IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 234 of 2018

Tahir Khan S/o. Tasbbar Khan Pathan
Aged about 37 years
R/o Room No. 3219,
Zuppadpati, Shah Bhaga,
Rander, Surat,Gujarat State **...APPELLANT**

v/s.
1. State of Maharashtra
2. Union Territory of Daman **...RESPONDENTS**

Ms. Nafeesa Khan a/w Ms. Sheeba Khan a/w Adv. Mr. N.V. Khan a/w Mr. Samer Sharif for Appellant.
Mr. Amit Munde APP for the Respondent No. 1- State.
Mr. Ashwin Thool a/w Ms. Archishmati Chandramore for Respondent No. 2- Union Territory.

VISHAL SUBHASH PAREKAR
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CORAM: MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

RESERVED ON: 24th JUNE, 2026
PRONOUNCED ON: 22nd SEPTEMBER, 2026

JUDGMENT (*Per Shreeram Shirsat, J.*)

1. The present Appeal has been filed challenging the impugned judgment and order dated 24.05.2017 passed by the Court of Session at Daman in Sessions Case No. 27/2013, whereby the Appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and has been sentenced to suffer Rigorous Imprisonment (R.I.) for Life and to pay a fine of Rs. 500/- and in default, to suffer R.I. for 15 days in Crime No. 20/2013 registered by the Coastal Police Station, Moti Daman.

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

a. It is the case of the prosecution that Hasruddin Sarafuddin Shaikh (deceased) and the Appellant were acquainted with each other. Both were fruit sellers and room partners. They were both residing in Surat.

b. On 21.05.2013 i.e. the day of the incident, both the Appellant as well as the deceased had gone to Daman, they consumed liquor in an open compound near Girish Bar, Kachigaon. At about 2:00 a.m., while they were preparing to go back to Surat, the Appellant asked the deceased to lift the bag that contained wine and beer. Upon the denial of the deceased to lift the said bag, the Appellant assaulted him with a knife, caused him several injuries and fled away.

c. In the early morning of 22.05.2013, a waiter from Girish Bar, Kachigaon, saw the deceased lying in an injured condition in an abandoned building. Thereafter, the owner of the said bar informed the police. The police sent the deceased to Government Hospital, Marward, where the deceased underwent surgery.

d. Thereafter FIR bearing CR No 20/2013 came to be registered on 22/5/2013 at Coastal Police Station, Moti Daman, under section 307 and 504 IPC.

e. As the condition of Hasruddin Sarafuddin Shaikh was not improving,

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he was shifted to J.J. Hospital, Mumbai on 26.05.2013. While undergoing treatment at J.J. Hospital, Mumbai, the deceased succumbed to his injuries on 04.06.2013. The offence which was initially registered under section 307 IPC was converted to 302 IPC.

f. During the course of the investigation, the Appellant came to be arrested on 06.07.2013. After completion of investigation, the chargesheet was filed before the Judicial Magistrate First Class (JMFC), Daman. Thereafter, the case was committed to the Court of Sessions, Moti Daman and was registered as Sessions Case No. 27/2013. The charge came to be framed under Section 302 of the IPC on 12.10.2015.

g. To bring home the guilt of the Appellant, the prosecution examined 11 witnesses (P.W. 1 to P.W. 11):

P.W.	NAME	ROLE
1.	Shyam Bahadur	Waiter at the Girish Bar who first saw the Victim (deceased) in an injured condition
2.	Kiranbhai Patel	Head Constable
3.	Dharmendrabhai Bhandari	Panch Witness to the spot of the incident (Hostile)
4.	Yogendra Kanojia	Panch Witness to the search and seizure of the Appellant on 06.07.2013
5.	Dr. Sudarshan Thakur	Medical Officer at Govt. Hospital, Marward who was present at the time of recording Dying Declaration on 22.05.2013

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6.	Dr. Harshulash Panshiwaikar	Medical Officer at J.J. Hospital, Mumbai who conducted the post-mortem on 04.06.2013
7.	Dr. Hetav Sadadiwal	Medical Officer who collected the blood samples of the Appellant
8.	Devendra Patel	Panch Witness to the spot of the incident (Hostile)
9.	Dhiren Laraya	Nodal Officer, Vodafone, who produced CDRs of numbers 9978556508 and 7874924397
10.	Kailesh Chaudhary	Photographer of the spot of incident
11.	PSI Suresh Shah	Investigating Officer (I.O.)

3. Upon completion of the prosecution evidence, the statement of the Appellant was recorded under Section 313 Cr.P.C. The case of the Appellant was that of total denial and false implication. The Appellant in his statement recorded under section 313 Cr.P.C. stated that the Police impleaded him by calling him to the police station and one other person who was already present in the police station was released and a false case was registered against him. However, the Appellant neither led any defence evidence to substantiate his claims, nor did he examine himself on oath.

4. After hearing the arguments adduced by the prosecution as well as the defence and after going through all the evidence on record, the Sessions Judge, Daman vide judgment and order dated 24.05.2017, was pleased to convict the Appellant for the offence punishable under Section 302 of the IPC and was sentenced to undergo R.I. for Life and to pay a fine of Rs.500/- and in default, to suffer R.I. for 15 days.

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5. Being aggrieved by the judgment and order of conviction dated 24.05.2017, in Sessions Case No. 27/2013, the Appellant has approached this Court by way of the present Appeal.

6. Heard Learned Counsel Adv. Nafeesa Khan for the Appellant, Ld. APP Adv. Amit Munde for the Respondent No. 1- State and Ld. Counsel Mr. Ashwin Thool for Respondent No. 2- Union Territory.

7. The Ld. Counsel for the Appellant submitted that the prosecution has failed to establish that the statement given by the deceased assumes the validity of a dying declaration within the four corners of law. It was argued that the said statement was recorded on 22.05.2013 at Govt. Marwar Hospital in Daman, when the victim was in a semi-conscious state and therefore it was highly improbable that the deceased could have narrated the facts in the dying declaration as is claimed by the prosecution witnesses. Moreover, the endorsement of the doctor, to the effect that the injured was fit to give a statement, is absent. Further, it was also argued that the dying declaration was not recorded before a Magistrate. Therefore, it was submitted that the dying declaration cannot be regarded as a reliable and trustworthy piece of evidence. It was further argued that the victim died after a period of 15 days from the date of incident i.e on 04.06.2013 at J.J. Hospital in Mumbai and therefore no causal connection or nexus can be attributed between the dying declaration and the eventual death of the injured victim at such a later date. It was submitted by the

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Ld. Counsel for the Appellant that the post-mortem recorded 59 injuries as opposed to only 15 injuries and except 3 injuries, all the injuries were simple in nature, which were noted at Govt. Marwar Hospital. It was argued that the rest of the injuries must have appeared subsequently and that no explanation has been provided for the same. It was also argued by the Ld. Counsel for the Appellant that the death of the deceased can be attributed to complications caused by lack of proper treatment. The recovery of the weapon of assault i.e. the knife and other articles has been contested by the Ld. Counsel for the Appellant as the panch witness for the spot panchnama has turned hostile.

8. The Ld. Counsel for the Appellant has further argued that there is no cogent evidence showing that the Appellant and the deceased were seen together at the relevant time. Thereafter, the Ld. Counsel for the Appellant questioned the non-production of the supplementary statement allegedly recorded by the police in Marathi on 26.05.2017 at J.J. Hospital, Mumbai. It was also argued by the Ld. Counsel for the Appellant that phone numbers of both, the deceased as well as the Appellant were not registered in their own names, they were registered but, in the name of certain unknown persons and further the prosecution failed to establish how the said phones were connected to each of them. Thus, the Ld. Counsel for the Appellant argued that the evidence on record is not cogent and it does not inspire confidence and therefore the Appellant deserves to be acquitted.

9. The Ld. Counsel for the Appellant relied upon ***Irfan @ Naka v. The State of***

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Uttar Pradesh[1].

10. *Per contra*, the Ld. APP submitted that the Sessions Court rightly convicted the Appellant. The Ld. APP submitted that the deceased made three dying declarations which are consistent. It was pointed out that the statements made before P.W. 1- the waiter, P.W. 2- the Head Constable and before P.W. 11- the I.O. in the hospital are all consistent. It was submitted that there are no material inconsistencies in any of the statements and the same were made voluntarily. As regards the absence of a separate medical certificate, it was contended by the Ld. APP that no such requirement arose at that stage. It was submitted that during his statement under Section 313 Cr.P.C., the Appellant admitted that the mobile phone was recovered from him. As regards the discrepancy in injuries, the Ld. APP submitted that the admission report was prepared at a preliminary stage and only major injuries were noted therein. The post-mortem report, however, recorded all external and internal injuries, including abrasions, and therefore the difference in the number of injuries stands satisfactorily explained. It was argued by the Ld. APP that during the physical search of the Appellant, one Samsung-make mobile handset along with a sim card was recovered from him, which further lends corroboration to the mobile number given by the deceased to P.W. 11. The Ld. APP urged that the prosecution has proved its case beyond reasonable doubt and therefore the conviction be maintained.

11. The Ld. APP for the Respondent-State relied upon the following judgments

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to buttress their arguments:

1) Kans Raj v. State of Punjab and Others[2]
2) Tehal Singh and Others v. State of Punjab[3]
3) State of Haryana v. Mange Ram and Others[4]
4) Neeraj Kumar alias Neeraj Yadav vs. State of U.P. and Others[5]
5) Sundar alias Sundarrajan v. State by Inspector of Police[6]
6) State of Uttar Pradesh v. Mahipal[7]
7) State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru[8]

12. Although there is no eye witness to the actual incident, the entire case hinges on the dying declaration made by the deceased to several witnesses. Before adverting to the analysis of the evidence on record, this Court finds it pertinent to refer to the judgment of the Hon'ble Apex Court in the case of *Laxman v. State of Maharashtra, 2002*[9], wherein it was held as under:

> *"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in*

2 (2000) 5 SCC 207
3 1980 (Supp) SCC 400
4 (2003) 1 SCC 637
5 2025 SCC OnLine Sc 2639
6 (2024) 12 SCC 764
7 (2018) 14 SCC 111
8 (2005) 11 SCC 600
9 (2002) 6 SCC 710

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order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

13. This Court finds it necessary to delve into the dying declarations- both oral and written, which forms the edifice of the prosecution case. Admittedly, as there is no eye witness in the case, the evidentiary value of dying declaration gains primary importance. However, before proceeding to weigh the dying declarations relied upon by the prosecution, it would be appropriate to first record a finding as to the nature of the death of the deceased.

14. To ascertain the nature of the death of the deceased, reference must be made to the medical evidence and post-mortem report on record.

A] HOMICIDAL DEATH

15. P.W. 5- Dr. Sudarshan Thakur is the doctor who treated the deceased at

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Government Hospital, Marward. He deposed that on 22.05.2013, he was a Medical Officer at Government Hospital, Daman, and on that day, the police had brought one person by name Hasmuddin with the history of assault by somebody. He deposed that at that time, Hasmuddin was semi-conscious. He further noted the external injuries found on examination.

> "*(i) Incised wound having 6 x 5 x 0.5 cm. on the right side of the upper chest laterally.*
> *(ii) Incised wound having 5 x o.5 x 0.5 cm. on the right side of the pelvis laterally.*
> *(iii) Incised wound measuring 3 x 0.5 cm x 0.5 cm. on the left side of upper chest.*
> *(iv) Incised wound measuring 4 x 0.5 cm x 0.5 cm on neck.*
> *(v) Incised wound measuring 4 x 0.5 x 0.5 cm on the neck.*
> *(vi) Incised wound measuring 4 x 1 x0.5 cm. on the left side of upper chest horizontally.*
> *(vii) Incised wound measuring 4 x 1 x 0.5cm. on the left side of shoulder.*
> *(viii) Incised wound measuring 2 cm 0.5 x 0.5 cm. On the left arm horizontally.*
> *(ix) Incised wound measuring 3 cm 0.5 cm 0.5 cm. On the right arm.*
> *(x) Abrasion measuring 3 cm x 2 cm. on left arm.*
> *(xi) Incised stab wound measuring 3 x 0.5 cm x0.5 cm. on back side laterally, as well as another incised wound measuring 4 x 0.5 x 0.5 cm. on back side of body laterally.*
> *(xii) Incised wound measuring 4 x 0.5 x 0.5 cm. on the upper chest left side.*
> *(xiii) Incised wound measuring 2 cm 0.5 x 0.5 cm on the right hand.*
> *(xiv)Incised stab wound 4 cm x 2 cm. going straight inside on right side of abdomen intestine blue pretending.*
> *(xv) Incised wound measuring 2 cm x .5 x .5 on the right side of eyebrow.*"

16. P.W. 5 further deposed that the injuries were possible by hard and sharp weapon. He also deposed that the injuries on upper chest and abdomen were grievous in nature. He further deposed that on 22.05.2013, police came to the

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hospital and recorded the statement of the patient in his presence and that the patient was semi-conscious, but was able to give his statement. He deposed that he put his endorsement on the statement given by the patient(Exhibit 23). He deposed that on 25.05.2013, the police had given him a letter seeking permission to record the further statement of the injured and to collect the blood sample. He further deposed that he collected the blood sample of the injured and sent it to the Moti Daman Police Station vide letter dated 29.05.2013. He further deposed that he was shown the knife (Article 4) and further deposed that the injuries found on the person of the injured may be possible by this knife. In the cross-examination, it was tried to be suggested that the injuries were possible if someone falls on a broken glass bottle or on tin sheet or if someone falls from height and rolls down or if someone falls on a sharp cutting instrument. It was also tried to be brought on record that after 25.05.2013, the patient was referred to another hospital as his condition was deteriorating. In the cross-examination, this witness categorically admitted that within (during) those four days, the patient was able to talk. Apart from this, there is nothing significant that has been brought on record to discredit the credibility of this witness.

17. P.W. 6 is the Medical Officer at J.J. Hospital, Mumbai who examined the deceased and conducted his post-mortem. He deposed that a patient namely, Ashruddin Sharafuddin Sheikh was admitted in J.J. Hospital on 26.05.2013 after being referred from Marward Hospital, Daman. He deposed that the victim died

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during treatment on 04.06.2013 at around 7 p.m. and that the body was sent for post-mortem. He further deposed that the cause of the death was septicemia with perforative peritonitis as a result of the complications caused by the incised stab injuries and that the same was unnatural. P.W. 6 deposed that 59 injuries were found on the body of the deceased as per Column No. 17. As per Column No. 19, another 5 injuries were also found. He also categorically deposed that all the injuries were ante-mortem. He also deposed that the "*stab and incised injuries were serious type injuries and those were sufficient to cause the death in the ordinary course of nature*." He further deposed that the injuries might have been possible by sharp and pointed weapons like knife, scissors, etc. P.W. 6 upon being shown the weapon that is the knife (Article 4), stated that the injuries noticed by him during the post-mortem might have been possible by such a weapon. It has come in the cross-examination of P.W. 6 that the residue found in the stomach i.e. the yellow fluid was not sent to the forensic laboratory. He further stated that the same was not done as it had no significance. P.W. 6, in his cross-examination, had stated that if proper treatment was not provided particularly in this case, septicemia may be caused. Lastly, upon being asked in his cross-examination, whether the deceased died due to the injuries and whether septicemia was caused due to the injury to which this witness replied in the affirmative.

18. The evidence of P.W. 5 and P.W. 6, read together, establishes the case of the prosecution on the circumstance of the nature of death. P.W. 5 found the

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deceased bearing multiple incised and stab injuries, caused by a hard and sharp weapon, with the injuries on the chest and abdomen being grievous in nature. P.W. 6, upon examination found the injuries to be of a serious nature, sufficient in the ordinary course of nature to cause death. It would be pertinent to note that the testimony of these witnesses have not been shaken on this point in the cross-examination. No suggestion was put to either of them that the death was natural, self-inflicted, or owed to any cause independent of the assault. Even though PW 5 has expressed, when a suggestion was put, that injuries were possible if someone falls on a broken glass bottle or on a tin sheet or if someone falls from height and rolls down or if someone falls on a sharp cutting instrument, we are of the opinion that the injuries are caused by knife and as also opined by PW 6 that the injuries noticed by him during the post-mortem might have been possible by knife shown to him. We accordingly hold that there can be no doubt that the death of the deceased was homicidal in nature.

19. It was urged by the Ld. Counsel for the Appellant that the death of the deceased cannot be attributed to the injuries said to have been inflicted upon him, inasmuch as the deceased did not succumb immediately, but after a considerable period and passed away only on 04.06.2013, on account of septicemia with perforative peritonitis. It was therefore submitted that no nexus could be established between the inflicted injuries and the eventual death, and that in the absence of such a nexus, the case would not fall within the purview of

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culpable homicide.

20. It is now a settled position of law that where death occurs after an interval of time on account of septicemia or other complications supervening upon injuries which were themselves fatal, or sufficient in the ordinary course of nature to cause death, the person responsible for inflicting those injuries does not stand absolved merely by reason of the passage of time. In this regard, we may draw valuable guidance from the judgment of the Hon'ble Supreme Court in the case of ***Maniklal Sahu v. State of Chhattisgarh***[10] which held as under:

> *"69. We may highlight few broad principles that the courts must keep in mind.*
>
> *a. If it is proved that the injury was fatal and the intention was to cause death, though the death occurred after several days of septicaemia or other complications having supervened, yet it is undoubtedly a murder as it falls within the first limb of Section 300 of the IPC.*
>
> *b. If it is proved that the injuries by themselves were sufficient to cause death in the ordinary course of nature, and if it is established that those injuries were the intended injuries, though the death might have occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the third limb of Section 300 of the IPC and the accused is therefore liable to be punished under Section 302 of the IPC.*
>
> *c. If it is proved that the injuries were imminently dangerous to life, though the death had occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the fourth limb of Section 300 of the IPC, provided, the other requirements like knowledge on the part of the accused, etc. are satisfied and so the accused would be liable to be punished under Section 302 of the IPC. Here also, the primary cause of the death is the injuries and septicaemia.*
>
> *d. In judging whether the injuries inflicted were sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.*
> *e. If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries.*

10 2025 SCC OnLine SC 1960

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f. Broadly speaking, the courts would have to undertake the exercise to distinguish between two types of cases; first, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. Secondly, where the complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty i.e., death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder under Section 302 and not merely of culpable homicide.

g. Even when the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, yet it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. If none of the injuries alone were sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively, they may be sufficient in the ordinary course of nature to cause his death.

h. What the courts must see is whether the injuries were sufficient in the ordinary course of nature to cause death, or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is whether death was only a remote possibility, or is one which would have occurred in due course.

i. To sum it up, where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate."

21. Applying this principle to the facts before us, we find that the deceased sustained multiple grievous injuries on his upper chest and abdomen. P.W. 5, who first examined the deceased, deposed that the injuries on the upper chest

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and abdomen were grievous in nature and were possible by a hard and sharp weapon. P.W. 6 who conducted the post-mortem, deposed that the stab and incised injuries were of a serious nature and were sufficient in the ordinary course of nature, to cause death. In his cross-examination, this witness also deposed that the septicemia which ultimately claimed the life of the deceased was a direct result of the complications following these very injuries. P.W. 6 categorically mentions in the post-mortem report which is exhibited as Exhibit 29 that, the probable cause of death is attributable to "*Septicemia with perforative peritonitis as a result of complications following incised stab injuries (Unnatural)"*. There is nothing on record which suggests the presence of any independent or intervening cause, nor did the defence put any such suggestion to either of the witnesses in the cross-examination. In these circumstances, we hold that the interval before the deceased succumbed to his injuries does not, by itself, detract from the homicidal nature of his death.

22. It was further contended by the Ld. Counsel for the Appellant that the number of injuries found on the person of the deceased shows a marked variance. It was submitted that P.W. 5 examined the deceased at the time of his admission and noted only fifteen(15) external injuries, however P.W. 6, who conducted the post-mortem after his death at J.J. Hospital, Mumbai, recorded as many as fifty-nine(59) injuries. Hence, it was thereby urged by the Ld. Counsel for the Appellant that such a stark escalation in the number of injuries casts serious

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doubt on the veracity of the case of the prosecution. We find that this very contention was considered by the Sessions Court in paragraph 46 of the impugned judgment by observing that that there was no evidence to show that the deceased was assaulted at any point during the period of his treatment, from the date of his admission at the Government Hospital, Daman, until his death at J.J. Hospital, Mumbai. It appears that the injuries which were noted at the time when the injured was admitted to the Government Hospital Marward, Daman, were at the preliminary stage when the injured was in an imminent need of the treatment and therefore possibility cannot be ruled out that only prominent injuries were noted. No doubt it raises a suspicion, however in the absence of any material brought on record to establish anything to the contrary, the said argument of the defence pales into insignificance.

B] DYING DECLARATIONS :

23. Since this case hinges on the dying declaration it will be pertinent to carefully analyse the multiple dying declarations in order to find out whether the dying declarations inspire confidence and are not an outcome of any tutoring.

24. P.W. 1 Shyam Bahadur deposed that he was working as a waiter at Girish Bar, Kachigam. He further deposed that on 21st May, 2013, his working hours were 8:00 a.m. to 2:00 p.m. and 5:00 p.m. to 11:00 p.m. He further deposed that at around 7:00 a.m., he saw one person lying in the land of Mohanbhai, and therefore he woke up Kamal Sharma, who in turn woke up Vishnu Bhandari. He

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has further deposed that they went near that person and saw that he had no clothes and had injuries on his neck, hands, and upper portion of the body, and those injuries were bleeding. He further deposed that Vishnu asked that person as to what had happened to him, to which he told that he came with his friend Tahir from Surat and they drank. He further submitted that he also told that Tahir asked him to lift the bag which he refused, hence he was assaulted with a knife. He further deposed that Vishnu told this to Seth who then called the police and the police came and took him. In the cross-examination, it has come by way of omission that this witness has stated while giving his statement that the injured had injuries on his neck, hands, and upper part, and had not worn upper wears. Apart from the above omission, there is nothing to disbelieve the said witness, or nothing has been elicited in the cross-examination. There is no cross-examination on the core issue about what was narrated to Vishnu in the presence of P.W. 1 about Tahir assaulting the deceased. Apart from the suggestion that P.W. 1 was not present when the deceased was narrating the incident to Vishnu, which has been denied, the cross examination does not in any manner dislodge the evidence of P.W. 1.

25. P.W. 2 Kiranbhai Govandbhai Patel, Head Constable, Coastal Police Station, deposed that on 22nd May, 2013 at 7:10 a.m., he received a phone call from one Vijaybhai in the outpost that one person was lying in injured condition in the building situated in the compound of his land. He further deposed that he,

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along with Home Guard driver Praful Patel, went there and saw one person lying on the corrugated box and that he had injuries on his neck, chest, hands, as well as on the stomach and therefore he called the ambulance on 108. He further deposed that he asked his name, to which he said that his name was Asharuddin Shaffuddin Shaikh. He further deposed that he asked Asharuddin Shaikh as to who assaulted him, to which he told that Tahir Pathan assaulted him with a big knife. He further deposed that thereafter he informed the incident to PSI Mr. S.M. Shah and Head Constable Kishan Halpati and asked them to reach Marwad Hospital, Nani Daman. He further deposed that the injured Asharuddin Shaikh told him that he was from UP and three days ago he had come to Surat which was the place of the accused and he was selling fruits in Surat. He further deposed that Asharuddin told him that on 21st May, 2013, he had been to Daman with the accused for a tour and both of them had consumed liquor at Girish Bar. He further deposed that Asharuddin told him that Tahir had brought one bag and had purchased wine to take to Surat and after consuming liquor, both of them came out of Girish Bar and sat under an almond tree in the open land near the bar. He further told that they were ready to leave at 2 o'clock and Tahir asked him to lift that bag, to which he denied and that Tahir took a big knife from the bag and assaulted him on his neck. He further told that when he started running, Tahir assaulted him on his neck, hands, and chest, and when he fell down Tahir assaulted him on his stomach and Tahir fled away from there and thereafter he

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came into the abandoned building. In the cross-examination, the said witness has admitted that except the victim, no other person had given him the information about the incident.

26. In the cross-examination, P.W. 2 Kiranbhai Patel was asked whether he felt it necessary to record the statement of the victim in the hospital, to which he replied that as his senior officer had been to the hospital, hence he did not record his statement. Further, in the cross-examination, much emphasis was on the point that after receiving the information, whether the superiors were informed or whether the incident was noted down in the station diary or the pocketbook. Beyond this, there is nothing much to discredit the witness on the actual narration about the assault given to this witness by the deceased. There is no evidence brought on record to discredit the testimony of this witness.

27. P.W. 11 Suresh Maganlal Shah, PSI, Nani Daman Police Station, deposed that in the month of May, 2013, he was posted at Kachigam Outpost as In-charge. He further deposed that on 22/5/2013 at about 7:30 a.m., he received a phone call from Police Constable Shri Kiran Patel that, in the open compound land of Girish Bar at Kachigam border, one person was lying injured. He deposed that he asked him to go to the spot with a PCR vehicle and make an arrangement to take him (the injured) to Marwad Hospital. He further deposed that he sent a message to Head Constable Kishan Halpati calling him to Marwad Hospital and also told him that he was also reaching there. He further deposed that they both reached

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Marwad Hospital and in the meantime, one injured was brought to Marwad Hospital in an ambulance by Police Constable Kiran Patel. He further deposed that he made inquiry with the said injured person, who told his name as Husnuddin Shaikh. He further deposed that he issued a request letter to the Medical Officer for providing him treatment. He further deposed that while he was under treatment, he was in a conscious state of mind and was talking. He further deposed that the deceased told him that he and his room partner, Tahir Khan Pathan, came to Kachigam on the 21st day in the evening and they took wine from that bar, drank and took food in the open compound of that hotel. He further told that at night at 2 o'clock they were prepared to go to Surat and Tahir Khan Pathan asked him to lift one bag and go, which he had denied and that bag was containing wine. He further told that they then had an altercation and the accused assaulted him with a knife-like weapon on his throat, chest, and other parts. He further told that the accused ran away leaving him there and after gaining sensation, he got up and went into the building in the said compound. He further told that in the morning a few waiters came to him and he told them that Tahir Khan assaulted him. He further deposed that he had recorded his statement as per his narration in the presence of the doctor. During deposition, he was shown the statement of the deceased. He identified the signature and thumb impression of the deceased as well as the endorsement of the doctor. He deposed that the contents of the statement of the deceased were true and correct, and it

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also bears his signature. He further deposed that he lodged a report against the accused with Coastal Police Station and a Crime bearing No. 20 of 2013 was registered against the accused.

28. In the cross-examination, the said witness denied the suggestion put to him that the injured was not fully conscious at that time. He admitted that he had seen the injuries on his person and that he took the statement of the deceased at about 8:15 a.m. He also agreed that the doctor had put his endorsement after recording the statement. He further stated in the cross-examination that the recording of the statement and his medical treatment were simultaneously going on. He also categorically admitted that he did not feel that the deceased was giving the statement under the influence of alcohol. Further in the cross-examination, he was also asked whether he felt it necessary to get the dying declaration recorded by the Magistrate, to which he has deposed that he did not feel it necessary. Further in the cross-examination, he once again admitted that during the course of recording the report, the complainant was fully conscious; however, he also stated that he did not try to obtain a certificate from the doctor about his full consciousness. He further stated in the cross-examination that since 22.05.2013 to 26.05.2013, when the patient was hospitalized, he visited thrice; however, he had not recorded the statement of the doctor who operated on the deceased. He further stated in the cross-examination that he did not obtain a certificate regarding the condition of the injured for the period 22/5/2013 till

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26/5/2013 from the doctor. He further admitted that on 25/5/2013, he recorded the supplementary statement of the deceased; however, he did not obtain a certificate from the doctor with regard to his consciousness. Beyond this, there is not much cross-examination on the actual narration given by the deceased to this witness.

29. Although in the cross-examination of P.W. 1, the narration that the injured had injuries on his neck, hands, and upper part, and had not worn upper wears has come by way of omission, P.W. 2 and P.W. 11 have categorically deposed about the same and the said depositions have not be demolished in the cross examination of P.W. 2 and P.W. 11.

30. Having set out the oral dying declarations made by the deceased before P.W. 1 and P.W. 2, and the written dying declaration recorded by P.W. 11, in extenso, it would now be apposite to test these declarations on the touchstone of the principles governing their acceptance.

31. In this regard, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in ***Irfan @ Naka v. State of Uttar Pradesh***[11] wherein it has been held as under:

> *62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -*
>
> *(i) Whether the person making the statement was in expectation of death?*

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(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"
(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?
(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?
(v) Whether the statement was not recorded properly?
(vi) Whether, the dying declarant had opportunity to clearly observe the incident?
(vii) Whether, the dying declaration has been consistent throughout?
(viii) Whether, the dying declaration in itself is a manifestation /fiction of the dying person's imagination of what he thinks transpired?
(ix) Whether, the dying declaration was itself voluntary?
(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?
(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration ?

32. Upon a perusal of the oral dying declarations made by the deceased orally to P.W. 1 and P.W. 2 and the written dying declaration made to P.W. 11, we find that they are consistent and cogent. The deceased was able to describe the incident in explicit detail and continued to mention 'Tahir' as being the individual who caused him the stab injuries. The circumstances leading up to the injury and the manner in which the injury was caused to him, both were described by the deceased consistently and there is no material discrepancy in his stance for us to conclude that the said dying declarations are false or as a result of tutoring or prompting or unworthy of credence.

33. Hence, on a conjoint reading of all the dying declarations on record, and testing them against the guidelines enumerated in ***Irfan Naka*** (supra), we accordingly hold the dying declarations to be truthful, voluntary and worthy of credence.

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34. The Ld. Counsel for the Appellant has raised doubts over the validity of the dying declaration. It was argued that the deceased did not succumb to his injuries immediately, and that his belated death must be taken into account. It was therefore submitted that the statement recorded by P.W. 11 immediately after the incident cannot be treated as a valid dying declaration, since the deceased was not under the shadow of death or in expectation thereof when he made it. In our considered view, a plain reading of Section 32 of the Indian Evidence Act makes it abundantly clear that the provision takes into account that the statement of an injured person, not under the expectation of death, if he dies subsequent to such statement being recorded, then there is no bar in treating such a statement as a dying declaration, as long as the cause of death can be attributed to the same cause. The Supreme Court in its judgment in the case of ***Neeraj Kumar @Neeraj Yadav*** (supra) has further reinforced the fact that delay in death cannot result in invalidation of the dying declaration, which was obtained at the time when the deceased was not under the shadow of imminent death. It states as follows:

> "*16. Additionally, in our considered view, the High Court erred in holding that these statements cannot be treated as dying declaration(s) merely because the death of the deceased occurred after a substantial lapse of time from their recordings. Such an approach is clearly untenable since the law does not require that a declarant, at the time of making the statement, to be under the shadow of death or the expectation that death is imminent. Here the time gap between the incident and the death is less than 2 months. In any event, Section 32 of the Evidence Act, contains no such limitation. What is pertinent is that the statement relates either to the cause of death or the circumstances leading to it. [See: Rattan Singh v. State of H.P.[21]; Kulwant Singh v. State of Punjab[22]; and Amar Singh v. State of Rajasthan[23]]*"

35. In this regard, the Ld. APP has relied on the judgment of the Hon'ble

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Supreme Court in ***Kans Raj v. State of Punjab and Others.***[12] Upon a perusal of the same, we find the same to be relevant as it reiterates that an expectation of imminent death is not necessary for a statement to qualify as a dying declaration. The relevant paragraph is reproduced hereunder:

> *"11. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, for the purposes of admissibility of the statement of a deceased the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without any delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it should be proved by examining the person who heard the deceased making the statement….."*

36. Additionally, the Ld. APP has also relied on the judgments of the Hon'ble Apex Court in the case of ***Tehal Singh and Otrs. v. State of Punjab*** (supra) ***State of Haryana v. Mange Ram & Ors.*** (supra) which elaborates upon true meaning of Section 32 of the Evidence Act as already stated above in **Kans Raj** (supra).

37. It was further urged by the Ld. Counsel for the Appellant that the dying declaration cannot be said to be worthy of credence, as the deceased was in a semi-conscious state at the relevant time, and no certificate or endorsement was obtained from the doctor as to his fitness to make a statement. It was hence

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submitted that in the absence of such an endorsement, coupled with the fact that the deceased was in a semi-conscious condition, the statement recorded by P.W. 11 cannot safely be relied upon as a dying declaration. It was further contended that the I.O. had ample time and opportunity to get the statement of the deceased recorded by a Magistrate, but failed to do so, and that such a lapse diminishes the evidentiary worth of the statement. In order to counter this argument, the prosecution relied upon the judgment of the Hon'ble Supreme Court in ***Neeraj Kumar (supra),*** which lays as under:

> *"We find these contentious bereft of any merit. We say so because it is a well-established position of law that a statement made by a deceased person, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and recorded under Section 161 CrPC, shall be relevant and admissible under Section 32(1) of the Evidence Act, notwithstanding the express bar provided in Section 162 CrPC. Such a statement, upon the death of the declarant, assumes the character of a dying declaration. It is also equally settled that a dying declaration need not necessarily be recorded in the presence of the Magistrate, and that the lack of a doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. This position has been recently reiterated by this Court in Dharmendra Kumar v. State of M.P., wherein it was held:*
>
> > *"65. Section 161 CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1) CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub- section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161 CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon."*

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38. Therefore, considering the law laid down by the Apex Court and in the peculiar facts of the case, neither the absence of a certification by the doctor regarding the fitness of the injured nor the omission to have the statement recorded by a Magistrate would affect the evidentiary value of the dying declaration recorded by P.W. 11, and hence the contentions urged on behalf of the Appellant are *dehors* of any merits.

39. As regards the contention raised about the semi-conscious condition of the deceased, we find it useful to refer to the Constitution Bench judgment of the Hon'ble Supreme Court in ***Laxman v. State of Maharashtra*** (supra), wherein it was held that:

> *"The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable."*

40. P.W. 11, who recorded the dying declaration, has himself deposed that the deceased was conscious and talking at the time the statement was taken. Therefore, applying the principles laid down in ***Laxman*** (supra) to the facts of the present case, we find no merits in this submission of the Appellant.

41. Upon a perusal of the oral dying declarations made by the deceased, we find that the cause of the said scuffle between 'Tahir' and the deceased has also been consistently described by the deceased.

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C] IDENTITY OF THE APPELLANT :

42. It is well settled that conviction can rest on a dying declaration alone, provided the same is found to be voluntary, truthful and free from tutoring and indeed in the present case we have come to a conclusion that we find the Dying Declarations to be voluntary, truthful and free from any tutoring. However in the present case a suspicion is sought to be raised by the Ld. Counsel for the Appellant as regards the very identity of the assailant named in the dying declarations. It was submitted that in the dying declarations recorded, oral as well as written, the deceased named his assailant as 'Tahir', 'Tahir Kunnu Pathan' or 'Tahir Pathan', whereas the Appellant has throughout identified and signed himself as 'Tahir Khan'. It was further submitted that in his statement under Section 313 of the Cr.P.C., the Appellant has taken the plea that he was falsely implicated by the police, and that he was called to the police station and arrested, while another person already present therein was let off. It was thus urged by the Ld. Counsel for the Appellant that even assuming for the sake of arguments the dying declarations are held to be reliable, the prosecution has failed to establish the elementary fact that the Appellant so convicted is the very person named by the deceased as his assailant.

43. On this backdrop, it would now be relevant to examine whether the evidence on record cogently establishes that the identity of the assailant, as it emerges from the dying declarations, is one and the same, as that of the

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Appellant before us.

44. Upon going through the records, we do not find that the issue of identity and the plea of false implication was raised at any point of time earlier or that any foundation was laid during the evidence. It is only at the stage of recording the statement under Section 313 of Cr.P.C that for the first time this issue was raised while answering Question No. 81 wherein it is stated by the Appellant that "*Police impleaded me by calling, one other men was in police station . Police released him and made a false case against.*"

45. The Appellant, although has raised this issue, and which he is entitled to at the appellate stage as well, does not in any manner support it by any cogent or convincing material. No doubt the law on this aspect is no more r*es integra* that the accused does not have to prove his case beyond reasonable doubt and can rest his case on the preponderance of probability. However, merely making a bald statement that he was falsely implicated is not enough as none of the allegations about false implication or the doubt raised about his identity by the Appellant could be established. Even at this stage, the Ld. counsel for the Appellant was not in a position to point out any material on record which could suggest that the Appellant was falsely implicated. Just because Appellant is referred to as Tahir' by P.W. 1, 'Tahir Kunnu Pathan' by P.W. 2 , 'Tahir Pathan' by P.W. 11 and he himself referring as 'Tahir Khan' in itself is not sufficient to raise a doubt. At this stage it will be advantageous to refer to the judgment of the Apex Court in the case of

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Munish Mubar v. The State of Haryana[13.]

> *"25. Moreso, it was the duty of the appellant to furnish some explanation in his statement under Section 313 Cr.P.C., as under what circumstances his car had been parked at the Delhi Airport and it remained there for 3 hours on the date of occurrence. More so, the call records of his telephone make it evident that he was present in the vicinity of the place of occurrence and under what circumstances recovery of incriminating material had been made on his voluntary disclosure statement. Merely making a bald statement that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established."*

46. Thus, in wake of the law laid down by the Supreme Court we do not find any substance in the contentions raised by the Appellant about the issue of identity. Thus, we are of a considered view that this argument is nothing but an afterthought, raised by the Appellant in his defence.

47. The Ld. Counsel for the Appellant further attempted to assail the case of the prosecution by furthering that, the identity of the Appellant can also be said to have been mistaken, in light of the arrest of the Appellant, which was wrongly effected on the basis of the Call Detail Records (CDRs) and the IMEI numbers found during the course of investigation. It was submitted that the entire chain sought to be established by the prosecution, from the mobile number allegedly furnished by the deceased to the eventual arrest of the Appellant, rests prominently and substantially upon the CDRs and the IMEI details obtained through the course of the investigation. It has been primarily contended that the CDRs relied upon by the prosecution were obtained only on 02.09.2013, whereas the Appellant had already been arrested on 06.07.2013.

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48. We find no merit in the contention that, merely on the ground that the CDRs were obtained after the arrest, the arrest is to be rendered unfounded. The delay in obtaining the said records, cannot be said to vitiate or render the arrest illegal or to hold that it is a case of mistaken identity, as the requisite information could have been procured by the police in the usual course of their investigation, with the formal additional reports thereof being obtained subsequently. In any event , the police machinery cannot be expected to reveal the source of their information or how the information was obtained, as investigation is the prerogative of the police, so long as it is not tainted. In the present case there is no cross-examination to that effect and no doubt is raised over the investigation on the said aspect. Thus, in the facts and circumstances of the present case, the said argument is untenable.

49. It was further submitted that the Mobile Phone No. 7874924397 was registered in the name of Gyan Chandra Ram Ujagar (Exhibit 40) and the Mobile Phone No. 9978556508 was registered in the name of Safdar Jamiluddin Siddiqui (Exhibit 38), both of whose statements have not been recorded by the police. Thus, it was argued that the mere production of CDRs does not, by itself, establish the connection of Appellant with the said mobile numbers.

50. Thus, the issue that arises for consideration is whether the material relied upon by the prosecution sufficiently establishes the connection between the Appellant and the Mobile Phone Numbers/IMEI relied upon by the Investigating

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Officer and whether the delayed subsequent procurement of the CDRs materially affects the version of the prosecution regarding the circumstances in which the Appellant came to be arrested.

51. It would be apposite to first set out the array of numbers as they emerge from the records:

ROLE	NUMBER	IMEI
Number provided by the deceased	7874924397	3517125040924240
Number traced by the police through the IMEI of the old device	9978556508	3517125040924240
Number found in use upon arrest	9978556508	3517125040924247

52. As per the details given by the deceased, the Mobile Phone No. 7874924397 was the number belonging to the Appellant, and this number is reflected against IMEI No. 3517125040924240 in the CDRs proved by P.W. 9. Upon analysis of these very records, the police discovered that the same IMEI No. i.e 3517125040924240, came to be subsequently associated with a new Mobile Phone No. which was 9978556508. It was thereby concluded that the handset itself remained the same, while only the Mobile Phone Number had changed. It was on the strength of this discovery that the CDRs of the Mobile Phone No. 9978556508 were sought and obtained, and it was this very number that led the police to the Appellant. Upon the arrest of the Appellant, the handset recovered from his person was found to be in use with the very Mobile Phone Number thus

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traced as 9978556508, and bore the IMEI No. 3517125040924247. On a plain comparison, therefore, the IMEI number first attributed to the Appellant i.e. 351712504092424<u>0</u>, and the IMEI number found on the handset recovered from him upon arrest, 3517125040924247, are identical except for the last digit.

53. It was on this discrepancy that the Ld. Counsel for the Appellant contended that variance in the final digit renders the two IMEI numbers as those of two distinct devices and therefore, the same cannot be said to be linked to the Appellant.

54. On this point, it would be pertinent to refer to the judgment of the Hon'ble Supreme Court in ***Sundar alias Sundarrajan v. State by Inspector of Police*** (supra), wherein the very question of variance in the last digit of an IMEI number was adequately answered. It was held as under:

> *"23. Similarly, the contention based on the difference in the IMEI number recorded in the seizure memo and the call detail records does not affect the prosecution's case for the following reason. The difference in the IMEI number recorded in the seizure memo and the call detail record pertains to the last digit of the 15-digit IMEI number. Every device has a unique IMEI number identifying the brand owner in the model. The first 8 digits are the Type Allocation Code (TAC) digits of which the initial 2 digits identify the reporting body and the next 6 identify the brand owner and device model allocated by the reporting body. The next 6 digits are the unique social number assigned to individual devices by the manufacturer.*
>
> *24. These 14 digits in the petitioner's case match in both the seizure memo and the call detail record. The last digit in the IMEI number is the "Luhn check digit" based on a function of the other digits using an algorithm. Technically, the last digit, which is the only digit that is different in the seizure memo and the call detail record, can be calculated through the algorithm on the basis of the first 14 digits which are the same in both the documents. As the last digit of an IMEI number is a function of the first 14 digits, as long as the first 14 digits are a match it can only lead to one unique device. Accordingly, it can be conclusively said that a difference in only the last digit of the IMEI number cannot imply that it represents the IMEI*

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> *number of a separate device. Therefore, the difference in the last digit of the IMEI number can reasonably be assumed to be a typographical error and does not raise a doubt in the prosecution's case."*

55. In the peculiar facts of the present case as well, since the first fourteen digits of the IMEI number recovered from the Appellant are identical to the first fourteen digits of the IMEI number first attributed to him, the variance in the final digit does not, on the reasoning as iterated in ***Sundar alias Sundarrajan*** (supra), suggest two separate devices. We accordingly find that the chain of connection stands established on each of its links.

56. It would additionally be important to note that the Mobile Phone number given by the deceased as that of the Appellant was itself found reflected against the very IMEI number in question. Though a new Mobile Phone number came to be subsequently inserted into that handset, the fact that the handset itself remained the same throughout is significant. The very foundation of the arrest link, in our view, is the IMEI number as it traced back to the number originally given by the deceased himself pointed turned to the Appellant. The prosecution has relied upon the judgment of ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*** (supra) to substantiate the same.

57. This Court is also conscious of the judgment of the Hon'ble Apex Court in the case of ***Rajesh v. State of M.P.[14],*** which deals with the user of the sim card and actual owner of the mobile phone not being examined to establish the link. However in view of our findings with respect to the link having been cogently

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established, non examination of the Safdar Jamiluddin Siddiqui in whose name the mobile No. 9978556508 was registered and Gyan Chandra Ram Gujar in whose name mobile No. 7874924397 was registered pales into insignificance.

58. Another argument raised by Ld. Counsel for the Appellant was that the Supplementary Statement of the victim, which was recorded at J.J. Hospital by PSI from J.J. Marg police station on 26.05.2013 was not brought on record. It was contended that the contents of this statement are at variance with all the previous dying declarations recorded by P.W. 1, P.W. 2 and P.W. 11. We are afraid that we cannot look into any such statement, which is neither exhibited nor brought on record as duly proved. At best, the weight that can be attributed to such a statement is equivalent to a statement recorded under Section 161 of the Cr.P.C., which is inadmissible in evidence.

59. We have also perused the evidence with respect to the FSL reports, however the FSL reports with respect to the clothes of the deceased were inconclusive and therefore the same aspect is not discussed in detail.

60. The Ld. Counsel for the Appellant has raised a contention/ground in his memo, though not argued at the time of final hearing of the appeal, that the Sessions Court had erred in treating the case as one based on dying declarations, instead of considering it as a case founded on circumstantial evidence. Although this Court agrees that there is no eyewitness in the present case, however in light of the judgments referred to above and the principles laid down by the Hon'ble

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Supreme Court, we find that the statements made by the victim concerning his death and the circumstances leading thereto are worthy of credence and that can be the sole basis for conviction. We further find that the statements are cogent, consistent and have been made voluntarily and therefore satisfy the requirements of a dying declaration. The prosecution has rightly founded its case upon the three dying declarations made by the victim. Accordingly, we hold that the Sessions Court was correct in considering the present case as one resting upon the dying declarations of the deceased.

61. We are therefore of the opinion that the Appellant has been rightly convicted by the Sessions Court, Daman and accordingly we uphold the conviction of the Appellant.

Hence, the following order.

ORDER

1] Appeal stands dismissed.

2] All pending application(s), if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)

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