

(2026) 08 BOM CK 3122

In the Bombay High Court, Nagpur Bench

Case No : CRIMINAL APPEAL NO. 310 OF 2019

Abdul Jahid @ Raju & Ors.

APPELLANT

Vs

The State Of Maharashtra

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Indian Penal Code — Section 302, 34, 143, 147, 148, 149
Indian Evidence Act, 1872 — Section 134, 118, 6
Code of Criminal Procedure — Section 313

Citation : (2026) 08 BOM CK 3122

Hon'ble Judges : Nivedita P. Mehta, J;Urmila Joshi Phalke, J

Bench : Division Bench

Advocate : Mr. P.W. Mirza, Mr. S.S. Hulke

Final Decision : Partly Allowed

Judgement

ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)

1. The judgment and order of sentence dated 13.03.2019 passed by the learned Sessions Judge, Yavatmal in Sessions Case No.21/2018, whereby the Appellants/ Accused were convicted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/- each, in default of payment of fine to suffer simple imprisonment for six months, is under challenge in the present Appeal.

2. Brief facts which are necessary for the disposal of the present Appeal are as under:

2(i). The Informant is the wife of the deceased. As per allegations, on 27.08.2017 at about 07.30 a.m., the deceased Govardhan had received a phone call of accused No.1/Abdul Jahid @ Raju Sheikh, therefore the deceased went outside the house to meet the accused No.1 in vegetable market, Datta Chowk, Yavatmal. Thereafter within half an hour the deceased returned back and

deceased disclosed to her that he met Raju Sheikh and demanded his hand loan amount back and dispute took place between him and Raju Sheikh and accused Raju Sheikh told him that he will return the money in the evening. In the evening at about 06.30 p.m., the deceased alongwith his son Jay went on two wheeler to purchase vegetable in the market, situated in Datta Chowk. After some time, son Jay came back and disclosed to her that accused Abdul Jahid @ Raju Sheikh and other two accused assaulted the deceased by means of iron rod, fist and kick blows as well as by knife and deceased has sustained the injuries. At the relevant time, there were two unknown persons alongwith the accused persons. The Informant immediately rushed to the spot of incident but the deceased was already moved to the Hospital and in the Hospital the deceased was declared dead. Thus, it is alleged that, due to the dispute on account of returning the hand loan amount, the accused persons have assaulted the deceased by means of iron rod and knife and thereby committed an offence punishable under Sections 143, 147, 148, 302 read with Section 149 of IPC.

2(ii). After taking cognizance of the First Information Report (for short "FIR"), the wheels of investigation started rotating. During investigation, the Investigating Officer has

(i)	PW-1	Pushpa Govardhan Dhole	Exh.16	Informant and wife of the deceased.
(ii)	PW-2	Jay Govardhan Dhole	Exh.19	Son of deceased & eyewitness of incident.
(iii)	PW-3	Dr. Kapildeo Sahadeo Patil	Exh.20	Medical Officer who conducted postmortem
(iv)	PW-4	API. Sugat Nathrao Pundge	Exh.28	Investigating Officer.
(v)	PW-5	API. Nandkumar Dashrath Aayre	Exh.45	Investigating Officer.

2(v). Besides the oral evidence, the prosecution placed reliance on Oral Report-Exh. 17, FIR-Exh. 18, Requisition to Medical Officer-Exh. 21, Postmortem Exh.22, Requisition to Medical Officer for examination of weapon-Exh. 23, Query report-Exh. 24, Arrest surrender form of accused persons Exhs. 29 to 31, Arrest seizure memo of accused No.3/Abdul Rashid Abdul Gaffur-Exh. 32, Arrest seizure memo of accused No.1/Abdul Jahid @ Raju S/o Abdul Rashid-Exh.33, Requisition to the Deputy Director of FSL, Amravati-Exh.34, CA Reports-Exhs. 35 to 39, Spot panchanama-Exh.46, Inquest panchanama-Exh.48, Seizure memo-Exh.49 and Muddemal receipts Exhs. 47 and 50.

2(vi). On the basis of the oral as well as documentary evidence, the prosecution claim the conviction of the accused persons on the basis of the evidence. The defence of the accused persons is of total denial and false implication.

2(vii). The learned Trial Court after recording the evidence and after appreciating

the same held the accused Nos. 1 to 3 guilty and convicted them as aforesaid. Being aggrieved and dissatisfied with the same, the present Appeal is preferred by the accused persons.

3. Heard Mr. Mirza, learned Counsel for the Appellants/Accused, who has made the submissions orally as well as submitted his written submissions and submitted that, the FIR and evidence of PW-1/Pushpa Dhole the Informant is highly doubtful. It is on the basis of hearsay evidence. As per the prosecution witnesses, accused Nos. 2 and 3 gave multiple knife blows on the person of the deceased, however, there was no cut or stab wound inflicted on the deceased. Thus, the oral evidence and medical evidence is contradictory to each other. He further contended that, the case is based on sole eyewitness i.e. PW-2/Jay Dhole, whose evidence is not inspiring the confidence. He is a child witness, therefore, the possibility of tutoring cannot be ruled out. Moreover, his statement was recorded after 15 days of the incident and no explanation is put forth for delayed examination of this witness. Despite the incident has occurred on road, no independent witness is examined by the prosecution. For all above these reasons, the judgment and order of sentence passed by the learned Trial Court, is erroneous and liable to be quashed and set aside.

3(i). In support of his contention he placed reliance on following judgments: State of U.P. Vs. Ashok Dixit & Anr., 2000 SAR (Criminal) 344; Vadivelu Thevar Vs. The State of Madras, 1957 CRI.L.J. 1000; State of Madhya Pradesh Vs. Subhan, III (1996) CCR 88 (SC); Ganpat Kisan Giri alias Nadiwala Vs. State of Maharashtra, 1995 CRI.L.J. 792; Najukrao Vs. State of Maharashtra, 1994 LawSuit (Bom) 728; Vijender etc. Vs. State of Delhi, 1997(1) Crimes 158 (SC); Dorai @ Mariappan Vs. State of Tamil Nadu, III (2005) CCR 204 (SC); Bhagwan Babu Ghotkar & Ors. Vs. The State of Maharashtra, 2001 ALL MR (Cri) 1569; Orsu Venkat Rao Vs. State of A.P., (2004) 13 SCC 243; Udaykumar Pandharinath Jadhav @ Munna Vs. State of Maharashtra, 2008 SAR (Criminal) 433; Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel & Ors., (2004) 10 SCC 583; State of U.P. Vs. Jamal Ahmad & Ors., 1993 SCC (Cri) 837; Balwan Singh Vs. State of Chhattisgarh & Anr., 2019 SAR (Criminal) 980 & Gopal Singh & Anr. Vs. State of Uttarakhand, 2025 LawSuit (SC) 293.

4. Per contra, Mr. Hulke, learned APP vehemently submitted that, PW-2/Jay Dhole is a child witness but he is a natural witness. He had been to the spot of incident alongwith his father. After the incident, he immediately rushed to the house and disclosed it to his mother. He submitted that, the accused and the deceased are from the same Village. The evidence of PW-1/Pushpa Dhole shows that, she was acquainted with them and they were on visiting terms at the house of the deceased. Therefore, the possibility that PW-2/Jay Dhole was knowing them cannot be ruled out.

4(i). He further submitted that, the blood stained weapon was seized from the spot of incident. The blood stained clothes of the accused Nos. 1 and 3 were also seized. There is no explanation by the accused as far as the blood stains on their

clothes are concerned. Thus, not only the oral evidence of PW-2/Jay Dhole but the circumstantial evidence i.e. blood stains of blood group 'A' found on the clothes of accused Nos. 1 and 3 connects the accused with the alleged offence. He submitted that, as far as the blood group of the accused are concerned, the blood group of accused No.1 is 'B' though the blood group of the accused No.3 is 'A'. However, there is no case of defence that the accused No.3 has sustained any injury and, therefore, the blood stains are occurring on his clothes. He submitted that, the clothes were seized on 28.08.2017 and on the same day, they were deposited with the muddemal clerk. On 18.09.2017, the clothes were forwarded to CA.

4(ii). The weapon initially was forwarded to the Medical Officer on 30.08.2017 for seeking an opinion. The weapon was again received alongwith opinion of Medical Officer on 05.09.2017 and thereafter on 18.09.2017 the weapon was forwarded to CA. Thus, the chain of the custody is also established by the prosecution. There is no case of any interpolation of blood stains on the said articles. Therefore, the prosecution has established the guilt of the accused persons on evidence of Medical Officer PW-3/Dr. Kapildeo Patil and circumstantial evidence in the nature of blood stained clothes of accused Nos. 1 and 3. Therefore, there is no reason to interfere in the judgment and order of sentence. Hence, the Appeal deserves to be dismissed.

5. On hearing both the sides and on perusal of the entire record, the first and foremost question which required to be answered is whether the death of the deceased is caused due to the assault and homicidal death.

6. To prove the death as homicidal one, the prosecution mainly placed reliance on the evidence of PW-3/Dr. Kapildeo Patil examined vide Exh-20, whose evidence shows that, he received the requisition on 28.08.2017 for conducting the postmortem on the dead body of the deceased Govardhan Dhole. The said requisition is at Exh. 21. On external examination, he found following injuries:

- 1] Lacerated wound over occipital region of head, horizontally placed of size 12 cm x 2.7 cm x bone deep. Margins are irregular and blood infiltrated.
- 2] Lacerated wound over occipital region of head, 2 cm below injury No.1, horizontally placed of size 8 cm. X 1 cm x bone deep. Margins are irregular and blood infiltrated.
- 3] Lacerated wound over high parietal region of head, 2 cm above injury No.1, placed antero-posteriorly, of size 7.5 cm. X 1 cm. X bone deep. Margins are irregular and blood infiltrated.
- 4] Lacerated wound over occipital region of head, 1 cm below injury No.3, obliquely placed of size 4 cm. X 0.5 x bone deep. Margins are irregular and blood infiltrated.
- 5] Lacerated wound over occipital region of head, 0.5 cm above injury No.1, obliquely placed of size 3 cm. X 1 cm x bone deep. Margins are irregular and blood infiltrated.
- 6] Lacerated wound over left frontal region of head, 0.5 cm above left eye brow horizontally placed of size 5 cm. X 0.5 cm x bone deep. Margins are irregular and blood infiltrated.
- 7] Lacerated wound present just above right tragus horizontally placed of size 2.5 cm. X

1 cm x bone deep. Margins are irregular and blood infiltrated.

8] Abrasion present over left cheek, irregular in shape of size 5 cm x 4 cm surrounded by contusion, reddish in colour.

9] Abrasion over back of right shoulder of size 2 cm x 1 cm, reddish in colour.

10] Abrasion over left knee, vertically placed, of size 2 cm x 1 cm, reddish in colour.

11] Abrasion over right knee, vertically placed, of size 2 cm. X 1 cm, reddish in colour.

12] On Palpation of skull we found fracture of skull corresponding to injury No.1 to 5 mentioned in col. no. 17 of postmortem report.

As per his evidence, all the above injuries were antemortem and fresh.

6(i). On internal examination, he found following injuries:

1] Evidence of underscalp hematoma over left frontal region and occipital region corresponding to injury No. 1 to 6 mentioned in column No.17 reddish in colour.

2] Evidence of depressed comminuted fracture of occipital bone, over an area of 17 cm x 11 cm with laceration of corresponding dura mater and laceration of corresponding brain. On dissection, fracture margin are irregular and blood infiltrated.

3] Evidence of linear fracture of fronto-right parietal occipital region of head, placed antero-posteriorly, 20 cm in length. On dissection, fracture margins are irregular and blood infiltrated.

4] Evidence of comminuted fracture of base of skull involving anterior, middle and posterior cranial fossa, involving cribriform plate and hypophyseal fossa respectively. On dissection fracture margins are irregular and blood infiltrated.

5] Meninges of brain torn corresponding to Injury No. 1 to 5 mentioned in column No.17 with corresponding fracture mentioned in col.No.19 (ii) (1).

Sub-dural hemorrhage present all over the cerebral hemisphere.

Sub-archnoid hemorrhage all over both occipital region of cerebral hemisphere.

Evidence of laceration of both cerebellar hemisphere with laceration and transsection of brainstem.

6(ii). He further deposed that, injury Nos. 1 to 6 mentioned in column No.17 with its corresponding internal injuries mentioned in Col. No.19 are sufficient in ordinary course of nature to cause death. The cause of death of deceased was of "Head Injury". Accordingly, he prepared the postmortem report vide Exh.22. On 04.09.2017, he received a requisition letter alongwith the weapon from the Investigating Officer of Wadgaon Road Police Station. The said requisition is at Exh. 23. On examination of said weapon i.e. Iron pipe which was hard and blunt and moderately heavy. The length of iron pipe is 94 c.m., and circumference of iron pipe 13.5 c.m., and internal diameter of iron pipe is 4 c.m. He also witnessed dried blood stains present at one end of the iron pipe. The iron pipe can be a dangerous weapon if it is used in the offence and, therefore, he opined that the injury Nos. 1 to 7 mentioned in Col.No.17 of the postmortem report are possible by such kind of weapon. He has forwarded his opinion on 05.09.2017 alongwith report Exh. 24. He also identified the iron pipe Art.F.

6(iii). His cross-examination discloses that, the defence has brought on record

that the weapon was brought alongwith requisition letter by API N.D. Ayare of Wadgaon Road, Police Station, who has carried out the part investigation of the said crime. The defence further stated that, personally he is not aware as to who has brought the alleged weapon in the Hospital. The weapon was received by clerk of his department, but he denied that, he is not personally aware as to in what condition the weapon was brought in the Hospital. He clarifies that, the Department of Forensic Medicine and Toxicology of S.V.N.G.M.C. & Hospital, Yavatmal never receives any weapon regarding query with respect to medico legal cases without seal and pack condition without requisition letter. Thus, he denied that, he has no personal knowledge in what condition the weapon was received.

7. Thus, PW-3/Dr. Kapildeo Patil is a Medical Officer who conducted the postmortem examination, whose evidence is not only an opinion evidence but his evidence is also a direct evidence as far as the nature of injuries are concerned as he has witnessed the injuries.

8. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon'ble Apex Court in the case of Smt. Nagindra Bala Mitra and Vs. Sunil Chandra Roy and another, reported in 1960 SCR (3) 1, wherein the Hon'ble Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

9. In the recent judgment also, the Hon'ble Apex Court in the case of Anuj Singh @ Ramanuj Singh @ Seth Singh Vs. The State of Bihar, reported in 2022 Live Law (SC) 402, dealt with the evidentiary value of the medical evidence and observed that the evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. It has been reiterated by this Court that the medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged.

10. Thus, the prosecution has succeeded in proving that the death of the deceased is homicidal one.

11. To prove the charges against the accused persons that the accused Nos. 1 to 3 in furtherance of their common intention assaulted the deceased by means of iron rod, the prosecution mainly placed reliance on the evidence of PW-2/Jay Dhole who is the son of the deceased and the eyewitness.

12. His evidence shows that, on the day of incident i.e. on 27.08.2017 at about 06.30 p.m., he alongwith his father went on two wheeler for purchasing vegetables in the vegetable market situated in Datta Chowk. They were standing in front of the gate of vegetable market. His father was talking on cell phone near the vehicle and he was standing behind his father. Some one assaulted his father by iron rod on his head. Thereupon his father fell down on the road. He saw the assailants. They were Raju Bhajiwala, Sonu and his father. Sonu and his father were beating his father by kicks and fist blows. Accused Raju has assaulted his father by iron rod repeatedly. He made hue and cry. His father fell down on ground and blood was oozing from his head. He gave a call by saying "Wachawa Wachawa", still the assault was continued. He got scared and ran towards his house. On the way he met his uncle. He disclosed the incident to his uncle. His uncle asked him to come alongwith him at the spot of incident but he insisted his uncle to proceed towards the house and he took his uncle to the house. He narrated the said incident to his mother. Thereafter he alongwith his mother and uncle came at vegetable market. The Police were already arrived there. His father was taken to the Hospital. He alongwith his mother approached to Wadgaon Road Police Station and his mother lodged the report.

12(i). During his cross-examination, the defence has brought on record that, he is a school going child. It was further brought on record that, his father was charged of committing murder of one Rinku Trivedi and was in jail for 8 to 9 years. It was brought on record that, his father was accused in committing the murder of Parmanand Mishra but PW-2/Jay Dhole stated that, he was not aware about the same.

12(ii). His cross-examination further shows that, on many occasions he went to the vegetable market. Datta Chowk is adjacent to vegetable market and visible from vegetable market. Traffic Police is always present in Datta Chowk. The fruits and vegetable vendors used to park their carts on road and create obstacle to the traffic. Adjacent to vegetable market there is complex of Nagar Parishad. Adjacent to gate of the vegetable market there is one shop of fruit vendor, one shop of panwala and one hotel. Thus, from the cross-examination it is brought on record that, various fruits vendors shops are available at the spot. The cross-examination further shows that, on Sunday till 08.00 to 09.00 p.m, there is crowd on the road. He further admits that, Wadgaon Road Police Station is on the road of Jaju Chowk.

12(iii). His cross-examination further shows that, Police made enquiry with him. He narrated the incident to the Police. After 17 days again he went to the Police Station and his statement was recorded. He denied the theory of tutoring during cross-examination. He specifically denied that, he is deposing on the say of his

uncle Banti and mother. He further admits that, on that day his father did not went inside the vegetable market. Some omissions and contradictions are also brought on record during his evidence. He specifically denied that, when they were standing facing towards vegetable market, at that time, one assailant with iron rod in his hand came from the backside of his father and gave a blow of it on the head of his father. Thus, he denied the portion mark 'B' of his statement. He also denied that, unknown assailant had assaulted his father. The fact that he made hue and cry by saying "Wachawa Wachawa" is not stated by him. Thus, the omission to that extent is proved. The omission that, he was standing behind his father was also brought on record. It further came on record that, from the date of incident till 14.09.2017 he, his mother and his uncle were in Yavatmal City.

13. Thus, from the cross-examination attempt was made to show that, despite various vegetable vendors and fruits vendors were available at the spot of incident but no independent witness was examined by the prosecution. The statement of PW-2/Jay Dhole was recorded after 17 days. Thus, there is a delay in recording the statement of material witness and being the child witness there is possibility of tutoring and, therefore, the evidence deserves to be discarded.

14. Besides the oral evidence of PW-2/Jay Dhole, prosecution placed reliance on the evidence of PW-1/Pushpa Dhole.

15. Admittedly, PW-1/Pushpa Dhole is not the eyewitness of the incident. As per her evidence, the incident took place on 27.08.2017. On that day at about 07.30 a.m., her husband received a phone call of accused No.1/Raju Shaikh. When the deceased was going out of the house, she asked him as to where he is going and he replied that Raju Shaikh wanted to meet him at Datta Chowk vegetable market. Thereafter within half hour when the deceased returned back to home, he disclosed to her that there was a quarrel between him and the accused No.1 regarding returning of money. On the same day in the evening at about 06.30 p.m., her husband alongwith her son Jay went to the vegetable market and after 15 minutes her son Jay and her brother Banti returned back to the house and Jay disclosed to her that her husband was assaulted by accused Raju Shaikh, Sonu Shaikh and his father Rashid Shaikh. Therefore, he immediately rushed to the spot of incident and witnessed that her husband was already removed to the Hospital. Therefore, she went to the Hospital and her husband was declared dead. On the same night he approached to the Police Station and lodged a report which is at Exh. 17 and FIR is at Exh. 18. She has identified the articles i.e. clothes of her husband, shirt Art.A., jeans pant Art.B, nicker Art.C and Rudraksha Art.D and wrist watch Art.E.

15(i). From her cross-examination attempt was made to show that though she proceeded towards the spot of incident and crossed the Police Station, she has not lodged the report at Police Station immediately. She admitted that, she or his son or her brother Banti have not lodged the report against the assailants while proceeding to the spot of incident. She also admitted that, while proceeding from the spot of incident to Hospital she did not went to Wadgaon Road Police Station

to lodge the report. She also not enquired with the other people as to how the incident took place. She also did not make enquiry about the assailants in the Hospital.

15(ii). Thus, the cross-examination shows that, after receipt of the information she neither approached to the Police Station while proceeding to the spot of incident nor to the Wadgaon Road Police Station while proceeding to the Hospital and also not made enquiry with the persons regarding how the incident has occurred. She also admitted that, her son did not disclose to her that there were two unknown persons alongwith the assailants and those unknown persons also assaulted her husband by fist and kick blows. She further admitted that, her son also did not state to her that some assailants have given a blow of knife on the person of her husband.

15(iii). During her cross-examination some omissions are brought on record but the omissions are to the extent of the names of accused Nos. 2 and 3. The omission that the accused Raju Shaikh was demanding the money was also brought on record. The said omission is also to the extent of name Shaikh. She also admitted that, her son has informed her about the incident and the friend of her husband by name Dolas has not made her phone call. She has also admitted about the involvement of her husband in the murder of one Rinku Trivedi and also admitted that, in the case of Rinku Trivedi, her husband was acquitted from the charges. Besides these two witnesses prosecution has not examined other witnesses.

16. PW-5/Nandkumar Aayre is the Investigating Officer who has carried out the earlier investigation. As per his evidence, he had received the information through a phone call from the control room that a quarrel has took place in Datta Chowk. He made entry in the Station Diary at Sr.No. 34/17 and thereafter proceeded alongwith the staff at Datta Chowk, where he saw the mob of public in front of vegetable market and one person was lying at that place in a pool of blood. On the spot, he drawn the sketch of his body and thereafter the injured was removed to the Hospital.

16(i). He has called two panchas at the spot of incident and prepared the spot panchanama in presence of panchas. The said panchanama is at Exh. 46. From the spot he has seized the key of motorcycle stained with blood, mobile hand set stained with blood, one iron rod stained with blood and simple soil and blood mixed soil. He has produced the said muddemal in the Police Station and muddemal receipt was obtained by him, which is at Exh. 47. Thereafter he drawn inquest panchnama in presence of panchas and witnessed the injuries. He also seized the clothes of deceased which were obtained from the Medical Officer which is at Exh.49. He admitted that, the certified copy of Station Diary entry No. 34/17 was not filed alongwith the charge-sheet. He also admitted that, the panchas did not saw the injured person on the spot of incident. The road where the spot of incident situated is 50 feet width road and the injured was lying on the middle of the road.

16(ii). He further admitted that, in panchanama the distance between the spot of incident and the gate of vegetable market is not mentioned. He admitted that, the injured person was not lying in front of gate of vegetable market or near the gate. He further admitted that, the inquest panchanama was drawn at 10.10 p.m., in presence of wife of deceased and she has not lodged the complaint till 12.30 a.m. He submitted that, the entire proceeding of inquest panchnama was completed in the presence of wife of the deceased. He further admitted that, the said incident did not took place in Datta Chowk. At the spot he has witnessed the mob of 25 to 30 persons. He further admitted that, at the spot the wife of the deceased or son or relative did not met him personally and he was present till completion of the spot panchnama.

17. The further investigation was carried out by PW-4/Sugat Pundge who was examined vide Exh. 28. As per his evidence he arrested the accused Nos. 1 to 3 on 28.08.2017 and also seized their clothes and deposited with muddemal clerk. He also forwarded the articles to FSL and the FSL reports are at Exhs. 35 to 39. Some omissions are proved through the evidence of this witness. He specifically admitted that, shopkeepers did not state to him that the assailants are the accused persons. During investigation it revealed to him that, there was two unknown assailants including the accused persons.

17(i). Thus, from the cross-examination itself it was brought on record that two unknown persons were there alongwith the accused persons. The portion mark 'A' of the statement of PW-2/Jay Dhole is proved at Exh. 40, which is to the extent that after parking of the two wheeler by his father he was standing near the gate, which PW-2/Jay Dhole has denied and the portion mark 'B' which is to the extent that when he was facing towards vegetable market, at that time, somebody has assaulted his father from the backside. Similarly, portion mark 'A' is that the people used to call her husband for demanding the money, is denied by her. Similarly, her husband has given some amount to vegetable vendors was also denied by her, which is at Exhs. 42 and 43.

18. Besides oral evidence, prosecution further placed reliance on the scientific evidence i.e. CA reports, which shows that, the blood group of accused No.1/ Abdul Jahid @ Raju Rashid is 'B', the blood group of accused No.2/Abdul Kadir @ Sonu is 'B', the blood group of accused No.3/Abdul Rashid Abdul Gaffur is 'A' and the blood group of the deceased is also 'A' as per Exhs. 35 to 38. Exh. 39 is the CA report in respect of various articles which shows that, Ex.1 is the soil collected from the spot, Ex.3 is cotton swab collected from the crime scene, Ex.4 is iron pipe seized from the spot, Ex.5 is the footwear, Ex.6 is wrist watch, Ex.7 is thread, Ex.9 is the half shirt of the deceased, Ex.10 is the full shirt of the accused No.3/Abdul Rashid and Ex.15 is the full shirt of accused No.1/Abdul Jahid @ Raju stained with blood of group 'A'.

19. Learned Counsel for the Appellants/Accused, submitted that the FIR is lodged on 28.08.2017 at about 00.02 a.m., though the alleged incident has occurred at about 06.30 p.m. Thus, there is an inordinate delay in lodging the FIR. He

further submitted that, despite the wife and son of the deceased were present at the time of spot panchanama and inquest panchanama, they have not lodged the report. He further submitted that, though PW-1/Pushpa Dhole has stated that she was informed by PW-2/Jay Dhole about the incident but the statement of PW-2/Jay Dhole nowhere discloses that he has informed the mother after reaching home. The statement of PW-2/Jay Dhole is also silent about the disclosure by PW-2/Jay Dhole to his mother. He further submitted that, PW-2/Jay Dhole being a child witness, the possibility of tutoring him to implicate the accused persons due to the previous dispute cannot be ruled out. Moreover, the independent witnesses are not examined.

20. Admittedly, the entire case of the prosecution is based on the evidence of sole eyewitness. Undisputedly, the cross-examination shows that, there were various shops and fruit vendors at the spot of incident but none of the independent witness is examined. The general cross-examination is carried out by the accused pointing out that there were various fruit vendors and vegetable vendors but no such material is brought on record to show that the fruit vendors or vegetable vendors were present at the time of incident on the spot and they have witnessed the incident, whereas the presence of PW-2/Jay Dhole at the spot is natural. Being the son of the deceased he went alongwith the deceased in the vegetable market.

21. Now, the only aspect which is required to be seen whether the evidence of PW-2/Jay Dhole is cogent and reliable. Admittedly, the sole eyewitness if found truthful, cogent and reliable there is no legal impediment in accepting the evidence. It is well settled principle that, the evidence of sole witness is to be accepted if it is found truthful and credible.

22. The Hon'ble Apex Court in the case of Jagdish Prasad & Ors. Vs. State of Madhya Pradesh, MANU/SC/0282/1994 : AIR 1994 SC 1251, held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872. But, if there are doubts about the testimony, the Courts will insist on corroboration. It is for the Courts to act upon the testimony of witnesses. It is not the number, quantity, but the quality that is material. The above position was also highlighted in the case of Sunil Kumar Vs. State of NCT of Delhi, MANU/SC/0815/2003 : 2003 (11) SCC 367.

23. The evidence of PW-2/Jay Dhole is further criticized on the aspect that, he is a child witness. It is vehemently submitted that, the evidence of child witness is unbelievable as there are chances of tutoring. The Indian Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Indian Evidence Act that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, deceased-

whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

24. In *Dattu Ramrao Sakhare & Ors. Vs. State of Maharashtra*, (1997) 5 SCC 341, the Hon'ble Apex Court has held that as long as the child witness is found to be competent to depose i.e. capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as an evidence in terms of Section 118 of the Indian Evidence Act, irrespective of their tender age or absence of any oath. The only additional factor to be considered is that, the witness must be found to be reliable exhibiting demeanour of any other competent witness, with no likelihood of having being tutored. It further clarified that, there is no requirement or condition that the evidence of child witness must be corroborated before it can be considered and rather the insistence of any corroboration is only a rule of prudence that would depend upon the peculiar facts and circumstances of each case.

25. Similarly, in *Pradeep Vs. The State of Haryana*, 2023 SCC OnLine SC 777, the Hon'ble Apex Court has emphasized on the importance of preliminary examination of a child witness, which was carried out in the present case.

26. In the case of *The State of Madhya Pradesh Vs. Balveer Singh*, in Criminal Appeal No. 1669/2012 decided on 24.02.2025, after considering the catena of decisions the Hon'ble Apex Court has observed that, from the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case."

27. In the light of the above aspect if the evidence of PW-2/Jay Dhole is appreciated, we do not find any discrepancy in the evidence of PW-2/Jay Dhole. The evidence as to the incident is not shattered during the cross-examination. As far as the omissions and contradictions which are brought on record are not affecting the entire core of the prosecution case.

28. As far as the submissions of the learned Counsel for the Appellants/Accused,

that the statement of PW-2/Jay Dhole nowhere discloses that he has disclosed the incident to his mother. However, it discloses that he went at home and thereafter again alongwith his mother he proceeded towards the spot of incident. Being the son he went at home and obviously he visited the house to disclose the incident to his mother and the evidence of mother shows that, she came to know about the incident from her son. Therefore, the submission is not sustainable. As far as the evidence of PW-1/Pushpa Dhole is concerned, she deposed on the basis of the information received from her son.

29. Section 6 of the Indian Evidence Act is an exception to the general rule, where under the hearsay evidence becomes admissible. But for bringing the hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the act or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act, which reads as under:

"Under the present Exception [to hearsay] an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."

30. In *Gentela Vijayavardhan Rao & Anr. Vs. State of A.P.*, MANU/SC/0719/1996 : 1996 Cri.L.J 4151, considering the law embodied in Section 6 of the Evidence Act held as under:

"The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*."

31. Thus, to form a particular statement as a part of same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after the occurrence. Thus, in view of rule embodied in Section 6 which is usually know as rule of *res gestae*, the information received by PW-1/Pushpa Dhole comes under Section 6 and, therefore, admissible in evidence.

32. Learned Counsel for the Appellants/Accused also vehemently submitted that, there is inordinate delay in lodging the FIR. The FIR was lodged at about 00.02 a.m. i.e. at about 12.02 a.m. in the morning. The alleged incident has taken place at about 06.30 p.m. The spot panchnama was drawn on the same day at about 07.15 to 08.10 p.m., and thereafter the inquest panchnama was drawn at about 12.30 a.m. As per the evidence of the Investigating Officer, at the time of inquest panchnama the wife of the deceased was present. The spot panchnama and inquest panchnama discloses the Station Diary entry No.34/17. Thus, the spot panchnama as well as the inquest panchnama was drawn on the basis of the information received and entered in the Station Diary by the Investigating Officer. Thus, apparently after drawing the inquest panchnama, PW-1/Pushpa Dhole has approached the Police Station and lodged the report.

33. This aspect is to be considered in the light of the fact that, PW-1/Pushpa Dhole has lost her husband. She immediately rushed to the spot and thereafter to the Hospital. The postmortem was conducted by the Medical Officer and thereafter the inquest panchnama was drawn. Thus, obviously after the inquest panchnama was drawn she has approached the Police Station and lodged the report. Therefore, it cannot be said that there was inordinate delay in lodging the FIR.

34. Admittedly, while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

35. While appreciating the evidence of relatives great weightage is to be given to them on the principle that there is no reason for them not to speak the truth and shield the real culprit. In fact a close relative which is a natural witness cannot be regarded as an interested witness. The term "interested" postulates that, the person concerned must have some direct interest in seeing that the accused is somehow or otherwise convicted either because he had some animus with the accused or for some other reason. While dealing with the evidence of witness who is relative, the evidence of witness cannot be discarded merely on the ground that he is either partisan or interested or close relative of deceased, if it is otherwise found to be trustworthy. The said evidence only requires scrutiny with more care and caution.

36. Even accepting the proposition that, the evidence of sole eyewitness is to be corroborated by the other evidence. Here in the present case, the evidence of PW-2/Jay Dhole is further corroborated by the circumstances that the blood stains are found on the clothes of accused Nos.1 and 3. The CA report which is at Exh. 39 shows that, the blood stains of blood group 'A' which is of the deceased as well as of the accused No.3 was found on Art.10 full shirt of accused No.3/ Abdul Rashid and on full shirt of accused No.1/Abdul Jahid @ Raju. Though blood group of accused No.3 is also 'A' but there is no evidence that he had received any injury and, therefore, the said blood stains are appearing on his clothes.

37. During statement under Section 313 of the Code of Criminal Procedure, this aspect was not put to the accused persons. Therefore, they were called before this Court and their additional statement was recorded and no explanation was put forth by them.

38. Thus, not only the evidence of PW-2/Jay Dhole but the scientific evidence also corroborates the story of the prosecution. The blood stains of blood group 'A' are also found on the incriminating weapon i.e. iron rod. The blood stained clothes were seized by PW-4/Sugat Pundge when the accused persons were arrested on the next day. The evidence of PW-4/Sugat Pundge shows that, the other clothes were arranged for the accused and thereafter their blood stained clothes were seized. Thus, the arrest seizure memos which are at Exh. 32 and 33 shows that, the accused Nos. 3 and 1 were arrested and at the relevant time the clothes which were seized were on their person. It is specifically mentioned that, there were no injury marks on their person. Therefore, the question of appearing their blood stains on the said clothes does not arise. Thus, the aspect of seizure of blood stained clothes from the accused persons and appearance of the blood group of the deceased on the said clothes, sufficient to show their presence at the spot of incident as well as their involvement in the alleged incident.

39. Though it is vehemently submitted that, the statement of the independent witnesses are not recorded and they are also not examined by the prosecution. It is the well settled principle laid down in various decisions that, the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds raised by the defence. The trivial defects in investigation or process are not in themselves to disbelieve the evidence of the eyewitnesses of the prosecution case. To acquit solely on the ground of defective investigation would be adding insult to the injury.

40. The evidence of PW-1/Pushpa Dhole and PW-2/Jay Dhole is further criticized on the aspect of delay in recording the statement. The alleged incident has taken place on 27.08.2017, whereas the statement of PW-2/Jay Dhole was recorded on 14.09.2017. PW-2/Jay Dhole has also admitted that his statement was recorded on 14.09.2017. Though he has stated that he was enquired on the day of incident. However, there is no evidence that any enquiry was made with PW-2/Jay Dhole on 27.08.2017.

41. Admittedly, on this aspect, the Investigating Officer was not cross-examined and the opportunity was not granted to the Investigating Officer to explain the delay. In the case of State of U.P Vs. Satish, (2005) 3 SCC 114, which is referred in the recent judgment by the Hon'ble Apex Court in The State of Madhya Pradesh Vs. Balveer Singh, Criminal Appeal No. 1669/2012 decided on 24.02.2025, wherein it is observed that, "it is to be noted that the explanation when offered by I.O. on being questioned on the aspect of delayed examination, by the accused has to be tested by the Court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the Court can consider it to be one of the factors to affect credibility of the witnesses, who were examined belatedly. It may not have any effect on the credibility of prosecution's evidence tendered by the other witnesses."

42. Thus, primarily it was for the accused to question the investigating Officer to explain the delay in recording the statements of witnesses. Admittedly, in the present case, the IO was not cross-examined on the aspect of delay in recording the statements.

43. In case of Gunnana Pentayya alias Pentadu & Ors. Vs. State of Andhra Pradesh, 2008 ALL MR (Cri), wherein it is held by the Hon'ble Apex Court that, mere delay in recording the statements of witnesses is not fatal unless a specific question is put to the investigating officer regarding the reason for delay.

44. In another case Firoz Khan Akbarkhan Vs. State of Maharashtra, 2025 SCC OnLine SC 627, the Hon'ble Apex Court has held that, delay in recording the statements of witnesses more so when the said delay is explained, will not aid an accused. Of course, no hard and fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it.

45. In the present, the Investigating Officer is not cross-examined on the aspect that why there was delay in recording the statement of eyewitness PW-2/Jay Dhole and, therefore, this ground is also not sustainable.

46. Now, the only question arises that whether accused Nos. 1 to 3 in furtherance of their common intention committed the murder of the deceased or caused his death. As far as the evidence of PW-1/Pushpa Dhole and PW-2/Jay Dhole is concerned, which only attributes the vital role to the accused No.1/Abdul Jahid @ Raju S/o Abdul Rashid. Though PW-2/Jay Dhole is a child witness has exaggerated his version that accused Nos. 2 and 3 also assaulted his father by fist and kick blows, however, that is not supported by any other evidence. Though the blood stains are appearing on the clothes of accused No.3 of a blood group 'A' of the deceased, but as far as the role is concerned, there is no evidence that any overt act is attributed to him.

47. The common intention contemplated under Section 34 of the IPC presupposes prior concert. It requires meeting of minds. It requires a

prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused.

48. The Hon'ble Apex Court has an occasion to interpret word "furtherance" in the case of Jasdeep Singh @ Jassu Vs. State of Punjab, (2022) 2 SCC 545, wherein it is held that, word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyze and assess the evidence before implicating a person under Section 34 of the IPC. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The evidence should be substantial, concrete, definite and clear.

49. By applying the aforesaid principles to the case in hand, the common intention of the accused persons i.e. accused Nos. 2 and 3 is not established by the prosecution on the basis of the evidence of eyewitness PW-2/Jay Dhole.

50. Thus, after appreciating the entire evidence on record as far as the accused No.1 is concerned, whose involvement in causing the death of the deceased is established by the prosecution. However, accused Nos. 2 and 3 were sharing common intention with the accused No.1, is not established by the prosecution. The evidence of the prosecution witness to the extent of involvement of the accused No.1 is consistent and cogent. The inconsistencies which are brought on record during the evidence of PW-1/Pushpa Dhole and PW-2/Jay Dhole are trivial in nature and do not affect the prosecution's case.

51. For the reasons recorded above as already observed that, the involvement of accused Nos. 2 and 3 to the extent that they were sharing common intention, is not established by the prosecution. However, the involvement of accused No.1 is established by the prosecution beyond reasonable doubt and, therefore, the Appeal deserves to be allowed partly. Accordingly, we proceed to pass the following order.

ORDER

i. Criminal Appeal is partly allowed.

ii. The judgment and order of sentence passed by the Sessions Judge, Yavatmal to the extent of accused No.1/Abdul Jahid @ Raju S/o Abdul Rashid, is hereby maintained.

iii. The judgment and order of sentence convicting accused No.2/Abdul Kadir @ Sonu S/o Abdul Rashid and accused No.3/Abdul Rashid S/o Abdul Gaffur of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for life and to pay fine

of Rs.50,000/- each, in default of payment of fine to suffer simple imprisonment for six months, is hereby quashed and set aside.

iv. The accused No.2/Abdul Kadir @ Sonu S/o Abdul Rashid and accused No.3/ Abdul Rashid S/o Abdul Gaffur shall be released forthwith if not required in any other crime.

v. The bail bonds of accused Nos. 2 and 3 stand cancelled.

vi. R & P be sent to the Trial Court.

52. Pending application/s, if any, shall stand disposed of accordingly.