

(2012) 02 BOM CK 0193

Bombay High Court

Case No: Criminal Appeal No. 595 of 2007

Sachin Dadarao
Borude

APPELLANT

Vs

The State of
Maharashtra

RESPONDENT

Date of Decision: Feb. 3, 2012

Acts Referred:

- Arms Act, 1959 - Section 25(1A), 7(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2012) BomCR(Cri) 717 : (2012) 114 BOMLR 674

Hon'ble Judges: Hari P. Davare, J; A.P. Lavande, J

Bench: Division Bench

Advocate: Arfan Sait, for the Appellant; M.M. Deshmukh APP, for the Respondent

Final Decision: Dismissed

Judgement

Shri. Hari P. Davare, J.

1.. Heard respective counsel for the parties.

2. The present appeal is directed against the conviction and sentence imposed upon the appellant/original accused by way of judgment and order dated 29th July, 2006 rendered by IInd Adhoc Additional Sessions Judge, Thane in Sessions Case No.346 of 2005 thereby convicting the appellant/accused for the offence punishable u/s 302 of IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs.2,500/-in default of payment of fine directing him to undergo R.I. for one year.

3. Briefly stated, the prosecution case is that : The appellant/accused viz. Sachin Dadarao Borude faced the trial for having committed murder of one Ravi Pradhan by assaulting him with big knife on 27.2.2005 at about 14.00 hours at Belapur C.B.D.

Mumbai. The investigation was set into motion by complainant Shri Pralhad Kisan Kamble by lodging FIR at C.B.D. Belapur police station on the same day i.e. 27.2.2005. It is alleged that accused Sachin and deceased Ravi Pradhan as well as complainant Pralhad Kamble used to reside at construction site in structure No.20, C.B.D. Belapur, New Bombay. At the time of incident, accused Sachin was working as labourer on the said construction site whereas deceased Ravi Pradhan was serving as watchman in Kiran Apartment in the said vicinity.

4. It is the case of the prosecution that on 27.2.2005 at about 2 pm the complainant Pralhad Kamble returned home for lunch and while washing his hands heard shouts "Are Bapare" "Are Bapare"; hence he went towards the hut of Ravi Pradhan and noticed that accused Sachin was assaulting deceased Ravi Pradhan with big knife in his hands. On seeing Pralhad Kamble, accused warned him not to intervene between them; hence, he went towards construction site and called people in the neighbourhood at the spot. It is further alleged that meanwhile Ravi Pradhan ran towards Kiran Apartment and accused followed him with knife in his hand and assaulted him by knife on the first floor and thereby victim Ravi Pradhan sustained bleeding injuries all over his body.

5. It is also the case of the prosecution that PW 6 Punjab Bhogale was serving as Asst. Police Commissioner of Turbhe Division at the relevant time and he received telephonic message regarding incident of murder of a male in Sector 20 at Belapur and hence he proceeded to the said spot alongwith staff and found that a dead body of male person was lying in the passage on the first floor of Kiran Apartment. Moreover, Pralhad Kamble was also present on the spot and he narrated the incident to him and the said narration revealed that Sachin i.e. accused committed murder of deceased Ravi Pradhan which was witnessed by him. Hence, Senior PI Ghadge recorded the FIR of said Pralhad Kamble which is produced at Exhibit-30 and offence was registered against the accused u/s 302 of IPC. Moreover, according to directions of PW 6 ACP Punjab Bhogale, PSI Chavan prepared inquest panchnama of the dead body at Exhibit-26. The Spot panchnama was also prepared which is at Exhibit-18. According to the prosecution, the investigation was taken over by ACP Punjab Bhogale and since accused was absconding the efforts were made to search him and he was found hiding himself in house at a distance of half kilometre from the spot, and accordingly, he was arrested therefrom under arrest panchnama Exhibit-31. Moreover, PW 6 ACP Bhogale recorded statements of the witnesses during the investigation.

6. It is further alleged that after arrest, the accused made disclosure about concealment of weapon. Accordingly, accused led police personnel to a shop behind Onkar Apartment near the staircase and took out blood stained knife beneath the staircase and same was seized under discovery panchnama Exhibit-22. Moreover, PW 6 ACP Bhogale took personal search of the accused and seized clothes under seizure panchnama Exhibit-24, so also blood stained clothes of the deceased were

seized under seizure panchnama Exhibit-19. He also recorded statement of several witnesses and took accused to the hospital for medical examination.

7. According to the prosecution PW 1 Dr.Bhushan Jain was attached to New Bombay Municipal Hospital, Vashi at the relevant time and he was attached to N.M.M.C. Hospital on 27.2.2005 and he conducted post mortem on dead body of Ravi Pradhan between 6.45 to 8 pm on the said date and noted about 16 external injuries and also internal injuries on the dead body, and prepared post mortem report which is produced at Exhibit-8.

8. Thereafter PW 6 ACP Bhogale sent seized articles to C.A. office for examination purpose alongwith forwarding letter Exhibit-28. Accordingly, the C.A. report dated 10.6.2005 was received which is produced at Exhibit-32. The investigation revealed that accused had committed murder of Ravi Pradhan on the date, time and place mentioned hereinabove by assaulting him with knife. Accordingly, after completion of investigation, the charge-sheet was filed against accused u/s 302 of IPC and also under the provisions of Arms Act before the learned J.M.F.C., Thane. However, since case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions, Thane. Thereafter, learned IInd Additional Sessions Judge, Thane framed the charge against the accused on 23.11.2005 under Exhibit-2 for the offences punishable u/s 302 of IPC, 7(1) of Arms Act for the offence punishable u/s 25(1-A) of the Said Act. However, the accused pleaded not guilty and claimed to be tried.

9. To substantiate the charges levelled against the accused, the prosecution examined as many as six witnesses as mentioned hereunder :

1. PW 1 -Dr.Bhushan Vilasrao Jain who conducted post mortem on dead body of Ravi Pradhan.

2. P.W. 2 - Srikant Vishnu Jadhav, eye witness.

3. P.W.3 - Nalini Srikant Jadhav, eye witness.

4. P.W.4 - Ferhan Ahsan Chaudhary, panch to memorandum and discovery panchnama.

5. P.W.5 - Mohan Shivaji Patil, panch to panchnama of seizure of clothes of accused Exhibit-24.

6. P.W.6 - ACP Punjab Vasantrao Bhogale, Investigating Officer.

10. The defence of the accused is of total denial, but he has not examined any defence witness.

11. After scrutinising oral, documentary and medical evidence as well as rival submissions advanced by learned counsel for the parties, the learned trial Court convicted and sentenced the appellant for the offence punishable u/s 302 of IPC as

mentioned hereinabove by impugned judgment and order dated 29.7.2006. Being aggrieved and dissatisfied by the said conviction and sentence, the appellant/accused has preferred the present appeal challenging the same and prayed for quashment thereof.

12. Before advertng to the submissions advanced by learned counsel for the parties, it is necessary to make useful reference to material evidence adduced and produced by the prosecution. The main thrust of the prosecution case is on two star witnesses i.e. PW 2 Srikant Jadhav and PW 3 Nalini Jadhav who claimed to be eye witnesses. Coming to the testimony of PW 2, he stated that he knew the accused present before the court and he was knowing deceased Ravi Pradhan also who was watchman of Kiran Apartment as well as working as watchman of other two buildings also. He stated that the incident occurred on 27.2.2005 at noon, when he was in the house alongwith his wife. At this juncture, he heard shout as "Bachav, Bachav" from down floor and, therefore, he alongwith his wife i.e. PW 3 Nalini Jadhav came in balcony of the flat and witnessed therefrom that Ravi Pradhan was running and accused was chasing him armed with big knife in his hand. Ravi Pradhan stumbled and fell, and thereupon, the accused inflicted blows of knife on different parts of his body, and, thereby, he sustained bleeding injuries. Srikant Jadhav also raised shout as well as other residents also raised shouts and PW 2 Srikant Jadhav came downstairs alongwith his wife PW 3 Nalini Jadhav but accused escaped towards railway track. Hence PW 3 Nalini stayed back with injured and Srikant chased the accused but it was in vain. He further stated that police personnel arrived and admitted the injured in hospital as well as recorded his statement during the investigation. He also identified knife, the incriminating Article "A".

13. In the cross examination, he admitted that he was not knowing accused prior to the incident. He also stated that he resided on the second floor of Kiran Apartment building. He further stated that he did not start getting down when Ravi Pradhan fell down on steps of the building and at that time occupants of the building went near victim Ravi Pradhan. He further stated that he did not accompany police personnel to hospital to admit Ravi Pradhan but had discussion with other occupants of the building in respect of the incident. As regards identification of knife, he stated that except length of knife there was no other mark of identification thereon. He also stated that he could not confidently state that the knife he witnessed on the date and time of incident was same or not. He further stated that police never invited him for test identification parade of the accused.

14. PW 3 Nalini Jadhav in her testimony stated that she identified accused in the court and stated that she has seen him on many occasions in front of her building. She also stated that she knew Ravi Pradhan as watchman of her building. She further stated that incident occurred on 27.2.2005 after 1.30 pm and she was present at her home alongwith her husband and on hearing shouts from down floor she and her husband witnessed the occurrence of incident when accused was

chasing victim Ravi Pradhan. He was trying to get in the building but fell down and accused was possessing weapon in his hands and inflicted blows of weapon i.e. knife on victim Ravi Pradhan. She also stated that her husband PW 2 Srikant Jadhav asked from gallery to leave the victim Ravi Pradhan. She further stated that victim Ravi Pradhan was coming upstairs in injured condition but he fell down on first floor. Meanwhile police personnel arrived in the building and removed Ravi Pradhan to hospital, but the accused went towards railway track. The police personnel recorded her statement during the course of investigation, and she also identified knife which was used during aforesaid occurrence of the incident.

15. In the cross examination, it has come that she did not state before the police that prior to the incident she witnessed the accused while coming and going from their building but the said purported contradiction in the context of concerned portion in her police statement was not brought on record and consequently, same was not put to the investigating officer PW 6 and has not been duly proved. Similar is the position with another contradiction which is attempted to be brought in the cross examination that she had not stated that labourer and her husband were asking the accused to leave Ravi Pradhan. Besides, she further stated that just two months prior to the incident they had come to reside in the building and denied suggestion that accused did not assault Ravi Pradhan.

16. That takes us to the deposition of PW 1 Dr. Bhushan Vilasrao Jain, who has stated that he was attached to N.M.M.C. Vashi and conducted post mortem on the dead body of Ravi Pradhan on 27.10.2005 between 6.45 pm to 8 pm and he observed following external injuries thereon :

External Injuries

"1. Incise chopped wound seen over right parietal region 7 X 0.5 cm. Bone deep situated at the distance of 9 cm. From glabella and 4 cm. Lateral to midlines reddish.

2. Incise chopped wound over franto parietal region 10 X 0.5 cm. Bone deep situated at the distance of 6 c.m. From glabella, obliqually placed reddish.

3. Incise chopped wound over left parieto frontal region 7 X 0.5 c.m. Bone deep situated at the distance of 5 c.m. From glabella and 7 c.m. Lateral to midline, reddish.

4. Incise wound over left parietal region medial to above injury no.3 of length 2.5 c.m. Scalp deep, reddish.

5. Incise chopped wound over the left temporo-parietal region 7 X 2 c.m. Alongwith chopped fracture of outer table at parietal eminence. Infiltration staining of blood seen at the fractural margins.

6. Incise chopped wound seen over left side of the face extending from cheek into occipital region involving external ear of size 16 X 4 c.m. Alongwith chopped fracture

of mastoid and mandible, infiltration staining of blood seen at the fractural margins.

7. Incise chopped wound seen over right side of the face extending from maxillary region upto mandibular region below ear lobule 11 X 3 c.m. Alongwith fracture maxilla, infiltration staining of blood seen at the fractured margins.

8. Incise wound over right little finger medially alongwith traumatic amputation, infiltration, staining of blood seen at the fractural margins.

9. Incise wound over the right ring finger medially at terminal end bone deep reddish.

10. Incise wound left arm posteriorly 3 X 1 c.m. Muscle deep reddish.

11. Incise wound over left forearm below elbow joint postero-medially 9 X 3.5 c.m. Bone deep infiltration staining of blood seen at the fractural margins.

12. Incise wound over left forearm middle (1/3) region 5 X 2 c.m. Muscle deep, reddish.

13. Incise chopped wound over left hand palmer aspect extending upto web of ring finger 9 X 3 c.m. Alongwith chopped fracture of metacarpel bmer, infiltration staining of blood seen at the fractural margins.

14. Incise chopped wound over the left hand extending from base of the thumb upto palm muscle below little finger 9 X 1 c.m. Alongwith fracture carpet bmel, infiltration staining of blood seen at the fractural margins.

15. Incise chopped wound over the left wrist joint on flexor aspect 7 X 4 c.m. Alongwith chopper fracture of wrist joint. Infiltration staining of blood seen at the fractural margins.

16. Incise chopped wound over right leg antero-medially 6 X 5 c.m. Bone deep alongwith chopped fracture of the tibia, infiltration staining of blood seen at the fracture margins

17. He also noted following internal injuries

1. Under scalp sub-gadial contusion seen in relation to injury no.1 to 6 in column no.17 reddish.

2. Skull showed.

a) Linear fracture of outer table of right parietal bone of length 4 c.m.

b) Linear fracture of right parietal bone extending upto frontal bone in a midline involving left parietal bone of length 12 c.m.

c) Linear fracture of length 11 c.m.

d) Chopped fracture of left parietal bone involving eminence of size 6 X 2 c.m. (Infiltration staining of blood seen at the fractural margins meninges intact. Brain showed multiple contusions all over of size varying from 2 X 2 c.m. To 3 X 3 c.m. Reddish).

18. He further stated that death must have caused one hour after sustaining injuries and all injuries were fresh in nature and death may have occurred within 6 hours prior to conducting the autopsy and within 2-4 hours after last meal. All injuries were ante mortem. All internal injuries were corresponding to external injuries nos.1 to 6. Injury nos.1 to 6 were of grievous nature and fatal. All external injuries were possible by sharp edged heavy weapon like chopper which was shown to him and same is marked as Art.A. According to him, cause of death was shock and haemorrhage due to multiple chopper wounds. He further stated that after conducting post mortem, he prepared post mortem report which was produced at Exhibit-8.

19. During the cross examination he stated that Police Personnel had sent inquest panchnama alongwith dead body for post mortem. He also stated that after incident deceased Ravi Pradhan was taken to New Mumbai Municipal Corporation Hospital and was brought dead in the Hospital. He further stated that he did not have any idea regarding exact time of incident and police did not communicate to him exact time of death of Ravi Pradhan. He also further stated that in routine course rigor mortis starts developing after 3 to 4 hours from death and in present case the rigor mortis was well developed in upper limbs and it was partly developed in lower limbs. He specifically stated that he had not mentioned time and death in post mortem report and stated that he had not mentioned directions of the injuries in the post mortem notes.

20. Turning to the evidence of PW 4 Farhan Chaudhary who acted as panch to memorandum and discovery panchnama, she stated that the accused in custody made statement in her presence on 27.2.2005 at about 7.15 pm which was recorded in memorandum of panchnama Exhibit-21 and thereafter accused led police personnel and panchas to village Belapur via Agroli Village and took them to Onkar building and further led them to Goverdhan Hotel, and there were two shops besides the Goverdhan Hotel, and the accused entered in the shop from adjacent window since door was closed and took out blood stained knife from beneath the staircase having length of 1 ft. 3 inches and same was seized under discovery panchnama Exhibit-22 as Article "A".

21. In the cross examination, she stated that police personnel did not mention in the panchnama that firstly accused entered into shop through window and thereafter they entered. She also admitted that police personnel did not describe the place properly from where the accused discovered the knife. She further stated that place was accessible to the public at large and Goverdhan Hotel was open at that time but police personnel did not make enquiry therein. Police Personnel did not supply copy

of seizure panchnama to the accused and signature of accused did not appear thereon.

22. On the aforesaid background of oral and documentary evidence learned counsel for the appellant canvassed that prosecution failed to examine the very complainant i.e. Pralhad Kamble who, in fact, was eye witness to occurrence of the incident and no efforts were made to examine the said witness for the reasons best known to the prosecution and FIR was sought to be proved by I.O. PW 6 ACP Bhogale which is done without examining Sr.P.I. Ghadge which is contrary to law. It was also argued by learned counsel for the appellant that PW 2 Srikant Jadhav and PW 3 Nalini Jadhav could be construed as eye witnesses since alleged witnesses saw occurrence of the incident from balcony of their flat and it is at very long distance. Moreover, PW 2 Srikant Jadhav categorically stated that he was not knowing accused prior to the incident as well as the very portion stated by PW 3 Nalini Jadhav seeing the accused on many occasions has come in contradiction and, therefore, it is clear that PW 2 Srikant Jadhav and PW 3 Nalini Jadhav were not knowing the accused earlier but still test identification parade was not conducted for the reasons best known to the prosecution and non conducting of test identification parade in respect of said witnesses PW 2 Shrikant and PW 3 Nalini hampers the case of the prosecution. It was also submitted by learned counsel for the appellant that Art.A was not shown to PW 2 Srikant earlier and he identified it in the Court for the first time. Moreover, the prosecution had not examined any independent witness or person from society to substantiate the charge levelled against the accused and the accused was not shown to PW 2 Srikant and PW 3 Nalini Jadhav after the arrest. It was further submitted that the testimony of PW 3 Nalini Jadhav suffers from vital contradictions which go to the root of matter and diminish the credibility of her testimony. Accordingly, it was submitted that the depositions of PW 2 Srikant Jadhav and PW 3 Nalini Jadhav suffer from discrepancies and infirmities, and hence, same cannot be considered as eye witnesses to the aforesaid incident, and consequently, so called direct evidence is not believable.

23. Learned counsel for the appellant also submitted that testimony of PW 4 Farhan Choudhary in respect of discovery panchnama was not reliable and trustworthy and there is no evidence that the knife which was allegedly seized at the instance of the accused was sealed at the time of its seizure. Moreover, even alleged discovery of knife was from the place which was accessible to the public at large, and hence, such discovery of knife allegedly at the instance of the accused is suspicious, and hence, will not connect the accused with alleged crime. It is also submitted by learned counsel for the appellant that copies of memorandum and discovery panchnamas were not handed over to the accused and his signature was not obtained thereon amounting to material lacunae in the prosecution case.

24. As regards medical evidence learned counsel for the appellant submitted that PW 1 Dr. Bhushan Jain admitted in the cross examination that he did not have any

idea regarding exact time of incident and police did not communicate to him exact time of death of Ravi Pradhan and Ravi Pradhan was brought in dead condition in the hospital. He further stated that the authorities of NMMC Hospital also did not communicate to him exact time of death of Ravi Pradhan. It was further submitted that the said doctor also admitted that he did not specify time and death in the post mortem report. Accordingly, it was canvassed that time of death of deceased Ravi Pradhan was not proved. Accordingly, learned counsel for the appellant submitted that there were infirmities, deformities and lacunae in the prosecution case, and hence, the accused was entitled for benefit of doubt and, therefore, urged that present appeal be allowed.

25. Learned counsel for the appellant relied upon judicial pronouncement of this court in Criminal Appeal 409 of 1997 dated 30.7.2010 and Criminal Appeal No.677 of 2004 dated 7.7.2010 to substantiate his contentions.

26. Learned A.P.P. countered the said arguments and opposed the present appeal vehemently and submitted that PW 2 Srikant Jadhav and Nalini Jadhav were eye witnesses to the occurrence of the incident and were natural and independent witnesses who have corroborated with each other and witnessed the assault by the accused upon victim Ravi Pradhan by big knife and the said direct evidence to the occurrence of the incident categorically connects the accused/appellant with the crime. It was also canvassed by learned A.P.P. that Srikant Jadhav and Nalini Jadhav who resided in the building where the incident occurred were independent witness and, therefore, other residents of the building were not examined. It was further submitted that it was evident from evidence of PW 2 Srikant Jadhav and PW 3 Nalini Jadhav that they knew the accused prior to the occurrence of the incident and there was no question of conducting test identification parade of the accused in respect of said witnesses and, therefore, the investigating agency had rightly not conducted the same.

27. In so far argument in respect of the FIR is concerned, it was submitted by the learned A.P.P. that the prosecution had made sincere efforts to examine Pralhad Kamble i.e. the complainant who was also one of the eye witnesses but summons could not be served upon him inspite of the efforts made by the investigating agency, and hence, said FIR was produced through I.O. ACP Bhogale and since he identified endorsement of Sr.P.I. Ghadge it was rightly exhibited by the trial Court, and hence, it was argued that the arguments canvassed by learned counsel for the appellant bear no substance. According to learned APP FIR is not substantive piece of evidence, and hence, production thereof and exhibiting it (Exhibit-30) had not caused any prejudice to the accused. He further submitted that the seized articles including big knife were sent to C.A. office for examination purpose and C.A. report thereof i.e. 10.6.2005 Exhibit-32 connects the accused with the crime. Moreover, it was pointed out that C.A. report disclosed human blood of "O" group on sura and the clothes of the accused had but he has not given any explanation in respect of

the said blood stains on sura and his clothes even in his statement recorded u/s 313 of the Criminal Procedure Code. Moreover, it was also submitted that specific question was put to the accused in respect of blood stains on his clothes which is incriminating circumstance against him but still he could not give any explanation therefore. Accordingly, learned A.P.P. submitted that although there are some minor discrepancies in the prosecution evidence, the direct evidence of PW 2 Srikant Jadhav and PW 3 Nalini Jadhav i.e. eye witnesses coupled with evidence of PW 7 Dr.Bhushan Jain and testimony of PW 4 Farhana Choudhary in whose presence knife was recovered/discovered at the instance of accused and C.A. report Exhibit-32 cumulatively connect the accused to the crime and, therefore, urged that present appeal bears no substance, and hence, same deserves to be dismissed.

28. We have perused ocular evidence, documentary evidence and medical evidence as well as evidence of forensic science laboratory and also considered submissions advanced by learned counsel for the parties as well as perused judicial pronouncements cited by learned counsel for the appellant carefully and at the outset Scrutiny of the evidence of PW 2 Srikant Jadhav reflects that he witnessed occurrence of the incident of assault by accused on victim Ravi Pradhan by knife for considerable period/time and he deposed eloquently that accused inflicted blows of knife on various parts of body of victim and thereby he sustained bleeding injuries on his person. Moreover, he identified the accused before the court and stated that he also knew deceased Ravi Pradhan, who was working as watchman prior to the date of occurrence of incident i.e. 27.2.2005. True it is that he stated in the cross examination that he was not knowing accused prior to the incident and he did not inform about the incident to his neighbours and there was no other identification mark on knife Art.A except length thereof and he was never called for test identification parade by the police personnel, but the very fact that he witnessed occurrence of the incident of assault upon Ravi Pradhan by accused by knife on 27.2.2005 in the afternoon, from balcony of his flat on the second floor and came down to downstairs reflects that he witnessed occurrence of the incident since beginning for considerable length of time and even he attempted to catch hold of the accused and chased after him before his escape, amounts to incriminating piece of evidence against the accused.

29. Moreover, from the Scrutiny of testimony of another eye witness PW 3 Nalini Jadhav emerges that she had witnessed occurrence of the incident which took place on 27.2.2005 after 1.30 pm outside the building where she resided. The accused was armed with weapon and he chased victim Ravi Pradhan and while running, the victim fell down in the building and thereupon accused gave blows of knife on body of the victim and thereafter fled away. She also stated that her husband was also present who also witnessed occurrence of the incident and her testimony corroborates the deposition of Srikant Jadhav. As mentioned hereinabove attempt was made to bring out some contradictions in her cross examination but it was half hearted attempt and concerned contents of the portion in police statement were

not brought on record/recorded and therefore the said purported contradictions would not diminish the credibility of her testimony. Accordingly, the testimony of PW 3 Nalini Jadhav has not been shaken in the cross examination, and hence, same is required to be accepted, and consequently, deserves to be believed as eye witness count.

30. A close scrutiny of the evidence of PW 7 Dr. Bhushan Jain reflects that he conducted post mortem on the dead body of Ravi Pradhan on 27.10.2005 and observed as many as 16 external injuries thereon and internal injuries as mentioned in P.M. report and all injuries were ante mortem injuries and internal injuries were corresponding to external injury nos.1 to 6. The injury Nos.1 to 6 were grievous in nature and fatal and all external injuries were possible by sharp edged weapon i.e. chopper. He also opined that cause of death was shock and haemorrhage due to multiple chopped wounds. Accordingly, the testimony of PW 1 Dr. Bhushan Jain clarifies that victim Ravi Pradhan met with homicidal death and external injuries nos.1 to 6 were grievous and fatal in nature and all internal injuries were corresponding to external injuries and all injuries were ante mortem injuries which were caused by sharp edged weapon like chopper Art.A produced before the Court. Hence, the testimony of PW 7 Dr.Bhushan Jain establishes that the death of victim Ravi Pradhan was homicidal.

31. The evidence of PW 4 Farhan Chaudhary discloses that seizure panchnama Exhibit-22 was prepared and Art.A blood stained knife was recovered at the instance of the accused from beneath the staircase, adjacent to shop behind Goverdhan Hotel at Belapur. True, it is that said place was accessible to public at large but simultaneously it cannot be ignored that the said place was beneath the staircase adjacent to shop behind Govardhan Hotel. It is also true that PW 4 Farhan Choudhary did not spell out in her testimony that said knife was sealed by lack seal at the time of seizure thereof. However, there is mention in the discovery panchnama Exhibit-22 that the said knife was sealed with lack seal at the time of seizure thereof. Hence, the said minor shortcoming will not vitiate discovery of big knife at the instance of accused.

32. Accordingly, eye witnesses account i.e. the testimony of PW 2 Srikant Jadhav, PW 3 Nalini Jadhav corroborate with each other on the material point of assault by the accused upon victim Ravi Pradhan by knife repeatedly which is the cogent and incriminating evidence against the accused. The depositions of said eye witnesses is the direct evidence coupled with medical evidence of PW 7 Dr.Bhushan Jain and P.M. Notes Exhibit-8 and the testimony of PW 4 Farhan Chaudhary alongwith memorandum and discovery panchnama, emerging recovery of blood stained knife at the instance of accused and C.A. report Ex.32 disclosing that blood stained chopper bore human blood of "O" group and non explanation by accused therefor inspite of giving an opportunity while recording statement u/s 313 of Criminal Procedure Code cumulatively connect the accused with the crime.

33. Besides since PW 2 Srikant Jadhav and PW 3 Nalini Jadhav who were the residents of the building where the incident occurred were examined by the prosecution, and hence, there was no necessity to examine other residents of the said building, and in fact, the said two witnesses are independent witnesses and, therefore, there is no substance in the argument canvassed by learned counsel for the appellant in that respect. Moreover, it is amply clear from the evidence of PW 3 Nalini Jadhav that she knew the accused prior to the incident, and therefore, there was no question of conducting test identification parade of the accused and, therefore, argument canvassed by learned advocate for the appellant also bears no substance in that respect. Moreover, it also appears that the prosecution made efforts to examine Pralhad Kamble, on whom witness summons could not be served and, therefore, he could not be examined although he was eye witness but said shortcoming will not be fatal to the prosecution since the prosecution examined PW 2 Srikant Jadhav and PW 3 Nalini Jadhav in that respect. As regards FIR, true it is that the complainant was not examined but it was produced through PW 6 ACP Punjab Bhogle, who identified endorsement of Sr. P.I. Ghadge and since FIR is not substantive piece of evidence, the minor lacuna would not hamper the prosecution case. It is also significant to note that C.A. report dated 10.6.2005 Exhibit-32 discloses that the clothes of accused as well as sura recovered at the instance of accused under memorandum and discovery panchnama bore blood stains of human blood of "O" group but accused has not given explanation therefore and more particularly to the question no.7 therein, although opportunity was given to him in that respect while recording his statement u/s 313 of Cr.P.C. and said inaction on the part of accused speaks volumes for itself.

34. As regards judicial pronouncements cited by learned counsel for the appellant, considering facts and circumstances of the said cases and also considering peculiar facts and circumstances of the present case, it is apparently clear that facts and circumstances in the present case differ from the said judicial pronouncements, and hence, same are of any aid and assistance to the appellant in the instant case.

35. Having entire survey of prosecution evidence and also after reappreciating it, and also on perusal of impugned judgment and order of conviction, it is amply clear that there is no glaring mistake therein, and, therefore, this is not a fit case warranting interference of this court, and hence, we are not inclined to accept the submissions advanced by learned counsel for the appellant and, therefore, the present appeal fails.

36. In the result, present appeal is dismissed and conviction and sentence imposed upon the appellant by the judgment and order dated 29.7.2006 rendered by IInd Additional Sessions Judge, Thane in Sessions Case No.346 of 2005 stands confirmed and present appeal is disposed of accordingly.

Shri Arfan Sait, advocate is appointed under Legal Aid Scheme. His fees are quantified at Rs.3,000/- (Rupees Three Thousand Only).

Copy of this Judgment be served upon the Appellant who is in jail through concerned jail authority.