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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1377 OF 2023  
WITH  
INTERIM APPLICATION NO. 557 OF 2024  
AND  
INTERIM APPLICATION NO. 3847 PF 2025  
IN  
CRIMINAL APPEAL NO. 1377 OF 2023

Ejaj Urf Pintya Sagir Ahmed Ansari  
Age – 22 Years, Occupation – NIL,  
Residing at Gayatri Nagar, Near Baba Hotel,  
Opposite Gayatri Nagar Police Chowki,  
Bhiwandi.  
(At present lodged at Nashik Road Central  
Prison, Nashik)

...Appellant/Applicant

Versus

The State of Maharashtra  
(Through Shantinagar Police Station,  
Bhivandi, Crim No. I-144 of 2019)

...Respondent

Mr. Ajit M. Savagave, Appointed Advocate for the Appellant.

Mr. Ashish Satpute, A.P.P for the Respondent-State.

CORAM : SARANG V. KOTWAL &  
SANDESH D. PATIL, JJ.

DATE : 30<sup>th</sup> MARCH, 2026

**JUDGMENT (PER SARANG V. KOTWAL, J):**

1. The appellant has challenged the Judgment and Order dated 6<sup>th</sup> March, 2023 passed by the learned Sessions Judge, Thane in Sessions Case No. 499 of 2019. The appellant was convicted for the commission of offence punishable under Section 302 of the Indian Penal Code ('IPC' for short) and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer further simple imprisonment for six months. The appellant was in custody since 1<sup>st</sup> August, 2019. He was granted set-off under Section 428 of the Criminal Procedure Code ('Cr.P.C' for short).

2. Heard learned Counsel Mr. Ajit M. Savagave for the appellant and Mr. Ashish Satpute, learned APP for the State.

3. The prosecution case in brief is as follows :

The deceased Mohammed Faiji Kamrul Khan Sayyad @ Amirul Hassan Kamrul Hassan (**'Mohammed Faiji'** for short) was knowing the appellant. On 7<sup>th</sup> February, 2019, there were some guests visiting Mohammed Faiji, therefore, he and his brother Abbas went to a nearby hotel to bring some snacks. While they were going towards hotel, the appellant and his friend Salman stopped them. The appellant demanded some money from them. Mohammed Faiji refused. He and his brother - Abbas went to the hotel, bought the snacks and started returning to their house. On the way, they were again confronted by the appellant and Salman. This time, there was some quarrel. The appellant was angry as Mohammed Faiji had not given him money. The appellant took out a knife and assaulted Mohammed Faiji. Mohammed Faiji tried to evade the blow. It fell on his waist. It was a deep injury. The appellant gave another blow on his buttock, near anus causing one more injury. The injured - Mohammed Faiji fell down. The appellant and his friend threatened others who tried to help the injured. After sometime, the appellant

and Salman went away from the spot. The injured – Mohammed Faiji was taken to IGM Hospital, Bhivandi and then was shifted to Civil Hospital, Thane. The Police were informed. The Police Officer who reached Civil Hospital, Thane, recorded statement of the injured – Mohammed Faiji. It was treated as the F.I.R. C.R.No. I-144 of 2019 was registered at Shanti Nagar Police Station, Bhivandi. The injured – Mohammed Faiji survived for two more days. He underwent surgical procedures, but he succumbed to his injuries on 9<sup>th</sup> February, 2019. In the meantime, the investigation had started. The spot panchanama was recorded. Statements of various witnesses were recorded. The appellant and his friend had absconded. Salman was never found and he did not face the trial. The appellant was arrested on 1<sup>st</sup> August, 2019.

According to the prosecution case, the knife was recovered at his instance on 6<sup>th</sup> August, 2019 from under a tile near a public toilet. The seized articles were sent for chemical analysis. At the conclusion of investigation, the chargesheet was filed and the case was committed to the Court of Sessions, Thane.

4. During trial, the prosecution examined 13 witnesses including the eye-witnesses, the Medical Officer, the Police officer who had recorded the Dying Declaration, the Medical Officer who had given her endorsement on that Dying Declaration, the constable who had carried the seized articles to F.S.L and finally, the Investigating Officers. The defence of the appellant was of total denial.

5. The learned Sessions Judge relied on the evidence of the Dying Declaration and the direct evidence of the three eye-witnesses. He also relied on the evidence of the recovery of knife. Believing all these circumstances and direct evidence, the learned Judge recorded the finding of guilt. He accordingly, convicted and sentenced the appellant as mentioned above.

6. As mentioned earlier, the Dying Declaration given by the deceased himself was treated as the F.I.R. In that connection, the

evidence of PW11 – PSI Tukaram Sakunde and PW13 – Dr. Anjali Pimple was important.

PW11 - PSI Sakunde deposed that at the relevant time, he was attached to Shanti Nagar Police Station, Bhiwandi. On 7<sup>th</sup> February, 2019, he received an information that injured was admitted to Civil Hospital, Thane. He got that information from the brother of the deceased. He went to the Civil Hospital, Thane at 7.15 p.m. He met the Medical Officer and asked him whether the injured – Mohammed Faiji was in a position to give statement. The Medical Officer examined the injured and opined that he was conscious and was in a position to give his statement. Accordingly, the Medical Officer gave the endorsement and signed it. After that, PW11 recorded statement of the injured – Mohammed Faiji in the presence of the Medical Officer. PW11 wrote it in his own handwriting. He and the injured signed that statement. PW11 further deposed that the injured had stated that on 7<sup>th</sup> February, 2019, at about 1.30 p.m., he and his brother - Abbas were walking towards Mama Hotel to buy

some snacks. The appellant asked for Rs.200/-. The appellant and his friend - Salman scuffled with Mohammed Faiji and his brother. They also abused. Then the appellant removed a knife from his pocket. He was about to give a blow on Mohammed Faiji's stomach. Mohammed Faiji turned to save himself, therefore, the blow fell on the left side of his waist. Because of that, he was about to sit down. The appellant again gave another blow on his back side and caused grievous injury. The appellant then threatened the people gathered there and ran away. The said statement is produced on record at 'Exhibit-52'.

The actual Dying Declaration is slightly different. In that statement, it is mentioned that the appellant had demanded Rs.200/- while the deceased and his brother - Abbas were going towards Mama Hotel. After that, they went to the hotel, they bought snacks and tea and when they were returning home, again the appellant and Salman confronted them, and then assaulted the deceased. The injured was taken to IGM Hospital and then was shifted to Civil Hospital, Thane. The said statement bears signature of Mohammed Faiji and also the

endorsement of PW13 – Dr.Pimple. The endorsement mentions that the patient was conscious and able to give his statement. The endorsement shows the time as 9.40 p.m. on 7<sup>th</sup> February, 2019.

PW11 – PSI Sakunde has further deposed that after recording the statement, he came back to Shanti Nagar Police Station and registered an offence vide C.R.No. 144 of 2019 under Section 307 r/w Section 34 of IPC. He conducted the spot panchanama. The spot was shown by Mohammed Faiji's brother – Abbas. He collected the blood mixed soil and other soil from the spot. The spot panchanama was already produced on record at Exhibit-35 through the panch for spot panchanama, PW6 – Zakir Abdul Hamid Ansari. PW11 then seized clothes of the deceased in the morning of 8<sup>th</sup> February, 2019 under a panchanama. He identified those clothes in the Court.

During investigation, he had recorded the statements of Abbas and other witnesses. He proved the contradictions in the

statement of PW9 – Halimabi Mohammed Hafiz Shaikh who was the hotel owner, but had turned hostile. The contradictory portion in her Police statement which was different from her deposition was proved by this witness PW11 and it is brought on record at ‘Exhibit – 55’. This particular portion from the Police statement of PW9 - Halimabi supports the prosecution case. On 10<sup>th</sup> February, 2019, PW11 was informed by the J.J.Marg Police Station that Mohammed Faiji has succumbed to his injuries, therefore, Section 302 of IPC was added to the offence. The appellant had absconded.

In the cross-examination, it is stated that he received an information about the incident at about 2.00 to 2.30 p.m. on 7<sup>th</sup> February, 2019, but he had not taken any entry in the Station Diary, however, he had given memo to the brother of the injured for taking him to the hospital. He met the Medical Officers at the Civil Hospital, Thane and discussed with them for about 10 minutes. When he reached the hospital, at that time, the injured was conscious. At that time, the injured was given first aid. But, he had not undergone any

surgery. He denied the suggestion that since the injured was serious, he was not in a position to give his statement. He denied the suggestion that the statement was recorded as per the version of Abbas and that Abbas was told to make false signature of the deceased on the Dying Declaration. He denied the suggestion that PW9 – Halimabi Shaikh had not stated portion marked A in her statement.

7. PW13-Dr.Anjali Pimple is an important witness as far as the Dying Declaration is concerned. She deposed that she was posted at Civil Hospital, Thane as Medical Officer and was on duty in the Casualty Department on 7<sup>th</sup> February, 2019. At about 4.10 p.m., on that day, the mother of the deceased brought him to the hospital. He was admitted in surgical ward. The Police had come to record his statement. At that time, the patient was conscious and was able to give his statement. She examined the patient and accordingly she had given her opinion that the Police Officer could record his statement as the patient was conscious and was able to give his statement. The Police Officer recorded his statement in her presence. Then she made

an endorsement on the statement and signed below that endorsement. The endorsement was “*patient is conscious and able to give his statement*”. She identified the endorsement and her signature on the Dying Declaration. She had noticed that the injured had suffered grievous injuries.

In the cross-examination, she denied the suggestion that when the patient was brought to the hospital, he was unconscious. She denied the suggestion that she had not personally examined the injuries of the patient and that because of the grievous injuries, he was unable to speak. She did not remember the name of the Police Officer who had recorded the statement of the patient. The patient was referred from IGM Hospital, Bhivandi.

8. Apart from this important evidence of the Dying Declaration, there is also direct evidence of eye-witnesses. PW1-Abbas Kamarul Hassan Sayyad was the brother of the deceased. He deposed that the incident took place on 7<sup>th</sup> February, 2019 at about 1.30 p.m.,

on the road in front of Mama Hotel. At that time, they had some guests and therefore, PW1 and his brother Mohammed Faiji had gone to Mama Hotel to get snacks. On the way, they met the appellant and Salman. The appellant demanded Rs.200/- as a loan. But, PW1's brother had declined by saying that he did not have any money. Then they went to the hotel to get snacks and while returning home, they again met the appellant and Salman. At that time, the appellant confronted the deceased. He took out a knife from his pant pocket and gave a blow on the waist of Mohammed Faiji. Mohammed Faiji tried to evade the assault. He was trying to sit down. At that time, the appellant gave the second blow on the buttock. PW1 tried to rescue his brother, but the appellant and Salman assaulted him with kicks and fist blows. The others from the hotel came there. The appellant threatened them with a knife. The appellant and Salman then ran away. PW1 and others took the injured Mohammed Faiji to IGM Hospital, Bhivandi. He was given first aid, and then on the doctor's advice, he was taken to the Civil Hospital. He was kept there for about 2 to 3 hours and then he was sent to J.J.Hospital. He

succumbed to his injuries in J.J.Hospital on 9<sup>th</sup> February, 2019. The Police recorded his statement. The Judicial Magistrate, First Class, Bhivandi also recorded his statement under Section 164 of the Criminal Procedure Code. It is produced on record at 'Exhibit-19'. He identified the appellant in the Court.

In the cross-examination, he stated that the appellant and PW1's family used to reside in the same area and therefore, they were knowing each other. On that day, Mohammed Faiji's brother-in-law Ali Hassan and Hassan had visited their house as guests. The hotel was close to their house. There were many other shops near the hotel. He denied that he had told the Magistrate that he went to the spot on hearing the commotion. He emphasized that when his brother's statement was recorded, he was in a position to give statement. He had not undergone any surgery before his statement was recorded. He denied the suggestion that since the appellant was externed outside Bhivandi, he was residing at Malegaon and Solapur. There was some incident on the previous night between PW1, his brother –

Mohammed Faiji on one side and the appellant and Salman on the other. There was some scuffle and therefore, their guests had come to meet him. But, PW1 had not suffered any injury in that scuffle. Though he identified the knife in the Court, he denied the suggestion that it was like any other knife available in the market.

In his statement recorded under Section 164 of Cr.P.C, there was some contradiction as to exactly at what point he came on the scene, but this contradiction is not specifically brought to his notice and no explanation was sought from him. In any case, his evidence and his statement under Section 164 of Cr.P.C were consistent, as far as the actual assault committed by the appellant on the deceased was concerned.

9. PW2 - Hassan Abbas had visited the house of the deceased at the time of the incident. He deposed that the deceased and his brother had gone to get snacks for PW2. He was standing outside the house. He saw that the appellant and Salman were assaulting the

deceased and Abbas (PW1) with kicks and fist blows. Then the appellant removed a knife and assaulted the deceased who fell down. PW2 went there to save the deceased, but the appellant threatened him with knife and ran away. PW1 then took the deceased to IGM Hospital. His statement was also recorded by the Magistrate under Section 164 of Cr.P.C. It is produced on record at 'Exhibit-21'. He identified the weapon and the appellant.

PW2, in his cross-examination stated that the hotel was very near to the house of the deceased. There were many shops around that hotel. He had also gone to the Civil Hospital. At one place, he admitted that the deceased had gone alone to the hotel to bring snacks. He did not know about the externment order against the appellant. He denied the suggestion that some unknown person had assaulted the deceased.

In his statement recorded under Section 164 of Cr.P.C., he deposed that the deceased had gone to the hotel to return the glasses

in which he had brought tea. He heard some commotion, he came out. By that time, Mohammed Faiji had fallen down. Mohammed Faiji told him that the appellant had assaulted him. Again this important contradiction was not brought to the notice of PW2 and he was not given an opportunity to explain that fact.

10. PW4 – Zarina Begum was examined as another eye-witness, but she had not actually seen the assault. She had reached the spot immediately. She deposed that at about 1.30 p.m., on 7<sup>th</sup> February, 2019, PW1 and the deceased had gone to Mama Hotel. Her husband had shouted that the appellant was assaulting the deceased, therefore, she ran to the spot of incident. Many people had gathered there. The appellant was threatening them with the knife. The people ran away. She asked her son Mohammed Faiji as to what had happened. At that time, he informed her that the appellant had assaulted him. Thus, this would be the oral Dying Declaration made by the deceased to this witness i.e. his own mother. She deposed about the deceased being taken to IGM Hospital and then to Civil

Hospital, Thane. He was then taken to J.J.Hospital where he succumbed to his injuries.

In the cross-examination, she deposed that when the Police recorded Mohammed Faiji's statement, till that time, no surgery was performed on him. She denied the suggestion that the deceased was creating terror in the area, therefore, some unknown person had assaulted him.

11. PW3 – P.C. Bharat Murkute and PW7 - Waman Bhoir were carriers of articles to F.S.L. PW3 had carried the articles on 20<sup>th</sup> February, 2019 and PW7 had carried the articles on 25<sup>th</sup> February, 2019, however, the C.A.reports in this case are not very material and therefore, their evidence was also not of much significance. PW6 – Zakir Abdul was a panch for spot panchanama. It is produced on record at 'Exhibit-35'. It mentions that the samples of blood stained and simple soil from the spot were seized. There is hardly any dispute about the spot of incident. The eye-witnesses as well as the deceased

have spoken about the spot of incident. The C.A.report produced on record also shows the presence of human blood on the soil seized from the spot. The clothes of the deceased shows presence of blood of “A” group.

12. PW9 – Halimabi was the hotel owner. She was declared hostile, as mentioned earlier, but her contradiction from her Police statement was put to her by the prosecution and it was proved through the Police Officer who had recorded her statement. In that portion, she had described the incident about the appellant assaulting the deceased with knife.

13. PW5 – Dr.Shailendra Anande is an important witness. He had conducted Post Mortem examination. The Post Mortem report is produced on record at ‘Exhibit-32’. He deposed that the deceased was admitted in J.J.Hospital on 8<sup>th</sup> February, 2019 and he died on 9<sup>th</sup> February, 2019. The dead body was identified by the brother of the deceased. On examination, he found ten injuries on the dead body.

There were multiple linear abrasions over epigastric region and on the left knee. There were other surgical wounds, but there were two important wounds caused by the assault. They were as follows :

- (i) A stab wound of the size 5 cm x 1 cm above left side of glutean. It was cavity deep.
- (ii) Stab wound of the size 2 cm x 1 cm x 0.5 cm, above anterior superior iliac spine. The margins were clean cut with infiltration of blood.

The internal examination showed that the bowel loops were oedemataus and dusky. The rectum was mobilized. There were sutures over posterior wall of lower 1/3rd of rectum and there was evidence of diversion loop. Thus, the intestines were damaged. He deposed that those two injuries were possible due to sharp and pointed weapon. The probable cause of death was mentioned as *“Evidence of multiple stab injuries. However, opinion reserved for accessory examination report.”* The Histopathology report produced by the prosecution during the trial did not show presence of any poison and thus, the cause of death was directly related to the stab wounds.

14. PW8 - PSI Karanjwane had supervised the Inquest Panchanama and had taken steps to conduct the Post Mortem examination. PW10 – Jiyauddin Janmohammad Shah was the panch in whose presence the appellant had given a statement leading to recovery of knife on 6<sup>th</sup> August, 2019. The said memorandum and panchanama are produced on record at ‘Exhibit-49’ and ‘Exhibit-50’. He was also a panch for the spot panchanama. He deposed that on 6<sup>th</sup> August, 2019, at around 5.30 p.m., Police called him to the Police Station. The appellant showed willingness to show the place where he had concealed the knife. The statement was recorded. It is produced on record during trial at ‘Exhibit-49’. The appellant led them to a public toilet near Gayatri Nagar Police Chowky. The appellant removed the knife kept in a plastic bag under a black tile. The blade of the knife was about 15 cm long. It was seized. The panchanama was produced on record at ‘Exhibit-50’.

In the cross-examination, he accepted that he could not read or write Marathi, but he denied the suggestion that he did not

know what was mentioned in the panchanama because it was in Marathi.

15. PW12 - Kirankumar Kabadi, Police Inspector, was the investigating officer. He deposed that from 12<sup>th</sup> February, 2019 to 21<sup>st</sup> February, 2019, the investigation was carried by the Police Inspector Bagga and then PW12 took over the investigation. He deposed that he had recorded statements of the witnesses. The appellant was arrested on 30<sup>th</sup> July, 2019, within the jurisdiction of Thane City Police Station. The Police Officer, Thane City Police Station gave custody of the appellant to PW12 on 1<sup>st</sup> August, 2019. The Arrest Panchanama was conducted. PW12 supervised the recovery of knife at the instance of the appellant. He made arrangement to record the statements of the witnesses under Section 164 of Cr.P.C. At the conclusion of the investigation, he filed the chargesheet.

In the cross-examination, he stated that an externment order was passed against the appellant. He admitted that the public toilet from where the knife was recovered was a public place and was

accessible to all. He denied the suggestion that because of the terror created by the deceased, some unknown person had assaulted him. This, in short, is the evidence led by the prosecution.

There is nothing incriminating in the C.A. reports against the appellant. The weapon recovered at the instance of the appellant was not sent for chemical examination.

**Submissions of Mr. Ajit M. Savagave, learned Counsel appearing for the appellant :**

16. The prosecution has not proved the evidence of written Dying Declaration beyond reasonable doubt. PW11 and PW13 are not consistent. PW11 had stated that he had taken the endorsement of the doctor before the recording of the Dying Declaration, whereas PW13 had stated that she had given the endorsement after the Dying Declaration was recorded. He submitted that, neither of these two witnesses has stated that, the deceased was in a fit mental condition to give the statement. Merely stating that he was conscious and was in a position to give statement was not enough. Considering that the

deceased had suffered grievous injuries causing heavy blood loss, it was not possible to believe that he would be in a position to give the Dying Declaration. Therefore, the evidence of Dying Declaration is required to be discarded. He further submitted that the endorsement on the Dying Declaration is not clear because the endorsement does not mention as to when the recording of Dying Declaration started and when it ended.

17. PW1, PW2 and PW4 claimed themselves to be the eye-witnesses, but their evidence is not consistent. Their evidence compared to their own statements recorded under Section 164 of Cr.P.C. is also not consistent. Therefore, it is doubtful, as to whether they had seen the incident at all. The prosecution did not examine any independent witness though there is evidence to show that the spot of incident was surrounded by many shops and that it was in a crowded locality. There is no other incriminating circumstance against the appellant.

18. Learned Counsel, in the alternative, submitted that even otherwise, considering the nature of incident, the offence will not fall within the meaning of Section 300 of IPC punishable under Section 302 of IPC. At the highest, it would be an offence of culpable homicide not amounting to murder, and at the highest, only knowledge can be attributed to the appellant. He submitted that the incident had occurred in a sudden quarrel, therefore, it falls within exception (iv) to Section 300 of IPC.

**Submissions of Mr. Ashish Satpute, learned A.P.P for the Respondent-State.**

19. Learned A.P.P, on the other hand submitted that the prosecution has proved its case beyond reasonable doubt. The learned Sessions Judge has considered all the circumstances as well as the direct evidence to reach a proper conclusion of guilt. He submitted that there was nothing wrong in recording of the Dying Declaration. All the procedure was properly followed. The evidence of PW11 and PW13 was important. There is no cross-examination that these witnesses were not satisfied that the deceased was in a fit mental

condition to give a statement. Learned A.P.P further submitted that PW13 is an independent witness as she was a medical officer and there was no reason for her to give a false evidence. The Dying Declaration was recorded in her presence. She submitted that inconsistency in the evidence of PW1, PW2 and PW4 is absolutely minor. It cannot be doubted that PW1 had accompanied the deceased. He was with the deceased right from the inception of the incident till the deceased was taken to the hospital. The evidence of hotel owner was recorded though she did not support the prosecution case. The prosecution has proved her contradictory Police statement which supports the prosecution case. In addition, there is recovery of knife at the instance of the Appellant and hence, there is strong evidence against the Appellant and hence, the prosecution has proved its case beyond reasonable doubt.

### REASONS AND CONCLUSION

20. As far as the written Dying Declaration is concerned, we did not find any infirmity in the procedure mentioned by PW11 and

PW13 which we have referred to hereinabove. From the evidence of PW11 it is quite clear that he himself was satisfied that the deceased was in a position to give a proper statement and accordingly he has recorded the statement. The Dying Declaration gives sufficient details regarding the incident. The Police Officer had no way of knowing the incident, till he was told by the deceased himself through his Dying Declaration. PW13 was present throughout the recording of the Dying Declaration and she had given her endorsement on the Dying Declaration. Though API Sakunde has stated that the endorsement was given before recording of the Dying Declaration, it does not make much difference in the context of the present case because PW13 has stated that she was present throughout the recording of the Dying Declaration and had given her endorsement. She has deposed that, she had examined the patient before permitting PW11 to record the Dying Declaration, therefore, we find that the evidence of the PW11 and PW13 is consistent and the Dying Declaration can be accepted as a true version of the deceased.

It is important to note that, the deceased had survived for

about two days. The death was not immediately on 7<sup>th</sup> February, 2019. Only after he was taken to J.J.Hospital, surgery was performed on him. Therefore, it cannot be said that the deceased was not in a position to give his statement. Infact, the Dying Declaration also bears his signature. There is no reason to disbelieve that the signature was scribed by the deceased himself. Therefore, in this background, the evidence of the Dying Declaration can safely be accepted.

21. The Dying Declaration is supported by the direct evidence particularly, that of PW1. He has described the incident in detail which is consistent with the Dying Declaration. He has described the incident exactly in the same manner. He has also described how the appellat had given his Dying Declaration. His version is also supported by the medical evidence given by PW5 - Dr.Anande mentioning the stab injuries in his Post Mortem notes. We do not find any infirmity in the evidence of PW1. As far as PW2 is concerned, from his statement recorded under Section 164 of Cr.P.C, we find that there are material contradictions and there are strong indications that

he could not have seen the actual assault. He had reached only after the assault had taken place as per his version in the statement recorded under Section 164 of Cr.P.C. His statement recorded under Section 164 of Cr.P.C mentions that the deceased himself has told him that the appellant had assaulted him. By that time, PW2 had reached the spot, the deceased had already fallen down on the ground. Therefore, it is doubtful, as to whether PW2 could have seen the actual assault. We do not find it safe to rely on the evidence of PW2 and therefore, his evidence is required to be discarded.

22. As far as PW4, the mother of the deceased is concerned, we find her to be a truthful witness. Though she has described the incident, but she only got to know about that incident. She has deposed that she had run to the spot because her husband had shouted that the appellant had assaulted the deceased. By the time, she had reached the spot, people had already gathered on the spot and the appellant was threatening them. After that, she asked the deceased as to what had happened and then, the deceased had told her about the

incident. Thus, her evidence is important not because she is an eye-witness for the incident as she had not seen the actual assault, but she had reached the spot soon after, and her evidence is important because the deceased had told her about the incident. It would amount to oral Dying Declaration given by the deceased to her. Therefore, we find that, she is a truthful witness on the point of oral Dying Declaration. Thus, the prosecution has proved the written Dying Declaration, the evidence of the eye-witness – PW1 and the oral Dying Declaration stated by the PW4. Their evidence is supported by the medical evidence given by PW5 who had conducted the Post Mortem examination. All these pieces of evidence taken together showed that prosecution has proved its case beyond reasonable doubt.

23. As far as recovery of weapon is concerned, we are not inclined to give much importance to that circumstance, firstly because the Investigating Officer has admitted that it was recovered from the place which was accessible to all and secondly, it was recovered almost after six months from the date of incident. Moreover, the weapon was not sent for chemical analysis and therefore, in this case, on both

these counts, the weapon could not be connected with the offence. In any case, we have already observed that the prosecution has proved its case based on the other evidence.

24. We are also cannot accept the submissions of the learned Counsel for the appellant that it would be a lesser offence and not the offence punishable under Section 302 of IPC. Firstly, the incident does not fall within any of the exceptions mentioned under Section 300 of IPC. It can certainly not be termed as a sudden quarrel. The incident took place in parts. In the first part, when the deceased was going to the hotel, the appellant and his companion stopped him and asked for money. The deceased refused. When he was returning back, then again, he was confronted by the appellant and his companion and this time, the appellant removed a knife and gave not only one blow, but the second blow as well. The first blow was aimed at the abdomen, but only because the deceased turned to save himself, it fell on the waist. But, even then, it was a forceful blow piercing the intestine, the second blow was equally forceful. Therefore, there was preparation, there was pre-meditation and there was execution of his

intention by giving forceful blows on the vital parts. The Post Mortem notes show that the deceased had to undergo major surgery, but he could not be saved. Thus, all the ingredients of Section 300 are proved in this case.

25. Looking at the incident, the nature of injuries, the intentions and the knowledge attributed to the appellant, it cannot be said that it is a lesser offence and not the offence punishable under Section 302 of IPC.

26. With the result, we find no reason to interfere in the impugned Judgment and Order dated 6<sup>th</sup> March, 2023. Accordingly, the appeal is dismissed.

27. In view of the dismissal of the appeal, the connected applications are also disposed of accordingly.

**SADESH D. PATIL, J.**

**SARANG V. KOTWAL, J.**