

(2010) 04 BOM CK 0150
In the Bombay High Court
Case No : Criminal Appeal No. 959 of 2002

Akram Khan Sirajulhaq

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 172, 25A, 293, 313, 374
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 112 BOMLR 1859

Hon'ble Judges : S.J. Kathawalla, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.P. Gupte, for the Appellant; J.P. Yagnik, APP, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This appeal filed u/s 374 of Cr.P.C. is directed against the order of conviction and sentence passed by the learned Additional Sessions Judge for Greater Mumbai in Sessions Case No. 433 of 1991, on 8th, 9th and 12th August, 2002 and by the said order, the appellant, sole accused, came to be convicted for the offence punishable u/s 302 of IPC and sentenced to suffer RI for life and to pay a fine of Rs. 1000/-, in default further RI for one month. During the trial, the accused was on bail and his bail bonds were cancelled and he was directed to be taken in custody on pronouncement of the order of conviction and sentence. On admission of this appeal, the bail applications were rejected and thus he is undergoing the sentence as of now.

2. We were informed across the bar that Shri A.P. Gupte, who had filed this appeal on behalf of the appellant had also conducted the trial in Sessions Case No. 433 of 1991, as a defence counsel and sometimes in the year 2002 when the appellant failed to obtain bail, as per the information provided by Shri Gupte, the appellant had taken away the papers from him. The record of this appeal shows that while in jail, on 6/7/2004 the appellant submitted an application to this Court to appoint a defence counsel for him at the Government expenses and

hence we appointed Shri A.P. Gupte as the Advocate for the appellant in this appeal.

3. As per the prosecution, PW 5 - Mumtaz Begum and her husband - Hamjamiya @ Babu Abdul Karim were residing at M.K. Chawl, Naitodi Village, Eksar Road, Borivali (W), Mumbai and begot three daughters and two sons. Hamjamiya was employed with a company by name Zarman Remedies in place of his father and he was involved in an extra marital relationship with another lady by name Ayesha Begum, the daughter of Majid Chappalwala, resident of the same area and in due course of time, Ayesha Begum came to be married with the appellant-accused. On 27/1/1991, PW 5 had gone to her sister's house near Dahisar Railway Gate and at about 9 p.m. she received a message that her husband was stabbed by a knife and was taken to Bhagwati Hospital at Borivali and he was declared dead. There was an assault inflicted on the deceased - Hamjamiya by the accused at about 8.30 p.m. in or near the urinal located behind the house of PW 2 - Mohd. Adil Ansari, on account of a quarrel between the two of them i.e. the deceased and the accused. The stab injuries were inflicted by a button knife by the accused and he was caught hold by the mob present at the spot. When the deceased was taken to the hospital via the police station, the accused was beaten up by the mob and sustained some bleeding injuries and had fallen down at or near the spot of the incident and with the help of the residents he was picked up by two police constables, who were on patrolling/detection duty, immediately after the incident. He was admitted overnight in the police hospital at the municipal hospital at Borivali. FIR at Exh. 9 came to be registered on the same day between 10 to 11 p.m. on the basis of the complaint submitted by PW 3 - Sayyed Iqbal Ahmed, an auto-rickshaw driver, after the injured was declared dead and the injured was taken by PW 3 and PW 4 - Yakub Hasan Vadekar who is the brother-in-law of the deceased. Inquest Panchanama at Exh. 6 was drawn at about 11.30 p.m. and PW 1 - Shri Shaikh Yusuf was one of the panchas for the same. The accused was taken to the Borivali Police Station by the police constables on detection duty and he was subsequently arrested. The I.O. visited the spot of the incident, recovered one button knife and also collected blood mixed soil there from. Spot Panchanam along with recovery of knife was drawn at Exh.24 and PW 7 - Dilip Mane was one of the witnesses for the same. The blood stained clothes on the person of the accused were also recovered and sealed along with the blood stained clothes recovered from the dead body of Hamjamiya. These articles were subsequently sent for C.A. on 25/3/1991. On 28/1/1991 the dead body of Hamjamiya was sent for post mortem and PW 6 - Dr. Baban Shinde, attached to the Additional Coroners Court at Juhu conducted the autopsy and signed post mortem notes at Exh. 14, between 12.30 to 1.20 p.m. He had also taken blood samples from the body of the deceased and sent for C.A. The blood group of the accused remained inconclusive and there was no trace of any alcohol/poison in his blood as per the C.A. reports at Exhs.15 and 16. The investigation was taken over and completed by Shri Bhujangwar, PI, and on completion of the investigation, charge-sheet came to be filed on 26/4/1991.

As the case was triable exclusively by the Sessions Court, it was committed on 10/5/1991 and the learned Additional Sessions Judge framed the charge on 12/2/2001.

4. The prosecution examined in all eight witnesses and in addition to the testimony of the panch witnesses PW 1 and PW 7, it mainly relied upon the evidence of PW 3 - Sayyed Ahmed and PW 4 - Yakub Vadekar. The prosecution tried to place on record the motive behind the assault through the evidence of PW 5 - Smt. Mumtaz Begum. PW 8 - Ashok Navkudkar was at the relevant time attached to the Borivali Police Station as PSI and he was involved in the investigation along with Shri Bhujangwar, who retired after the charge-sheet was filed. The prosecution claims that PW 2 - Mohd. Ansari was an eye witness to the incident of assaults and PW 3 and PW 4 had also seen the incident of thrashing of the accused by the mob.

5. As per the inquest panchanama at Exh.6, there were in all 14 injuries noticed on the person of the deceased and Dr. Baban Shinde - PW 6, while in the witness box, stated that while performing post mortem, he noticed the following external injuries on the dead body:

1. Incised wound 2 cm x 0.5 cm x skin deep left side of submandibular region.
2. Incised wound 1 cm x 0.5 cm x 2nd right intercostal / 6 cm from sternum.
3. Incised wound 1.5 cm x 1 cm x skin deep over right pectoral region horizontal.
4. Incised wound 2 cm. X 1 cm x skin deep right upper arm upper 1/3 medial aspect.
5. Incised wound 7th x 0.5 cm x skin deep over posteriomedial aspect of right arm middle 1/3 horizontal.
6. Incised wound 4.5 cm x 2 cm x skin deep over post aspect of right arm lower 1/3.
7. Incised wound 1.5 cm x 0.5 cm x skin deep over right hypochondrial region.
8. Stab wound 2.5 cm x 1 cm x cavity deep infra-axillary region. ant. axillary line at level 8th rib.
9. Stab wound 1.5 cm x 1 cm x Cavity deep right infra-axillary region oblique.
10. Incised wound 2 cm x 0.8 cm x skin deep over right gluteal region upper and outer quadrant.
11. Incised wound 2.5 cm x 1 cm x skin deep below left knee horizontal.
12. Stab wound 4 cm x 1.5 cm x Cavity deep in 7th and 8th intercostal spaces oblique 5 cm left to sternum lower and medially.
13. Incised wound 1 cm x 0.5 cm x skin deep left perioral region.

14. Abrasion 2 cm x 0.5 cm over left shoulder posteriorly.

15. Abrasion 2 cm x 1 cm over sternum at level of 2nd rib.

He also noticed corresponding internal injuries, namely, right 7th intercostal space pierced right 9th rib cut, left 6th intercostal space pierced, pericardium torn rupture apex of heart, right liver lobe ruptured (3 cm x 1 cm x 7 cm). As per the doctor, all these injuries were ante mortem and they were sufficient to cause death in the ordinary course of nature. He opined that the cause of death was "shock and haemorrhage due to multiple injuries". He also stated that the injuries, as seen on the dead body, were possible to be caused by means of the knife (Article 7) which was shown to him in the court. Whereas the abrasions injuries at Sr. Nos. 14 and 15 could be caused due to contact with hard and blunt surface. The injuries sustained by the deceased clearly indicated that there were multiple assaults inflicted on the deceased and as per the doctor all the injuries caused by any article like knife (Article 7) would be one angle as sharp and other angle as blunt. He further stated that the injured might have died within 12 to 24 hours prior to the time of post mortem. Thus, the prosecution, through the evidence of this witness, read with the post mortem notes at Exh. 14, proved that Hamjamiya died a homicidal death on account of the multiple injuries, he sustained on 27/1/1991.

6. We have to, therefore, examine whether the said homicidal death was caused by the appellant on the basis of the evidence that was adduced by the prosecution before the trial court. As noted earlier, the accused was picked up initially by the mob at the spot and subsequently by the police in injured condition and was admitted in the Bhagwati Hospital at Borivali on 28/1/1991 and came to be discharged on the next day. Medical Certificate issued by the said hospital at Exh.18, he had sustained injuries as shown in Exh.18 and two of the injuries were CLWs. and could not have been caused by sharp weapon. This medical certificate at Exh.18 was admitted by the defence before the trial court. In his statement u/s 313 of Cr.P.C. before the trial court, accused admitted that at a distance of about 5 ft. from the spot of incident, the members of the public had caught hold of him and he was beaten by them and on hearing of shouts "Pakdo Pakdo Ye Babu Ko Markay Bhag Raha Hai" the nearby persons gathered and caught hold of him and some of them assaulted him. On a specific question, accused admitted that he was unconscious at the spot and was taken to the hospital. He also admitted that some of the members of the mob obstructed, stopped and caught hold of him and started giving blows to him and at that time PW 4 - Yakub Vadekar stated that the accused was the son-in-law of Majid Chappalwala and requested not to beat. But he denied that the injuries sustained by the deceased could be caused or were possible by the knife (Article 7). Thus, the accused himself admitted before the trial court that at the spot of the incident and within a short distance of about 5 ft. while he was trying to run away, he was obstructed and caught hold of by the members of the mob present and he was beaten up by them in which he sustained injuries and fell

unconscious. His presence at the spot and while in the process of fleeing away from the spot having been thrashed by the members of the mob to the extent that he fell unconscious, is an admitted position.

7. PW 8 - Shri Ashok Navkudhkar stated in his examination-in-chief that at about 8.30 p.m. on 27/1/1991 PW 3 - Iqbal Sayyed along with PW 4 - Yakub Vadekar had brought the injured Hamjamiya Chaugule to the Borivali Police Station by auto-rickshaw and PW 3 gave the information about the incident. One constable was sent along with the complainant and the injured to Bhagwati Hospital in the very same auto-rickshaw. On registration of the complaint, as per the first informant PW 3, C.R. No. 55 of 1991 came to be registered for the offence punishable u/s 302 of IPC. The clothes on the person of the accused were recovered after he was arrested around 11.30 p.m. on 27/1/1991 and those were sealed. Under the forwarding letter dated 25/3/1991 all these articles and more particularly the blood stained clothes of the deceased, blood stained clothes of the accused and the knife were sent for C.A. and C.A. reports at Exhs. 28, 29, 39 and 31 were received by him on 2/7/1991. As per the C.A. report at Exh. 28, the blood group of the accused was detected to be "AB" and though the detection of blood group of the deceased remained inconclusive, the blood stains on the clothes of the deceased like the full pant, shirt, jangya (underwear) and handkerchief were detected to be of blood group "B". This report, therefore, went to show that the blood group of the deceased was "B". The blood stains on the knife blade (Article 7) was human blood and of group "B". Whereas the blood stains on the clothes recovered from the person of the accused were detected to be of blood group "B" as well as "AB".

8. It was submitted by Shri Gupte, the learned appointed Advocate, that the prosecution failed to explain through the evidence of PW 8 the inordinate delay caused in forwarding the articles recovered for C.A. and these articles were not forwarded for almost two months. He, therefore, stated that it would not be safe to rely upon the C.A. reports so received. It is true that under Exh.29, these articles were forwarded for C.A. vide letter dated 25/3/1991 and PW 8, by way of explanation, stated before the trial court that Shri Bhujangwar was the IO and after filing the charge-sheet, the IO retired from the service and he was not personally aware that these articles were not forwarded for C.A. in time. The fact remains that the C.A. reports were received from the public authority i.e. the Chemical Analyzer of the State Government and u/s 293 of Cr.P.C., such report could be used as evidence in any inquiry, trial or other proceedings under the said Code and the court may, if it thinks fit, summon and examine any such expert as to the subject matter of the report. Further the provisions of the said Section apply to the Chemical Analyzer or Assistant Chemical Analyzer to the State Government, as well. Hence, if the defence had any doubt about the veracity of these reports, on its application the court could have summoned and examined the Chemical Examiner/Analyzer. This was not done. The trial court has dealt with the very same objection raised before it and in our opinion rightly discarded the same.

9. PW 2 is claimed to be an eye witness by the prosecution. It was urged by Shri Gupte before us that the trial court was in error in relying upon the testimony of this witness, leave alone he being an eye witness. It was pointed out that though his house is located just in front of the subject urinal and he claimed to be present when the incident had taken place and chased the accused, he did not approach the police or his statement was not recorded by the police till 2/2/1991 and during these 4 to 5 days he was admittedly available in Mumbai and was residing with his family. As per Shri Gupte, either the witness or the prosecution was required to explain this inordinate delay and if this explanation was found satisfactory, the trial court would be justified in accepting him to be the reliable witness. In his cross-examination before the trial court, this witness was called upon to explain the said delay and he stated,

I did not go to the police station on my own during the said period of 3 to 4 days from 27/1/1991 upto the date of recording of my statement. Since number of persons had gathered at the place of incident and caught hold of the accused herein, I did not feel it necessary to go to the police station and deposed the said matter to police personnel. I also did not feel it necessary to go to the police station even after 27/1/1991 and report the matter to the police personnel, since I used to work as daily wage and since once I was called for inquiry and was asked to go.

Having furnished this explanation, which admittedly is an evidence before the trial court, the learned Judge accepted him to be a reliable witness and we do not find any error in the same. In support of the arguments, to rely upon the evidence of PW 2, Mr. Yagnik, the learned APP, has rightly relied upon the Constitution Bench decision in the case of Tahsildar Singh and Another Vs. The State of Uttar Pradesh, and more particularly the explanation furnished by the said witness for his not visiting the police station any time after the incident till his statement was recorded on 2/2/1991.

10. PW 2, during his examination-in-chief, stated before the trial court that he was a resident of the area where the incident had taken place for about 30 years and he knew the family of the deceased. On 27/1/1991 at about 8.30 p.m. he had returned from work and went to public urinal behind his house to answer the nature's call. At that time he noticed that two persons standing in the public urinal were quarreling with each other and one of them was Hamjamiya and he did not know the other person at that time, but subsequently he came to know the other person's name as Akram Khan and was the son-in-law of Majid Chappalwala. He noticed blood like on the floor of the urinal and, therefore, told both of them not to quarrel. When he was through attending to the nature's call, he saw that Akram was running from the spot and was being followed by the injured and he collapsed near the electricity pole. He, therefore, shouted, "Pakdo Pakdo Ye Babu Ko Marke Bhag Raha Hai". On hearing his shouts, nearby persons gathered and caught hold of Akram and assaulted him. After about 20 to 25 minutes police arrived at the spot and took the accused away. He identified the

accused to be Akram Khan in the court. In his cross-examination, he admitted that his statement was recorded by the police on 2/2/1991 but only once and he had come to know the name of the accused as Akram Khan on the same day. He also admitted that prior to the incident, he was not knowing the accused. He further stated in his cross-examination that while he was in the urinal block, the assailant ran away assaulting Babu from the very same urinal block and the distance between the urinal and electric pole where Babumiya collapsed was about 30 to 35 mtrs. The witness was asked, whether he was frightened and went to his residence when the accused being assaulted and he replied that he was standing behind the mob at that time. In his cross-examination, he also stated that two police constables on bandobast duty came to the place where the mob had gathered and took him away. The distance between his residence and Gaothan area is about 30 to 40 mtrs. He admitted that he knew PW 3, but did not know Yakub Vadekar - PW 4. He also admitted that the police contacted him for the first time on the date on which his statement was recorded.

On these depositions, Shri Gupte has raised two issues which need to be dealt with. He pointed out that the station diary as well as the case diary was not before the court and the IO was not examined. At the same time, Exh.32 and Exh.33 were two different statements of PW 2 recorded by the IO on the same day i.e. on 2/2/1991 and Exh. 33 appeared to be an improvement so as to fill in some lacuna and to make this witness more reliable. It was urged by Shri Gupte before us that despite the adjournments, Shri Bhujangwar, PI, could not be examined by the prosecution and, therefore, both these statements were required to be discarded. He also submitted that these are additional grounds on account of which PW 2 did not appear to be a natural witness. We are not impressed by these submissions. Firstly, in the cross-examination this witness admitted that he had gone to the police station only once and his statement was recorded only on single occasion and, therefore, both the statements at Exh.32 and Exh. 33 cannot be discarded. Even if we consider one of these two statements, there are hardly any contradictions or improvements brought out during his cross-examination so as to make the testimony of this witness doubtful on material aspects. His house was at about 10 to 15 ft. away from the subject urinal, where the incident had taken place and the details of the incident, as stated by him in his examination-in-chief, could not be shaken up in the cross-examination, even if some improvements/contradictions were brought on record by the defence. Certainly, the prosecution case could have been strengthened if the IO along with the two constables who had taken the accused in custody was examined by the prosecution and in addition the availability of the case diary for the perusal of the court could be of advantage. But these deficiencies in the prosecution case would not affect the testimony of this witness to the extent he had seen the incident and as stated in his examination-in-chief before the court.

11. PW 3 - Sayyed Ahmed stated in his examination-in-chief that Babumiya was lying in a pool of blood and at a distance of about 5 ft. from him the members of the public had caught hold of the accused and they were beating him. He and

Yakub shifted Babumiya in one auto-rickshaw and took him to the Borivali Police Station. He knew the accused and he identified him before the court as the person standing in the dock. He also stated that PW 4 is the brother-in-law of the deceased. On reaching Borivali Police Station he informed the police officer that murder had taken place and the culprit had caught hold of by the members of the public near the place of incident. The police officer instructed him to take Babumiya to Bhagawati Hospital along with one constable and after reaching the said hospital, the doctor concerned, on examination of Babumiya, declared him dead. He returned to the police station where his statement was recorded and it was read over to him. He verified the contents of the FIR (Exh.9) and it was signed by him. He also stated that he provided the police with the address of the place of incident. In his cross-examination, he stated that he knew the name of the accused prior to the occurrence, but he did not know his address correctly. He further clarified that he was not knowing the occupation of the accused at the relevant time and the police had shown him as the accused at the time of recorded of his statement and he had seen the accused in injured condition in the police station. He used to ply his auto-rickshaw between 7.30 a.m. to 5 p.m. and on the date of the incident he had returned home by 6.30 p.m. Around 40 persons had gathered around the accused at about 5 ft. away from the place where Babumiya was lying and he knew almost all of them. He also admitted that when his statement was recorded he did not state the name of the accused. He denied the suggestion that he was not knowing the accused by name or by place prior to the date of the incident and that he did not hear any commotion and did not come out of the house. He also denied the suggestion that he had not seen Babumiya lying near the public lavatory and the members of the public assaulting the accused. He also denied the suggestion that he had not taken Babumiya to the hospital and that he was deposing falsely at the instance of the police.

12. PW 4 - Yakub Vadekar was also the resident of Naitodi Village which is the locality where the incident had taken place and he stated that the deceased was his wife's brother on 27/1/1991 at about 8.30 p.m. he had returned from his work and was standing near hotel Shankar after ordering for tea and saw Babumiya running from the opposite direction and he collapsed near the electric pole. The accused was armed with knife and was chasing Babumiya from behind raising the said knife and some members of the public obstructed Akram Khan and caught hold of him. He was assaulted by the public and the accused stated that he was the son-in-law of Majid Chappalwala and requested not to beat him. He identified the accused in the court as the same person. He further stated that along with PW 3 he had taken the deceased in an auto-rickshaw to the Borivali Police Station and thereafter to Bhagwati Hospital along with one police constable. After Babumiya was declared dead they returned to the police station and the statement of PW 3 was recorded by the police at the first instance and subsequently his statement was recorded. In his cross- examination, he stated that he was self employed and his business hours were between 8.30 - 9 a.m. to

7.30 - 8 p.m. He also admitted that on the Eksar Road there was traffic at the relevant time and he had gone to the place where Babumiya was lying, after he had collapsed. In his cross-examination it was brought out that he had not disclosed that Akram Khan was running or chasing Babumiya from behind raising knife in his hand when his statement was recorded by the police. He also admitted in the cross-examination that he came to know the name of Akram Khan only when his statement was recorded by the police. These contradictions, in our opinion, cannot make this witness as totally unreliable, more so when the doctrine of falsus in uno falsus in omnibus is not applicable to our criminal jurisprudence. This witness has corroborated the testimony of PW 3 to the extent that in the assault Babumiya sustained injuries and he collapsed near the electric pole on 27/1/1991, the accused was caught hold of by the members of the crowd and was beaten up and he also collapsed. Both of them had taken Babumiya to Borivali Police Station and subsequently to the Bhagwati Hospital and FIR was recorded between 10 to 11 p.m. on the same day at Borivali Police Station.

13. PW 7 was the witness for the recovery of knife from the spot of incident. He identified the knife (Article 7) shown to him before the court. One sealed packet was shown to him in the court and he admitted that the label thereon had his signature at Sr. No. 2 and in the said packet one cigarette packet empty of Wills brand was shown to him. He identified the same cigarette packet which was seized from the spot of incident on 27/1/1991 at about 11.40 p.m. He also identified the wrapper of the knife and it bore his signature at Sr. No. 2. He stated that the police personnel prepared the panchanama at Exh.24, the same was signed by him and the contents therein were correctly recorded. Thus, through the evidence of this witness along with the contents of the spot panchanama at Exh.24, the recovery of knife with a grip of 12 1/2 cm in length and 2 1/1 cm in width and the blade of 16 1/2 cm in length and 3 cm in width has been proved. The panchanama also states that on the blade of the knife blood stains were noted. This spot panchanama has been confirmed in the evidence of PW 8 - Ashok Navkudkar who stated that it was written in his hand writing and he had counter signed it. The panchanama for the seizure of the clothes from the person of the accused and drawn at Exh.27 has been proved through the evidence of this witness. He stated before the court that both the panch witnesses Shri Ibrahim Abdul and Shri Sikandar Ali Kammu were not traceable and, therefore, he submitted a report to that effect at Exh.26. The witness being the writer of the said panchanama at Exh.27, it was taken on record and exhibited. He identified the clothes of the accused seized through this panchanama and shown to him before the court i.e. Article Nos. 10 to 12. He admitted in the cross-examination that the statement of the complainant was recorded by Shri Bhujangwar in his presence and he did not remember whether accused was shown to the complainant while recording his statement. He was in Bhagwati Hospital till 11.30 p.m. on 27/1/1991 and had completed the inquest panchanama at Exh.6 and thereafter he had gone to the place of incident directly. He had noticed some police personnel already present at the spot and PI

Bhujangwar made enquiries with the nearby residents in respect of occurrence of the incident. They had not met PW 2 - Mohd. Ansari at the said place and his statement was recorded on 2/2/1991 by Shri Bhujangwar in his presence. He further stated that only one statement of PW 2 was recorded in his presence and he identified that to be Exh. 32. He further admitted that he was not aware whether PW 2 had visited the police station at any time between 27/1/1991 till 2/2/1991 and did not remember who had called him to the police station. The statement at Exh. 33 was not recorded in his presence. He also admitted, when shown the panchanama at Exh.24, that he did not mention regarding folding of the knife at the time of its seizure. He denied the suggestion that the knife was not found and was not seized under the said panchanama.

14. The evidence of PW 5 - Smt. Mumtaz Begum was considered by the trial court to examine motive behind assault and the learned trial court did not accept her to be a reliable witness for the same. It has come in her evidence that on two occasions she had seen her husband sleeping with Ayesha Begum but that was before her marriage and prior to 1982. She admitted in her cross-examination that she had not seen her husband and Ayesha together any time from 1982 till his death and, therefore, the learned trial Judge did not consider her testimony to support the prosecution case on motive. However, we have noticed that in her examination-in-chief, this witness clearly stated that after the murder of her husband she had visited the company where he was working i.e. German Remedies Company for collection of legal dues and there she had learnt that Ayesha Begum had continued her illicit relationship with the deceased. Be that as it may, when the prosecution case is supported by the eye witnesses, the element of motive gets backseat. We must also note that this case has its own special features and, therefore, the identification parade of the accused was inconsequential. At the spot of the incident and immediately after he collapsed, the accused, while running away from the place, or chasing the deceased, was stopped, surrounded and beaten up. He sustained bleeding injuries. On his clothes the blood of his blood group as well as that of the deceased was detected. He was caught unconscious from the place of the incident and taken in custody and in the injured condition. The knife recovered from the spot did connect with the injuries as per the evidence of PW 6 - Dr. Baban Shinde and it was stained with blood of group "B", which was of the deceased.

15. Having considered and re-appreciated the evidence, as adduced by the prosecution before the trial court, there is no doubt that it was the accused only who had unleashed an attack on the deceased with the knife and on account of the said injuries the victim died and thus the accused caused the homicidal death of Babumiya. The assaults were multiple as is clear from the number of incised wounds, ribs were fractured, heart was ruptured and, therefore, his knowledge and intention in causing these injuries was clear. The trial court rightly convicted the accused for the offence punishable u/s 302 of IPC and, therefore, the said order is required to be confirmed.

16. Having regard to the deficiencies seen in the prosecution case, it would be , as suggested by the learned APP, in the interest of criminal justice administration that the Director of Prosecution, State of Maharashtra who is a statutory authority u/s 25A of Cr.P.C., is directed to issue appropriate orders calling upon the learned prosecutors all over the State of Maharashtra to ensure that the case diary as is required to be maintained u/s 172 of Cr. P.C. is produced before the trial begins so that it is available for the perusal of the court along with the originals and muddemal. We direct accordingly.

17. Hence this appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the learned Additional Sessions Judge in Sessions Case No. 433 of 1991 on 12/8/2002 is hereby confirmed.

18. The Registrar (Judicial) is directed to forward a copy of this order to the concerned Jail. The professional fees of Shri A. P. Gupte, the learned appointed Advocate, is quantified at Rs. 3000/-.