

MHHI010011072022



Received on :- 06/10/2022

Registered on :- 06/10/2022

Decided on :- 06/07/2026

Duration :- 03Y.09M.00D.

SESSIONS CASE NO.93/2022.

EXH.NO.146.

Form No.XXXII

Part "A"

(Title Page of Judgment)

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

<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE,</u> <u>HINGOLI, DISTRICT HINGOLI</u> Present : Smt. S. N. Mane - Gadekar (Date: 06/07/2026)	
	<u>OFFENCE PUNISHABLE UNDER SECTIONS</u> <u>302, 324 READ WITH SECTION 34</u> <u>OF THE INDIAN PENAL CODE AND</u> <u>SECTION 4 READ WITH SECTION 25</u> <u>OF THE INDIAN ARMS ACT</u>
COMPLAINANT	: State of Maharashtra Through Police Station Officer, Hingoli (City), Tq. Dist. Hingoli.
REPRESENTED BY	: Shri. N.S. Mutkule, Additional Public Prosecutor.
ACCUSED	1. Bablu @ Baba Subhash Dhabe, Age: 25 Years, Occp. Labourer, R/o. Talab Katta, Hingoli, Tq. Dist.Hingoli,
	2. Santosh @ Mohan Chintaman Jorewar, Age: 20 Years, Occp. Labourer, R/o. Washim, Tq. Dist. Washim, At/p. Talab Katta, Hingoli, Tq. Dist.Hingoli,
	3. Vishu @ Vishwas Sanjay Mekwal, Age: 21 Years, Occp. Labourer, R/o. Pusad, Tq. Pusad, Dist. Yavatmal, At/p. Talab Katta, Hingoli, Tq. Dist.Hingoli,
REPRESENTED BY	: Adv. G.P. Jamkar for accused No.1, Adv. P.K. Puri for accused No.2 and 3.

Part “B”**(Para 44(ii) of Chapter VI of Criminal Manual)**

Date of Offence	:	18/04/2022
Date of FIR	:	19/04/2022
Date of charge-sheet	:	06/10/2022
Date of framing of charge	:	20/06/2024
Date of commencement of evidence	:	12/12/2024
Date of on which judgment is reserved	:	06/07/2026
Date of the judgment	:	06/07/2026
Date of sentencing order, if any	:	06/07/2026

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of Release on bail	Offence charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention under gone during trial for purpose of section 428 Cr.PC.
(1)	Bablu @ Baba Subhash Dhabe	19/04/2022	UTP	U/s.302, 324, 34 I.P.C. and Section 4, 25 of Arms Act	Convicted	As per final Order	From 19/04/2022 to 06/07/2026
(2)	Santosh @ Mohan Chintaman Jorewar	19/04/2022	UTP	U/s.302, 324, 34 I.P.C. and Section 4, 25 of Arms Act	Convicted	As per final Order	From 19/04/2022 to 06/07/2026
(3)	Vishu @ Vishwas Sanjay Mekwal	19/04/2022	UTP	U/s.302, 324, 34 I.P.C. and Section 4, 25 of Arms Act	Convicted	As per final Order	From 19/04/2022 to 06/07/2026

Part “C”**(Para 44(iii) of Chapter VI of Criminal Manual)****LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. PROSECUTION:**

RANK	NAME	NATURE OF EVIDENCE
PW1	Shobha Sakharam Raje	Informant
PW2	Akshay Manik Waghmare	Witness
PW3	Ajay Subhash Chopade	Eye-witness
PW4	Chetan Pandurang Bhujvane	Spot panch

PW5	Sagar Shamrao Mane	Inquest panchnama
PW6	Pradip Haribhau Bhuktar	Seizure panch
PW7	Anil Uttamrao Kale	Witness
PW8	Dr. Vitthal Yadavrao Karpe	Medical Officer
PW9	Shaikh Babar Shaikh Latif	Eye-witness
PW10	Mukesh Mukund Thombare	Memorandum-cum-seizure panch
PW11	Dr. Swarna Sharad Mahale	Medical Officer
PW12	Rajkumar Bhagwan Ghongade	Muddemal Carrier
PW13	Ganesh Keshavrao Lekule	Witness
PW14	Vikram Pandurang Vithubone	Investigating Officer
PW15	Pandit Sopanrao Kachhave	Witness
PW16	Madhav Eknath Jivhare	Witness
PW17	Anil Datta Kachmande	Witness

B. DEFENCE WITNESSES, IF ANY:

RANK	NAME	NATURE OF EVIDENCE
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C. COURT WITNESSES, IF ANY:

RANK	NAME	NATURE OF EVIDENCE

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

SR. NO.	EXHIBIT NUMBER	DESCRIPTION
1.	PW1- Exh.24	Report
2.	PW1- Exh.P25	Printed FIR
3.	PW1- Exh.P26	Statement of the informant recorded u/s.164 CrPC
4.	PW3- Exh.44	Statement of the PW3 recorded u/s.164 CrPC
5.	PW4-Exh.53	Spot panchnama

6.	PW5-Exh.55	Inquest panchnama
7.	PW6-Exh.57 to 60	Seizure panchnamas
8.	PW6-Exh.63	Statement of the PW6 recorded u/s.164 CrPC
9.	PW8-Exh.71	Information letter given by M.O. to police
10.	PW8-Exh.72	Requisition letter given by police about the Post-Mortem to M.O.
11.	PW8-Exh.73	P.M. report
12.	PW8-Exh.74	Letter given by police to M.O. with weapon requesting opinion
13.	PW8-Exh.75	Query Report
14.	PW9-Exh.81	Statement of the PW9 recorded u/s.164 CrPC
15.	PW10-Exh.84	Memorandum panchnama in respect of Santosh Jorewar
16.	PW10-Exh.84/1	Seizure panchnama of Gupti
17.	PW10-Exh.85	Memorandum panchnama in respect of Vishwas Mekwan
18.	PW10-Exh.85/1	Seizure panchnama of dagger
19.	PW10-Exh.86	Memorandum panchnama in respect of Bablu Dhabe
20.	PW10-Exh.86/1	Seizure panchnama of iron rod
21.	PW10-Exh.87	Seizure panchnama of motorcycle
22.	PW11-Exh.93	Medico-cum-Legal Injury Certificate of Ajay Chopde
23.	PW11-Exh.94	Information given to police
24.	PW12-Exh.97	Letter sending the muddemal to FSL
25.	PW14-Exh.111 to 113	Arrest panchnamas of the accused
26.	PW14-Exh.114	Letter asking government panch
27.	PW14-Exh.115	Letter sent by I.O. to M.O. for collection of blood samples of accused
28.	PW14-Exh.116	Letter given to Depo Manager, Hingoli asking government panch

29.	PW14-Exh.117	Letter given to SP asking CDR of the deceased
30.	PW14-Exh.118	Covering letter of CDR of the deceased
31.	PW14-Exh.119	CDR of all the accused
32.	PW14-Exh.120	Letter given to JMFC Court requesting recording of statement u/s.164
33.	PW14-Exh.121	Letter given to MO asking injury certificate of Ajay Chopde
34.	PW14-Exh.122 & 123	Insurance policy and R.C. book of the motorcycle
35.	PW14-Exh.124 & 125	FIRs
36.	PW14-Exh.126	Lock book extract
37.	PW15-Exh.128	Order in respect of preservation of the spot
38.	PW15-Exh.129	Order given to PSI Jivhare in respect of Post-Mortem and inquest panchnama
39.	PW15-Exh.130	Order given to API Anil Kachmande in respect of spot panchnama
40.	PW16-Exh.137	Shav Form
41.	PW16-Exh.138	Receipt of dead body
42.	PW17-Exh.P18 to P22	Photographs

B. DEFENCE:

SR	EXHIBIT NUMBER	DESCRIPTION
1.	PW10- Exh.88 & 89	Photo Article MO5 and MO6
2.	PW10- Exh.90	Photo of the shrub from where the weapon seized
3.	PW11- Exh.95	Discharge card of Ajay Chopde
4.	Exh.106	Letter given by Land Record Office to police
5.	Exh.107 & 108	Map given by Land Record Office

C. COURT EXHIBITS:

SR.NO.	EXHIBIT NUMBER	DESCRIPTION
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D. MATERIAL OBJECTS:

SR. NO.	MATERIAL OBJECT NUMBER	DESCRIPTION
1.	PW1– Article 1	Purple T-shirt of the deceased
2.	PW1– Article 2	Black pant of the deceased
3.	PW1– Article 3	Underpant of the deceased
4.	PW1– Article 4	Black shirt of the deceased
5.	PW1– Article 5	Blue pant of the deceased
6.	PW3– Article 6	Hudi of Vishwas
7.	PW3– Article 7	Red shirt of Santosh
8.	PW3– Article 8	Iron rod
9.	PW3– Article 9	Dagger
10.	PW4– Article 10	Soil seized at the spot
11.	PW4– Article 11	Cotton swab of blood
12.	PW4– Article 12	Blood mixed soil at the spot
13.	PW4– Article 13	Watch
14.	PW4– Article 14	Chain
15.	PW4– Article 15	Sword case
16.	PW6– Article 16	Jeans pant of Vishwas
17.	PW6– Article 17	Jeans pant of Babalu
18.	PW7– Article 16	Photo of motorcycle
19.	PW7– Article 17	Motorcycle used by accused
20.	PW10- M.O. 1 to 12	Photographs of spot and seizure
21.	PW14- Exh.P16	Motorcycle

J U D G M E N T

(Delivered on 06/07/2026)

1] The Accused are facing this trial for the offence punishable under Section 302, 324 read with Section 34 of the

Indian Penal Code and Section 4 read with Section 25 of the Indian Arms Act.

The case of the prosecution is as under:

2] The informant is the mother of the deceased. On 19/04/2022, she lodged the First Information Report. According to her, on 18/04/2022, after completing her work at Vaibhav Hotel, she returned home at about 9:00 p.m. She found her husband and her son, Shubham (the deceased), present in the house. While she was attending to the household work, at about 9:30 p.m., accused No.1 came in front of her house and called Shubham outside. Thereafter, Shubham left the house and went along with accused No.1 towards the Maruti Temple.

3] After a short while, on hearing commotion from the nearby area, she came out of the house and heard that Shubham had been assaulted. When she and others proceeded towards the temple, they saw Shubham staggering and thereafter falling down in front of the Babar's house. On reaching near him, they found him covered with blood. Blood was oozing from his neck. On being asked as to what had happened, Shubham told her that Bablu, Vishu (the nephew of Bablu) and Santosh Jorewar had assaulted him with an iron pipe, a gupti and a khanjar.

4] Thereafter, with the assistance of Akshay Manik Wagmare and Umesh Shivaji Bondhare, they placed Shubham in the vehicle of Vinayak Bhise and shifted him to the Civil

Hospital, Hingoli. On examination, the Medical Officer declared him dead. She noticed injuries on his left hand, neck, chest and abdomen caused by a sharp-edged weapon, including stab injuries.

5] While she was weeping in the hospital, the persons gathered there informed her that there was a dispute between Shubham and accused Bablu because Shubham had molested Bablu's niece. Owing to the said dispute, Bablu, Vishu and Santosh Jorewar assaulted Shubham with deadly weapons and caused his death.

6] On 19/04/2022, Crime No.166/202 came to be registered under Sections 302, 324 read with Section 34 of the Indian Penal Code and Sections 4 read with Section 25 of the Indian Arms Act.

7] The I.O. prepared spot, inquest panchnama and seizure panchnamas. Map was drawn. Medical papers were obtained. Statements were recorded and after completing the investigation, charge-sheet came to be filed.

8] The offence punishable under Sections 302 of the Indian Penal Code is exclusively triable by the Court of Sessions. Therefore, the learned Judicial Magistrate committed the case to this Court on 29/09/2022.

9] I have framed the Charge at Exh.16 against the Accused. Its contents were read over and explained to them in vernacular. They pleaded not guilty thereto and claimed to be tried.

10] After completion of evidence, the statements of accused under Section 313 of the Criminal Procedure Code were recorded. Their defence is that of total denial and false implication.

11] The following Points arise for my consideration. I have recorded my findings thereon for the reasons to follow:

POINTS

FINDINGS

- | | |
|---|-------------|
| 1. Does the prosecution prove that on 18/04/2022 in between 21:30 Hrs. to 21:45 Hrs. at Talab Katta, Hingoli, Tq. Dist. Hingoli, all the accused in furtherance of their common intention, have committed murder intentionally causing death of Shubham Sakharam Raje by deadly weapons and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code ? | Proved. |
| 2. Does the prosecution prove that on the aforesaid date, time and place accused No.3 voluntarily caused hurt to Ajay Chopade by means of dagger a deadly weapon and thereby committed an offence punishable under Section 324 of the Indian Penal Code ? | Proved. |
| 3. Does the prosecution prove that on the aforesaid date, time and place all the accused in furtherance of their common | Not Proved. |

intention, possessed and used the weapon like “Gupti” and “Khanjir” unauthorizedly in the crime and thereby committed an offence punishable under Section 4 read with Section 25 of the Indian Arms Act ?

4. What order?

: As per final
Order.

REASONS:

AS TO POINT NOS.1 TO 3:

12] It is necessary to state that the material prosecution witnesses in this case are PW1, PW2, PW3, PW7, PW8, PW9 and PW11. Their evidence is closely connected with each other and they speak about the same chain of events. Therefore, instead of discussing the evidence of each witness separately, this Court proposes to consider and appreciate their evidence together.

13] PW1 the informant deposed that she has two daughters and one son, namely Shubham (the deceased). At the time of the incident, she was residing with her husband and her son, Shubham. The incident took place on 18.04.2022. On that day, after finishing her work at Vaibhav Hotel, she returned home at about 9.00 p.m. and was attending to the household work. At about 9.30 p.m., accused Bablu Dhabe came in front of their house and called Shubham outside. Thereupon, Shubham told her, “Mother, I will be back,” and accompanied accused Bablu Dhabe towards the Maruti Temple.

14] After some time, she heard people shouting that “Shubham has been assaulted.” On hearing the commotion, she

proceeded towards the Maruti Temple. At that time, she saw Shubham staggering towards their house. He fell down in front of the house of PW9 Babar.

15] PW1 immediately rushed to him and found that he was lying in a pool of blood. On her asking as to what had happened, Shubham told her, "Mother, though I had committed no fault, Bablu, his nephew Vishu and Santosh assaulted me with a gupti, a khanjar and an iron pipe."

16] She further stated that several persons gathered at the spot. Among them, Akshay Wagmare and Umesh Bondhare placed Shubham in the vehicle belonging to Vinayak Bhise and shifted him to the Civil Hospital, Hingoli. She followed the vehicle to the hospital. After examining Shubham, the Medical Officer declared him dead. She noticed injuries on his neck, chest, abdomen and left hand, and his body was completely covered with blood.

17] She further deposed that, from the persons gathered at the hospital, she came to know that the deceased had allegedly teased Kanchan, the niece of accused Bablu Dhabe, and on that account accused Bablu, Vishu and Santosh had committed the murder of Shubham.

18] On the same night, she went to the police station and lodged the First Information Report, which is at Exhibit 24.

Her statement was also recorded before the Magistrate, which is at Exhibit 26.

19] She further stated that, at the time of the incident, Shubham was wearing a round-neck purple T-shirt, black trousers and a brown-coloured undergarment. When accused Bablu Dhabe came to call Shubham, he was wearing a black full-sleeved shirt and blue trousers. She identified the clothes seized during the investigation. According to her, the clothes of the deceased are marked as Articles P-1 to P-3, whereas the clothes of accused No.1 Bablu are marked as Articles P-4 and P-5. Thereafter, this witness was extensively cross-examined on behalf of the accused.

20] During her cross-examination, the complainant admitted that she was working at Vaibhav Hotel, which is a beer bar and also serves food. She stated that her work there was to prepare chapatis and bhakarlis and to wash utensils. She further admitted that dinner orders were accepted at the hotel till 11.00 p.m. and that several other women were also employed there.

21] The defence intended to suggest that since dinner orders were accepted till 11.00 p.m., the complainant must have remained at the hotel till that time and, therefore, her claim that she reached home at about 9.00 p.m. on the date of the incident was false.

22] However, while answering the suggestion, the complainant voluntarily stated that although dinner orders were accepted till 11.00 p.m., she did not take the afternoon break. Consequently, she completed her work by about 8.00 to 8.30 p.m. every day and returned home thereafter. This explanation was given by her on her own without any suggestion from either side.

23] In the opinion of this Court, the explanation given by the complainant is natural, probable and satisfactory. It has come in evidence that both her daughters are married and reside with their respective husbands. Therefore, only the complainant, her husband and the deceased Shubham were residing in the house. There was no other woman in the family to attend the household work. It is, therefore, quite natural that the complainant would not take the afternoon break so that she could finish her work early and return home to attend the household chores.

24] The complainant further stated that it takes about thirty minutes to reach her house on foot, about twenty-five minutes by auto-rickshaw and about fifteen minutes by motorcycle. Thus, even if she left her workplace at about 8.30 p.m. and walked home, she could easily reach her house by about 9.00 p.m. Therefore, her statement that she had completed her work and had reached home before the incident appears to be probable and trustworthy. The defence has not

been able to bring on record any material in the cross-examination to discredit this part of her testimony.

25] During cross-examination, several questions were put to the complainant regarding Kanchan, Vinayak Bhise, the alleged dispute between Vinayak Bhise and the deceased Shubham, the alleged transaction relating to possession of a plot, the establishment of Chhava Health Club by Vinayak Bhise and the alleged demand made by Shubham to have the gym transferred in his name. The complainant consistently stated that she had no knowledge of these matters.

26] The defence also suggested that the deceased Shubham used to cut birthday cakes with a sword and attempted to show him as a person of criminal or aggressive disposition. However, the complainant either denied these suggestions or stated that she had no knowledge about them.

27] The object of these suggestions was apparently to create an inference that Shubham had disputes with other persons and that someone else might have committed his murder. However, mere suggestions put in cross-examination do not constitute evidence. The defence neither elicited any supporting material from any prosecution witness nor examined any defence witness to establish that Vinayak Bhise and Shubham were on inimical terms or that such enmity had resulted in the murder of Shubham. Consequently, these

suggestions remain unsupported by evidence and carry no evidentiary value.

28] The defence further argued that the complainant was not aware that Shubham had gone with Bablu Dhabe because she was busy with household work. This argument is contrary to the complainant's own testimony. She has consistently stated that after returning from work she was attending the household chores when, at about 9.30 p.m., Bablu Dhabe came to her house, called Shubham outside and, after saying "I will be back shortly", Shubham left with Bablu Dhabe towards the Maruti Temple. The defence has failed to challenge this material part of her evidence in the cross-examination. No suggestion was effectively put that she had not actually seen Shubham leaving with Bablu Dhabe or that she was falsely deposing in this regard.

29] The complainant had stated the same facts in her First Information Report (Exhibit-24), namely that Bablu Dhabe came to her house, called Shubham outside and took him towards the Maruti Temple. Similarly, in her statement at Exhibit-26, she stated that at about 9.00 p.m. on the date of the incident, Bablu Dhabe came to her house, told Shubham that he had some work with him and thereafter Shubham left with Bablu Dhabe. Although she stated in that statement that two other persons were standing at some distance with Bablu Dhabe, she could not identify them. Those two persons have not been

referred to in her substantive evidence before the Court. Therefore, no undue importance can be attached to that omission. However, the consistent version of the complainant in the FIR, her previous statement and her evidence before the Court is that Bablu Dhabe came to call Shubham and that Shubham left with him towards the Maruti Temple. The defence has failed to shake this important part of her evidence.

30] Apart from this, PW3 Ajay Chopade has also deposed that while he was sitting near the Maruti Temple on the date of the incident, he saw accused No.1 Bablu Dhabe and deceased Shubham coming towards the temple and that they started quarrelling near the house of Babar. The defence attempted to discredit him on the ground that he was a relative of the deceased. However, mere relationship with the deceased is not a ground to reject the testimony of a witness. His evidence is required to be assessed on the touchstone of its naturalness, consistency and corroboration from the other evidence available on record.

31] According to this PW3, the articles required for erecting the pandal at the Maruti Temple belonged to him. On the date of the incident, he was alone checking those articles. He stated that he had completed that work at about 9.30 p.m.

32] He further deposed that the house of the deceased is situated at a distance of about 100 metres from the Maruti

Temple. He also stated that the house of Babar is situated at a distance of about 100 metres from the house of the deceased. He further deposed that he saw the deceased Shubham coming towards the Maruti Temple along with accused No.1 Bablu. At that time, the witness himself was sitting near the Maruti Temple. Thus, according to him, both Shubham and Bablu were proceeding towards the Maruti Temple.

33] This part of his evidence finds support from the testimony of the complainant. The complainant has consistently stated that Bablu came to her house, called Shubham outside and both of them proceeded towards the Maruti Temple. The same version is found in her First Information Report (Exhibit-24) as well as in her statement at Exhibit-26. Thus, the consistent prosecution case is that Bablu had gone to the house of Shubham and had taken him towards the Maruti Temple. The complainant herself witnessed Shubham leaving with Bablu in that direction. The evidence of PW3 Ajay Chopade also supports this version, as he has stated that on the date of the incident he saw Shubham and Bablu coming towards the Maruti Temple.

34] The complainant has further deposed that after some time she heard people shouting that “Shubham has been assaulted.” Immediately thereafter, she started running towards the Maruti Temple. Her conduct appears to be natural because she was already aware that Shubham had gone towards the Maruti Temple along with Bablu. Therefore, instead of searching

for him elsewhere, she directly proceeded towards the temple.

35] The complainant further stated that she thereafter saw Shubham staggering towards his house. However, before she could reach his house, he collapsed in front of the house of PW9 Babar. The same version is found in her First Information Report (Exhibit-24), wherein she stated that she saw Shubham staggering towards his house and that he ultimately fell in front of the house of Babar. Thus, her evidence on this aspect has remained consistent from the very beginning.

36] The testimony of **PW2**, Akshay Manik Waghmare, also lends assurance to this fact. He deposed that on the date of the incident he received a phone call from Umesh Bondare, who informed him that Shubham had been assaulted by someone and was lying in front of the house of Babar.

37] Similarly, Prosecution Witness No. 3, Ajay Chopade, has deposed that while he was near the Maruti Temple, he noticed an altercation between Bablu and Shubham near the house of Babar. On hearing the commotion, he immediately went towards the house of Babar.

38] The evidence of Prosecution Witness No. 9, Babar, in front of whose house the deceased ultimately collapsed, further corroborates the prosecution case. Babar has deposed that at about 9.30 p.m. on the date of the incident, he heard the sound

of a quarrel. He immediately came out of his house and saw that the deceased Shubham and accused Bablu were quarrelling in front of his house. Thus, the evidence of Babar also establishes that immediately before the assault, Shubham and Bablu were together and were quarrelling in front of Babar's house.

39] The evidence of the complainant clearly establishes that Bablu Dhabe came to her house and took Shubham towards the Maruti Temple. This fact is consistently stated by her in her evidence.

40] The testimony of Prosecution Witness No. 3, Ajay Chopade, also corroborates this fact. He has deposed that while he was sitting near the Maruti Temple on the date of the incident, he saw Bablu Dhabe and Shubham coming towards the Maruti Temple. Thereafter, he saw both of them quarrelling near the house of Babar. This version is further corroborated by Prosecution Witness No. 9, Sheikh Babar, who has also deposed that he saw Shubham and Bablu quarrelling in front of his house.

41] It is true that the complainant was not present at the actual place of assault and, therefore, she is not an eyewitness to the assault itself. When she reached there, Shubham was lying in an injured condition and was bleeding profusely.

42] The testimony of Prosecution Witness No. 3, Ajay

Chopade, is also material on this aspect. He has stated that on hearing the commotion near the house of Babar, he went there to intervene and separate the quarrel. At that time, Bablu Dhabe was assaulting Shubham with an iron rod. Shortly thereafter, Santosh and Vishwas arrived at the spot carrying a gupti and a dagger. According to Ajay, Santosh started assaulting Shubham by giving blows with the gupti on his abdomen, while Vishwas assaulted Shubham on his neck with a dagger. Ajay further deposed that while he was trying to rescue Shubham, accused Vishwas questioned him as to why he was interfering and assaulted him with a dagger on his right thigh. After sustaining the injury, Ajay ran away from the spot.

43] The testimony of Prosecution Witness No. 9, Sheikh Babar, substantially corroborates the evidence of Ajay Chopade. According to Sheikh Babar, Bablu Dhabe assaulted Shubham with an iron rod. Thereafter, Santosh and Vishwas came to the spot carrying a gupti and a dagger. Sheikh Babar has specifically stated that Santosh inflicted blows with the gupti on the back of Shubham. Thus, both Ajay Chopade and Sheikh Babar consistently attribute the injuries caused by the gupti.

44] Sheikh Babar has further stated that Ajay had come to intervene and separate the quarrel. At that time, accused Vishwas assaulted Ajay with a dagger, because of which Ajay ran away from the place. Thus, the evidence of Sheikh Babar also corroborates the version given by Ajay regarding the injury

sustained by him during the incident.

45] Sheikh Babar has further deposed that accused No.1 Bablu Dhabe shouted that Shubham should be killed. Thereafter, Santosh assaulted Shubham with the gupti on his neck, wrist and hand. Ajay had already witnessed Vishwas assaulting Shubham on the neck with a dagger. Thus, both Ajay Chopade and Sheikh Babar consistently speak about the assault on the neck of the deceased. Sheikh Babar has also specifically stated that Santosh caused injuries on the neck, wrist and hand of Shubham with the gupti.

46] To ascertain whether the injuries alleged by prosecution were actually found on the dead-body of deceased Shubham, it is necessary to consider the evidence of PW8 Medical Officer. PW-8 Dr. Vitthal Karpe was serving as a Medical Officer in the Casualty Department on 18-04-2022. He deposed that at about 10.00 p.m., the dead body of Shubham Raje was brought to the Casualty Department. After examining him, he declared him dead and informed the police. The intimation given by him is at Exhibit 71.

47] He further deposed that on 19-04-2022, he commenced the post-mortem examination at about 11.30 a.m. and completed it at about 1.30 p.m. At the time of post-mortem, the deceased was wearing a violet full T-shirt, a black full pant and a tan-coloured underpant. He also noticed a black thread

around the chest and red and yellow cotton threads on the right wrist. The clothes were stained with blood. He found tattoo marks bearing the words “S.N. Raje” on the right forearm and “Sai” on the right wrist. According to him, the dead body was cold and well nourished, and rigor mortis was present all over the body.

48] The defence has not disputed the evidence of PW-8 regarding the post-mortem examination. It is also not the defence case that the death of the deceased was accidental or suicidal. Rather, the defence has admitted that the deceased died a homicidal death. However, the defence has denied that the accused persons are the authors of the said murder.

49] After examining the dead body of deceased Shubham Rajeev, PW-8 noticed the following external injuries, which are described in Column No. 17 of the post-mortem report (Exhibit 73):

External Injuries (Column No. 17)

1] Incised wound in size 11 cm x 4 cm x 3 cm over jaw at lower border of mandible from left side to right side upto mid point of lower border of mandible below chin and neck region.

2] Incised wound on neck in size 13.5 cm x 4 cm x 1 cm deep to muscle starting from upper 1/3 of neck on left side to mid point of tracheal region. Margins clear cut sharp edges, obliquely placed on neck caused by hard and sharp weapon.

3] Stab wound on chest on left side in between 1st &

2nd intercostal space, in size 3 cm x 2 cm x 7 cm deep. Penetrating to the pleura & upper lobe of left lung elliptical in shape, margins clear cut, edges inverted.

4] Stab wound over xypesternum at lower border, elliptical in shape, margin clear cut, penetrating to middle lobe of lung, pleura of lung tissue & pulmonary vessel on left side obliquely placed having dimensions 3 cm x 2 cm x 34 cm (deep).

5] Penetrating stab wound on epigastric region situated 10 cm below to wound No.4 obliquely placed of size 3 cm x 2 cm x 42 cm cavity deep with clear cut margins, penetrating skin, subcutaneous tissue, smaller left lobe of liver, upper dome of stomach, pleura, lower lobe of left lung tissue to underline vessels, through posterior aspect at 8th & 9th ribs exiting through skin of back exit wound of size 1 cm x 0.5 cm on back, para spinal on left side margins everted, clear cut with hemorrhagic in subcutaneous tissue in size 6 cm x 4 cm. Making reddish tan colour patch on skin of back near exit wound.

6] Stab wound over right hypochondrium laterally with margins clear cut. Penetrating skin subcutaneous tissue peritoneal covering having size 3 cm x 2 cm x 3 cm cavity deep straight in position.

7] Incised wound over dorsal aspect of hand having dimension 6 cm x 1 cm x 0.5 cm. Elliptical in shape, margins are clear cut, inverted edges, obliquely placed near in between index finger and ring finger dorsally.

8] Incised wound over left hand palm at lower 1/3 in

size 9 cm x 1.5 cm x deep to muscle & underline bone of the hand.

9] Incised wound over left hand wrist joint in size 7 cm x 2 cm x 1 cm causing of tendon cut through injury leading to dis-articulation of wrist joint margins are clear cut inverted, transversally placed.

10] Incised wound just below the wound No.9 12 cm below having dimension 6 cm x 8 cm below x deep to muscle & vessels. Transversally placed, margins are clear cut, inverted leading to avulsion of skin flap.

11] Stab wound over right shoulder having size 2 cm x 2 cm x 2 cm elliptical in shape margins are clear, edges are inverted, obliquely placed.

12] Stab wound over arm laterally at middle 1/3 of arm in size 4 cm x 3 cm x 1 cm margins are clear cut, inverted, vertically placed.

13] Stab wound over arm, medially at middle 1/3 in size 4 cm x 3 cm x 3 cm margins are clear, elliptical in shape, transversally placed.

14] Stab wound over right thigh at upper 1/3 in size 3 cm x 3 cm x 2 cm elliptical in shape, margins are clear, edges are inverted.

Internal Examination

15] No any external injuries were found. No any fracture was found over skull. Brain was congested, shrunken, covering congested. No any abnormality was found.

16] Walls, ribs, cartilages: Congested, fracture of xypesternum found due to stab injury as per column No.17. Pleura was congested and teared at site of stab wound. Right lung was congested. Left lung was pale, having stab injury at upper lobe, in size 2.5 x 0.5 cm. Stab injury at middle lobe of size 2.5 cm x 0.5 cm and lower lobe having penetrating injury 2.5 cm x 0.5 cm. Pericardium was congested. Heart was congested and empty. Large vessels—Pulmonary vessels on left side get cut through stab injury. 800 ml to 1000 ml blood & blood clots present in left pleural cavity having haemothorax.

17] Abdomen was non distended. Walls were congested. Peritoneum congested. Cavity was non distended. Buccal cavity, teeth, tongue and pharynx were congested, all teeth intact. Tongue within mouth, pharynx congested. Oesophagus was congested.

18] Stomach and its contents: Congested, dome of stomach get teared due to stab injury. It contains semi digested food. No smell of any poison, organophosphorus compound poison.

19] Large intestine and its contents: Congested contains fecal matter. Liver and gall bladder was congested, smaller left lobe of liver having stab injury of 2.5 cm x 0.5 cm penetrating injury.

20] Pancreas and suprarenal were congested. Spleen was congested. Kidneys were congested. Bladder was congested and empty.

21] Additional remarks: Medical Officer's deduction

from the state of contents of stomach as to time of death and last meal: 2 to 4 hours from last meal. There is no smell of any organophosphorus compound poison or any unpleasant smell found, therefore, viscera was not preserved.

22] Spine and spinal cord: No any fracture of spine found on palpation. Spinal cord not opened.

23] Cause of Death: Death due to hemorrhagic shock due to haemothorax caused by penetrating of stab injury on chest.

50] His evidence establishes that the deceased sustained as many as fourteen external injuries, most of which were incised and stab wounds caused by a hard and sharp-edged weapon. The injuries were found on the neck, chest, abdomen, upper limbs and right thigh. Several of these injuries had penetrated vital organs such as the left lung, liver, stomach and pulmonary vessels.

51] The post-mortem report (Exh.73) shows that Injury Nos. 3, 4 and 5 had penetrated the chest cavity and damaged the pleura, left lung and pulmonary vessels. Injury No.5 was the deepest injury, penetrating the liver, stomach, pleura, lung and blood vessels and exiting through the back. The doctor categorically opined that all the injuries were ante-mortem in nature and that the cause of death was hemorrhagic shock due to haemothorax caused by penetrating stab injuries to the chest.

52] PW-8 further opined that Injury Nos. 4 and 5 were possible by the weapon referred to him by the Investigating Officer and that the remaining injuries were having small depth possible by the weapon (Article P-9). He specifically stated that all the injuries mentioned in Column No.17 were stab or incised injuries and were sufficient in the ordinary course of nature to cause the death of the deceased.

53] During cross-examination, PW-8 admitted that he did not find any bruise or any injury caused by a hard and blunt object. He further stated that the injuries mentioned in the post-mortem report were not possible by an iron rod or lathi, thereby ruling out the use of hard and blunt weapons.

54] PW-8 also admitted that there was no injury to the heart or the aorta. However, he explained that the pulmonary vessels on the left side were cut due to the stab injuries, resulting in profuse internal bleeding. He further stated that Injury Nos. 3, 4, 5 and 6 were fatal injuries, whereas Injury Nos. 1 and 7 to 14 were not individually fatal. He clarified that although there was no injury to the sternum, the xiphisternum was fractured due to the stab injury.

55] The doctor further stated that the jugular and carotid vessels in the neck had sustained injury and that injuries to the pulmonary vessels, jugular vein and carotid artery are fatal in nature. According to him, profuse bleeding from these

vessels can cause death. He also stated that puncture injuries to the lung obstruct respiration and are fatal.

56] PW-8 admitted that Injury Nos. 7, 10, 11 and 13 were possible if the injured was running away from the assailant. He also admitted that blood stains could have fallen on the clothes of the assailant as well as on the ground during such an assault. However, he was unable to state the exact time required to inflict all the injuries.

57] Nothing substantial has been elicited in the cross-examination to discredit the testimony of PW-8. His evidence remains consistent with the post-mortem report and establishes beyond doubt that the deceased died a homicidal death due to multiple penetrating stab injuries inflicted by a sharp-edged weapon.

58] Both PW-3 and PW-9 consistently deposed that the deceased sustained injuries on his neck. Their version is corroborated by the medical evidence of PW-8, who noticed two incised injuries on the neck. The discrepancy between PW-3 and PW-9 is only with regard to the identity of the accused who inflicted the neck injury and the weapon used. Such discrepancy, in the facts of the present case, does not affect the substratum of the prosecution case, particularly when the prosecution alleges that all the accused acted in furtherance of their common intention and participated in the assault. It is well settled that in

a case of simultaneous assault by several accused, some variation regarding the specific overt act attributed to each accused is not uncommon and, by itself, is not sufficient to discard the otherwise reliable ocular evidence. The material circumstance is that the deceased sustained neck injuries during the assault, which stands fully corroborated by the medical evidence.

59] This discrepancy is not automatically fatal to the prosecution case. This contradiction does not affect. In the case of **Leela Ram Vs. State of Haryana**, on **06/10/1999 Appeal (Cri.) 297/1992 IndianKanoon** the Hon'ble S.C. held that the Court should separate the grain from the chaff and need not reject the entire evidence merely because one part is inaccurate.

60] The medical evidence of PW8 and P.M. Exh.73 shows that deceased sustained injury on neck, abdomen, hand, wrists and back. The prosecution case is based on common intention under Section 34 of IPC and from the evidence of PW1, PW3, PW9 that accused No.2 and 3 jointly participated in the assault with sharp edged weapon. Khanjir and Gupti both are sharp edged weapons and medical evidence is consistent with injuries caused by sharp edged weapons.

61] PW9 Sheikh Babar has deposed that accused Vishwas assaulted PW3 Ajay Chopade with a dagger when Ajay attempted to intervene in the quarrel.

62] PW9 has categorically stated that Santosh and Vishwas arrived at the spot carrying a gupti and a dagger respectively. He has also deposed that after the assault, Bablu, Santosh and Vishwas fled from the spot on a motorcycle.

63] The same version is found in the statement of Sheikh Babar recorded at Exhibit-81. In that statement, he has stated that Santosh was carrying a gupti and Vishwas was carrying a dagger. Santosh immediately started stabbing Shubham with the gupti, while Vishwas also assaulted Shubham with the dagger. During the assault, Bablu was instigating the other accused that “याला जीवाने मारुन टाका”.

64] PW9 has further stated that when Santosh was attacking the neck of Shubham with the gupti, Shubham attempted to protect himself by raising his hand. As a result, his hand sustained cut injuries. He has further stated that Vishwas used the weapon in his hand to cut the neck of Shubham. This part of the evidence recorded before the Court at Exhibit-81 clearly attributes the neck injury to accused Vishwas. This version is in complete agreement with the testimony of PW3 Ajay Chopade, who has also stated that Vishwas assaulted Shubham on the neck with a dagger.

65] The evidence of the complainant also assumes significance. When she reached the spot and asked Shubham what had happened, Shubham made an oral dying declaration

stating that although he had committed no fault, Bablu Dhabe, Vishwas and Santosh had assaulted him with a gupti, a dagger and an iron rod.

66] Whether the complainant had actually reached the place where Shubham had fallen in front of the house of Babar is also supported by the testimony of PW9 Sheikh Babar. During his cross-examination, Sheikh Babar denied the suggestion that it was dark at the place of occurrence. He further stated that when Shubham fell in front of his house, the mother of Shubham came there. Although he did not narrate the incident to her, he remained present at the spot from the beginning of the quarrel until Shubham was taken to the hospital.

67] Sheikh Babar has admitted that he did not intervene to separate the quarrel and did not offer water or any other assistance to Shubham. He further stated that by the time the complainant reached the spot, the assault had already come to an end. As soon as she arrived, she started crying and asked Shubham, “काय झाले बोल.”

68] This part of the testimony of PW9 Sheikh Babar fully corroborates the evidence of the complainant. Therefore, the evidence of PW9 Sheikh Babar lends substantial assurance to the prosecution case that the PW1 complainant reached the spot immediately after the assault, when Shubham was still alive and conscious, and that she questioned him about the incident

before he was taken to the hospital.

69] The learned defence counsel argued that the conduct of Prosecution Witness No. 1 (the complainant) and Prosecution Witness No. 9 was unnatural. It was further argued that the prosecution has failed to establish any motive for the offence. According to the defence, the prosecution has falsely projected that the incident occurred because the deceased Shubham had allegedly teased Kanchan, who is the niece of accused No. 1, Bablu Dhabe.

70] In this regard, the answers given by the PW1 complainant during her cross-examination, particularly in paragraph No. 17, assume significance. She has stated that accused No. 1, Bablu Dhabe, resides in the same lane as her family. Even prior to the incident, Bablu and her son Shubham used to move together. She further stated that Bablu's family consists of his mother, brother-in-law, sister, his sister's daughters and his brother, and that Bablu's house is situated about six or seven houses away from her residence. She has also categorically stated that there was no previous dispute between her family and the family of Bablu Dhabe.

71] The complainant has admitted that Kanchan, the niece of accused No. 1, used to reside in Bablu's house along with her sisters. Although she stated that she had no knowledge about any alleged love affair between Shubham and Kanchan,

the defence has also not disputed that Kanchan is the niece of Bablu Dhabe and that she was residing in his house.

72] The complainant has further stated that after the incident she came to know from the people gathered at the spot that the quarrel had taken place because of Kanchan. When she was asked by the defence why she did not make further enquiry about the actual reason for the incident, she replied that she was immersed in the grief of losing her son and was not in a position to make enquiries. This explanation appears to be natural and probable. The complainant is a labourer by occupation and her husband is also an elderly labourer. After the death of their only son, it is only natural that they would remain in deep grief rather than make independent enquiries regarding the exact cause of the incident.

73] Since the complainant had already learnt from the persons present at the spot that the quarrel had taken place because of Kanchan, she believed the same to be true. Accordingly, she mentioned this fact in her First Information Report (Exhibit-24). If there had been any other motive behind the incident, it was open to the defence to establish the same by leading evidence. The prosecution has built its case regarding motive on the basis of the First Information Report (Exhibit-24), and the Investigating Officer has also conducted the investigation on that basis.

74] If the defence intended to contend that the incident had occurred for some other reason or that some other person was responsible for the murder, the burden lay upon the defence to bring such material on record. However, nothing has been elicited during the cross-examination of the prosecution witnesses, nor has any defence evidence been led, to indicate that there was any other motive or that any person other than the accused was responsible for the offence. Consequently, the motive put forward by the prosecution appears to be the only probable motive emerging from the evidence on record.

75] The complainant has also admitted that she had seen Kanchan earlier because she was residing in the same locality. However, Kanchan never used to visit the complainant's house.

76] It is true that every word spoken by the complainant before this Court does not find place in the statement recorded at Exhibit-26. However, the complainant has specifically stated that she had narrated all these facts while her statement was being recorded. A perusal of Exhibit-26 shows that it contains the material facts, namely that Shubham was at home, Bablu Dhabe came to the house and called him outside on the pretext that he had some work, Shubham accompanied him, thereafter people from the locality informed her that a quarrel had taken place, she rushed towards the house of Babar where she found Shubham lying injured on the ground, and on her enquiry Shubham told her that Bablu Dhabe, Santosh and Vishwas had

assaulted him with an iron rod, a dagger and a gupti.

77] It is also necessary to bear in mind that the statement recorded before the Court is not a written statement prepared by the witness herself. It is the deposition recorded by the Court. During the recording of statement, it is for the Court to decide what part of the narration is material and requires to be recorded. It is possible that certain unnecessary or repetitive details narrated by the witness were not incorporated in the deposition. Therefore, merely because every detail narrated by the witness does not appear in Exhibit-26, no adverse inference can be drawn against her. The complainant has consistently maintained that she had stated all these facts while giving her evidence, and therefore no fault can be attributed to her on that count.

78] The defence further contended that PW-1 did not state that Ajay Chopade was present at the spot. In the opinion of this Court, such an omission is quite natural. The murder of one's own son is an extremely traumatic event in the life of any mother. At such a moment, it is neither possible nor expected that a mother would carefully observe who was present in the crowd or what each person standing there was doing. Her immediate concern would naturally be her injured son and not the identity or conduct of the persons gathered at the spot.

79] The learned defence counsel, Mr. Puri and Mr.

Jamkar, also challenged the conduct of PW-1. According to them, when PW-1 saw her son lying in a pool of blood, she did not cry aloud, raise an alarm, seek help from the persons present, or offer him water. It was argued that, being the mother of the deceased, such conduct was expected from her. On this basis, the defence submitted that PW-1 did not behave like a mother would ordinarily behave in such circumstances. Therefore, according to the defence, it should be inferred that she was not present at the spot, that she did not reach there immediately after the incident, and that the deceased did not make any statement to her.

80] This submission cannot be accepted. Human behaviour in moments of extreme shock and grief is not uniform. Different individuals react differently to a sudden and tragic event. Some cry, some become speechless, some remain stunned, while others are unable to react immediately. Therefore, merely because PW-1 did not behave in the manner expected by the defence, no adverse inference can be drawn against her. Her conduct cannot be described as unnatural so as to reject her otherwise reliable testimony.

81] However, the evidence of PW-1 clearly shows that as soon as she reached Shubham, she asked him, “What happened?” This part of her testimony is corroborated by PW-9, Sheikh Babar. PW-9 has deposed that when PW-1 arrived at the spot, she started crying and asked her son, “काय झालं, बोल”

("What happened? Tell me."). PW-9 was standing at the entrance of his house at that time and had an opportunity to witness her conduct.

82] Even during her cross-examination, PW-1 stated that when her son disclosed the names of the assailants to her, his voice was very feeble. She admitted that she could not immediately disclose this fact to anyone. She explained that immediately thereafter, her son was taken away to the hospital. This explanation appears to be natural and satisfactory.

83] PW-1 further voluntarily stated that immediately after seeing her son in an injured condition, she cried for help, and the people present at the spot came to her assistance. She saw Akshay and Umesh while Shubham was being placed in a vehicle. According to her, the vehicle belonged to Vinayak. She also stated that one boy had called the vehicle, though she was unable to disclose his name. As soon as Shubham was placed in the vehicle, it immediately left for the hospital. PW-1, therefore, followed the vehicle and could not accompany her son in it.

84] In the opinion of this Court, this conduct is perfectly natural. The evidence of PW-1 as well as PW-9 establishes that Shubham had sustained serious injuries and was in a critical condition. In such circumstances, the immediate priority of everyone present was to ensure that he received urgent medical treatment. Therefore, the persons present at the spot

immediately took him to the hospital without waiting. It is, therefore, quite understandable that PW-1 could not travel with Shubham in the same vehicle. No adverse inference can be drawn from this circumstance.

85] The incident in question was not an ordinary occurrence. It involved the brutal assault on the complainant's son. Therefore, the conduct of PW-1 is required to be appreciated in the light of the extraordinary circumstances prevailing at that time and not on the basis of how a person may react in ordinary situations.

86] PW-1 further admitted that she first disclosed the names of the assailants to the police when her report was recorded at about 3.30 a.m. on 18.04.2022. In the opinion of this Court, there is neither any delay nor anything unnatural in this conduct. The incident had taken place at about 9.30 p.m. on the previous night. Immediately thereafter, the injured Shubham was taken to the hospital, where he was examined by the Medical Officer and declared dead. Naturally, the complainant and her family members, particularly the parents of the deceased, were in a state of extreme grief and shock. In such circumstances, it cannot be expected that they would immediately rush to the police station and narrate all the details of the incident.

87] It was only after these immediate events had

concluded that PW-1 lodged the First Information Report at about 3.30 a.m. on the following morning, wherein she disclosed the entire incident as well as the names of the assailants and the motive.

88] It is necessary to see how the vehicle of Vinayak Bhise came on the spot. Prosecution Witness No. 2, Akshay Manik Waghmare, has deposed that at about 9.30 p.m. on the date of the incident, he was at his house. At that time, he received a phone call from Umesh Bondare, who informed him that Shubham had been assaulted and was lying in front of the house of Sheikh Babar. Immediately thereafter, PW-2 rushed to the spot. On reaching there, he saw Shubham lying in a pool of blood, and blood was oozing from his neck. He enquired as to who had assaulted Shubham and came to know that accused No. 1, Bablu Dhabe, was responsible for the assault.

89] PW-2 further deposed that he immediately telephoned Vinayak Bhise and brought his vehicle on the spot. Umesh Bondare and Ajay Dhut were also present there. With their assistance, PW-2 placed Shubham in the vehicle and took him to the Civil Hospital, Hingoli, where the Medical Officer declared him dead. PW-2 also stated that he came to know that the dispute had arisen because of Kanchan, the niece of accused No. 1, Bablu Dhabe. He further learnt that the assailants had used deadly weapons such as a gupti, a dagger and an iron rod.

90] The testimony of PW-2 receives material corroboration from the evidence of PW-1. PW-1 has stated that she saw Akshay (PW-2) and Umesh Bondare while her son was being placed in the vehicle. She also stated that one boy had called the vehicle belonging to Vinayak Bhise. PW-2 has likewise deposed that he brought the vehicle of Vinayak Bhise and that he, along with Umesh Bondare, shifted Shubham to the Civil Hospital in that vehicle. Thus, the evidence of PW-1 and PW-2 is consistent regarding the manner in which Shubham was taken to the hospital and the vehicle used for that purpose. This also supports the presence of PW-1 at the spot when deceased Shubham was shifted to the hospital.

91] PW-2 has further stated that when he reached the place of occurrence, about 15 to 20 persons had gathered there. Although he did not know all of them by name, but deposed that they were residents of the locality. He also stated that he was acquainted with PW-9, Sheikh Babar.

92] During cross-examination, PW-2 admitted that Sheikh Babar had two houses, one situated at Talab Katta and another at Bavankhole, and that there was a distance of about two kilometres between them. When asked whether he had seen Sheikh Babar at the spot, PW-2 replied that he had not looked around to see who was present, as he had immediately left the spot to arrange a vehicle.

93] In the opinion of this Court, this explanation appears to be natural and probable. PW-2 had received information from Umesh Bondare that Shubham had been seriously assaulted and was lying in front of the house of Sheikh Babar. Shubham was his friend. Upon reaching the spot and seeing his friend lying in a grievously injured condition, it cannot reasonably be expected that PW-2 would first observe who was present, identify every person in the crowd, or ascertain whether Sheikh Babar was standing there. The immediate and natural reaction of any close friend in such circumstances would be to arrange for prompt medical assistance.

94] The conduct of PW-2 is fully consistent with such a natural reaction. Immediately after reaching the spot, he arranged for the vehicle of Vinayak Bhise and ensured that Shubham was taken to the Civil Hospital without delay. Therefore, no adverse inference can be drawn from the fact that he did not notice the presence or absence of particular persons at the spot.

95] The defence also suggested that it was dark at the place of occurrence. It is pertinent to note that PW-2 reached the spot some time after the incident had taken place. By then, PW-1 had already reached there. Naturally, with the passage of time, the darkness may have increased. Nevertheless, PW-2 has categorically stated that he could clearly see Shubham lying injured and also noticed the persons gathered there. Thus, the

evidence does not indicate that the darkness was of such a nature as to prevent the witnesses from observing the relevant events.

96] The defence has not been able to bring out any material contradiction or circumstance in the cross-examination to discredit the testimony of PW-2. His evidence is consistent, natural and receives corroboration from the testimony of PW-1 and the surrounding circumstances. Accordingly, this Court finds the evidence of PW-2 to be trustworthy, reliable and worthy of acceptance.

97] Now turning again to the evidence of PW-3. PW-3 during his evidence identified all the accused before the Court. He also identified the clothes i.e. shirts and Hudi worn by all the accused on the date of the incident, namely Articles P-4 (shirt), P-6 (Hudi) and P-7 (shirt). He further identified the shirt of the deceased Shubham (Article P-1). However, he was unable to identify the pants wore by all the accused. He also identified the iron rod (Article P-8) and the dagger (Article P-9). The prosecution informed the Court that the gupti was not available in the muddemal when the weapons were shown to the witness.

98] As per CA report Exh.150, the Gupti was sent for CA examination and results of analysis clearly indicates that it was stained with blood on blade and the blood was of human. But the group of blood detected on Ex.11 cannot be determined as

the result was inconclusive.

99] During cross-examination, PW-3 admitted that after the incident he neither went to the police station nor immediately visited the hospital. He also admitted that before the incident he had no personal knowledge regarding Kanchan.

100] PW-3 further admitted that after giving his statement to the police he did not read it. Likewise, he did not read the statement recorded before the Court. He also stated that he did not know who had lodged the First Information Report. He admitted that after sustaining the injury, he had to seek medical treatment. He denied the suggestion put by the defence that the injury on his person was self-inflicted.

101] On an overall appreciation of the evidence of PW-3, one fact clearly emerges. On the date of the incident, he saw accused No. 1 and the deceased together. When he noticed that they were quarrelling, he attempted to separate them. At that stage, accused Vishwas assaulted him on his right thigh with a dagger, causing an injury. Out of fear, he ran away from the spot.

102] In the opinion of this Court, such conduct is perfectly natural. When three persons, armed with deadly weapons, are assaulting one individual and one of them also attacks a person who attempts to intervene, no ordinary and unarmed person can reasonably be expected to continue resisting them. A person

placed in such circumstances would naturally fear for his own life and leave the place to save himself. Therefore, the conduct of PW-3 in fleeing from the spot cannot be described as unnatural.

103] It is true that PW-3 did not immediately approach the police station or the hospital after leaving the place of occurrence. However, this circumstance, by itself, is not sufficient to discredit his testimony. In his statement at Exhibit-44, PW-3 has explained that after the incident he received several telephone calls from unknown numbers, but he did not answer them because he was frightened and mentally disturbed. It was only after his cousin, Anant Chopade, contacted him that he answered the call and came to know that Shubham had died.

104] The conduct of PW-3, viewed in the light of the circumstances of the case, indicates that he was under fear and mental shock after being assaulted by all accused. His failure to immediately approach the police or the hospital is, therefore, understandable and does not affect the credibility of his testimony. Rather, it appears to be a natural reaction of a person who had himself become a victim of the assault and was genuinely apprehensive for his own safety.

105] Another objection raised by the learned defence counsel is that the injury sustained by PW-3, Ajay Chopade, was self-inflicted. This contention does not merit acceptance.

106] There is nothing on record to indicate that PW-3 deliberately caused an injury to himself in order to falsely implicate the accused. On the contrary, his conduct throughout the incident suggests that he is not a person of aggressive nature. As soon as accused Vishwas assaulted him with a dagger on his right thigh, he became frightened and immediately ran away from the spot. Even though his maternal cousin, Shubham, was being assaulted by the accused, PW-3 did not continue to intervene because he apprehended danger to his own life. His conduct clearly indicates that he is a timid person who acted out of fear for his own safety.

107] If PW-3 was so frightened that he could not remain at the spot after receiving a single blow, it is difficult to believe that he would voluntarily inflict an injury upon himself and falsely claim that it was caused by the accused. Such a suggestion is wholly improbable and unsupported by any evidence. Except for putting such a suggestion during cross-examination, the defence has produced no material whatsoever to establish that the injury was self-inflicted. Therefore, the contention of the defence deserves to be rejected.

108] The learned defence counsel further argued that the incident occurred on 18.04.2022, whereas the statement of PW3 came to be recorded only on 24.04.2022, and therefore there was an inordinate delay which creates serious doubt about his

testimony. This submission also cannot be accepted.

109] It is pertinent to note that the First Information Report was lodged promptly in the early hours following the incident, and on 19.04.2022 the complainant also submitted a written complaint against all the accused persons. Thus, there was no delay on the part of the complainant in setting the criminal law into motion. Even otherwise, the argument of the defence that accused persons are involved in a false case as complainant prepared a plan to implicate them falsely. No satisfactory reason to prepare a false case.

110] So far as the recording of the statement of PW-3 is concerned, it is the responsibility of the Investigating Officer to examine the witnesses during the course of investigation. A witness cannot be blamed merely because his statement was not recorded immediately. Unless it is shown that the delay has caused prejudice to the accused or has resulted in embellishment or fabrication, such delay by itself does not render the testimony of the witness unreliable.

111] The defense learned Advocate argued that conduct of witness No.3 and 9 was against the humanity. This contention does not appear to be well-founded. The evidence of PW-9, Sheikh Babar, shows that he too witnessed the quarrel. However, he also did not intervene to rescue the deceased or inform the police or the family members immediately. He has explained

that his mother had instructed him not to interfere in the quarrel. His explanation has not been shown to be false.

112] It is a matter of common experience that many people hesitate to intervene when they witness violent incidents involving persons armed with deadly weapons. Fear for one's own safety often prevents bystanders from coming forward to help the victim. It is also frequently seen that, even in road accident cases, members of the public do not immediately come forward to assist injured persons despite their desperate need for help. Therefore, merely because a witness did not intervene or call for help does not, by itself, render his presence at the spot doubtful.

113] Most importantly, despite an extensive cross-examination, the evidence of PW-3 has remained unshaken on the material aspect that he witnessed all the three accused assaulting the deceased Shubham with deadly weapons, namely an iron rod, a dagger and a gupti. His testimony on this material aspect inspires confidence and finds substantial corroboration from the evidence of the other prosecution witnesses.

114] It is significant to discuss here the medical evidence of PW11 who had examined PW3.

115] **PW11**, Dr. Suvarna Sharad Mahale, has deposed that she was serving as a Medical Officer at the Civil Hospital,

Hingoli, from the year 2011 till June 2023.

116] According to her evidence, on 19.04.2022 at about 8.45 a.m., PW-3, Ajay Subhash Chopade, was brought to the Civil Hospital by Asif Khan Pathan for medical examination and treatment. The history recorded before her was that the injured had been assaulted about one hour earlier at Talab Katta.

117] Upon examination, she found the following injury on the person of PW-3:

Contused lacerated wound over the right thigh
measuring 8 cm × 2.5 cm × 1 cm.

118] According to her, the injury was simple in nature, was caused by a hard and blunt object, and was within six hours old. She issued the Medico-Legal Certificate (Exhibit-93), treated the injured and also issued the police intimation letter (Exhibit-94). She further stated that the injury mentioned in Exhibit-93 could be possible by the dagger (Article P-9).

119] She also stated that she had brought the relevant hospital record along with her. However, it is not clear from her evidence as to which particular record was produced before the Court, as no such record has been formally exhibited through her testimony.

120] During cross-examination, she admitted that the

history of assault is not mentioned in Exhibit-93. However, while answering the questions put by the learned counsel for accused Nos. 2 and 3, she stated that both the injured and the accompanying person had narrated the history of assault to her.

121] This part of her evidence creates some inconsistency. If the history had in fact been narrated by both the patient and the accompanying person, it was expected that the same would have been recorded in the Medico-Legal Certificate. The omission to record the history in Exhibit-93 weakens the evidentiary value of her oral explanation given subsequently before the Court.

122] She further stated in her cross-examination that from the appearance of the injury she was of the opinion that it was a recent injury. However, no such observation has been specifically recorded in Exhibit-93. Therefore, this oral statement cannot be given the same weight as the medical record, prepared immediately after the incident.

123] The learned counsel for accused No. 1 further elicited that, according to the history given by the injured, the weapon used was a sharp-edged weapon. This answer also appears to be inconsistent with Exhibit-93, wherein the doctor has expressly opined that the injury was caused by a hard and blunt object.

124] The witness further admitted that PW-3 was admitted in the hospital and that she had brought the discharge card. She also stated that the discharge card mentions that no treatment was administered. However, on perusal of the discharge card (Exhibit-95), it appears that the injured was advised treatment for three days. The discharge card also specifically records the history of physical assault.

125] Thus, certain inconsistencies do appear in the oral testimony of PW-11 regarding the recording of history, the nature of the weapon and the treatment administered. However, these inconsistencies do not affect the core medical evidence, namely that PW-3 had sustained an injury on his right thigh, that the injury was fresh, and that he was medically examined shortly after the incident. The fact that PW-3 had suffered an injury stands independently established by the Medico-Legal Certificate (Exhibit-93) and the discharge card (Exhibit-95).

126] Therefore, although the evidence of PW-11 is not entirely free from inconsistencies, her testimony sufficiently establishes that PW-3 had sustained an injury around the relevant time. Those inconsistencies are not of such a nature as to completely discredit her evidence.

127] So, it is my opinion that in the evidence of PW-11 there are some inconsistencies but her evidence sufficiently establishes that PW-3, Ajay Chopade, had sustained a contused

lacerated wound on his right thigh measuring 8 cm × 2.5 cm × 1 cm. According to the Medical Officer, the injury was simple in nature, was caused by a hard and blunt object, and was within six hours old. PW-3 was examined by the doctor at about 8.45 a.m. on 19.02.2022. A CLW can be caused by a dagger. If the blow is inflicted with the blunt portion of the weapon.

128] It is significant to note that by the time PW-3 was brought for medical examination, the First Information Report had already been lodged by PW-1. Thus, the fact that PW-3 had also been assaulted had already come to the notice of the investigating agency. It appears that immediately after the registration of the crime, the police sent PW-3 to the Civil Hospital for medical examination, where the Medical Officer found the aforesaid injury on his right thigh. Therefore, the medical evidence lends assurance to the testimony of PW-3 that he had sustained an injury during the course of the same incident.

129] Now I think it is necessary to discuss what happened after the assault. PW-9, Sheikh Babar, has deposed that when deceased Shubham fell to the ground, he had sustained injuries on his neck. He has further stated that after the assault, all the accused fled from the spot on a motorcycle, carrying the weapons used in the commission of the offence. However, he admitted that he did not know how or when the motorcycle had reached the place of occurrence.

130] PW-9 has also stated that he came to know about eight days after the incident that the occurrence had taken place because of a dispute relating to a girl. Thus, his knowledge regarding the motive for the offence is not based on his personal observation but on information received subsequently. Therefore, his evidence on the question of motive is hearsay in nature and is of limited evidentiary value. However, this circumstance does not affect the credibility of his eyewitness account regarding the assault witnessed by him. To corroborate this aspect of the prosecution case, the prosecution has examined PW7.

131] PW7, Anil Uttamrao Kale, was residing at Talab Katta at the relevant time. He knew the deceased Shubham, as they were residents of the same locality.

132] According to his evidence, on 18.02.2022, at about 9.00 to 9.30 p.m., he had returned home for dinner and was watching television. At that time, he heard loud shouting from outside. He immediately came out of his house and noticed that the commotion was coming from the direction of the house of PW-9, Sheikh Babar.

133] At that very moment, he saw accused Bablu Dhabe, Santosh and Vishwas leaving the place on a motorcycle. According to him, they were shouting that they had killed Shubham and that they would kill two or three more persons.

He further stated that Bablu was driving the motorcycle. An iron rod was kept on across the handle of the motorcycle. Santosh was carrying a gupti and Vishwas was carrying a dagger.

134] Thereafter, PW-7 proceeded towards the house of Sheikh Babar. By that time, several persons had gathered there. He saw Shubham lying in a pool of blood. From what he had thought immediately before reaching the spot, he concluded that the accused persons had assaulted Shubham. He further stated that he subsequently came to know that the dispute had arisen because of Kanchan, the niece of accused No. 1, Bablu Dhabe.

135] PW-7 further deposed that the motorcycle used by the accused was blue in colour and bore a sticker of Dr. Babasaheb Ambedkar on its front portion. He admitted that his statement had been recorded before the Court at Exhibit-63.

136] He identified Article P-9 as the dagger carried by accused Vishwas and Article P-8 as the iron rod carried by accused Bablu. He also stated that he would be able to identify the gupti if it were shown to him.

137] PW-7 was shown the photograph of the motorcycle marked as Article P-16. After seeing the photograph, he stated that it was the same motorcycle which had been used by the accused while fleeing from the spot. Subsequently, the motorcycle itself, produced before the Court after being released

on supratnama to the father of the accused, was shown to him. He identified it as the very same motorcycle and specifically stated that the sticker of Dr. Babasaheb Ambedkar was still affixed at the same place.

138] PW-7 further pointed out one distinguishing feature. According to him, on the date of the incident, the motorcycle did not bear a registration number on its front number plate. Instead, some words were written in red colour. When he identified the motorcycle before the Court, he noticed that both the front and rear number plates now bore registration numbers. When this Court verified the photo of said motorcycle (Article P-16), the word “Police” was found written in red letters on the front number plate instead of the registration number. This observation lends assurance to the identification of the motorcycle by PW-7, as he had noticed this distinctive feature on the date of the incident itself.

139] The defence extensively cross-examined PW-7. He admitted that he had known the deceased for about seven or eight years, but denied the suggestion that he had very close relations with him. He also denied the suggestion that photographs existed showing the deceased dancing with a sword at the inauguration of Vinayak Bhise’s Chhava Gym.

140] PW-7 fairly admitted that two or three criminal cases had been registered against him, including cases relating to

gambling and prohibition offences. However, merely because criminal cases are pending against a witness, his testimony cannot be rejected solely on that ground. The real question is whether he witnessed the incident and whether his evidence is otherwise reliable and trustworthy. His antecedents alone are not sufficient to discard his testimony.

141] PW-7 further stated that on the date of the incident he was working as a watchman. His duty ordinarily commenced at about 7.00 p.m. He used to return home at about 9.00 p.m. for dinner and thereafter resume his duty. On the date of the incident also, he had returned home for dinner and had not yet resumed his duty when he heard the commotion. Thus, when he witnessed the accused fleeing on the motorcycle, he was present at his house. He also stated that the house of Sheikh Babar is situated at a distance of about 100 to 200 feet from his house.

142] He further stated that he had never spoken to any of the three accused prior to the incident. The noise which attracted his attention was the noise of members of the public, and from that noise he could understand that a quarrel had taken place.

143] During cross-examination, the defence questioned PW-7 as to how he could say that Bablu was carrying an iron rod when he was also driving the motorcycle. PW-7 clarified that the iron rod was not actually in Bablu's hand. According to him, the

rod was resting on across the handle of the motorcycle while Bablu was driving it. This clarification satisfactorily explains the earlier statement made by the witness.

144] PW-7 consistently maintained that when he saw the three accused leaving on the motorcycle, he heard them shouting that they had killed Shubham and that they would kill two or three more persons. Immediately thereafter, he proceeded towards the house of Sheikh Babar, where he found Shubham lying in a pool of blood. He also noticed Akshay Waghmare, PW-9 Sheikh Babar and several other persons present there. Nothing substantial has been elicited in his cross-examination to discredit this material part of his testimony.

145] It is true that after seeing the deceased lying in a pool of blood, PW-7 did not attempt to lift him or offer him water. From a moral point of view, one may expect a person to render such assistance. However, merely because the witness did not do so, it cannot be concluded that he was not present at the spot or that his evidence is false.

146] It cannot be laid down as a rule that every person witnessing such a gruesome incident would react in the same manner. Human reactions to a sudden and violent occurrence vary from person to person. Many individuals become shocked, stunned or confused. They may not immediately comprehend what has happened or what course of action should be taken.

While some persons may promptly come forward to help the injured, others may remain speechless or unable to react because of the psychological impact of the incident. Such conduct, by itself, cannot be regarded as unnatural.

147] A different consideration may arise where a person remains completely indifferent, mocks the victim or merely records the incident on a mobile phone for amusement or publicity instead of extending any assistance. Such conduct may rightly be described as insensitive. However, the mere inability of a witness to react immediately or to decide what should be done in a situation of sudden violence cannot lead to the conclusion that he was not present at the place of occurrence. It may equally indicate that the witness was deeply shocked by the incident. In recent times, there appears to be an increasing reluctance among members of public to intervene in such type of violent incidents and to assist victim.

148] On an overall appreciation of the evidence of PW-7, it is clear that on the date of the incident he came out of his house after hearing loud cries and commotion. He immediately saw all the three accused fleeing from the spot on a motorcycle. He heard them shouting that they had killed Shubham and would kill two or three more persons. Thereafter, he proceeded towards the house of Sheikh Babar, where he found Shubham lying in an injured and blood-soaked condition.

149] The testimony of PW-7 also receives corroboration from the evidence of PW-9, Sheikh Babar, who has deposed that after the assault the accused fled from the spot on a motorcycle. Thus, the evidence of PW-7 is consistent with the other prosecution evidence on this material aspect.

150] Having carefully considered his testimony as a whole, this Court finds no reason to disbelieve PW-7. The defence has not been able to bring on record any material contradiction or circumstance which would render his evidence unreliable. For the reasons discussed above, his testimony appears to be natural, trustworthy and worthy of acceptance.

151] The spot, seizure and memorandum panchnama are also material in this case. PW4, Chetan Pandurang Bhujone, is the panch witness to the spot panchanama. According to his evidence, on 19.04.2022, acting on the oral instructions of his superior officer, he reported to the City Police Station, Hingoli. Thereafter, along with the police and the other panch witness, Akash Athole, he proceeded to Talab Katta. The complainant (PW-1), the mother of the deceased, accompanied them and pointed out the place of occurrence.

152] On reaching the spot, they found that the area had been barricaded by the police. PW-1 identified the exact place of the incident. The witness noticed a broken wristwatch, a chain and a belt lying at the spot. There was a pool of blood at the

place of occurrence, and the police took photographs of the scene. The police collected samples of blood-stained soil as well as ordinary soil and seized the articles found at the spot. A spot panchanama was prepared in his presence, which bears his signature and is produced at Exhibit-53.

153] PW-4 identified all the articles seized during the spot panchanama, namely, ordinary soil (Article P-10), a cotton swab containing blood (Article P-11), blood-stained soil (Article P-12), a wristwatch (Article P-13), a chain (Article P-14) and a belt (Article P-15).

154] During cross-examination, PW-4 admitted that he had attended the police station on the oral instructions of his superior and that no written order had been issued. However, nothing significant has been elicited from this admission. He also stated that he could not recollect the name of the owner of the house situated near the place of occurrence. He admitted that he had read the contents of the panchanama before signing it, although he could not remember the name of the police officer who had prepared it. He further stated that the police had handed over the panchanama to the panch witnesses for reading before obtaining their signatures.

155] PW-4 further admitted that the place of occurrence is situated in a thickly populated residential area. A Maruti Temple is situated nearby, and there is a public road in front of the place

of occurrence. He also stated that when they noticed the house of Sheikh Babar, its door was closed.

156] In the opinion of this Court, no adverse inference can be drawn from the fact that the door of Sheikh Babar's house was closed. By the time the spot panchanama was conducted, the police had already barricaded the place of occurrence. It is, therefore, quite natural that the occupants of the house had closed the door. The spot was preserved for investigation.

157] **PW-4** has further stated that all the seized articles were sealed at the spot in the presence of them and that their signatures were obtained on the sealed packets. He also stated that Vinayak Bhise was not present when the spot panchanama was conducted. He further confirmed that the electric pole is shown in the spot panchanama but not remember whether actually it was on the spot or not.

158] The evidence of **PW-4** shows that he is a Government servant who acted in the discharge of his official duty. He had no acquaintance, enmity or relationship either with the accused or with the family of the deceased. There is nothing on record to suggest that he had any reason to falsely support the prosecution. His evidence is, therefore, independent and impartial.

159] The photographs of the place of occurrence also show that the door of the house of Sheikh Babar was closed, which corroborates the testimony of PW-4. Upon careful examination of the spot panchanama (Exhibit-53), it is evident that blood stains were found in front of the house of Sheikh Babar. It is further recorded that on the northern side of the house of Sheikh Babar is the house of Madhav Sambhaji Dhawandkar, and blood stains were also noticed in front of that house.

160] The spot panchanama further records the seizure of a wristwatch bearing blood stains. The strap of the wristwatch was found broken. Having regard to the nature of the assault, it is quite probable that the strap broke during the attack when the deceased attempted to protect himself from the blows. The photographs of the deceased also show injuries on his wrist, lending support to this circumstance. The wristwatch was subsequently identified by PW-1 as belonging to the deceased.

161] The police also seized a chain measuring approximately 50 centimetres in length from the place of occurrence. The recovery of these articles from the spot further corroborates the prosecution case regarding the place where the assault had taken place.

162] The Spot Panchanama contains a detailed description of the place of occurrence. It specifically records the

exact locations where blood stains were found, namely, near the entrance of the house of Sheikh Babar and at another place adjacent to his house. The panchanama also records that the chain, the wristwatch and the belt were found near the house of Sheikh Babar. The description, location and condition of each of these articles have been clearly mentioned in the panchanama.

163] The Spot Panchanama further describes the surrounding features of the place of occurrence, including the electric pole installed near the house of Sheikh Babar. Thus, the scene of offence has been properly identified and described in detail.

164] The defence has not been able to elicit anything in the cross-examination of PW-4 to discredit his testimony or to cast any doubt on the correctness of the Spot Panchanama. His evidence has remained consistent and unshaken. Accordingly, this Court finds that the Spot Panchanama (Exhibit-53) has been duly proved and that the testimony of PW-4 is trustworthy, reliable and worthy of acceptance.

165] **PW5**, Sagar Shamrao Mane, is a panch witness to the inquest panchanama. According to his evidence, on 19.04.2022, he had gone to the Civil Hospital, Hingoli. There, a police officer called him to the post-mortem room. Another panch witness, Sheikh Sadiq, was also present. The dead body of the deceased Shubham was lying on the post-mortem table.

166] PW-5 deposed that he observed several injuries on the body of the deceased, particularly on the chest, neck, abdomen and hands. In his presence, the police prepared the inquest panchanama, which is produced at Exhibit-55. He identified his signature on the said panchanama and proved its execution.

167] During cross-examination, PW-5 admitted that Vinayak Bhise had come to the Civil Hospital and was also present at the funeral of the deceased. He was also questioned regarding the injuries found on the neck of the deceased. He stated that the injury on the neck was large in size and width. He further stated that the injury below the chin was also extensive.

168] Although PW-5 was a friend of the deceased, his evidence is confined to the preparation of the inquest panchanama. He was present in the post-mortem room as a panch witness and has deposed only about the injuries which he personally noticed on the dead body and the preparation of Exhibit-55. Nothing has been elicited in his cross-examination to discredit his testimony or to create any doubt regarding the preparation of the inquest panchanama. His evidence is consistent, reliable and inspires confidence. Accordingly, this Court finds that the prosecution has duly proved the inquest panchanama (Exhibit-55) through the testimony of PW-5.

169] PW6, Pradip Haribhau Bhuktar, is a panch witness to the seizure of the clothes of the accused and the deceased. According to his evidence, on 19.04.2022, he was serving as a Lineman with the Maharashtra State Electricity Distribution Company. On the instructions of his superior officer, he reported to the City Police Station to act as a panch witness. Another panch witness, Mohammed Mujeeb, also accompanied him.

170] PW-6 has deposed that in his presence, the police seized the black shirt and jeans pant of accused No. 1, Bablu Dhabe, under the seizure panchanama (Exhibit-57). Thereafter, the police seized the red T-shirt and jeans pant of accused Santosh under Exhibit-58. Similarly, the police seized the pink hoodie and jeans pant of accused Vishwas under Exhibit-59. The police also seized the clothes of the deceased, namely a full-sleeved T-shirt, a pant and an undergarment (Isa brand), under the seizure panchanama at Exhibit-60.

171] PW-6 identified the articles produced before the Court, namely Article P-6 (hoodie of accused Vishwas), Article P-16 (jeans pant of Vishwas), Article P-3 (undergarment of the deceased), Article P-1 (shirt of the deceased), Article P-2 (pant of the deceased), Article P-7 (shirt of accused Santosh), Article P-5 (jeans pant of accused Santosh), Article P-17 (jeans pant of accused Bablu), and Article P-4 (shirt of accused Bablu).

172] During cross-examination, PW-6 admitted that while preparing the seizure panchanamas, the police informed the panch witnesses that the clothes belonged to the accused and the deceased. He further admitted that accused Santosh was not personally shown to him, although the clothes stated to be belonging to Santosh were shown and seized in his presence.

173] From the evidence of PW-6, it appears that although the accused were in police custody at the relevant time, every article of clothing was not seized directly from the person of each accused in the presence of the witness. However, this circumstance, by itself, does not affect the prosecution case.

174] The identity of the clothes worn by the accused and the deceased on the date of the incident stands independently established through the evidence of PW-1 and PW-3. PW-1, the mother of the deceased, has specifically identified Articles P-1, P-2 and P-3 as the clothes worn by Shubham at the time of the incident. She has also identified Articles P-4 and P-5 as the shirt and pant worn by accused No. 1, Bablu Dhabe. She has categorically stated that when Bablu came to her house to call Shubham on the night of the incident, he was wearing those very clothes. This part of her testimony has remained unshaken during cross-examination.

175] This evidence also lends support to the prosecution case that PW-1 had last seen the deceased leaving the house in

the company of accused No. 1, Bablu Dhabe.

176] Similarly, PW-3, Ajay Chopade, has identified Article P-4 as the black shirt worn by accused No. 1, Bablu Dhabe, Article P-1 as the shirt worn by the deceased Shubham, Article P-6 as the pink hoodie worn by accused Vishwas, and Article P-7 as the red shirt worn by accused Santosh. Although PW-3 could not identify the respective pants of the accused and the deceased, he has consistently identified the upper garments worn by them on the date of the incident.

177] Since PW-3 had personally seen the accused and the deceased together immediately before the incident, his identification of their shirts and hoodie assumes significance. The inability to identify the pants is only a minor omission and does not affect the core of the prosecution case.

178] Thus, on the basis of the consistent evidence of PW-1 and PW-3, the prosecution has satisfactorily established the identity of the clothes worn by the deceased and the accused on the date of the incident. Therefore, even if every article of clothing was not seized directly from the person of the respective accused in the presence of PW-6, that circumstance is not fatal to the prosecution case and does not diminish the evidentiary value of the seizure panchanamas.

179] PW-10 is the panch witness to the memorandum

panchnamas and the consequential seizure panchnamas. He has categorically deposed that the accused voluntarily expressed their willingness to produce the weapons used in the commission of the offence. Pursuant to such disclosure, the Investigating Officer prepared the memorandum panchnamas, and thereafter the accused themselves led the police party and the panch witnesses to the respective places where the weapons had been concealed and produced them.

180] The witness has narrated the entire sequence of events in a natural, cogent and consistent manner. He has specifically stated the route taken by the police party, the places visited, the accused who produced the respective weapons, and the manner in which the seizure panchnamas were prepared. He has identified his signatures, the thumb impressions/signatures of the accused, and the signatures of the police officer on the memorandum as well as the seizure panchnamas, and has affirmed that the contents thereof were correctly recorded.

181] During the cross-examination, an attempt was made by the defence to show that PW-10 was a habitual panch witness and was acquainted with the Investigating Officer. However, the mere fact that a witness had earlier acted as a panch witness or was known to the Investigating Officer is not, by itself, sufficient to discard his testimony. PW-10 was serving as an employee of the State Transport Corporation and had attended the police station pursuant to the directions of his superior officer. Nothing

has been brought on record to indicate that he had any personal enmity against the accused or any reason to falsely implicate them.

182] The defence has failed to establish that the accused had not made the disclosure statements voluntarily or that they were subjected to threat, coercion or inducement. Likewise, no material has been brought on record to show that the Investigating Officer had prepared false memorandum or seizure panchnamas at the police station without the accused actually leading the police to the places of recovery. Mere suggestions put to the witnesses during cross-examination do not constitute proof. In the absence of any convincing material supporting such suggestions, they deserve no acceptance.

183] On the contrary, the testimony of PW-10 finds substantial corroboration from the contemporaneous photographs taken at the time of recovery, the documentary evidence in the form of the memorandum and seizure panchnamas, and the testimony of the Investigating Officer. The photographs depicting the places of recovery are consistent with the description contained in the panchnamas as well as the oral testimony of PW-10, thereby lending assurance to the genuineness of the recovery proceedings.

184] Further, the recovered weapons have also been identified by the eyewitnesses. In particular, PW-3 and PW-9

have identified the rod in the hands of accused Bablu and the other weapons allegedly carried by the remaining accused during the occurrence. Thus, the recovery evidence is not an isolated circumstance but stands corroborated by the ocular evidence adduced by the prosecution.

185] Considering the evidence on record as a whole, this Court is satisfied that the disclosure statements were made voluntarily, that the discoveries were effected in consequence of the information furnished by the accused, and that the memorandum and seizure panchnamas have been duly proved in accordance with law. The defence has not been able to create any reasonable doubt regarding the genuineness of the recovery proceedings. Accordingly, the evidence relating to the recoveries inspires confidence and constitutes a reliable incriminating circumstance against the accused, which can safely be taken into consideration along with the other evidence on record.

186] **PW12** has deposed that on 27.04.2022, on the directions of Police Inspector Kachve, he was entrusted with the responsibility of depositing the muddemal articles in the Forensic Science Laboratory, Nanded. According to him, he received 21 sealed packets, four sealed paper envelopes, and the forwarding letter from the Investigating Officer. He deposited all the articles in the Forensic Science Laboratory, Nanded, and thereafter handed over the acknowledgment receipt to the Investigating Officer. The forwarding letter is at Exhibit-97.

187] During his cross-examination, PW-12 admitted that on 27.04.2022, he had received 21 sealed articles. However, he did not make any entry or sign in the relevant register acknowledging receipt of those articles. He further admitted that before the articles and the forwarding letter were handed over to him, all the sealed packets had already been prepared. He left the police station between 9.00 a.m. and 10.30 a.m. for the Forensic Science Laboratory.

188] PW-12 further admitted that subsequently one muddemal article was found to be missing. Consequently, he was again sent to the Forensic Science Laboratory to make enquiries. He admitted that on that occasion he did not carry any written communication addressed to the laboratory. He further stated that the officials of the laboratory orally informed him that all the articles which had been received by them had already been returned. However, no written communication to that effect was issued either by the laboratory or produced before the Court.

189] A perusal of Exhibit-97 shows that the gupti allegedly seized from accused Santosh Jorewar was shown as one of the articles forwarded to the Forensic Science Laboratory for examination. However, there is no material on record explaining what ultimately happened to the said gupti. There is no evidence to show whether it was misplaced while in police custody or whether it was lost after being forwarded to the

laboratory. The prosecution has failed to place any satisfactory explanation on record regarding the disappearance of this important muddemal article.

190] In the opinion of this Court, the absence of any documentary explanation regarding the missing gupti reflects a lapse in the handling of the muddemal. Although this lapse does not, by itself, demolish the entire prosecution case, it certainly requires the Court to scrutinize the evidence relating to the recovery and forwarding of the muddemal with greater care and caution. However, his evidence is sufficient to hold that on the direction of his senior he deposited muddemal.

191] PW-13 was attached to City Police Station at the relevant time. He stated that on 22.04.2022, PSI Vithu Bhone informed him that accused Santosh had expressed his willingness to produce the gupti used in the offence. Before leaving the police station, PSI Vithu Bhone made Station Diary Entry No. 25 at about 12.50 p.m.

192] Thereafter, PSI Vithu Bhone, PI Pathan, the police staff, the panch witnesses and accused Santosh proceeded to the place of recovery. PW-13 has stated the route by which they travelled. According to him, after reaching near Talab Katta, close to the house of Shah, accused Santosh took them to a place where there were bushes and trees. From a concealed place, accused Santosh took out the gupti and handed it over to

the police. The gupti had bloodstains on it. It was about 20 inches in length and had a horse design on its handle. The police seized it under a panchnama and photographs of the recovery were taken.

193] PW-13 identified the photographs marked as Articles MO-1 to MO-4. He stated that he is seen in Article MO-3 along with the recovered gupti. He also identified accused Santosh in those photographs.

194] In his cross-examination, only a suggestion was given that he was not present at the time of the recovery and that he is deposing falsely. He denied the suggestion. Except for this suggestion, nothing has been brought on record to show that he was not present or that his evidence is false.

195] PW-13 is a police constable who accompanied the police party during the recovery. There is nothing on record to show that he had any personal reason to falsely implicate accused Santosh. His evidence is clear and consistent. It also supports the evidence of the panch witness. Therefore, his evidence shows that, after making the necessary Station Diary entry, the police party, along with the panch witnesses and accused Santosh, went to the place of recovery, where accused Santosh himself produced the gupti. The gupti was then seized under the panchnama.

196] PW-14 is the Investigating Officer in this case. He deposed that Crime No. 166 of 2022 was registered on 19.04.2022 and the investigation was entrusted to him.

197] During the course of investigation, he searched for the accused persons. After they were traced, he got them medically examined before their arrest and arrested them under arrest panchnamas at Exhibits 111 to 113. He collected the inquest panchnama, post-mortem report and spot panchnama. He also issued letter Exhibit 114 for securing Government employees as panch witnesses.

198] He seized the clothes of the deceased under seizure panchnama Exhibit 60. The clothes of all the three accused were also seized under seizure panchnamas at Exhibits 57 to 59. He recorded the statements of the witnesses and collected the blood samples of the accused under letter Exhibit 115.

199] He issued letter Exhibit 116 to the Depot Manager, MSRTC, Hingoli, for providing Government employees to act as panch witnesses.

200] He further stated that accused Santosh made a disclosure statement, which was recorded under memorandum panchnama Exhibit 84. Pursuant to the said statement, a gupti was recovered and seized under seizure panchnama Exhibit 84/1.

201] Similarly, accused Vishwas made a disclosure statement under memorandum panchnama Exhibit 85. Pursuant to the said statement, a khanjar was recovered and seized under seizure panchnama Exhibit 85/1.

202] Thereafter, accused Bablu made a disclosure statement under memorandum panchnama Exhibit 86. Pursuant to the said statement, an iron rod was recovered and seized under seizure panchnama Exhibit 86/1.

203] He further deposed that the motorcycle used in the offence was seized under seizure panchnama Exhibit 87 in the presence of panch witnesses. At the time of the recovery proceedings, photographs were also taken. The photographs are on record as Articles MO-5 to MO-12. The photograph of the motorcycle is at Article P-16.

204] He stated that the gupti was forwarded to the Medical Officer for obtaining an opinion under forwarding letter Exhibit 74, and the Medical Officer's opinion is at Exhibit 75.

205] For preparation of the spot map, he issued letter Exhibit 106 to the Deputy Superintendent of Land Records, and the map prepared by that office is at Exhibit 107.

206] He further stated that he recorded the statements of the eyewitnesses. The muddemal articles were forwarded to the

Forensic Science Laboratory under forwarding letter Exhibit 97.

207] He issued letter Exhibit 117 to the Superintendent of Police, Hingoli, for obtaining the call details relating to the mobile phone of the deceased. The report and the forwarding letter are at Exhibits 118 and 119 respectively.

208] For recording the statements of the informant and other witnesses under Section 164 of the Code of Criminal Procedure, he issued letter Exhibit 120. He also issued letter Exhibit 121 to the Medical Officer for obtaining the injury certificate of injured Ajit Chopde.

209] He seized the registration certificate and insurance policy of the motorcycle, which are at Exhibits 122 and 123. He also collected certified copies of the earlier offences registered against accused Bablu Dhabe, which are at Exhibits 124 and 125.

210] He further stated that the police vehicle was used while carrying out the recovery proceedings and the relevant log book entries are produced at Exhibit 126.

211] On completion of the investigation, he found that the accused persons, armed with a gupti, a khanjar and an iron rod, had assaulted and caused the death of Shubham on account of previous enmity arising out of allegations that the deceased

had teased the niece of accused Bablu Dhabe. Accordingly, he filed the charge-sheet before the Court.

212] During his cross-examination, the learned counsel for accused No. 1 put several questions to PW-14. From his answers, it appears that the official correspondence made during the investigation is ordinarily required to bear an outward number. He admitted that the letter at Exhibit 116 does not bear any outward number.

213] He further admitted that the iron rod was recovered from the tin shed of the house of Durgabai Dhabe. He also admitted that the said place was accessible to other members of the family and other persons. Therefore, it cannot be said that only accused Bablu had knowledge of that place.

214] PW-14 further admitted that the husband of the informant and Kanchan, the niece of accused Bablu, were important witnesses in the case. However, he had not recorded their statements during the course of investigation. He also admitted that he did not make any inquiry regarding the incident allegedly involving Kanchan and that, during the investigation, he did not find any material to show that the dispute had not arisen on account of Kanchan.

215] He also admitted that an iron rod of the type seized in the present case is commonly available in the market. Lastly,

he admitted that there was no sufficient lighting at the place of occurrence.

216] During the cross-examination of PW-14, the learned counsel for accused No. 1 pointed out that Exhibit 116 does not bear any outward number. In the opinion of this Court, this is only a technical irregularity. Merely because the letter does not bear an outward number, it cannot be inferred that the investigation is doubtful or that the document is fabricated.

217] It was also pointed out that the computerized copies of the FIRs at Exhibits 124 and 125 do not disclose the name of the person who prepared them and are not accompanied by a certificate under Section 65-B of the Indian Evidence Act. These documents have not been relied upon by the prosecution to establish the guilt of the accused in the present case. Therefore, these omissions are only technical defects and do not affect the merits of the prosecution case.

218] It is true that PW-14 did not record the statements of Sakharam Raje, Kanchan or Vinayak during the investigation. However, the defence has not shown as to how the non-recording of their statements has caused any prejudice to the accused or weakened the prosecution case. The prosecution has examined the eyewitnesses to the incident, whose evidence has already been found to be reliable. Therefore, merely because the statements of the above persons were not recorded, it cannot be

said that the entire investigation is vitiated.

219] The learned counsel for the defence further argued that the prosecution has failed to establish the motive and that are liable to be acquitted This submission cannot be accepted. In the present case, the prosecution relies upon direct evidence of eyewitnesses, which has been found to be cogent and trustworthy. Once reliable direct evidence is available, motive loses much of its significance. In **Subhash Aggarwal v. State (NCT of Delhi)**, reported in 2025 SCC OnLine SC 808 : 2025 INSC 499, the Hon'ble Supreme Court reiterated that ***motive is of greater importance in cases based on circumstantial evidence, whereas where there is convincing direct evidence, absence of motive is not by itself sufficient to discard the prosecution case.***

220] The defence also contended that the iron rod was recovered from the tin shed of Durgabai Dhabe and that the said place was accessible to other persons. This argument cannot be accepted. Merely because the place was accessible to others, it does not follow that every person had knowledge that the iron rod was concealed there. The recovery was effected pursuant to the disclosure made by accused Bablu. Therefore, the possibility of access by others does not, by itself, render the recovery doubtful.

221] PW-14 also admitted that the statement of the injured witness was recorded after seven to eight days and that

no separate report of the injured was registered. This circumstance also does not affect the prosecution case. The record shows that immediately after the FIR was lodged, the injured was sent for medical examination. Thus, the police had taken immediate notice of his injuries. Since the injuries were sustained in the same incident which forms the subject matter of the present crime, there was no necessity to register a separate report. The delayed recording of his statement, in the facts of the present case, does not create any reasonable doubt about the prosecution case.

222] During the cross-examination by the learned counsel for accused Nos. 2 and 3, PW-14 admitted that after the incident the informant was present in the hospital. He also admitted that before the FIR was lodged, information about the incident had already reached the police station. He further stated that he could not say whether Shubham was brought dead to the hospital or whether he died after he was admitted.

223] PW-14 further admitted that the place of incident is situated in a crowded locality. He stated that Umesh Bondare helped in shifting the deceased into the vehicle of Vinayak Bise and that the deceased was taken to the hospital in that vehicle. He also admitted that the dog squad was called to the spot after the accused had already been arrested. He further admitted that many persons had gathered at the place of incident.

224] He stated that, during the investigation, it was found that Babar had not helped the deceased at the time of the incident. He denied the suggestion that accused Nos. 2 and 3 had neither made any disclosure statement nor produced any weapon.

225] PW-14 also admitted that he did not lodge any report regarding the missing gupti. It is true that Exhibit 74 does not specifically mention that the gupti was sent to the Medical Officer for opinion. However, Exhibit 75 is the opinion given by PW-8. Unless the Medical Officer had received the gupti, he could not have examined it and given his opinion. Therefore, this omission in Exhibit 74 is not sufficient to doubt the prosecution case.

226] After considering the evidence of PW-14 as a whole, this Court finds that no material defect has been brought on record in the investigation. It is true that the Investigating Officer has committed some lapses and omissions. However, they are only minor in nature. Such minor defects are bound to occur during investigation and, by themselves, they do not make the entire prosecution case doubtful. Unless the defects go to the root of the case or cause prejudice to the accused, they cannot be treated as fatal to the prosecution. In the present case, the lapses pointed out by the defence are not of such a serious nature as to affect the credibility of the prosecution case.

227] **PW15**, the then Police Inspector, has deposed that on 19.04.2022, he registered the offence on the basis of the report lodged by PW-1. The complaint is at Exhibit-24, and the First Information Report is at Exhibit-25.

228] After registration of the crime, he immediately directed a Police Naik to preserve and guard the place of occurrence. The said order is at Exhibit-128. He further directed PSI Jivare to conduct the inquest panchanama and to take necessary steps for the post-mortem examination of the deceased. The said order is at Exhibit-129. He also instructed API Anil Kasamde to prepare the spot panchanama. The said order is at Exhibit-130.

229] Thereafter, he handed over the First Information Report and the connected investigation papers to PSI Vithubone for further investigation.

230] During his cross-examination, PW-15 admitted that, in her report, the informant (PW-1) had specifically stated that accused No. 1, Bablu Dhabe, had come to her house, called her son Shubham outside, and thereafter taken him away from the house. He denied the suggestion put by the defence that he had failed to correctly record the report as narrated by PW-1.

231] The evidence of PW-15 shows that immediately after registration of the crime, he took prompt steps to preserve the

scene of occurrence, directed the preparation of the inquest and spot panchanamas, and ensured that the investigation commenced without delay. Nothing substantial has been elicited in his cross-examination to discredit his testimony regarding the registration of the offence and the initial steps taken during the investigation. Consequently, his evidence inspires confidence and duly proves the registration of the crime and the immediate investigative measures taken thereafter.

232] PW-16 was working as a Police Sub-Inspector at Hingoli City Police Station from the year 2019 to June 2023. He stated that on 19.04.2022 he was on duty at the police station. On that day, PI Pandit Kachwe gave him a written order to prepare the inquest panchnama of deceased Shubham in Crime No. 166 of 2022. The said order is at Exhibit 129.

233] After receiving the order, he went to the Civil Hospital. In the presence of two panch witnesses, he prepared the inquest panchnama. The inquest panchnama is at Exhibit 55. He identified his signature on it and stated that its contents are correct. He also prepared the dead body forwarding form, which is at Exhibit 137. Thereafter, he sent a letter to the Medical Officer for conducting the post-mortem examination. The said letter is at Exhibit 72.

234] After the post-mortem examination, he received the provisional post-mortem report. Thereafter, he handed over the

dead body to Vinayak Bhise. The receipt for handing over the dead body is at Exhibit 138. He also handed over the clothes and other articles of the deceased to Police Constable Ghuge.

235] In his cross-examination, PW-16 admitted that while handing over the clothes and other articles to Police Constable Ghuge, he did not take any receipt from him. He also admitted that he did not make any written note about handing over those articles. He further stated that before handing over the dead body to Vinayak Bhise, he made inquiry with the persons present there and found that Vinayak Bhise was a friend of the deceased. He also stated that the parents of the deceased were present when the inquest panchnama was prepared.

236] Except these admissions, nothing important has come on record in his cross-examination. PW-16 has simply carried out the work entrusted to him by his superior officer. The omissions admitted by him are minor in nature. They do not create any doubt about the inquest proceedings or affect the prosecution case.

237] PW-17 was working as an Assistant Police Inspector at Hingoli City Police Station from May 2021 to November 2023. He stated that PI Pandit Kachwe directed him to prepare the spot panchnama. The written order is at Exhibit 130.

238] Accordingly, he obtained two panch witnesses

through the Chief Officer of the Municipal Council and went to the place of incident in a police vehicle. The house of the informant was near the place of occurrence. He met the informant and requested her to show the place of incident. Thereafter, the informant, the panch witnesses and the police staff went to the spot. The informant pointed out the place and narrated the incident.

239] PW-17 stated that he seized blood-mixed soil, simple soil, the cover of the gupti, one broken metal wristwatch and one metal chain from the spot. He also took photographs of the spot. He prepared the spot panchnama after noting the latitude and longitude of the place. After preparing the panchnama, he read it over to the panch witnesses and obtained their signatures. The spot panchnama is at Exhibit 53. He identified his signature on it and stated that its contents are correct.

240] He identified the muddemal articles, namely, the broken wristwatch (Article P-13), the gupti cover (Article P-15), the cotton ball containing blood (Article P-11), the metal chain (Article P-14), the simple soil (Article P-10) and the blood-mixed soil (Article P-12). He also identified the photographs of the spot marked as Articles P-18 to P-20. Thereafter, he handed over the spot panchnama and all the seized articles to PSI Vithubone.

241] During his cross-examination, PW-17 admitted that PSI Vithu Bhone was the Investigating Officer. A suggestion was

given that since the Investigating Officer himself did not prepare the spot panchnama, the panchnama is false. This argument cannot be accepted. There is nothing illegal if the Investigating Officer directs another police officer to prepare the spot panchnama. The important question is whether the panchnama was properly prepared. The evidence of PW-17 shows that he followed the proper procedure.

242] The defence also pointed out that PW-17 did not mention the IMEI number of his mobile phone or its Android version and that no certificate under Section 65-B of the Indian Evidence Act was produced for the photographs. These are only technical defects. The prosecution case does not depend only on the photographs. PW-1, PW-3, PW-9 and the other witnesses have clearly stated that the incident took place in front of the house of Sheikh Babar. Therefore, these omissions do not affect the prosecution case.

243] The defence further suggested that there was darkness at the spot and that the place was unnecessarily kept reserved. PW-17 denied the suggestion. He explained that after the FIR was registered, some time was required to call the panch witnesses and complete the formalities for preparing the spot panchnama. Therefore, preserving the place of occurrence till the panchnama was prepared was proper.

244] It was also argued that some work was done by PW-

17 without any written order from the Investigating Officer. This also does not affect the prosecution case. During investigation, every direction need not be in writing. Oral directions are also given in the normal course of investigation.

245] The defence further argued that the latitude and longitude were not measured with a scientific instrument. This argument is also without merit. The place of occurrence is clearly proved by the spot panchnama as well as the evidence of the eyewitnesses.

246] After considering the evidence of PW-17, this Court finds that no material defect has been brought on record. His evidence is clear, reliable and trustworthy.

C.A. REPORTS

247] The prosecution has relied on the C.A. Reports Exh.147 to 153.

248] As per the C.A. Report Exh.147, DNA profile obtained from blood detected in Ex.3-(Cotton Swab from scene of crime), Ex.6-(Blood detected from Full open shirt of Babalu dhabe) and Ex.9-(Blood detected from Full open shirt of Santosh Jorewar) in this case is identical and from same source of male origin.

249] As per the C.A. Report Exh.148, 2) Prepared Blood stain Cutting in a packet Labelled-Shubham Sakharam Raje, ML case No.Nd/B/1130/2022 - No amplifiable DNA profile obtained from Ex.2.

250] As per the C.A. Report Exh.149, Description of articles contained in the parcel: 1) Blood in a test tube labelled---शुभम सखाराम राजे, 2) Blood in a test tube labelled---शुभम सखाराम राजे --Ex. 1 and 2 in a carton box labelled---EX. No.E-3.

ANALYSIS - Blood group of exhibits 1 and 2 cannot be determined as the results are inconclusive.

251] As per the C.A. Report Exh.150, Description of articles contained in the parcel: 1) Earth in a packet labelled---Exbt. No. A , 2) Earth in a packet labelled---Exbt. No. A1, 3) Cotton swab in a packet labelled---Exbt. No. A2, 4) Wrist watch in a packet labelled---Exbt. No. A3, 5) Metallic chain (neck) in a packet labelled---Exbt. No. A4, 6) Full shirt in a packet labelled---Exbt. No. B, 7) Full jeans pant in a packet labelled---Exbt. No. B1, 8) Iron rod in a cloth parcel labelled---Exb. No. B3, 9) Full shirt in a packet labelled---Exbt. No. C, 10) Full jeans pant in a packet labelled---Exbt. No. C1, 11) Sword (stated to be गुप्ती) in a cloth parcel labelled---Exb. No. C3, 12) Full T-shirt with cap in a packet labelled---Exb. No. D, 13) Full jeans pant in a packet labelled---Exb. No. D1, 14) Dagger without handle (stated to be खंजीर) in a cloth parcel labelled, 15) Full T-shirt (cut) in a packet labelled---Exb. No. E, 16) Full pant in a packet

labelled---Exb. No. E1, 17) Underwear in a packet labelled---Exb. No. E2.

RESULTS OF ANALYSIS

Exhibits 2, 3, and 4 are stained with blood. Exhibits 11 is stained with blood on blade. Exhibit 6 has few blood stains ranging from about 0.5 cm to 3 cm in diameter portion.-in diameter on front and back. Exhibit 7 has few blood stains ranging from about 0.2 cm to 6 cm in diameter on front portion. right leg. Exhibit 9 has few blood stains ranging from about 0.1 cm to 5 cm in diameter on left sleeve portion. Exhibit 10 has few blood stains ranging from about 0.1 cm to 4 cm in diameter on front portic left leg. Exhibit 15 has innumerable blood stains ranging from about 0.5 cm in diameter to big in size spread at places. Exhibit 16 has moderate number of blood stains ranging from about 0.5 cm to 4 cm in diamete on front and back portion. Exhibit 17 has few blood stains ranging from about 1 cm to 8 cm in diameter on back portion. No blood is detected on exhibits 1, 5, 8, 12, 13 and 14. Blood detected on exhibits 2, 3, 4, 6, 7, 9, 10, 11, 15, 16 and 17 is human. Group of blood detected on exhibits 2, 3, 4, 6, 7, 9, 10, 11, 15, 16 and 17 cannot be determined as the results are inconclusive.

252] As per the C.A. Report Exh.151, Description of articles contained in the parcel: 1) Blood in a test tube labelled---Bablu Subhash Dhabe and 2) Blood in a test tube labelled---Bablu Subhash Dhabe. Exhibits 1 and 2 in a carton box labelled---EXB. No. -B2.

RESULTS OF ANALYSIS

Exhibits 1 and 2 are of blood group 'A'.

253] As per the C.A. Report Exh.152, Description of articles contained in the parcel: 1) Blood in a test tube labelled---Santosh Chintaman Jorewar and 2) Blood in a test tube labelled--- Santosh Chilaram Jorewar. Exhibits 1 and 2 in a carton box labelled---EXB. No. -C2.

RESULTS OF ANALYSIS

Exhibits 1 and 2 are of blood group 'A'.

254] As per the C.A. Report Exh.153, Description of articles contained in the parcel: 1) Blood in a test tube labelled---Vishwas Sanjay Mekwal and 2) Blood in a test tube labelled---Vishwas Sanjay Mekwal. Exhibits 1 and 2 in a carton box labelled---EXB. No. -D2.

RESULTS OF ANALYSIS

Exhibits 1 and 2 are of blood group 'O'.

255] After considering these C.A. reports of the prosecution, C.A. reports Exh.147 and 150 both are material and supports the prosecution's case to prove the guilt of the accused.

256] The learned D.G.P placed reliance on following cases:

1. Ghanshyam Mandal Vs. State of Bihar on 25/02/2026 Criminal Appeal No.31/2025 Indian Kanoon – <http://indiankanoon.org/doc/81896561>,

2. Rakesh Vs. State of Uttar Pradesh 06/07/2021, Criminal Appeal No.556/2021 Indian Kanoon – <http://indiankanoon.org/doc/53754313>,

3. Lakhan Sao Vs. State of Bihar & Anr. AIR 2000 Supreme Court 2063 Indian Kanoon – <http://indiankanoon.org/doc/1986490>.

257] The learned Advocate for defense has also relied on following citations:

1. Babasaheb Devram Arane Vs. State of Maharashtra, DLD (Cri)-2023-2875,

In this case, the Hon'ble High Court has held that oral dying declaration cannot be believed. It is a very weak kind of evidence and unless strong circumstance are shown, no reliance can be placed on it. Further it has been held that disclosure statement under section 27 Evidence Act cannot be believed unless it has been shown to be made voluntarily.

2. Criminal Appeal No.1439/2009 Bobby Vs. State of Kerala, dated 12/01/2023, 2023 LiveLaw (SC) 50 in which the Hon'ble Supreme Court held that *Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to the said*

fact. The information as to past user or the past history of the object produced is not related to its discovery.

Further the Hon'ble Bombay High Court in this judgment also held that, "it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and must be or should be proved". It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

3. Criminal Appeal No.985/2010 Babu and Others Vs. State of Karnataka, 2024 LiveLaw (SC) 316 in which the Hon'ble Supreme Court has held that *the confessional part of the statement is inadmissible and only the part which distinctly leads to discovery of fact is admissible in evidence. Mere exhibiting the memorandum prepared cannot tantamount to*

proof of its contents.

4. **Criminal Appeal No.859/2011, R. Sreenivasa Vs. State of Karnataka, 2023 LiveLaw (SC) 751.** This citation is related to the last seen theory. In this case, the Hon'ble Supreme Court has held that *last seen theory can be invoked only when the same stands proved beyond reasonable doubt. The burden on the accused would keep in only when the last seen theory is established.*

5. **Criminal Appeal No.5641/2024 Govind Vs. State of Haryana, 2025 LiveLaw (SC) 1106** in which the Hon'ble Supreme Court held that *mere recovery of a weapon, even with a supporting FSL report, is not sufficient to sustain the conviction for murder in the absence of corroborative evidence connecting the accused to the crime.*

6. **Harilal Vs. State of Madhya Pradesh, DLD (Cri)-2023-2717** in which the Hon'ble Supreme Court held that *when an FIR is delayed, in absence of proper explanation, the Courts must be on guard and test the evidence meticulously. It is the bounden duty of the prosecution to prove the guilt of the accused beyond reasonable doubt.*

258] After considering the entire evidence on record, case-laws cited by both parties this Court comes to the conclusion that the prosecution has proved that PW-1 who is the

mother of deceased Shubham, on 18.04.2022 on the day of incident returned home at about 9.00 p.m. after finishing her work at Vaibhav Hotel. She was doing her household work. At about 9.30 p.m., accused Bablu Dhabe came her house and called Shubham outside. Shubham told her that he would return shortly and went with accused Bablu towards Maruti Temple.

259] After a short time, PW-1 heard people shouting that Shubham was being assaulted. She immediately rushed towards the spot. By that time, Shubham was trying to reach his house. However, he fell down in front of the house of Sheikh Babar. When PW-1 reached there, she found that Shubham was covered with blood. She asked him what had happened. Shubham told her that though he had done nothing wrong, accused Bablu Dhabe, Vishwas and Santosh Jorewar had assaulted him with a gupti, khanjar and an iron rod.

260] The learned counsel for the accused argued that the oral dying declaration is a weak piece of evidence and cannot be relied upon. This submission cannot be accepted. It is well settled that an oral dying declaration can form the basis of conviction if the Court finds that it is voluntary, truthful and inspires confidence. At the same time, the Court must examine such evidence with great care and caution.

261] In the present case, PW-1 reached the spot immediately after hearing that her son was being assaulted. She

found Shubham lying on the ground in an injured condition and covered with blood. She immediately went near him and asked him what had happened. PW-9 has also stated that PW-1 came to the spot and asked Shubham about the incident. Thus, the presence of PW-1 and the conversation between her and Shubham are supported by the evidence of PW-9.

262] The defence argued that because of the serious injuries, it was not possible for Shubham to speak. However, the evidence of PW-8, Dr. Vitthal Karpe, and the post-mortem report at Exhibit 73 do not support this contention. It does not appear that there was no injury to the voice box of deceased Shubham. There was also injury to the brain or the heart. Therefore, there is nothing on record to show that Shubham was not in a position to speak when PW-1 reached him. There is also no evidence that anybody prompted him or suggested the names of the accused. The Court, therefore, finds no reason to disbelieve the oral dying declaration made by Shubham to PW-1.

263] The evidence further shows that accused No.1 Bablu first went to the house of Shubham and called him outside. PW-1 has stated that Shubham left the house with accused Bablu. Thereafter, PW-3 and PW-9 saw all the three accused assaulting Shubham with deadly weapons. Thus, the evidence clearly shows that Shubham was last seen in the company of the accused immediately before the incident.

264] The oral dying declaration also finds support from the scientific evidence. According to the DNA report at Exhibit 147, the blood found on the shirts of accused Bablu and accused Santosh matched the blood of deceased Shubham. The accused have not offered any explanation as to how the blood of the deceased came on their clothes.

265] It is true that the prosecution has not satisfactorily proved that the incident took place because Shubham had allegedly teased Kanchan, the niece of accused Bablu. The evidence on this aspect is hearsay. However, this does not affect the prosecution case. The present case is based on direct evidence of eyewitnesses. When there is reliable and trustworthy eyewitness evidence, failure to prove the motive is not fatal to the prosecution case.

266] PW-3 and PW-9 have consistently stated that all the three accused assaulted Shubham with a gupti, a khanjar and an iron rod. Their evidence is natural and trustworthy. Their version is supported by the medical evidence, the recoveries, the spot (Exh.53) and seizure panchnama (Exh.57 to 60), memorandum panchnama (Exh.84 to 86) as described above, the Chemical Analyser's reports with the DNA report (Exh.147 to 150).

267] The evidence further shows that after the assault, all the three accused fled from the spot on a motorcycle. PW-17 saw them leaving the spot with the weapons. He also stated that while leaving, they were shouting that they had killed Shubham

and would kill two or three more persons. This conduct immediately after the incident is also a relevant circumstance against the accused.

268] The manner in which the incident took place also shows that the accused acted with a common intention. Accused Bablu first called Shubham out of his house and took him near the house of PW-9. Soon thereafter, accused Santosh and accused Vishwas reached there carrying deadly weapons. All the three accused jointly assaulted Shubham. The assault was repeated and severe. The available evidence shows that they acted together from the beginning till the end of the incident. Their conduct before, during and after the incident clearly proves that they shared a common intention to commit the offence.

269] The evidence of PW-1, PW-3, PW-7 and PW-9 is fully supported by the medical evidence of PW-8, the post-mortem report (Exhibit 73), the injury certificates (Exhibits 93 and 94), the documentary medical evidence relating to injured PW-3 (Exh.93), the recovery of weapons and the scientific evidence.

270] The Chemical Analyser's Reports at Exhibits 147 to 150 support the prosecution case. They show that blood was detected on the shirts worn by accused No.1 Bablu Dhabe and accused Santosh Jorewar. The DNA Report further shows that the blood detected on their shirts was that of deceased

Shubham. The accused have not offered any explanation as to how the blood of the deceased came on their clothes.

271] The prosecution has also proved that the gupti, khanjar and iron rod were recovered at the instance of the accused under the memorandum and seizure panchnamas at Exhibits 84, 85 and 86. The evidence of the panch witnesses and the Investigating Officer proves these recoveries.

272] The evidence of PW-8 and the post-mortem report at Exhibit 73 clearly show that the cause of death was haemorrhagic shock due to haemothorax caused by a penetrating stab injury to the chest. Thus, the medical evidence fully supports the prosecution case.

273] PW-3 Ajay Chopde has stated that accused Vishwas gave him a blow by the khanjar. The evidence of PW-11 shows that PW-3 sustained an injury which was possible by a hard and blunt object. It means he used blunt side of the khanjar. Thus, the medical evidence supports the evidence of PW-3. His presence at the spot is, therefore, fully established.

274] In fact the evidence of PW-1, PW-3, PW-7 and PW-9 is natural, consistent and trustworthy. Their evidence is fully supported by the medical evidence of PW-8, the post-mortem report (Exhibit 73), the injury certificates of PW-3 (Exhibits 93 and 94), the recoveries of the weapons, the Chemical Analyser's

Reports Ex 147, Ex.150.All these pieces of evidence support each other and form a complete chain.

275] Therefore, this Court holds that the death of Shubham was homicidal. The prosecution has proved beyond reasonable doubt that on 18.04.2022, between 9.00 p.m. to 9.25 p.m., at Talab Katta, Hingoli, all the three accused, in furtherance of their common intention, assaulted Shubham with a gupti, a khanjar and an iron rod and caused his death. Thus, the prosecution has proved the offence punishable under Section 302 read with Section 34 of the IPC.

276] The prosecution has also proved that during the same incident accused No.3 voluntarily caused hurt to PW-3 Ajay Chopde by giving him a blow with the blunt side of the khanjar. Therefore, accused No.3 is also guilty of the offence punishable under Section 324 of the IPC.

277] However, so far as the offence under Section 4 read with Section 25 of the Arms Act is concerned, the prosecution has failed to prove the necessary legal requirements of notification issued by Center or State Government. Therefore, the prosecution has failed to prove the offence punishable under Section 4 read with Section 25 of the Arms Act. Accordingly, the findings on Points Nos. 1 to 3 are recorded in the above terms.

278] Here I stop this judgment to hear the accused on the

point of quantum of sentence.

279] On the point of sentence, the accused were heard. The accused submitted that considering their age, prayed for a lenient view. Learned counsel for the accused submitted that the accused are young, married, belong to a poor family, earns their livelihood and their families are dependant on them. It was, therefore, requested that leniency be shown while considering the sentence.

280] On the other hand, the learned DGP opposed the prayer on the ground the deceased was the only one son of her parents and he was young. Accused No.1 is having criminal background. There are two cases pending against the accused No.1. Considering the nature and behaviour of the accused at the time of the incident and after incident, undue leniency in such matters would send a wrong message. It is, therefore, prayed that the punishment of life imprisonment be awarded.

281] Having considered the nature and gravity of the offence, the circumstances of the case and the submissions of both sides, I do not find any mitigating circumstance for leniency. In the facts and circumstances of the case, the sentence life imprisonment and fine will be just, proper and commensurate with the gravity of the offence. Therefore, I pass the following order for point No.4 :

ORDER

- 1) All the accused are acquitted from the Sections 4 read with Section 25 of the Indian Arms Act.
- 2) The Accused Bablu @ Baba Subhash Dhabe, Santosh @ Mohan Chintaman Jorewar and Vishu @ Vishwas Sanjay Mekwal are convicted vide under Section 235 of the Code of Criminal Procedure of the offence punishable under Sections 302 of the Indian Penal Code and sentenced to suffer **life imprisonment** and to **pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only)** each and in default of payment of fine, they are to undergo rigorous imprisonment for one year.
- 3) The Accused Vishu @ Vishwas Sanjay Mekwal is also convicted vide under Section 235 of the Code of Criminal Procedure of the offence punishable under Sections 324 of the Indian Penal Code and sentenced to suffer **rigorous imprisonment of one year** and to **pay a fine of Rs.10,000/- (Rupees Ten Thousand Only)** and in default of payment of fine, he is to undergo rigorous imprisonment for two months.
- 4) All accused are in jail since 19/04/2022, hence, are entitled for set off under Section 428 of Cr.PC.
- 5) All the substantive sentences shall run concurrently.
- 6) All the accused are directed to surrender their bail bonds.
- 7) Out of fine amount, Rs.1,00,000/- be given to PW1 complainant.

- 8) DLSA, Parbhani is directed to award compensation to PW1 complainant and PW3 as per Rules.
- 9) The P.S.O./Investigating Officer of the concerned P.S. is directed to destroy the muddemal properties i.e. soil, broken watch, steel chain, man of gupti, clothes of accused and deceased, gupti, khanjir and rod appears to be worthless, after the appeal period is over, as per Rules.
- 10) Supurtnama in respect of the muddemal property i.e. one Blue Hero Honda Splender motorcycle worth of Rs.20,000/- seized vide MR No.63/2022 shall be absolute after the appeal period is over.
- 11) A copy of judgment be given to all the accused free of cost.
- 12) A copy of judgment be sent to the District Magistrate, Hingoli.
(Judgment is dictated and pronounced in open Court.)

Date: 06th July, 2026.
Place: Hingoli.

(S.N. Mane-Gadekar)
Additional Sessions Judge,
Hingoli.

CERTIFICATE

I affirm that the contents of this P.D.F. file order is same word for word as per original order.

Name of Steno	:-	Atul Pandurangrao Deshmukh (Stenographer Grade-I)
Court Name	:-	S.N. Mane-Gadekar Additional Sessions Judge
Date of order	:-	06/07/2026
Order signed by the Presiding Officer	:-	06/07/2026
Order Uploaded on	:-	06/07/2026