol in his motorcycle. Incident occurred on side of path way of Sai baba chowk.

25. As per witness Asif he saw there was commotion, Krushna was crying for help. Three to four persons were assaulting him. He went to the house of Krushna on motorcycle and informed them. Mother, wife and sister of Krushna reached the spot. He saw blood oozing from head of Krushna and the assailants had left. Unfortunately, this witness resiled from his statement and stated that was cross-examined by the prosecution. In his cross-examination witness Asif admitted that, when he reached the spot they started shouting, informant was seeking help to rescue Krushna at that time the assailants ran away. At that time Krushna was lying on the side of road with bleeding head injury. He was then taken to hospital.

26. In the cross-examination conducted by defence, witness Asif admitted that he knows father-in-law and brother-in-laws of Krushna by face. He further admitted that, the assailants were unknown persons, many persons had gathered on the spot and police reached there in five minutes. The learned defence counsels argued that, alleged eye-witness Asif has stated that, the assailants were unknown persons. The investigating officer admitted that, he has not recorded the description of assailants from Asif. Admittedly, no test identification parade was conducted for the identification of the accused persons.

27. On the other hand, the learned prosecutor submits that, the entire evidence of witness Asif cannot be discarded. He stated that there were 3-4 assailants and they ran away after the informant, wife and sister of Krushna reached the spot. The informant i.e mother and wife of Krushna has identified the assailants as accused persons. Thus, the evidence of mother and wife of Krushna needs to be scrutinize.

28. Informant (PW.1) i.e mother of deceased Krushna deposed to have witnessed the incident. According to her, on the day of incident at around 09.30 P.M when she was at home with her daughter and daughter-in-law (Radha), Asif Shaikh came shouting that Krushna was being assaulted by four persons. They all went near temple where accused no 1 to 4 were assaulting

Krushna. Accused no.4 was equipped with koyta (sickle), accused no.2 and 3 with stick of fiber whereas accused no.1 was having wooden stick in his hand. Krushna was shouting. Informant shouted to leave Krushna but accused no.4 said that, they will not leave him till he is dead. Then accused person went away. People gathered there and someone called police.

29. As per informant, Krushna was then taken to Government hospital. He was only put with bandages and referred to Jalna. He was taken to Kalawati Hospital and was under treatment for entire night. On next morning Partur police came to record statement of Krushna but he was in coma. Police took informant and her daughter to Partur, where her statement was recorded. She had shown the spot of incident to the police.

30. The evidence of informant is corroborated by Radha; wife of Krushna. As per Radha, she got married to Krushna in 2006 and had three daughters and a son from him. Narrating about the incident she states that, on 08/08/2023 at 09.30 P.M, she along with informant and her sister-in-law were at home waiting for Krushna. Asif Shaikh came shouting that four persons were assaulting Krushna near Sai Baba Temple. They all went to the spot and saw accused no.1 to 4 were assaulting Krushna. She shouted not to assault him. Accused no.2 and 3 were assaulting with fiber rod on head of Krushna, accused no. 1 with stick and accused no.4 with koyta (sickle). Then they left on motorcycle exclaiming that, he died. Krushna had fall down, blood was oozing from his head.

Police vehicle came there in some time. Krushna was taken to hospital in rickshaw. He was unconscious. They were at Partur hospital for 5-10 minutes from there they brought Krushna to Jalna and then he was shifted to Aurangabad, where he expired after two days.

31. The informant and Radha have deposed about motive of accused to commit offence. As per these witnesses, Krushna was having 5 acres of land. Out of it four acres were in his name and one acre in the name of informant. It was purchased before 25 years. The possession of the land was with accused no.2 to 4. They were cultivating it. There was a common pipeline with accused no.4. Accused no.4 stopped giving water to field of Krushna hence, he took the land from accused no.4. There was a quarrel over it. Accused were demand back the land. When Radha use to visit Krushna at his medical shop, he use to inform her that, accused were threatening to kill him. Krushna had also filed compliant about it and N.C was registered against her father and brothers.

32. The learned prosecutor pointed out that, copy of N.C is produced on record by Investigating Officer PI Survase which is at Exh. P-66/PW-16. On perusal of the N.C, it is noted that same was filed on 14/09/2022 by Krushna and registered as N.C. no. 493/2022 against accused no.2 to 4. It was alleged that, since many years his land was given on rent to accused no.2 to 4 and he gave it to one Dynandev Ghule. Thus, on 12/09/2022 in after noon when he was at his medical shop, accused no.2 to 4 visited him and

abused him as why he did not give the land on rent to them, they also threatened and intimidated to see him.

33. The learned defence counsel for accused no.1, accused no.1 was having no motive to commit the offence. The evidence of Radha is improvisation that accused no.1 assaulted Krushna with stick. The informant and Radha are interested witnesses and not trustworthy. The independent witness Asif Shaikh did not identify accused persons. The learned counsel for accused no.2 to 4 vehemently argued that, the evidence of informant and Radha cannot be believed as they have not witnessed the incident. He contents that, informant admitted that, Asif Shaikh did not disclose the names of assailants when he informed about incident to informant and Radha.

34. The learned counsel for accused no.2 to 4 further argued that, as per informant and Radha people had gathered at the spot but they failed to name any one of the witness's present nor the police examined any of them. It is further deposed that, police reached the spot but neither informant, Radha or investigating officers Kendre or Survase could give details of who those police officers where and why they were not examined. He argued that, in case police had reached the spot, they would have taken report of the incident at Police station. But the report was taken only on next day when informant gave her statement.

35. Another contention raised by the learned defence counsel for accused no.2 to 4 is about the delay in recording

complaint and statement of Radha. He argued that, the FIR is registered after 15 hours of the incident. If as per informant, police reached spot and also visited hospital to record statement of Krushna then why she did not disclose that accused no.1 to 4 had assaulted Krushna. In the MLC issued by the Partur hospital it is only mentioned that, Krushna got injured, no names of assailants are mentioned in it. Informant gave the names of accused for the first time in FIR which is doubtful.

36. The evidence of Radha is also challenged contending that, her statement was recorded after 17 days and it was given under influence of her in-laws. The delay caused in giving statement, in disclosing names of accused by informant are fatal to the case of prosecution. Further, the learned counsel for accused no.2 to 4 pointed out that, informant has not specifically stated about the role of accused persons at the time of assault. She stated that, accused no.4 was having weapon like koyta (sickle) and improvised her statement by deposing that, the stick in hands of accused no.2 was of fiber. Finally, it is also submitted that, prosecution has not examined the sister of Krushna as a witness.

37. Accused no.2 to 4 had relied on the following cases on the point that;

i) The unexplained delay in recording statements of eye witnesses is in a shadow of doubt. (*Sachin s/o Dnyaneshwar Fulkar Vs. State*

of Maharashtra in Criminal Appeal No.248 of 2016 dated 21/06/2019.)

ii) Inordinate delay in registration of the 'F.I.R.' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. (*Ganesh Bhavan Patel and Ors. Vs. State of Maharashtra* AIR 1979 SC 135)

iii) Much reliance cannot be placed on the evidence of a witness when for no justifiable reason he was not examined by the investigating officer for a number of days particularly when the witness is found to be telling falsehood on material aspects of the case and tries to conform to the evidence of other witnesses. (*Balakrushna Swain Vs. State of Orissa* AIR 1971 SC 804)

iv) The evidence of the eye witness was not truthful, reliable and trustworthy and hence could not form the basis of conviction. Their presence at the scene of occurrence at the time of the incident was highly unnatural as also their ability to individually and correctly identify each of the accused from a considerable distance, especially when it was dark at the alleged place of occurrence, was itself suspect. (*Harbeer Singh and Ors. Vs. Sheeshpal and Ors.* AIR 2016 SC 4958)

v) The delay in recording the statements casts a serious doubt about their being eye witnesses to the occurrence. No explanation is forthcoming as to why they are not examined for 3

days. (*Maruti Rama Naik Vs. State of Maharashtra*, AIR 2003 SC 3884)

38. To counter the contentions raised by the defence, the learned prosecutor submits that, as regards delayed examination of certain witnesses, the Hon'ble Supreme Court in several decisions has held that, unless the Investigating officer is categorically asked as to why there was delay in examination for the witnesses the defence cannot gain any advantage there from. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion [*Ranbir and Ors. v. State of Punjab*, AIR (1973) SC 1409, *Bodhraj @ Rodha and Ors. v. State of Jammu and Kashmir*, [2002] 8 SCC 45 and *Banti @ Guddu v. State of M.P.*, [2004] 1 SCC 414.] *State of U.P vs Satish* (AIR 2005 S.C 1000)

39. The learned prosecutor further submits that; some delay in lodging the FIR is not fatal to the prosecution. It is not the sole ground to disbelieve the prosecution witnesses (*Ravindra Kumar and another Vs. State of Punjab* in (2001) AIR (SC) 3570) She also banked on the case of *Sukhdev Yadav and others Vs. State of Bihar* in (2001) 8 Supreme Court Cases 86 where it has been laid down by the Hon'ble Supreme Court of India that: "*The court can sift*

the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence. It is indeed necessary however to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment sometimes, there would be a deliberate attempt to offer the same. Sometime, the witnesses in their over anxiety to do better from the witness box details out an exaggerated account."

40. It is to be noted that the explanation when offered by I.O. on being questioned on the aspect of delayed examination, by the accused has to be tested by the Court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the Court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of prosecution's evidence tendered by the other witnesses. As per Radha, her statement could not be recorded early as she was not well. She states that she was having jaw lock and was not in mental state to give statement as accused were his brothers and father.

41. It is worth mentioning that, informant is sister of accused no.4 whereas Radha is the daughter of accused no.4. accused no.2 and 3 are real brothers of Radha. She had witnessed

the accused assaulting her husband who was killed. When the delay in filing of FIR or statement of witnesses is challenged it has to be looked at the reason why there was such a delay. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report.

42. In the present case, no doubt, there is apparently a long delay of 17 days to give statement to the police, but the bereaved widow was not absolutely in fit mental state. It is only understandable how much time a wife, in such a situation would take to reach some level of placidity for disclosing to the police what she witnessed as assailants were her own father and brothers. Thus, there is no merit in the contention of defence about the delay of wife of deceased to give statement to the police. Where eyewitnesses i.e informant and Radha, who knew the accused persons prior to the occurrence deposed that they saw the accused persons, there is no reason for them to falsely implicate own family members.

43. Learned defence counsel had pointed out towards omissions and contradictions in the evidence of informant and Radha by pointing out the discrepancies of police reaching the spot before they reaching the spot. It is settled proposition of law that, even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (*Sohrab v. State of M.P.*, (1972) 3 SCC 751, *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505, *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217, *State of Rajasthan v. Om Prakash*, (2007) 12 SCC 381, *Prithu v. State of H.P.*, (2009) 11 SCC 588, *State of U.P. v. Santosh Kumar*, (2009) 9 SCC 626 and *State v. Saravanan*, (2008) 17 SCC 587).

44. The evidence of informant and Radha also founds corroboration to the evidence of Asif Shaikh, whose evidence cannot be swiped aside completely as the hon'ble Apex Court in the case of *Khuji @ Surendra Tiwari vs The State Of Madhya Pradesh* (AIR 1991 SUPREME COURT 1853) has laid down that, *the evi-*

dence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

45. Thus, from the evidence of Informant, Radha and Asif Shaikh, it is proved that accused no.1 to 4 has assaulted Krushna in the manner stated by these witnesses. It is contended by the Counsel for the accused no.1, that he was not present on the spot, and in fact he was in Amba. At this juncture, it is apt to deal with the plea of alibi that has been put forth by the accused no.1. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the prosecution. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused on the spot of incident at the relevant time.

46. To substantiate the contention raised by accused no.1, no evidence is adduced by him to prove his presence away from the spot. However, the learned counsel for accused no.1 relied on the call data records and cell ID addresses of the mobile of accused no.1.

47. Prosecution has examined Nodel Officer Tushar Nalawde (PW.17) of Bharti Airtel. As per this witness he received letter of SP Jalna for providing call date record (CDR) of four mobile number from 06/08/2023 to 10/08/2023 along with customer application form (CAF) and subscriber detail records (SDR). He issued the information accordingly along with certificate (Exh.P-72/PW17) under section 65 B of the Indian Evidence Act. Exh. P-71/PW17 is the letter issued by witness Tushar along with the customer application forms of one Amit Jivne, accused no.1, accused no.2 and deceased Krushna (Exh.P-73/PW17 to P-76/PW17), cell ID details of tower locations (Exh.P-77/PW17 to P-80/PW17) and call data records (Exh.P-81/PW17 to P-84/PW17).

48. In his cross-examination by accused no.1 he admitted that, on 08/08/2023 at 12.37 the mobile phone of accused no.1 was at post Amba, Taluqa Partur District Jalna. However, he specifically stated that, on 08/08/2023 the last SMS on mobile of accused no.1 was 16.06.13 and after it the mobile was switched off till 8.22.57 of 09/08/2023. The tower location at that time was at Partur. Thus, accused no.1 miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt.

49. Prosecution has supported the evidence of eye witnesses with the recovery of muddemal articles leading to the involvement of accused persons which is quite reliable and acceptable. Prosecution has examined panch witnesses. PW.2 Vinod

Wagh acted as panch for spot panchnama and inquest panchnama. His evidence is not much challenged by the defence rather the spot panchnama and inquest panchnama were admitted by defence. The police has seized soil, blood mixed soil and sleepers of deceased Krushna from the spot under the spot panchnama.

50. Further there is most crucial piece of evidence which is the recovery of the weapon of assault, namely, pieces of fiber rod, sickle and wooden stick at the instance of the accused persons u/s. 27 of The Evidence Act. This recovery is proved through evidence of panch witness Sunil Jaybhay (PW.4) who is panch for the recovery of pieces of fiber rod at instance of accused no.2. As per his evidence on 28.5.2013 the accused no.2 has given disclosure statement in the presence of panch that he is ready to show the place where he has kept the rod. His statement was reduced to memorandum panchnama (Exh.P-7/PW-4). Thereafter, the accused no.2 guided the Panch and Police to spot of incident at Sai baba chowk, Partur. He asked to stop the vehicle and took the Panch and Police, he went ahead in grass and searched for the stick in it. He pointed two pieces of stick having blood stains. Police sealed it with the labels of signatures of Panch and performed seizure panchnama (Exh. P-8/PW-4). A photographer had also accompanied the police and panch, who took photographs.

51. As per panch Jaybhay they returned to police station where, the clothes of accused no.2 having blood stains were seized. The clothes being black and yellow colour shirt with checks and

light blue colour jeans of “Being Human” brand. This witness identified the accused no.2 in Court, the pieces of stick and clothes (MO.4, MO.5, MO. 6 & MO.7) He also identified the signatures on labels of the seized articles (MO.4-A, MO.5-A, MO.6-A & MO.7-A)

52. Panch PW.6 Santosh Saraf deposed about seizure of clothes of accused no.1 in his presence at Police station. As per panch Saraf, police seized one half sleeves black and chocolate coloured T-shirt and blue-coloured jeans pant of accused no.1. Seizure panchnama (Exh.P-9/PW.6) was performed. He identified the accused no.1 in Court and the clothes (MO.8 & MO.9) He also identified the signatures on labels of the seized articles (MO.8-A & MO.9-A). Further, accused no.1 gave disclosure statement to produce stick from his house at Amba. His statement was recorded (Exh.P-10/PW-6). Accused No.1 lead the police, panch and photographer to his village in police jeep. On the directions of accused No.1, the vehicle stopped near temple of Goddess. The all got down and followed accused No.1, who showed his house, which was of tin-shed. He produced one Bamboo stick from beneath the shed. Police seized the stick and performed the panchnama vide Exh.P-11/PW-6. This witness identified stick (MO-10) and Label on it (MO-10-A).

53. Panch Saraf also stated that he was again called on 13th along with another panch Sudam Khandare. Accused No.3 gave disclosure statement of producing motorcycle from the cattle shed. It was recorded (Exh.P-12/PW-6). Accused No.3 took the police and

panch to his house at Amba in the police jeep. He showed the place of cattle shed of his house, where the motorcycle was kept near the fodder. It was of Hero Honda company without registration and black in colour. Police seized the vehicle by performing panchnama (Exh.P-13/PW-6).

54. Another panch examined by the prosecution is PW-8 Subhash Sadashiv Vaidya. He stated to have been called at Partur police station on 03.10.2023. Accused No.4 handed Koyta and his clothes to the police. The clothes were one white shirt of full sleeves and black colour full pant. Police seized the articles by performing panchnama (Exh.P-15/PW-8). Panch Vaidya identified accused No.4 in the Court and the articles i.e. Koyta, shirt and pant (MO-11, MO-12 and MO-13) and the labels over it (MO-11-A, MO-12-A and MO-13-A).

55. PW-13 Sheetal Bhosale is the witness of disclosure statement of accused No.3. According to Sheetal Bhosale, on 11.08.2023, she went to the police station along with one Vinod Wagh. Accused No.3 was taken out from the lock-up. He disclosed of producing pieces fiber stick, thrown in the grass, near the spot and his home. His statement was recorded in presence of panch (Exh.P-34/PW-13). The police and panch along with photographer accompanied accused No.3 in police vehicle.

56. According to PW-13, the police vehicle was taken from Ashti road then to Watur road and stopped near Sai Baba square on

the directions of accused No.3. Accused lead them and showed the spot. He produced two pieces of fiber stick from the grass, which were 6 inches in length and circumference. The sticks were having blood stains. Accused No.3 then took the panch and police near one field, Gat No.146. The police and panch followed him to the place from where he took out one fiber stick from the grass, which was 13 Inche in length and four and half inch circumference. The pieces were seized by performing panchnama (Exh.P-35/PW-13). PW-13 identified accused No.3 in the Court and also identified the pieces of fiber stick (Article MO-14 and MO-15) and labels (Articles MO-14-A and MO-15-A).

57. One Ritika Karhale (PW-14) who acted as panch of the seizure panchnama is examined by prosecution. She stated to have been called at police station on 14.08.2023. Accused No.3 made disclosure about producing motorcycle and his clothes from his home at Amba. His statement was recorded (Exh.P-36/PW-14). API Surwase, accused and panch went in police jeep. Accused guided the vehicle from Malangshaha square to the pond near Amba village. He asked to take left turn and stopped the vehicle in front of one south facing house, which accused pointed as his house. They followed the accused to his bed-room, from where, he handed the clothes worn by him at the time of incident. The clothes were one black and white checks shirt with full sleeves and full pant of jockey brand, blue in colour.

58. Panch Karhale stated the boundaries of the house and identified the clothes seized by the police by performing seizure panchnama (Exh.P-37/PW-14). She also identified accused No.3 in the Court and the shirt and pant (MO-16 and MO-17) and labels (MO-16-A and MO-17-A).

59. The learned defence counsel has challenged the recoveries made at the instance of the accused persons. The learned counsel for accused Nos.2 to 4 argued that the spot from where the seizures were made was open place, accessible to all. The panch witnesses stated that the accused persons did not talk to them. The seizure of Koyta from accused No.4 is doubtful since in the arrest panchnama, it is not mentioned that accused was carrying Koyta. It is further argued that the muddemal articles were sent for forensic analysis after delay of two to three months. From the seizure of the articles, till they were sent to the forensic laboratory, the articles are required to be kept in sealed condition, however it is seen from the evidence of Dr.Kale that the packets containing weapons were open by him for giving his opinion and later, he sealed it with the seal of police station. Since the muddemal articles were forwarded to forensic laboratory after showing to the doctor, there is possibility of its tampering.

60. The learned defence counsel also pointed out discrepancies and lacunas from the evidence of Investigating Officers PSI Kendre and PI Surwase. It is pointed out that the statement of Medical Officer who examined deceased Krushna at

Kalawati Hospital, is not recorded. PSI Kendre admitted that he has not made any inquiry about who gave the information of assault to Krushna at police station, what was the information and which Officers went to the spot. It is also contended that accused Nos.2 and 3 did not disclose the location from where the article was to be recovered and therefore it is not admissible under Section 27 of Cr.PC. He submitted that Investigating Officer PI Surwase conducted Investigation in negligent and casual manner.

61. Investigating Officer PI Surwase has deposed about recording of the disclosure statements of the accused persons, performing of the seizure panchnamas of the articles seized. PI Surwase has stated in detailed about depositing of the seized articles with the muddemal Mohril – Khade from time to time and collecting the deposit receipts from him which are filed at Exh.P-50/PW-16, Exh.P-51/PW-16, Exh.P-52/PW-16, Exh.P-54/PW-16, Exh.P-55/PW-16, Exh.P-57/PW-16, Exh.P-59/PW-16 and Exh.P-61/PW-16.

62. The prosecution has examined PW-3 Police Constable Sunil Pawar and PW-9 Police Constable Machhindra Kokate who deposed to have collected the muddemal articles in sealed condition and deposited it with the chemical laboratory along with forwarding letter signed by PI Surwase. The forwarding letter being Exh.P-16/PW-9 and acknowledgment receipts Exh.P-4/PW-3, Exh.P-5/PW-3, Exh.P-17/PW-9 to Exh.P-23/PW-9.

63. The recovery of the articles on the instance of accused persons further fortifies the case of prosecution since prosecution relied on the reports of DNA and chemical analysis. Exh.64/PW-16 is report of DNA analysis of the articles seized from which, the DNA was extracted and compared with the DNA of deceased Krushna, extracted from his hair and teeth (Exh.P-65/PW-16). As per the opinion of the chemical analyser, the earth, blood stains cutting from jeans pant, blood stains collected from fiber log, full shirt and the controlled DNA of deceased were identical and from one and the same source of male origin. As per the CA report (Exh.108), blood stains of human origin were found on earth, earth mixed with blood (collected from the spot, slipper of deceased, three broken pieces of fiber log, bamboo stick, full jeans pant and underwear of deceased, full shirt and jeans pant). Though the blood stains were detected were of human origin, they were referred to DNA for blood grouping.

64. From the list of articles sent to the chemical analyser and its report Exh.108, it is found that the fiber pieces seized from accused Nos.2 and 3, Bamboo stick seized from accused No.1 white and black coloured shirt of accused No.3 and jeans pant of accused No.2 were having blood stains. Though the learned defence counsel is pointed out about the discrepancies of the evidence of panch witnesses, the presence of human blood stains from the fiber log, Bamboo stick and clothes of accused persons is sufficient to connect them with the commission of the offence.

65. In the case of "**Shankar Gopal Patil V/s State of Maharashtra**", reported in [2000 ALL MR (CRI) 186], it was ruled that, Section 27 of the Evidence Act requires witness to prove in his deposition, statement of the accused, which relied upon to discover the object and the fact of accused keeping or concealing the object at a particular place. Hon'ble Supreme Court in the case of, '**Amit Singh Bhikamsing Thakur V/s. State of Maharashtra**', reported in [AIR 2007 SC 676] has summed up various requirements of [Section 27](#) of the Evidence Act, which are reproduced as follows:

- "(i) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provisions has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- (ii) The fact must have been discovered.
- (ii) The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- (iv) The persons giving the information must be accused for any offence.
- (v) He must be in the custody of the police officer.
- (vi) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

- (vii) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

66. In view of the above cited case and the discussion therein, the prosecution has already proved that, the weapons used were recovered at the instance of the accused persons, the place from where the recovery was made was in exclusive knowledge of the accused, who led to the discovery of the articles. The presence of blood stains thereon proves the use of weapons in the commission of the offence.

67. So far as the contentions of the defence about the negligent and casual manner of the Investigating Officer, it cannot be fatal to the case of the prosecution. As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the accused. (*Union of India vs. Prakash P. Hinduja* AIR 2003 SC 2612). If the prosecution case is established by the evidence adduced, any failure or omission on the part of the I.O cannot render the case of the prosecution doubtful. (*Amar Singh vs. Balwinder Singh*, AIR 2003 SC 1164, *Sambu Das vs. State of Assam* AIR 2010 SC 3300). If direct evidence is credible, failure, defect or negligence in investigation cannot adversely affect the prosecution case. The evidence of informant and Radha is natural, cogent and creditable. Since no doubt can be casted on their evidence in absence of any plausible reason why informant being

the sister of accused No.4 and Radha being his daughter and sister of accused Nos.2 and 3 would implicate them in such a serious offence falsely.

68. The prosecution has alleged that accused Nos.1 to 4 have committed the murder of deceased Krushna in agreement between them to commit the illegal act. Section 120-B of the IPC defines criminal conspiracy as an agreement between two or more persons to commit an illegal act or a legal act by illegal means. The essence of this offence lies in the agreement and the intention to commit the act. The foundation of criminal conspiracy is the existence of an agreement between two or more individuals. The agreement does not need to be formal or explicit; it can be inferred from the actions or conduct of the parties involved. The explanation to the provision provides that, it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

69. The presence of accused Nos.1 to 4 on the spot of incident can be inferred that there was a criminal conspiracy due to their action and conduct. Not even a single suggestion was put suggesting that the accused persons were not present on the spot at the time of incident. As already discussed accused No.1 failed to prove his plea of alibi. The motive of accused No.1 to 4 for committing the murder of deceased Krushna is proved by the informant and Radha which was the grievance for not giving the land to accused Nos.2 to 4 on rent. The dispute over is further

strengthen by the proof of NC filed by deceased Krushna about the abuse and threat given to him by accused No.2 to 4.

70. In view of foregoing discussion, it can be held that, prosecution has proved beyond the reasonable doubt, date, period, spot and manner of occurrence of incident in question. Besides the recovery of weapons of assault used by accused persons on their instance. The evidence of material prosecution witnesses appears to be cogent, natural, reliable and corroborating with the prosecution case and that of each other. Besides the documentary evidence in the shape of information report, FIR, spot panchanama, seizure panchanama, inquest panchanama, post-mortem examination report, reports of Chemical Analyzer, material objects and articles recovered during investigation.

71. Thus, all the aspects supporting to each other have been discussed in the preceding paragraphs, leading this Court to hold that, prosecution could prove beyond the reasonable doubt that, accused No.1 to 4 intentionally and knowingly committed culpable homicide amounting to murder of Krushna by hatching criminal conspiracy in furtherance of common intention. Therefore, accused No.1 to 4 are guilty of offence punishable under Section 302 and 120(B) of the Indian Penal Code. Moreover, as accused persons are held guilty of offence punishable under Section 302 of the Indian Penal Code, they are not convicted for the offence punishable under Section 307 and 326 of Indian Penal Code. As

such, I answer point No. 2 to 5 accordingly and proceed to hear accused on the quantum of sentence.

72. The accused are explained with observations and findings recorded and the punishment which can be awarded for the proved offence. The accused no.1 has submitted that he is innocent and has no concern with the offence. Accused no.2 stated that, he has young children and aged mother to look after. Accused no.3 and 4 also submits that they have not committed any offence. They all prayed for leniency in awarding the sentence.

73. Learned A.PP Smt.J.B.Solanke has fairly submitted it cannot be said to be rarest of the rare case and therefore, suitable sentence may be awarded according to law.

74. Learned Advocate Mr. K.D.Sawant for accused no.1 has submitted that the accused No.1 is having aged mother who is on dialysis for both kidneys. He is Karta of the family and therefore, minimum sentence may be awarded.

75. Learned Advocate Mr. S.P.Sartale for accused no.2 to 4 has submitted that accused No.4 is aged persons having undergone open heart surgery. Accused No.2 is having three young children, and accused No.3 is young person having aged mother to look after. Accused Nos.2 to 4 are the only earning members of the family. Therefore, considering the above circumstances, minimum sentence may be awarded.

76. The accused has claimed innocence even at this stage however, it cannot be ignored that, the deceased was brutally

beaten and killed by the accused who was not only nephew of accused no.4 and cousin brother of accused no.2 and 3 but also son-in law of accused no.4 and brother-in-law of accused no.2 and 3. The act of the accused warrants proportionate punishment, and no extraordinary lenient view can be taken in sentencing.

77. So far as quantum of punishment is concerned, for the offence punishable under section 302 of the IPC sentence of imprisonment for life is provided. Death penalty can only be awarded in rarest of the rare case. Undisputedly, the present one is not, and cannot be treated as, rarest of rare case and therefore, it would be proper to award punishment of imprisonment for life to the accused, with suitable fine. Resultantly, I proceed to pass the following order;

ORDER

1. The accused No.1 **Shankar Dagaduba Patange**, the accused No.2 **Pandurang Narhari Rokade**, the accused No.3 **Pavan Narhari Rokade** and the accused No.4 **Narhari Bapurao Rokade**, are hereby convicted u/s. 235(2) of the Code of Criminal Procedure, 1973, for the offence punishable u/s. 302 read with Section 120-B and 34 of the Indian Penal Code in C.R. No.331/2023 registered by Partur Police Station and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- (Rupees Ten Thousand Only) each. In default to pay fine, suffer rigorous imprisonment for one year each.

2. The fine amount, if recovered, be paid to the Radha, widow of deceased Krushna after appeal period is over.
3. Accused no.1 is on bail. His bail bonds stand cancelled.
4. Accused No.2 to 4 are entitled for the set off as per the section 428 of the Code of Criminal Procedure, 1973, if any. They are in custody since 10.08.2023 and 03.10.2023 respectively. The period undergone by accused No.1 in custody from 09.08.2023 to 05.01.2024 and from 15.4.2026 to 17.04.2026 is set off.
5. Muddemal property (PR No.23/2024) being worthless, it be destroyed, after an appeal period is over.
6. Seized motorcycle of Honda company having Chesis No. ME4JC36DEB11177980 and Engine No. JC36E2349721, be handed over to its registered owner, after appeal period is over.
7. Marked and unmarked articles if any, being worthless, be disposed of, after appeal period is over.
8. The accused are appraised with provision of appeal.
9. A copy of the Judgment be given to accused no.1 to 4 in gratis and forwarded to District Magistrate, Jalna vide Section 353(4) and 365 of the Criminal Procedure Code, 1973 respectively.

10. As the matter is disposed of by this Judgment, the record and proceedings be sent to Record Department.

(N. S. SHAIKH)

Date : 17.04.2026

Additional Sessions Judge,
Jalna

Part 'C'

List of prosecution/ defence/ Court witnesses

A. Prosecution witnesses :

RANK	NAME	NATURE OF WITNESS (EYE-WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
PW-1 (Ex-37)	Sagar Gunaji Dhongde	Informant
PW-2 (Ex-48)	Vinod Bhanudas Wagh	Panch witness
PW-3 (Ex-50)	Sunil Dattatray Pawar	Carrier of muddemal
PW-4	Sunil Ramrao Jaybhay	Panch witness

(Ex-52)		
PW-5 (Ex-54)	Radha Krishna Dhongde	Wife of deceased and eye-witness
PW-6 (Ex-56)	Santosh Sadashiv Saraf	Panch witness
PW-7 (Ex-66)	Asif Pasha Shaikh	Eye-witness
PW-8 (Ex-67)	Subhash Sadashiv Vaidya	Panch witness
PW-9 (Ex-71)	Machhindra Ramkishan Kokate	Carrier of muddemal
PW-10 (Ex-73)	Dr. Santosh Manikrao Kale	Medical Officer
PW-11 (Ex-76)	Dr. Manohar Kashinath Shelke	Medical officer
PW-12 (Ex-87)	Ashok Limbaji Gadhave	Police Constable who went to record statement of injured
PW-13 (Ex-88)	Shital Digambar Bhosale	Panch witness
PW-14 (Ex-89)	Ritika Shrikrishna Karhale	Panch witness
PW-15 (Ex-93)	Vitthal Baburao Kendre	Investigating Officer

PW-16 (Ex-96)	Machhindra Tukaram Survase	Investigating officer
PW-17 (Ex-104)	Tushar Lalasaheb Nallawade	Nodal Officer, Bharati Aritel

B. Defence witness, if any:

RANK	NAME	NATURE OF WITNESS (EYE-WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
NIL	NIL	NIL

C. Court witness, if any:

RANK	NAME	NATURE OF WITNESS (EYE-WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES)
NIL	NIL	NIL

List of prosecution/ defence/ Court exhibits.**A. Prosecution :**

Sr. No.	Exhibit Number	Description
1.	Exh.P1/PW-1	Report
2.	Exh.P2/PW-1	Printed FIR
3.	Exh.P3/PW-2	Seizure panchnama of clothes of Krushna
4.	Exh.P4/PW-3	Letter dated 09.10.2023 issued by PI Surwase
5.	Exh.P5/PW-3 & Exh.P6/PW-3	Two acknowledgments issued by Regional Forensic Science Laboratory, Aurangabad.
6.	Exh.P7/PW-4	Memorandum panchnama of accused No.2
7.	Exh.P8/PW-4	Seizure panchnama of pieces of fiber log
8.	Exh.P14/PW-4	Seizure panchnama of clothes of accused No.2
9.	Exh.P9/PW-6	Seizure panchnama of clothes of accused No.1
10.	Exh.P10/PW-6	Memorandum statement of accused No.1
11.	Exh.P11/PW-6	Seizure panchnama of wooden stick

12.	Exh.P12/PW-6	Memorandum panchnama of accused No.3
13.	Exh.P13/PW-6	Seizure panchnama of motorcycle
14.	Exh.D1	Photograph
15.	Exh.P15/PW-8	Seizure panchnama of Koyta and clothes of accused No.4.
16.	Exh.P16/PW-9	Letter submitted by PW-9 with regard to receiving 7 acknowledgments from CA laboratory and depositing the same to Investigating Officer.
17.	Exh.P17/PW-9 to Exh.P23/PW-9	Acknowledgment slips of muddemal issued by C.A. Laboratory, Chhatrapati Sambhaji Nagar
18.	Exh.P24/PW-10	MLC of deceased Krushna
19.	Exh.P25/PW-10	Letter received by Medical Officer from Police Station Partur for weapon query.
20.	Exh.P26/PW-10	Query weapon
21.	Exh.P27/PW-10	Letter to Medical Officer
22.	Exh.P28/PW-10	Query report
23.	Exh.P29/PW-10	Letter to Medical Officer for collecting blood sample of accused No.4
24.	Exh.P30/PW-11	Requisition for postmortem
25.	Exh.P31/PW-11	Report of sending dead-body
26.	Exh.P32/PW-11	Postmortem examination report

27.	Exh.P33/PW-12	Letter to Medical officer of Kalawati Hospital
28.	Exh.P34/PW-13	Memorandum panchnama of accused No.3
29	D1	Photograph
30.	Exh.P35/PW-13	Seizure panchnama of piece of fiber log
31.	Exh.P36/PW-14	Memorandum panchnama of accused No.3
32.	Exh.P37/PW-14	Seizure panchnama of clothes of accused No.3
33.	Exh.D2	Photograph
34.	Exh.P38/PW-15	Letter to Agricultural Officer
35.	Exh.P39/PW-15	Muddemal receipt
36.	Exh.P40/PW-15 to Exh.P42/PW-15	Arrest panchnamas of accused Nos.2 to 4
37.	Exh.72	Arrest panchnama of accused No.1
38.	Exh.P43/PW-15	Receipt of dead-body
39.	Exh.P44/PW-15	Letter to Medical Officer Partur
40.	Exh.P45	Spot panchnama
41.	Exh.P46	Inquest panchnama
42.	Exh.P46/PW-16	Station diary entry extract No.45/2023

43.	Exh.P47/PW-16	Letter to Judicial Magistrate
44.	Exh.P48/PW-16	Letter to Agricultural Officer
45.	Exh.P49/PW-16	Letter to Photograph
46.	Exh.P50/PW-16	Muddemal receipt
47.	Exh.P51/PW-16	Muddemal receipt
48.	Exh.P52/PW-16	Receipt
49.	Exh.P53/PW-16	Letter to CEO Partur
50.	Exh.P54/PW-16	Muddemal receipt
51.	Exh.P55/PW-16	Muddemal receipt
52.	Exh.P56/PW-16	Letter to Agricultural Officer
53.	Exh.P57/PW-16	Muddemal receipt
54.	Exh.P58/PW-16	Letter to CEO Partur
55.	Exh.P59/PW-16	Muddemal receipt
56.	Exh.P60/PW-16	Letter to Sub-Divisional Officer
57.	Exh.P61/PW-16	Muddemal receipt
58.	Exh.P62/PW-16	Letter to C.A.
59.	Exh.P63/PW-16	Letter producing CA reports.
60.	Exh.P64/PW-16 and Exh.P65/PW-16	DNA Reports
61.	Exh.P66/PW-16	NCR No.493 of 2022
62.	Exh.P67/PW-16	Letter to Superintendent of Police Jalna

		for CDR
63.	Exh.P68/PW-16	Letter Superintendent of Police Jalna for CAF
64.	Exh.P69/PW-16 and Exh.P70/PW-16	Portion marks 'A' and 'B' of statement of Shaikh Asef Shaikh Pasha
65.	Exh.D2	Document (CDR)
66.	Exh.P71/PW-16 to Exh.P73/PW-16	Notice under Section 50 of Cr.PC. to accused No.1 to 3
67.	Exh.P74/PW-16	Application for producing station diary and log-book.
68.	Exh.P71/PW-17	Letter of Nodal Officer to Superintendent of Police Jalna
69.	Exh.P72/PW-17	Certificate under Section 65-B of Evidence Act
70.	Exh.P73/PW-17 to Exh.P76/PW-17	Customer application forms
71.	Exh.P77/PW-17 to Exh.P80/PW-17	Four documents with regard to Call ID details
72.	Exh.P81/PW-17 to Exh.P84/PW-17120-B	CDR prints

73.	Exh.106 Exh.113	to	CA reports
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B. Defence :

Sr. No.	Exhibit Number	Description
NIL		

C. Court exhibits :

Sr. No.	Exhibit Number	Description
1.	Ex-17.	Charge.
2.	Ex-18 to 21	Plea of accused.
3.	Ex-114 to 117	Statement u/s. 313 of Cr.PC.
4.	Exh.	Judgment

D. Material Objects:

Sr. No.	Material Object Number	Description
1.	Article MO-1/PW-2	Chappal
2.	Article MO-1A/PW-2	Label on Chappal
3.	Article MO-2/PW-2	Jeans pant
4.	Article MO-3/PW-2	Underwear
5.	Article MO-2A/PW-2	Label on Jeans pant

6.	Article MO-3A/PW-2	Label on Underwear
7.	Article MO-4/PW-4	Piece of Fiber stick
8.	Article MO-4A/PW-4	Label on stick
9.	Article MO-5/PW-4	Stick
10.	Article MO-5A/PW-4	Label on stick
11.	Article MO-6/PW-4	Shirt
12.	Article MO-6A/PW-4	Label on shirt
13.	Article MO-7/PW-4	Jeans pant of accused No.2
14.	Article MO-7A/PW-4	Label on jeans pant
15.	Article MO-6/PW-4	Shirt of accused No.2
16.	Article MO-6A/PW-4	Label on shirt
17.	Article MO-8/PW-6	T-shirt of accused No.1
18.	Article MO-9/PW-6	Jeans pant of blue colour of accused No.1
19.	Article MO-8A/PW-6	Label on T-shirt
20.	Article MO-9A/PW-6	Label on Jeans pant of blue colour
21.	Article MO-10/PW-6	Stick produced by accused No.1
22.	Article MO-10A/PW-6	Label on stick
23.	Article MO-11	Koyta produced by accused No.4
24.	Article MO-11A	Label on Koyta

25.	Article MO-12	Shirt of accused No.4
26.	Article MO-12A	Label on shirt
27.	Article MO-13	Full pant accused No.4
28.	Article MO-13A	Label on full pant
29.	Article MO-14/PW-13	Piece of Fiber stick produced by accused No.3
30.	Article MO-14A/PW-13	Label on fiber stick
31.	Article MO-15/PW-13	Pieces of fiber stick(collectively) produced by accused No.3
32.	Article MO-15A/PW-13	Label on pieces fiber stick
33.	Article MO-16/PW-14	Shirt of accused No.3
34.	Article MO-16A/PW-14	Label on shirt
35.	Article MO-17/PW-14	Pant of accused No.3
36.	Article MO-17A/PW-14	Label on pant

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original.

Name of Stenographer : Prashant S. Tayade

Name of the Court : Court of Addl. Session Judge, Jalna

Date of PDF : 17/04/2026

Sd/-

Stenographer (Grade-1)

