



Cr.A.498-2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 498 of 2019

Abdul Shakur Walesab Nadaf
(at present in Amravati Central Prison)
Aged 52 years.
R/o. Surle, Tal. Mangaon, Dist. Raigad.
vs.

...Appellant

The State of Maharashtra
(Through the Senior Inspector of Police,
Mangaon Police Station, Dist. Raigad).

...Respondent

Mr. Valmiky Narvekar a/w. Ms. Ankita Rai, for the Appellant.
Ms. Sharmila Kaushik, APP for the State.

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2026.08.28
14:30:24 +0530

CORAM: **MANISH PITALE &
SHREERAM V. SHIRSAT, JJ**

RESERVED ON: **8th JULY, 2026**
PRONOUNCED ON: **28th AUGUST, 2026**

JUDGMENT: *(Per Shreeram Shirsat, J.)*

1. The present Appeal has been filed challenging the impugned judgment and order dated 03.08.2018 passed by the Sessions Judge, Mangaon, Raigad district in Sessions Case No. 46/2016, whereby the Appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and has been sentenced to undergo Imprisonment for Life and pay a fine of Rs. 50,000/- and in default, to undergo Rigorous Imprisonment (R.I.) for 2 years and also ordered Rs. 40,000/- to be paid to the sons of the deceased after the period of Appeal.

Vishal Parekar

....1

2. Brief facts of the prosecution case are as under:
- a. It is the case of the prosecution that on 04.05.2016, Sarfaraz Abdul Karim Dhangu (First Informant) approached Mangaon Police Station with respect to the assault on his sister-Mehjabin Abdul Shakur Nadaf (the deceased). He informed the police that at around 6:30 a.m., he received a phone call from his maternal cousin, Mubina Abdul Gani Pathan who told him that Abdul Shakur Nadaf (the Appellant) had stabbed his wife (the deceased) and that she was sitting on the staircase in front of Mubina's house.
 - b. It is further the case of the prosecution that upon the First Informant reaching Mubina's house, he found his sister lying in an injured condition outside the house, in a pool of blood. Thereafter, the First Informant and other relatives of the deceased took her to Mangaon Rural Hospital. The doctors found injuries on her head, back, palm, waist and her stomach with her intestines coming out. Upon the referral of the doctor, the deceased was shifted to Sir J.J. Hospital at Mumbai for further treatment.
 - c. It is further the case of the prosecution that an F.I.R was filed by the brother of the deceased at Mangaon Police Station vide

Crime No.86 of 2016 under Section 307 of the IPC on 04.05.2016 and the Appellant came to be arrested on the same day. However, during the course of her treatment at Sir J.J. Hospital, she succumbed to her injuries on 05.05.2016. Thereafter, further investigation was carried out and the charge-sheet came to be filed under Section 302 of the IPC.

3. To effectively prove the guilt of the Accused-Appellant, the prosecution in all examined 7 witnesses (P.W. 1 to P.W. 7):

P.W	NAME	ROLE
1.	Sarfaraj Abdul Karim Dhangu	First Informant and brother of the deceased.
2.	Jakir Najir Khan	Witness who saw the Appellant in blood-stained clothes and; The Appellant tendered the extra-judicial confession before him.
3.	Mubina Abdul Gani Pathan	Maternal cousin of the deceased who first saw the deceased in an injured condition.
4.	Daniyal Abdul Shakur Nadaf	Son of the Appellant and the deceased and; Eye-witness to the incident.
5.	Sunil Prahlad Shelake	Panch witness Spot Panchnama dated 04.05.2016 relating to the clothes of the deceased and; Arrest Panchnama of the Appellant dated 04.05.2016
6.	Datta Kisan Nalawade	Investigating Officer (I.O.)
7.	Dr. Harsh Olhas Panshewdikar	Medical Officer at Sir J.J. Hospital, Mumbai who conducted the Post-Mortem of the deceased.

4. On completion of the prosecution evidence, statement of the Appellant under Section 313 Cr.P.C. was recorded, wherein the Appellant denied the case of the prosecution. The Appellant neither chose to lead any defence evidence, nor did he examine himself on oath. After hearing the prosecution as well as the defence and upon appreciation of the evidence on record, the Sessions Judge, vide judgment and order dated 03.08.2018, was pleased to convict the Appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo Imprisonment for Life and pay a fine of Rs. 50,000/- and in default, to undergo R.I. for 2 years and also ordered Rs. 40,000/- to be paid to the sons of the deceased after the period of Appeal.

5. Being aggrieved by the judgment and order of conviction in Sessions Case No. 46/2016, dated 03.08.2018, passed by the Sessions Judge, Mangaon, the Appellant has approached this Court by way of the present Appeal.

6. Heard Ld. Counsel Adv. Valmiky H. Narvekar for the Appellant and Ld. APP Sharmila S. Kaushik for the Respondent-State.

7. The Ld. Counsel for the Appellant primarily contended that there is no eye-witness to the incident. Apart from the presence of the minor son, no other witness was present at the time of the incident. It was further argued by the Ld. Counsel for the Appellant that the prosecution failed to

prove the presence of the Appellant at the crime scene as a result of varying statements given by several witnesses. It was further argued that P.W. 2 deposed to the effect that the Appellant had confessed to the murder of his wife and had also seen the Appellant with blood on his clothes, however there is no corroboration to this effect. Additionally, the statement of P.W. 2 is in contradiction to the statement of P.W. 4 wherein, the suggestion that the deceased and the Appellant resided together was denied. He further argued that a similar contradiction was also brought out in the cross-examination of P.W. 6- the I.O., who stated that the deceased and the Appellant were residing separately as a result of a dispute between them. Therefore, it was contended that P.W. 2 is not a reliable witness to sustain the conviction of the Appellant. It was further argued that no fingerprint evidence on the alleged weapon i.e. the knife, was brought on record to link the Appellant to the incident. Further, no forensic analysis took place to actually link the wounds to the alleged weapon used. Thus, it was argued that the usage of the said knife by the Appellant, to attack the deceased has not been proven beyond reasonable doubt. It was further submitted by the Ld. Counsel for the Appellant, that the dying declaration made by the deceased to P.W. 1, naming the Appellant as the assailant, while she was being taken to Sir J.J. Hospital Mumbai in the ambulance, is unreliable and should not be considered. The Ld. Counsel for the Appellant

substantiates the aforesaid argument by contending that the deceased had numerous serious injuries including- head injuries, ruptured intestine, etc. and thus it would be impossible that such an injured person would be in the state to narrate the entire sequence of events. It was further contended by the Ld. Counsel for the Appellant that out of the 28 articles/samples seized by the police, 15 came back as inconclusive and although the remaining samples match the blood type of the Appellant, the blood type of the deceased has not even been determined, let alone be matched to the blood found on the said seized articles/samples. Thus it was contended that the prosecution has failed to prove the case against the Appellant beyond reasonable doubt and hence he is entitled to acquittal.

8. In support of his contentions, the Ld. Counsel for the Appellant has relied upon the following authorities:

- i. *Bhanmati vs. The State of Haryana*¹
- ii. *Shivaji Kisan Narawane vs. State of Maharashtra*²
- iii. *Sahadevan and Anr. vs. State of Tamil Nadu*³
- iv. *State of Rajasthan vs. Hanuman*⁴
- v. *Ishwarbhai Narayan Makwana vs. State of Maharashtra*⁵
- vi. *Arbind Singh vs. State of Bihar*⁶

¹ Cr. Appeal No. 114 of 2019

² SLP Cri. No. 17258 of 2024

³ 2012 (6) SCC 403

⁴ Cri. Appeal No. 631 of 2017

⁵ 2013 ALL MR (Cri) 998

⁶ 1994 SCC (Cri) 1418

5. *Per Contra*, the Ld. APP submitted that the prosecution has successfully established its case beyond reasonable doubt and that the Sessions Court has rightly convicted him for the offence punishable under Section 302 of the IPC. The Ld. APP submitted that the contention, that the presence of the Appellant at the scene of the crime has not been established, is without merit. She submitted that the Appellant himself, in his examination under Section 313 Cr.P.C., admitted that he and the deceased were residing together. Further, the Appellant did not dispute the statement of P.W. 4 that on the day of the incident, the Appellant, the deceased, P.W. 4 and the brother of P.W. 4 were present in the house. Thus, the presence of the Appellant at the place of the incident during the relevant time stands established. It was further submitted that the submission made by the Ld. Counsel for the Appellant, that the knife seized was not sent for forensic examination is incorrect. It was submitted that the FSL Report clearly refers to the knife as 'Article 9' and the blood detected on it was found to match the blood group of the Appellant. Therefore, it was contended that the FSL evidence further corroborates the presence of the Appellant at the scene of the crime. It was further argued that the dying declaration made by the deceased to her P.W. 1, P.W. 2 and P.W. 3 inspires confidence and therefore can be a ground for confirming the conviction of the Appellant and lastly urged that the Appeal be dismissed.

6. The Ld. APP has relied upon *Raj Kumar @ Suman vs. State (NCT of Delhi)*⁷ to buttress her arguments.

7. Taking into consideration the arguments advanced by the rival parties, it would be appropriate for this Court to examine the contentions raised in light of the following aspects:

a) **TESTIMONY OF THE EYE WITNESS P.W. 4 :**

8. P.W. 4 is the son of the Appellant and the deceased. In his testimony, he deposed that at the time of incident, he along with his mother (the deceased herein), his brother and his father (the Appellant herein) were in the house and that he was sleeping. He further deposed that the Appellant had dealt a knife blow on the stomach and back of his mother. He deposed that the Appellant took him and his brother out of the house and that the Appellant was to go to the police station. He further deposed that the police recorded his statement and his statement was also recorded by the Magistrate. He identified his father in the court. He also identified the knife before the court. In the cross-examination, it was put to him that at the time of the incident, they were residing at the house of his maternal uncle at Morba and that his father and mother were not residing jointly, to which this witness has answered in the affirmative. However, in the re-examination by the Ld. APP, it was clarified that at the time of

⁷ Criminal Appeal No. 1471 OF 2023

incident, they were residing at Surle, at the house of the Appellant. Further, in the cross-examination to this limited aspect, the witness has maintained his stance on the fact that at the time of incident they were residing at Surle.

9. From the evidence, it can be seen that P.W. 4 is a minor studying in the second standard and is not aware of his age. The Trial Court, therefore, took due precaution to ascertain whether the witness understood the meaning of the term 'oath'. The court specifically asked him whether he knew what an 'oath' meant, to which he gave a satisfactory answer. Accordingly, the Trial Court proceeded to record his evidence on oath. He categorically deposed as follows:

"1) My father had dealt a knife blow on the stomach, back of my mother. Thereafter my father took me and my brother out of the house. Thereafter my father was to go to the police station."

10. Upon the perusal of the entire examination of this witness, we are of the considered opinion, that the contention appears to be that they used to stay permanently at Surle and intermittently used to stay with his maternal uncle at Morba. What is of utmost importance is that P.W. 4, has categorically and unequivocally deposed that the Appellant had dealt a knife blow on the stomach and back of the deceased. There is no cross-examination on this aspect. The deposition of P.W. 4 is corroborated by the Appellant himself in his 313 Cr.P.C. statement, to the effect of his presence

during the incident. It reads as follows:

*“Q.65. It has come in the evidence of PW 4 Daniyal Abdul Shakur Nadaf say that, at the time of incident himself, his mother, his brother and father were in the house. What you have to say about it?
Ans. It is true.”*

Therefore, we have no doubt in coming to a conclusion that the Appellant and the deceased were together at the time of the incident. Further, P.W. 7- the doctor also testified to there being injuries on the stomach as well as on the back of the deceased and has therefore corroborated the testimony of the child-witness. We find the evidence of this witness to be truthful, trustworthy and not a result of any tutoring and in absence of any cross-examination, the evidence of P.W. 4 stands unshaken.

11. The Ld. Counsel for the Appellant relied upon the judgment of the Hon’ble Apex Court in the case of *Arbind Singh vs. State of Bihar*⁸ to discredit the testimony of the child-witness as being unreliable and prone to tutoring. The relevant paragraph reads as under:

“3....There are also certain other statements made in the course of her deposition which would suggest that possibility of tutoring could not be ruled out. Having taken a careful look at the evidence of this child witness we are of the opinion that implicit faith and reliance cannot be placed on her testimony since it is not corroborated by any independent and reliable evidence. It is well-settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly when the evidence betrays traces of tutoring. We, therefore, think that appellant 1 was entitled to benefit of doubt.”

⁸ 1994 SCC (Cri) 1418

12. This judgment can be distinguished on the facts of the case. In the facts of the present case, we do not find the evidence of P.W. 4 to be an outcome of any tutoring. Further, we find sufficient corroboration to what has been deposed by P.W. 4 and therefore, the said judgment cannot be said to be applicable to the facts of the present case.

b) ORAL DYING DECLARATIONS TO P.W. 1, P.W. 2 & P.W. 3 :

13. Before analysing the evidence with respect to Oral Dying Declaration, a useful reference can be made to the judgment of the Hon'ble Apex Court in the case of ***Bhajju alias Karan Singh vs. State of Madhya Pradesh***⁹ wherein it has been observed as under :-

“23. The “dying declaration” essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.

24. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot for the sole basis of conviction unless it is corroborated by other evidence.”

⁹ (2012) 4 SCC 327

14. P.W. 1- Sarfaraz Abdul Karim Dhangu, the brother of the deceased and the Complainant, deposed that when he was taking his sister in an ambulance to Mumbai, she told him that she had woken up in the morning to observe '*upas*' and that some quarrel took place between herself and the Appellant. She further narrated to him that thereafter the Appellant assaulted her with a knife. He further deposed that subsequently the deceased died in the hospital. Therefore, we are of the considered opinion that the statement made by the deceased to P.W. 1, relating to the circumstances in which she sustained the injuries leading to death, assumes significance of a dying declaration and is required to be considered accordingly.

15. P.W. 2, the landlord of the deceased and the Appellant deposed that he saw the deceased lying on the staircase of one Sharmir Pathan in a pool of blood. He further deposed that the deceased had injuries on her stomach, her intestine had come out and she had head injuries. He further deposed that the police Patil enquired about her injuries and that she told him that the quarrel took place between her and the Appellant. She further said that pursuant to the quarrel, the Appellant dealt the knife blow on her person and thereby she sustained injuries. He also deposed that the deceased went on to narrate that about two days back, some dispute had taken place between her brother and the Appellant and that the Appellant

was telling her to lodge a complaint against her brother regarding the same and therefore the quarrel took place. The testimony of P.W. 2 also lends material corroboration to the version of the prosecution regarding the circumstances in which the deceased sustained the injuries at the hands of the Appellant.

16. P.W. 3- the cousin sister of the deceased, deposed that the deceased frequently visited the Appellant. She further deposed that at about 6:30 a.m., she heard shouts like "*Baji, Baji*" and when she opened the door, she saw that the deceased was sitting on the staircase- bleeding, in an injured condition. She further deposed that she asked the deceased as to what happened, to which she replied that her husband had assaulted her. P.W. 3 further stated that the deceased narrated that a quarrel took place between her and the Appellant at night and even in the morning. Thereafter, the Appellant gave a knife blow on her stomach, back and different parts of the body, due to which she sustained the injuries. The witness further deposed that the deceased asked to be taken to the hospital and when the deceased was taken, the doctor referred her to Mumbai for further treatment. Thereafter, she was taken to Sir J.J. Hospital, where she succumbed to her injuries. There is nothing in the cross-examination of this witness which would discredit her. It would be important to take into consideration a categorical admission in the cross-examination of P.W. 3, wherein it is

stated that the deceased was talking to her till she reached Sir J.J. Hospital. The other suggestions like the quarrel did not take place and that the Appellant did not assault the deceased have been categorically denied by this witness. This testimony is relevant and lends further credence to the case of the prosecution.

17. It will now be relevant to note that P.W. 1, P.W. 2 and P.W. 3 are all consistent in their deposition and that there is no discrepancy in their evidence. All of the aforesaid witnesses have deposed in unequivocal and categorical terms as to what was narrated to them by the deceased. Upon perusal of the oral dying declarations, made to various witnesses, it can be seen that the deceased clearly, coherently and cogently narrated the incident and also remained consistent in naming the Appellant. Just because the prosecution has not examined Police Patil and the doctor who were also present when the deceased had made the oral dying declaration to PW 2 and PW 3, the same will not diminish the value of the dying declaration. This Court finds that the oral dying declarations given to P.W. 1, P.W. 2 and P.W. 3 are true and free from any embellishment. It is pertinent to note that there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration and if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it, without any corroboration. We are of the opinion

that, there is nothing on record to come to the conclusion or harbor a reasonable suspicion or doubt that the deceased could have been tutored. Additionally, this Court also does not find that the dying declarations are a manifestation of fiction or a product of imagination of the mind of the deceased. The deceased was in a position to speak till they reached the hospital as deposed by PW 3 and therefore the narration given by the deceased which has been deposed by PW 1 to Pw 3 is in a natural way and does not smack of any tutoring.

18. At this juncture, it would be apposite to refer to the judgment of the Hon'ble Apex Court in the case of ***Irfan alias Naka vs. The State of Uttar Pradesh***¹⁰.

“15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

.....

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide

10 2023 SCC OnLine SC 1060

this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation /fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration ?

19. The above-mentioned judgment has laid down certain factors which can be considered to determine when a dying declaration should be accepted. A conjoint reading of the depositions of P.W. 1, P.W. 2 and P.W. 3 would show that there is absolute consistency in the deposition of these witnesses, with respect to the oral dying declaration made by the deceased

to each of them. PW 3 has answered in the cross examination that till they reached the hospital the deceased was talking to them. The evidence on record, if perused minutely, fulfils all the requisites enumerated by the Apex Court in the aforesaid judgment.

20. The basic premise of the law on dying declaration is, '*nemo moritur praesumitur mentire*' i.e. a man will not meet his maker with a lie in his mouth, is the reason in law to accept the veracity of such a statement. Thus, the oral dying declarations made to P.W. 1, P.W. 2 and P.W. 3 appear to be true, voluntary and devoid of tutoring.

c) EXTRA JUDICIAL CONFESSION

21. Further, there is also evidence in the nature of extra-judicial confession which was made by the Appellant before P.W. 2, the landlord. P.W. 2 deposed that on 04.05.2016 at about 5:00 a.m., when he had gone for morning prayer along with Anis Rizwan and Tabrej to the mosque at Morba and after prayer when he was proceeding towards his house at about 6:00 a.m., he met the Appellant at the S.T. Bus Depot stand, along with his two sons. He deposed that blood could be seen on the Appellant and his clothes. Upon enquiry, the Appellant told him that there was a quarrel between him and his wife. He further told P.W. 2 that, “बायकोचा आज काम करून टाकलाच” and stated that he is going to Mangaon Police Station. This witness deposed that as he suspected the Appellant, he told

him that he would come along with him.

22. This Court has in several cases held that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. However, the confession will have to be proved like any other fact and the value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. No doubt, as held by the Hon'ble Apex Court, the extra-judicial confession is a weak piece of evidence, however, what has to be seen is whether the extra-judicial confession inspires confidence and is corroborated by other prosecution evidence. We have also gone through the cross-examination of P.W. 2, but we do not find anything substantial which would discredit this witness.

23. The corroboration of the circumstances during which the extra judicial confession was made as deposed by P.W. 2, finds place in the statement recorded under Section 313 Cr.P.C. When the question was put to the Appellant, that it has come in the evidence of P.W. 2 that at that time Shakur Nadaf along with his two sons met him on the ST stand, he replied in the affirmative. So also, when it was put to him that it has come in the evidence that blood was found on his person and clothes, he once again replied in the affirmative. The answers to Question Nos. 24 and 25 are reproduced hereinbelow:

“24] Further it has come in his evidence that, at that time Shakur Nadaf along with his two sons met me on the S.T. stand. What you have to say about it ?

Ans: It is true.

25] Further it has come in his evidence that, the blood was found on his person and clothes. What you have to say about it ?

Ans: It is true.”

24. The Ld. Counsel for the Appellant relied upon the judgment in the case of *Sahadevan and Another vs. State of Tamil Nadu*¹¹ and has invited the attention of this Court to paragraph 16, which deals with the analysis of extra-judicial confession:

16] Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

ii) It should be made voluntarily and should be truthful.

iii) It should inspire confidence.

iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

25. The above-cited judgment cited by the Ld. Counsel for the Appellant in fact supports the case of the prosecution. We find that the extra-judicial

¹¹ (2012) 6 SCC 403

confession is without coercion and is trustworthy. We also do not find that it suffers from any material discrepancies or inherent infirmities. The Appellant has made the extra-judicial confession in a most natural way. This Court has come to the conclusion that the extra-judicial confession was made voluntarily and was truthful. In our view, it inspires complete confidence. Thus, the overall evidence with respect to the extra-judicial confession, is found to be worthy of consideration and reliance.

d) MOTIVE

26. To prove motive the prosecution has examined P.W. 1 who has deposed that there was a long standing dispute between his sister (the deceased) and the Accused (the Appellant). P.W. 2 has deposed that the deceased had told that the quarrel took place between her and her husband (the Appellant) and therefore the Appellant dealt the knife blow on her person by which she sustained injuries. P.W. 3 has also deposed that when she asked her what had happened , she told her that quarrel took place between them at night hours and even in the morning and therefore her husband gave knife blow on her stomach, back and different parts of the body thereby she sustained bleeding injuries. Nothing has been brought out in the cross-examination of these three witnesses which will discredit their testimonies. In our opinion the prosecution has proved motive beyond reasonable doubt.

e) **CASE OF CULPABLE HOMICIDE :**

27. It will also be pertinent to take into consideration the nature of injuries and the cause of death. P.W. 7- the doctor who conducted the post-mortem, deposed that on 04.05.2016, he was attached to Sir J.J. Hospital, Mumbai and on that day, the deceased was brought by J.J. Marg Police Station with a history of injury by a sharp-edged weapon, caused to her by her husband, under the influence of alcohol. He further deposed that the deceased was initially taken to Mangaon Rural Hospital and then referred to Sir J.J. Hospital where she died during treatment. He further referred to the external injuries which were found on the body of the deceased. The following are the injuries noted by P.W. 7:

“03. I along with resident Dr. Mr. Kamble perform PM on dead body. Following external injuries were found.

Stitched CLW of size 8cm x 0.2 cm over forehead above left eyebrow, black coloured four stitches noted, on dissection it is muscle deep, blood infiltration noted around margins, margins irregular, dark red in colour.

Abrasion of size 1.5 x 0.5 cm over right side of nose, dark red in colour.

Stitched CLW of size 2 x 0.1 cm over right anterior side of neck, on dissection it is muscle deep, blood infiltration noted around margins, dark red in colour.

Stitched stab wound of size 3 x 0.2 cm over right side of chest below right breast three black coloured stitches noted on dissection it is cavity deep, margins inverted, blood infiltration noted around margins, dark red in colour.

Stitched stab wound of size 4 x 0.2 cm over right inguinal area, for black coloured stitches noted, on dissection, margins inverted, it is cavity deep, blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 4 x 0.2 cm over left wrist, four stitches, black colour noted, on dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

FMDDMC/AMK/473/16, ADR No. 00/16, Sir J.J. Marg Police

Station, Mumbai date 05.05.2016 column No. 17 separate sheet.

Stitched CLW of size 1.5 x 0.2 cm over base of left thumb over palm, two stitches noted, black coloured, on dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 3 x 0.2 cm over lateral border of right thigh, 4 black coloured stitches noted, on dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 3 cm x 0.2 cm over lateral border of right thigh, below injury no (8), 5 cm. On dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 4 x 0.2 over anterior aspect of right thigh, two black coloured stitches noted, on dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 1.5 x 0.5 cm over anterior aspect of right thigh, 6 cm below injury no (10), two black coloured stitches noted, on dissection it is muscle deep, margins, irregular blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 4 x 0.2 cm over back below left sided angle of scapula, three black coloured stitches noted, on dissection it is muscle deep, blood infiltration noted around margins, dark red in colour.

Stitched CLW of size 4 x 0.2 cm over back, on left side, 13 cm below injury no.12, three black coloured stitches noted, on dissection it is muscle deep, blood infiltration noted around margins, dark red in colour.

04. On internal examination column No.19-

Under scalp contusion of size 13 cm x 3 cm over left parietal region, blood infiltration noted around margins, dark red in colour.

Under scalp contusion of size 8 cm x 3 cm over left frontal region, blood infiltration noted around margins, dark red in colour.

05. Fracture of right sided 8th rib noted, blood infiltration of corresponding skin, muscle noted, dark red in colour.

06. Laceration of lower lobe over right lateral side noted, pale.”

28. P.W. 7 further deposed that the stab injuries are possible with a sharp and pointed weapon and the other injuries are possible with a hard, pointed and rough weapon. He also deposed that head injuries are possible if the head of a person is banged into the wall. He stated that the injuries

on the deceased were possible by Article 'D'- the knife, shown to him in the court. In the cross-examination, the only question which was asked to him was whether the police had shown the weapon to him, to which he replied in negative. Beyond that, there is no cross-examination. P.W. 7 the doctor has also issued the cause of death certificate wherein the provisional cause of death is stated to be head injury with multiple injuries over body (unnatural). The prosecution has therefore proved that this is a case of culpable homicide.

f) RECOVERY OF BLOOD STAINED CLOTHES AND KNIFE :

29. P.W. 5- the panch witness to recovery of clothes of the Appellant has deposed that he was called for panchnama in Mangaon Police Station on 04.05.2026, where one light green ladies Kurta with blood stains and holes was produced, which was seized under the panchnama. He has further deposed that an arrest panchnama of the accused was prepared. He also deposed that the accused had injury to his left hand and it was banded. He has further deposed that the clothes of the accused were blood stained. If the CA report at Exhibit 26 is perused, it shows that on Exhibit 1(kurta), Exhibit 2 (pant), Exhibit 3 (shirt), ' Human Blood' was found of 'A' group. Even on Exhibit 8(Oadhani), Exhibit 9(Knife) and Exhibit 9A (Handkerchief), 'Human blood' was found of 'A' group which is of the Appellant (Exhibit 28). As it has come in the evidence that there was

injury on his left hand, the finding of human blood of A group which is of the Appellant, on all the exhibits referred herein above further corroborates the presence of the Appellant and his culpability. The possibility of the scuffle also cannot be ruled out. There is no cross examination on this aspect of injury to the Appellant and merely a suggestion has been put which has been denied by PW 5. Further no question is put to the IO as well on the aspect of injury. The Ld. Counsel for the Appellant had submitted that there is no medical record to show that there was any injury and only the statement of the Panch cannot be believed. The answer of the Appellant to question 78, in the statement under section 313 of the Cr.PC, will clinch the issue. Said question and answer is reproduced herein below.

Q. 78: Further it has come in his evidence that, he had injury to left hand. It was banded. His clothes were blood stained. What do you have to say about it?

Ans : It is true.

30. What we have observed is that, the date of incident is 4/5/2016, the blood samples were received by the FSL Kalina on 16/5/2016. The analysis started on 23/5/2016 and completed on 15/6/2016. The results of the examination of blood samples of the deceased are “ haemolysed hence unsuitable for blood grouping “ and “inconclusive” (Exhibit 35). It is a sorry state of affairs that in such cases, where prompt examination is expected, which can give proper results, the examination is carried out in such a delayed manner. Be that as it may, the finding of blood of group A

of the Appellant on the knife, Kurta and Oadhani corroborates the involvement of the Appellant in the present crime. The contention of the Ld. Counsel that conviction cannot be based just because the blood group of the Appellant is the same as found on the knife. Although it is true that conviction cannot be solely based on it, nevertheless can be a corroborating circumstance which can be taken into consideration.

31. Further failure on the part of the prosecution to conclusively determine the blood group of the deceased and therefore to match the same with the blood stains recovered from the spot of the incident, cannot be said to be fatal to the prosecution. It is true that the conclusive finding with regard to the blood stains would have further strengthened the case of the prosecution and corroborated the witness testimonies, however, the absence thereof does not convince us to conclude otherwise, in the light of the other evidence available on record. It would be unfair to disregard the other evidence brought on record by the prosecution, such as the oral dying declarations which are consistent, the child witness who witnessed the Appellant stabbing his mother and withstood the cross-examination without any contradictions and especially the extra-judicial confession which appears voluntary and true. This is not a case resting on circumstantial evidence, where each link in the chain must independently and conclusively point to the guilt of the accused. Where the direct ocular

testimony and oral dying declarations establish the complicity of the Appellant beyond reasonable doubt, the mere failure to determine the blood group and to link the same to the weapon involved cannot be permitted to create a doubt about the circumstances that the substantive evidence establishes.

32. A profitable reference can be made to the judgment of ***Prabhu Dayal vs. State of Rajasthan***¹², wherein the Apex Court has been pleased to observe as under :

“24. In State of Rajasthan v. Teja Ram, this Court concluded that even when the origin of the blood cannot be determined, it does not necessarily prove fatal to the case of the prosecution. In that case, the murder weapons had been recovered with blood on them, and the origin of the blood on one of the weapons could not be determined. Therein, the Court held as follows: (SCC pp. 514-15, paras 25-27)

“25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.”

33. A reference could also be made to another landmark judgment of the Hon’ble Apex Court in the case of ***Balwan Singh vs. State of Chhattisgarh***¹³.

¹²(2018)8 SCC 127

¹³ Cr. Appeal No. 727 of 2014

“9. We are also conscious of the fact that, at times, it may be very difficult for the serologist to detect the origin of the blood due to the disintegration of the serum, or insufficiency of bloodstains, or haematological changes etc. In such situations, the Court, using its judicious mind, may deny the benefit of doubt to the accused, depending on the facts and circumstances of each case, if other evidence of the prosecution is credible and if reasonable doubt does not arise in the mind of the Court about the investigation.

Thus, in the case of R. Shaji v. State of Kerala, (2013) 14 SCC 266, this Court had observed:

“31. A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or nonmatching of blood group(s) loses significance.”

Similar observations were made by this Court in the case of Gura Singh v. State of Rajasthan, (2001) 2 SCC 205, wherein it was observed that it was not possible to accept the submission made on behalf of the accused that in the absence of the report regarding the origin of the blood, the accused could not have been convicted, inasmuch as it was only because of the lapse of time that blood could not be classified successfully.

In the case of Jagroop Singh v. State of Punjab, (2012) 11 SCC 768, this Court had ruled that as the recovery was made pursuant to a disclosure statement made by the accused, and the serological report had found that the blood was of human origin, the non-determination of the blood group had lost its significance.

In the case of State of Rajasthan v. Teja Ram and Others, (1999) 3 SCC 507, the Court had observed that the failure of the serologist to detect the origin of the blood, due to disintegration of the serum, did not mean that the blood stuck on the weapon could not have been human blood at all. In this context, it was noted that it could not be said that in all cases where there was a failure in detecting the origin of blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. It was thus observed that unless the doubt was of a reasonable dimension which a judicially conscientious mind entertained with some objectivity, no benefit could be claimed by the accused.

10. However, we cannot lose sight of the fact that the accused would be in a disadvantageous position in case if the aforementioned dictum laid down by this Court in the cases of *R. Shaji (supra)*, *Gura Singh (supra)*, *Jagroop Singh (supra)* and *Teja Ram (supra)* relating to the bloodstains is applied in each and every case. Non-confirmation of bloodgroup or origin of the blood may assume importance in cases where the accused pleads a defence or alleges mala fides on the part of the prosecution, or accuses the prosecution of fabricating the evidence to wrongly implicate him in the commission of the crime.

11. In the case of *John Pandian v. State Represented by Inspector of Police, Tamil Nadu*, (2010) 14 SCC 129, this Court, on facts, observed that the evidence of recovery of weapons was credible. The Forensic Science Report (FSL) report had disclosed that the blood was of human origin. The Court proceeded to conclude that since the evidence of recovery of weapon was proved to the satisfaction of the Court, it was sufficient that the prosecution had proved that the bloodstains were of human origin, even though the blood group could not be ascertained.

12. The cases discussed above highlight the burden that the prosecution would ordinarily have to discharge, depending on the other facts and circumstances of the case, for the evidence relating to recovery to be considered against the accused. At the same time, as mentioned above, we are conscious of the fact that it may not always be possible to inextricably link the bloodstains on the items seized in recovery to the blood of the deceased, due to the possibility of disintegration of bloodstains on account of the timelapse in carrying out the recovery. For this reason, in *Prabhu Dayal v. State of Rajasthan*, (2018) 8 SCC 127, where one of us (Mohan M. Shantanagoudar J.) had the occasion to author the judgment, this Court, relying on *Teja Ram (supra)*, had held that the failure to determine the blood group of the bloodstains collected from the scene of offence would not prove fatal to the case of the prosecution. In *Prabhu Dayal* case (*supra*), although the FSL report could not determine the blood group of the bloodstains on account of disintegration, the report clearly disclosed that the bloodstains were of human origin, and the chain of circumstantial evidence was completed by the testimonies of the other witnesses as well as the reports submitted by the Ballistic Expert and the Forensic Science Laboratory regarding the weapon used to commit murder.

13. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood.

The Court will have to come to the conclusion based on the facts and circumstances of each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.”

34. The upshot of these two judgments is that, if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin, even though the blood group is not proved because of disintegration of blood. In the present case the panchnamas at Exhibits 18 and 20 for the recovery of the knife, blood stained clothes of the deceased, blood stained clothes of the Appellant and other recovered articles are admitted. The blood is found to be of Human origin. There are no allegations against the investigating agency about the investigation being tainted and therefore even if the blood group is inconclusive, it will not affect the case of the prosecution. We are, therefore, of the view that in the facts of the present case, this circumstance neither advances the case of the prosecution nor does it detract from it and the conviction can be sustained independently. Taking into consideration the overall circumstances that there are eye witnesses, oral dying declarations and extra judicial confession,

even if the blood group of the deceased is inconclusive, it would not affect the fabric of the prosecution case.

g) JUDGEMENTS RELIED UPON BY THE APPELLANT :

35. The Ld. Counsel for the Appellant has placed reliance on the judgment in the case of *Bhanmati vs. State of Haryana (supra)*. In this case, the Hon'ble Apex Court had acquitted the Appellant of all the charges. The core issue in this case was that the courts below had placed substantial reliance on a mere recovery of a weapon. The Hon'ble Apex Court held that mere recovery of the material object, namely a '*gandasi*', by itself cannot be the sole basis for recording a conviction. The Hon'ble Court further noted that there were no fingerprints of the Appellant on the recovered weapon and that the evidence was inadequate to conclusively establish that the recovered weapon had been used in the commission of the offence and that in any case the evidence was inadequate to conclusively show that the weapon recovered was used for committing the offence. However, the facts of the present case significantly differ from those mentioned in the case above. In the case at hand, there is ample material in the nature of oral dying declarations, extra-judicial confession and even the knife was found at the spot which is not disputed since the panchanama of the same has been

admitted by the defence. Just because the prosecution failed to produce fingerprint evidence, the same cannot be considered as a ground to acquit the Appellant, in the peculiar facts of the present case.

36. The Ld. Counsel for the Appellant has relied upon the judgment of *Shivaji Kisan Narawane vs. State of Maharashtra*¹⁴ and has invited the attention of this Court to paragraph 14, which reads as under:

“14] The prosecution further contends that the appellant's alleged presence at the crime scene is substantiated by CDR and the recovery of purported murder weapons, including a knife and a grinding stone (Article 24). While the CDR may indicate that the appellant was in the vicinity around the time in question, it does not conclusively link him to the crime. Cell phone location data, at best, establishes proximity; it does not confirm participation or knowledge of an illegal act. The prosecution has not produced any direct evidence-such as eyewitness testimony or forensic material-showing the appellant actively engaging in the offence. As for the recovery of the grinding stone (Article 24), the record reveals that it was found in an open area accessible to multiple individuals. This fact significantly diminishes its probative value. The prosecution must demonstrate not only that the stone was the weapon used, but also that the appellant had exclusive possession or control of it at the relevant time. In the absence of fingerprints, bloodstains conclusively identified as belonging to the appellant, or any other form of forensic linkage, the mere discovery of a potentially incriminating article fails to establish guilt. When weighed against the stringent standards applicable in circumstantial evidence cases, such tenuous connections are insufficient to fix culpability on the appellant beyond reasonable doubt.”

37. As stated above, there is ample material in the nature of oral dying

¹⁴ Cri. Appeal arising out of SLP (Cr.) No. 17258 of 2024.

declarations, extra-judicial confession and an eye- witness. Just because the prosecution failed to produce fingerprint evidence, the same cannot be considered as a ground to acquit the Appellant, in the peculiar facts of the present case.

38. The Ld. Counsel for the Appellant relies upon the judgment in ***Ishwarbhai Narayan Makwana vs. The State of Maharashtra***¹⁵, particularly paragraph 13 thereof, to contend that the inability of the prosecution to produce fingerprint evidence would fail to meet the required standards to establish the guilt of the Appellant. Therefore, it can be seen that in some cases even if no steps are taken to find out the fingerprints on the handle of the knife, the same may not be fatal to the prosecution if there is other material sufficient enough to establish the guilt of the Appellant.

39. The Ld. Counsel for the Appellant has further relied upon the judgment of ***State of Rajasthan vs. Hanuman***¹⁶ and has invited the attention to paragraph 6 of the said judgment:

“6] We find that the incriminating circumstances relied upon by the prosecution, i.e., the motive and the recovery of the blood stained weapon, even taken in conjunction cannot constitute the complete chain of incriminating circumstances required to bring home the charges against the accused. The High Court seems to have overlooked the FSL report which fact was stressed upon by learned counsel for the appellant. However, in our view, even if the FSL report is taken into account, then also, other than the fact that the weapon recovered at the instance of the accused tested positive for the same blood group as that of the deceased (B +ve), nothing much turns on the said report.”

¹⁵ 2012 ALL MR (Cri) 988.

¹⁶ SCI Cri. Appeal No. 631/2017 Dt. 19-06-2025

40. The case herein was of an appeal against acquittal and a case of circumstantial evidence, where the Court had come to a conclusion that the incriminating circumstances relied upon by the prosecution i.e. the motive and the recovery of blood-stained weapon, even taken in conjunction, could not constitute the complete chain of incriminating circumstances required to bring home the charges against the accused. Further, the Ld. Counsel for the Appellant also invited attention of this Court to paragraph 7 of the said judgment, wherein it was held that mere recovery of blood-stained weapon, even bearing the same blood group of the victim, would not be sufficient to prove the charge of murder.

41. While not disputing the proposition of law laid down by the Hon'ble Apex Court, we are of the opinion the present case does not hinge only on the findings or the outcome of the blood stains analysis. There is ample evidence in terms of oral dying declarations and extra-judicial confession and therefore, even if we discount the blood-stained weapon, the same would not affect the fabric of the prosecution case. Therefore, this judgment, which is in the case of an appeal against acquittal, is of no avail to the present Appellant.

42. The Ld. APP relied upon the judgment of *Raj Kumar @ Suman vs. State (NCT of Delhi) (supra)* to emphasise on the importance of statement recorded under Section 313 of the Cr.P.C. We agree with the guidelines

laid down by the Apex Court and in the case in hand the Appellant was given an opportunity to explain the circumstances appearing against him. The Appellant having understood the questions put to him has rightly answered the questions. The question that would therefore arise is whether such material should be taken into consideration whilst appreciating the evidence. The wordings of the section itself are very clear. Section 313(4) of Cr.P.C. reads as follows:

313(4)....The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

43. The Apex Court in the case of ***Raj Kumar Singh @ Raju @ Batya v State of Rajasthan***¹⁷ has held as under

“32 In Ramnaresh & Ors. v. State of Chhattisgarh, AIR 2012 SC 1357, this Court held as under: “It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.”

44. The Appellant in response to some of the questions put in the statement recorded under section 313 of the Cr.P.C., has given positive answers which further corroborates the case of the prosecution.

¹⁷ CRIMINAL APPEAL NOS. 931-932 of 2009

45. Taking into consideration the overall conspectus of the case, we are of the opinion that the prosecution has proved the case beyond reasonable doubt and the resultant conviction is proper. The Appeal therefore stands dismissed and the conviction of the Appellant is upheld.

Hence, the following order.

ORDER

(i) The Appeal stands dismissed.

(ii) All pending Applications are also disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)