

(2017) 07 BOM CK 0241
In the Bombay High Court
Case No : 265 of 2001

Gaffar Khan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-07-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 34, Section 304-II -
Punishment for murder - Acts done by several persons in furtherance of common
intention

Citation : (2017) 07 BOM CK 0241

Hon'ble Judges : V. M. Deshpande

Bench : SINGLE BENCH

Advocate : M.R.Khan, N.B.Jawade

Judgement

1. By the present appeal, the appellant who stands convicted for the offence punishable under Section 304 Part II of Indian Penal Code is sentenced to suffer R.I. for five years and to pay fine of Rs. 1000/and in default of payment of fine to suffer further R.I. for four months,is before this Court.

2. SubDivisional Police Officer(SDPO) Ravindra Prabhakar Shegaonkar was posted at Morshi from October1992 to June1993. The P.S.O.Shirkhked is within the territorial jurisdiction of SDPO, Morshi. Maroti Tukaramjji Taiwade(PW1) came to P.S. Shirkhed on 16/10/1992. He lodged his oral report(Exh.43) before SDPO Ravindra Shengaonkar(PW12). By the said report it was reported that he owns autorickshaw bearing registration no.MH27471 and the said autorickshaw used to ply by his brother Vasant Tukaramji Taiwade(deceased). He used to ply the said autorickshaw in between Nerpingali to Legaon fata. On 16/10/1992 when the first informant (PW1) returned from his agricultural field that time he was informed that his brother Vasant and Gaffur Khan (appellant) had a quarrel at Nerpingali bus stop. Thereafter Vasanta and appellant Gaffur Khan proceeded towards Legaon fata in autorickshaw driven by Vasant. The said autorickshaw was followed by another autorickshaw driven by one Imran. In the said

autorickshaw Imran,Rafiq and other 23 persons were seated. It is further stated in the F.I.R. that thereafter quarrel took place in between them and in that they assaulted Vasanta by means of sharp edged weapon. His brother Vasanta was admitted by Vijay Mahure, Rupral Bhopde and one Adne. Thereafter first informant alongwith Vijay Ingale went to Govt. Hospital, Morshi, however that time Vasanta was declared as dead.

3. The report(Exh.43) was reduced into writing by Ravindra(PW12)himself. After reduction of report into writing, A.S.I. of P.S.Shirkhed prepared F.I.R. in the prescribed proforma. Offence was registered against appellant Gaffurkhan, Rafiqkhan, Imrankhan and 23 unknown persons at P.S.Shirkhed vide Crime No.210/1992 for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code. After registration of the crime Ravindra(PW12) took up the investigation upto himself.

4. On 17/10/1992 at about 00.45 a.m. he arrested appellant and another accused Rafiq. Thereafter he visited Rural Hospital alongwith panchas and there he conducted inquest panchnama (Exh.25) over the dead body of Vasanta. Another accused Imran Khan was also arrested on 17/10/1992 itself. On 17/10/1992 at about 7.30 a.m. investigating officer prepared spot panchnama (Exh.28) in presence of panchas from the spot. He seized one pair of chappal, slipper pair and stick. Statements of ten witnesses were recorded on the same day. On 17/10/1992 investigating officer sent appellant Gaffurkhan to the Government Dispensary, Morshi by issuing requisition (Exh.38). Next day, he recorded statements of other 11 witnesses. On 18/11/1992 during the police custody remand appellant made his disclosure statement that he has concealed weapon i.e. knife near roots of one shrubs situated near Dhawalia nullah and he agreed to show the said place for recovery of the said weapon.Memorandum statement is at Exh.65. Consequently, weapon was recovered from the place which was shown by appellant and recovery panchnama is at Exh.66. After completion of usual investigation,the investigating officer filed chargesheet before learned J.M.F.C.Morshi. The learned Magistrate noticed that the offence is exclusively triable by the Court of Session therefore he passed committal order and after committal case was registered as S.T.No.211/1992. The learned Additional Sessions Judge,Amravati framed charge against appellant and other two accused persons Rafiqkhan and Imrankhan for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code for committing murder of Vasant. All the accused persons abjured their guilt and claimed for their trial.

5. In order to bring home their guilt, the prosecution examined in all 14 witnesses and also relied on the documents which were duly proved during the course of trial. After appreciation of the prosecution case, vide impugned judgment and order learned Judge of the Court below acquitted all the accused persons for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code. However the appellant was convicted for the offence punishable under Section 304 Part II of the Indian Penal Code and sentenced him

to suffer R.I. for five years. Hence, this appeal.

6. Heard Shri M.R.Khan, learned counsel for appellant and Shri N.B.Jawade, learned A.P.P. for State. With the assistance of learned counsel I have gone through the record and proceedings of the case.

7. P.W.13 is Dr.Shamsundar Haribhau Nikam. He conducted post mortem over dead body of Vasant. While conducting post mortem he noticed one penetrating incised wound obliquely placed to anterio lateral aspect on left thigh of size 1" x 1 1/2" x with clots with dark coloured fluid oozing. The said wound was 5 1/2" below iliac crist. On opening of the body autopsy surgeon did not find any abnormality and all organs were found normal. The post mortem report is at Exh.27. According to the post mortem report (Exh.27) the cause of death is "due to shock due to severe hemorrhage because of injury to the underlines vessels and muscles and tissues". The post mortem report(Exh.27) shows that the assault on the deceased was not on his vital part of body. The learned Judge of the Court below in my view has correctly reached to the conclusion that the prosecution could not prove its charge that the assault was made on Vasant with an intention to cause his death, therefore in my view the Court below has rightly acquitted the appellant and other accused of the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code.

8. Though, the appellant and other coaccused were acquitted by the Court below of the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, the State has not filed appeal against their acquittal.

9. The question that is posed to this Court is as to whether the conviction as imposed upon the appellant for the offence punishable under Section 304 Part II of the Indian Penal Code is sustainable.

10. Though the prosecution has examined Sau. Asha Sriram Sapkal(PW6), Ku.Rukhma Narayan Adane(PW7) and Sau.Suman Rajaram Sapkal(PW8) as eye witnesses to the incident these three ladies turned hostile and nothing could be brought on record even through their crossexaminations by the learned A.P.P. As a result, there is no eye witness account to the assault made on Vasant.

11. Consequently, learned Judge of the Court below noticed that the prosecution case is required to be decided on the basis of circumstances. The learned Judge after appreciating the prosecution case has cull out following circumstances which were used by the learned Judge of the Court below in convicting the appellant. Those are as under: (a) That on 17/10/1992 in the evening time at about 5.00 p.m. to 5.30 p.m. at the S.T. stand of village Nerpingalai a quarrel between deceased Vasant Taiwade and accused no.1 had taken place and in that quarrel some altercation between them had also taken place.

(b) That on separation of quarrel between deceased Vasant Taiwade and accused no.1 the deceased Vasant Taiwade had forced accused no.1 to sit his (Vasant's) autorickshaw and he (Vasant) had taken his autorickshaw towards lahegaon

Phata;in other words deceased and accused no.1 were lastly seen together.

(c) That accused no.2 and accused no.3 and some other persons had followed the autorickshaw of deceased Vasant Taiwade through another autorickshaw.

(d) That accused no.1 was seen while coming from the side of place of incident and at the relevant time he was having injuries on his person.

(e) That oral dying declaration made by deceased Vasant Taiwade against accused no.1.

(f) That the recovery of weaponknife made on the disclosure statement of accused no.1.

(g) That the blood of having the blood group of deceased Vasant Taiwade was detected on the seized knife and on the clothes of accused no.1 and

(h) That the slipper found at the place of occurrence was found fitted to the foot of accused no.1.

The learned A.P.P. heavily relied on these circumstances alone for supporting the impugned judgment.

12. In so far as first circumstance is concerned which relates to dispute between appellant and deceased there is evidence of Vijay Marotrao Ingale(PW2). This prosecution witness was member of Zilla Parishad and Chief Secretary of Bhartiya Shetkari Kamgar Party of Nerpingali. On 16/10/1992 when he was present in his house he heard shouting. His attention was drawn due to shouting therefore he stepped out side his house to notice that exchange of words in between appellant and deceased Vasant. His evidence further shows that that time deceased was occupying driver seat and thereafter he asked appellant to take seat in his autorickshaw. Thereafter they moved in the autorickshaw towards Legaon fata. The said autorickshaw was followed by the rickshaw of Vijay Mahure and 23 other autorickshaws. Mamroti(PW1) first informant is not an eye witness to the incident of quarrel that occurred near bus stop. There is no reason to disbelieve Vijay(PW2) about the quarrel that took place in between appellant and Vasant.

13. The second circumstance and circumstance no.3 is the sequel of circumstance no.1. The evidence as available on record shows that there was quarrel in between deceased and appellant and it is the deceased who insisted the appellant that he should sit in his autorickshaw and thereafter they proceeded to Legaon Fata and was followed by other autorickshaws.

14. The fourth circumstances that was used by the learned Judge of the Court below is that appellant was seen while coming from the spot of incident and was having injuries on his person. In that behalf there is evidence of Sahebrao Bhimrao Deshmukh(PW3). At the relevant time, Sahebrao(PW3) was returning from his field to his house. That time, he noticed appellant with blood stained clothes. On inquiry, as per the version of this prosecution witness he was

informed by appellant that he was attacked by deceased Vasant by means of knife and thereafter Vasant ran away. After getting this information as per the evidence of this prosecution witness when he proceeded further he noticed autorickshaw standing on Lihida road with many persons gathered there. He reached near autorickshaw that time he noticed Vasant soaked with blood and a stick was lying near him. Vasant was asking for water. He was unconscious when he reached near him.

15. The another circumstance that was used against the appellant is oral dying declaration made by deceased Vasant against the appellant. This oral dying declaration is coming on record through Waman Bhagwansa Mawle(PW11)who claims that when he was returning from his field he noticed Vasant's autorickshaw in tilted condition and when he reached near autorickshaw he noticed that Vasant was lying in the autorickshaw and was demanding water. His clothes were soaked in blood. This witness(PW11) claims that Vasant disclosed to him that appellant stabbed him. He further states that Vasant asked him to inform the said fact at his residence. His evidence further shows that before reaching to the house of Vasant near S.T. stand he noticed gathering of large people including the father of Vasant to whom he informed that "Vasant was lying on the road".

16. The another circumstance is the recovery of weapon i.e. knife at the behest of the appellant. The other two circumstances are that blood of deceased was noticed on the clothes of the appellant and also that, slipper which was found at the place of occurrence was perfectly fitted to the appellant. So far as the last one circumstance is concerned the prosecution has examined Nana Devchand Pimple (PW5) P.S.I. As per version of this prosecution witness SDPO asked him to verify whether slipper seized from the spot belong to the appellant. Accordingly that attempt was made by him and he noticed that slipper which were seized from the spot were perfectly fitted in the foot of the appellant. To that effect a panchnama(Exh.52) is drawn. The learned A.P.P. also relied on the last circumstance of blood group of deceased noticed on the clothes of appellant and for that he relied on Exh.69.

17. The law is well crystalized as to how the Court should appreciate the case solely based on the circumstantial evidence. The leading lamp in that behalf is the authoritative pronouncement of the Hon'ble Apex Court in Sharad Birdhichand Sarda..vs..State of Maharashtra,1984(SCC 1622. By the said judgment and by subsequent catena of decisions of the Hon'ble Apex Court and on various occasions by this Court has ruled that if prosecution case is solely based on circumstantial evidence, it is the primary duty of the prosecution to complete the chain of events. If any coupling in the chain is missing then the benefit has to be extended in favour of the accused. Not only that every circumstances should be incriminating one, but there shall be a complete chain amongst those incriminating circumstances. One incriminating circumstance that by itself is not sufficient to convict the accused or to uphold his conviction if the

link is missing in between the said incriminating circumstance and other incriminating circumstances.

18. From the evidence of Maroti(PW1) it is clear that there was union of autorickshaw drivers at Lehagaon fata and Maroti, the owner of autorickshaw and Vasant were not the members of the said union. It is also established on record that Vasant was not ready to keep his autorickshaw in que for soliciting the passengers and there used to be quarrel between him and other autorickshaw drivers. One of such incident has occurred on 16/10/1992. At the time of verbal duel between appellant and deceased on 16/10/1992 Maroti was not present. He learnt such incident from others and his evidence to that extent is duly corroborated by Vijay Ingale (PW2), said is also evidence of Ramrao(PW4) other brother of deceased and also through the evidence of Ruprao Madhaorao Bhopale(PW10) The prosecution evidence shows that the verbal duel between appellant and deceased did not stop there. According to Vijay(PW2) and Ruprao(PW10) after exchange of hot words deceased Vasant insisted appellant that he should accompany with him in his autorickshaw. Thereafter, appellant occupied one of the seats in autorickshaw and Vasant drove the autorickshaw towards Legaon fata. The first circumstance as culled out by the learned Judge of the Court below in my view stands proved.

19. It is a trait law that suspicion however it grave may be, cannot take place of proof. The accused cannot be convicted merely because there exists grave suspicion against him as could be noticed from a particular prosecution case. It is a cardinal principle of criminal jurisprudence that the burden to prove its case beyond reasonable doubt is firmly placed on the shoulder of the prosecution. The prosecution cannot permitted to take any advantage or lacunae in the defence which accused may take during the course of trial. Therefore it is the bound duty of the prosecution to prove its case beyond reasonable doubt against the accused person against whom the prosecution wish to prove guilt. If there is an iota of doubt then advantage must go in favour of the accused persons.

20. The first three circumstances show that there was a quarrel in between appellant and the deceased. The examination of the prosecution evidence in that behalf shows that none of the prosecution witnesses claim that there was any physical assault at that particular point of time. What is available evidence in respect of the said incident is that there was verbal altercation in between the appellant and deceased. A verbal altercation in between appellant and deceased that by itself cannot term as incriminating circumstances especially in this case because two brothers of deceased are candidly admitting that deceased who was not the member of autorickshaw union used not to que his autorickshaw in line for waiting passengers. Further, Ramrao(PW4) has stated that when other autorickshaw owners used to charge Rs. 1/per kilometer that time Vasant in order to attract more and more passengers to his autorickshaw used to charge 50 paisa per kilometer. That shows that Vasant indulged in unhealthy competition in the business. Therefore, if there were verbal altercations in between appellant

and deceased in my considered view that cannot be termed as incriminating circumstance against the appellant. Be that as it may, merely because there were verbal altercations one should not jump to the conclusion that it is only the appellant who has caused injury on non vital part of the body of deceased which unfortunately resulted into his death.

21. The another circumstance, is that the appellant was returning from near the place of incident and that time he was having clothes stained with blood. In that behalf we have evidence of Sahebrao Bhimrao Deshmukh(PW3) which shows that appellant was returning from near the place of incident at that particular time his clothes were stained with blood. At the same time, we have evidence of Ramchandra Baliramji Madke(PW9). In the evening hours as per the evidence of this prosecution witness appellant met this prosecution witness near his house and he requested this prosecution witness that he should be taken in autorickshaw to P.S.Shirkhed. That time police station officer of P.S.Shirkhed asked Ramchandra (PW9) to leave the police station resultantly, he was required to leave the police station. What is important to note from the evidence of this prosecution witness that , that time he noticed blood oozing wound on the thigh of appellant. He also claimed that particular wound was also noticed by the police. What is important to note from the evidence of this prosecution witness (PW9) is that his evidence appears to be in isolation from the evidence of other prosecution witnesses and by such one can reached to the conclusion that he was not supporting the prosecution. Further, inspite of that this prosecution witness was not declared hostile witness. The law on this issue by now is well settled. In Mukhtiar Ahmed Ansari..vs..State(NCT of Delhi),AIR(2005)SC2804 the Hon"ble Apex Court in para nos. 29 and 30 has ruled that once the prosecution has examined particular witness and he did not support the prosecution and when he is not declared hostile, evidence of that prosecution witness is binding on the prosecution.

22. Keeping in mind the aforesaid principle of law as laid down in Mukhtiar Ahmed Ansari case (cited supra) it is clear that Ramchandra(PW9) took appellant in his autorickshaw to P.S.Shirkhed and at that particular point of time he was asked to leave the police station. The prosecution is not coming with clean hands on record. The prosecution for the reasons best known to it has suppressed the fact as to what happened when appellant was in police station. It is always expected from the investigating officer and the prosecution not to take the side of the either complainant or accused. It is the duty of the investigating officer to place all materials collected during the course of investigation. It is the duty of the Court to appreciate the evidence which is collected during the course of inquiry and investigation. I am of the firm view that the investigating officer cannot himself decide that a particular matter is not supporting the complainant though he collected during the course of inquiry or investigation therefore he will not file it on record. In my view, that pollutes the stream of administration of criminal justice. Therefore, to that extent I draw adverse inference against the prosecution.

23. The version of Ramchandra(PW9) that when he took appellant in his autorickshaw to P.S.Shirkhed that time he noticed blood oozing wound on his thigh is duly corroborated none other than investigating officer(PW12) himself. Ravindra(PW12) has stated in his evidence that he noticed injury on the person of appellant and he referred appellant to medical officer for his examination. Exh.38 is a requisition issued by the investigating officer to Medical Officer, Morshi for examination of appellant. He examined appellant on 17/10/1992 at 2.30 a.m. Appellant was arrested on 17/10/1992 at 00.35 hours. The injury certificate of appellant is available on record at Exh.39. Doctor who examined appellant noticed following injuries. (1) Penetrated incised wound over (Rt.) leg medially anteriorly size 1/2" x 1/4" edges are clear cut. Age of injury within 12 hours and could be caused by sharp probing object and will heal within 7 days if no complication.

(2) Contusion behind(L)ear size 1/4th" to 1/4th" circular age within 12 hours.

(3) Contusion over (L) axillary region downwards to thoracolumber region obliquely placed size 6" x 1/2" Age is within 12 hours.

According to said injury certificate, injury no.1 is caused by sharp probing object whereas, injury nos. 2 and 3 are caused by hard and blunt object. Looking to the nature of these three injuries in my view, it cannot be self inflicted injuries. It was expected from the prosecution that when the accused is having injuries and which are not superficial in nature then it was the duty of the prosecution to explain those injuries. Law in that behalf is well settled by the Hon"ble Apex Court in the case of Lakshmi Singh and others ..vs..State of Bihar,AIR 1976 SC 2263. In the present case,injuries as could be seen from Exh.39 are not superficial or those cannot be termed as self inflicted injuries. Thus, in my view the prosecution has suppressed the genesis of the incident. Therefore, I have no hesitation whatsoever in my view to draw adverse inference against the prosecution.

24. The another circumstance is the oral dying declaration made by deceased Vasant against the appellant. As noticed in the preceding paragraphs of this judgment though initially the prosecution tried to rely on the version of three ladies as an eye witness they did not support the prosecution. According to prosecution Waman Bhagwansa Mawle(PW11) is the prosecution witness to whom the deceased made his oral dying declaration. This prosecution witness used to call deceased "MAMA" .That shows that this prosecution witness is near person of the deceased. Merely because witness is near or dear or interested witness that by itself, the version of such witness cannot be discarded only on the said ground. However, while appreciating the evidence of such witness the Court should also be on guard and should seek corroboration from the other available evidence.

25. According to evidence of Waman(PW11) when he was returning from his agricultural field near Lhihida Road he noticed deceased's autorickshaw in a

tilted condition. Therefore, he reached near to the autorickshaw that time he noticed Vasant was lying on a road and he was asking for water. The splash of blood was found on his body. That time he stated "Gaffur stabbed knife to him". According to this prosecution witness when that statement was made to him nobody was present there. The version of this prosecution witness in so far as the time is concerned if taken into account it is between 5.00 to 5.30 p.m. P.W.2 Vijay who is member of Zilla Parishad and Chief Secretary of Bhartiya Shetkari Kamgar Party at Nerpinglai when reached to the spot he noticed that autorickshaw was standing near Dhawdi river and deceased Vasant was lying at the distance of 10 to 15 feet from the autorickshaw in injured condition. As per the evidence of this prosecution witness that time he was accompanied by Arun Dhonde a police patil. Vijay(PW2) testimony is as under: " It is true near Dhavdi nadi police paril Arun Dhonde asked Vasant Taiwade where he received the injury, on which, Vasant Taiwade shown the injury on his left thigh"

" It is true that P.S.I. Pimple made enquiry with Vasant Taiwade that who assaulted on him. It is true that at that time Vasant Taiwade did not disclose any name before P.S.I.Pimple".

P.S.I.Nana Devchand Pimple is also examined though for the other reason as prosecution witness no.5. Evidence of Vijay(PW2) shows that police patil made an inquiry as to where he received the injuries that time he showed place as his left thigh. The post mortem report(Exh.27) confirms that Vasant received penetrated injury on his left thigh. That shows at the time of inquiry by police patil Vasant was in his full sense. However, when the further question was put as to name the assailant not only by police patil and by P.S.I.Ingle Vasant chose not to disclose the name of the appellant. When injured was in his full sense and he was surrounded by the police officer that normally gives sense of security in the mind of the injured and that time the injured will never hesitate to disclose the name of his assailant. In the light of this evidence of independent witness in my view court should reluctant to accept the version of interested witness Waman(PW11).

26. There is also another reason for not to accept the version of Waman(PW11) in respect of oral dying declaration. Waman (PW11) claims that after disclosing the name of the appellant , Vasant asked him that the name of the assailant should be known to his family members. It is claim of the Waman(PW11) that thereafter he reached to the village. Firstly, the conduct of Waman(PW11) itself in my view caused serious doubt as to really whether Waman(PW11) was present on the spot. As this Court has noticed that Waman(PW11) was in close relation with Vasant it is hard to believe that this man will leave injured at secluded place without offering any medical help. Further, assuming that he did not offer any help to Vasant that since different persons may react differently to the same situation. However, as per the claim of Waman(PW11) Vasant specifically asked him that the name of the appellant should be disclosed to his family member. Waman(PW11) claims that when he reached near bus stand he noticed large

gathering of the people where he noticed the presence of father of Vasant. Normally, it would have been his first reaction to disclose the name of the appellant since he was knowing the name of assailant of Vasant. Not only this, Vasant asked him to disclose the name of assailant to his family members. However, this prosecution witness informed his father as under: " Vasant was lying on the road"

He failed to disclose the name of the assailant to father of Vasant or to anybody. In this back drop, belated recording of police statement by two days assumes importance. Since belated recording of police statement does not rule out the embellishment and false implication. Therefore, cumulative effect of the aforesaid discussions in respect of the oral dying declaration in my view shows that Waman (PW11) is not witness to the truth but he is a got up witness in the prosecution case. Consequently, I reject his testimony on oral dying declaration which he claims.

27. The another circumstance, is recovery of weapon i.e. knife. Ravindra(PW12) claims that during the police custody remand on 18/10/1992 the appellant made his disclosure statement by which he agreed to show the place where he concealed the weapon that was used in the commission of offence. The prosecution has examined Bhojraj Rajaramji Bonde(PW14)who acted as a panch at the time of recording of the disclosure statement and consequently recovery. This witness has not supported the case of the prosecution. However, disclosure statement and consequently recovery panchnama is duly proved by Ravindra(PW12). Exh.65 is the disclosure statement. The admissible portion of this disclosure statement shows that the appellant agreed to show the place where he has concealed the knife. The place is under Sindi and Raimunji trees. Accordingly, police party was lead by the appellant near place and the weapon was seized. In view of the following admissions given by the investigating officer in my view the recovery at the behest of the appellant loses its importance and I am not giving any importance to such recovery. "It is true to say that place where accused namely Gaffurkhan had taken out knife was accessible place to anybody."

In view of the above admissions, it is clear that the place from where the weapon was seized was accessible to anybody. What is important to note that merely because it is accessible to everybody that by itself the recovery cannot go in view of law laid down by Hon"ble Apex Court in the case of Yakub Abdul Razak Menon..vs..State of Maharashtra, 2013 (13) SCC1 in para no.1708. But, in this case the weapon was not concealed under the tree. Thus, the weapon visible and accessible to anybody. Therefore, in my view, the incriminating material of recovery of weapon cannot be used against the appellant.

28. Last but one circumstance is noticing of blood of blood group "A" on knife and full pant of the appellant. As per Exh.71 the blood group of the deceased was "A" . the blood group of appellant is "B". C.A.report(Exh.69) shows that blood having blood group "A" was noticed on knife and full pant. The scientific

evidence is always in the nature of corroborative piece of evidence. Merely because there exists C.A.report against appellant or against any accused person that by itself is not sufficient to convict or to uphold the conviction unless there is substantive piece of evidence against whom the C.A.report is pressed into service. In so far as knife is concerned as discussed in the preceding paragraph this Court has discarded the recovery since the place was accessible to any one. In so far as fullpant is concerned the said full pant is seized by the investigating officer under seizure memo (Exh.30). Reading of Exh.30 shows that the said seizure panchnama is totally silent about sealing. Further investigating officer Ravindra(PW12) is silent that at the time of drawing seizure memo and seizure of clothes of appellant that time that article was sealed. In that view of the matter the sprinkling of blood on the articles cannot be completely ruled out as observed by this Court in Lalchand Yadao ..vs..State of Maharashtra, 2000(3)Mh.L.J.438 and which is followed by this Court in numerous cases. Therefore, noticing blood stains of blood group "A" cannot be used against the appellant.

30. From the aforesaid reappreciation of the entire prosecution case, I am of the firm view that though deceased Vasant lost his life due to the injury that was found on non vital part of his body. The prosecution is utterly failed to prove case against the appellant for the offence punishable under Section 304 Part II of the Indian Penal Code that he alone was the author of the said injury. Consequently, I pass the following order. I) The appeal is allowed.

II) The judgment and order of conviction convicting the appellant for the offence punishable under Section 304 Part II of the Indian Penal Code is hereby quashed and set aside.

III) Appellant is acquitted of the offence punishable under Section 304 Part II of the Indian Penal Code.

IV) His bail bonds stand cancelled.