

Part-'A' (Title Page of Judgment) [Para 44 (ii) of Chapter VI of Criminal Manual]		
	<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WASHIM.</u> Present: J. P. Zapate, Additional Sessions Judge, Washim. [Date of the Judgment: 25/03/2026] [S.T. No.59/2019] <u>Exh.136</u> CNR No.MHWS010009432019	
	(Details of FIR/Crime and Police Station)	
	Complainant	State of Maharashtra through P.S.O.Risod, Tq. Risod, Dist.Washim.
	REPRESENTED BY	DGP Shri.A.R.Vyawahare
ACCUSED	1] Gajanan Digambar Sarnaik Age : 33 years, Occu- Agriculturist 2] Digambar Sanjabrao Sarnaik Age : 66 years, Occu- Agriculturist Both R/o. Chikhali, Tq. Risod, Dist. Washim.	
REPRESENTED BY	Adv. Shri.K.M.A.Hussain & Shri.Z.G.Shaikh	

Part- 'B'	
[Para 44 (ii) of Chapter VI of Criminal Manual]	
Date of Offence	10/01/2019
Date of FIR	10/01/2019
Date of Charge-sheet	24/06/2019
Date of Framing of Charges	08/09/2021
Date of commencement of evidence	09/11/2021
Date on which judgment is reserved	25/03/2026
Date of the Judgment	25/03/2026
Date of the Sentencing Order, if any	---

Accused Details

Rank of Accused	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, Cr.P.C.
1]	Gajanan Digambar	10/01 /2019	29/11/ 2019	S.302, 504 r/w	acquitted	None	---

2]	Sarnaik Digambar Sanjabrao Sarnaik	11/01 /2019	26/08/ 2019	S.34 of IPC.			
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Part- 'C'

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

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Specimen Chart for Witnesses Examined:

Prosecution Witness No.	Name of Witness	Description
PW-1	Shankar Govindrao Sarnaik	Complainant
PW-2	Sumedh Gautam Khadse	Panch witness
PW-3	Bandu @ Manohar Dattarao Bhutekar	Witness
PW-4	Vishwanath Laxman Ingole	Panch witness
PW-5	Shankar Pandurang Borkar	Panch witness
PW-6	Dr. Dhammapal Suresh More	Medical Officer
PW-7	Pawan Prakash Khule	Witness
PW-8	Vitthal Pandurang Khule	Investigation Officer
PW-9	Anil Ganpatrao Shirsat	Investigation Officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	Nil.	
DW-2	Nil.	

C. Court witnesses if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW-1	Nil.	
CW-2	Nil.	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Specimen Chart for Exhibited Documents :

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Exh.46	Report	PW-1
Exh.47	Printed FIR	
Exh.48	Summons	
Exh58	Letter/	PW-2

Exh.59 Exh.60 to 62, 64, 65 Exh.63	Samajpatra Spot panchanama Seizure panchanamas Inquest panchanama	
Exh.70 Exh.71	Envelope Statement	PW-3
Exh.79 Exh.80 Exh.81	Samajpatra Statement Seizure panchanama	PW-4
Exh.86 Exh.87 & 88	Spot panchanama Seizure panchanama	PW-5
Exh.93 Exh.94, 95 & 96 Exh.97 & 98	PM report Letter Reply	PW-6
Exh.114 Exh.115 Exh.116	True copy of case diary Letter Arrest panchanama	PW-8
Exh.123, 126, 127 & 128 Exh.124 & 125	Letter Seizure panchanamas	PW-9

B. Defence :

Sr.No.	Exhibit Number	Description
1.	Exhibit P-83/PW-4	Letter
2.	Exhibit P-117/PW-8	Letter
3.	Exhibit P-129/PW-9	Contents of portion mark A.

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
1.	Exhibit C-1/CW-1	Nil
2.	Exhibit C-2/CW-2	Nil

D. Specimen Chart for Material Objects/Muddemals :

Material Object Number	Description of the Exhibit	Proved by/Attested by
1	Knife	Article A [PW-4]
2	Cover	Article B [PW-4]
3	T-shirt	Article C [PW-4]
4	Jeans pant	Article D [PW-4]
5	Mobile	Article E [PW-5]
6	Pant	Article F [PW-5]
7	Pant	Article G [PW-5]
8	Weapon	Article H [PW-9]
9	Clothes	Article F to G [PW-9]

JUDGMENT

Accused no.1 & 2 stands prosecuted for the offence punishable under Sections 302, 504 r/w 34 of the Indian Penal Code, 1860 on the accusations that, infurtherance of their common intention they insulted the informant and thereby gave provocation to him as well as they intentionally committed murder of deceased Pawan Sarnaik on 10/01/2019 at village Chikhali, Dist.Washim.

2. Brief facts of the prosecution need be stated at the beginning which are as under :

That the informant Shankarrao Sarnaik is farmer and residing at village Chikhali. He is residing there with his family members. He is having three uncles who are residing separately. His elder uncle Dattarao Sarnaik is having two sons and three daughters. Name of those sons are Panditrao Sarnaik and Gajanan Sarnaik out of which Gajanan is in service at Parbhani. Panditrao Sarnaik is having four daughters and one son namely Pawan Sarnaik who is looking after agricultural land of Dattarao Sarnaik. They are

having five acres agricultural land having Gat no.140. They are having old dispute with their village Bhawaki[brotherhood persons] which are resulted in Court cases.They are entering into quarrels. On 09/01/2019 at about 9.00 p.m. his nephew Pawan had dinner and went in agricultural land to provide water to crops. On 10/01/2019 at about 7.48 a.m. when informant was at his hotel he received phone call from his nephew Pawan on which Pawan told that “ मला मारून राहिले.” [I am beaten]. Informant asked Pawan as to who is beating you on which Pawan did not talk. Therefore, he disconnected phone and again did call to Pawan but Pawan did not receive the call. Informant repeatedly did call but in vain. Therefore, informant sent his nephew and one person Sham to agricultural land. Therefore, they went in land of Prabhakar and they found that Pawan was lying in injured condition. Therefore, they did call to informant and told that Pawan sustained stab injury at left side of stomach and he had sustained bleeding injury and he has not talking anything. At that time, Digambar and Bandu @ Manohar Bhutekar saw them and started running. Therefore, they nabbed them. After receiving the information informant immediately went by motorcycle in the land of Prabhakar where Pawan laying unconscious. Informant tried to awake Pawan but invain. Therefore, he confirmed that Pawan is dead. Informant aksed Bandu as to why he is there. On which Bandu told that, “Yesterday he brought tiffin of Digamber in agricultural land. After dinner he and Digambar slept in agricultural land. In the morning when they woke up Pawan was going through agricultural land of Prabhakar Sarnaik at that time Digambar sarnaik obstructed Pawan and asked him as to why he is calling from their land. At that time, Gajanan also came there. Thereafter there were exchange of words in which Digambar hurled abuses to Pawan and beaten by fist and legs. At that time, Gajanan stabbed Pawarn by sharp weapon on the stomach of Pawan.” This fact was narrated by Bandu to informant. Thereafter informant immediately did mobile call to police about

the incident. In such a way on 10/01/2019 at about 7.30 to 8.00 a.m. accused Digambar and Gajanan stabbed Pawan and committed his murder. In this matter Swapnil Sarnaik would be real culprit because in the previous quarrel Gajanan and Swapnil raised quarrel with informant and beaten him. Mental condition of informant was not good, therefore after post-mortem he went in police station and lodged report. Thus, FIR came to be registered.

3. On the basis of FIR present Crime No.08/2019 came to be registered. FIR was registered on 10/01/2019 at about 7.46 p.m. [19.46 hours]. After registration of crime investigation started on its own wheel. After registration of crime I.O. prepared panchanama of spot of incident. He referred dead body of Pawan for post-mortem by conducting inquest panchanama. These two panchanamas were prepared on the basis of telephonic information given to police.

4. Thereafter I.O. seized clothes of deceased under panchanama. He seized certain articles of deceased under panchanama. He recorded statement of relevant witnesses. He recorded statement of witnesses under Section 163 of Cr.P.C. After arrest of accused on 12/01/2019 he recorded statement of accused Gajanan under Section 27 of Evidence Act and discovery weapon of offence. He seized mobile, battery and other articles under panchanama. He collected post-mortem report. He got conducted weapon query. He forwarded muddamal and weapon to CA. He collected report of CA. After completion of formalities he submitted the charge-sheet before the Court.

5. As the offence is exclusively triable by the Court of Sessions, Ld. Magistrate complied with Section 207 of Cr.P.C. and thereafter he committed charge-sheet to this Court under Section 209 of Cr.P.C. that's how this Court possess jurisdiction to take cognizance under Section 193 of Cr.P.C.

6. Before framing of charge Ld.DGP opened the prosecution case under Section 225 of Cr.P.C. After hearing both sides Ld.Predecessor framed charge below Exh.41.

7. Charge was read over and explained to accused into vernacular to which they pleaded not guilty and claimed to be tried. After completion of prosecution evidence statement of accused under Section 313 of Cr.P.C. came to be recorded. Their defence is of total denial. The accused have not adduced any defence evidence.

Evidence :

8. Prosecution have examined following witnesses. Prosecution have relied on following documents :

A] Oral Evidence :

PW-1	Shankar Govindrao Sarnaik	Exh.45
PW-2	Sumedh Gautam Khadse	Exh.57
PW-3	Bandu @ Manohar Dattarao Bhutekar	Exh.69
PW-4	Vishwanath Laxman Ingole	Exh.78
PW-5	Shankar Pandurang Borkar	Exh.85
PW-6	Dr. Dhammapal Suresh More	Exh.92
PW-7	Pawan Prakash Khule	Exh.100
PW-8	Vitthal Pandurang Khule	Exh.113
PW-9	Anil Ganpatrao Shirsat	Exh.122

B] Documentary Evidence :

Report Exh.46, Printed FIR Exh.47, Summons Exh.48, Letter/Samajpatra Exh.58, Spot panchanama Exh.59, Seizure panchanamas Exh.60 to 62, 64, 65, Inquest panchanama Exh.63, Envelope Exh.70, Statement Exh.71, Samajpatra Exh.79, Statement Exh.80, Seizure panchanama Exh.81, Spot panchanama Exh.86, Seizure panchanama Exh.87 & 88, PM report Exh.93, Letter Exh.83, 94, 95 & 96, Reply Exh.97 & 98, True copy of case diary Exh.114, Letter Exh.115, 117, Arrest panchanama Exh.116, Letter Exh.123, 126, 127 & 128, Seizure panchanamas Exh.124 & 125, Contents of portion mark A Exh.129, CA reports Exh.67A to 67D.

9. The evidence of the prosecution side is closed by filing pursis below Exh.129

Argument :

10. It is argued by Ld.DGP Shri.Vyawahare that, “ Eye witness Bandu has stated in terms of prosecution story. His statement under Section 164 of Cr.P.C. supports his oral version. His evidence is supported by informant and other witnesses. In this matter discovery of weapon of offence is made under Section 27 of Evidence Act which is categorically proved by the deposition of panch witness. Blood stains on the weapon of offence are matching with blood group of deceased Pawan. Blood stains on the clothes are also matching. Therefore, by adducing oral as well as cogent and documentary evidence prosecution have successfully proved the case. Delay to loge FIR is satisfactorily explained by the prosecution. Laches on the part of I.O. cannot give benefit to the accused. Therefore, they are praying for convicting the accused.” In support of their submission they have relied on following rulling :

- i] **State through the Inspector of Police vs. Laly @ Manikandan and another etc, AIR 2022 SC 5034.**
- ii] **Brahm Swaroop and Anr vs. State of U.P., 2011 CRI. L.J.306.**
- Iii] **Edakkandi Dineshan Alias P. Dineshan and Ors vs. State of Kerala, AIR 2025 SC 444**

11. Per contra, it is argued by Ld. advocate Shri. Khan that, “ Recovery of weapon as well as clothes are not proved beyond reasonable doubt. Panch has stated that before recording statement of accused, I.O. informed them that they have to seize weapon. So police were already knowing the fact. Evidence is lacking on this point. Article were not sealed properly and those were lying in police station for ten days. PW-4 has stated that knife and cover were seized by police So, there was no sealing and labelling under signature of panchas. In muddemal receipt there is no mentioned of sealing.

There is ten days delay on the part of I.O. to sent weapon to CA. Photographs and video shooting of discovery was not conducted. I.O. is not telling entire contents of statement of accused. There is huge delay to lodge FIR which is not explained. Before FIR inquest panchanama and spot panchanama were prepared in presence of informant but names of accused are not mentioned. Word Aropi [आरोपी] is used in panchanama then why their names are not mentioned. Panchanama was made on 10/01/2019 and arrest was made on 11/01/2019. Till then how word accused is used. There is previous enmity between PW-1 and accused. Komal Shinde who recorded FIR is not examined. General diary of telephonic message is not produced. Omkar and Sham are eye witnesses but they are not examined. Bandu has not told that he informed about incident to PW-1. Then what is source of information. Bandu told that there was quarrel with Pawan then why he has not made accused. The tiffin is not siezed. Mobile is seized but CDR not produced. CFL reports are manipulated. Bandu told that there was quarrel between Bandu, Digambar and Pawan. Gajanan was not present there. All these goes to the root of the cause. Hence, they are praying for acquittal of the accused.

12. They relied on following rullings :

- i] **Babu Sahebagouda Rudragoudar & Ors, vs State of Karnataka, 2025 All MR (Cri) 3623 SC.**
- ii] **Tejas Gajendra Kshirsagar vs. The State of Maharashtra, 2020 ALL MR (Cri) 4163.**
- iii] **State of Gujarat vs. Patel Mohan Mulji and Ors, Criminal Appeal No.777/1980.**

13. Having heard perused record and proceeding following points arise for my consideration together with my findings thereon for the reasons recorded below :

<u>S.No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the prosecution prove that death of Pawan Sarnaik is homicidal, suicidal or accidental ?	Accordingly.
2	Does the prosecution prove that on 10/01/2019 at village Chkhali, Tq.Risod, Dist.Washim accused infurtherance of their common intention committed murder intentionally[or knowingly] causing the death of Pawan Sarnaik and thereby committed an offence punishable under Sec.302 r/w 34 of Indian Penal Code ?	In the Affirmative.
3	Does the prosecution prove that on the above day, date, time, place and during the course of same transaction accused infurtherance of their common intention intentionally insulted the victim and therevly gave provocation to him intending or knowingly it to be likely that such provocation would cause him to break public peace and thereby committed an offence punishable under Sec.504 r/w 34 of Indian Penal Code ?	In the Affirmative.
3	What order ?	As per final order.

REASONS

As to Point No.1 to All :

14. At the outset it is pertaining to note that on 10/01/2019 Pawan died due to stab injury. To that effect PW-1 Shankar Sarnaik Exh. 45 has stated that “ He saw that Pawan was lying in unconscious condition. He tried to awake the Pawan. However, Pawan did not wake up. Hence, he confirmed that Pawan was dead.” In this respect PW-3 Bandu Exh.69 has stated that, “Pawan sustained bleeding injury from ribs.” To that effect inquest panchanama Exh.63 dated 10/01/2019 shows that dead body of Pawan was lying in the field. There was injury on his upper limb. At left side rib there was injury of 6 c.m. length and 2.5 width which was bleeding. Therefore inquest panchanama shows that there was injury to Pawan.

15. In this respect PW-6 Dr. Dhammapal Exh.92 has stated that “ He has completed his MBBS. In January 2019 he was working as Medical Officer at Rural Hospital, Risod. During his working as MBBS he conducted 50 - 60 post-mortems till date. On 10/01/2019 while he was working as Medical Officer at Risod PSI Khule had referred dead body of one Pawan through Police Constable Sangale for post-mortem examination. During external examination he found two injuries as mentioned below :

- i] Lacertaion in the form of stab injury present on left hypochondrium. Injury was about 28 cm from umbilicus. Size of injury was 7 x 3.5 cm x 7.5 cm. Also there was porotrusion of small intestine through that injury.
- ii] There was swelling of 2 x 2 cm on left side of upper lip.

16. He has further stated that on internal examination injury no.1 mentioned above was visceral injury i.e injury which causes damage to the visceral organs like spleen, liver, intestine, stomach and kidney. On post-mortem examination it was found that there was laceration type of injury present over posterior aspect of spleen with injury to the splenic vein, which was found to raptured. Also 2300 ml blood was found in abdominal cavity. On the basis of these findings he prepared post-mortem examination report exh.93. He took blood sample from abdominal and handed over to PC Sangle. On 13/10/2019 he collected blood sample of accusd by filling B form and handed over to concern police constable. On 18/01/2019 he conducted weapon query. Injuries mentioned in post-mortem report may be caused due to that weapon knife Article A. Jacket of deceased was splitted at mulbiple side. Jacket was splitted at the tise corresponding the site of injury over abodomen of deceased. A cut of 3.5 cm length was on the left side of the jacket. He answered query Exh.97 and 98. So far as regards his above evidence is concerened he has remained sitck up during the cross-

examination. Post-mortem report Exh.93 support his oral evidence. Weapon query Exh.97 and jacket query Exh.98 also supports his evidence.

17. Thus, above noted evidence makes it clear that on 10/01/2019 deceased Pawan was stabbed at upper side of his abdomen near ribs. He sustained bleeding injury due to which there was heavy blood collection of 2300 ml in his abdomen. More-so, it is pertaining to note that the defence has not disputed that death of Pawan is homicidal. He died due to hemorrhage shock and therefore all the medical evidence is sufficient to held that death of deceased Pawan was homicidal and not suicidal or accidental. Hence, I record my findings to point no.1 accordingly.

As to point no.2 & 3 :

18. As discussed earlier prosecution have examined in all nine witnesses. Prosecution has rested its case on three types of evidence as under :

- i] Oral evidence of eye witness.
- ii] Memorandum statement and discovery panchanama under Section 27 of Evidence Act.
- iii] CA report.

Oral Evidence of eye witness :

19. Prosecution have examined PW-3 Bandu @ Manohar Dattarao Bhutekar Exh.69 as eye witness to the incident. During his examination in chief he has stated that “ His agricultural land is situated within Chikhali shivar. Agricultural land of Digambar Sarnaik, Parvatrao and Panditrao are situated at some distance from his agricultural land. There was dispute amongst Digambar Sarnaik, Parvatrao and Panditrao on account of boundaries of field. On 09/01/2019 work of Toor crop was going on in the field of Digambar. Toor was in the field of Digambar. On 09/01/2019 at about 8.00 p.m. son of Digambar namely Gajanan had given tiffin of

Digambar at his house [PW-3]. He had taken tiffin and went at field of Digambar at about 9.00 p.m. He went at the field of Digambar to work as watchman. Earlier Digambar had come to his [PW-3] as Jagali. Hence, he went in his field as Jagali. He and Digambar had taken dinner and they went to sleep at field. They both woke up at about 6.30 a.m. After some time Gajanan Sarnaik came at field of Digambar.”

20. PW-3 has further stated that “ Then he and Digambar started to return to their home. They were going through boundary of field of Parbatrao. At that time, Pawan came there. Pawan told them that they were making new path and it was not way. Then Gajanan came there. Pawan and Gajanan abused each other. There was scuffling amongst Pawan, Gajanan and Digambar. Then Pawan made phone call to somebody. Then he taken phone of Pawan and told that there was quarrel and he should come immediately then suddenly Gajanan assaulted Pawan on his ribs towards left side by sharp weapon. Pawan sustained bleeding injury from the ribs. Hands of Gajanan were stained with blood. Then Gajanan ran away. Pawan fell down. Then people from their village came there. Pawan died on the spot. Police had recorded his statement at Risod. Afterwards his statement Exh. 71 under Section 164 of Cr.P.C. recorded by the Magistrate. During his evidence he has identified GP No.47/2021 i.e. knife. However, in cross-examination he has stated that, “ He is aware about the dispute amongst deceased and accused because he is resident of village Chikhali. According to him Parbatrao Sarnaik and Prabhakar Sarnaik is one and same person. Prabhakar Sarnaik owned agricultural land in village Chikhali. He is not aware whether there are two groups in their village and one group is of accused and another group is of Shankar Sarnaik and others. On 09/01/2019 at night time Digambar Sarnaik was also present at his field. The field of Digambar Sarnaik is situated at the distance of 2 k.m. from his

hosue. Gajanan Sarnaik came to his house by walking to give tiffin to them. Gajanan Sarnaik had motorcycle and he used to drive that motorcycle. Motorcycle can be driven to the field of Digambar. Incident was going for about 30 to 45 minutes. It did not happen that Pawan was going on the boundary of the field and he [PW-3] and Digambar restrained him. He has not told to Magistrate that he demanded phone from Pawan and made call to Shankar. It is marked as portion mark A. In statement Exh.71 he did not remember whether he told to police that he demanded mobile phone from Pawan and made call to Shankar. On that day he did not have talk on mobile phone with son of Shankar. He had not told to police that while recording his statement that Pawan was talking with the sons of Shankarrao about quarrel and he had taken his mobile phone and told them to come immediately. On that day he did not have talk with Shankar on mobile. He did not remember whether he had stated before the Magistrate that Pawan made phone call to somebody. It is not mentioned in Exh.71 that Pawan made phone call to somebody. It did not happen that firstly pawan abused him and Digambar. He had not stated before Magistrate that Pawan abused him and Digambar. However, it is mentioned in his statement Exh.71 that Pawan abused him and Digambar. However, it is not correctly mentioned. He did not remember whether he stated before Magistrate while recording his statement that hands of Gajanan were stained of blood. It is not mentioned in application Exh.71 that hands of Gajanan were stained with blood. On the day of incident panch asked him that why he was going alongwith Digambar from his field. It is true that on the day of incident initially there was fighting amongst himself and Digambar and Pawan.”

21. During the cross-examination he has stated that “ Police reached at the spot of incident after one hour from the incident. He again told about how much time police were present at the spot. When police came at the spot at that time many people were present on the spot. Shankar, Mangesh

and relatives were present on the spot at that time. It is true that when police returned to police station at that time they had taken himself and Digambar alongwith them. He denied that police had kept him in police station for three days. He has denied that according to police he assaulted Pawan. He did not receive summons from police to remain present before Magistrate. Police only told him to remain present. However, police were not present at the Court. On next day of incident his statement was recorded by the Magistrate. He has denied that police brought him to Court to give statement under Section 164 of Cr.P.C. and he gave statement as per say of police. It is true that in his statement recorded by Magistrate it is not mentioned that Gajanan assaulted Pawan by knife. It is not mentioned in his statement recorded by police that he can identify the weapon. He has denied that he assaulted Pawan.” During his crossexamination PW-3 has stated that “ Towards left side of the road there is field of Digambar and right side there is field of Pawan. At that time work of harvesting was going on in the field of farmers. During that time many farmers were present at field. On 09/01/2019 when he reached field of Digambar at that time they were not aware where Pawan came to his field. When quarrel was started at that time he did not call other people for help. He did not go to call anybody for help. On 10/01/2019 when he himself and Digambar were returning at that time Tur was cut from the field. At that time Tur of Digambar was kept at one place. He has denied that informant Shankar had filed one case of kidnapping against his son and in order to compromise that case he is deposing falsely to help the informant.”

22. Before discussing his evidence at this juncture it is pertaining to note evidence of PW-1 Shankar Govindrao Sarnaik. PW-1 is examined below Exh.45. So far as regards incident he has stated that “ He is running hotel and shop at Chikhali bus stand. Deceased Pawan was son of his cousin

namely Panditrao. Panditrao was cultivating agricultural land. His father was paralised. Hence, Pawan was cultivating the land. Pawan owned five acres agricultural land at village Chikhali. He know both accused. On 09/01/2019 at about 9.00 p.m. deceased Pawan had gone to agricultural land for supplying water to crops. On 10/01/2019 at 7.48 a.m. he recieved call on his moible from Pawan. At that time he [PW-1] was present at his hotel. Pawan told him on phone that he was assaulted. He asked him who was assaulting him. But he did not talk anything. Then he again called Pawan on his mobile however Pawan did not receive his call. Then he sent Omkar and Sham to field. Accordingly they went at the field and thereafter they called him on phone, informed him that Pawan was lying unconscious and he was injured in field of Prabhakar. They also informed that Pawan had been stabbed to left side of stomach and he sustained bleeding injury. Omkar further told that Digambar and Bandu @ Manohar were running away after seeing them But Omkar and Sham have nabbed them.

23. Then he went at the field of Prabhakar by motorcycle. He saw that Pawan was lying in unconscious condition. He tried to awake Pawan however Pawan did not wake up. Hence, he confirmed that Pawan was dead. He asked Bandu how he was there. Bandu told that he had brought tiffin of Digambar. Bandu told that they had taken their food and slept at field on the last night. Bandu told that Pawan was goint from the field of Prabhakar. Bandu told that Digambar restrained Pawan and there was exchange of words and Digambar assaulted Pawan by kick and fist blows. Bandu further told that Gajanan stabbed Pawan by sharp weapon on stomach. Then he gave information about incident to police. Then police prepared inquest panchanama. He gve report Exh.46 to police. Printed FIR is at Exh.47. On that day police prepared spot panchanama and inquest panchanama for whole day and his mental condition was not proper due to death of Pawan and hence there was delay in filing FIR.”

24. However, during the cross-examination he has stated that, “He had lodged report to police station. He went at police station at about 6.00 to 7.00 p.m. He was present at police station for about one hour. His brother Vilas, Panditrao, Madhavrao and Vaibhav were present alongwith him at police station. Before he lodged report police came at spot of incident at about 10.00 to 10.30 a.m. At that time Mangesh was Police Patil of their village. He did not remember whether Mangesh was present at the spot when police came there. He had informed police on phone about incident. Omkar and Sham were present on the spot when police arrived. When police came at spot at that time panchas came alongwith police. He had shown spot of incident to police. He has deained that before police came at spot he had colleced information about incident. When he showed spot of inciden to police at that time he had given information about incident to police. Inquest panchanama was prepared by police in his presence. Police prepared inquest panchanama at about 11.00 a.m. He did not remember whether police seized wrist watch of deceased. Police seized mobile handset, torch, matchbox from the spot of incident. Police prepared seizure panchanama. Police did not inquire to him and other persons. However, police inquired about incident to Bandu. It is denied that on the day of incident Pawan did not call him on mobile phone. Pawan did not tell him on mobile phone who assaulted him. Accused no.1 Gajanan was not present at the spot when he reached at the spot. He sent Omkar and Sham towards Pawan within five to seven minutes. After he received phone call from Pawan. He left shop after 20 minutes from Omkar and Sham left. Omkar is son if his real brother. Omkar and Sham came to his shop on the day of incident. Omkar and Sham came to his shop at about 7.30 on the day of incident.” During cross-examination he has further stated that he himself and police were present at the spot nearabout two and half hour. Thereafter

he went to government hospital Risod where post-mortem of deceased was done. Vilas, Madhavrao and Vaibhav were present alongwith him at Government Hospital, Risod. He has denied that Vilas, Panditrao and Vaibhav and he[PW-1] had dispute with accused since last many years. He volunteers that deceased Pawan, himself and accused had dispute. He had filed case against accused and it is pending in the Court. That case was regarding his kidnapping. There was one civil case pending in the Court however it was compromised. He denied that he had filed false complaint against accused. He denied that due to personal enmity he has falsely implicated them. He denied that Bandu or any other person did not give information to him about incident.”

25. During the cross-examination he has stated that on 09/1/2019 Pawan went in his land at about 9.00 p.m. Pawan slept at night at his farm Gat no.140. Police did not visit land Gat no.140. Omkar and Sham told him about incident when police were present at the spot. He did not tell about the incident to villagers who were present at the spot when police prepared spot panchanama. None other than himself gave report to police about the incident. He did not remember whether police had brought laptop or computer at the spot of incident. Prior to incident he had quarrel with Swapnil. At the time of quarrel accused no.2 Digambar had taken side of Swapnil. In FIR Exh.46 it is not mentioned that Omkar informed him on phone that Digambar and Bandu were running away.”

26. So far as regards evidence of PW-1 and PW-3 it is argued by Ld.advocate Shri. Khan that, “ In the presence of PW-1 and PW-3 inquest panchanama as well as panchanama of spot of incident was prepared on the same day at about 10.30 a.m. Prior to it both of them were knowing names of these accused and they had knowledge about the incident. But both of them have not told to police about names of accused. So such non disclosure

of their part creates strong doubt. On these aspects they have relied on Judgment between **State of Maharashtra vs. Patel and others, Criminal Appeal No.777/1980** in which Hon'ble Supreme Court had laid down that :

The whole case rests only on the evidence of PW- 5 and 8. PW- 5 is none other than the wife of the deceased and she is an injured witness. No doubt the occurrence had taken place in the day light. The accused are none other than the brothers and sister of the deceased. In spite of the close relationship and in spite of the fact that the occurrence had taken place in the broad day light as rightly pointed out by the High Court, the entire case of the prosecution suffers from many infirmities which compel this Court to affirm the judgment of the High Court. PW-5 states that she was assaulted by the second respondent with a sharp edged pointed weapon on her leg but we do not find any corresponding injury on her person. PW-5 has not mentioned the names of the assailants either to PW-3 or to the Police or to any other person till 4.30 p.m. Surprisingly the inquest took place at about 2.15 p.m. even before the registration of the case. In the inquest report also none of the names of the assailants find a place. The first information was recorded only at about 5.00 p.m., which is by a delay of nearly nine hours. It was under these circumstances the High Court was not inclined to place much reliance on the testimony of PW-5 Now we come to the evidence of PW-8. The name of PW-8 does not find a place in Ex.25. PW-8 was not examined by the Police till the next day. On both the grounds the High Court rejected the testimony of PW-8. We are in full agreement with the reasons given by the High Court for discarding the testimony of PW-8. It may be also pointed out here that the medical evidence as rightly held by the High Court is irreconcilably in conflict with the oral evidence given by PW- 5 and 8. Thus it is seen that there are many infirmities surrounding the prosecution case. Under these circumstances, we do not like to interfere with the order of acquittal passed by the High Court and in fact the

judgment of the High Court does not suffer from any manifest illegality or perversity. In the result, the appeal is dismissed. Bail bonds are discharged.

27. On the other hand, it is argued by Ld.DGP Shri.Vyawahare that in both panchanamas PW-1 had used word accused. There is no need to mention names of accused either in inquest panchanama or panchanama of spot of incident. Therefore, it does not go against the prosecution. To that effect they have relied on following rullings :

- i] **State through the Inspector of Police vs. Laly @ Manikandan and another etc, AIR 2022 SC 5034.**
- ii] **Brahm Swaroop and Anr vs. State of U.P., 2011 CRI. L.J.306.**
- iii] **Edakkandi Dineshan Alias P. Dineshan and Ors vs. State of Kerala, AIR 2025 SC 444**

28. After giving anxious thought to these rival submissions I find substance in the submission of Ld.DGP Shri. Vyawahare, because, inquest panchanama is made only to ascertain and bring on record condition of dead body with its injuries. Domain of panchanama of spot of incident is to capture condition of spot of incident. It is true that both these panchanamas were prepared in the presence of PW-1 and PW-3. In panchanama of spot of incident Exh.59 following statement is made by PW-1 to police “ याच ठिकाणी आरोपीने मृतक यास धारदार हत्याराने वार करुन गंभीर जखमी करुन त्याचा खुन केला आहे असे फिर्यादी पंचासमक्ष सांगता.” [Informant stated before panchas that on the same spot accused have inflicted blow of sharp weapon to the deceased and committed his murder.] The similar statement is findings place in inquest panchanama Exh.63. Therefore, informant had told to police while preparing this panchanama that accused committed murder of deceased. Now it was for the police officer to mention names of the accused. It was not fault of informant. So non mentioning names of accused persons in inquest panchanama and panchanama of spot of incident is not fatal to the

prosecution when evidence of PW-3 is recorded which is supported by evidence of PW-1. I have carefully gone through ratio of rulings relied by both party. It respectfully reveals that rulings relied by Ld.DGP are helpful to prosecution.

29. It is further argued by Ld.advocate Khan that, “ Omkar and Sham Sarnaik are not examined who were nabbed accused Digambar and Bandu on the spot of incident. So non examination is fatal to the prosecution. Therefore, they are praying for drawing adverse inference. Per contra, it is argued by Ld.DGP Shri.Vyawahare that evidence of PW-3 who is eye witness is already on record. PW-1 also went on the spot and he found Digambar and Bandu on the spot. Omkar and Sham were not eye witness. Hence, their evidence would be mere repetition to the evidence of PW-1 and PW-3. Hence, adverse inference cannot be drawn.

30. After giving anxious thought to these rival submissions I find no substance in the submission of defence, because, as per prosecution story when Omkar and Sham went on the spot of incident they nabbed Digambar and Bandu and they immediately called PW-1 there. When PW-1 went there he found presence of Digambar and Bandu on the spot of incident. Bandu narrated entire episode of stabbing deceased by Gajanan. So all these facts are already brought on record by prosecution by examining eye witness Bandu. His evidence is supported by PW-1. As per Section 134 of Indian Evidence Act quantity of evidence is not required. What matters is quality of evidence. So prosecution cannot be asked to examine multiple witness on same point when evidence of eye witness is already brought on record. Therefore, adverse inference cannot be drawn and hence it is not fatal to the prosecution.

31. It is further argued by Ld.Advocate Shri.Khan that evidence of

Bandu suffers for omission which amount to material contradiction because Bandu has admitted in his cross-examination as follows :

“ It is true to say that in my statement recorded by police and statement recorded by Magistrate it is not mentioned that Gajanan assaulted Pawan by knife.”

Hence, Ld.advocate submitted that major portion of prosecution story is nothing but omission which goes against the prosecution.

32. I find no substance in this submission because in his statement under Seciton 164 of Cr.P.C. Exh.71 it is mentioned that “ गजाननने पोटाचे डाव्या बाजूला शस्त्राने वार केला व तो पळून गेला.” So also in his statement under Section 161 of Cr.P.C. it is recorded that “ तेव्हा गजानन याने पवन याचे डाव्या बरगडीवर धारदार शस्त्राने वार केला.”

33. If both statements are perused there is no omission and contradiction about blow of knife by Gajanan to deceased. So even though said admission is given, both previous statement shows the fact mentioned in it. Therefore, admission is nothing but empty admission and given inadvertantly. In fact, there is no omission. Cross-examination of Bandu on this point does not show that both previous statements were shown to him or confronted to him. Without referring statement this admission is recorded. Contents about stabbing by Gajanan are already mentioned in both previous statement i.e. under Seciton 164 of Cr.P.C. and previous statement recorded by I.O. under Seciton 161 of Cr.P.C. Therefore, this admission is not fatal to the prosecution.

34. It is further argued by Ld.Advocate Shri.Khan that in statement under Seciton 164 of Cr.P.C. name of Digambar was scored and below of it name of Gajanan is mentioned. Therefore, it looses evidentiary value. To my mind this is not fatal to the prosection. Moreso, in entire cross-examination of Bandu this fact was not asked to him by putting questions to him. As per

Section 79 of Evidence Act there is presumption in favour of said statement. Scoring of word Digambar and writing name of Gajanan is signed by Ld.Magistrate who recorded it. Therefore, statement does not loses evidentiary value.

35. It is further argued about evidence of PW-1 that time of incident is 7.30 a.m. and FIR is lodged on the same day at about 19.46 hours [7.46 p.m.]. So there is delay of more than 12 hours to lodge FIR. This delay is not explained by prosecution satisfactorily. Moreso, before lodging FIR and registration of crime inquest panchanama and panchanama of spot of incident were prepared. So FIR is anti time. In support of their submission. They have relied on rulling between **Babu Sahebagouda Rudragoudar & Ors, vs State of Karnataka, 2025 All MR (Cri) 3623 SC** in which it is held by Hon'ble Apex Court that evidence of eye witness not trustworthy. FIR was post investigation document. Weapons recovered in furtherance of disclosure statements, non-est in eyes of law. Entire case under shadow of doubt, accused acquitted.

36. On the other hand Ld.DGP Shri.Vyawahare argued that delay is satisfactorily explained by informant in his FIR as well as deposition. So delay is not fatal to the prosecution. Lodging of FIR after preparation of inquest panchanama and panchanama of spot of incident is not fatal to the prosecution. They have relied on following rulling :

i] **Brahm Swaroop and Anr vs. State of U.P., 2011 CRI. L.J. 306.**

37. After giving anxious thought to these rival submission I find no substance in the submission of Ld.defence counsel. I have carefully gone through the rulling. It's facts are different than the case at hand. It is true that incident took place at about 7.00 a.m. to 7.30 a.m. of 10/10/2019 and FIR is lodged on the same day at about 7.46 p.m. So there is delay of near-

about 12 hours. It is settle position that mere delay to lodge FIR is not always fatal. If delay is satisfactorily explained delay is not fatal to the prosecution. Therefore, it has to be seen that whether delay is satisfactorily explained or not. In FIR Exh.46 informant has stated that his mental condition was not good and after post-mortem report he went in police station and lodged FIR. In his oral evidence he has stated that “ On that day police prepared spot panchanama and inquest panchanama for whole day and his mental condition was not proper due to death of Pawan and hence there was delay in filing FIR.” During cross-examination this statement is not denied or disputed by defence. After perusal of panchanama of spot of incident exh.59 it was prepared on 10/01/2019 between 10.30 a.m. to 11.15 a.m. It reveals from inquest panchanama that it was prepared on 10/01/2019 between 11.30 a.m. to 12.20 noon. Post-mortem report exh.93 shows that dead body was received in hospital on 10/01/2019 at about 2.45 p.m. Beginning of post-mortem was on 10/01/2019 at about 3.00 p.m. and it was completed on same day at about 5.00 p.m. Post-mortem was conducted at Rural Hospital, Risod. Thereafter at about 6.00 p.m. he went in police station and lodged FIR. Therefore, contents in FIR and oral evidence of PW-1 fortifies and supported by these documents. Cause given for delay is unstable. Mental condidtion of informant due to death of Pawan. After panchanama he attended post-mortem and then he lodged FIR. So this reason is plausible and acceptable because when in broad day light there is murder of nephew of informant then definitely informant would have suffer mental shock. In such circumstances, he had to attend post-mortem because father of Pawan is paralysed. Hence, he could not attend post-mortem. Therefore, informant was duty bound to attend post-mortem. When post-mortem is completed at about 5.00 p.m. thereafter informant went in police station and lodged FIR. Therefore, delay is satisfactorily explained. Hence, it is not fatal to the prosecution.

38. It is further argued by Ld.advocate Shri.Khan that after the incident PW-1 immediately did telephonic call to police then question arises as to why telephonic message is not produced before the Court. In this respect it is argued by Ld.DGP Shri.Vyawahare that diary regarding telephonic message is already produced on record.

39. After perusal of record and proceeding it reveals that general diary details dated 10/01/2019 at about 8.54 a.m. station diary 007 is produced on record, at page no.137 which shows that PW-1 informed police about murder.

40. Ld.defence advocate are harping on certain omissions in the evidence of PW-1 & PW-3. I have carefully gone through the cross-examination of PW-1 & PW-3. There are certain omissions. But so far as regards omissions it is trite law that minor omissions are not fatal unless it amounts to material contradictions. The omissions in their evidence are not amounting to material contradictions. Some omissions hereto there are not fatal to prosecution. Because, the core issue of stabbing by accused is not shaken in their evidence. After going through evidence of Bandu it reveals that his evidence clearly shows that he is eye witness to the incident. In fact, during his cross-examination his presence on the spot of incident is not disputed. Certain suggestions given to him shows that this witness was present on the spot of incident. Not only this it is suggested to this witness that he committed murder of Pawan which is flatly denied by this witness. His evidence shows that there is scuffling between Digambar and Pawan and thereafter Gajanan came there and he stabbed Pawan on left side of his stomach. This evidence of PW-3 is corroborated by evidence of PW-1. So far as regards this material aspect is concerned they have remained stick up in cross-examination. What is brought on record is previous enmity. Admittedly, enmity is double edged weapon. It can be used by either side. So

it cannot be believed that due to previous enmity this case is filed. But entire evidence of PW-1 and PW-2 shows that due to previous enmity accused have committed murder of deceased Pawan.

41. Now so far as regards recovery evidence is concerned prosecution have relied on evidence of PW-2 Sumedh Khadse Exh.57 and PW-4 Vishwanath Ingole Exh.78 and on the evidence of I.O. PW-2 Sumedh Khadse has stated that on 10/01/2019 he was called by police. Police prepared panchanama of spot of incident exh.59 and they seized mobile handset, two torch under panchanama Exh.60 & 61, simple soil and blood stained soil under panchanama Exh.62. This witness has identified all the articles before the Court. He has further stated that police seized clothes under panchanama Exh.64. He has identified clothes. So far as regards this evidence is concerned during the cross-examination he has remained sitck up and nothing is brought on record which would cause to disbelieve him. His oral evidence is supported by panchanama Exh.59 to 62 & 64.

42. It is case of prosecution that on 12/01/2019 accused Gajanan gave statement and discovery of weapon of offence is made under Section 27 of Evidence Act. In order to prove this fact prosecution examined PW-4 PW-4 Vishwanath Ingole Exh.78. He has stated that on 12/01/2019 police called him as panch by letter Exh.79. At about 2.00 p.m. he went in police station alongwith Mr.Nawale. Accused Gajanan told that alongwith his uncle there was dispute of agricultural land and in that dispute there was harassment to his father. At that time accused was working at Surat. Swapnil told that his father harassed and he may come back at the earliest. Accused further told that after 10 to 12 days he returned and to appraise his uncle and not to harass his father he went in land. He took one knife from vegetable seller and after two days again there was quarrel between his uncle's brother and his father. At that time he took knife and inflicted its

blow to son of his uncle and therefore ran away by motorcycle via Masle. He stated that after village Masle there is village Nandhana. Before 1km he concealed knife in Babool bush and went in Chandas where he concealed and his clothes. Police recorded his statement below Exh.80.

43. This witness further stated that after recording statement of witness they went to Nandhana shivar as per say of accused. There accused produced one knife from shrub of Babool. That spot was 50 feet ahead to small bridge. Accused produced knife. Cover was torned. It was having blood stains. Knife was having blood stains. This witness identified both articles. Police seized knife and cover.

44. Further this witness stated that thereafter they went at brother-in-law house at Chandas. Road was narrated by accused. Accused showed house. Accused produced clothes from Madi. Accused took these clothes which were put behind utensil gunny. That clothes were red colour T-shirt and blue colour jeans pant. They found blood stains on clothes. Police seized it. Accused has identified both articles. Police prepared panchanama Exh.81. Police seized one motorcycle.” During cross-examination he has stated that when he reached at police station I.O. told him that accused is giving memorandum statement and as per it we have to seize knife and clothes. Therefore, it is argued by Ld.advocate Shri.Khan that discovery was already known by police. Hence, it cannot be treated as discovery under Section 27 of Evidence Act. To that effect they have relied on **Tejas Gajendra Kshirsagar vs. The State of Maharashtra, 2020 ALL MR (Cri) 4163** in which it is held that panch witness admitted that police had informed him that they wanted to seize chain and mobile phone of deceased from accused. This admission itself shows that police knew about seizure of gold chain and mobile phone in advance. Thus, recovery evidence under Section 27 of Evidence Act pales into insignificance and loses its evidentiary value. Discrepancies found in

evidence of Investigation Officer and panch witness with regard to exact location of chian at accused's house. Therefore, recovery evidence needs to be discarded.

45. Per contra, it is argued by Ld.DGP that during investigation police interrogated with accused in which he might have told about concealment. Therefore, I.O. told to panchas the fact but entire statement was not narrated by I.O. to pancha. Therefore, this defect in investigation does not help to the accused. To that effect Ld.DGP relied on **Edakkandi Dineshan Alias P. Dineshan and Ors vs. State of Kerala, AIR 2025 SC 444** in which it is held that hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the court to consider the rest of the evidence which the prosecution has gathered such as statement of the eye-witnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eye witnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW-1 Jitesh, PW-2 and PW-4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eye-witnesses, what is material to be seen is their stand is consistent when they said that it was A2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1.00 a.m., it was full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been

raised by the defense. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they are from different political groups.

46. I have carefully gone through the rulings relied on by Ld. advocate Shri.Khan. Panch witness has admitted that he was informed by I.O about seizure of knife and clothes that too before recording memorandum and recovery panchanama. Therefore, I.O. knew before the memorandum that weapon and clothes have to be seized. Therefore knowledge of accused is not attributed about memorandum and discovery. Therefore, discovery is not coming under Section 27 of Evidence Act.

47. But evidence of PW-4 shows that weapon was seized from the spot i.e. Babool shrab which was not visible easily to others. Therefore, even though there is no discovery of fact under Section 27 of Evidence Act. Evidence of PW-4 proved that weapon of offence was recovered and seized from Babool shrab. Weapon was having blood stains. So also clothes were recovered and seized from the house of brother-in-law of accused. Those clothes are also having blood stains.

48. It is prosecution case that accused Gajanan brought knife from vegetable seller. Name of vegetable seller is Pawan PW-7 Exh.100 but he has not supported the prosecution. Therefore, his evidence is not helpful to prosecution.

49. PW-5 Shankar Borkar Exh.85 is panch witness of spot of incident and about seizure of soil, torn shirt under panchanama Exh.87. Seizure of shirt Exh.88. This witness identified these articles. During cross-examination nothing is brought on record which would cause to discredit him. His evidence is supported by panchanamas Exh.86 to 88.

50. Seized weapon was sent for query to Dr.Dhammpal. He has stated that weapon was found to be knife. He opined injuries mentioned in post-mortem may be caused due to that weapon. He identified knife and jacket. Weapon query exh.97 and jacket Exh.98 support his oral evidence. PW-8 Vitthal Khule Exh.113 retired PSI is examined at exh.113. His evidence shows that he called two panchas from Tahsil Office. They went in Chikhali shivar in agricultural land of Prabhakar. Informant showed spot of incident to them. They found one dead body. They found severe bleeding injury on left side stomach of deceased. There was mark of scuffled on the spot of incident. He prepared panchanama Exh.59. He has proved seizure panchanama Exh.60 to 62 and inquest panchanama Exh.63. During cross-examination nothing is brought on record which would go to discredit him. His evidence is supported by panchanama Exh.59 to 63.

51. Prosecution have examined I.O. PW-9 Anil Shirsat Exh.122. He has stated that accused Gajanan and Digambar were arrested by him. Accused Gajanan expressed his desire to give voluntary statement in presence of panch. He recorded statement Exh.80. As per direction of accused he went at Nandhana near bridge of accused. He took weapon from babool bush and produced it before him. He seized it under panchanama Exh.81 and clothes of accused under panchanama from the place showed by him. He has proved panchanama Exh.124 & 125. CDR letter Exh.127. He has identified seized articles. During cross-examination it has brought on record that crime is registered after preparation of printed FIR and before it inquest and spot panchanama were prepared. He did not inquire with informant Shankarrao about delay of 10 hours to lodge FIR. During the cross-examination he has remained stick up with his version.

52. Besides this oral evidence there is one clinching evidence that I.O has forwarded seized muddemal and weapon to Regional Forensic Science,

Amravati for its examination. He had also forwarded blood sample of accused and deceased as well as blood sample of PW-1 and PW-3. CA report is at exh.67A to D. CA report Exh.67A shows that near-about 16 articles were examined out of which knife is at Sr.No.15. Knife cover is at Sr.No.16. Report of analysis shows that article 15 i.e. knife is stained with blood group A. Exh.3 to 9, 10 to 12 & 15 are stained with blood group A. Exh.67B shows that blood group of accused Digambar Sarnaik is of B group. Exh.67C shows that blood group of accused Gajanan Sarnaik is of AB group. Exh.67D shows that blood of deceased Pawan Sarnaik is of A group. CA report shows that deceased was having blood group A and that group A is found on the knife Exh.15. Therefore, it is proved by this report that knife seized from babool shrab was containing blood stains of deceased Pawan i.e. blood group A.

53. Even though in this case discovery is not proved under Section 27 of Evidence Act. One fact remains intact i.e. knife Article A is recovered and seized from babool shrab. Eye witness PW-3 has identified knife as same. Recovery panch has also identified knife. I.O. has also identified knife. Doctor has stated that stab injury can be caused by knife Article A. Blood group of deceased Pawan is A and blood stains having on the knife are belonged to blood group A. Therefore, scientific evidence also supportes to oral and recovery evidence. Therefore, eventhough discovery under Section 27 of Evidence Act is discarded for want of knowledge of accused, fact of recovery and seizure of knife remains intact.

54. Sum and substance of above discussion is that PW-3 Bandu @ Manohar Bhutekar in his deposition and statement under Section 164 of Cr.P.C. has stated that Digambar and Gajanan beaten deceased Pawan and accused Gajanan by knife stabbed on the left side of stomach of deceased Pawan. This evidence of PW-3 is supported by evidence of PW-1. Moreso, CFSL report also support to oral evidence by its report that blood group of

Pawan was A and knife seized from babool shrab contained blood stains of blood group A. Delay to lodge FIR is satisfactorily explained by prosecution. Even though inquest and spot panchanamas are prepared prior to lodging FIR. This is not fatal to the prosecution because domain of Section 174 is altogether different from the registration of crime. Non mentioning of names of accused either in inquest panchanama and panchanama of spot is not fatal to the prosecution because purpose of this panchanama is not to elucidate names of accused but to bring on record aspect of soon after the incident. In such circumstances, oral evidence of eye witnesses as well as documentary evidence makes it clear that accused no.1 and 2 infurtherance of their common intention beaten Pawan. Accused no.1 Gajanan by knife stabbed on the left side of stomach of Pawan due to which Pawan sustained severe bleeding injury and he succumbed to the injuries. Therefore, the offence punishable under Section 302, 504 r/w 34 of IPC is proved. As the accused are held guilty for offence punishable under Section 302, 504 r/w 34 of IPC it takes me to hear on the point of sentence. Hence, I take here pause.

(J. P.Zapate)

Date : 25/03/2026

Additional Sessions Judge, Washim.

55. I have heard accused no.1 and 2 in person. They submitted that accused no.1 is having small children. Accused no.2 is old aged person. If they will sent behind bar then their entire family will come on road and they will face starvation. Therefore, they are praying for leniency.

56. Ld.advocate Shri. Shaikh for both accused submitted that there are no aggrevative circumstances but there are full of mitigating circumstances. So, they are praying for leniency. Whereas Ld.DGP Shri.Vyawahare submitted that even though leniency would be shown minimum sentence is

life imprisonment.

57. After giving anxious thought to these rival submissions I find that mitigating circumstances in this case are more weighing than aggravating circumstances because age of the accused no.2 is 66 years and accused no.1 is having small children. Considering the nature of offence and manner of commission of murder I find mitigating circumstances are more weighing. So, it is not rarest of rare case to impose death penalty. Hence, I pass following order.

ORDER

- 1] Accused no.1 Gajanan Digambar Sarnaik & No.2 Digambar Sanjabrao Sarnaik are found guilty for the offence punishable under Sections 302, 504 r/w 34 of the Indian Penal Code, under Section 235 (2) of the Code of Criminal Procedure.
- 2] Accused no.1 Gajanan Digambar Sarnaik & No.2 Digambar Sanjabrao Sarnaik are hereby convicted for the offence punishable under Sections 302 r/w 34 of the Indian Penal Code and sentenced to suffer life imprisonment each and to pay fine of Rs.10,000/- each (Rs. Ten Thousand only), in default six months simple imprisonment each.
- 3] Accused no.1 Gajanan Digambar Sarnaik & No.2 Digambar Sanjabrao Sarnaik are hereby convicted for the offence punishable under Sections 504 r/w 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for the period of one year each and to pay fine of Rs.5,000/- each (Rs. Five Thousand only), in default three months simple imprisonment each.
- 4] Substantive sentence of imprisonment shall run concurrently.
- 5] Set off be given as per rules.

- 6] Muddemal i.e. knife be sent to Ld.District Magistrate for its disposal according to law after appeal period is over.
- 7] Muddemal i.e. two wheeler is already returned to accused no.1 on idemnity bond and that bond is confirmed because there is no use of motorcycle in actual commission of crime, after appeal period is over.
- 8] Rest of muddemal being worthless be destroyed after appeal period is over.
- 9] Copy of Judgment be given free of cost to both accused.
- 10] Copy of Judgment be sent to Ld.District Magistrate.
- 11] Out of fine amount Rs.25,000/- be paid to either father or mother of deceased Pawan under Section 357(i) of the Code of Criminal Procedure.

[Judgment dictated and pronounced in open Court.]

Date : 25/03/2026

(J. P.Zapate)
Additional Sessions Judge, Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer	:- R.K.Pawar, Stenographer (Grade-I)
Name of Court	:- District Judge 1 & Additional Sessions Judge, Washim.
Date of Judgment/ Order	:- 25/03/2026
Judgment/Order signed by the Presiding Officer on	:- 25/03/2026
Judgment/Order uploaded on	:- 25/03/2026