IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 439 OF 2016
WITH
INTERIM APPLICATION No.1689 OF 2026
IN
CRIMINAL APPEAL No.439 OF 2016

Jitendra Fakirchand Rana @ Chaina
Aged : 29 years, Occ. : Nil
R/o Room No.112, Hindu Muslim Chawl,
Anand Nagar, Behram Baug, New Road,
Jogeshwari West, Mumbai 400 062. .....Appellant
(Org.Accused No.1)

Versus

The State of Maharashtra
At the instance of Sr. Inspector of Police,
D.N.Nagar Police Station,
Vide their C.R.No. 410 of 2011 .....Respondent

WITH
INTERIM APPLICATION No.2617 OF 2025
IN
CRIMINAL APPEAL No.439 OF 2016

Valerie Santos
Aged 61 years,
All Residing at : 17, Kevni Pada, Amboli,
Next to Saint Blaise Church,
Andheri West, Mumbai
Mumbai Suburban, Maharashtra-400058 .....Applicant

<u>In the matter between</u>
Jitendra Fakirchand Rana @ Chana
Aged : 29 years, Occ. : Nil
R/o Room No.112, Hindu Muslim Chawl,
Anand Nagar, Behram Baug, New Road,
Jogeshwari West, Mumbai 400 062. .....Appellant
(Org.accused No.1)

RUPALI RAJESH WAKODIKAR
Digitally signed by RUPALI RAJESH WAKODIKAR
Date: 2026.11.05 21:16:31 +0530

Uploaded on - -
Downloaded on - 05/11/2026 22:03:49

Versus

The State of Maharashtra)
At the instance of Sr. Inspector of Police,)
D.N.Nagar Police Station,)
Vide their C.R.No. 410 of 2011).....Respondent

WITH
INTERIM APPLICATION No.768 OF 2025
IN
CRIMINAL APPEAL No.439 OF 2016

Valerian Santos)
Aged 43 years,)
Residing at : 17, Kevni Pada, Amboli,)
Next to Saint Blaise Church,)
Andheri West, Mumbai)
Mumbai Suburban, Maharashtra-400058).....Intervenor

In the matter between)
Jitendra Fakirchand Rana @ Chana)
Aged : 29 years, Occ. : Nil)
R/o Room No.112, Hindu Muslim Chawl,)
Anand Nagar, Behram Baug, New Road,)
Jogeshwari West, Mumbai 400 062.).....Appellant
(Org.accused No.1)

Versus

The State of Maharashtra)
At the instance of Sr. Inspector of Police,)
D.N.Nagar Police Station,)
Vide their C.R.No. 410 of 2011).....Respondent

WITH
CRIMINAL APPEAL No.381 OF 2016

Sunil Omprakash Both @ Chota)
Aged 20 years, Indian Inhabitant,)
Occ. : Service.)
Permanent resident of Walmiki Nagar,)

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Ceaser Road, Amboli, Andheri (W),
Mumbai 400 058
(Presently lodged at Arthur Road Central Prison as convicted prison in the present matter) .....Appellant (Org.accused No.3)

Versus

The State of Maharashtra
At the instance of D.N.Nagar Police Station,
Vide their C.R.No. 410 of 2011 .....Respondent

WITH
INTERIM APPLICATION No. 2778 OF 2026
IN
CRIMINAL APPEAL No. 381 OF 2016

Sunil Omprakash Both @ Chota
Aged 20 years, Indian Inhabitant,
Occ. : Service.
Permanent resident of Walmiki Nagar,
Ceaser Road, Amboli, Andheri (W),
Mumbai 400 058
(Presently incarcerated at Nashik Road Central Prison as convicted prisoner) .....Applicant (Org. accused No.3)

Versus

The State of Maharashtra
At the instance of D.N.Nagar Police Station,
Vide their C.R.No. 410 of 2011 .....Respondent

WITH
INTERIM APPLICATION No. 2618 OF 2025
IN
CRIMINAL APPEAL No.381 OF 2016

Valerie Santos
Aged 61 years,
Residing at : 17, Kevni Pada, Amboli,
Next to Saint Blaise Church,
Andheri West, Mumbai
Mumbai Suburban, Maharashtra-400058 ....Intervenor

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

In the matter between)
Sunil Omprakash Both @ Chota)
Aged 20 years, Indian Inhabitant,)
Occ. : Service.)
Permanent resident of Walmiki Nagar,)
Ceaser Road, Amboli, Andheri (W),)
Mumbai 400 058)
(Presently lodged at Arthur Road, Central)
Prison As convicted Prisoner in present matter) ....Applicant
(Org. accused No.3)

Versus

The State of Maharashtra
At the instance of
D.N.Nagar Police Station,
Vide their C.R.No. 410 of 2011 .....Respondent

WITH
INTERIM APPLICATION No.1004 OF 2025
IN
CRIMINAL APPEAL No.381 OF 2016

Valerie Santos)
Aged 43 years,)
Residing at : 17, Kevni Pada, Amboli,)
Next to Saint Blaise Church,)
Andheri West, Mumbai)
Mumbai Suburban, Maharashtra-400058 ....Intervenor

In the matter between)
Sunil Omprakash Both @ Chota)
Aged 20 years, Indian Inhabitant,)
Occ. : Service.)
Permanent resident of Walmiki Nagar,)
Ceaser Road, Amboli, Andheri (W),)
Mumbai 400 058)
(Presently lodged at Arthur Road, Central)
Prison As convicted Prisoner in present matter) ....Applicant
(Org. accused No.3)

Versus

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

The State of Maharashtra
At the instance of
D.N.Nagar Police Station,
Vide their C.R.No. 410 of 2011 .....Respondent

WITH
CRIMINAL APPEAL No.840 OF 2016

Deepak Ishwar Omprakash Piwal)
Age : 22 years, Occ. : Education,)
Residing at room No. 38, Walmiki Nagar,)
Creaser road, Amboli, Andheri (W),)
Mumbai 400 079.)
).....Appellant
(Org. accused No.4)

Versus

The State of Maharashtra)
At the instance of Amboli Police Station,)
Vide their C.R.No. 410 of 2011).....Respondent

WITH
INTERIM APPLICATION No.1693 OF 2026
IN
CRIMINAL APPEAL No. 840 OF 2016

Deepak Ishwar Omprakash Piwal)
Age : 34 years,)
Residing at room No. 38, Walmiki Nagar,)
Creaser road, Amboli, Andheri (W),)
Mumbai 400 079.)
presently incarcerated at)
Nashik Road Central Prison, Open Jail, District-)
Nashik, PIN-422101.)
).....Applicant
(Org. accused No.4)

Versus

The State of Maharashtra)
At the instance of D. N. Nagar Police Station)
Vide their C.R.No. 410 of 2011).....Respondent

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

WITH
INTERIM APPLICATION No.760 OF 2025
IN
CRIMINAL APPEAL No.840 OF 2016

Valerian Santos)
Aged 43 years,)
Residing at : 17, Kevni Pada, Amboli,)
Next to Saint Blaise Church,)
Andheri West, Mumbai)
Mumbai Suburban, Maharashtra-400058).....Intervenor

In the matter between)
Deepak Ishwar Omprakash Piwal)
Age : 34 years,)
Residing at room No. 38, Walmiki Nagar,)
Creaser road, Amboli, Andheri (W),)
Mumbai 400 079.).....Appellant
At present Nashik Jail (Org.accused No.4)

Versus

The State of Maharashtra)
At the instance of Amboli Police Station, at)
Mumbai, Dist-Maharashtra)
Vide their C.R.No. 410 of 2011).....Respondent

WITH
INTERIM APPLICATION No.2615 OF 2025
IN
CRIMINAL APPEAL No.840 OF 2016

Valerie Santos)
Aged 61 years,)
All Residing at : 17, Kevni Pada, Amboli,)
Next to Saint Blaise Church,)
Andheri West, Mumbai)
Mumbai Suburban, Maharashtra-400058).....Intervenor

In the matter between)
Deepak Ishwar Omprakash Piwal)
)

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Age : 34 years,)
Residing at room No. 38, Walmiki Nagar,)
Creaser road, Amboli, Andheri (W),).....Appellant
Mumbai 400 079. (Org.accused No.4)
At present Nashik Jail

Versus

The State of Maharashtra)
At the instance of Amboli Police Station, at)
Mumbai, Dist-Maharashtra)
Vide their C.R.No. 410 of 2011).....Respondent

.....

Mr. Sudeep Pasbola, Senior Advocate a/w Mr.Sankalp Vichare, Nagrees B. Tarade i/b. Mr. Rahul S. Arote, for the Appellant in Appeal No.439/2016.

Dr. Yug Mohit Chaudhary a/w Mr. Dashrath Gaikwad, for the Appellant in Appeal Nos.790/2016 and 840/2016.

Mr. Gaurav Bhawnani a/w Mr. Fardin Shaikh i/b. Mr. Khan Abdul Wahab, for the Appellant in Appeal No.381/2016.

Ms. Gayatri Gokhale a/w Mr. Aakash Gupta a/w Mr. Amit Padwal, Mr. Shane Santos, Mr. Anash Irani, for the intervener.

Mr. Aabad Ponda, Senior Advocate, Special PP a/w Mr. Bahraiz Irani, Mr. P. P. Shinde, APP, for the respondent-State.

.....

CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.

RESERVED ON : 18th SEPTEMBER 2026

PRONOUNCED ON : 5th NOVEMBER, 2026

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

JUDGMENT [PER SANDESH D. PATIL, J]

For convenience of reference, this Judgment is arranged in the following manner:-

INDEX

SR. NO.	PARTICULARS	PAGE NO.
A.	CASE OF THE PROSECUTION	11
B.	PROSECUTION WITNESSES-PW-1 TO PW-29	14
C.	DISCUSSION ON LD. TRIAL COURT'S JUDGMENT	83
D.	SUBMISSIONS ON BEHALF OF ACCUSED NO.1 IN CR. APPEAL No.439/2016	85
E.	SUBMISSIONS ON BEHALF OF ACCUSED NO.4 IN CR. APPEAL No.840/2016	94
F.	SUBMISSIONS ON BEHALF OF ACCUSED NO.3 IN CR. APPEAL No.381/2016	100
G.	SUBMISSIONS OF LEARNED SPECIAL PUBLIC PROSECUTOR	102
H.	SUBMISSIONS ON BEHALF OF INTERVENOR	116
I.	REASONING AND ANALYSIS	116
	(a) MOLESTATION	117
	(b) DELAY IN RECORDING STATEMENTS AND F.I.R.	132
	(c) CREDIBILITY OF PW-2 (SECURITY GUARD)	140
	(d) CREDIBILITY OF PW-21 (PAAN VENDOR)	141
	(e) NON-EXAMINATION OF SOME OF THE WITNESSES.	143
	(f) NON-PRODUCTION OF CCTV FOOTAGE	146
	(g) INCONGRUITY IN NUMBER OF ASSAILANTS	148
	(h) DELAY IN CONDUCTING TEST IDENTIFICATION PARADE	150
	(i) RECOVERY OF KNIFE	151
	(j) CONSUMPTION OF ALCOHOL BY THE COMPLAINANT	156
	(k) SUDDEN FIGHT, PREMEDITATION & EXCEPTION 4 TO SECTION 300 OF IPC	158
	(l) APPLICABILITY OF SECTION 302 R/W SECTION 34 OF IPC *QUA* ACCUSED NOS.3 AND 4	168
J.	CONCLUSIONS	178
K.	IMPOSITION OF SENTENCE ON ACCUSED NO.1.	180
L.	ORDER	183

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

The Challenge :

1. The genesis of the present proceedings lies in the gruesome murder of two young persons namely Keenan Santos and Ruben Fernandez on the fateful night of 20th October, 2011. The Appellants are the accused. By the present appeal, the Appellants are challenging the Judgment and Order dated 5th May, 2016 passed in Sessions Case No.161/2012 passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai (hereinafter referred to as '**The Trial Court**'), whereby the Trial Court convicted the accused No.1 – Jitendra Fakirchand Rana, accused No.2 – Satish Nafesing Dulgaj, accused No.3 – Sunil Omprakash and accused No.4 Deepak Ishwar Piwal for the offence punishable under Section 302 r/w Section 34 of Indian Penal Code (hereinafter referred to as '**IPC**' for short).

The sentences :

All accused were sentenced to suffer imprisonment for life i.e. remainder of their life.

Accused No.1 Jitendra Rana and accused No.2 Satish Dulgaj were convicted for the offence punishable under Section 354 of IPC

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

and were sentenced to suffer rigorous imprisonment for two years and fine of Rs.5,000/-, in default of which, they were sentenced to suffer imprisonment for one month.

Accused No.1 Jitendra Rana and accused No.2 Satish Dulgaj were convicted for the offence punishable under Section 509 of IPC and were sentenced to suffer imprisonment for one year.

Accused No.1 Jitendra Rana and accused No.2 Satish Dulgaj were convicted for the offence punishable under Section 504 of IPC and were sentenced to suffer rigorous imprisonment for two years.

Accused No.1 Jitendra Rana and accused No.2 Satish Dulgaj were convicted for the offence punishable under Section 506 (II) of IPC and were sentenced to suffer rigorous imprisonment for five years and fine of Rs.5,000/-, in default of which, they were prescribed imprisonment for 15 days.

Accused No.1 Jitendra Rana and accused No.2 Satish Dulgaj, accused No.3- Sunil Omprakash Both @ Chota and accused No.4- Deepak Riwal were convicted for the offence punishable under Section 37(1) r/w 135(1) of the Bombay Police Act and were sentenced to suffer rigorous imprisonment for six months.

Accused No.3 Sunil and accused No.4 Deepak were convicted

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

for the offence punishable under Section 323 of IPC and were sentenced to suffer rigorous imprisonment for one year.

The substantive sentence were to run concurrently.

A. CASE OF THE PROSECUTION

2. The case of the prosecution is that the complainant Avinash Solanki along with his friends, went to a restaurant namely, 'Amboli Bar and Kitchen Restaurant', on 20th October 2011. They were watching cricket match. After the match, they had dinner. The group was three female and four male friends. The four male friends, Keenan Santos, Ruben Fernandez, Benjamin Fernandez and Avinash Solanki, went to the paan shop after having dinner. They were standing on the footpath near the paan shop. Their female friends went to the washroom. It is the case of the prosecution that when the female friends were coming down from the staircase of the hotel, one of the accused, who was wearing a white-coloured Pathani dress, made a noise of "*shuk... shuk...*", passed a derogatory comment on one of the girls and blinked his eye. He further molested the girl.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

3. The male friends of the girl confronted those persons, and one of them, i.e. the deceased Keenan, asked them whether they did not have mothers and sisters at home. Upon hearing this, the accused started abusing them. One of the friends of the deceased, Avinash Solanki (PW-17), slapped accused No.1. To this, accused No. 1 reacted and asked whether he was acting as a hero because the girls were with him. The accused persons threatened the deceased and his friends that they would come back and left. The deceased and their friends were at the paan shop. They consumed paan (betel leaf) and were saying good night to each other. At that time, the accused marched towards them. They were carrying weapons in their hands. accused Nos. 1 and 2 were carrying knives, while accused No. 3 was carrying stump. Accused No.4 was carrying a Bamboo. The girls got scared. They went towards the hotel and stood on the staircase of the hotel.

4. Accused No. 1 assaulted the deceased Keenan with a knife. Keenan was stabbed repeatedly in the stomach and on the arm. Keenan fell down on the footpath. Ruben tried to help Keenan. Accused No. 2 assaulted Ruben with a knife in his stomach, and he

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

also fell down on the footpath. The first informant, Avinash Solanki, took glasses which were lying there and threw them towards the accused. One of the glasses hit the head of accused No. 1, and he sustained a bleeding injury. After the injury to accused No. 1, all the accused went towards the first informant and started assaulting him. The first informant-Avinash threw a ladder which was there, towards the accused persons. People gathered at the scene of the offence. The accused ran away from the place.

5. Keenan and Ruben were lying in an injured condition on the footpath. Keenan was profusely bleeding. The first informant lifted him with the help of one of the waiters of the restaurant name Mohsin and took him inside. He asked Mohsin to take the injured person to Kokilaben Hospital in an autorickshaw. Thereafter, the first informant went towards Ruben, who was also injured, and, with the help of Benjamin, the brother of Ruben, Ruben was taken to Cooper Hospital. The female friends of the informant went to Kokilaben Hospital. The doctors gave treatment to Keenan, but they declared him dead within 10 to 15 minutes of admission. Ruben, who was initially taken to Cooper Hospital, was brought to Kokilaben

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Hospital. Thereafter, the first informant went to the police station at about 2:40 a.m. and lodged a complaint against unknown persons.

B. THE PROSECUTION HAS EXAMINED THE FOLLOWING WITNESSES:

6. **PW-1** is an eye witness to the incident. She deposed that she was friends with PW-17 – Avinash – the first informant, Priyanka, Benjamin, PW-18 – Shobita, deceased Keenan and Ruben. On 20th October, 2011, she and her friends went to Amboli Bar and Kitchen to watch the India-England match. After having dinner, Avinash went to buy paan at the paan shop. This witness, Shobita (PW-18) and Priyanka went to the washroom. When they were coming out of the restaurant, she saw four unknown persons (the accused persons) standing near the paan shop. One of the persons who was wearing Pathani dress (accused No. 1) made derogatory oral comments to this witness. He said *'Kya mast maal hai. Isko aaj rat ko uthake leke jayenge...'*. Then the same person came closer to this witness and he molested her. The other three persons started laughing. One of those persons, wearing 3/4th pants, also molested her and passed filthy comments. She pushed the molester and ran towards her friends and told them about the incident. Keenan confronted all these 4

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

unknown persons and told them to behave respectfully with girls. Thereafter, all the 4 persons started abusing him. Avinash came forward to pacify the situation. The person wearing white Pathani said "*tumhare pass ladki hai islye jyada hero ban raha hai kya*" and started abusing him. The person wearing 3/4th pants warned Avinash that he shall come and kill him and said *"himmat hai to ruk ke bata"* (if you have the guts, then wait here...)and the person wearing white Pathani said "*chhodunga nahi, wapas ak ke batata hoo"* (I won't spare you..) and those four unknown persons went away.

7. This witness and her friends ate paan and were about to leave when the unknown persons came back. The person who was wearing white Pathani was carrying a big knife. The person wearing 3/4th pants also had a knife. One person was having a cricket stump and the fourth person was having a bamboo stick. This witness, along with Priyanka and Shobita, ran towards the steps. They stood there. The four persons started attacking Avinash, Ruben and Keenan. The person in the white Pathani stabbed Keenan on his stomach multiple times and also on his left hand. The person

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

wearing 3/4th pants and white t-shirt stabbed Ruben on his stomach. The person with the stump and wooden stick attacked Benjamin and Avinash. The witness and the girls screamed for help and dialed 100, but nobody came forward to help. When the assailants came towards Avinash, he threw a glass at them and it hit accused No.1 (the person in white Pathani) on his head. When they were going to attack him, Avinash picked up the ladder and threw it at them. A large crowd gathered near the incident till then. The four persons ran away. Thereafter, Benjamin and Avinash took Ruben and Keenan inside the restaurant with the help of one waiter named Mohsin. Avinash and Mohsin put Keenan in an autorickshaw. Avinash asked Mohsin to take Keenan to Kokilaben Hospital. Avinash and Benjamin put Ruben in an auto, and Avinash asked Benjamin to take him to a Hospital. Thereafter, Avinash caught another rickshaw and left for Kokilaben Hospital and told this witness and the girls to come to Kokilaben Hospital. This witness called Keenan's father on mobile and narrated to him the whole incident. Thereafter, the witness alongwith Shobita and Priyanka, went to Kokilaben Hospital. After some time, the doctor came out and declared that Keenan was dead due to serious injuries. On 31.10.2011, she came to know that Ruben died in the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

same hospital.

8. A specific question was put to her as to the description of the persons who had misbehaved with her and who had assaulted Keenan and Ruben. She answered that the person who attacked Keenan and who misbehaved with her was the same person and he was wearing white Pathani and his height was around 5'7". She identified this person in the Court. The accused told his name as Jitendra Rana. The person who killed Ruben and also molested her was the person wearing 3/4th pants and white t-shirt and his height was about 5'5". She identified him in the Court. The accused told his name as Satish Dulgaj. She identified the person who was having a cricket stump in his hand. The accused told his name as Sunil Omprakash Both. She also identified the person who was beating Avinash and Benjamin with a bamboo stick. The accused told his name as Deepak Ishwar Piwal. This witness had also identified these persons on 16.11.2011, at Arthur Road Jail in the test identification parade. The letter issued to her for Test Identification is exhibited at **Exhibit-37**. She also identified the murder weapons, i.e. the knife marked as **Article-1**, another knife marked as **Article-2**, the cricket

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

stump marked as **Article-3** and the bamboo marked as **Article-4**. The clothes of the deceased were also identified by this witness. Keenan's clothes are marked as **Article-5 (colly.)** and Ruben's clothes are marked as **Article-6**.

9. This witness, in the cross-examination, admitted that she was in Mumbai from the date of the incident to the date of recording of the statement, i.e. 7th November, 2011. She admitted that she was sick and therefore she could not come to police station after the incident. She also admitted that she had not mentioned in her initial statement that she was ill for 15 to 17 days. She could not assign any reason for this omission. She further accepted that she had not made any application to the company she was working with about the said illness. She admitted that she had disclosed the misbehavior by the accused persons to the informant, i.e. Avinash Solanki @ Bali, and Benjamin at the spot of incident as well as at the Kokilaben Hospital. A specific question was put to her in this respect. She admitted that she did not inquire about her friend Ruben even when she was sick. She admitted that nobody called her and informed her that Ruben had expired on 31.10.2011. She also admitted the fact

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

that she was not hospitalised during the said period when she was ill. This witness, in cross-examination, admitted that none of her friends had consumed alcohol and nobody from their group used to smoke. This witness stated that she cannot assign any reason as to why it is not mentioned in her statement that she saw 4 unknown persons standing near the paan shop. She further admits that she cannot assign any reason as to why the incident of molestation is not mentioned in her statement. She admitted that they did not dial 100 number after the first incident. She did not tell the magistrate that the accused persons had molested her. She stated that death of her friends was more important than her molestation and therefore, she did not mention it.

10. In the re-examination by the prosecution, this witness deposed that when the accused persons initially gave her threats, they did not pay much attention to it and she did not want to lodge a complaint as she did not want her name to be spoiled being a girl. She also deposed that she came to know about the death of Ruben as her mother told her. She also indicated the spot through a photograph as to where she, along with Shobita and Priyanka, were standing when

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the accused assaulted Keenan and Ruben.

11. **PW-2, Surendra Soni Ray** was the security Guard at the Amboli Bar & Kitchen Restaurant. He deposed that he was on duty after 8.00 pm on 20th October, 2011. He saw Keenan, Ruben, Benjamin and Bali getting out of the restaurant at about 10:30 pm and saw 3 girls getting out after them. He deposed that the four unknown persons were smoking at the paan shop and passed filthy comments and teased them. At that time, one of the girls screamed and rushed towards their friend Bali and Benjamin. Thereafter Keenan confronted those persons and asked them to be respectful to women. Thereafter those four unknown persons started abusing Keenen and Ruben. Bali, Avinash alongwith PW-17 went towards him and slapped the person wearing white pathani. The person wearing 3/4th pants gave threats that he will kill all of them. Thereafter, after 10 to 15 minutes, these four persons came back with weapons. The three girls ran towards staircase and were shouting for help. He deposed that the person wearing white pathani stabbed Keenan and the person wearing white t-shirt and 3/4th pants assaulted Ruben with a weapon. The third person was of about twenty-two year of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

age, had cricket stump in his hand and the fourth person had a wooden stick. They assaulted all four friends. This witness identified all the accused in Courtroom. On 16/11/2011, he identified all four accused persons in Arthur road jail in test identification parade. The letter issued to him for test Identification is at **Exhibit 43**.

12. In cross-examination, this witness deposed that he did not help the injured persons when they were brought in the hotel. He admitted that he saw the accused persons for the first time on that day. He admitted that even though he witnessed the girls shouting for help, he did not inform about the assault to his manager or staff as the incident took place on the footpath in front of the hotel and not inside the hotel. He did not have any record to show that he was on duty at Amboli Bar and Kitchen Restaurant neither he had any proof that he was working for Vishal Security Force on the date of incident. He could not assign any reason as to why he did not mention that there existed a ladder adjacent to the wall of the hotel.

13. **PW-3, Valentine John Silvera** is a panch witness for spot

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

panchanama. He deposed that Police brought him to the spot and the complainant i.e. Avinash Solanki pointed out the exact place of incident. In front of the staircase of the restaurant there were blocks on the foothpath and blood stains were there. The blood stains were dried. On the eastern side of the restaurant there was a paan shop. There was a wooden stump near it. The complainant pointed out that wooden stump was used for assaulting which was seized by the police. Half wooden stump was recovered from nearby plant pot and was seized. It is marked as **Article-7**. Blood stained slipper with green stripes was found and seized. It is marked as **Article–8**. Police took various measurements of the spot of incident and prepared the panchanama. The said panchanama is exhibited at **Exhibit- 46.**

14. In cross examination he admitted that he did not see any crowd of local residents on the spot of incident. He denied that he signed the readymade panchanama. He denied that he had identified the articles at the instance of the Police. Not much was put to this witness in cross examination.

15. **PW-4, Sarfaraz Gause Mouiddin Shaikh** was a panch witness to

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

inquest panchanama of Keenan. He deposed that he was standing outside Kokilaben hospital as his friend's daughter was ill when police asked him to act as panch witness. He saw one dead body kept on the stretcher covered with white cloth. PW-17 identified him as Keenan. There were four marks on his body with sharp weapon. Police took measurements of the wound marks and prepared the panchanama. It is exhibited at **Exhibit-48.** Cross examination was declined by all the accused.

16. **PW-5, Savio Santan Mendes** was a panch witness to the inquest panchanama of Ruben. He deposed that on 31/10/2011 he was at Kokilaben Hospital as his friend was ill due to food poisoning. Mr. Benjamin identified the dead body as Ruben Fernandes. There were injuries on the left side of his neck, abdomen and right knee, accordingly a panchanama was drawn. It is marked as **Exhibit-51.** Not much was put to this witness in cross examination.

17. **PW-6, Regan D'souza** was a panch witness for recovery panchanama. On 25/10/2011 while he was passing through Andheri, the police asked him to act as a panch witness. He deposed

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

that in the police station the accused told his name as Satish Naphesingh Dulgaj (accused No.2), who stated that he was ready to produce the knife used in the said crime. The accused asked the witness to come with him so that he can disclose where the churra is concealed. Accordingly, memorandum statement was recorded and memorandum panchanama was drawn. It is marked as **Exhibit-53**. This witness along with the accused and police went near Hindu Smashan Bhumi and entered the lane of Valmiki Nagar. At the dead end of the lane, the were two houses opposite to one another, there was a small passage between the two houses, the knife was concealed under the small roof in the corner. The accused took out the knife from that place and gave it to the police. There were blood stains on it. It was having a plastic handle and three screws fitted to it. The Knife is marked as **Article–1.** panchanama was drawn accordingly. It is produced at **Exhibit-54.**

18. In the cross examination, the witness admitted that he had asked the accused whether somebody had pressurized him to give the statement. This question was not recorded in the panchanama. He was not aware of the details of the crime and involvement of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

accused No. 2 in the crime. The accused person was not asked to put his signature on the panchanama.

19. The learned S.P.P re-examined this witness. In re-examination, this witness deposed that when he put the question to the accused whether anyone had pressurized him in giving the statement, he answered that he was willingly giving it.

20. **PW-7, Yamin Yasin Shaikh** is another panch witness. He deposed that he was passing through the D. N. Nagar Police Station when two police constables requested him to act as a panch witness. Thereafter, Inspector Indalkar introduced him the accused No.1-Jitendra Rana. This witness asked accused No.1 as to what he wanted to state, the accused No.1–Jitendra Rana replied that he was ready to produce knife from the place where he had concealed it, and was also ready to show the place. The panchanama was accordingly drawn and it bears the signature of this witness. It is marked as **Exhibit-56.**

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

21. Thereafter, a vehicle was arranged and this witness along with police, the accused No. 1 and another panch witness went to the location as per the say of the accused No. 1. The accused No. 1 took them near Gulmohar building and near the electric pole, there was an electric box. The accused No. 1 took out the knife from a hole under the electric box. The hole was not visible. The knife was having dry blood stains. It was about 12 inches – grip 7 inches and blade 5 inches. Handle was of green colour. It is marked as **Article-2** panchanama was drawn. He had signed the panchanama. It is marked as **Exhibit-56-A.**

22. In cross-examination, this witness admitted that he was asked by Mr. Indalkar to act as a panch witness. Mr. Indalkar only asked him to listen whatever the accused is saying. Mr. Indalkar did not tell this witness what panchanama had to be prepared. He admitted that his interaction with the accused person is not mentioned in the panchanama though he had spoken with the accused. The knife was having green and red colour handle. He does not remember how many blood stains were on the knife.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

23. **PW-8, Bryan Rocky D'costa** is a panch witness for cloth seizure panchanama of deceased Keenan. On 21/10/2011, this witness was in Kokilaben hospital for consultation with his mother when the police asked him to act as a panch witness. A lady had produced four clothes - one bloodstained blue jeans having brand name "Desire", bloodsoaked underwear of brown colour, one black coloured t-shirt with a cut on the left sleeve and on the front right side. The t-shirt was cut into two parts, one handkerchief soaked with blood. The police seized these clothes and panchanama was drawn. He identified the said clothes in Courtroom as **Article-9 (colly)**. Panchanama was marked as **Exhibit-59.**

24. In cross, a specific question was put forth to this person as to how the articles were sealed, the witness deposed that he does not remember the process. Cross-examination was declined by accused Nos. 1, 2 and 4.

25. **PW-9, Vishal Ramchandra Vishwakarma** was a panch witness for the clothes seizure panchanama of Ruben. He deposed that on 22/10/2011, he went to Kokilaben Hospital to visit father of his

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

friend when the police asked him to act as a panch witness. Police took him to ICU ward and one nurse brought one blue coloured jeans pants with bloodstains on the pocket having lable of bear denim. This was handed over to the police and sealed by them. Panchanama was drawn. It is at **Exhibit-62.** In cross-examination, he declined the suggestions made to him that he was a habitual panch and no such panchanama was prepared by the police in his presence. Cross examination was declined by accused No.2, 3 and 4.

26. **PW-10, Abbas Ramzan Ansari** is a panch witness for the production and seizure of Benjamin's clothes. He deposed that on 22/10/2011, he was passing through D. N. Nagar Police Station, when the constable called him to act as a panch witness. One person named Benjamin produced clothes in his presence. One grey coloured t-shirt and green coloured underwear and one towel. The clothes were smeared with blood, and t-shirt was torn from front side. Clothes were seized and sealed. panchanama was drawn. It is marked as **Exhibit 10 (colly).** Cross examination was declined by all the four accused.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

27. PW-11, Samsuddin Habib Khan, was a panch witness for the cloth seizure panchanama for accused No. 4. He deposed that on 22/10/2011 while passing through the D. N. Nagar police station, the police asked him act as a panch witness. He went inside the police station. Accused Deepak was present there. He identified the said accused in the Court as well. The accused No. 4 told that he was ready to produce the clothes which he concealed. Police prepared panchanama and he signed on it. It is marked as **Exhibit-65**. Thereafter, the accused No.4 took them to, Amboli near Smashanbhumi and there he took them to a hutment area.. He took them in one room where his father was also present. The accused No.4 pulled clothes from behind the refrigerator. It was a one black coloured t-shirt and one hosiery full pant with two white stripes. Police seized and sealed the clothes. The panchanama was drawn. It is produced at **Exhibit-66.**

28. In the cross-examination, he deposed that he did not speak with the accused when they were in the vehicle. He stated that he was not aware of the responsibilities of a panch witness. The hutment area was 5 minutes away form the smashanbhumi. The

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

room was 10x12 ft. There was nothing except the fridge in the said room. Accused Nos.1 and 2 declined the cross-examination.

29. **PW-12, Narayan Swaminath Gupta** is a panch witness to the arrest panchanama. He deposed that on 21/10/2011, he was passing through D. N. Nagar Police station and police asked him to be a panch witness. He gave consent and entered the police station. Three accused persons i.e. Jitendra Rana – accused No. 1, Satish Dulgaj accused No. 2, Sunil Both – accused No. 3 were present there. Jitendra Rana was wearing white Pathani Kurta and payjama. There were blood stains on the neck and the payjama and also on the sando banian and underwear. His clothes were seized and marked as **Article-12 (colly)**. Satish Dulgaj was wearing half sleeves white t-shirt and half pant and brown underwear. Something written on his t-shirt was smeared with blood. His clothes were seized and marked as **Article-14 (colly).** Sunil Both was wearing a black t-shirt and 3/4th pant. The pants were having blood stains. His clothes were seized and marked as **Article-13 (colly).** He identified all these articles in the Court as well.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

30. In cross-examination, he admitted that he did not act as a panch before. He admitted that he did not ask any questions to the accused. He admitted that the police did not give him any information as to how the accused persons were arrested. He took physical search of the clothes of the accused persons, nothing was found from the pockets of their clothes.

31. **PW-13, Amit Sidram Tad,** was the PSI attached to D.N. Nagar Police Station. He deposed that on 20/10/2011, at about 11:50 pm, while he was on night duty, he received a sick message from Cooper hospital that in Amboli Bar and Kitchen Restaurant, unknown persons assaulted Ruben and his brother brought him there. Thereafter he went to Cooper Hospital. He found out that Ruben was admitted in ICU and was unable to give a statement. He took endorsement of Dr. Shanks about Ruben's condition. The said endorsement is marked as **Article-15**. He thereafter met his brother Benjamin, he was busy in arrangement of ambulance and shifting Ruben to Kokilaben Hospital, hence his statement was not recorded.

32. In cross examination, he deposed that EPR register is

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

maintained in every hospital and EPR officer passes the message to the concerned police station and the said message is noted in the EPR register maintained in the Police Station. This witness deposed that each and every sick message is noted in the sick register. He deposed that he did not receive the message that 'one person, Keenan Santos, Christian, Age 25 was stabbed by one unknown person in the stomach'. He admitted that he had received the sick message that Ruben Fernandes was stabbed by chopper at 11 pm by unknown persons. The names of the assailants were not disclosed in the sick message. The EPR register was shown to this witness and the same is marked as **Exhibit-70**. This witness admitted that he did not record statement of any person in the hospital. He admitted that he did not feel it necessary to lodge the complaint on behalf of the State. He denied to have recorded the statement of Benjamin in the hospital.

33. **PW-14, Satish Panduranga Kadam** is the Executive Magistrate who conducted the Test Identification Parade (TIP) on 16th November 2011 at the Central Jail of the four accused persons namely, Deepak Piwal, Jitendra Rana, Satish Dulgaj and Sunil Bodh.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

There were 12 witnesses for the TIP. He deposed in detail the procedure he followed while conducting the TIP. The notes of the Test Identification are annexed at **Exhibit- 72**. In cross-examination this witness deposed that he did not inquire about the backgrounds of panch witnesses. He denied the suggestion that no witness had identified the accused persons.

34. **PW-15, Dilip Mukund Davane** was the police Naik attached to the D. N. Nagar Police station. He deposed that on 19/09/2011, there was a proclamation of ban on keeping weapons and unlawful assembly issued by the Police Commissioner and he complied with the Order in the jurisdiction of D. N. Nagar Police Station. The Order is annexed at Exhibit 76.

35. In the cross-examination he deposed that the said Order was issued on 19/09/2011 and promulgation was published on 21/09/2011 at 10:30 am. The said Order was not published in newspapers. This witness deposed that he had made an entry in the police diary when he went for proclamation. He denied the suggestion that he did not take the mega phone from PI Mr. Kate. He

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

admitted that the said Order was announced in Marathi and the one affixed was in English language.

36. **PW-16, Dr. Vijay Nivrutti Tasgaonkar**, Medical Officer had conducted post mortem examination of Keenan Santos and Ruben Fernandes. He states that post mortem of Keenan Santos was conducted on 21st October, 2021. He found following 6 external injuries on the dead body of Keenan:

(i) Surgically sutured wound seen on left side of abdomen 3cms. from midline, 5 cm above oblique from umbilicus. Verticle length 5.5cms with 6 sutures of black thread in situ. (on removal of sutures both angles acute).

(ii) Surgically sutured wound seen on right side of abdomen. 7Cm obliquely below umbilicus 6cm away from midline verticle. Length 4.5cm with 3 sutures of black thread in situ. (on removal of sutures both angles acute).

(iii) Perforating wound on left arm 12cm below A.C. region verticle.

(a) Wound of entry size 6cm x 3cm upper angle acute lower

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

irregular

(b) Wound of exit 4cms medical to entry wound on left arm size 2cm x 1cm. Both angles-notched-(W)(M) shaped.

(iv) Abrasion on right eyebrow red size 2x1 cm.

(v) Contusion left anterior abdominal wall oblique size 6cm x 4cm x muscle deep, red.

(vi) Contusion red color 2 in nos. on right side of abdomen, A.P. direction laterally.

(a) superior 19cm x 6cm

(b) interior parallel to above injury size 20 cm x 6cm. Both muscle deep and red.

Internal injuries on the dead body of Keenan are as follows:

(i) Contusion on right frontal region corresponding external injury No. (iv) red color size 6cm x 3 cm.

(ii) Abdominal wall red color due to external injury No. (v) and (vi).

(iii) Peritoneum perforated due to external injury No. (i) and (ii)

(iv) Abdomen cavity blood fluid 2000 CC clots 200 CC.

(v) Stomach perforated through and through at lesser

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

curvature due to external injury No.(i). Stomach empty. Mucosa congested. Sour smell.

(vi) Small intestine perforated at ileum corresponding to external injury No. (i).

(vii) Left kidney capsule contused with retroperitoneal hematoma over area 8 cm x 6 cm corresponding to external injury No.(ii). Kidney substance pale.

37. He deposed that cause of death was due to hemorrhage stab injuries (unnatural) and that external injuries at (i) and (ii) can cause death in ordinary circumstances. The post-mortem examination report is produced at **Exhibit-77**.

38. He further deposed that post-mortem examination of Ruben Fernandes was conducted on 01.11.2011 by him and Dr. Abhijeet Kondar. Following 10 external injuries were found on the body of Ruben:

(i) E/o exploratory laprotomy present over abdomen. Wound extends from epigastric region 33cms x 20.1 cm. Oval shape. Wound covered with plastic stitched at margins with black

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

catgut with 47 sutures in nos. Blood fluid oozes. Outer wound at pubic region. Loops of intestines with peritoneum visible from outside.

(ii) Incised stab wound on right iliac region 7cm medial to right ant. Superior iliac spine/size 2cm x 0.5cm x ? deep with medial angle acute.

(iii) Peeling of skin with multiple vesicles at left leg anteriorly. These vesicles are pale.

(iv) Peeling of skin seen at right leg anteriorly.

(v) Abrasion covered with black scab on left shoulder over area 3 cm x 2 cm.

(vi) Abrasion at left elbow lateral aspect covered with blackish, greyish coloured scab size 4 cm x 3cm.

(vii) Graze abrasion 2c, below injury No.(vi) over area 3cm x 3 cm, covered with black scab size 2 cm x 1.5 cm.

(viii) Abrasion right knee anterior covered with black scap size 1.5 cm x 1 cm.

(ix) Whitish coloured multiple scar mark present on left side of abdomen parallel to each other of various shape and size over area 15cm x 3cm.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Following internal injuries were found on the body of Ruben:

(i) Abdominal Peritoneum was inflamed at places, dark brown to white color. Cavity reddish fluid about 1000CC present.

(ii) Gauze pieces 4 in number retrieved from at peritorial cavity, inferior aspect.

(iii) Stomach blood about 100CC mucosa congested.

(iv) Loops of intestines stapled with pins at places with mesentry.

(v) Visecra preserved.

39. He deposed that cause of death was shock due to incised stab wound (unnatural). The post-mortem report in case of Ruben was prepared by Dr. Abhijeet Kondar and same is Exhibit 78. He further deposed that external injuries at (i) and (ii) caused to Keenan and Ruben are possible due to **Articles at Nos. 1 and 2** knives.

40. During the cross-examination, he stated that death of the persons is caused due to stab injuries and that hemorrhage and shock always follows stab injuries. External injuries at (i) and (ii) is caused by weapon sharp on both the sides. He stated that in case of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Ruben only injury No.(ii) is caused due to stab by weapon whereas injury No.(i) is a therapeutic injury. Injury (i) has cut the stomach and injury (ii) has damaged the kidney. He also stated that in case of Keenan Santos profused bleeding at peritoneum cavity can be the cause of death and is alone sufficient to cause death.

41. He stated that in case of Ruben Fernandes injury No.(ii)- blood in abdominal cavity, that injury is sufficient to cause death of a person. He deposed that he did not remember calling for indoor medical papers of Ruben and that the said papers are necessary to rule out the possibility of death due to medical negligence. He further has also deposed that in case of Ruben, penis and scrotum was swollen and stated that same could also be the cause of death.

42. **PW-17, Avinash Surendrasingh Solanki @ Bali**, was the first informant and an eye witness to the incident. He deposed that he was friends with the deceased and that he had accompanied all the friends for the dinner and to watch Indian cricket match on the evening of the incident. He deposed that around 10:30pm after dinner and match, when 3 female friends went to use the washroom,

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

he along with the deceased and Benjamin went to the paan shop, and after placing order went to the footpath. Four persons (accused) were already there at the footpath. After sometime when girls were coming, he saw accused going towards them. He deposed that PW1 screamed and came towards him and his friends, and she reiterated the incident of harassment by accused to them. After hearing the same, Keenan went towards the accused and questioned them about misbehaving with the girls and that whether they did not have mother and sister. All the accused came towards them and started abusing him and his friends. When accused wearing white pathani said that the PW-17 and his friends were being hero in front of girls, then PW-17 slapped him. Then the deceased and Benjamin tried to give them an understanding, accused abused them and one of the accused wearing t-shirt and 3/4th pant threatened that they would come back and all the accused went away.

43. After 10-15 minutes, all the accused persons came back wherein person wearing white pathani (accused No.1) carried knife, person wearing white t-shirt and 3/4th pant (accused No.2) had knife, person with long hair (accused No.3) had stump in his hand

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

and fourth person (accused No.4) had bamboo (wooden stick). Accused No.1 assaulted Keenan with knife and accused No.2 assaulted Ruben with knife, and accused Nos.3 and 4 beat Ruben and PW-17. He deposed that that in order to save himself he took two glasses from near the staircase and threw at the accused persons. Accused No.1 and another accused were hurt by the same, and they ran towards him so he started running as well, and found a ladder. He took the ladder and threw at them and then all the accused persons ran away with the weapons.

44. He further deposed that afterwards he with the help of waiter took Ruben and Keenan inside the restaurant, and as intestine of Keenan had come out he with the help of the waiter put the intestine inside the stomach and tied the same with towel, and then with the help of Mohsin (waiter) and other waiters put Keenan in the auto and asked one of the waiters to accompany Keenan to Kokilaben Hospital. Then, he and Benjamin put Ruben in another auto and Benjamin took Ruben to the hospital and then Avinash himself went to Kokilaben Hospital in another auto. On his arrival at the hospital, Keenan was being treated and after sometime was declared dead.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Ruben was initially admitted in the Cooper Hospital and later on was shifted to Kokilaben Hospital on the same day, and treatment was given, but on 31.10.2011 Ruben passed away.

45. He deposed that on the day of incident he went to D. N. Nagar Police Station from the hospital and lodged a complaint. He identified all the accused persons in the Court. He deposed that while lodging complaint he had not mentioned about sexual harassment to the girls to avoid their defamation but same was mentioned in supplementary statement. The FIR in question is produced at **Exhibit-83**.

46. He deposed that he was called on 16.11.2011 at Arthur Road Jail for identification. He identified all of them, and Tehsildar Kadam along with 2 panch witnesses were present at the time of TI Parade. He further deposed that on 31.10.2011 he went to police station and showed the spot of incident. Spot panchnama was conducted in presence of 2 panch witnesses. At the time of panchnama six articles were seized by the police from the spot and same were sealed in his presence.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

47. During cross-examination, he deposed that after lodging of FIR, as per the instructions of the police he went to Cooper Hospital for medical checkup. Police had not accompanied him. Upon being asked by the doctor about the injuries, he did not mention about the assault by accused persons. After check-up, he went to the police station. He deposed that he had reached Kokilaben Hospital around 11:00 pm and was there for 30-45 minutes and Mohsin along with other waiters were present there. Ruben was brought to Kokilaben hospital after the death of Keenan. Police had not come to the hospital till the time he was there in the hospital. He deposed that he had not disclosed to anyone of the injuries sustained by him including the doctors at the Kokilaben hospital.

48. He further deposed that as he helped to put the deceased in auto after assault there were blood stains on his clothes-pant and shirt and that he had not produced them to the police. He further voluntarily added that despite the stains being visible to the police, the police had not asked him to produce the same. He deposed that house of Keenan, Ruben, Benjamin and Priyanka were near to Amboli Bar and Kitchen Restaurant. He further deposed that he

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

went to the police station from Kokilaben Hospital to inform about the incident. He had asked Benjamin and Priyanka whether they had informed the police about the incident to which they had answered in the negative, and told them that he shall inform the police about it. He further added that he had not asked anyone else about informing the police as his mind was not stable. He had not informed his friends that his mind was not stable. When he went to the police station his mind was stable. The police informed him that they had received information about the incident and van was already sent to the spot. He was at the police station for around 1 hour till 6 am on 21st October, 2011. During his visit to Ruben's house, he met Benjamin and informed about the lodging of FIR. And did not inform father of Keenan about the FIR when he visited Keenan's house.

49. He deposed that he gave supplementary statement on 22.10.2011 and informed about the harassment of the girls at the hands of the accused on the day of the incident considering the same to be defamatory. He wasn't aware of the four arrests made by the police. He deposed that none of the friends were present at the time

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

of lodging the complaint and that he asked police whether they had received any call. He had not seen Mohsin and any other waiters after the incident except on the day of TI Parade. He deposed that Keenan and Ruben were his sports friends and they would play hockey together, and that he was friends with girls. He deposed that he had slapped one of the four accused persons. They had seen the four accused persons for the first time. He deposed that he had heard PW1's shout 'ouch', and that nobody followed the girls. He agreed to the suggestion that he had not seen anything at the time. He deposed that he had no bleeding injury.

50. He deposed that only one person had assaulted Keenan and three people assaulted Ruben and both were assaulted on footpath. When he had assaulted the person with glass, the accused person had sustained head injury and blood was oozing from the head and that nobody assaulted him after he hit the accused with glass.

51. He deposed that while lodging complaint he had given description of the clothes worn by the accused persons. The accused had ran away with the knives and police never showed him the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

knives after the incident. There is omission in FIR about the time when match was over and in the statement of PW-17 there is omission about that the girls wanted to go to the washroom and that he shall order paan from the paan shop and the boys went to paan shop, and after placing their order they went to the footpath. There are omissions in respect of the certain physical descriptions of the accused persons *viz.* in case of accused No.1, his height 5'7" is omitted, in case of accused No.2 there is omission to the extent that he was bald from front side, in case of accused No.3 omission is to the extent that the person was wearing pant and accused No.4 who was holding wooden stick, the omission is to the extent of his age i.e. 20 years. He deposed that he has worked as panch witness for Oshiwara Police station in 2005. During the test identification parade he identified the accused persons. Upon being asked, he denied being a police informant of the police.

52. In the cross-examination taken by the advocate for the accused No.3 he deposed that, when he went to hospital for medical check-up for his treatment, he met his friend Amir and he did not inform him about how he had sustained the injuries. The injury certificate issued

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

to him is at **Exhibit-85** and the same mentions that injury was sustained due to assault by sticks by three known person and voluntarily adds that the doctor has wrongly mentioned it as known persons as he has mentioned to the doctor as 'unknown persons'. He deposed that Benjamin never informed him that Ruben was assaulted by 15 persons with knife. He further deposed that there were no blood stains on the clothes of the girls as they had not helped to put the deceased into auto. He deposed that he never went to the police station after 22.10.2011 and that he did not sign FIR after 22.10.2011. He also deposed that the story of misbehaving with girls is not made up after 7th November, 2011.

53. During the cross-examination taken by advocate for accused No.2 he deposed that, he had not taken police inside the Amboli Bar and Kitchen Restaurant. He further deposed that injured were taken inside the hotel and there was blood on the floor of the restaurant. He deposed that he does not remember the name of the police who had recorded his statement on 22.10.2011 and that the police who recorded his statements on 21st October, 2011 and 22.10.2011 were not the same persons. He deposed that quarrel did not happen

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

inside the hotel due to cricket betting. He further deposed that Amboli Bar and Kitchen Restaurant is closed since the incident.

54. In the cross-examination on behalf of accused No.4 he deposed that, he had not described the wooden stick in his statement to the police. He had accompanied the police to the spot. He deposed that when Ruben was assaulted with knife, simultaneously he was assaulted with bamboo and stick.

55. **PW-18, Shobhita Singh**, who accompanied PW-1 to the Amboli Bar and Kitchen Restaurant with Priyanka, Benjamin, PW-17 and the deceased for watching cricket match and dinner. She is an eyewitness to the incident. She narrated the incident similar to PW-17. She deposed that PW1 dialed 100 number from her phone but the call responded as 'waiting'. After Keenan and Ruben were taken to the hospital, PW1 called Keenan's father and informed about the incident, after which Keenan's father came to the spot of incident and PW-1 informed him to come to Kokilaben Hospital. After which, PW-1, PW-18 along with Priyanka went to Kokilaben Hospital. After sometime they were informed that Keenan had passed away due to

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

severe injuries. She deposed that Benjamin had initially taken Ruben to Cooper Hospital, but as his condition was deteriorating, he was brought to Kokilaben Hospital and after few days Ruben too passed away. She identified all the accused and the weapons. She deposed that on 16.10.2011 she identified the accused persons in T.I. Parade held at Arthur Road jail in presence of the Magistrate and two panch witnesses.

56. During cross-examination on behalf of accused No.1 she deposed that, she came to know about the friends through PW1 and started accompanying them 3-4 months prior to date of incident and that Amboli Bar and Kitchen Restaurant was their favourite place. She deposed that PW-1 and herself were working at the same place, but all stayed separately. PW-18 would stay as a paying guest. She deposed that on the afternoon of the date of the incident PW-1 had informed her about going to said restaurant. She further deposed that she always carried her mobile phone and that she did not call anyone after the said incident neither did she receive call from anyone after the incident. She deposed that she was at Kokilaben Hospital till 3:30 am and till then no police personnel had visited the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

hospital. She had attended the funeral of both Keenan and Ruben. She deposed that on the advice of her boss she went to the D. N. Nagar Police Station on 21st October, 2011 i.e. the next day of the incident and that she was not aware that complaint was already lodged. She did not go to her office on 21st October, 2011 and did not contact any of the friends from the incident as all were under shock due to the incident. She deposed that everyone except PW1 attended the funeral of Keenan. She only met PW-1 directly on 16.11.2011 as till then PW-1 had not attended the office as well since the incident. At the police station, PW-23-Mr. Indalkar the police Inspector had not informed her that the FIR in said case was already lodged. He recorded her statement. She deposed that she does not remember whether PW-17 informed her about lodging of the complaint at the police station. She agreed that her attention was drawn to the noise of 'shook shook' and ignored the same. When PW-1, PW-18 and Priyanka were walking towards Benjamin, Avinash and the deceased, the accused persons were at 10-15 feet away and the friends were 20-25 feet away and eventhough the accused persons used derogatory words they did not shout and ignored them. She further reiterated the sexual harassment incident with PW-1, and still

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

they did not scream for any help, and went to the friends and informed about the incident. She deposed that during the altercation and assault though the crowd had gathered at the place neither any person from the crowd chased the four accused persons nor any person helped the injured during and after the assault. She deposed that for the T.I. parade nobody was present from the D. N. Nagar Police Station at the jail.

57. In the cross-examination on behalf of accused No.3, she deposed that she does not remember whether she had noticed any injury marks on Avinash. She deposed that except knives all other articles were at the spot of incident till the time she left and that she had not described the knife while giving her statement. She deposed that Avinash, Benjamin and both deceased were not under the influence of liquor on the day of the incident.

58. During the cross-examination on behalf of accused No.2, she deposed that she was not aware whether PW-17 was in close association with the officers of the D N Nagar Police Station and that he was not running cricket betting racket and scuffle had not taken

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

place due to cricket betting. She deposed that after the deceased (then injured) were taken inside the hotel after the assault and there was blood on the floor of the hotel due to blood oozing out of their bodies.

59. **PW-19, Dr. Sunil Mukund Pai**, was attached to critical care unit of the Kokilaben Hospital in the month of October, 2011. He deposed that Ruben was admitted on 21st October, 2011 around 1:45 am in critical condition in ICU, on ventilator and kept under observation. He deposed that he had issued the certificate accordingly. He further deposed that Ruben died on 30th October, 2011 and during the entire period until death his health remained critical and could not speak. He deposed that certificates dated 21st October, 2011-25th October, 2011 and 27th October, 2011- 31st October, 2011 issued by him and his co-doctors *viz*. Dr. Smita Digrajkar and Dr. Madhav, were issued only after the examination of the patient. The same are at **Exhibit Nos. 89,90,91, 92 (Colly), 93 (Colly) and 94**. Certificates issued by his co-doctors were issued in his presence. During cross-examination he deposed that the history of assault was given to him and that the police had never recorded his statement but were in

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

touch with him from 21.11.2011 to 31.10.2011.

60. **PW-20, Dr. Ruchi Nitish Khambadia**, working as Junior Consultant in ICU at the Kokilaben Hospital deposed that Ruben Fernandes was admitted and was under critical condition. She had issued the certificate dated 26.10.2011 which is at **Exhibit -96**. During cross-examination she deposed that police had not recorded her statement.

61. **PW-21, S. Kumar Chaurasia** was working at a paan stall near the Amboli Bar and Kitchen Restaurant. He is an eyewitness to the said incident. He deposed that he worked from 11.00 am to 11:30 pm on the said stall and was the only person working at the stall. He deposed that said paan stall is closed since the incident. He deposed that on 20th October, 2011 around 10:30pm he was at the stall, and he knows Bali (PW-17) as he would visit frequently at his stall, and that 4 persons had taken paan and cigarettes from his stall. The order was placed by the person wearing white pathani and they were smoking standing on the footpath. He deposed that after that PW-17 along with his 3 friends came from restaurant and ordered paan and

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

were waiting at the footpath.

62. He further deposed that then he saw three girls coming there and were scared while telling something to PW-17, and felt that the boys smoking on footpath must have misbehaved with the girls. He was specifically asked as to why did he feel that boys must have misbehaved with the girls, to which he answered that the girls were frightened and were pointing at the boys while talking. He deposed that after that an altercation took place between the boys and person wearing white pathani said that the boys were trying to be hero in front of the girls and then PW-17 slapped him. He further deposed that the person wearing white t-shirt and 3/4th pant said to them "*agar dam hain to ruko, ham aake janse mar denge*". After 10-15 minutes those 4 persons came back, and person wearing white pathani had knife and stabbed one of the friends of PW-17 in the stomach and his intestine came out, person wearing white t-shirt and 3/4th pant who was also carrying knife stabbed other friend of PW-17 on his waist and other two persons carrying stump and bamboo in their hands assaulted all four boys. Three girls were frightened and standing at the staircase of the restaurant were shouting for help but

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

nobody helped them. He deposed that PW-17 threw two glasses and they hit persons wearing white pathani, and white t-shirt and 3/4th pant, and later threw ladder towards them. People had gathered at the spot and those 4 persons ran away from there. He further deposed that PW-17 then took the injured friends inside the hotel with the help of waiter, and he being frightened closed the stall, went to house and came back the next day. His statement was recorded on 21st October, 2011. He deposed that he had identified all the accused persons during the Test Identification Parade at Arthur Road Jail on 16.11.2011. He identified all the accused persons in Court and all the weapons shown to him.

63. During cross-examination on behalf of the accused No.2, he stated that there was no crowd at the spot and barely 1-2 persons were there. He deposed that that he did not give paan to those 4 accused persons due to the incident and the said incident had happened within 10-15 minutes of giving them cigarettes. He also deposed that he had not given paan to PW-17 and his friends. He deposed that distance between the paan stall and footpath is 6-7 feet and PW-17 and his friends were standing on the footpath. He

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

described the clothes worn by PW-17 and his friends except for the 4th person. He volunteered that those persons misbehaved with the girls after placing order for paan. He further disposed that PW-17 had slapped one of the persons before the incident.

64. He deposed that the staircase and the gatekeeper of the hotel cannot be seen from the paan stall. He added that after coming down the staircase until a person takes a turn towards his shop, that person cannot be seen. He went to D. N. Nagar Police Station on 21st October, 2011 at 12:30pm until then he had not informed anyone about the incident. He deposed that he had received a letter regarding TI Parade but he did not go to the police station regarding the same, whereas he went to Arthur Road jail for the test identification parade. He deposed that during the TI Parade the persons were standing in circular position beside each other in a group of seven persons standing in single line. He deposed that he had not helped the injured persons and that injured persons were taken in one auto. The ladder thrown by PW-17 was lying opposite the paan stall and after throwing the same the incident was over.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

65. During cross-examination on behalf of the accused No.4, he deposed about the test identification parade and assault by accused No.4 by bamboo.

66. During cross-examination on behalf of the accused No.3, he deposed that his paan shop is on footpath and does not have any license for the same. He went to police station on his own around 12:30pm on 21st October, 2011 after opening of his paan shop. He deposed that on the day of incident he had closed his shop on the day of incident around 10:45pm. He deposed that he had not disclosed about the incident to anyone until the next morning when he informed his brothers. After opening of the shop on the next day, he did not inquire with the hotel owner and waiters of the hotel. He deposed that there was blood on the staircase of the hotel and there were glass pieces lying on the spot. He also deposed that there were no blood stains on his clothes.

67. **PW-22, Shivaji Vishnu Ghadge,** was the Investigating Officer. He deposed that around 11:45 pm on 20th October, 2011 he received call from the supervisor named Mr. Gupta from the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Kokilaben Hospital informing him that an injured unknown person stabbed by an unknown person in the stomach by knife at the Amboli Bar and Kitchen Restaurant has been admitted in the hospital by the waiter of the said restaurant and he took an entry of the same in the station diary. The said extract of the station diary is at **Exhibit-99**. Thereafter, he informed the same to PW-23 and went to the hospital for verification of the information. The doctor at the hospital informed him that the person admitted was in ICU and not in a condition to speak and mentioned the spot. The IO proceeded to the spot of incident and asked the beat marshall to safeguard the spot. On returning back to the police station, he was informed by PW-23-PI Indalkar to register the complaint in the said crime as the complainant had come to the police station. Accordingly, complaint was registered and the same was produced at **Exhibit-83**, and was noted in the station diary which is at **Exhibit-100**. The crime came to be registered bearing FIR No.410 of 2011 and Accidental Death Report (ADR) No.78 of 2011 was registered. He then went to the hospital and dead body kept in the adjacent room to the ICU was recognised by the Complainant as of Keenan Santos and then Inquest panchnama was conducted of the said dead body in presence of the 2

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

panch witnesses and the same is at Exhibit 48. He deposed that he further instructed the police constable 1291 to take the body to Cooper Hospital for post mortem. The clothes of the deceased were handed over by the sister of the hospital *viz.* chocolate colour underpant with blood, black colour t-shirt smeared with blood, blue colour jeans smeared with blood and off-white handkerchief smeared with blood. The same were seized, labelled and signed by him in presence of the 2 panchas, and the seizure panchnama of clothes was prepared which is at **Exhibit- 59**.

68. He deposed that thereafter he went to the spot and conducted spot panchnama. The spot panchnama is at **Exhibit-46.** He took blood samples from the spot and also of blood mixed with mud. He seized stump of about 2.5 ft, one broken stump, one bamboo of 3.2ft, broken glasses and pair of slippers stained with blood and the stumps were labelled as Article 3, 4 and 7, and slippers as Article 8. He deposed that API More and PSI Tad had brought accused persons at the police station. He had arrested them, searched and seized their clothes. He recognised 3 of them present in the Court.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

69. He deposed that at the accused No.1 was wearing full sleeves white color pathaani kurta and there were blood stains at the back of the collar and on payjama, one sando baniyan and maroon colour underwear. The clothes were marked as Article 12 (colly). Accused No.2 wore half-sleeves white colored t-shirt and white colour 3/4th pant, both smeared with blood stains. They were marked as Article-14 (colly). Accused No.3 was wearing black colour round neck t-shirt and light blue colour jeans pant, and the same were marked as Article-13 (colly). These clothes were seized in the presence of two panchas. Arrest panchnama was prepared and same is at **Exhibit-68.** Accused No.4 was arrested on 21st October, 2011. He deposed that, on 22.10.2011 he handed over the investigation to PI Indalkar.

70. During the cross-examination on behalf of accused No.3, he deposed that he went to the Kokilaben Hospital on 20th October, 2011 and PSI Tad was relieving officer and that the PW- 22 worked as PSO after coming to the police station. He deposed that the PSI Tad had not accompanied him at the Kokilaben Hospital, it was Police Constable 1291. The paan shop was closed and wireless mobile van present at the spot. He had directed Police Constable

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

22902 to safeguard the spot and PW- 22 had conducted the spot panchnama. He deposed that he had not recorded the statement of the police constable 22902 and had not met him. At the spot, Mr. Hankare with Dantos was safeguarding the spot but had not recorded statement of Dantos in this crime. He deposed that there was no one at the spot and there were no chaos or riots at the spot. FIR No. 411 of 2011 was registered for riots. He deposed that during his investigation he neither inquired about the hotel nor investigated the hotel from inside. He did not inquire with people leaving in zopadpatti near Mayflower building and added that there was no zopadpatti near the building. He further deposed that he had arrested 15-16 persons in FIR No.411/2011.

71. No station diary entry is required to be made to use the seal and that with the consent of night PI Indalkar he had taken the seal while leaving the police station. Private photographer-Shekhar was called by him at the spot and with the directions of PW-22 he had taken photographs at the spot and he saw the photos after 2-3 days and gave it PI Indalkar. He had not verified the phone numbers and addresses of the friends of the complainant and had not entered

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

them in the station diary. He deposed that he had not filed fake case against the accused to save the management of the Amboli Bar and Kitchen Restaurant. He further deposed that he had registered CR No. 411 of 2011 on 21st October, 2011 which is at **Exhibit-112** and had conducted spot panchnama which is at **Exhibit-113**. He further deposed that he had recorded statement of 6 witnesses who were eyewitnesses to the incident and filed final report which is at **Exhibit-114**. He deposed that he had met PW-23 at the Kokilaben hospital. He had met PW-17 at the hospital and PW-17 had narrated the incident to him.

72. He deposed that he had taken into custody 21-22 persons around 00:45 hours and does not remember whether 17 out of them were shown as accused in CR No.411 of 2011. He deposed that he was not SHO when he returned from the Kokilaben hospital and that he had not sent complainant and his companion for alcohol test and does not remember sending the accused persons for the alcohol test. He deposed that the Complainant had not taken any medical treatment till he came to the police station for the injuries sustained by him. He does not remember whether the complainant's clothes

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

were seized in his presence and whether there were blood stains on the clothes of the Complainant. Medical papers are produced at **Exhibit-116(Colly)**.

73. During the cross-examination on behalf of accused No.3, he deposed that he had not seized the knives from the spot and had seen them first in the Court, and he had not interrogated the accused from whom the knives were seized as alleged by the prosecution and that none of the accused had produced knives in his presence and if anything mentioned about the same in panchnama is incorrect. He deposed that accused No.1 had not given any statement on 22.10.2011 in his or panch witnesses' presence, and that accused No.1 had not produced clothes in his presence. He further deposed that neither had accused No.4 given his Memorandum statement in his or panch witnesses' presence, and that accused No.4 had not produced clothes in his presence. He deposed that if anything mentioned in case of either of the 2 aforesaid accused in panchnama is incorrect.

74. When Exhibit Nos. 65 and 66, 55 and 56, 53 and 54 were

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

shown to him he deposed that he did not know whether his name was wrongly mentioned as no instructions were given by him to mention his name. He deposed that he had not met Benjamin Fernandes and no clothes were produced by Benjamin in his presence at the police station, and mention of it in panchnama is incorrect; and that clothes of the deceased were not seized in his presence. He added that as he was present in the police station, hence his name had been mentioned. While deposing about the EPR, he had mentioned that in the EPR received by him there was one assailant in which information was given by supervisor Gupta from Kokilaben hospital. Another EPR written by Mr. Jawale from Cooper Hospital wherein the information was of injured Ruben Fernandes and there were 3-4 assailants. He after receiving EPR inquired about the incident at the Kokilaben Hospital and it was then cognizable offence was disclosed. He deposed that he could have lodged complaint on behalf of the State but had not done the same as he had not felt it necessary. He visited the spot at 12:15 am, upon inquiry with the passerby cognizable offence was disclosed. He deposed that he had recorded the complaint and taken 17 people in custody. Photocopy of the station diary entry in this regard is produced at **Exhibit-101.**

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

75. He deposed that he went to Kokilaben Hospital at 12 midnight and reached the spot of incident around 12:30 am from the hospital, and went back to hospital. There he had met the Complainant and upon inquiring the Complainant (PW-17) agreed to give information, but his statement was not recorded in writing at the hospital and was told to come to the police station for the same. He deposed that he does not remember about the investigation of Crime No.411 of 2011 and has also stated that he filed the chargesheet in Crime No.411 of 2011. After Keenan Santos was declared dead, he returned to police station along with PW-17. He deposed that he did not inquire with PW-17 as PW-23 had inquired with him beforehand and not in presence of PW-22. Accused No.4 adopted cross-examination of accused No.3.

76. During cross-examination on behalf of the accused No.1, he deposed that he reached hospital around 12 midnight and there was one injured person by the name Keenan Santos brought there by Mohsin, waiter. He had spoken with the doctor treating Keenan and further deposed that there were no relatives of Keenan at the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

hospital. Entry in EPR register is at Exhibit 70. The information received through EPR by him was verified from the sister of the hospital. He deposed that when he went to spot of the incident, no police officer was present, only beat marshal was present and that he neither met Mohsin nor inquired about him at the spot. No eye witness, no public was present on the spot. Even the beat marshal had not given any information about the incident on the spot. He deposed that from the spot of the incident he went to Kokilaben hospital and then he had not received information about the other injured, and further deposed that he had not met the Complainant and friends of Keenan even on his second visit to the hospital. On his third visit to the hospital, he met Keenan's father and other relatives. He deposed the girls were present in the hospital after recording of the FIR, and that he had inquired about the girls and other people who were named in the FIR.

77. He deposed that when he went back to the police station, PI Indalkar (PW-23) was inquiring PW-17 and PI Indalkar (PW-23) instructed PW-22 to record the statement of PW-17 and it was then when PW-22 got to know about the second injured person. He

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

deposed that he had not made any arrangement to send the police on the spot of the incident. Photographer was present at the spot. He further deposed that he returned to the police station along with the Complainant around 10:00 pm. He deposed that the complainant went for medical check up alone and had submitted the medical certificate with the police. He deposed that he had not contacted any girl named in FIR, and had investigated on this FIR on 22nd and 23rd and later on had handed over the investigation to PW-23.

78. **PW-23, Bhimrao Shivram Indalkar**, was Police Inspector (PI) attached to DN Nagar Police Station from 2009- May, 2012. He deposed that on the day of the incident he was on night duty and PSI Ghadge was the SHO and PSI Tad was the Relief Officer. Around 11:30pm PSI Ghadge informed PW-23 that Keenan was assaulted in front of the Amboli Kitchen Bar and Restaurant, and that Keenan has sustained stab wounds in stomach and he has been admitted in Kokilaben Hospital, and then PSI Ghadge went to Kokilaben hospital with staff. After informing the senior officers and Control Room, he also went to the Kokilaben Hospital. At the hospital, Keenan was admitted in ICU and he was informed by the doctor that Kennan is

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

not in a condition to speak and can't be inquired, after that PW-23 went to the spot of the incident. He safeguarded the spot and after verification of the slot, went back tot he hospital and met PW-17 there, who gave brief information about the incident and he told PW-17 to come to the police station and lodge complaint with SHO. He deposed that he informed API Devrukhkar and PI Atyale of Main Control Room. He deposed that investigation was handed over to him on 22.10.2011 by the senior officer. PW-17 voluntarily came to the police station to give details of the incident which he had not given at the time of lodging of the FIR and the same were recorded as supplementary statement. He deposed that he seized the clothes of Ruben Fernandes which were produced by his brother Benjamin in presence of the panchas. The clothes included grey color t-shirt stained with blood, green color underwear, handkerchief stained with blood and panchnama to that effect was drawn and the same is produced at **Exhibit-67** and the clothes are at **Article 10 (colly)**. He deposed that four accused were already arrested before investigation was handed over to him. He identified the accused in the Court. Memorandum statement of the accused No.4 was recorded in presence of the two panchas and is produced at **Exhibit-61**. He

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

deposed that after that the accused No.4 took them to Caesar Road, Walmiki Nagar at hutment where his father was present. Accused No.4 produced clothes and they were concealed at the back side of the fridge and had blood stains on them. Said clothes were seized in presence of the 2 panchas and panchanama was prepared which is at **Exhibit-66**. Black color jersey, black color pant having white stripes are marked as **Article 11(colly)**.

79. He deposed that on 25.10.2011, he recorded the statement of accused No.1 in presence of 2 panchas and the memorandum statement is produced at **Exhibit-56**. He further deposed that accused No.1 took them to electric box near Gulmohar building and he produced knife which was kept under the gap of wire. Knife (Article 2) had blood stains on it and memorandum panchanama was prepared which is at **Exhibit-56-A**. SHO Ghadge and Tad were present and panchnama was recorded by SHO Ghadge in his own handwriting.

80. He deposed that accused No.2 memorandum statement was recorded in presence of the 2 panchas and the same is at **Exhibit-53**.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

He further deposed that accused No.2 took them to the hutment area at Caesar Road, Walmiki Nagar and from the roof of one of the two rooms adjacent to each other, the accused No.2 produced knife which was stained in blood. Memorandum panchnama was prepared and is at **Exhibit-54**. Knife recovered is at **Article-2**. The viscera, blood sample and nail clipping of Keenan were sent to FSL and CA reports received are marked as **Exhibit-119(colly)**. Clothes of deceased and accused were sent to FSL on 01.11.2011 and CA reports received are marked as **Exhibit-121(colly)**. Blood samples of Ruben were sent to Kalina and CA report received is marked as **Exhibit-122**. Viscera of Ruben were sent to Kalina and CA report received is marked as **Exhibit-124**.

81. During cross-examination on behalf of accused No.1, he deposed that except the girls, none of the relatives or friends of the injured were present at the hospital. He deposed that he has not made any entry regarding the presence of the girls at the hospital. He also deposed that that he did not know that CR No.411 of 2011 was registered. He deposed that he had told PW-17 to call girls and he himself had not contacted the girls. On 22.10.2011 none of the 3

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

girls came to the police station and he voluntarily added that one girl came to the police station on 22.10.2011. He deposed that investigation was with him till 05.11.2011 and till then he tried to contact PW-1 and Priyanka but he was informed that PW1 was unwell and Priyanka was not at her home. He deposed that after producing PW-18's statement to the senior officer, he was not informed to add Section 354 of IPC. He deposed that he sent the remand on 03.11.2011 and 04.11.2011 and he did not feel it necessary to register offences u/s 506(II) and 509 of IPC. He deposed that after recording statement of PW-18, he did not feel it necessary to record further statement of PW-17. He deposed that statement given by PW-18 about Sections 506 and 354 of IPC were not mentioned as PW-17 had requested him orally, to do so. He deposed that he had not inquired about liquor consumption by the deceased, injured and other eye-witnesses and also had not collected blood samples of the injured and the witnesses including PW-17-the Complainant for contents of alcohol in their blood. He deposed that he did not enter compound of Gulmohar building, which is at Ceasar road 30-30 feet away from the spot of the incident. there was no lock on the meter box and there were no blood stains on the place but

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

were on the weapon.

82. During the cross-examination on behalf of accused No.2, nothing substantial was brought out. During cross-examination on behalf of accused No.3, he deposed that station diary entries for offences u/s 506(II) and 509 of the IPC were registered on 7th November, 2011. He had recorded supplementary statement of PW-17. Accused No.4 adopted cross-examination of accused No.3.

83. **PW-24, Lingappa Rama Attayar**, was the PI of the date of the incident and incharge of control room, PSI Devrukhkar and PN Bandarkar were with him. He deposed that on 21st October, 2011 around 2 am he was informed by PW-23 from D.N Nagar Police Station that on 20th October, 2011 three boys and two girls in front of Amboli Kitchen Bar and Restaurant around 11:00 pm quarrel had taken place between one boy and three boys of the group and that person had uttered bad words with the girls. He further deposed that he was informed that boy thereafter went and came back with knives and chopper, two were injured and one of them named Keenan Santos was taken to Kokilaben Hospital and later on during

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the treatment was declared dead and the other injured was admitted in Cooper hospital and accordingly the entry was made of the incident by PW-24. The station diary entry is at **Exhibit-134.**

84. During cross-examination on behalf of accused No.3, he deposed that on 21st October, 2011 PW-23 had informed PSI Devrukhkar who informed PW- 24, and that Mr. Devrukhkar had informed that four boys had assaulted the other boys. The number of boys was not mentioned in the station diary. Accused Nos.1, 2 and 4 adopted the cross-examination of accused No.3.

85. **PW-25, Mr. Dyanesh Devde**, Investigating Officer, was attached to D.N.Nagar Police Station from July, 2011 to March, 2014. On 04.11.2011 charge of investigation was handed over to PW-25 from PW-23. He deposed that on 05.11.2011, on perusal of case papers he found that statements of PW-1 and Priyanka were not recorded and PW-1's mother had informed the constable that PW-1 is unwell and will be unable to attend the police station; and Priyanka had stated that she shall attend the police station on the next date. Both their statements were recorded on 7th November, 2011. He deposed that

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

ADR of Keenan and Santos were filled up by PSI Ghadge and are marked at Exhibits 138 and 139 respectively.

86. During cross-examination on behalf of accused No.2, he deposed that he had recorded statements of 2 girls on 7th November, 2011. During cross-examination on behalf of accused No.1, he deposed that remand which is marked at Exhibit 142 was filed by him without perusing the papers and that remand application was not prepared by him. He further deposed that he did not feel it necessary to record further statement of PW-17 after registering of offences u/s 354 and 506 of IPC. He deposed that he had neither issued summons to hotel owner nor recorded his statement. He deposed that he did not feel it necessary to collect bills of witnesses of hotel. During the cross-examination on behalf of accused No.3, nothing substantial was brought out. Accused No.4 adopted cross-examination of accused No.1 to 3.

87. **PW-26, Dr. Prakash Umaji Pawar**, Medical Officer, was attached to Cooper Hospital from 2009 to 2015 as Casually Medical Officer. He deposed that on 21st October, 2011 three perbuttocksons viz.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Jitendra Rana (accused No.1), Satish Dulgaj (accused No.2) and Sunil (accused No.3) were brought by D.N. Nagar Police Station to the hospital. He deposed that he had examined Jitendra Rana and there were 2 old injuries to scalp at left parital and they were CLW, injuries were 12 hours old. Following injuries were found on accused No.1:

(i)Measurement of 2 injuries were: 3x1x1 cm and 2x1x1cm respectively;

(ii) Contusion below right eye;

(iii) Contusion to right chin 2x1 cm

All the above injuries were simple in nature and injury at skin was infected. The medical certificate was issued by him and is produced at **Exhibit-158**.

88. He deposed that the history of the injury by the accused was mentioned in the medico-legal register, wherein it was mentioned by the accused that assault was by glass and hand. He further deposed that injury No.1 can be possible if hit by glass. The copy of the certificate is at **Exhibit-159**. He deposed that he had examined accused Nos.2 and 3 and no injuries were sustained by them, and accordingly medical certificate was issued by him. As there were no

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

injuries to them, he did not ask them about any history. The medical certificates issued are at **Exhibit-160 (Colly)**.

89. During cross-examination on behalf of accused No.1, he deposed that he does not agree with the time mentioned as 4:05 pm is **Exhibit-158**- Medical certificate issued to accused No.1 and agreed that there is overwriting on time in Exhibit 159- copy of the medical certificate issued to accused No.1. He deposed that medical certificate was issued as per the entry in medico legal register. Photocopy of the medico legal register is at **Exhibit-161**. He deposed that his statement was not recorded by the police. He further disclosed that injury below the eye was possible by glass, but the glass pieces were not found during the examination of the injury. He deposed that age of injury is determined on the basis of surrounding tissues and in the present case injuries were 6-12 hours old, but he also deposed that he had not mentioned the stages of infection. Accused Nos. 2, 3 and 4 adopted cross-examination of accused No.1.

90. **PW-27, Dr. Prajesh Bhuta**, was attached to Kokilaben hospital as a consultant and general surgeon. He deposed that Ruben

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Fernandes was admitted to Kokilaben hospital around 1:45am on 21st October, 2011. He deposed that when Ruben was admitted to the hospital there was a big open wound on his abdomen. He further deposed that it was an external injury and lacerated wound in left iliac foss measuring 5x3 cm with evisceration of bowel and the said injury was possible with knife. Ruben was not in a position to speak and was directly taken by him to operation theatre. During the operation following internal injuries were found:

(i) perforation though mesentrery

(ii) small bowel perforation 2 x 1 cms in the ileum

(iii) Rent (hole) in external iliac artery (left) 1x1 cm + branches

(iv) complete transaction of the bifurcation of the left iliac veins including small veins.

(v) multiple lacerations to pelvic plexis of veins.

91. He deposed that the aforesaid injuries were corresponding to external injuries and injuries (iii), (iv) and (v) are fatal injuries sufficient to cause death. Ruben since admitted in the hospital till his death was in ICU and died on 31.10.2011 at 5:52pm and

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

certificate in that regards was issued by him on 16.11.2011 which is **Exhibit-164.** He deposed that Ruben was brought to Kokilaben hospital from Cooper hospital and further deposed that considering the nature of injuries he was not treated there as the injuries were open and bowels were outside.

92. During cross-examination on behalf of accused No.1, he deposed that neither his statement was recorded by police nor had he handed over any medical papers and injury certificate to police, and that he had taken operation notes and day to day notes while monitoring Ruben. He deposed that throughout his stay at the hospital, Ruben was unstable, but he also deposed that he did not have any documentary proof to show that he was unconscious and unstable. He deposed that death was caused due to injury and post operation complications and further that doctors do not disclose post operation complications; only the injuries are mentioned in the certificate. He deposed that after considering both external and internal injuries, direction of injury was from top to bottom and that injury was not caused by one single blow. He deposed that there was only one external injury as lacerated injury thereby meaning that the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

cut was not very sharp. He deposed that Ruben would have survived had there been no post operational complications but further deposed that he did not pass away due to post operational complications and therefore had not produced any documents. During cross-examination on behalf of accused No.2, he deposed that patient would not have survived even if proper treatment was given and that Ruben had not died due to negligence on part of the hospital. Accused No.3 adopted cross-examination of accused No.1. Accused No.4 declined cross-examination.

93. **PW-28, Dr. Sameer Rathi**, was attached to Kokilaben Hospital as Consultant Emergency Medicine. He deposed that on 20th October, 2011 around 11:10 pm Keenan Santos was admitted in hospital and was unconscious and unresponsive, and he admitted Keenan in Emergency Department and upon examination following injuries were observed:

(i) Stabbed wound over right lower quadrant of abdomen approximately 8cm x 4 cm with full thickness abdominal wall with bowel protruding through wound.

(ii) Stabbed wound over left upper quadrant of abdomen

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

approximately 4 cm x 2 cm with full thickness abdominal wall with bowel protruding through wound.

(iii) incised wound over left arm approximately 4 cm x 2 cm × 1.5 cm medial side of arm, muscle exposed.

(iv) incised wound over left arm approximately 3cm × 1.5 cm × 1.5 cm medial side of previously mentioned wound muscle exposed.

94. He further deposed that injuries were ante-mortem and as patient was critical, life saving treatment was started by the hospital and Keenan's heart stopped within 10 minutes and died due to said injuries. He deposed that as bowel was protruding out, it was pushed in abdomen and wound was sutured to prevent blood loss and CPR was given throughout till 12:30 am, and Keenan was declared dead at 12:30 am and his body was handed over for post-mortem. He issued injury certificate and the same is at Exhibit 166. He deposed that injury nos. (i) and (ii) are on vital parts and therefore, are sufficient to cause death and the injuries can be caused due to sharp objects.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

95. During cross-examination on behalf of accused No.1, he deposed that there is no date on Exhibit 166 and that he does not remember the date he issued the injury certificate but was issued after 26.11.2011. He further deposed that police had not recorded his statement. He deposed that injury nos. (i) and (ii) were sharp on both edges and thus were caused by weapon with sharp edges on both sides. He deposed that dimensions of all 4 injuries are different but cannot comment whether the injuries were caused with different weapons. Accused Nos.2 and 4 adopted cross-examination of accused No.1. Accused No.3 declined cross-examination.

96. **PW-29, Shrikant Hanamant Lade**, Assistant Director at Forensic Lab in Kalina. He deposed that on 01.11.2011, he had received 26 parcels and 2 plastic containers out of which 13 articles/exhibits were sent for DNA analysis. After detection of blood stains and extraction of DNA from detected blood, following interpretation was drawn by PW-29:

(i) DNA profile of blood detected on exhibit 12- jeans full pant of Ruben, exhibit 18- full bush shirt of Mohsin and DNA profile obtained from blood detected on exhibit 19- knife are identical,

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

and from one and same source of male origin. DNA profiles matched with maternal and paternal alleles in source or blood.

(ii) Controll DNA profile obtained from blood detected on exhibit 1- jeans full pant of deceased Kenan.

(iii) Controll DNA profile obtained from blood detected on exhibit 16- track full pant of accused Deepak.

(iv) Controll DNA profile obtained from blood detected on exhibit 28 - jeans full pant of Sunil Both.

97. Report was prepared by PW-29 and sent to D.N. Nagar Police Station. The report is at **Exhibit-168**. During cross-examination on behalf of accused No.3, he deposed that report at **Exhibit-168** is not electronic record, and further voluntarily added that it is Electro Phelogram. He deposed that report at **Exhibit-168** was not generated using the software. He volunteered that the all findings of electro phelogram are mentioned in the report and the lab has a procedure to generate report by comparative study. He further deposed that the said report was not submitted to the police as they had not asked for the same. He deposed that he had not issued certificate u/s 65(B) under the Evidence Act regarding generating electronic report using the software. Accused Nos.2 and 4 adopted

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

cross-examination of accused No.3.

98. The statements of the accused under Section 313 of the Cr.P.C were recorded. The arguments of the Counsel appearing for the respondents were heard at length. The Trial Court, thereafter, vide the impugned Judgment and Order dated 05.05.2016 convicted the Appellants.

C. DISCUSSION ON THE TRIAL COURT'S JUDGMENT

99. The Trial Court held that the prosecution proved the death of Keenan and Ruben as homicidal death.

100. The Trial Court held that the prosecution proved that on 20th October, 2011, at about 22:30 hours, the accused Nos. 1 to 4, in furtherance of their common intention, had outraged the modesty of victim-PW-1 and therefore, committed an offence under Section 354 of IPC. It was further held that the accused Nos. 1 to 4, in furtherance of the common intention, had expressed gesture and uttered demeaning words to PW-1 and committed an offence under Section 509 of IPC. The accused Nos. 1 to 4 committed an offence

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

under Section 504, the accused Nos. 1, 2, 3, and 4 threatened the victim Keenan and Ruben to cause injuries to their person and life, intending to prevent them from opposing the accused and the other co-accused from assault, injuries, threats, and commission of the offence and thereby, the accused Nos. 1 to 4 committed an offence punishable under Section 506 read with Section 34 of the IPC.

101. It was held that the accused Nos. 1 to 4 had committed an offence under Section 120(B)(i) of the IPC. So also, the accused Nos. 1 to 4 had committed the murder of deceased Ruben and Keenan and committed an offense under Section 302 r/w Section 34, 120(B) of the IPC. The accused Nos. 1 to 4 caused voluntary hurt to PW-17 by means of knives, cricket stump, and bamboos and therefore committed an offence under Section 324 r/w Section 34, 120(B) of the IPC. The offence under Section 37(1) r/w Section 135(1) of the Bombay Police Act was committed, inasmuch as there was a common intention to commit breach of the order of the Commissioner of Police for preventing public peace and public safety by carrying weapons, such as knives and cricket stump. The Trial Court for the reasons mentioned in greater details in the impugned

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Judgment and Order, passed the impugned Judgment and Order.

D. SUBMISSIONS OF THE LEARNED SENIOR ADVOCATE, MR. PASBOLA, APPEARING FOR THE ACCUSED NO. 1 IN CR. APPEAL NO. 439 OF 2016

102. The learned Senior Advocate attacked the Judgment of the Trial Court. He submitted that the prosecution has deliberately suppressed the evidence from the Court and concocted a false narrative. The waiter Kanti Patel, who helped in removing the injured, was not examined. Similarly, Mohsin, who was an employee of the restaurant, was not examined. The real brother of the deceased Ruben, who carried Ruben to Cooper Hospital and thereafter took him to Kokilaben Hospital, Benjamin Fernandes, was not examined. The said person Benjamin had given a history of alleged assault by 15 persons with knife at Amboli Kitchen Bar & Restaurant. The version of Benjamin given to the doctor and EPR constable discredits the prosecution case, and therefore he was not examined.

103. He submitted that the EPR constable at Cooper Hospital had made the EPR entry (Exhibit 70) with regard to the injured

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Ruben Fernandes. The said Exhibit 70 discloses assault by some known persons. The EPR is recorded as per the information given by Benjamin Fernandes. The constable who recorded the said EPR was, therefore a material witness, but he was not examined. This was only to avoid discrediting the prosecution's case. Priyanka, who was with the victim and an eyewitness to the alleged molestation of PW-1, was also not examined. The father of Keenan Santos, who was informed about the incident and who arrived at the spot, and thereafter, visited Kokilaben Hospital, was also not examined. The F.I.R of PW-17 at Exhibit 83 is totally silent regarding the molestation. The story of molestation is subsequently introduced sometime on 07/11/2011 or thereafter.

104. The F.I.R (Exhibit 83) and the station diary entry in respect of registration of the F.I.R below Exhibit 100 does not speak about molestation or an indecent remark made by the said four persons who were standing near the paan shop. The F.I.R (Exhibit 83) explicitly states that there was an accidental push by one of the four persons, which led to the verbal altercation.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

105. Though the statement of PW-18, Shobita Singh, is alleged to have been recorded on 21st October, 2011, the offences u/s 504, 506(II), 509, 354 of the Indian Penal Code (IPC) were added to the F.I.R (Exhibit 83), which was registered u/s 302, 307, 324 read with Section 34 of the Indian Penal Code (IPC) and Section 137-A and 135 of the Bombay Police Act, much later. He submitted that PW-2 and PW-21, though are not shown to be connected with the complainant and victim, their evidence needs to be accepted with great care and caution. They are subsequently introduced to bolster the prosecution's case. The presence of PW-2 at the spot is doubtful, and the conduct of PW-21 is unnatural. The F.I.R is totally silent regarding molestation, and the story of molestation is introduced subsequently after public and media pressure so that the case does not come within the ambit of grave and sudden provocation.

106. The statements of PW-18 and PW-1 were recorded at an earlier point in time, yet the charges u/s 354 of the Indian Penal Code (IPC) were added only after 5th November, 2011 or 7th November, 2011 or thereafter. The investigating officer did not add an offence u/s 354 of the IPC.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

107. The remand reports below Exhibit 127 and 142 show that the charge u/s 354, 504, 506(II) of the Indian Penal Code (IPC) had not been invoked till 4th November, 2011. The station diary, Exhibit 128, by PI Dewde, shows that the charge u/s 509, 506(II) was added on 0 7th November, 2011. The incident is alleged to be of 00.45 hours in that connection. C.R No.411 of 2011 has been registered u/s 143, 144, 147, 149, and 353 of the Indian Penal Code (IPC). Subsequently, some of the persons were charge-sheeted. The said F.I.R is also recorded by PW-22.

108. The F.I.R No. 411 of 2011 is suppressed. The blood samples of the complainant, Benjamin, PW-1, Shobita, and Priyanka have not been collected, nor were they tested for alcohol. The bill allegedly paid by the complainant and witnesses have also not been collected.

109. The complainant party was there in the Bar for around 3 hours. In all probability, they had consumed alcohol, and in this drunken state, the incident had occurred. There was a gross delay in

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

recording the F.I.R. There is an inordinate delay in recording the statements. The statements of PW-1, and Priyanka were recorded on 7th November, 2011, and the statement of PW-18 Shobita Singh was recorded on 21st October, 2011 is apparently pre dated.

110. The recovery of the knife (Article 2) appears to have been recorded u/s 27 of the Evidence Act at the instance of accused No. 1. The memorandum statement is at Exhibit 56, and the seizure panchanama is at Exhibit 56-A. The panch witness is PW-7. The recovery is allegedly made from an open place which is accessible to all. The place of recovery is from a hole under the electric box. The meter box is situated on a footpath and is situated at Gulmohar building. The place of recovery is very close to the Amboli Kitchen Bar & Restaurant, and it does not stand to any logic that the accused would commit the murder, come back, and keep the knife near the place of incident.

111. According to the C.A report, the blood on the knife seized from accused No. 1 had blood group 'O'. Blood group of Ruben is 'O', whereas blood group of Keenan is 'A'. As per the DNA report Exhibit-

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

168, proved through the evidence of PW-29, the DNA of blood on the said knife is of Ruben.

112. It is not the prosecution's case that the accused No. 1 had assaulted Ruben. The assault on Ruben is attributed to accused No. 2. The blood allegedly found on the clothes of the accused is human and inconclusive. The fact that the accused himself was injured in the alleged incident and had sustained injuries on his head is proved through the medical certificate and OPD papers at Exhibit 158 and 159, respectively. The same could have been his own blood on his clothes.

113. The learned Counsel Mr. Pasbola also attacked the forwarding letter dated 01.11.2011 at Exhibit 120. PW-17 has improved the version in his deposition by stating that 4 unknown persons who were smoking cigarettes went towards the girls with them (PW-1, PW-18 and Priyanka). At that time, PW-1 screamed and came towards Avinash PW-17 who was standing with Keenan, Ruben, and Benjamin. The story of the alleged lewd words and molestation was not disclosed by PW-17 Avinash in his F.I.R dated 21st October,

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

2011, which is allegedly recorded at about 1:30 hours. The case of the prosecution with regard to alleged misbehavior and molestation is farce, preposterous and absurd. It is unbelievable that the deceased Keenan, Ruben, Benjamin, or PW-17, who were standing near the paan shop, would not have themselves noticed the alleged molestation or heard the screams/shouts of PW-1. The evidence of PW-17, apart from being replete with embellishment, is also highly unreliable and unsafe to convict the accused.

114. The statement of PW-17 cannot be treated as an F.I.R regarding a cognizable offence which was already relayed to the police. The evidence of PW-23 PI Indalkar and PW-22 PSI Ghadge shows that the information regarding commission of a cognizable offence was already disclosed to the police. The investigation had thus commenced, and therefore, the statement of PW-17, is a statement recorded u/s 161 of Cr.P.C, and its use is limited as prescribed u/s 162 of Cr.P.C and cannot be used for corroboration.

115. The statement of PW1, who was the alleged victim of molestation, shows that the incident happened on 20th October,

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

2011 and her statement was recorded on 7th November, 2011. There is no plausible explanation for such delay. There are improvements regarding identification of the accused. Evidence of PW-1 is also too artificial, absurd, and unbelievable. The evidence of PW-18 Shobita Singh, who is an alleged eyewitness, also does not inspire confidence. Her statement was also recorded on 22.10.2011.

116. The statement of PW-2 Surendra Ray who was working as a security guard at the Amboli Bar & Kitchen restaurant, also does not inspire confidence. There is no record to show that, on the day of the alleged incident, the said witness was on duty. The said witness states that there was no exchange of words between four unknown persons and four customers at the paan shop, and they crossed those unknown persons while going to the paan shop.

117. The evidence of PW-21 Kumar Chaurasia, who claims to be running a paan shop near the Amboli Bar & Kitchen Restaurant does not inspire confidence. The statement does not corroborate the statement of molestation, but has only deposed that he saw the girls frightened, and therefore, felt that the accused person might have

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

misbehaved with them.

118. The conduct of PW-21 of not waiting at the place of the incident, not rendering any help or informing the police, and there being no evidence to show that he was running the paan shop, as deposed by him, creates serious doubt regarding the presence of PW-21 at the spot and having witnessed the incident. His conduct is unnatural. There was no reason for him to close the shop and run away from the spot. The cross-examination of PW-21 would totally discredit his evidence. He submitted that the entire case is a concocted version of the incident. In the end, he submitted that in case the Court comes to a conclusion that the offence has taken place, the same is covered by exceptions 1 and 3 of Section 300 of the Indian Penal Code (IPC). He lastly submitted that the occurrence was sudden within the meaning of the exception to Section 300 of the Indian Penal Code (IPC). There was no sufficient time for passions to cool, and therefore the accused were entitled for acquittal or, at least, convicted for a lesser offence u/s 304 of the Indian Penal Code (IPC).

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

119. He relied and took us through the text of the following judgments:

1. ***Surinder Kumar Vs Union Territory of Chandigarh***[1]
2. ***Jagrup Singh Vs State of Haryana***[2]
3. ***Arvind Kumar Vs State of Uttar Pradesh***[3]
4. ***Sukhbir Singh Vs State of Haryana***[4]
5. ***Surain Singh Vs State of Punjab***[5]
6. ***Rambir Vs State of NCT, Delhi,***[6]
7. ***Rampal Singh Vs State of Uttar Pradesh***[7]
8. ***Tholan Vs State of Tamil Nadu***[8]
9. ***Anbazhagan Vs State of Tamil Nadu***[9]

E. SUBMISSIONS OF THE LEARNED COUNSEL DR. YUG MOHIT CHAUDHARY ON BEHALF OF ACCUSED NO. 4 IN CR. APPEAL NO.840 OF 2016:

120. The Learned Counsel Yug Mohit Chaudhary appearing for the Appellant No. 4 made the following submissions:

He argued that the allegation of sexual assault and molestation is an afterthought and is levelled belatedly. The complainant was the

1 (1989) 2 SCC 217
2 (1981) 3 SCC 616
3 (1987) (Supp) SCC 638
4 (2002) 3 SCC 327
5 (2017) 5 SCC 796
6 Cr. Appeal No. 839 of 2019
7 (2012) 8 SCC 289
8 (1984) 2 SCC 133
9 (2026) 2 SCC (Cri.) 717

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

aggressor and had initiated the fight as he and his friends were under the influence of alcohol. It was a case of free fight and that the learned Judge has rightly recorded a finding that no injury had been caused by accused No. 4, whom he is representing. The accused No. 4 was holding a bamboo stick in his hand and that it was not the reason for causing death of the deceased. The only injury which is said to have been caused was the injury to the PW- 17 and that too, a minor injury to his thumb in the nature of abrasion. There was no common intention to kill because he was not holding any deadly weapon in his hand and Section 34 would not apply in this case. It was a case of free fight, and that each person was responsible for their own conduct and that the vicarious liability could not have been attached in this case upon the accused No.4.

121. It was submitted that the entire incident of molestation was concocted. Although the incident took place on 20th October, 2011, yet on that day, the charges of molestation were not pressed. Section 354 of IPC was not invoked immediately upon lodging of the FIR. Section 509 was added for the first time on 7th November, 2011 and thereafter Section 354 was added on 30th December, 2011.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

There were total five eyewitnesses namely PW-1, PW- 2, PW- 17, PW-18 and PW- 21. The complainant and his friends were PW-1, PW- 17 and PW- 18. Save and accept these witnesses, the independent witnesses PW- 2 and PW- 21 do not make out allegation of molestation. The PW- 17 slapped the accused No.1 and this is how the fight began. In the event this Court comes to a conclusion that the offence of Section 300 was made out, then the exception 4 would be attracted in this case and that the accused No. 4 is entitled for acquittal.

122. He argued, in free fight, every person is liable for his own act and that it was incorrect on the part of the Trial Court to make the accused Nos.3 and 4 are liable for the act committed by the other accused. The provisions of Section 354 were added belatedly. The offence was committed on 20th October, 2011 at about 11.00 pm. The Medical Certificate of deceased - Ruben at Cooper Hospital clearly shows that the history of assault given by the brother of Ruben i.e. Benjamin to Dr. Ram Murthy states that the assault was by 15 persons with knives in Andheri (West) at 11.00 PM. In this Medical Certificate, there was no mention of any molestation. The

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

EPR entry made at Kokilaben Hospital on the basis of information given by supervisor Gupta of Amboli Bar and Kitchen Restaurant while admiting Keenan also states that Keenan was assaulted by unknown person by knife in abdomen at 23.00 hours. Here, also, there was no mention of molestation. The station diary of D.N. Nagar Police Station about visit of PSI Ghadge to Kokilaben Hospital, which is at Exhibit - 99 also, does not mention any thing about molestation. The EPR entry made at Cooper Hospital, which is below Exhibit-70 also fails to note any any incident of molestation. The ADR No. 78 of 2011 registered by the office in-charge of D. N. Nagar Police Station, which is at Exhibit-138 states only about the scuffle which has taken place. However, it doesn't mention anything about the alleged molestation. The station diary entry of D.N. Nagar Police Station after Police team returned from Kokilaben Hospital which is below **Exhibit–100** and **Exhibit-115** does not mention anything about molestation. The FIR registered by PW-17, station diary entry made on information given by Police inspector - Indalkar of D.N. Nagar Police Station, which is below **Exhibit-134**, the Medical Certificate of PW-17, which gives history of assault which is at Exhibit- 85, the MLC OPD paper of PW- 17, which is below **Exhibit- 116** does not

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

mention the incident of molestation.

123. The supplementary statement of PW-17 recorded by PW-23 is where, for the first time, the allegation of molestation has found place. The said statement was recorded after 24 hours from the date of recording of the FIR. In the FIR, however, there is no mention of molestation. The entire case of molestation under Section 354 is totally a figment of imagination and that such incident has never taken place.

124. The complainant and his friend had consumed liquor. The statement of PW-1 stated that they had been in the Bar, where liquor was served for nearly 3 hours and therefore, it is difficult to believe that they did not consume alcohol. Reference was made to the notes of the Autopsy Surgeon where it was mentioned that a sour smell was coming out of the stomach. This sour smell was present because the deceased had consumed alcohol. The act of the investigating officer of not sending the blood for test was criticised. The investigating officer has also not collected the bill of the restaurant which, if collected, would have shown that the complainant and his

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

friends were drunk. He criticized the investigation by stating that the investigation is not an independent investigation. He raised the question as to how the PW- 17, who is the first informant had got access to the glass, which he threw upon the accused due to which the accused was injured. He lastly submitted that the accused No.4 had no role. He pointed out the findings of the Trial Court which is on record at page 1337, which says that there was no role attributed to the accused No.4. There was no weapon seized from the accused No.4. The bamboo was lying on the spot. There were no blood stains upon the said bamboo, which was the weapon alleged to have been used by the accused No.4. The t-shirt was recovered, however, there were no blood stains on the said t-shirt. However, there were blood stains on the pant. Those blood stain, however, not were not of the accused nor there were of the deceased or the injured. There was no intention on the part of the accused No.4 because had it been there was an intention of killing the deceased, he would not have come merely with the bamboo as a weapon.

125. Lastly, he submitted that if this Court comes to a conclusion that the offence under section 300 was committed, then

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

in such an event they all were entitled to the benefit under the provisions of exception 4 of Section 300. He criticized the Judgment of the Trial Court for not considering the aforesaid facts and he sought acquittal of the accused No.4. He submitted that the appeal be allowed and the accused be acquitted.

F. SUBMISSIONS OF LEARNED COUNSEL MR. GAURAV BHAVNANI ON BEHALF OF ACCUSED NO. 3 IN CR. APPEAL NO.381 OF 2016:

126. The learned Counsel, Mr Bhavnani, appearing for the accused No. 3, adopted the arguments made by the learned Counsel appearing for the accused Nos. 1 and 4. He, however, made a specific submission regarding the material available against accused No. 3. He argued that accused No. 3 did not assault either of the deceased persons. The only allegation is that he has assaulted PW-17 Avinash and witness Benjamin. The injuries of Benjamin have not been proved. PW-17 is said to have suffered merely an abrasion and that too either one or two in number.

127. Accused No. 3 is alleged to have used a cricket stump which was seized from the spot of the incident (the cricket stump is

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Article 3). He relied upon the CA Report, Exhibit-171, and stated that there were no blood stains found on the said stump. The alleged weapon used by accused No. 3 also does not indicate any role in assaulting the deceased persons.

128. The clothes allegedly worn by accused No. 3 were seized at the time of his arrest under panchanama, Exhibit-68. As per the CA Report, no blood was found on the shirt/baniyan of accused No. 3, although few blood stains were found on the lower part of the leg of the jeans pant; the blood group was inconclusive. The said pant was sent for DNA analysis. As per the DNA analysis report, Exhibit-168, the blood stains did not tally with either of the deceased persons.

129. There is absolutely no material to state that the Appellant shared any common intention to murder the deceased person. He argued that the intention of each person in an assembly may vary from merely threatening, to causing hurt, causing grievous hurt, or to commit murder . The evidence of accused No. 3 does not indicate that there was any common intention on his part to commit murder.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

G. SUBMISSIONS BY LEARNED SPECIAL PUBLIC PROSECUTOR MR. AABAD PONDA :

130. Learned Spl. P.P Mr. Ponda appearing for the prosecution made the following submissions :

He argued that the Trial Court has meticulously considered every material aspect of the prosecution case, dealt with each of the contentions raised on behalf of the defence and assigned cogent reasons while recording the findings of conviction. The findings recorded are fully supported by evidence on record and settled principles of criminal jurisprudence and therefore, there is no perversity, illegality or infirmity, warranting interference by this Court in exercise of its appellate jurisdiction. The evidence on record must be appreciated cumulatively. The evidence of the prosecution is not dependent upon one witness, one recovery or one document. The evidence of five witnesses are supported by medical evidence, the spot panchanamas, the recovery evidence, the Chemical Analyser's report and the DNA reports.

131. The present case is principally that of direct evidence. The prosecution has examined five witnesses, namely PW-1, PW-2,

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

PW-17, PW-18 and PW-21 who are eye witnesses. PW-2 and PW-21 are independent witnesses naturally present at the place of occurrence and provide material corroboration regarding the presence and conduct of the parties and subsequent assault. The learned Sessions Judge has specifically treated the prosecution case as one based on direct evidence upon cumulative assessment and found that the eye witnesses were trustworthy and consistent with the spot and medical evidence. The evidence concerning the first incident is principally proved through PW-1 and PW-18. PW-17 speaks about the disclosure made by the girls and his own subsequent interaction with the accused. PW-21 corroborates the surrounding circumstances, including the frightened demeanor of the girls, their immediate communication with PW-17 and ensuing reaction of deceased Keenan and PW-17. PW-24, the Control Room Officer, recorded the information received at approximately 2.00 a.m. on 21st October, 2011 in the Station Diary at Exhibit-134. This contemporaneous record assumes significance because it was created within hours of occurrence and before the subsequent detailed statements were recorded. After the first confrontation had concluded, all the four accused left the spot where there was a

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

interval of about 10 to 15 minutes. While going, they had threatened the victim and other friends that they would be coming back. Thereafter, the four accused returned together armed with weapons. Accused Nos. 1 and 2 carried knives, while accused Nos.3 and 4 carried wooden weapons attributed to them. Accused No.1 repeatedly stabbed Keenon Santos in the abdomen until he fell. Accused No.2, on the other hand, stabbed deceased Ruben Fernandez in his abdomen until he fell. Accused Nos.3 and 4 simultaneously, participated in the assault with wooden weapons carried by them. Accused No.1 had made a memorandum statement, expressing is willingness to produce the knife concealed by him, the police and the panch witnesses were led to an electric meter box near Gulmohar building, from where he produced the concealed knife was produced and seized. PW-7, Yamin Shaikh proved the said memorandum recovery. The recovered knives were thereafter forwarded alongwith other Muddemal articles for Forensic Examination. The forwarding letter is at Exhibit-120 which is proved by PW-23.

132. PW-29, The Chemical Analyser specifically deposed that on 01.11.2011, he received 26 parcels and two plastic containers in

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

sealed condition. He examined them for presence of blood and thereafter subjected to DNA analysis. Significantly, the DNA profile obtained from the blood detected upon one of the recovered knife was found to be identical with the DNA profile obtained from the blood of deceased Ruben's Jeans and was found to originate from the same male source. The physical condition of the place immediately after the occurrence materially corroborates the eye witnesses' narrative. PW-3 proves the spot panchanama. The same is at Exhibit-46, under which the scene was examined and physical articles, including blood stains, pieces of broken glass, and wooden articles connected with the occurrence were found and seized. This evidence is particularly relevant to PW-17's account that during the armed assault, it threw the glasses towards the accused in self defence and thereafter used the ladder lying nearby in an attempt ward off the attackers. Thus, the physical condition of the spot is not independent of eye witnesses' narrative but also corresponds to the material features described by the eye witnesses.

133. PW-16 Dr. Vijay Tasgaonkar conducted Post Mortem examination and provided the Post Mortem Report at Exhibit -77.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

The medical evidence, therefore independently establishes, both, the homicidal nature of the death and its consistency with weapon and the manner of assault.

134. PW-26, Dr. Prakash Pawar, who examine accused No.1 found the injuries upon the scalp. The history given by the accused No.1 himself and as recorded in the medico-legal register was of an assault by glass and hand over the left parietal region. PW-26 opined that the injury was possible if stuck by glass. Thus, the medical evidence independently corroborates with the occurrence described by the eye witnesses. The recovery of two knives at the instance of accused Nos.1 and 2, which is corroborated by PW-6 - Regan D'Souza who proved the memorandum and recovery at the instance of accused No. 2 under Exhibit-53 and 54 and PW-7 - Yamin Shaikh, who proved the memorandum and recovery at the instance of accused No.1 under Exhibit-56 and 56A are very material witnesses. The clothes worn by the accused and their subsequent seizure/recovery is also important. PW-12 proves the seizure of the clothes of accused Nos.1 to 3 under Exhibit-68. PW-11 proved the memorandum and recovery of clothes of accused No.4 under Exhibit-

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

65 and 66. He argued that these articles formed part of muddemal forwarded for scientific examination. The clothes evidence therefore provides an additional physical link which has to be read together with rather than separately from the eye witnesses and forensic evidence. He relied upon the report at Exhibit - 168 of the Chemical Analyser. He submitted that the prosecution establishes a continuous evidentary sequence from the seizure/recovery, forwarding, receipt in sealed condition and scientific examination. He submitted that the chain of custody of articles is completed.

135. Learned Counsel relied upon the Test Identification Parade conducted by PW-14 on 16.11.2011. The memorandum of identification parade is at Exhibit-72. The eye witnesses identified the accused during the Test Identification Parade and thereafter before the Trial Court.

136. He submitted that PW-1 and PW-18 are the direct witnesses to the acts committed by the accused Nos.1 and 2. The learned Session Judge recorded that the accused No. 1 molested PW-1, the accused No.2 touched her inappropriately and both passed

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

vulgar comments. The immediate disclosure of the occurrence by PW-1 and PW-18 to their friends was found to be natural and consistent. He submitted that it was never the case of the prosecution that PW-21 was an eye witness to the physical act, constituting molestation. He relied upon the testimony of PW-1, duly corroborated by the PW-18, the immediate disclosure made to PW-17, the evidence of PW-2, the contemporaneous ADR and the Station Diaries established the incident of molestation.

137. The statement of PW-2, a security guard which was recorded on the very next date that is on 21st October, 2011, corroborates the evidence of PW-1 and PW-17 regarding the genesis of the incident. He argued that the contention of the Appellant that the case of molestation was introduced subsequently and is totally concocted is not correct. He submitted that the statements which recorded is considered in the proper sequence would falsify the case of the Appellant . He stated that the incident occurred during the night of 20th October, 2011 at about 2.00 a.m. On 21st October, 2011 PW- 24, the Control Room Officer received information from P. I. Indulkar of D. N. Nagar Police Station that three boys and two girls

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

had been standing in front of Amboli Bar and Kitchen Restaurant and that a quarrel had arising after one of the boys had "uttered bad words for girl". He also stated that the person thereafter left the spot returned with his companions, armed with choppers and knives and assaulted the boys. This information in the Station Diary is at Exhibit-134. Thus, within hours of the occurrence and before the subsequent detailed statement of the witnesses, the Police themselves recorded the genesis of the first altercation.

138. In response to the argument of the Appellant that the PW-21's vision was questionable. He submitted that the submission of the Appellant is speculative and not founded upon any legal or evidentary requirement that every victim of molestation must necessarily scream or raise an alarm. The evidence shows that the occurrence was immediately disclosed by the girls to their friends. Keenan and PW-17 confronted the accused.

139. In response to the case of the Appellant that there is a contradiction regarding which knife was carried by accused No.1 and which knife was carried by accused No.2, the said submissions

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

according to the learned Counsel for the respondent confuses the identification of recovered articles with the substantive evidence concerning the individual roles of the accused during the assault. He submitted that there is no material contradiction in eye witnesses as regard the actual role of the accused Nos.1 and 2.

140. In response to the argument advance by the learned Counsel appearing for the Appellant that the recoveries were doubtful because the panch witness stated during the deposition before the Court that the recovered weapons were wrapped, labelled and sealed by the Police. The earlier spot panchanama do not specifically record the fact of sealing. He submitted that the alleged omission must be distinguished from a contradiction concerning factum of recovery itself.

141. In response to the argument of the Appellant regarding common intention, learned Counsel for the State, Mr. Ponda submitted that there was a common intention. He submitted that all four persons were present during the first incident, thereafter they left the spot together. They threatened the complainant party to

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

return back. All the four returned together, and at this time, each of them was armed. The accused Nos.1 and 2 were carrying knives while accused Nos.3 and 4 returned carrying, cricket stump and bamboo respectively.

142. As far as the argument of the Appellant regarding non-production of CCTV footage, Restaurant bill, waiter and alcohol test is concerned, the learned S.P.P submitted that none of the above evidence constitute substantive evidence. He submitted that when the case rests upon direct evidence of five eye witnesses, including two independent eye witnesses mere absence of CCTV footage cannot outweigh otherwise, reliable direct evidence. He submitted that mere recording of a person's statement during investigation does not make a person a material witness whose non-examination must necessarily result in adverse inference against the prosecution. Mere non examination of witnesses cannot be treated as suppression. He submitted that the challenge to the timing and genuineness of the FIR, based on the movements of PW-22 PSI Shivaji Ghadge, was without merit. The Sessions Court had considered the issue and found that there was no delay in registration of the FIR. The injured

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

were immediately taken to the hospital and, after Keenan's death, the FIR was registered at about 2.30–2.40 a.m. The mere movement of PW-22 between the Police Station, hospital and spot did not establish that the FIR was ante-timed or fabricated. No alteration in the FIR or contemporaneous document showing otherwise was brought on record. It was further submitted that C.R. No.411/2011 was not a counter-case arising from the present incident. The Sessions Court had found that it was registered because a mob had interfered with the police investigation and was not connected with the present offence.

143. As regards the gaps in the Station Diary, it was submitted that the failure to record every movement or investigative step could not, by itself, render the eyewitness, medical and forensic evidence unreliable unless such omission showed manipulation or contradiction regarding the occurrence.

144. On the challenge to the Test Identification Parade, it was submitted that PW-14, Special Executive Magistrate, had proved that the parade was conducted after following the necessary precautions.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

As regards PW-18, it was submitted that the TI Parade was only for identification of the accused and was not an occasion to repeat the entire occurrence. The failure of PW-18 to mention the act of molestation before the Magistrate during the parade therefore did not affect her evidence. It was further submitted that the incident was not a "free fight" or a case of grave and sudden provocation. The slap by PW-17 occurred during the first confrontation. Thereafter, all four accused left the spot and returned after about 10–15 minutes armed with weapons. Accused Nos.1 and 2 had knives, accused No.3 had a stump and accused No.4 had a bamboo. Their departure, procurement of weapons and return together showed an intervening and deliberate act, and not a spontaneous continuation of the earlier incident. Further, accused Nos.2 to 4 had not themselves been subjected to the alleged provocation. The allegation of consumption of alcohol by the complainant party was also stated to be speculative. There was no evidence that any eyewitness was intoxicated to an extent affecting his or her perception, recollection or identification.

145. As regards accused No.4 and Section 34 IPC, it was submitted that the prosecution did not allege that he had inflicted

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the fatal knife injuries. His role was to participate in the assault while armed with a bamboo. He had left the spot with the other accused, returned with them after 10–15 minutes armed with the bamboo and actively participated in the assault. Section 34 did not require the accused to use identical weapons or inflict identical injuries. His active participation in the assault, along with the other accused, was sufficient to establish his participation in the common intention. He further submitted that the conduct of accused Nos.3 and 4 during the fatal assault supported the finding of common intention. All four accused had left the spot together and returned together, armed with weapons. When accused Nos.1 and 2 commenced the fatal knife assault, accused Nos.3 and 4 did not withdraw or attempt to prevent the assault. Instead, they simultaneously assaulted Avinash and Benjamin with the stump and bamboo respectively. Their conduct therefore showed active participation in furtherance of the common intention. It was submitted that the comparatively minor injury caused to PW-17 did not exonerate accused No.4. The relevant circumstance was his active participation in the coordinated assault. Section 34 IPC did not require every accused to inflict a fatal or grievous injury.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

146. As regards the decisions relied upon by learned Counsel for accused Nos.2 and 4, it was submitted that they were distinguishable on facts. The cases concerning free fights, sudden quarrels and individual liability involved circumstances such as mutual fighting, injuries on both sides, injuries to the accused or private defence. No such circumstances existed in the present case. The first confrontation had ended, after which all four accused left and returned together after 10–15 minutes armed with weapons. The relevant consideration was their conduct during the intervening period and their subsequent armed return.

147. On the issue of sentence, the learned Counsel fairly submitted that the Sessions Court did not have the power to impose a sentence for the remainder of natural life. However, it was submitted that this Court possessed the requisite power and could impose an appropriate sentence having regard to the nature and circumstances of the offence.

148. As regards to accused No.3, the learned Counsel

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

submitted that his case was substantially similar to that of accused No.4. accused No.3 was present during the first confrontation, left with the group, returned after 10–15 minutes armed with a stump and participated in the simultaneous assault while accused Nos.1 and 2 were armed with knives.

H. SUBMISSIONS ON BEHALF OF INTERVENOR

149. The learned Counsel Ms. Gayatri Kulkarni appearing for the intervener adopted the arguments made by the learned Special P.P. Mr. Ponda. Although she has also argued extensively, however, since the arguments of the learned Counsel appearing for the intervener are nearly the same as that argued by the learned Special P.P for the State, we would not reproduce the same to avoid repetition.

I. REASONING AND ANALYSIS

150. We have heard the learned Counsel appearing for the parties. We have perused the evidence and materials on record. Our attention was invited to the Record and Proceedings. We have gone through the impugned Judgment and Order passed by the learned Additional Sessions Judge. There are, in all, four accused who were

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

tried before the Trial Court . During pendency of these appeal, accused No. 2 expired on 3rd November, 2025, and hence, his Criminal Appeal No. 790 of 2016 was disposed of by this Court vide a separate order dated 28th August, 2026.

151. Accused No. 1 has filed Criminal Appeal No. 439 of 2016. Accused No. 3 has filed Criminal Appeal No. 381 of 2016. Accused No. 4 had filed Criminal Appeal No. 840 of 2016. Since all these accused were tried together and a common Judgment and Order was passed, hence, these appeals are decided by a common Judgment and Order.

152. The principal submission of the learned Counsel appearing for all the Appellants was that there was no molestation which took place and that the theory of molestation was introduced later on. Since this aspect was argued at the beginning by all the parties and much emphasis was laid on this issue, we deal with this issue at the outset.

(a) MOLESTATION

153. The prosecution case is that of direct evidence. There are

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

five eyewitnesses who were examined by the prosecution, namely, PW1, PW- 2- Surendra Soni Ray, PW 17 - Avinash Surendra Singh Solanki- the first informant, PW- 18 - Shobita Singh, and PW- 21 - S. Kumar Chaurasia. Learned Counsel for the Appellants argued that the allegation of molestation is an afterthought. They argued that the molestation of PW- 1 never occurred and that the prosecution has, therefore, failed to prove the genesis and motive of the subsequent assault.

154. Evidence of PW- 1, who is an eyewitness and victim of alleged molestation, is very crucial in this regard. PW- 1 has narrated before the Court, the manner in which the molestation had taken place. PW- 18 – Shobita Singh who is another witness of this incident, has narrated the incident in the same manner in which it was narrated by PW- 1.

155. As a matter of fact, it is the prosecution case that PW- 1 and PW- 18, along with another friend of theirs, namely, Priyanka, were together. They had gone to the washroom when the boys had gone to eat paan at the paan stall. All these three girls were coming

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

down the hotel staircase, when the incident of molestation took place. Their case is that accused No. 1 had molested PW-1. Thereafter, accused No. 2 touched her inappropriately, and both of them passed vulgar comments directed towards PW- 1.

156. The learned counsel appearing for the Appellants in all the three appeals argued that if at all this was true, then this incident would have been narrated in the statement of PW- 1 immediately. It is submitted that the allegation of sexual assault is an afterthought. They stated that the incident took place on 20 October 2011, yet on that day, the charges of molestation were not applied. Section 354 of the Indian Penal Code was not invoked immediately upon lodging of the FIR. As a matter of fact, Section 509 was added for the first time on 7th November 2011, and thereafter, Section 354 of IPC was added on 30th December 2011. They submitted that the very fact that Section 354 was added as late as on 30th December 2011 shows that no such incident had taken place. They stated that the FIR does not mention the act of molestation. The statement of PW- 17, supplementary statement of PW- 17, which was recorded after passage of 24 hours from the date of recording of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the First Information Report, also does not mention molestation. They submitted that the entire case of molestation under Section 354 is a figment of imagination and that such an incident never took place.

157. They submitted that the story of molestation was subsequently introduced after public and media pressure, so that the case does not come within the ambit of grave and sudden provocation. They laid much stress on the fact that the statement of PW- 18, Shobita Singh, is said to have been recorded on 21st October, 2011. The statement of PW- 1 and Priyanka (another girl who was along with the complainant) are said to have been recorded on 7th November, 2011. The supplementary statement of the Complainant was recorded on 22/10/2011. Till that time, the charge under Section 354 had not been added. It was for the first time, the charge under Section 354 was added after 5th November, 2011.

158. According to PW- 23, till 5/11/2011, when he was the Investigating Officer, the charge under Section 354 of the IPC was

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

not attracted. They had invited our attention to the reports, Exhibit 127 dated 3rd November, 2011 and Exhibit 142 dated 4th November, 2011, to buttress their contention that the charges under Sections 354, 504 and 506 of the IPC had not been added till then. They relied upon the case diary entry, Exhibit 128, made by PI Devde, which shows that the charges under Sections 509 and 506 were added only on 7th November, 2011.

159. Learned Counsel appearing for accused No. 1 relied upon the evidence of PW- 21 to drive home the point that the said witness had not narrated anything about the alleged molestation, although he was very well present near the spot of the incident and at a shop, preparing paan.

160. We find that the prosecution does not rely upon PW- 21 as the sole or direct evidence regarding the act of molestation. The prosecution has relied mainly upon the evidence of PW-1 and PW-18 to make out the case of molestation. We have considered the evidence of PW-2 as well. The said witness is a security guard, whose statement was recorded on 21st October, 2011 which is the very next

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

day of the incident. He corroborates the evidence of PW-1 and PW-18. PW-21 had not specifically observed, the actual act of the molestation. The actual incident of molestation is proved by the prosecution through PW-1 and PW-18, which is supported by the other witnesses named PW-2, PW-17 and PW-21.

161. Although learned Counsel appearing for the Appellants had made much capital of the fact that the initial F.I.R did not contain the full particulars of molestation, the Trial Court had rightly considered that the F.I.R was lodged shortly after the death of Keenan, when PW-17 was in state of shock. PW-17 had also stated in his deposition that initially the girls had decided not to pursue the incident, naturally because of fear of social stigma. In the supplementary statement which was recorded on the very next date, PW-17, disclosed the incident of molestation. The statement of PW-18 Shobita Singh, was all along with PW-1 who had been the victim of molestation, needs to be considered at this stage. This statement of PW-18 was recorded on the very next date of the incident. She has stated about the act of molestation. The case of the Prosecution is thus proved by direct evidence of PW-1 and PW-18 supported by the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

evidence of PW-2, PW-17 and PW-21. It would be too far fetched to say that the act of molestation was subsequent act of fabrication. Our attention was also invited by the learned Counsel appearing for the State to the statement recorded by PW-24 Lingappa Rama Attayar, the Control Room Officer on 21/10/2011 at about 2.00 a.m. The information received by him was that three boys and two girls were standing in front of Amboli Bar & Kitchen Restaurant, and that a quarrel had arisen after one of the boys had uttered abusive words towards the girl. Thereafter, the said person left the spot and returned with his companions, armed with choppers and knives, and assaulted the boys. The said information, was recorded by PW-24 in the Station Diary, and was exhibited before the Court as **Exhibit 134.** This document clearly shows that there was some incident of quarrel and utterance of abusive words towards the girl. The said incident was recorded immediately within hours of the occurrence. This Station Diary at **Exhibit 134** supports the case of Prosecution that such an incident of molestation had indeed taken place.

162. Assuming without admitting that the Station Diary Exhibit 134 does not contain details of molestation , such Station

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Diary Entry is not expected to be an Encyclopedia. This entry, however, supports the version of prosecution witnesses that an incident of utterance of lewd comments aimed at the girls had taken place.

163. Apart from the aforesaid documentary evidence; there are five eye-witnesses, to the incident, their evidence needs to be considered extensively. PW-1 has stated that on 20th October, 2011, she alongwith Shobita Singh (PW-18) had gone to Amboli Bar and Kitchen Restaurant to watch the cricket match between England and India. She has stated that it was a very big screen and they usually went to see the match and take dinner. She has stated that after the dinner was over, she alongwith Priyanka (PW-18) and Shobita were coming out of the restaurant. Four unknown persons were standing near a paan shop. One of the person who was wearing white pathani dress, called the girls by making noise "shuk..shuk..". When she looked at the person, he said *'Kya mast maal hai. Isko aaj rat ko uthake leke jayenge...'* . She has stated that she ignored him and started walking down. Till that time, her friends Shobita and Priyanka also reached downstairs. Then the person who was

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

wearing white pathani came closer to her and molested her. She screamed and pushed his hand. All the other persons who were standing and smoking at the paan shop started laughing. The other person wearing 3/4th pant with whitish colour t-shirt came and touched her inappropriately and he said "*aaj hamara rat ka asra ho gaya"* and tried to hold her from behind. She screamed and after pushing him, ran towards her friends. She told her friends what had happened. At that time, deceased Keenan came forward and stated to the four persons "*tumhare ghar pe ma behan nai hai kya. Khule am ladki ko chhedte ho. Sharam nahi aati kya.."* Thereafter, the four persons came and started abusing him. This incident is narrated by PW-1 who herself is a victim of assault. She has narrated the incident very clearly. There is nothing in the cross-examination to discredit the version of the witness. The only major attack which was made on this witness was that the statement under Section 161 was recorded very late. Even in the cross-examination to this witness, there is nothing to discredit. Thus, the evidence of PW-1, however, establishes the allegations against the accused/Appellants that they had not only misbehaved with the PW-1, but had also molested PW-1.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

164. As far as the question of delay in recording the statement is concerned, we are dealing with the same in *extenso* in the subsequent paragraphs.

165. The next witness in this regard is PW-18. PW-18 is the friend of PW-1 who was molested. PW-18 was accompanying PW-1 throughout the incident. PW-18, thus, is an eye-witness to the incident of molestation. She is the next important witness other than PW-1 who was actually molested. We have perused the evidence of PW-18 in detail. In paragraph No.3 of the deposition, she has clearly stated as to the fact that the person in white pathani touched PW1 inappropriately. She further stated that PW-1 shouted and pushed his hand. At that time, she noticed yet another person wearing white t-shirt and 3/4th pant touched PW-1 inappropriately. He uttered derogatory words against PW-1. She has also stated as to how PW-1 screamed and pushed away the hand of the accused. The version narrated by PW-18 supports that of PW-1.

166. As far as PW-18 is concerned, again here there is nothing elicited in the cross-examination to conclude that her evidence was shaken. As a matter of fact, in the cross-examination by learned

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Counsel for the accused No.1, she has reiterated as to how the molestation had taken place. We do not find any infirmity in the evidence of PW-18 either. As a matter of fact, PW-18 as stated above, accompanied PW-1 who was actually molested and was always with her. There is no reason to doubt her version.

167. The next important evidence in this regard is PW-17. PW-17 is the friend of PW-1. PW-17 also happens to be the first informant. He has stated in the evidence that when girls were stepping down from the staircase of the restaurant, at that time, PW-1 screamed. She came towards them. She narrated to him that the four persons who were standing on the footpath approached them. One of them was wearing white pathani. He gave signal and made noise of "*shuk..shuk*...". When she saw them, one of them uttered derogatory words to PW-1. The person wearing white pathani touched her inappropriately. PW-1 shouted. At that time, the person wearing 3/4th pant came near PW-1 and touched her inappropriately. Thereafter, he also uttered derogatory words against PW-1. In the cross-examination, save and except questioning the delay in not recording the statement under Section 161 on the same

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

day *qua* this incident, there is nothing to discredit the witness. It is true that the said witness has not uttered about this incident in the first information report. However, he has given an explanation for the same. He explained that the girls did not give the statement immediately due to the defamatory social stigma attached. This explanation is plausible.

168. PW-2 who was the watchman at the Amboli Bar & Restaurant, is also a significant witness as far as the incident of molestation is concerned. He has stated that he was on duty at that particular time. He saw four unknown persons were smoking near the paan shop. They passed filthy comments on the girls. At that time, one of the girls screamed and rushed to their friends Bali and Benjamin. Thereafter, some quarrel took place between them. Although this witness does not state exactly as to what had happened, however, he corroborates the evidence of PW-1 and PW-17 that some incident had taken place, as a result of which the girls had screamed.

169. Next important witness is PW-21 – Mr. Chaurasia. The said witness is the person who runs the paan shop. He has stated

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

that the four friends of the deceased gave order for paan. Thereafter, he saw the girls came there. They were scared. They told something to Bali (PW-17). Therefore, he felt that the boys who were smoking on the footpath must have misbehaved with the girls. He has also explained that the girls were frightened and they were pointing towards the accused and telling something to PW-17. Hence, he felt that the boys (accused) must have misbehaved the girls. Thus, this incident corroborates the incident of molestation. We find that PW-1 was molested. PW-18 was with PW-1. They are natural witnesses who narrated the actual factum of the molestation. The evidence of PW-17, PW-2 and PW-21 corroborates the said incident of molestation.

170. Thus, the statements of PW-1, PW-18, PW-2, PW-17, PW-21 have to be read in conjunction with the Station Diary exhibited as **Exhibit 134**. If it is read in conjunction, then it can safely be concluded that the act of molestation had indeed taken place. It is too far fetched to say that there was no incident of molestation and that it was an an afterthought. The evidence on record, more particularly the statements of the witnesses stated above clearly

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

demonstrates that the incident had taken place. The submission of the learned Counsel appearing for the Appellants is that PW-21 did not hear the girls scream, and that absence of any screams indicates that no such act of molestation had taken place. The submission of learned Counsel is not sufficient to conclude that no molestation has taken place. As a matter of fact, PW-21 has stated that from the demeanor of the girls, it was clear that some incident had taken place. Only because PW- 21 did not hear the screams is not sufficient to come to a conclusion that no such incident has taken place. The statement of PW-21 that he saw the girls return in a frightened condition and saw them speaking to PW-17, pointing towards the accused, and thereafter, the said, the said PW-17, confronted the accused, clearly shows that although PW-21 might not have heard the screams, but certainly some acts have taken place which the PW-21 did not hear. Evidence of PW-21, therefore can be used to corroborate the evidence of PW-1 and PW-18. PW-21 was a paan vendor and was busy doing his work of preparing paan. The Trial Court had correctly considered the material before it. Only because there was no mention of hearing of the screams by PW-21 itself was not sufficient to infer that there was contradiction in the statement of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the witnesses of Prosecution. The Hon'ble Apex Court in the matter of ***Firoz Khan Akbarkhan Vs. State of Maharashtra 2025 SCC OnLine SC 627*** has observed thus:

> ***"20.*** *To our mind, the prosecution has succeeded in proving its case beyond reasonable doubt. Having carefully gone through the material on record, especially the depositions of the witnesses and upon a keen examination of the relevant aspects of the case, we find that the presence of the Appellant at the site of the incident and him having stabbed the deceased on the stomach repeatedly has been the consistent stand of the PW-s who were eye-witnesses. The Courts below have also concurrently found the same. The accused-Appellant has not been able to controvert the evidence on record. Minor and immaterial inconsistencies and/or discrepancies shall not harm the case of the prosecution, as held, inter alia, in State of Himachal Pradesh v. Lekh Raj, (2000)Saturday 1 SCC 247; Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457; State of Madhya Pradesh v. Ramesh, (2011) 4 SCC 786; Mekala Sivaiah v. State of Andhra Pradesh, (2022) 8 SCC 253, and; Rameshji Amarsingh Thakor v. State of Gujarat, 2023 SCC OnLine SC 1321. The following observations from Lekh Raj (supra) are instructive:*
>
> > *'7. In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

> *will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the Courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement……."*
>
> (Emphasis supplied by us)

On cumulative reading of the ocular evidence which is before us, we have no hesitation to come to a conclusion that the incident of molestation had indeed taken place. We therefore, hold that the accused Nos.1 and 2 have committed the act of molestation upon PW-1.

(b) DELAY IN RECORDING OF STATEMENTS AND F.I.R.

180. We have dealt in *extenso* as to how the evidence of the witnesses mentioned above viz. PW-1, PW-2, PW-17, PW-18 and PW-21 are relevant for the purpose of coming to the conclusion that the act of molestation has taken place. However, the argument of the learned Counsel appearing for the Appellant was also that the delay

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

in recording the statement of the said witnesses are fatal.

181. The learned Counsel appearing for the Appellants submitted that the statement of PW- 1 has been recorded on 7th November, 2011. They submitted in unison that the statement of PW-17 is recorded as FIR and is exhibited as Exhibit 103. They submitted that in the FIR, the said PW- 17 has stated that four unknown persons were smoking near the paan shop, one of them who was wearing a cream and white colour pathani dress was under the influence of alcohol, he pushed and dashed against them. Verbal altercation took place, and therefore he gave a slap on his face. It is argued by the learned Senior Advocate for the Appellants that the said PW- 17 has improved his version in the supplementary statement recorded on the next day by stating that the four unknown persons who were smoking cigarettes went towards the girl. At that time PW- 1 screamed and came towards PW- 17. She informed them that the person wearing white Patani dress made a noise of Shuk Shuk, and made certain derogatory comments and also molested her. Learned Counsel submitted that there was delay in recording statement of PW-1.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

182. We have perused the FIR. It was recorded on 21st October, 2011. This first information report was the statement of PW-17. In the FIR, there is no mention of molestation having taken place. On the next date, that is, on 22.10.2011 in the supplementary statement, PW- 17 had mentioned about the case of molestation. PW-18, whose statement was recorded on 21/10/2026, also corroborates the version of PW- 17. PW- 17 had given an explanation as to why the FIR does not mention about the molestation. He had stated that the same was not given on that day, because the girls initially decided not to pursue the incident because of the nature of the occurrence and social consequences associated with the disclosure. He also explained that the incident was a very vulgar act and it was necessary to keep the girls away from defamation. Hence, it was not mentioned in the FIR. Just because the incident of the case of molestation was not mentioned in the FIR by PW- 17, would not mean that such incident had not taken place.

183. Even otherwise, it is settled position of law that FIR is not an encyclopedia and that the statements of the eyewitnesses and other witnesses have to be considered in conjunction to each other.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

The Hon'ble Supreme Court in the matter of **Satpal vs. State of Haryana, reported in (2018) 6 SCC 610**, has observed in paragraph 7 that the FIR is not to be read as an encyclopedia requiring every minute detail of the occurrence to be mentioned therein.:

> *"7. Both PW- 7 and PW- 9 have consistently stated having seen the deceased going with the Appellant on a bicycle at 9.00 p.m. the previous evening. The deceased did not return home at night. The Appellant was also not to be found at home. The corpse of the deceased was recovered the next morning hidden in a heap of fodder in the fields. The FIR was lodged promptly on 11-9-2007 naming the Appellant as a suspect. An FIR is not to be read as an encyclopedia requiring every minute detail of the occurrence to be mentioned therein. The absence of any mention in it with regard to the previous altercation, or the presence of the milk can, cannot affect its veracity so as to doubt the entire case of the prosecution. The altercation suffices to establish motive. The Appellant has not led any evidence regarding his not being in the company of the deceased or that they had subsequently parted ways. The Appellant has not led any evidence, despite his statement under Section 313 CrPC that he would do so, why he did not return home at night or his whereabouts otherwise. PW- 8, father of the deceased, was informed in the morning of 11-9-2007 by PW- 7 after which he came to the village. The deceased was a thirteen-year-old hardly in a position to resist the Appellant . We see no reason why the two witnesses being related to the deceased would depose falsely and shield the real offender, especially when the Appellant*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

has not given any reason or led any evidence for his false implication."

(Emphasis supplied by us)

184. The learned Senior Advocate, Mr. Pasbola and Mr. Yug Mohit Choudhary had attack the statements of the eyewitnesses. They drew our attention to the statement of PW1 and contended that there was an inordinate delay in recording the statement of PW1.

185. As far as the first eye witness that is PW-1 is concerned, we have discussed the evidence led by her in the forgoing paragraph. She has clearly stated in her evidence as to how the accused No. 1 had molested her and as to how the accused persons had threatened the complainant party that they would return back. She has also stated before the Court, the manner in which the accused No. 1 and 2 have committed brutal assault on deceased Keenan and deceased Ruben. In her evidence, the justification for recording the evidence belatedly is clearly made out. Only because there was no proof of leave from her work would not lead to a conclusion that the justification put by her for recording the statement at a belated stage

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

was incorrect. The conduct and the background in which the statement was recorded also deserves to be considered. This young girl had witnessed the fatal assault upon her friends immediately following the incident involving herself, her state of mind can well be imagined, therefore, mere absence of employment or leave document cannot be said to be sufficient to prove that the explanation given by her was false. In any event, the evidence of the said witness was tested in detailed cross-examination. There surely is some delay in recording the statement of the said witness, however, such delay in itself can't be considered in isolation. In this regard, the evidence of PW- 25, the investigating officer is also very important. He has stated that on 4/11/2011, the charge of investigation of the crime was handed over to him by PI Indulkar. He further stated that on 5/11/2011, when he produced the papers received by him, he found that statements of two eye witnesses were yet to be recorded. He sent for a constable to call her for recording the statement. The mother of PW-1 told the constable that PW-1 was not well and therefore she was unable to attend the police station. This statement of PW- 25, the investigating officer is sufficient to conclude that the delay can at the highest be attributable to defect in investigation.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Further one will have to look into the fact that there was a double murder which had taken place in front of eyes of PW-1. PW-1 was molested before the gruesome assault. It is because she was molested, the further incident of murder had taken place. The sad witness is a young girl of 24 years of age. Even on 5/11/2011, the mother of P1 informed the constable that she was not well. It would not be incorrect to infer that the young girl must have been tremendous, psychological trauma which must have led to her ill health. The delay has to be appreciated in this view of the matter.

186. The Apex Court in the matter of the ***State of Madhya Pradesh v/s Balveer Singh***[10] has held as under:

> *"51. Thus, even if the accused had failed in putting a question in regard to delay in examination of PW- 6, the Presiding Judge was duty-bound to put this question to the IO in exercise of his powers under Section 165 of the Evidence Act. Since in the present case no question whatsoever was put to the IO to explain the reason for the delay in examination of Rani, PW- 6, we should not willingly jump to discard the testimony of PW- 6 on the ground of delay alone, and ought to be circumspect while scrutinising the effect of such delay. The court in such a situation would be required to carefully see whether there is anything palpable on the face of it to indicate any malice at the end of the investigating*

10 (2025) 8 Supreme Court Cases 545

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

agency in belatedly examining such witness.

52. There is nothing on record that would lead to the inference that the delay in recording the statement of PW- 6 was done deliberately in order to manipulate or concoct the case against the respondent-accused herein, and rather such delay appears to be inadvertent with no sinister motive or design in mind. We say so because, the statement of PW- 6 had been recorded on the same date as the statement of PW- 5. If at all the investigating agency intended to allow the doctoring of the testimony of PW- 6 then it would have only delayed the examination of the child witness, Rani (PW- 6) and not of PW- 5 as well, thus this delay in examination appears to be attributable to the routine manner in which the IO proceeded with the course of investigation and the overall investigation inertia and not to give effect to any unfair practice."

In this case also the delay in examining the witness under Section 161 Cr.P.C was sufficiently explained. As far as PW-18 is concerned, her statement was recorded immediately on the next day of the incident. She has deposed before the Court. The deposition was in sync with her statements recorded under Section 161 of the Cr.P.C. She was also subjected to grueling cross examination. She is an eye witness who has deposed what has transpired on that day. She was very well present with the PW-1 on the staircase of the Hotel where the incident of molestation had taken place. She is a natural witness in these circumstances. In absence of any infirmity in the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Cross- Examination, her statement deserves to be accepted without any doubt. There was no delay in recoding her statement. As stated by the Hon'ble Supreme Court in the matter of ***State of Madhya Pradesh versus Balveer Singh (Supra)***, if at all the act of recording evidence of PW-1 regarding molestation was done deliberately, the prosecution would not have recorded the statement of PW- 18 and statement of PW- 17 on the very next date where the act of molestation is mentioned in greater details. The delay is sufficiently explained by the PW- 25.

(c) CREDIBILITY OF PW-2 (SECURITY GUARD)

187. The learned Counsel appearing for the prosecution attacked the credibility of PW-2. The said witness PW-2 happens to be a Security Guard. He has narrated in details the incident which has taken place. Only because he has not produced the appointment letter of Vishal Security Force where he was employed, does not make his evidence doubtful. The said witness has also been subjected to detailed Cross-examination. He has withstood the statement which was recorded under Section 161 as well as the deposition given by him in the Court. He has narrated in detail as to

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

how the accused Nos.1 and 2 gave threats that they will kill them all and thereafter they returned after about 10 to 15 minutes with weapons. He deposed that the person wearing White Pathani, stabbed Keenan and the person wearing white t-shirt, and 3/4th pant stabbed Ruben with knife. He has identified all the accused in the Courtroom. He also happens to be a natural witness as he was guarding the main door of the Hotel Amboli Bar and Restaurant. Only because he did not hear the actual words uttered by accused No. 1 to PW-1, does not make his evidence doubtful.

(d) CREDIBILITY OF PW-21 (PAAN VENDOR)

188. The evidence of PW-21 Chaurasia, who is the paan vendor is also considered by the Trial Court in detail. This witness is a natural witness. He was having a paan shop outside the Hotel. He has narrated the manner in which the girls who were frightened came towards the boys who were standing near the paan shop. He heard the accused giving threat to the Complainant that they should wait there, and that the accused would come back. He has deposed the matter in which the assault took place. He has also narrated who had assaulted whom and what were the weapons with them. Since

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

he was having a shop over there, he was a natural witness. Merely because he did not wait after the incident, closed his shop and went away would not render his evidence doubtful. It is but natural that when a gruesome murder of two young boys had taken place in front of him, he would try to go away after the incident probably because he did not want to involve himself in Police Investigation. This itself does not make his evidence untrustworthy. We have perused the Cross-examination to which he was subjected. This witness has not narrated anything which would make his Cross-examination doubtful.

189. The argument of the Appellants that PW-21 has not heard the scream of PW-1 and therefore, it should be disbelieved is without any substance. The paan shop is on the road. The said witness PW-21 was preparing paan. He perhaps might not have heard the screams of the girl. In fact, it was not even the Prosecution's case that PW-21 had seen the physical act of molestation. We have already discussed in foregoing paragraph that as a matter of fact, this witness does not state anything which he has not seen. The Trial Court has considered this witness as well as PW-2 to be quite truthful witnesses

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

and has also observed that they have not exaggerated the version.

(e) NON-EXAMINATION OF SOME OF THE WITNESSES:

190. The learned Senior Advocate, Mr.Pasbola has submitted that non-examination of Mohsin, Benjamin, the Doctor from Cooper Hospital, beat Marshals and other witnesses was fatal to the case of the Prosecution and that adverse inference should have been drawn. We must note at this juncture that it is not the number of witnesses which are important, but the quality of the witnesses which is important. The Prosecution has examined nearly 5 eyewitnesses. Two of the eyewitnesses are not at all related to the Complainant Three witnesses are known to the Complainant. Only because the said witnesses are from the side of the Complainant would not make them interested witnesses.

191. The Apex Court in the matter of ***Vijendra Singh versus State of Uttar Pradesh (2017), 11 SCC page 129*** has held thus:

> *"**35.** The next plank of argument of Mr Giri is that since Nepal Singh who had been stated to have accompanied PW-2 and PW- 3 has not been examined and similarly, Ram Kala and Bansa who had been stated to have arrived at the tubewell as per the testimony of PW- 2, have not been examined, the Prosecution's version has to be discarded, for*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

it has deliberately not cited the independent material witnesses. It is noticeable from the decision of the trial Court and the High Court, that reliance has been placed on the testimony of PW-s 1 to 3 and their version has been accepted. They have treated PW- 2 and PW- 3 as natural witnesses who have testified that the accused persons were leaving the place after commission of the offence and they had seen them quite closely. The contention that they were interested witnesses and their implication is due to inimical disposition towards accused persons has not been accepted and we have concurred with the said finding. It has come out in evidence that witnesses and the accused persons belong to the same village. The submission of Mr Giri is that non-examination of Nepal Singh, Ramlal and Kalsa is quite critical for the case of the Prosecution and as put forth by him, their non-examination crucially affects the Prosecution version and creates a sense of doubt. According to Mr Giri, Nepal Singh is a material witness. In this regard we may refer to the authority in State of H.P. v. Gian Chand [State of H.P. v. Gian Chand, (2001) 6 SCC 71 : 2001 SCC (Cri) 980] wherein it has been held that: (SCC p. 81, para 14)

> *"14. Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the Court levelled against the Prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the Prosecution."*

The Court after so holding further ruled that it is the duty of the Court to first assess the trustworthiness of the evidence available on record and if the Court finds the evidence adduced worthy of being relied on and deserves acceptance, then non-examination of any other witnesses available who could also have been examined but were

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

not examined, does not affect the case of the Prosecution.

36. In Takhaji Hiraji v. Thakore Kubersing Chamansing [Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145 : 2001 SCC (Cri) 1070] , it has been held that: (SCC p. 155, para 19)

*"19. … if a material witness, who would unfold the genesis of the incident or an essential part of the Prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the Prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the Prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the Prosecution by holding that if the witness would have been examined it would not have supported the Prosecution case. **On the other hand, if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. … If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable, the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."***

*37. In Dahari v. State of U.P. [Dahari v. State of U.P., (2012) 10 SCC 256 : (2013) 1 SCC (Cri) 22] , **while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and** the Prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the Prosecution. Similar view has been expressed in Manjit Singh v. State of Punjab [Manjit Singh v. State of*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Punjab, (2013) 12 SCC 746 : (2014) 4 SCC (Cri) 531] and Joginder Singh v. State of Haryana [Joginder Singh v. State of Haryana, (2014) 11 SCC 335 : (2014) 3 SCC (Cri) 366] .

38. Tested on the aforesaid parameters, we are unable to accept tho submission of Mr Ciri that non-examination of Nepal Singh and other two persons who had been referred to by PW- 2 affects the Prosecution version or creates any doubt in the mind of the Court. We arrive at such a conclusion since the witnesses examined by the Prosecution are trustworthy and the Court can safely act on their testimony. There is no justification in the instant case to draw any adverse inference against the Prosecution.

(Emphasis supplied by us)

(f) NON PRODUCTION OF CCTV FOOTAGE

192. The next submission of the, Mr. Pasbola Mr. Yug Mohit Choudhary and Mr. Gaurav Bhavnani appearing for the Appellants was that non-production of CCTV footage, restaurant bill, non-examination of waiter, and absence of alcohol test was fatal to the case of the prosecution. This submission of the learned Counsel for the Appellants can only be stated to be rejected. In this case, there are five eyewitnesses who have deposed the manner in which the assault has taken place. Merely for want of CCTV footage, all these eyewitnesses cannot be ignored. This case is not based on circumstantial evidence nor is based only on digital evidence. We

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

have already discussed in *extenso* the evidence of the eyewitnesses and we have given our reasons why the eyewitnesses are to be believed. In these premises, non-production of CCTV footage, restaurant bill, non-examination of the waiter, and absence of alcohol test is not at all fatal to the case of Prosecution. Non-production of CCTV footage at the highest can be attributed to defect in the investigation. The investigating officer should have been more careful to gather the CCTV footage and produce the same. However, non-production of the CCTV footage only a defect in the investigation which cannot be regarded as fatal to the case of the prosecution. The Hon'ble Supreme Court in the matter of ***the State of Karantaka v/s. K. Yarappa Reddy***[11] has observed as under :

> *"If the other evidence , on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by*

11 (1999) 8 Supreme Court Cases 715

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case."

(g) INCONGRUITY IN NUMBER OF ASSAILANTS:

193. Learned Counsel appearing for the Appellants contended that when PW-17, Avinash Solanki visited Cooper Hospital at 7.35AM of 21st October, 2011, he gave history of assault by three known persons. In the continuation sheet of the casualty papers at page number 558 the alleged history has mentioned as assault by four unknown persons. The Medical Certificate Exhibit 85, according to them shows assault by three unknown persons. They contented that three different versions given by PW-17 recorded in medical papers was not satisfactorily explained by the Prosecution. The Station Diary Entry Exhibit 100 recorded at 01.30 hours shows that the information was received from Kokilaben Hospital in respect of assault on Keenan Santos by 1 known person and was brought to the hospital by waiter Mohsin. All these contradictions are minor in nature. The entire incident is witnessed by the five eye-witnesses.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

The Station Diary – Exhibit 134, the statement of the eye-witnesses PW-1, PW-2, PW-17, PW-18 and PW-21, all have given a clear account that there were four accused persons. The said medical documents have to be read in its entirety alongwith the material evidence on record. At page No.557 of the paperbook, it is mentioned that the assault was by three persons. However, immediately on the dorsal side of the said document, it is mentioned that assault is by four unknown persons. Thus, there can be some error by the staff of hospital while recording of medical history. The statement of PW-17 and his evidence in the Court will have to be given due importance in this regard. As far as the eye witnesses are concerned, in the statement under Section 161 or in the deposition recorded in the Court, there is no variation at all. It is not the case of any of the eye-witness present on the spot that there were more than four people. The Station Diary – Exhibit 134 which was the earliest available document also clearly mentioned that there were in all four persons involved in the incident. Hence, the objection regarding the discrepancies in the medical record cannot be given any weightage for the reasons mentioned above. The said discrepancies are duly explained by the prosecution in their ocular evidence as well as the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

documentary evidence.

(h) DELAY IN CONDUCTING TEST IDENTIFICATION PARADE:

194. The submission of Mr. Pasbola the learned Senior Advocate appearing for the Appellant about inordinate and unexplained delay in conducting the Test Identification Parade is that the Appellant and other accused were arrested on 21/10/2011 whereas the Test Identification Parade was conducted on 16/11/2011 i.e. nearly a month later and therefore there was sufficient time to show the witness, the photographs of the accused at the time of remand. In this connection evidence of PW-14 the Spl. Executive Magistrate, Mr. Kadam is very important. He narrated that the Test Identification Parade was conducted on 16.11.2011 after taking necessary precautions. He has narrated extensively as to the manner in which the TIP was conducted. Only on the basis that there was a delay in conducting the TI Parade was not sufficient to discard the TI Parade. There is nothing brought on record to show that the photographs of the accused were seen by the witnesses before the identification. The witnesses had the sufficient opportunity to observe the accused at the time of incident. The occurrence was in

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

front of the paan shop and the Hotel. In the Cross examination specific question was put to the witnesses that photographs of the accused were shown to them before the TI Parade. The witnesses have denied the same. Even otherwise the said witnesses had identified the accused in the Court. This identification is substantive piece of evidence as opposed to the TI Period which is only the corroborative evidence. We, therefore, hold that there was no infirmity in the Test Identification Parade.

(i) RECOVERY OF KNIFE:

195. The learned Senior Advocate, Mr Pasbola, appearing for accused No. 1, argued that the knife (Article 2) is alleged to have been recovered under Section 27 of the Indian Evidence Act at the instance of accused No. 1. He submitted that the memorandum statement (Exhibit 56) and the seizure panchanama (Exhibit 56A) show that the said recovery was made from an open place which is accessible to all. The place of recovery was from a hole under the electric box. This electric meter box was situated on the footpath near Gulmohar Building. The place of recovery is very close to Amboli Bar and Kitchen Restaurant where the incident took place.

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

He submitted that by no stretch of imagination could the accused, after committing a murder would come back and keep the knife near the place of incident. He drew our attention to the CA Report, Exhibit 121. The blood on the knife seized from accused No. 1 had blood group O, and the blood group of the deceased Ruben is O, whereas the blood group of Keenan is A. He submitted that, as per the DNA Report, Exhibit-168, proved through the evidence of PW-29, the DNA of the blood on the said knife is of Ruben. He argued that it was not the case of the prosecution that accused No. 1 had assaulted Ruben. The assault on Ruben was attributed to accused No. 2 and not to accused No. 1. The blood found on the clothes of accused No. 1 is human and inconclusive. He submitted that the accused himself was injured in the incident and had sustained injuries on his head. He invited our attention to Exhibit 120, which was the forwarding letter dated 01.11.2011 shows that the knife originally recovered from accused No. 1 was marked as Exhibit 19, the jeans pant of Ruben was marked as Exhibit 12, and the shirt of witness Mohsin was marked as Exhibit 18. He submitted that the DNA profile of the blood, as per Report Exhibit-168, shows that Exhibits 12, 18 and 19 are of one and the same source of mutual

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

origin. He submitted that the contradiction regarding the knife which was carried by accused No. 1 and the knife which was carried by accused No. 2 falsifies the case of the prosecution.

196. We have considered the submissions very carefully. The eyewitnesses have clearly stated that accused No. 1 stabbed Keenan, whereas accused No. 2 stabbed Ruben. Mr. Ponda, learned Senior Advocate, rightly argued that the discrepancy sought to be highlighted by the Appellant is only with regard to the identification of a particular knife, that is, Article 1 and Article 2, as being in the hands of accused No. 1 or accused No. 2. The knives were not seized from the spot. They were recovered from the spot pursuant to the statement under Section 27 of the Indian Evidence Act. The eyewitnesses do not make any mistake about the role of accused Nos. 1 and 2. Accused No. 1 was identified as the person who stabbed Keenan repeatedly until he fell on the ground. The discrepancy in subsequently identifying the recovered knife as to whether it was Article 1 or Article 2 cannot have a material effect on the trial and the same could not displace the otherwise cogent and reliable evidence of the eyewitnesses. Further, it is very difficult to expect

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

that, in the course of a violent assault, the eyewitnesses would have noted minor distinguishing features of each knife so as to subsequently identify with precision which particular knife was used by which accused. Only because of inconsistency in identification of the knife as Article 1 and Article 2, the eyewitnesses' evidence cannot be discarded.

197. The contention of the Appellant that the knife was recovered pursuant to the recovery panchanama and statement under Section 27 of the Evidence Act and was therefore not believable is also not correct. The memorandum statement was made by accused No. 1. PW- 7, who is the panch witness, proved the memorandum statement. The same is part of the record. It is material to read the memorandum statement, which is at Exhibit 56, and the seizure panchanama, which is Exhibit 56A. The knife was concealed under the electric box of Reliance Company. It is not as if the knife was kept on the electric box, but the specific statement of accused No. 1 shows that the knife was hidden beneath the electrical box. The location of the concealed weapon was within the special knowledge of the accused. The knife bore blood stains. The knife

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

was not left lying open or at a place where it could ordinarily come to the notice of a passer-by. The learned Sessions Judge rightly found that the recovery of the knife at the instance of accused No. 1 was consistent with the evidence on record and cannot be doubted. We find no merit in the submission of Mr Pasbola regarding recovery of the knife pursuant to the statement at Exhibits 56 and 56A under Section 27 of the Indian Evidence Act at the instance of accused No. 1, was faulty.

198. Mr. Pasbola, learned Senior Advocate appearing for the Appellant No. 1 further sought to cast doubt upon the recoveries by contending that, although the panch witnesses stated during their deposition before the Court that the recovery weapons were wrapped, labelled and sealed by the police, the earlier Spot panchama does not specifically record the fact of sealing. Mr Ponda, on the other hand, submitted that this at the most being omission, must be distinguished from a contradiction. The witnesses have consistently narrated regarding the recovery of weapons at the instance of the respective accused from the places from which the weapons were produced. We have gone through the panchanama in

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

details. Although the panchanama does not expressly mention every subsequent procedural detail concerning the seal, such omission by itself would not establish that the weapon was not recovered or that the recovery was fabricated. The evidence of the panch witnesses must be read as a whole. Mere absence of the word seal would not render their evidence untrustworthy. The recovery at the instance of accused No. 1 was proved through PW-7 the panch witness. The memorandum and recovery panchama is exhibited below Exhibit 56 and 56A. The recovered articles were forwarded to the Forensic Science Laboratory. The C.A. Reports were received. PW-29, who is the Chemical Analyzer has also deposed the manner in which he had received the parcels which were 26 in numbers and plastic containers, which were 2 in numbers in "sealed condition". The analysis of the DNA and the Report at Exhibit-168 cumulatively would show that there was no tampering with the seal. We do not wish to attach much importance to the fact of sealing being omitted in the earlier panchanama.

(j) CONSUMPTION OF ALCOHOL BY THE COMPLAINANT:

199. The learned Counsel appearing for the Appellants

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

strenuously argued that the death was as a result of free fight, in which the Complainant Party was the aggressor which started because PW-17 had slapped the accused No. 1 during the first incident. They relied upon the post mortem report of deceased Keenan at page number 286 of the paper book. They read the deposition of PW-16 (Autopsy Surgeon). There was a specific question put to PW-25 about the scuffle taking place after both the sides had consumed alcohol. The learned Counsel Dr. Choudhary appearing for accused No.4 went to the extent of saying that it is very inconceivable that the Complainants who were inside a beer bar for about 3 hours would not consume alcohol. He further mentioned that the victim, the deceased and the Complainant were drunk and therefore the blood samples were not collected. He relied upon the evidence of PW-22 and PW-23 to buttress his contention. He also laid much stress upon the Investigating Officer's failure to collect the bill from the restaurant of the relevant date. He further submitted that it was very wrong to suppose that none of the victim's party was consuming alcohol and still they chose the Amboli Bar and Kitchen Restaurant for a get together especially when a Cafe Coffee Day was opened next to the Amboli Bar and Kitchen Restaurant. We find the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

above submission of learned Counsel totally prepostorous. It is too much to assume that merely because a person is visiting a bar and restaurant, he would invariably consum alcohol.

200. It is true that the blood sample of the Complainant party was not taken. It is also true that the complainant party were inside the bar and restaurant for nearly or perhaps more than 3 hours. But this itself was not sufficient to conclude, that the said persons had consumed alcohol. It is too prepostorous to assume that only because a person goes to a Bar and Restaurant, the person has consumed alcohol. The submission of Dr. Yug Mohit Chaudhary that only because the Complainant were inside the Bar and Restaurant for about 3 hours, therefore they must be presumed to have consumed alcohol deserves to be considered only to be rejected. Only because there was some sour smell coming from the stomach is not sufficient to come to a conclusion that deceased had consumed alcohol.

(k) SUDDEN FIGHT, PREMEDITATION AND EXCEPTION 4 TO SECTION 300:

201. Learned Counsel appearing for the Appellant contended

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

that if the Court comes to a conclusion that Appellant have committed an offence under Section 300, then they are entitled to the benefit of exception (4) of Section 300 of the Indian Penal Code.

Section 300 reads thus :

> *"Section 300. Murder. —Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*
>
> *2ndly-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-*
>
> *3rdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-*
>
> *4thly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*
>
> *Exception 1- When culpable homicide is not murder.*
> *- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*
>
> *The above exception is subject to the following provisos:—*
>
> *First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*
>
> *Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defence.
Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2- Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.
Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

202. We are conscious of the fact that the doctrine of grave and sudden provocation is incapable of rigid construction. It will have to be interpreted on a case to case basis. A sudden fight implies mutual provocation and exchange of blows on both the sides. In such

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

case, the homicide committed is clearly not attributable to unilateral Act, nor can the blame be placed on one side. The learned Counsel appearing for the Appellants are pitching their case to bring the same within Exception 4 to section 300 of the IPC. The Hon'ble Apex Court in the judgment of ***Kikar Singh versus State of Rajasthan[12],*** has held in paragraph 8 as under:

> *"**8**. The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the* offender's *having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder. 9. The occasion for sudden quarrel must not only*

12 (1993) 4 SCC 238

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4.…"

(Emphasis supplied by us)

203. Thus, exception 4 to Section 300 can be invoked only if the death is caused - A), without premeditation, B) in a sudden fight C) without the offenders, having taken undue advantage or acted in cruel or unusual manner, D) the fight must have been with the person killed.

204. In the present case, none of the ingredients of exception 4 to section 300 are attracted. In the first place, there was no sudden fight. The sudden fight was a part of the first incident in as much as the accused No. 1 was given a slap by PW-17 (informant). This had arisen from the offence of molestation which the said accused No. 1 had committed as against PW-1. Thus, this is not a case of sudden

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

fight. The accused No.1 knew very well what had transpired and that he had molested the PW-1. Since PW-1 narrated the same to her friends, as a natural reaction PW-17 slapped the accused No. 1. At that time, no fight ensued. The accused went away by threatening the Complainant. The actual assault took place after an interval of about 10-15 minutes. Thus, this is not a case of sudden fight.

205. The next parameter is that it should be without 'premeditation'. In the case at hand, the accused had threatened the complainant with grave consequences after PW-17 slapped accused No.1. The accused had threatened them that they would come back to kill them. After a passage of about 10 to 15 minutes, the accused came back duly armed with dangerous weapons. Hence, it cannot be said that there was no premeditation.

206. The next parameter which is required to be satisfied in order to get benefit of exception 4 to section 300 is that the offender should not take advantage or act in cruel and unusual manner. In the present case, the accused No.1 had caused serious stab injuries to deceased Keenan. The injuries were of such severe nature that the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

intestine of deceased Keenan came out protruding, it had to be put together with a towel and thereafter, deceased Keenan had to be hospitalised. He died immediately thereafter. Similarly, deceased Ruben was given a blow with such impact that he fell down on the spot. Taking into consideration the aforesaid facts, it certainly can be said that the assault was gruesome and that the Appellant No.1 certainly cannot take advantage of exception 4 to Section 300.

207. The last principle is that the fight must have been with the person killed. If we accept the theory of the Appellant , that it was because of the slap which PW-17 had given to accused No. 1 that there was grave and sudden provocation, but the death of PW-17 is not caused. The death which is caused is of Keenan and Ruben. Thus, by no stretch of imagination, the case of the Appellant can be said to be falling within exception 4 to Section 300. We are further fortified in our view by the decision of Hon'ble Supreme Court in the matter of ***Surain Singh versus State of Punjab*** **(2017), 5 SCC 796** where their Lordships observed thus:

> *"The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (C) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

> *person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in IPC..... A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."*
>
> *(Emphasis supplied)*

208. We make it clear at this juncture that this observation that exception 4 to Section 300 is not attracted in the present case is made, *qua* accused No.1 only and not *qua* accused Nos.3 and 4. As far as the case of accused Nos.3 and 4 is concerned, we are dealing with it in detail in the subsequent paragraph.

209. Thus, the contention of the Appellant that this injury was caused as a result of grave and sudden provocation, which resulted from the fact that PW- 17 had given a slap to accused No. 1 cannot be countenanced. The incident can be divided into two parts. In the first part, accused No. 1 had molested PW- 1, the later complained of

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

the same to her friends. PW- 17 slapped the accused. The accused threatened that they would return and kill them and went away. Thereafter, almost 10 to 15 minutes had passed. All the accused returned with weapons in their hands. There was enough time to cool down the passion. It is not as if the fight ensued immediately after accused No. 1 was slapped by PW- 17.

210. The submission of the learned Counsel that the trial Court erred in not placing reliance on Exception 4 of section 300 in our opinion, is an incorrect interpretation on the part of the Appellants to apply the exception to the facts of the present case. At the cost of repetition, after the first incident, the accused left the place, and there was sufficient time for them to cool down their passion. Their subsequent conduct of coming armed with knives and other weapons and immediately assaulting the complainant cannot be said to be an act of grave and sudden provocation. There is premeditation involved. It is not that the accused were armed with the weapons at the time when the first incident had taken place. They, in fact, went away to procure the weapons, came back with the weapons, and then started assaulting the complainant. This itself

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

shows the deliberate and intentional act on the part of the accused. At this juncture, it is also necessary to consider that the complainant party was not armed. The Appellant No.1 certainly cannot take the benefit of Exception 4 to Section 300 of the IPC.

211. The Apex Court, in the matter of ***Asif Khan v. State of Maharashtra***[13]***,*** had occasion to consider similar facts, where there was an altercation between the parties. Para 15 reads thus :

> "***15.*** *Coming to the case relied on by the Appellant i.e. Ramesh Vithalrao Thakre [Ramesh Vithalrao Thakre v. State of Maharashtra, (2009) 17 SCC 438 : (2011) 1 SCC (Cri) 1056] in the above case, the accused had previous enmity with one Ashok and they have gone to inflict injury on Ashok. Sister of Ashok, Rekha came in between and she received single injury on her chest. In the above circumstances, this Court held that case will fall under Section 304 Part II IPC. In paras 9 and 11, the following has been held: (SCC p. 441)*
> *"9. There is no denying the fact that one single injury was caused to the deceased by Ramesh when Rekha intervened to save her brother Ashok from being assaulted. The primary target of Ramesh was Ashok, who got saved when Rekha received the injury on her chest. After causing the single injury to Rekha, it is the prosecution case itself, that Ramesh did not cause any other injury to Rekha nor even to Ashok, PW- 1.*
> *11. We, accordingly set aside the conviction and sentence of Ramesh for the offence under Sections 302/34 IPC and instead find him guilty for the offence under Section 304 Part II IPC and sentence him to five years' rigorous imprisonment and a fine of Rs 4000. In default of payment of fine, the Appellant shall suffer rigorous imprisonment*

13 2019 5 SCC 210

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

> *for a period of one year. The fine shall be paid within three months and on realisation shall be paid to the mother of the deceased, PW- 2, Janabai."*
> ***The above case in Ramesh Vithalrao Thakre [Ramesh Vithalrao Thakre v. State of Maharashtra, (2009) 17 SCC 438 : (2011) 1 SCC (Cri) 1056] is clearly distinguishable since in that case, they had not gone to inflict injury on the deceased sister of Ashok, rather they had gone to inflict injury on Ashok and since she intervened to save her brother and got assaulted, it was not pre-planned. But, in the present case, accused 1 and 2 after first incident, returned back on motorcycle and came back after 10 minutes along with weapon, hence, the above judgment is not applicable."***
>
> (emphasis supplied by us)

212. For the reasons mentioned above, we are of the considered opinion that this is not a case where the death was caused due to grave and sudden provocation. This is a case where there was a pre-planned intention to commit the murder. The accused had threatened to kill them. The Appellants, came armed with weapons, in fact, with deadly weapons. The facts in this case are similar to that in the matter of ***Asif Khan V. State of Maharashtra (supra)***.

(l) APPLICABILITY OF SECTION 302 R/W SECTION 34 OF IPC QUA ACCUSED NOS.3 & 4

213. Learned Counsel Dr. Chaudhary as well as learned

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Counsel Mr. Gaurav Bhavnani vehemently submitted that Section 34 of the IPC could not be made applicable to the accused Nos. 3 and 4 only. They carried stump and bamboo stick and that they did not inflict the fatal knife injuries upon the deceased Keenan or Ruben. The learned Counsel for the accused No. 4 had relied upon a detailed comparison of injuries sustained by the injured and deceased and also the role attributed to the accused No. 4 as narrated by the prosecution witnesses. As far as Avinash PW-17 is concerned, he stated that Avinash had sustained abrasion over Occipital region. The medical certificate of Avinash also corroborates the same. He submitted that PW-17 claimed that he was assaulted by A3 and A4 who are allegedly holding bamboo and stump and only single simple injury is sustained by PW-17. Even if the prosecution's case is taken to be true, according to the learned Counsel appearing for the respective Appellants, the offence under Section 302 read with 34 could not have been made out against the accused Nos.3 and 4. According to learned Counsel Mr. Yug Mohit Chaudhary and Mr. Gaurav Bhavnani, it is not the case of Prosecution that accused No.3 and 4 had inflicted the fatal blow on the deceased. He submitted that accused No. 4 is alleged to have been armed with simple stick

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

and the only injury is alleged to have been inflicted is on PW-17's thumb causing a minor abrasion. He is not shown to have assaulted the deceased. They submitted that there was no weapon recovered from him and that a stick was alleged to have been found on the spot which was alleged to have been used by the accused No. 4. They submitted that, at the best, intention can be ascribed to accused Nos.3 and 4 to cause simple injuries with a stump and stick. They further submitted that there was no evidence to show that they shared or harboured the intention to commit murder. Therefore, a necessary inference required to be drawn is that Section 34 of IPC is not made out from the facts of the present case. They relied upon the judgment of ***Mahboob Shah v. Emperor*** [14] to buttress their submission. They submitted that there is nothing to show that accused Nos.3 and 4 was even aware of the intention of the other accused to commit murder; The accused Nos. 3 and 4 have not assaulted either of the deceased persons. It is not the prosecution's case that accused Nos.3 and 4 had exhorted his co-accused to murder the deceased. It is submitted that invoking Section 34 of IPC against accused Nos.3 and 4 for murder requires undoubtedly evidence of

14 AIR (32) 1945 PC 118

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

their involvement in the offence of murder. There was no scope according to the learned Counsel for arriving at a conclusion that there was meeting of mind of accused Nos.3, accused No. 4, accused No. 1 and accused No. 2. They relied upon the decision of ***Mohan Singh & Anr. V/s. State of Punjab***[15] . In support of their contention, relevant para of which reads thus :

> *"That inevitably takes us to the question as to whether the Appellants can be convicted under Section 302/34. Like Section 149, Section 34 also deals with cases of constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons sharing the same common intention is one of the features of Section 34. In some ways the two sections are similar and in some cases they may overlap. But, nevertheless, the common intention which is the basis of Section 34 is different from the common object which is the basis of the composition of an unlawful assembly. Common intention denotes action-in-concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. It is now well-settled that the common intention required by Section 34 is different from the*

15 AIR 1963 SC 174

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

> *same intention or similar intention. As has been observed by the Privy Council in Mah-bub Shah v. King-Emperor common intention within the meaning of Section 34 implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan and that the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case."*

214. They argued that inference of common intention should never be reached unless it is necessarily inference deducible from the circumstances of the case. Learned Counsel appearing for accused No. 4 as well as accused No. 3 made submissions which are almost identical. It is true that the evidence on record does not indicate that the deceased Keenan or deceased Ruben were attacked by the accused No. 3 or accused No. 4. The Prosecution has also never alleged that accused No. 3 or accused No. 4 had stabbed either of the deceased. The finding of the Sessions Judge is also to the effect that accused No. 1 and accused No. 2 had inflicted the fatal knife assault upon deceased and accused No. 3 and accused No. 4 were armed with wooden weapons and simultaneously assaulted Avinash and Benjamin. We must also mention at this juncture that the only injury which is caused by the accused No. 4 is to the thumb of PW-17, the complainant. Before coming to a conclusion that the offence under

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Section 302, read with Section 34 is made out several aspects will have to be considered. Upon perusal of the entire evidence there is nothing to show that the accused No. 3 and accused No. 4 shared or harboured the common intention to commit murder. It is settled position of law that the inference of common intention should never be reached unless it is necessarily an inference deducible from the circumstances of the case. There is nothing before us to arrive at a conclusion that there was meeting of minds of accused No. 4, accused No. 3, accused No. 1 and accused No. 2. No doubt accused No. 3 and accused No. 4 were present on the spot. It is however not the case of the Prosecution that these accused had assaulted the deceased person. There is nothing to show that accused Nos.3 and 4 were even aware of intention of accused No. 1 to commit murder.

215. In this context, it is necessary to refer to the decision in ***Pandurang, Tukia, Bhilia versus The State of Hyderabad***[16]. Paragraph numbers 30, 31 and 32 of the said decision are reproduced as under:

> *"30. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all :*

16 AIR 1955, Supreme Court Cases 216

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Mahbub Shah v. King Emperor-, IA pp. 153-54. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: Barendra Kumar Ghosh v. King Emperor- (at p. 49) and Mahbub Shah v. King Emperor. As their Lordships say in the latter case: (IA p. 154) ".... the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in mis- carriage of justice."

31. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other eg. the intention to rescue another and, if necessary, to kill those who oppose.

32. In the present case, there is no evidence of any prior meeting. We know nothing of what they said or did before the attack, not even immediately before. Pandurang is not even of the same caste as the others Bhilia, Tukia and Nilia are Lambadas, Pandurang is a Hatkar and Tukaram a Maratha. It is true prior concert and arrangement can, and indeed often must, be determined from subsequent conduct as, for example, by a systematic plan of campaign unfolding itself during the course of the action which could only be referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently. But, to quote the Privy Council again: (Mahbub Shah case-, IA p. 154) "... the inference of common intention... should never be reached unless it is a

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

necessary inference deducible from the circumstances of the case."

(Emphasis supplied by us)

216. There is hardly any material to show that there was prior meeting of minds, although four persons had attacked the deceased. It would however be preposterous to suppose that there was a common intention required under Section 34 of IPC. We are also conscious of the position of law that common intention can arise on the spur of the moment also and that long interval of time is not required to reach a common intention. There is nothing on record to conclude that there is pre-meditation, the nature of the injuries infected would fortify our findings. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true purport of Section 34 is that if two or more persons intentionally do an act jointly, it is same as if each of them has done it individually by himself. As observed in ***Ashok Kumar v. State of Punjab***[17], the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

217. The evidence of PW-1, PW-18, PW-17, PW-2 and PW-21 all are at variance with each other when it comes to assault, by

17 MANU/SC/0089/1976

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

accused Nos. 3 and 4 to the deceased. PW-1 in her Examination-in-chief, states in paragraph No. 6 of her deposition that the accused Nos. 3 and 4, attacked on Benjamin and Avinash. PW-18 in paragraph No. 7 of her Examination-in-chief states that, accused Nos. 3 and 4 attacked. Ruben, Keenan, and Avinash. PW-17 in paragraph No. 3 of his Examination-in-chief stated that the accused No. 3 and 4 were assaulting deceased Ruben and himself. PW-2 in paragraph No. 3 of his Examination-in-chief states that all the persons assaulted PW-17(Bali), Keenan, Ruben, and Benjamin. PW-21 in paragraph No. 4 of his Examination-in-chief stated that the accused Nos. 3 and 4 attacked all the four boys from the complainants side. Thus, the version of all the eyewitnesses, *qua* the role of accused Nos. 3 and 4 is not consistent. It is, therefore, difficult to conclude that accused Nos. 3 and 4 had assaulted deceased Ruben and deceased Keenan. Their role of attacking PW-17 Avinash, and causing injury to his right thumb, is, however, clearly made up. The Trial Court has rightly convicted the accused Nos. 3 and 4 of the offence under section 323 of Indian Penal Code. We are in agreement with the findings of the Ld. Trial Court convicting the Appellant under section 323 of Indian Penal Code. We, however, do not agree with the finding of the Trial

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

Court that the accused No. 3 and 4 had committed an offence under Section 302, read Section 34 of the Indian Penal Code. For the reasons mentioned hereinafter, we are of the considered opinion that the accused No. 1 committed the offence under section 302 read with section 34 of IPC. The conviction of accused No. 1 is sustained. We do not find any ground to interfere with the Judgment and order passed by the Trial Court *qua* accused No. 1. We are, however, not in agreement with the findings of the Trial Court that the accused Nos. 3 and 4 also deserve to be convicted under section 302 read with Section 34 of the Indian Penal Code.

J. CONCLUSION :

218. To sum up the prosecution has failed to prove the element of common intention. The prosecution, however, has proved that deceased Keenan was assaulted by the accused No.1 in most gruesome manner. Since the evidence of the witnesses on the role of accused Nos.3 and 4 assaulting deceased Keenan is concerned, they are at variance. Hence, it would be too unsafe to hold that accused No.3 and 4 had assaulted deceased Keenan and Ruben. Once we hold that, the accused has failed to prove the element of common

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

intention under Section 34, accused Nos.3 and 4 cannot be held guilty of commission of murder of Keenan or Ruben. We conclude that the accused Nos.3 and 4 have assaulted PW- 17 and Benjamin. We, concur with the finding of the Trial Court that accused No. 1 committed the murder of deceased Keenan. We, however, do not subscribe to the view of the Trial Court that accused Nos.3 and 4 had common intention, and therefore they too should be held guilty of murder of deceased Keenan. To this extent, we are interfering with the finding of the Trial Court.

219. The Trial Court has in paragraph No. 329 of the impugned Judgment and Order held as under :

> *"329 accused nos.3 and 4 were having bamboo and stump. They were assaulting simultaneously to Benjamin and Avinash. Avinash has received some injuries and he has deposed that accused No.3 and 4 assaulted him. Other eye-witnesses have also mentioned that the accused nos.3 and 4 were assaulting with said bamboo stick and stump which were found on the spot. The articles were identified during evidence. As the injuries were of not grave nature but, PW-17 has stated that he was assaulted by both of them and he went to medical checkup. The offence of assault by deadly weapon causing grievous injury is not proved as he was assaulted by wooden stick and stump therefore offence u/s.324 is not proved but, the offence u/sec. 323 is proved which is related to body pain. Hence, offence u/s.323 r/w 34 of IPC is proved against accused nos.3 and 4."*

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

This is yet another reason for coming to a conclusion that the prosecution failed to prove that accused Nos.3 and 4 committed offence under Section 302 r/w Section 34 of IPC.

220. As far as the finding of the Trial Court that the accused Nos.3 and 4 have committed offence under Section 323 of the IPC is concerned, we do not intend to interfere with the finding of the Trial Court. We hold the accused No.1 guilty of having committed offence under Section 354 of IPC. None of the Appellants before us had argued the appeal against that part of the order, imposing punishment under Section 509, 506 and 504 of IPC, or Section 37(1) r/w Section 1351) of the Bombay Police Act.

K. IMPOSITION OF SENTENCE ON ACCUSED NO.1 :

221. After having come to the aforesaid conclusion, the next issue, which arises for our consideration is whether the Trial Court was right in convicting the accused No.1 under Section 302 r/w Section 34 of IPC, and sentencing him for life imprisonment, i.e. remainder of natural life. As stated, in the earlier paragraphs, the learned Special PP, Mr. Ponda had very fairly submitted that this

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

power did not exist with the Trial Court, however, the High Court can definitely consider imposing the said sentence i.e. remainder of natural life. We appreciate the fairness of the learned Special P.P appearing for the State. We hold that the Trial Court was not within its jurisdiction to impose the sentence i.e. remainder of natural life upon the accused No.1.

222. We are fortified in our view by the Judgment of the Apex Court in the matter of ***Naval Kishore and another V/s State of Punjab***[18]. The Hon'ble Apex Court after considering various Judgments of the Apex Court has held as under :

> *"25.In light of the decisions considered hereinabove, we are of the view that there is no doubt that the Trial Court was competent to impose the punishment of imprisonment for life upon the Appellants for the offence under Section 302 read with Section 34 IPC, however, at the same time, the Trial Court was not competent to impose a special category sentence that the Appellants "to remain in prison till rest of their life", which in substance and effect, excludes the statutory power of remission or commutation. Therefore, the High Court, while affirming the sentence imposed by the Trial Court, did not examine the competence of the Trial Court to impose such a sentence and thus, to that extent, the impugned judgment requires interference of this Court."*

223. Having said so, we must note that the offence is premeditated murder of two young persons viz. Keenan and Ruben

18 2026 SCC OnLine SC 2000

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

who were of 25 years and 29 years, at the time of incident. They had been to a restaurant to have food and to watch cricket match and enjoying their life peacefully. The accused No.1 had molested the friend (PW-1) of the deceased. The accused No.1 has assaulted the deceased in utmost heinous manner, as stated above with lethal weapon. The injury was such that the intestine of Keenan came out protruding and had to be held together by a towel. The deceased died immediately within 10 to 15 minutes of him being taken to the Kokilaben hospital. Further taking into consideration the factors that the accused No.1 was of 25 years on the date of incident, not a habitual offender, we are of the opinion that ends of justice would be adequately met by altering the sentence of the accused No.1 awarded by the Trial Court i.e. "life imprisonment i.e. remainder of their life', to the sentence of rigorous imprisonment for a period of 20 years, without any statutory remission. We are fortified in awarding the rigorous imprisonment for a period of 20 years and putting it beyond statutory remission by placing reliance upon the judgment in the matter of ***Union of India V/s V. Shriharan alias Murugan & Ors.***[19]

> *"**177.** Imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means*

19 2016 (7) SCC 1

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

imprisonment for rest of life of the convict. The right to claim remission, commutation, reprieve etc. as provided under Article 72 or Article 161 of the Constitution will always be available being Constitutional Remedies untouchable by the Court.

178. *We hold that the ratio laid down in Swamy Shraddananda (supra) that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded and we answer the said question in the affirmative."*

Hence, the following order:

ORDER

(1) The appeals are partly allowed.

(2) The Judgment and Order passed by the Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay dated 5th May, 2016 in Sessions Case No.161 of 2012 is modified to the following extent:

(i) The accused No.1 Jitendra Fakirchand Rana @ Chaina is hereby convicted for the offence punishable under Section 302 r/w Section 34 of IPC and is

Uploaded on - - Downloaded on - 05/11/2026 22:03:49

sentenced for rigorous imprisonment of 20 years without any statutory remission.

(ii) Accused Nos.3 and 4 are acquitted from the offence punishable under Section 302 r/w 34 of the IPC. To that extent, the order of the Trial Court is set aside.

(iii) Rest of the sentence imposed on the Appellants by the Trial Court is confirmed.

(iv) The appeals are disposed of in the aforesaid terms.

224. In view of the disposal of appeals, all the interim applications pending therein are also disposed of.

(SANDESH D. PATIL, J.) **(M. S. KARNIK, J.)**

Uploaded on - - Downloaded on - 05/11/2026 22:03:49