

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 904 OF 2023

Janardan Hariram Varma @ Chaudhari ..Appellant
Versus
The State of Maharashtra ..Respondent

Mr. Rajesh Bhosale (Appointed Advocate) for Appellant.
Ms. Supriya Kak, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 06 & 07 MAY 2026

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 03.06.2023 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.325 of 2016. The Appellant was the sole accused in that case. He was convicted for commission of the offence punishable U/s.302 of the IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- and in default to suffer R.I. for three months. He was also convicted for commission of the offence punishable U/s.506 of the IPC and was sentenced to suffer R.I. for three months and to

pay a fine of Rs.2000/- and in default to suffer R.I. for 15 days. Both the sentences were directed to run concurrently. The Appellant was acquitted from the charges of commission of the offence punishable U/s.201 of the IPC. He was given set off U/s.428 of the Cr.PC. for the period from 23.07.2016 to 03.06.2023 i.e. till the impugned judgment was passed.

2. Heard Mr. Rajesh Bhosale, learned counsel for the Appellant and Ms. Supriya Kak, learned APP for the State.

3. The prosecution case is as follows:

The Appellant was instrumental in introducing one Vinodkumar Chaudhary to one Geeta. Vinodkumar was having close relations with Geeta Mogre (PW-10). They developed close relationship and were also physically intimate. All of them were friends. On one occasion, the Appellant told PW-10 Geeta to stay away from Vinodkumar. PW-10 Geeta, in turn, informed this fact to Vinodkumar. On 22.07.2016, Vinodkumar and the Appellant met in the house of PW-10 Geeta. Vinodkumar invited the Appellant to have liquor and food with him. Vinodkumar had brought one

bottle of liquor. He asked the Appellant to get two more liquor bottles. He asked the Appellant to bring some grocery articles. They consumed liquor in PW-10 Geeta's house. Vinodkumar questioned the Appellant as to why he was telling PW-10 Geeta to stay away from Vinodkumar. They exchanged words. Vinodkumar said something about the Appellant's wife. The Appellant got angry. It is the prosecution case that the Appellant pushed Vinodkumar from the balcony of PW-10 Geeta's flat. It was at a height of 25 feet. Vinodkumar fell on the hard ground made up of cement. He suffered head injury. The Appellant threatened PW-10 Geeta to not to disclose this incident to anybody. He himself took Vinodkumar's motorcycle and went to a relative of Vinodkumar. The Appellant informed him about the incident. Vinodkumar's relative PW-2 Ajaykumar Chaudhary and others came to the spot near Sai Plaza building. The injured Vinodkumar was taken to a hospital, but he was in serious condition. The Doctor advised to take him to a specialty hospital. When he was being taken there, he succumbed to his injuries. PW-2 Ajaykumar informed the police about the incident. Initially, an Accidental Death Report (for short

'ADR') was lodged. The spot panchanama was conducted. The police made enquiry with PW-10 Geeta. The F.I.R. vide C.R.No.382 of 2016 was registered at Manpada police station on 23.07.2016 at 11:00a.m. naming the Appellant as an accused. He was arrested. The investigation was carried out. The dead body was sent for postmortem examination. The statements of the witnesses were recorded. Some articles were recovered at the instance of the Appellant. Those articles were the key of the motorcycle, the Appellant's *chhapal* etc. The articles were sent for chemical analysis. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

4. During trial, the prosecution examined ten witnesses including the aforementioned Geeta, Ajaykumar, the panchas, the Medical Officers and investigating officer. The learned Judge relied on the evidence of the sole eye witness PW-10 Geeta. He also relied on the recovery of *chhappal* and relied on the circumstance that the Appellant's *chhappal* showed presence of soil which was found in the balcony of PW-10 Geeta's flat. He disbelieved the defence of the Appellant, and convicted and sentenced the

Appellant as mentioned earlier.

5. In the statement recorded U/s.313 of the Cr.PC., the Appellant stated that, he was falsely implicated. The police wanted to protect Geeta and, therefore, to save her he was implicated by creating false evidence against the Appellant. The learned Judge disbelieved this defence.

6. The F.I.R. was lodged by PW-1 Sandeep Borade. He was the PSO at Manpada police station. He deposed that on 23.07.2016 at about 2:00a.m. Ajaykumar came to the police station. He informed that, one Vinodkumar was found in injured condition at Sai Plaza building. He was taken to Metro hospital with the help of others. After primary treatment, he was referred to Meera hospital. However, on the way to that hospital, Vinodkumar died. After that, his dead body was taken to Rukminibai Hospital, Kalyan. PW-1 recorded the statement of Ajaykumar and registered ADR No.130 of 2016 U/s.174 of the Cr.p.c.. He conducted the investigation in the said area. The ADR is produced on record at Exhibit-9. PW-1 went to Rukminibai

Hospital and prepared the inquest panchanama. The dead body was sent for postmortem examination. He then visited the spot of incident. The sample of blood stained earth was collected from the spot. The spot panchanama was conducted. It is produced on record at Exhibit-11. He came back to the police station. On further inquiry, he came to know that the deceased had a love affair with one Geeta. He was residing in the said building on the second floor. PW-1 called Geeta to the police station. He recorded her statement. He came to know from her version that she had a love affair with the deceased from the past three months. Her description was as per the prosecution case mentioned herein above. After the deceased fell on the ground, the Appellant threatened Geeta not to disclose the incident to anybody. He left her house. He took the key of the motorcycle of the deceased. Geeta came to know that the Appellant had gone to Vinodkumar's house and that he had informed Ajaykumar about Vinodkumar lying on the ground. Ajaykumar came there and the matter was reported to the police. Since it transpired that the Appellant had committed the murder of the deceased, PW-1 lodged the F.I.R. on

behalf of State against the Appellant. A copy of the F.I.R. is produced on record at Exhibit-12. The further investigation was carried out by PI Raut.

In the cross-examination, he deposed that, he had recorded the statements of the persons residing near the place of the incident. He deposed that Geeta was working in one ladies bar. The ADR (Exhibit-9) and the FIR lodged by him substantially corroborate his deposition. The spot panchanama at Exhibit-11 describes only the spot where Vinod was lying. The proforma of the FIR mentions that the FIR was lodged at 11:00a.m. on 23.07.2016.

7. PW-2 Ajaykumar Chaudhary is an important witness who had informed the police about the deceased having been found lying on the ground. He deposed that, he knew the Appellant. According to him, the Appellant used to stay at Sai Plaza building. The deceased Vinodkumar was PW-2's relative. He was residing in Sai Dham building. On 22.07.2016, at about 9:30pm he was sitting in a shop. The Appellant came there on a motorcycle and told him

that his relative Vinodkumar fell from a building and had sustained injury. PW-2 went with the Appellant to that building. As per information given by the Appellant, they went towards the rear side of the building. He saw that Vinodkumar was lying on the ground. There was bleeding from his nose and mouth. He called Babalu, Ramsajan and Jawahir. They came there. PW-2 brought an autorickshaw. They lifted Vinodkumar and put him in an autorickshaw. Babalu, Ramsajan and the Appellant took Vinodkumar to Metro hospital. PW-2 followed them on a motorcycle. The doctor advised them to take Vinodkumar to Meera hospital. They were shifting Vinodkumar to that hospital in an ambulance, but on the way he died. The dead body of Vinodkumar was sent to Rukminibai hospital for postmortem examination. PW-2 then went to Manpada police station and gave information to the police. He identified the ADR produced on record at Exhibit-9. It contained his signature. He was again called by the police on 09.08.2016 at Manpada police station and informed him the manner in which the incident had occurred.

In the cross-examination, he stated that, no quarrel had

taken place between the Appellant and the deceased in his presence. The distance between Sai Plaza building and Sai Dham building was about 1.5km. He could not explain as to why the ADR did not mention that, he had called Babalu and others at the spot. He stated that the Appellant had accompanied the deceased upto the autorickshaw. He further stated that the motorcycle on which the Appellant had come to him was of the deceased. The motorcycle was in possession of PW-2 after the incident. Vinodkumar was married and had two children. They were residing at their native place.

8. PW-3 Radheshyam Yadav was the owner of room No.203, 'B' wing of Sai Plaza apartment. He had rented out that room to PW-10 Geeta for eleven months. He knew the Appellant as a Supervisor working with a builder. Even after completion of the project, the Appellant was looking after the water supply of the building. On 25.07.2016, he received a phone call from Manpada police station informing him that Vinodkumar had died due to fall from the building. PW-3 was not knowing Vinodkumar. After one month from the incident, PW-10 Geeta left that flat.

In the cross-examination, he stated that the police had not collected any document from him to show that he was the owner of the flat. The police had not taken a copy of the leave and licence agreement in respect of that flat. He was not frequently visiting his flat. He was not personally aware of the incident.

9. PW-4 Swapnil Kamble was a pancha for the spot panchanama. He deposed that on 23.07.2016 he was called by the brother in law of the deceased to the spot of the incident. The police were present at the spot. They prepared the panchanama. He acted as a pancha. The spot panchanama is produced on record at Exhibit-11. After that, they went to Sai Plaza apartment, Flat No.203, 'B' wing. He described the said flat. There was a flower bed/balcony. There were four to five pots having plants. At one corner, there was a small heap of earth. There were three liquor bottles in the dustbin. The police seized those bottles. He identified three liquor bottles produced in the Court marked collectively as Article 'A'. The police prepared the spot panchanama of that flat. It is produced on record at Exhibit-27.

In the cross-examination, he denied the suggestion that the panchanama was not prepared in his presence, and that no samples were drawn. The description of the bottles were mentioned in the panchanama. The spot panchanama mentions that, there was a sliding window in the hall of the size 8 x 7ft. There was a flower bed of the size 9 x 2 ft. outside the sliding window. The side wall of the balcony was of half feet height and one feet breadth. The spot panchanama mentions the story narrated by PW-10 Geeta which is in consonance with the prosecution's case. The height of the balcony of flat No.203 was about 25 ft. from the ground.

10. PW-5 Dr. Parag Padvi had conducted the postmortem examination. The postmortem notes are produced on record at Exhibit-30. He deposed that the deceased had consumed liquor and the samples were preserved. The cause of death was due to "neuro hemorrhagic shock due to head injury".

In the cross-examination, he deposed that the head injury was possible if somebody fell from upper floor on the

ground. The postmortem notes show three injuries; one was a sutured wound over right temporal region; second injury was fracture of occipital bone and the third injury was on right and left temporal bone.

11. PW-6 Dr. Abhijit Thakur had examined Vinodkumar when he was still alive. PW-6 was attached to Kalyan Metro Multi specialty Hospital. He examined Vinodkumar on 22.07.2016. He noticed CLW over right parietal region of the size 5 x 3 x 2cm. He was taken on manual ventilation. The stitches were put on his injury. The patient was transferred to higher center for further treatment.

12. PW-7 Rajesh Chaudhary was a pancha for recovery of the articles at the instance of the Appellant on 25.07.2016. The panchanama are produced on record at Exhibits-42 and 43. According to this witness, the Appellant stated before the pancha and the police that, he was willing to show the place where he had concealed those articles. He led them towards Haji Malang road to approach Adivali gaon. There was thick forest. He pointed at the

bushes where a plastic bag was kept. There were two *chappals*, one mobile handset and one key. Those articles were seized. The key and the pair of *chappal* were produced in the court. However, the mobile handset was not produced.

Nothing much is elicited from his cross-examination.

13. PW-8 Raju Devrukhkar was a pancha for seizure of the clothes of the deceased and the clothes of the Appellant. He was also a pancha for seizure of CCTV footage which showed that the Appellant had purchased two liquor bottles from Jiya wine shop. All these panchanamas are produced on record at Exhibits-46, 47 and 48 respectively.

14. PW-9 PI Sureshkumar Raut was the investigating officer. He deposed about the investigation conducted in the area. He visited the spot of the incident and prepared the spot panchanama at Exhibit-11. He recorded the statements of the witnesses including PW-10 Geeta. The panchanama of her flat was prepared which is produced on record at Exhibit-27. He seized three empty bottles of liquor and soil from her flat. He seized the clothes of the

deceased and clothes of the accused after his arrest. He supervised the recovery panchanama when the articles were recovered at the instance of the Appellant. He arranged for recording Geeta's statement U/s.164 of the Cr.p.c. He collected the CCTV footage from in front of Jiya wine shop. He collected the CDR. At the conclusion of the investigation, he filed the charge-sheet.

In the cross-examination, he stated that, it was the job of the Appellant to look after Sai Plaza building. The investigation revealed that the Appellant was with the deceased when the deceased was taken to the hospital. He admitted that, he did not verify whether the key recovered at the instance of the Appellant was of the motorcycle of the deceased. He denied the defence suggestion that the deceased was under the influence of liquor and fell down due to imbalance.

15. PW-10 Geeta Mogre is the most important witness. She is the sole eye witness in this case. She deposed that, she was working as a waiter at a bar in Kalyan. She was residing in flat No.203, Sai Plaza building. She met the Appellant when she had

been to Sai Plaza building to see the room. The Appellant was looking after the said building and was looking after the water supply. She started residing there. The Appellant himself gave her phone number to the deceased. PW-10 and the deceased became close. The deceased started visiting PW-10 Geeta's house. They used to have drinks together. They developed physical relations. He used to visit her house in about two to three days. On 22.07.2016, she was at home as she was not well for about four to five days. At about 4:00p.m. the Appellant came to her house and told her that Vinodkumar had called him to a *dhaba* for dinner. She informed Vinodkumar that she was not well and she would not come for dinner. At about 6:00p.m. Vinodkumar came to her house. He had brought one quarter bottle of liquor. Vinodkumar then called the Appellant on the phone and asked him to bring more liquor. The Appellant came there with liquor. Vinodkumar asked PW-10 to cook food. She asked for grocery articles. Vinodkumar then asked the Appellant to bring the grocery. The Appellant brought rice, dal, chilly, eggs etc. She deposed that, Vinodkumar told her that he had consumed excess liquor and,

therefore, not to prepare food. The Appellant put empty bottles in the dustbin. She deposed that, two days prior, the Appellant had come to her house and had told her not to allow Vinodkumar to come to her house. She had told the Appellant that they were in love and that he should not get involved in their relationship. She had told this conversation to Vinodkumar.

16. She further deposed that on 22.07.2016 when both of them had consumed liquor and while the Appellant was keeping the bottles in the dustbin, Vinodkumar questioned him as to why the Appellant had told PW-10 Geeta to stay away from Vinodkumar. He added that the Appellant's wife was having some objectionable behaviour involving one Pandit. Because of that conversation, there was a quarrel between them. Vinodkumar told the Appellant that he should set his house in order and that he should not interfere in Vinodkumar's affairs. There was a fight in the balcony. She deposed that the Appellant pushed Vinodkumar and, therefore, Vinodkumar fell from the balcony. She added that the Appellant was annoyed because Vinodkumar had said something about the Appellant's wife. The Appellant told PW-10

not to disclose this fact to anybody. He threatened her. In the scuffle, the soil in one of the pots had spread in the gallery. The Appellant pushed it aside and left the house. PW-10 then called one Pandit telephonically and made enquiries about the Appellant. After some time, the Appellant came there. He took the key of the motorcycle and the pair of *chappal* belonging to Vinodkumar. He told her that, he would inform the relatives of Vinodkumar. She then saw what was happening by standing in the balcony. At that time, nobody had gathered there. In the morning, the police came to her house. They made enquiries. She told them everything. The empty bottles and the earth were seized by the police. Her statement was recorded by the Magistrate. It is produced on record at Exhibit-58. She identified the Appellant through video conferencing. She identified the liquor bottles produced in the Court.

In the cross-examination, she admitted that, initially the police suspected her as having been involved in the crime. She had not lodged the report regarding the incident. She denied the suggestion that Vinodkumar accidentally fell from the gallery. She

admitted that, Vinodkumar was addicted to liquor. The police had already arrested the Appellant before they came to her house. The police had taken her to the police station as a suspect. She was in the police station for about one to one and half hour. She did not know whether there was any quarrel between the Appellant and Vinodkumar prior to the incident. Vinodkumar was staying at her house. The Appellant had his separate room and he was residing with his wife.

The learned Judge recorded that the bottles which were produced in the Court showed the manufacturing dates as 17.10.2021, 21.09.2021 and 26.09.2021. Thus, there was something obviously wrong, because the incident is from the year 2016. The deposition was recorded in the year 2022 and at that time those bottles were produced. Quite obviously the bottles were switched and they were not the original bottles seized from the spot. The learned Judge has considered this situation and has discarded the evidence of seizure of bottles and production of those bottles in the Court.

In her further cross-examination, she deposed that after visiting the police station, she went back to her house and again she was taken to one place; but she did not know that place. She corrected herself and stated that she was taken to that place directly from the police station. She denied the suggestion that the incident had not taken place as was described by her.

17. This is the oral evidence led by the prosecution. In addition, the prosecution produced the CA reports which show that the soil found on the *chappal* recovered at the instance of the Appellant i.e. his own *chappal* has the same soil which was found in PW-10 Geeta's flat's balcony. The CA report is produced on record at Exhibit-78.

This, in short, is the evidence led by the prosecution.

SUBMISSIONS OF MR. RAJESH BHOSALE, LEARNED COUNSEL FOR THE APPELLANT

18. Learned counsel submitted that, PW-10 Geeta is a wholly unreliable witness. She herself was a suspect. The conduct of PW-10 Geeta was quite unnatural. She had not immediately informed the incident either to the police or to the other residents of the

building. It was only after the police visited her house on the next morning, she told the story which was a concocted story. The police had detained her for a few hours. Then she was taken to some unknown place. It is quite obvious that, to save herself, she has deposed falsely against the appellant.

19. He submitted that the recovery evidence is also unreliable. If, according to the prosecution case, after the incident the Appellant had gone to PW-2 Ajaykumar who was a relative of the deceased, then it does not stand to reason that he would come to a distant place in the forest to conceal the articles. The articles were also quite innocuous. The *chappals* were his usual footwear. There was no question of any blood stains on them. Therefore, there was no reason for concealing those footwear. The prosecution has admitted that the investigating agency did not verify whether the key recovered at his instance matched with the deceased's vehicle. The mobile phone seized during the investigation is not produced on record.

20. There is a clear case of manipulation as being accepted

by the learned Judge because three liquor bottles which were produced in the Court showed that they pertain to the manufacturing of liquor in the year 2021, whereas, the incident is from the year 2016. Thus, the prosecution has manipulated the evidence.

21. In the alternative, the learned counsel for the Appellant submitted that, in any case, the offence would not be that of 'murder' as defined U/s.300 of the IPC. The case squarely falls within the *Exception 4* to Section 300 of the IPC. In addition, even *Exception 1* to Section 300 of the IPC will be attracted as there was grave and sudden provocation to the Appellant, because the deceased had uttered derogatory words against the wife of the Appellant casting aspersions on her character. He submitted that, there was no intention to cause death of the deceased. At the highest, it would be the offence punishable U/s.304(II) of the IPC. The Appellant is in custody since 23.07.2016. Almost ten years have been passed. Therefore, the offence be converted U/s.304(II) of the IPC and the sentenced be reduced accordingly.

SUBMISSIONS OF MS. SUPRIYA KAK, LEARNED APP FOR THE STATE

22. Learned APP, on the other hand, submitted that, PW-10 Geeta was a natural witness. She was in relationship with the deceased. She was also in close contact with the Appellant. She relied on the CA report which showed that the soil found on the balcony of PW-10 Geeta's flat matched with the soil attached to the footwear of the Appellant. It shows his presence in the balcony. She submitted that PW-10 Geeta's conduct was not unnatural. She was residing alone. It was natural that she would have got scared because of the incident. Moreover, she was also threatened by the Appellant. Therefore, it was not unnatural that she did not raise any shouts or did not inform the police.

23. Learned counsel for the Appellant relied on the evidence of recovery of the articles. However, the learned APP could not explain as to why the liquor bottles seized during the investigation were switched with three different bottles which were produced in the Court.

REASONS AND CONCLUSION

24. We have considered these submissions. The prosecution case rests mainly on the evidence of PW-10 Geeta. Since the deceased had visited PW-10 Geeta's house from where he had fallen down on the ground, it was not unusual that initially the investigating agency treated her as a suspect. But as the investigation progressed, their theory was clear. According to the prosecution case, the deceased was pushed by the Appellant. Therefore, we do not find fault with the evidence of PW-10 Geeta merely because she was treated as a suspect in the initial part of the investigation. The spot panchanama carried out in her flat at about 12:00p.m. on 23.07.2016 records her story which is similar to her deposition. Though, that part in the spot panchanama is not a substantive evidence, it only shows that at about 12:00p.m. on 23.07.2016 the police were already aware of the incident and the manner in which the deceased was pushed from PW-10 Geeta's flat. Therefore, in these circumstances, we do not see any reason to discard the evidence of PW-10 Geeta.

25. The incident had taken place in the night. PW-10 Geeta was staying alone. The prosecution has not brought on record as to who were the other residents of the building. The building was not fully constructed. She had started residing there only a couple of months before the incident. Therefore, it was not unusual that she was not in close contact with any other residents of the building. In these circumstances, PW-10 Geeta not seeking help from anybody else or not informing about this incident is not unnatural. Thus, on this ground, we are inclined to accept the evidence of PW-10 Geeta.

26. The sequence of evidence following the incident also supports PW-10 Geeta's deposition. Her statement recorded U/s.164 of the Cr.P.C. is produced on record at Exhibit-58. The said statement is also consistent with her deposition. For all these reasons, the evidence of PW-10 Geeta can be accepted in favour of the prosecution.

27. The next question is whether the offence would be of 'murder' as defined U/s.300 of the IPC or whether it would fall in

any of the exceptions as contended by the learned counsel for the Appellant.

28. The prosecution case as set out through the deposition of PW-10 Geeta shows that the deceased was having close relations with PW-10 Geeta. They had developed physical relations. The Appellant had introduced both of them. He was aware that the deceased was married and, therefore, he had cautioned PW-10 Geeta against keeping close contact with the deceased. It cannot be said that the Appellant was entertaining any malice or grudge against the deceased.

29. On the day of incident, the deceased had gone to the house of PW-10 Geeta at around 6:00p.m. The deceased himself had called the Appellant telephonically. The deceased had asked him to bring liquor with him. Subsequently, the deceased himself had told the Appellant to bring grocery articles. The Appellant had brought the liquor, as well as, the grocery as per the instructions. Both of them consumed liquor. The Appellant kept empty bottles in the dustbin. The deceased himself picked up a quarrel with the

Appellant by questioning him as to why he had told PW-10 Geeta not to keep contact with the deceased. The deceased himself further passed some remarks against the Appellant's wife with reference to her character. Thus, all along it was the deceased who was giving provocation to the Appellant and who had started the quarrel. Therefore, there was a sudden fight. The Appellant was not responsible for that fight. The fight took place in the balcony and in that scuffle, the Appellant pushed the deceased. From the spot panchanama and the photographs it is clear that the grill of the balcony was not of sufficient height and the deceased fell down. It is not the case of PW-10 Geeta that the Appellant lifted the deceased and threw him down. It was a push given by the Appellant. It has to be noted that, there was a fight between them. The height of the balcony was about 25ft. The deceased fell on his head which resulted in his death.

30. The subsequent conduct of the Appellant is also important. According to the prosecution case, the Appellant himself went to PW-2 Ajaykumar on the deceased's motorcycle. He informed PW-2 Ajaykumar about the fact that the deceased was

lying on the ground. PW-2 Ajaykumar has specifically deposed that the motorcycle which was with the Appellant was that of the deceased. Thus, the Appellant immediately took the vehicle which was available and went to call PW-2 Ajaykumar, who in turn, informed the others, and the deceased was taken to the hospital. Thus, the Appellant had not run away, but had tried to take the deceased to the hospital. PW-2 Ajaykumar's evidence shows that the Appellant helped others to take the injured to the hospital. His conduct shows that the Appellant tried to save the deceased. From this conduct and the history narrated above, it is quite clear that the Appellant did not have any intention to commit murder of the deceased.

Exception 4 to Section 300 of the IPC reads thus:

300. Murder. - ~~xxxx~~

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 having taken undue advantage or acted in a cruel or unusual manner.

31. The present case squarely falls within the said exception.

As discussed, the prosecution has failed to prove that the Appellant had acted with the intention to commit murder of the deceased. Therefore, as rightly submitted by the learned counsel for the Appellant, the case at the highest would attract the sentence under part II of Section 304 of the IPC. The Appellant can be attributed only the knowledge and not the intention.

Section 304 of the IPC reads thus:

“304. Punishment for culpable homicide not amounting to murder. --

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

32. As a result of the above discussion, we are of the opinion that the prosecution has proved the case against the Appellant for commission of the offence punishable U/s.304(II) of the IPC and

not for the commission of offence punishable U/s.302 of the IPC.

33. The maximum punishment for the offence punishable U/s.304(II) of the IPC is ten years or with fine or with both. Therefore, due consideration to the facts and circumstances will have to be given while imposing the sentence. In our opinion, the sentence of seven years of R.I. would meet the ends of justice in the facts and circumstances of the case. The Appellant is in custody since 23.07.2016. There are no criminal antecedents against him. The Appellant had tried to save the deceased.

34. Though, the Appellant himself went and informed the others, the prosecution has proved that he had threatened PW-10 Geeta not to disclose the offence to anyone else. As mentioned earlier, we are accepting the deposition of PW-10 and, therefore, the conviction and sentence U/s.506 of the IPC can be maintained.

35. As we have relied on the evidence of PW-10 Geeta and PW-2 Ajaykumar, it is not necessary to refer to the other corroborative pieces of circumstances and the lapses in the investigation. In any case, the recovery of the articles becomes

extremely doubtful. As mentioned earlier, the prosecution has not produced the mobile phone that was seized and had introduced three different bottles as is clear from the record. Therefore, these circumstances do not help the prosecution. As a result, the following order is passed:

O R D E R

- i) The Appeal is partly allowed.
- ii) The conviction and sentence recorded by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.325 of 2016 vide the impugned Judgment and order dated 03.06.2023, convicting the Appellant for commission of the offence punishable U/s.302 of the IPC, are set aside.
- iii) Instead, the Appellant is convicted for commission of the offence punishable U/s.304(II) of the IPC and is sentenced to suffer R.I. for seven years and to pay a fine of Rs.5000/- and in default to suffer R.I. for three months.
- iv) The conviction and sentence recorded for commission of the offence punishable U/s.506 of

the IPC are maintained.

- v) Both the sentences of the Appellant shall run concurrently.
- vi) The Appellant is given the benefit of set off U/s.428 of the Cr.P.C.
- vii) The Appellant is in custody since 23.07.2016 and, therefore, the substantive sentences are already over. In case the substantive sentences and in default sentences for non payment of fine are already over, the Appellant be released forthwith, if not required in any other case.
- viii) Before being released, the Appellant shall execute PR bond in the sum of Rs.15000/- U/s.481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in case an Appeal against acquittal is preferred by the State.
- ix) The Appeal is disposed of in the aforesaid terms.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)