



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.517 OF 2021

1. Shiva @ Golu s/o Mallesh
Peraboinwar,
aged about 23 years, occupation: labourer.

2. Rama s/o Raymallu Kota,
aged about 41 years, occupation: labourer.

3. Laxman s/o Raymallu Kota,
aged about 36 years, occupation: labourer.

All r/o Lalpeth, Colliery No.1, behind
Shopping Complex, Chandrapur,
tahsil and district: Chandrapur. **Appellants.**

:: VERSUS ::

State of Maharashtra,
through Police Station Officer,
City Police Station, Chandrapur,
tahsil and district: Chandrapur. **Respondent.**

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Shri R.M.Daga, Counsel for Appellants.
Shri M.J.Khan, Additional Public Prosecutor for the
Respondent/State.

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CORAM : URMILA JOSHI-PHALKE & NIVEDITA P.MEHTA, JJ.
CLOSED ON : 20/04/2026
PRONOUNCED ON : 28/04/2026

JUDGMENT : (Per : Urmila Joshi-Phalke)

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1. By this appeal, appellants (accused persons) have challenged judgment and order dated 15.11.2021 passed by learned Additional Sessions Judge, Chandrapur (learned Judge of the trial court) in Sessions Case No.108/2019.

2. By the said judgment impugned, learned Judge of the trial court convicted accused persons for offence under Section 302 of the IPC and sentenced to undergo imprisonment for life and pay fine Rs.5000/-, in default, to undergo simple imprisonment for one year.

Accused No.1 Shiva is further convicted for offence under Section 324 of the IPC and sentenced to undergo two years rigorous imprisonment and pay fine Rs.1000/-, in default, to undergo simple imprisonment for six months.

3. Brief facts of the prosecution case are as under:

Raju Mohan Gogulwar (the complainant) has lodged report with Chandrapur City Police Station alleging that on 30.6.2019, at about 10:00 pm, he along with Sanju Odal

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Zunmulwar (the deceased) had been to a grocery shop on motorcycle. When they were returning to their respective houses from the said shop and reached near house of Bandu Totawar, the accused persons had restrained them. Therefore, he taken his vehicle aside and alighted from it. The accused persons asked them not to interfere in their family matters. Accused Shiva asked the deceased “he supported to Santu and he will see him.” Thereafter, there was a scuffle between accused Shiva and the deceased as accused Shiva went towards the deceased. When the complainant rushed to intervene, accused Shiva has taken out a knife (Katti) and gave a blow on his right hand elbow and then left hand wrist. Therefore, the complainant received bleeding injury and he came aside. Accused Nos.2 and 3 caught hold hands of the deceased and accused Shiva gave a blow of knife on the stomach of the deceased and, therefore, the deceased fell on the ground. Thereafter, accused Nos.2 and 3 both started assaulting the deceased by fist blows. At the relevant time, Bandu Totawar, Nitesh Durge, Suresh Durge, Ajay Singh,

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Sampat Durge, Kashyap Aunty, Somayya Rangari, and Suresh Kewat rescued the deceased. The deceased was taken to hospital on the motorcycle of Bandu Totawar. The complainant also followed them on the motorcycle of Shubham. As the deceased had sustained injury on his stomach, his intestine came out as well as the deceased had also sustained injuries on heads, legs, shoulder, and other parts of the body. During treatment, the deceased succumbed to injuries.

4. On the basis of the said report, the police have registered the crime against the accused persons. After registration of the crime, wheels of investigation started rotating. During the investigation, the Investigating Officer, by issuing a letter to the Commissioner, Municipal Corporation, called two panchas. In presence of panchas, he has drawn spot panchanama. The accused persons were arrested and arrest panchanamas are drawn. Their blood samples were obtained. The clothes of the accused persons and the deceased were seized. Inquest panchanama was also
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drawn. During the investigation, postmortem report was collected. An opinion from the Medical Officer was also obtained. The blood stained clothes of the deceased were also seized. All incriminating articles were forwarded to the Chemical analyzer. After completion of the investigation, chargesheet came to filed against the accused persons.

5. As the offence was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions. The charge was framed by learned Judge of the trial court vide Exh.48 and altered the charge is at Exh.48-A.

6. The accused persons, along with acquitted accused, denied the charge and claimed to be tried.

7. In support of the prosecution case, the prosecution has examined in all seven witnesses, they are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Raju Mohan Gogulwar, the complainant	88
2	Nitesh Laxman Durge, eyewitness	94
3	Hansraj Dadaji Yerawar, pancha on various	101

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	panchanamas	
4	Dr.Pranay Shailendra Gandhi, Medical Officer who obtained samples of the accused persons	131
5	Vijay Korde, Investigating Officer	142
6	Devendra Thakur, Investigating Officer	151
7	Dr.Bandu Ramteke	179

8. Besides the oral evidence, the prosecution placed reliance on report Exh.89, FIR Exh.90, requisitions to panchas Exhs.102 to 103, spot panchanama Exh.104, seizure memo as to articles from the spot Exh.105, seizure memo as to blood samples of accused No.2 Exh.106, seizure memo as to blood sample of accused No.3 Exh.107, seizure memo as to blood sample of accused Shiva Exh.108, seizure memo of acquitted accused Santoshi Exh.109, requisitions to panchas Exhs.111 and 112, seizure memo of the clothes of the deceased Exh.113, seizure memo of as to clothes of acquitted accused Santoshi Exh.114, seizure memos as to various articles and clothes of the accused persons Exhs.115 to 121, requisitions to panchas Exh.122 and 123, seizure memo Exh.124,

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requisitions to panchas Exhs.125 and 126, seizure memo Exh.127, requisitions to the Medical Officer Exh.131/1 and 132/4, requisitions to the Chemical Analyzer Exhs.165 and 166, postmortem report Exh.180, query report Exh.181, medical certificate of the complainant Exh.188.

9. On the basis of the oral as well as the documentary evidence, the prosecution claimed that the prosecution has proved its case beyond reasonable doubt. All incriminating evidence was put to the accused persons in order to obtain their explanation regarding the evidence appearing against them. The incriminating evidence as to blood stains on their clothes was not put during the trial and, therefore, additional statement under Section 313 of the CrPC was recorded before this court. The defence of the accused persons is of false implication.

10. After hearing both the sides, learned Judge of the trial court came to conclusion that the prosecution proved the charge that the accused persons, in furtherance of their

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common intention, assaulted the deceased and caused his death and thereby committed the offence. Therefore, they are convicted as the aforestated. Whereas, accused Santoshi was acquitted.

11. Being aggrieved and dissatisfied with the judgment impugned, the present appeal is preferred.

12. Heard learned counsel Shri R.M.Daga for the accused persons and learned Additional Public Prosecutor Shri M.J.Khan for the State and with their able assistance, we have gone through the entire record.

13. Learned counsel for the accused persons submitted that vehemently submitted that the alleged incident has occurred, as per prosecution, on the count that sister of accused Shiva was having love affair with one Santu, which was opposed by family members. The deceased, allegedly, supported Santu and on that count, there was hot exchange of words between the deceased and accused Shiva in the night of the incident. He submitted that the prosecution has placed

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reliance on the evidence of PW7 Dr.Bandu Ramteke to prove homicidal death. Admittedly, the death of the deceased is caused due to injury on his stomach, which was allegedly attributed to accused Shiva.

As far as accused No.2 Rama and accused No.3 Laxman are concerned, the evidence of prosecution witnesses is not consistent to the extent of their role. There is nothing on record to show that there was prior meeting of mind between them and, therefore, they came at the spot in furtherance of their common intention and accused Shiva has given a blow of knife on the stomach of the deceased.

He submitted that even accepting the prosecution case as it is, at the most, it was the incident which took place during hot exchange of words. The role of accused Nos.2 and 3 even if accepted as it is, there is no reason for them to have knowledge that accused Shiva was holding the knife and would give a blow. During hot exchange of words, they have caught hold of the deceased, but unaware of the fact that

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accused Shiva was holding the knife. Therefore, the common intention cannot be attributed to them.

He further submitted that even if the role of accused Shiva is accepted, the evidence of prosecution witnesses is not sustained and is exaggerated one. Despite the clothes of the accused are seized on 5.6.2019, and the requisition regarding forwarding of the clothes by the Investigating Officer is on 10.6.2019, i.e. after five days, neither carrier nor muddemal Clerk is examined to show that during these five days muddemal articles were kept in a sealed condition and, therefore, the evidence as to blood stains on the clothes of accused Nos.2 and 3 is suspicious.

He submitted that arrest panchanamas of the accused persons that they were arrested on 4.6.2019. The arrest panchanamas are silent regarding fact that at the time of the arrest, they were wearing blood stained clothes. The seizure panchanamas, regarding the clothes of the accused persons, show the clothes on their person were seized by the

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Investigating Officer on 5.6.2019, i.e. after 36 hours of their arrest. Despite the fact is mentioned in seizure panchanamas, that blood stains were found on the clothes of these accused persons, neither pancha PW3 Hansraj Dadaji Yerawar nor Investigating Officer PW6 Devendra Thakur stated that when the clothes were seized, the same were having blood stains. Neither muddemal receipt is produced on record nor the concerned clerk is examined by the prosecution to show that these clothes were deposited in a sealed condition with the muddemal clerk. These facts itself are sufficient to show that in absence of any evidence regarding common intention of accused Nos.2 and 3 and chain of seizure till it is forwarded to the Chemical Analyzer is not established by the prosecution. However, learned Judge of the trial court has convicted accused Nos.2 and 3.

He submitted that as far as accused No.1 Shiva is concerned, he is implicated due to enmity. The incident happened, due to sudden fight and sudden quarrel between accused No.1 Shiva and the deceased. Therefore, no offence is
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made out against the accused persons and, therefore, they be acquitted from the charges.

He submitted that DW1 Suresh Indrapal Kewat is examined by the defence, whose presence is also stated by the prosecution witnesses. Therefore, his presence is natural one. He has not attributed any overt act to accused Nos.2 and 3. PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge have stated about his presence at the spot and, therefore, he is also an eyewitness. However, the prosecution failed to examine him and, therefore, the accused persons, in support of their defence, examined him. Thus, the evidence of PW2 Nitesh Laxman Durge shows he has also not attributed the role to accused Nos.2 and 3 as to the assault by fist. Similarly, DW1 Suresh Indrapal Kewat has also not attributed any role regarding the assault by accused Nos.2 and 3 by fists, which sufficiently shows that PW1 Raju Mohan Gogulwar has exaggerated the version by stating that accused Nos.2 and 3 assaulted the deceased by fists blows after he fallen on the ground.

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14. In support of his submissions, learned counsel for the accused person has placed reliance on following decision:

(1) Gagadhar Chandra vs. State of West Bengal, reported in (2022)6 SCC 576;

(2) Deepak Madhu Waghmare vs. State of Maharashtra, reported in 2026 SCC OnLine Bom 239;

(3) Pooranmal vs. State of Rajasthan and anr, reported in 2026 SCC OnLine SC 344; and

(4) Criminal Appeal No.695/2019 (Sanjay s/o Ashok Suradkar and ors vs. State of Mah., thr.PO Dhad, district Buldhana) decided by this court on 17.4.2023.

15. Per contra, learned Additional Public Prosecutor for the State strongly opposed the said contentions and submitted that accused No.1 Shiva came at the spot with preparation holding a knife in his hands. There is a direct evidence of PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge, who are eyewitnesses of the incident. PW1 Raju Mohan Gogulwar is independent witness as his evidence shows that he is not only friend of the deceased but also he is friend of accused

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No.1 Shiva. He has categorically narrated about the incident and nothing incriminating is brought on record to falsify the prosecution case. The act of accused Nos.2 and 3 catching hold of the hands of the deceased and, thereafter, giving blow by accused No.1, itself is sufficient to show that they were sharing a common intention. The circumstantial evidence, that blood stains are found on the clothes of Nos.2 and 3 of Blood Group of the deceased, sufficiently discloses involvement of the accused persons. The accused persons came at the spot together. The common intention can be formed at the spot itself. To attract Section 34 of the IPC, meeting of mind prior to the incident is not required. Thus, the evidence of these two witnesses sufficiently shows involvement of the accused persons in the alleged incident and, therefore, no interference is called for.

16. After hearing both the sides and considering the evidence on record, admittedly, the entire case of the prosecution is based on the evidence of two witnesses PW1

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Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge, who are allegedly eyewitnesses of the incident.

17. Besides the evidence of these eyewitnesses, the prosecution has further relied upon circumstantial evidence like; recovery of article knife from the spot of incident, blood stained clothes of the accused persons, medical evidence supported by the Medical Officer, and the Chemical Analyzer's Report has been examined.

18. Now, it has to be seen, whether the evidence adduced by the prosecution witnesses sufficiently shows that the accused persons, in furtherance of their common intention, caused the homicidal death of the deceased.

19. Insofar as the homicidal death of the deceased is concerned, the material evidence adduced by the prosecution is the evidence of PW7 Dr.Bandu Ramteke, examined vide Exh.179. His evidence is to the extent that he was serving as Medical Officer in the Government Medical Hospital at Chandrapur on 4.6.2019. On that day, requisition letter

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Exh.162 was received from the City Police Station, Chandrapur requesting to conduct the postmortem of the deceased. The dead body of the deceased was brought by NPC Arun Chaudhari, B.No.86. He examined the dead body. Upon examination, he found external injuries, as mentioned in column No.17, which are as follows:

“(i) Sutured wound present on top of left shoulder. Six sutures in situ. It is an incised wound of size 15 cm x 3.5 x muscle deep, obliquely placed, its right end at 11 cm below left angle of mandible, left end on back of shoulder, both angles clean cut, tailing at left end.

(ii) Incised wound on chest, on and along right clavicular area, transverse, medial third of clavicle, 5 cm x 0.2 cm x skin deep, tailing at right end.

(iii) Linear abrasion on chest on left parasternal area on 5th intercostal space, transverse, 2.5 cm in length.

(iv) two linear abrasions, one above the other, vertical, on left side of chest, 6th intercostal space along mid clavicular line. Upper abrasion 1.5 cm in length, lower abrasion 1 cm in length.

(v) Incised wound on left arm, lower third, lateral aspect obliquely placed, 5 cm x 2 cm x muscle deep. Both angles clean cut.

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(vi) Contusion on left side of chest over anterior axillary area, 14 cm x 10 cm.

(vii) Stab wound on arm pit (left) 2.5 cm x 1 cm x 5.5 cm deep, directed inwards, underlying axillary artery cut through and through.

(viii) Stab wound on abdomen left side, transversely placed on left lumbar region, 12 cm below lower coastal margin, 10 cm above left anterior superior iliac spine, along mid clavicular line, 7.5 cm from umbilicus, 1.2 cm x 0.5 cm x cavity deep directed inwards and backwards. It is continued on right angle to incised wound of size 3.3 cm x 0.3 cm x subcutaneous tissue deep. Both angles clean cut.”

His evidence further shows that all injuries are antemortem. Injuries mentioned in column No.21, stab wound to small intestine as as described in column No.17, are corresponding injury. The cause of death of the deceased is “shock of hemorrhage due to injury to auxiliary vessels due to stab wound with stab wound on abdomen. The said injury was sufficient in ordinary course of nature to cause death. All injuries are of grievous in nature. Accordingly, he prepared postmortem report and issued the same Exh.180. His further evidence shows on 7.6.2019, he received a requisition letter
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Exh.164 from Chandrapur City Police Station thereby requesting him to give an opinion by observing the weapon. The weapon was forwarded to him along with requisition letter in a sealed condition. Upon examination of the weapon, he found its length 12.5 cms, blade 6.5 cms, grip 6 cms, maximum width of blade 1.5 cms. The blood stains were present on the said weapon. He advised for chemical analysis. He advised for forwarding the weapon for chemical analysis. He opined that injuries mentioned in column No.17 of the postmortem report are possible with this weapon except injury No.6. Thereafter, he sealed the said weapon and handed over the same to Police Constable Amol. Query report is at Exh.180.

Despite the cross examination, nothing incriminating is brought on record to affect the prosecution case. The cross examination only shows that for causing incised wound of size of about 10 cms, it may be required a weapon of that size, but he explained that it is not necessary in every case. He has also obtained obtained the blood samples of the deceased.

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20. Thus, on the basis of the examination, the cause of death determined is, “due to the injury to auxiliary vessels due to the stab wound on abdomen.” As far as the cause of death is concerned, it was not denied by the defence as well as nothing is elicited from the cross examination to falsify the said cause of death.

21. Now, it is well settled that the evidence of PW7 Dr.Bandu Ramteke is not only the opinion evidence but also his evidence is in the nature of direct evidence as he had an opportunity to see the injuries on the person of the deceased.

22. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Hon’ble Apex Court in the case of **Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another**, reported at 1960 SCR (3)1 wherein it has been observed that “the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony,

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because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tattooing found by the medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

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

24. Thus, the evidence on record sufficiently shows that the death of the deceased is caused as he has sustained injury on vital organ i.e. stab wound on abdomen as well as injuries on auxiliary vessels due to stab wound. The death of the deceased is caused due to the injuries on auxiliary vessels. The opinion given by the Medical Officer, that such injuries are possible by the weapon which was seized during the investigation i.e. Article-2 “knife” (Katti). No other probable cause came before the court to show that there is any other reason for causing of the death of the deceased.

25. Thus, the prosecution has proved that the death of the deceased is homicidal one.

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26. The entire case of the prosecution is based on two eyewitnesses.

27. PW1 Raju Mohan Gogulwar, is eyewitness to the said incident. His evidence shows that the alleged incident has occurred on 30.6.2019 at about 10:00 pm. As per his evidence, when he had been to the grocery shop along with the deceased and when he was returning to home, near the house of Bandu Totawar, he and the deceased were restrained by the accused persons. Therefore, they took their vehicle aside and there was exchange of words between the deceased and accused Shiva on the count that his sister was having love affair with one Santu who is friend of the deceased. He asked the deceased that he should not interfere in the family matters and went towards the deceased. PW1 Raju Mohan Gogulwar has intervened, but he was assaulted by accused Shiva by means of knife, due to which he sustained injuries. Accused Nos.2 and 3 caught hold the deceased and accused Shiva gave a knife blow on his stomach. Thereafter, the deceased fell on the ground and accused Nos.2 and 3 assaulted him with fists
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blows. Due the injuries sustained by the deceased, he was immediately shifted to hospital, but he succumbed to injuries.

The evidence of PW1 Raju Mohan Gogulwar further shows that the knife was found on the spot itself. He has identified the clothes of the accused persons as well as the deceased. His blood stained clothes were were also seized by the Investigating Officer, which are also identified by him. On basis of his report, the crime came to be registered.

His cross examination shows that the deceased was friend of Santu, against whom accused Shiva was having grievance, as his sister was having love affair with him and also lodged the report against said Santu. Said Santu is also residing in the said vicinity. It further came in the evidence that house of the deceased was not located near the spot of the incident.

Thus, as far as the act of accused No.1 is concerned, the cross examination nowhere shatters the said evidence.

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However, the role of accused Nos.2 and 3, as to assault by fists, is concerned, is brought on record by way of omission.

28. PW2 Nitesh Laxman Durge is another eyewitness, who is examined vide Exh.94. His evidence corroborates the evidence of PW1 Raju Mohan Gogulwar on material particulars which shows that on 30.6.2019, at about 10:00 pm, he along with his friends Ajay Singh, Somayya Rangari, and Suresh Kewat was sitting near the Hanuman Temple near his house. At a distance of 300 meters, PW1 Raju Mohan Gogulwar and the deceased were sitting. The dispute started between PW1 Raju, the deceased, and the accused persons. Thereafter accused Nos.2 and 3 caught hold the hands of the deceased and accused Shiva gave a blow of knife. Though PW1 Raju has intervened and received the injuries, but he could not save the deceased from receiving the blow and accused Shiva assaulted the deceased with knife on his stomach, chest, neck, and hands. Thereafter, the deceased was taken to hospital whereat he succumbed to the injuries.

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29. Thus, as far as the evidence of PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge, regarding the role of accused Shiva, is concerned, the same is consistent. However, regarding role of accused Nos.2 and 3, as per the evidence of PW1 Raju Mohan Gogulwar, accused Nos.2 and 3 assaulted the deceased after falling on the ground by fists, which is not corroborated by PW2 Nitesh Laxman Durge. The evidence of PW2 Nitesh Laxman Durge shows presence of DW1 Suresh Indrapal Kewat on the spot of the incident. The present of DW1 Suresh Indrapal Kewat is also narrated by PW1 Raju

30. The cross examination of PW2 Nitesh Laxman Durge shows that the deceased and PW1 Raju Mohan Gogulwar were residing in the same locality. He further admitted that there was no dispute with accused Shiva and Santoshi.

31. To prove that there was enmity between the accused persons and PW2 Nitesh Laxman Durge, it is brought on record that prior to 2-3 days of the incident, the houses of the

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accused persons were set on fire wherein PW2 Nitesh was accused.

32. From the entire cross examination, nothing incriminating is brought on record to falsify the version of PW2 Nitesh Laxman Durge as to the assault by accused Shiva by means of knife. Only a suggestion was given regarding the role of accused Nos.2 and 3 which is denied by PW2 Nitesh.

33. As the prosecution has not examined some of eyewitnesses, allegedly present at the spot of the incident, the accused persons have examined DW1 Suresh Indrapal Kewat. There is no dispute that his presence at the spot of the incident was also narrated by PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge. The evidence of the said defence witness also shows that accused Shiva has possessed something and the deceased fell on the ground. While they were chit-chatting each other, PW1 Raju has received injuries to his hands and he shouted that accused has possessed

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something. At the relevant time, accused Nos.2 and 3 were present at the spot.

During his cross examination by APP, he admitted that PW1 Raju had intervened when accused Shiva assaulted with knife to the deceased and, therefore, PW1 Raju received injuries on his hands. He has denied that he has seen the incident assaulting the deceased by accused Shiva.

Thus, as far as his presence is concerned, who was admittedly there, it is established not only from the evidence of the prosecution witnesses but also from his own evidence. His evidence is consistent to the evidence of PW2 Nitesh Laxman Durge that accused Nos.2 and 3 merely present there.

34. The medical certificate Exh.188 corroborates the fact that PW1 Raju Mohan Gogulwar has also sustained the injuries in the said incident.

35. Besides the direct evidence, the prosecution placed reliance on circumstantial evidence.

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36. PW3 Hansraj Dadaji Yerawar, acted as pancha on various panchanamas. As per his evidence, he received requisition letters issued by the Chandrapur City Police Station, which are at Exhs.102 and 103. Therefore, he went to the police station and from the police station to the spot of the incident. The spot of the incident was at Lalpeth Colliery, Chandrapur, in front of the house of one Bandu Totawar. PW1 Raju Mohan Gogulwar has shown the spot of the incident. The police have collected the simple soil, blood stained soil, one slipper, and one knife from the spot and sealed the same by preparing seizure panchanama. The said spot panchanama is at Exh.104 and seizure panchanama is at Exh.105. His further evidence shows that at the relevant time, photographs were also obtained by the Investigating Officer at the spot. His further evidence shows that again he was called on 4.6.2019 in the police station. In his presence, four seizure panchanamas are prepared regarding the blood samples of accused Nos.1 to 4, which are at Exhs.106 to 109. On the same day, they were called in the police station. At the relevant

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time, the police have seized the clothes, blood sample, viscera of the deceased vide seizure memo Exh.110. Again, on 5.6.2019, he along with other panchas was called in the police station by issuing requisitions to them, which are at Exhs.111 and 112. In their presence, the police seized clothes of the complainant which were blood stained. Accordingly, seizure memo Exh.113 was prepared. The police have also seized one saree from from Shanti Kewat in his presence, which is at Exh.114. The police have also seized clothes of the three persons vide different seizure panchanamas. The said clothes were blood stained, which are at Exhs.115 to 117. Again, the police have seized clothes of the accused persons by four different seizure panchanamas, which are at Exhs.118 to 121. On 7.4.2019, again, he was called in the police station by requisitions Exhs.122 and 123. In his presence, the blood sample of complainant Raju was seized, vide seizure memo Exh.124.

On 12.6.2019, again, he was called by requisitions Exhs.125 and 126. In his presence, the police have opened
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closed bundle of clothes of the deceased and separated all clothes and the police have snapped photographs of the said clothes. Accordingly, panchanama was drawn, which is at Exh.126. His cross examination shows that when reached the police station, complainant Raju was present there. However, he denied that prior to reaching to the spot of the incident, the police had written down the contents of the spot panchanama. He has also denied that prior to reaching to the spot of the incident, the police and complainant Raju reached at the spot of the incident. He admitted that the knife seized from the spot was stained with blood.

Thus, the cross examination also shows that incriminating weapon having blood stains was also seized from the spot. It further shows that the spot panchanama was drawn in presence of PW3 Hansraj Dadaji Yerawar and another pancha. The relevant requisitions and seizure memos are on record.

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37. The evidence of PW4 Dr.Pranay Shailendra Gandhi is only to the extent that the accused persons were produced before him on 4.6.2019 for pre-arrest examination and he was requested to obtain their blood samples and nail clipping. Accordingly, he has obtained the same.

38. PW5 Vijay Korde and PW6 Devendra Thakur are Investigating Officers.

The evidence of PW5 Vijay Korde is only to the extent that he has recorded statements of some of witnesses on 26.6.2019. On 9.7.2019, he has issued letter to JMFC, Chandrapur for recording statements of witnesses under Section 164 of the CrPC. On 17.7.2019, he has also issued letter to Area Manager, Lalpeth Colliery, Chandrapur requesting to provide information whether on the day of the incident electricity light was switched-on or not at the spot of the incident. The said letter is at Exh.144.

The evidence of PW6 Devendra Thakur, who has carried out the investigation, shows that after receipt of the

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report, he received investigation. During the investigation, he issued requisition letters and secured presence of panchas. He visited the spot of the incident in presence of panchas and from the spot, he collected simple soil, blood mixed soil, one chappal, concrete pieces stained with blood, and knife (Katti). He prepared separate seizure panchanama. On 4.6.2019, he has arrested the accused persons by arrest panchanamas Exhs.155 to 158. They were referred for pre-arrest medical examination with a request to obtain their blood samples. Accordingly, their blood samples and nail clippings are received, which were seized by seizure memos Exhs.106 to 109. He has also seized the clothes of the accused persons vide four different panchanamas Exhs.118 to 121. He has forwarded all the articles to the Chemical Analyzer along with forwarding letter. Despite the cross examination, nothing incriminating is brought on record to suspect the investigation carried out by him.

39. Learned counsel for the accused persons vehemently submitted that neither PW3 Hansraj Dadaji Yerawar nor
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Investigating Officer PW6 Devendra Thakur has stated that there were blood stained clothes on the persons of the accused when they were arrested. He submitted that the arrest panchanamas are also silent about the same. The arrest panchanamas are at Exhs.155 to 158. He has also invited our attention towards seizure memos which are proved through the evidence of PW3 Hansraj Dadaji Yerawar. He submitted that though this seizure memo discloses that the clothes of accused Rama were seized by seizure memo Exh.118, the description of the clothes shows that there were blood stains on the T-Shirt. Similarly, the clothes of accused Laxman were seized vide Exh.120. The seizure memo shows that there were blood stains on the clothes of accused Laxman. However, there is no evidence that since seizure panchanamas were drawn on 5.6.2019, till incriminating articles are forwarded to the Chemical Analyzer on 10.6.2019, were in a safe custody and there was no possibility of tampering of the same. He submitted that neither muddemal clerk nor carrier was examined to show the chain that since the seizure of the

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clothes till it is forwarded to the Chemical Analyzer, the same were in a safe custody. He further submitted that the evidence of Investigating Officer PW6 Devendra Thakur is also silent regarding custody of the said clothes. The evidence of PW3 Hansraj Dadaji Yerawar and Investigating Officer PW6 Devendra Thakur is also silent that the clothes were blood stained at the relevant time as they have not stated so. Therefore, the evidence, as far as involvement of accused Nos.2 and 3, is suspicious.

40. In support of his contentions, learned counsel for the accused persons has placed reliance on the decision of this court in the case of **Deepak Madhu Waghmare vs. State of Maharashtra** *supra* wherein it is observed, that, “the failure to examine the carrier of the clothes of Accused and deceased along with their blood samples, to the Forensic Science Laboratory (FSL), is also a fatal flaw in the case of the prosecution and forms a missing link in the chain of evidence. In reference to drawing, sealing, storage and handing over the samples for examination to the FSL, the Hon'ble Supreme
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Court has underscored the importance of proving FSL report, in cases based on circumstantial evidence.”

It has been further observed that, “the Hon'ble Supreme Court has also elaborately dealt with the reliability and integrity of scientific evidence, such as, FSL reports, referring to the procedure prescribed in Appendix XXIV of the Maharashtra Police Manual. The observations made by the Hon'ble Supreme Court about the possibility of contamination and diminishment of value of the sample during its transit, for depositing it in the FSL for examination has been observed in Paragraph Nos.59 to 61, of the Judgment in case of **Prakash Nishad Alias Kewat Zinak Nishad vs. The State of Maharashtra**, which are reproduced herein below, which reads thus:

“59. We may observe that the Maharashtra Police Manual , when speaking of the integrity of scientific evidence in Appendix XXIV states--

"The integrity of exhibits and control samples must be safeguarded from the moment of seizure up to the completion of examination in the

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laboratory. This is best done by immediately packing, sealing and labelling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also."

“60. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the laboratory concerned as soon as possible, we may refer to "Guidelines for Collection, Storage and Transportation of Crime Scene DNA Samples For Investigating Officers -- Central Forensic Science Laboratory, Directorate Of Forensic Sciences Services, Ministry of Home Affairs, Government of India" which in particular reference to blood and semen, irrespective of its form i.e. liquid or dry (crust/stain or spatter) records the sample so taken:"Must be submitted in the laboratory without any delay."

“61. The document also lays emphasis on the "chain of custody" being maintained. Chain of custody implies that right from the time of taking of the sample, to the

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time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloguing the custody. A chain of custody document in other words is a document, "which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item".

Learned counsel for the accused persons submitted that the similar observations are also made by the Hon'ble Apex Court in the case of **Pooranmal vs. State of Rajasthan and anr** *supra* wherein in paragraph No.36 it is observed that, "the recovery of the shirt was held to be incriminating based on the FSL report (Ex.P-49) as per which the blood stains on the shirt tested positive for the presence of "O-Blood Group" being the same as that of deceased-Aruna. For treating the FSL report (Ex. P-49) to be admissible, the prosecution would have to prove the complete chain of

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custody establishing the sanctity of the sealed articles right from the time of the seizure till the time they reached the FSL.”

41. Here, in the present also, the prosecution relied upon seizure panchanamas Exhs.118 and 120 which shows that one brown (Kattha) colour half-sleeve T-shirt having blood stains was seized from the person of accused Ram on 5.6.2019 at 8:00 pm and as per Exh.120, one faint white-orange colour t-shirt seized from accused Laxman was having blood stains, which was also seized on 5.6.2019. Whereas, accused Rama and Laxman were arrested on 4.6.2019 at about 9:48 am. The arrest panchanamas Exhs.156 and 157 of both the accused persons are silent regarding the blood stained clothes of these accused persons.

42. The evidence of pancha PW3 Hansraj Dadaji Yerawar and Investigating Officer PW6 Devendra Thakur is also silent about the blood stained clothes found on the person of both the accused persons. The evidence of Investigating Officer

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PW6 Devendra Thakur is also silent on the aspect that since the seizure of the clothes till the same were forwarded on 10.6.2019, the clothes were kept in a safe custody and there was no chance of tampering.

43. Thus, admittedly, Chemical Analyzer's Report Exh.82 shows that Article-15 half T-shirt of accused Rama and half T-shirt of Laxman, which are marked as Article-H1 and Article-K1 in the requisition letter addressed to Chemical Analyzer, stained with Blood Group AB which was of the deceased. However, in absence of the chain that since the seizure of the clothes till it was forwarded to the Chemical Analyzer, it was kept in a safe custody, is not established and, therefore, the said evidence is not free from doubt.

44. As far as the evidence regarding the role of accused Shiva is concerned, the evidence is consistent to show that it was accused Shiva who has given the knife blow on the person of the deceased on his vital part and due to the said knife blow, the deceased succumbed to the injuries. The

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evidence of PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge is consistent and nothing incriminating is brought on record during the cross examination to show that involvement of accused Shiva is suspicious or false. On the contrary, the evidence shows that accused Shiva came at the spot with preparation as he carried the knife along with him when he restrained the deceased and PW1 Raju Mohan Gogulwar. Though the presence of DW1 Suresh Indrapal Kewat was established at the spot, he has not supported the prosecution case as far as the role of accused Shiva is concerned. During the cross examination of APP, it was brought on record that he is interested witness being relative of accused Shiva. It is specifically admitted by him that he is brother-in-law of accused Shiva. Moreover, his cross examination shows that after receiving the injury, PW1 Raju Mohan Gogulwar ran towards Bandu Totawar. His evidence further shows that he has taken the deceased to the hospital and the deceased was declared dead in the hospital. Thus, he has left the loyalty towards the prosecution only to the extent

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of giving blow by accused Shiva on the stomach. The evidence of Medical Officer PW7 Dr.Bandu Ramteke also establishes that the death of the deceased is caused due to the injury on vital part i.e. stomach. He observed in all 8 injuries on the person of the deceased. He opined that the death of the deceased is due to “shock of hemorrhage due to injury to auxiliary vessels due to stab wound with stab wound on abdomen. He further stated that injuries mentioned in column No.21 are corresponding to injuries mentioned in column No.17. The injury at Sr.No.2 in column No.17 is sufficient in ordinary course of nature to cause death. All the injuries are grievous in nature. His opinion was also obtained by the investigating agency by referring the weapon to him. He specifically stated that when he received the weapon, it was in a sealed condition. He measured the length of the said weapon which was 12.5 cms, blade was 6.5 cms, grip was 6 cms, and width of the blade was 1.5 cms. Thereafter, again, the said weapon was sealed and forwarded and handed over to Police Constable Amol. As far as the opinion of the Medical

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Officer, that the said injuries are possible by the said weapon, is not challenged during the cross examination. Admittedly, the said weapon was forwarded for chemical analysis, however Blood Group of the blood stains found on the knife was not determined as result was inconclusive, but fact remains that the blood stains were found on the weapon. Therefore, as far as the role of accused Shiva in causing the death of the deceased is concerned, which is established by the direct evidence of PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge corroborated by the medical evidence.

45. The Hon'ble Apex Court in Criminal Appeal No.56/2018 decided on 19.9.2008 (**Smt. Shamim vs. The State Of Delhi**) observed that, "while appreciating the evidence of witnesses, approach must be whether the evidence of witness read as a whole inspires confidence. Once that impression is found, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks, infirmities pointed out in the evidence as a whole and evaluate them to find out
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whether it is against general tenor of the evidence and whether earlier evaluation of the evidence is shaken as to render it unworthy.”

46. By applying the above said principles, as far as the role of accused Shiva is concerned, the prosecution has proved the same beyond all reasonable doubts.

47. As far as the role of accused Nos.2 and 3 is concerned, it is consistently stated by PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge that they caught hold the deceased and, thereafter, accused Shiva has given the blow on the stomach of the deceased.

It is vehemently submitted by learned Additional Public Prosecutor for the State that this act of catching hold of the deceased and, thereafter, the other accused is executing the act, is sufficient to show that the accused persons were sharing common intention.

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48. To appreciate the arguments advanced on behalf of the accused persons, it is necessary to understand the object of incorporating Section 34 of the IPC. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 of the IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most

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cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted.

49. Since the common intention essentially being a state of mind and can only be gathered by inference drawn from the facts and circumstances established in a given case, the earlier decisions involving all similar facts cannot be used as

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precedent to determine the conclusions on facts in the case in hand.

50. The common intention contemplated by Section 34 of the Indian Penal Code presupposes prior concert. It requires meeting of minds and it requires a plan.

51. Here, in the present case, PW1 Raju Mohan Gogulwar has exaggerated the version by attributing the role to accused Nos.2 and 3 by deposing that after the deceased was fallen, he was assaulted by fists. However, this version is not supported by PW2 Nitesh Laxman Durge or DW1 Suresh Indrapal Kewat. DW1 Suresh Indrapal Kewat has admitted the presence of accused Nos.2 and 3, but he has not assigned any role to accused Nos.2 and 3.

52. The evidence of PW1 Raju Mohan Gogulwar and PW2 Nitesh Laxman Durge is consistent on the aspect that they caught hold the deceased and, thereafter, accused Shiva has given blow of the knife.

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53. Thus, there is no evidence on record to show that the plan was formed suddenly and in furtherance of that plan, accused Shiva gave a blow of knife on the person of the deceased.

54. The Hon'ble Apex Court in the case of **Jasdeep Singh alias Jassu vs. State of Punjab**, reported in (2022)2 SCC 545 has dealt with word "furtherance" and held that, "word "furtherance " indicates the existence of aid or assistance in producing an effect in future and thus it has to be construed as an advancement or promotion."

It is further held that, "existence of common intention is obviously the duty of the prosecution to prove. However, the court has to analyze and assess evidence before implicating a person under Section 34 of the Indian Penal Code. A mere common intention *per se* may not attract Section 34 of the Indian Penal Code, *sans* an action in furtherance.

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55. Thus, Section 34 of the Indian Penal Code creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to the common intention. The onus is on the prosecution to prove the common intention to the satisfaction of the court. The evidence should be substantial, concrete, definite, and clear.

56. By applying the above said principle, here, in the present case, admittedly, there is no evidence to show that the accused persons were sharing the common intention.

57. Insofar as the role of accused Nos.2 and 3 is concerned, which was allegedly to the extent of catching hold the deceased. However, there is no evidence that there was a prior meeting of mind or something happened at the spot of the incident and at the spur of moment, they shared the common intention and in furtherance of that common intention, accused Shiva with the help of accused Nos.2 and 3 executed the act. The evidence adduced by the prosecution is

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not convincing to hold that accused Nos.2 and 3 shared the common intention. Admittedly, no overt act is attributed to accused Nos.2 and 3.

58. Observing the inference of common intention, the Hon'ble Apex Court in the case of **Ramesh Singh @ Photti vs. State of A.P., reported in (2004)11 SCC 305** held that, "as a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 of the IPC embodies the principles of joint liability
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in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted.”

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59. The similar observations are made by the Hon'ble Apex Court in the case of **Gadadhar Chandra vs. State of West Bengal, reported in (2022)6 SCC 576** wherein in paragraph No.14 it is held as under:

“14. As consistently held by this Court, common intention contemplated by Section 34 of the Indian Penal Code presupposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly.”

60. In the present case, non-examination of two crucial eyewitnesses makes the prosecution case about existence of prior concert and prearranged plan extremely doubtful.

61. In the light of the above principles, if the evidence adduced by the prosecution is considered to ascertain whether accused Nos.2 and 3 had the common intention and acted in furtherance of the common intention, considering the role of

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accused Nos.2 and 3, the prosecution did not bring any evidence to show that there was prior meeting of mind or at the spur of moment there was any consultation, instigation, aiding by these accused persons to accused Shiva and in furtherance of the common intention, accused Shiva has given blow of knife on the person of the deceased. Mere their presence along with the other accused is not sufficient.

62. The Hon'ble Apex Court in the case of **Balvir Singh vs. State of Madhya Pradesh, reported in AIR 2019 SC 2983** held that, "though the accused persons were present along with the main accused, they were not armed, they only caught hold of arms of the deceased and attacked on him. Prior meeting of minds and knowledge of accused persons that their brother was armed with Katta, not established conviction of accused persons under Section 302 read with Section 34 of the Indian Penal Code is liable to be set aside.

63. Here, in the present case also, there is no material evidence on record to show that they were having knowledge

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that accused Shiva was carrying the weapon along with him. The evidence nowhere shows that there was a prior meeting of mind or at the spur of moment there was any discussion between them and accused Nos.2 and 3 was having knowledge that accused Shiva was armed with weapon (Katti). Therefore, the evidence of the prosecution to hold accused Nos.2 and 3 guilty, in view of Section 34 of the IPC, is not sustainable, and liable to be set aside.

64. Thus, for all the above said reasons, as far as the role of accused Shiva is concerned, it is established by the prosecution beyond all reasonable doubts. The evidence of the prosecution is cogent and consistent to show that it was accused Shiva who has caused the death of the deceased which is culpable homicide amounting to murder. The intention of accused Shiva can be gathered from the circumstances that he arrived at the spot along with the weapon. Thus, it is his premeditated act.

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65. As far as accused Nos.2 and 3 are concerned, admittedly, there is no evidence on record to show that they were having knowledge that accused Shiva was carrying a weapon like “Katti” and, therefore, they are not liable for the act of the co-accused. The evidence on record is not sufficient to show that they were sharing the common intention and in furtherance of the common intention they have caused the death of the deceased.

66. In the result, as far as accused Shiva is concerned, we find no merit in the appeal and, therefore, the appeal deserves to be dismissed. However, the appeal, insofar as accused Nos.2 and 3 are concerned, deserves to be allowed. Hence, we pass following order:

ORDER

(1) The criminal appeal is **partly allowed**.

(2) The judgment and order dated 15.11.2021 passed by learned Additional Sessions Judge, Chandrapur in Sessions

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Case No.108/2019 is maintained insofar as accused Shiva is concerned.

(3) The judgment and order dated 15.11.2021 passed by learned Additional Sessions Judge, Chandrapur in Sessions Case No.108/2019 is hereby quashed and set aside, insofar as accused Nos.2 and 3 are concerned.

(4) Accused No.2 Rama s/o Raymallu Kota and accused No.3 Laxman s/o Raymallu Kota are acquitted of offence under Section 302 read with 34 of the IPC.

(5) The Bail Bonds of Accused No.2 Rama s/o Raymallu Kota and accused No.3 Laxman s/o Raymallu Kota stand discharged.

With these, the criminal appeal stands **disposed of**.

JUDGE

JUDGE