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

**CONFIRMATION CASE NO.2 OF 2016**

The State of Maharashtra  
(Through Wanwadi Police Station)

... Appellant

Versus

Vishwajeet Kerba Masalkar,  
Age about - 25 years, Occupation Service,  
Resident at Champaratna Society, Building No.3,  
Flat No.4, Uday Baug, B.T. Kavade Road, Ghorpadi,  
Pune.

... Respondent

Mr. Arfan Sait, APP for State.

Ms. Payoshi Roy i/b. Dr. Yug Mohit Chaudhary for the Respondent.

**CORAM : B.P. DHARMADHIKARI &  
MRS. SWAPNA S. JOSHI, JJ.**

**DATE ON WHICH SUBMISSIONS WERE HEARD : 7<sup>th</sup> JUNE 2019  
DATE ON WHICH JUDGMENT IS PRONOUNCED : 23<sup>rd</sup> JULY 2019**

**JUDGMENT (PER SMT. SWAPNA S. JOSHI, J.):-**

1 This Appeal takes an exception to the judgment and order dated 26/31<sup>st</sup> August 2016 decided by the Additional Sessions Judge, Pune in Sessions Case No.64 of 2013, whereby the learned Additional Sessions Judge has convicted the respondent (hereinafter referred as “accused”, for the sake of brevity) for the offence punishable under section 302 of the Indian Penal Code and sentenced him to death and pay a fine of Rs.5,000/-

in default to suffer R.I. for one year. The convict was ordered to be hanged by neck till his death. The accused was further convicted for the offence punishable under section 307 of IPC and sentenced to suffer R.I. for 10 years and to pay a fine of Rs.10,000/- in default to suffer R.I. for one year. He was also convicted for the offence punishable under section 201 of IPC and was sentenced to suffer R.I. for three years and to pay a fine of Rs.5,000/- in default to suffer R.I. for six months.

2 The factual matrix of the prosecution case is as under :-

On 4<sup>th</sup> October 2012, Mr. Bajirao Mohite, ACP CID (PW14) who was on duty at Wanawadi Police Station, Pune, at about 7.45 pm, received a message from Police Control Room that theft has taken place at Champaratna Society, Uday Baug, Wanwadi. On receipt of the said information, he proceeded to the place of incident. The accused who was working as a Facility Executive in DTSS Company, Pune informed to the Police that theft has taken place in his house and his mother, wife and daughter have been killed. Similarly, his neighbour Madhusudan Kulkarni has been injured. PW14 - ACP Mohite entered the said information in the laptop carried by him and it was treated as a complaint (Ex.100). On the basis of the said complaint, offence was registered vide C.R. No.196/2012 under section 302 and 397 of IPC. In the said complaint, it was mentioned that one gold chain of 8 tolas, one gold mangalsutra, cash amount of

Rs.7,000/-, 3 small rings and 2 almond shape pendants total jewellery of Rs.3,07,000/- was stolen. ACP Mohite sent all three dead bodies to the hospital. So also he referred Madhusudan Kulkarni (PW12) for his medical treatment in the hospital. ACP Mohite visited the place of incident and recorded panchanama of the scene of offence (Ex.25).

3 ACP Mohite while recording the spot panchanama, observed that there were no marks of forceful entry on both the doors as well as safety doors of the flat. He also found inside flat no.4 belonging to the accused that behind photo frame hanged on the wall, one small mangalsutra, 3 small gold rings, 2 gold almond shape pendants and cash amount of Rs.7,000/- was found in one red colour money purse (Article – D). So also one ash colour money purse (Article - 12) was found lying in the flat of the accused. All those articles were taken charge by ACP Mohite from the flat no.4 belonging to the accused. Flat no.4 and the flat belonging to Kulkarni i.e. flat no.1 were adjacent to each other. At the place of incident near the main door of the flat of the accused, few pieces of bangles stained with blood and one blood stained odhani were found which was also taken charge by the Police. Thereafter, the inquest panchanamas of the 3 dead bodies were prepared by the Police, vide panchanamas (Ex.69 to 71) respectively. The statements of witnesses came to be recorded. During the course of investigation, it was noticed that neither there was a theft of gold



ornaments or cash from the house of the accused nor there was a forcible entry from any of the doors of the house of the accused or the adjacent house belonging to Kulkarni (PW12). It was also revealed that there was love affair between the accused and one Gauri Londhe (PW2). Therefore, the Police suspected that the accused might have committed murder of his wife, mother and child. So also, he must have injured Madhusudan Kulkarni as he might have noticed the said murder and therefore, accordingly, investigation was conducted and the accused was arrested by the Police, vide arrest panchanama Ex.103. ACP Mohite took charge of clothes of deceased Archana i.e. wife of the accused and his daughter Kimaya vide Ex.72. So also clothes of deceased Shobha i.e.mother of accused were seized vide Ex.105. The seized articles were sent for forensic analysis by the Investigating Officer. So also the post-mortem reports of the three deceased were secured by the Police. Dog squad also visited the place of incident during the course of investigation. The C.A. reports were taken charge vide Exhs.11 to 15. After completion of investigation, the charge sheet was filed in the Court of learned J.M.F.C. The case was committed to the Court of the learned Additional Sessions Judge. On recording of evidence and hearing both the sides, the Additional Sessions Judge convicted the accused as aforesaid.



4           The learned counsel for the applicant Dr. Yug Chaudhary along with Ms.Roy vehemently canvassed that the statement of the star witness PW12 has been recorded at belated stage, although he was conscious and oriented to give his statement before the Police. It was stated that the conviction is based only on the point of recovery of jewellery which was not identified by any of the witnesses more particularly PW5 who is father of the deceased Archana. Even the sister of accused has not been examined by the prosecution who would have thrown light on the aspect whether the said jewellery was belonging to her mother deceased Shobha. It is stated that the prosecution has failed to establish the link between the deceased Shobha, Archana and the jewellery allegedly found in the house of accused. It was further contended that the hammer, used in the offence, particularly to assault PW12 was not identified by him in the Court.

5           It was canvassed that when the dog squad was brought at the place of incident, the accused was present on the spot, however after smelling the things given to the dog, the dog went out of the flat for about 50 meters and then went 800 to 900 meters upto Railway crossing to find the culprit. It was stated that the said fact shows that some other person was involved in the offence. It was stated that the trial court framed charge u/s 34 of IPC, however, the accused was only found to be an offender. It was argued that finding of un-identified articles such as odhni, grey colour

purse and channi at the place of incident points out the involvement of another culprit.

6           The finding of blood on the hammer kept in a bag which was thrown in water appears to be improbable, according to the learned counsel. It was argued that even there is discrepancy in the description of colour of T-shirt of the accused, which was worn by him at the time of incident and seized by the Police. The defence did not dispute that there was love affair between the accused and PW2 and that the accused lodged FIR in respect of the incident. It is the case of the defence that the main intention of the culprit was to commit robbery, however during the course of robbery, murder had taken place in the house of accused and hence, he had lodged the complaint with the Police. It was urged that the prosecution has failed to connect the articles odhani, ash colour purse and chhanni found at the place of incident with the accused as no one has identified these articles as to whom they belong. It was stated that no motive has been proved by the prosecution. The case of the accused is that he simply wanted divorce from his wife. There was no reason to kill his wife as well his mother and child.

7           Per contra, the learned APP Mr. Sait contended that it was the accused who has set the investigation into motion. He himself has reported



to the Police that robbery had taken place in his house and during the course of the said robbery, murder was committed of his wife, mother and child. He also reported that one gold chain of 8 tolas, one gold mangalsutra, cash amount of Rs.7,000/-, 3 small gold finger rings and 2 almond shape pendants have been taken away by the culprits. The learned APP submitted that in fact spot panchanama (Exh.25) shows that except gold chain weighing about 8 tolas other articles were found behind the photo frame kept in a red colour purse which clearly indicates that the accused had lodged a false complaint in respect of the robbery in his house and further conduct of the accused shows that he himself had committed murder of his wife, mother and child. The learned APP submitted that recovery of hammer at the instance of accused, taken charge under section 27 of the Evidence Act pointed out towards his guilt. It was contended that even CCTV footage supports the case of the prosecution. It is submitted that the accused has attempted to commit murder of his neighbour PW12, who supported the family of the accused including his mother and sister. PW12 financially helped the sister of accused who was married. Ultimately, the APP urged for confirmation of the death sentence awarded to the accused.

8 In order to verify the rival contentions of both the sides, it would be advantageous to go through the evidence led by the prosecution.

9           The defence did not dispute the scene of offence, filing of complaint by the accused and his love affair with PW-2 – Gauri Londhe. During the course of investigation, it was revealed that the deceased Shobha i.e. mother of accused was working in the house of Madhusudan Kulkarni (PW-12). Madhusudan Kulkarni had transferred his entire property in the name of daughter of Shobha who was married.

10           It is also not disputed that deceased Archana, Shobha and Kimaya died a homicidal death. The cause of death of deceased Kimaya was due to asphyxia, due to smothering. The post-mortem report is at Exh. 53. Similarly, the cause of death of deceased Shobha Masalkar was due to traumatic and hemorrhagic shock, due to head injury. So also cause of death of deceased Archana was due to traumatic and hemorrhagic shock, due to head injury. In case of Kimaya, Medical Officer PW6 – Dr. Ajay Taware opined that if mouth and nose are pressed by hands, death due to smothering can be possible. He issued post-mortem report to this effect vide Exh.52. In case of Shobha Masalkar, opinion was given by PW6 that injuries mentioned in paragraphs 17 and 19 of the post-mortem report (Exh.54), are possible by assault by seized hammer (Article 24 K) and chhanni (Article 5). Similarly, PW6 deposed that in case of Archana Masalkar, the injuries mentioned in paragraphs 17 and 19 of post-mortem report (Exh.56) are possible by assault by seized hammer (Article 24 K) and chhanni (Article 5).



The inquest panchanama (Exh.71) of Kimaya Masalkar indicated that eyes of Kimaya were partially closed. In between both eyebrows, there was some abrasion. Whitish froth was seen coming out of her nose. So also near the right eyebrow there was a small blackish spot and on the upper lip internally there was a small injury.

11 Inquest panchanama of Shobha Masalkar (Exh.69) indicates that there were multiple injuries mainly over occipital region. The inquest panchanama of Archana Masalkar (Exh.70) indicates multiple injuries on her face and occipital region of the head and other parts of the body. The spot panchanama shows that all the articles in the house of the accused were in scattered condition. Behind photo frame of Keraba Masalkar, a red colour money purse was found containing an amount of Rs.7,000/-, one gold mangalsutra, three small gold rings and two small almond shape pendants. One gold chain weighing about 80 gms was missing. Various blood stains were found on the floor of the flat. So also one chhanni (weapon) about 6 inches in length and  $\frac{3}{4}$ <sup>th</sup> inch in width having eight angles was lying in flat no.1. Similarly, one odhani (chunni), pieces of bangles and one ash colour money purse was found at the place of incident. Thus, all the aforesaid facts indicate that deceased Kimaya, Shobha and Archana died homicidal death.

12 The prosecution case is based on direct evidence as well as circumstantial evidence. So far as the direct evidence is concerned, the prosecution heavily relied upon testimony of PW12 – Madhusudan Kulkarni. Rest of the evidence is circumstantial in nature. The prosecution further relied upon testimony of PW5 - Vijaykumar Sonpetkar, who is father of deceased Archana, PW2 – Gauri Londhe with whom the accused had love affair, PW4 – Deepak Patankar on the point of spot panchanama, PW8 – Haji Mastan Salim Shaikh who was the friend of accused, PW7 – Abhijit Shinde - friend of the accused who was working with him in DTSS Company Magarpatta, Hadapsar, Pune. On the point of medical evidence, the prosecution examined the Medical Officers PW13 who examined Madhusudan Kulkarni and PW16 – Dr. Tushar Madhavrao Kalekar who is Radiologist and examined PW12 – Madhusudan Kulkarni. The prosecution further examined PW6 – Dr. Ajay Taware who conducted the autopsy on the three deceased persons. In order to prove the recovery of hammer at the instance of accused, the prosecution examined pancha PW11 – Santosh Awaghade. The prosecution also relied upon testimony of PW10 – Pratik Shinde in whose presence clothes of accused and broken mangalsutra of his wife were taken charge. So far as the investigation is concerned, the prosecution relied upon the testimony of the Investigating Officer (PW14) – Bajirao Dadoba Mohite, A.C.P., C.I.D. On the point of motive, the prosecution examined PW2 – Gauri Londhe and PW5 - Vijaykumar

Sonpetkar. To prove the conduct of the accused, the prosecution placed reliance on the testimony of PW8 and PW7.

13 The investigation in the instant case initiated from the complaint lodged by the accused himself vide Exh.100. The accused stated that on 4<sup>th</sup> October 2012, as there was a marriage of his friend Haji Mastan Shaikh (PW8), he was on leave and therefore, he was at home. As it was raining heavily, the accused could not proceed for the marriage till 3.30 pm. At about 3.30 pm, he left his house he took an amount of Rs.1,000/- out of the amount of Rs.8,000/- which was in his house kept in the cupboard and left the house. According to the accused, he contacted his friends Kamble as well as Deepak Choudhary on mobile phone. The accused along with his friend Deepak Choudhary proceeded to meet Haji Mastan Shaikh (PW8) at about 5.30 pm. At about 6.00 pm, the accused visited his office and at about 7.45 he returned from the office to his house. It was dark. He found that safety door of his own house was in open condition, so also the door of the adjacent house belonging to Kulkarni was open. The accused first entered in the house of PW12 - Kulkarni and switched on the light. He found Kulkarni lying in the pool of blood on the bed kept in the hall of the house. On making enquiry with Kulkarni, Kulkarni informed him that he slipped down in the kitchen. The accused saw PW1 - Rajkumar Pawar, who was resident of the same building where the accused was staying. He made enquiry with

him whether he had seen anyone visiting the house of Kulkarni. Rajkumar Pawar then called the Chairman of the society so also other members of the society also rushed to that place. The accused then entered in his own house and switched on the light. At that time, he noticed his wife and mother lying on the floor in pool of blood. So also his daughter Kimaya was lying on the bed. The accused noticed empty jewellery box on the bed. The accused then informed the Police control room about the said incident. The Police recorded the complaint lodged by the accused about the murder and theft of the jewellery and cash amount of Rs.7,000/- (Exh.100).

14 PW14 - ACP Bajirao Mohite registered offence on the basis of the said complaint vide C.R. No.196 of 2012 under sections 302 and 397 of IPC.

15 The prosecution relied upon the testimony of PW12 – Madhusudan Kulkarni. The testimony of PW12 shows that he was residing in the neighbourhood of the accused. The mother of the accused viz. Shobha Masalkar was having a daughter namely Aboli who was married. According to PW12 there used to be quarrels between the accused on one hand and the mother of accused on the other hand. Accused was intending to marry another lady and he was to give divorce to Archana. PW12 and Shobha were against the accused on this aspect. On the date of incident i.e. 4<sup>th</sup> October 2012, when PW12 was in his house, after about 12 noon, he

heard noise of shouts and cries, he immediately came out. He noticed Kimaya and her mother were crying outside the house. PW12 made inquiry with them as to why they were crying outside the house. PW12 then came inside his house. Suddenly, someone hit on his backside by some weapon. PW12 felled down and noticed the accused holding hammer and was going away. Thereafter, PW12 became unconscious. He was admitted in the hospital for six days. Police recorded his statement. It is noticed that during the cross-examination of PW12 it was pointed out that the version of PW12 that accused was holding hammer in his hand and he saw him going away is an improvement made by PW12 before the Court. The said omission in the evidence of PW12 before the Court goes to the root of the prosecution case and it creates a serious doubt whether after receiving the injury on his head, PW12 noticed the accused while going away with the hammer in his hand. The evidence of PW12 is indicative of the fact that after 12.00 noon he noticed the deceased Archana along with her daughter Kimaya both crying standing outside their house.

16           It can be gathered from the testimony of PW12 that somebody assaulted him on his backside by some weapon. Deposition of PW12 also shows that he was admitted in Sassoon Hospital and after six days his statement was recorded by Police. Further part of the cross-examination shows that from the Police PW12 came to know that as the accused desired to marry with one Gauri Londhe he quarrelled with his wife Archana and

mother Shobha and killed them by means of hammer and smothered his daughter by a pillow to death. He also came to know that as the accused thought that PW12 would disclose the said incident to others, he assaulted him on his head by means of hammer and tried to kill him. The testimony of PW12 is found to be reliable one.

17           The prosecution examined PW5 – Vijaykumar Sonpetkar who is father of deceased Archana. The testimony of PW5 demonstrates that one and half years after the marriage, Archana happily cohabited with the accused. However, thereafter the accused started beating her on account that she is not cooking food properly. The accused was not allowing Archana to contact him on phone. Archana used to call him by using public phone and she used to inform about ill-treatment suffered at the hands of accused. Archana gave birth to twins. They both expired. PW5 stated that the accused stated to him that he had spent Rs.75,000/- for the treatment of Archana. Therefore, he demanded the said amount from PW5. PW5 could not fulfill the said demand due to his poor financial condition.

18           In the month of May 2012, PW5 visited the house of the accused along with his relatives and tried to convince him. However, the accused was not in a position to listen to them. The accused stated that he is going to take divorce with Archana as he is having love affair with another girl. The accused also threatened to kill Archana. The accused asked PW5 to

compel Archana to sign on the stamp paper. PW5 gave understanding to both Archana as well as accused and he returned to his village. In June 2012, the accused assaulted Archana and ousted her from the house. Therefore, Archana came to her parental house and informed about the said fact to her father. At that time, accused took custody of his daughter and did not allow Archana to take her child with her and he himself kept custody of his daughter. PW5 stated that his daughter Archana informed him that accused is having love affair with another girl and he was talking with her on phone during late night hours. On 18<sup>th</sup> July 2012, as Archana was having a feeding child, PW5 reached the house of accused with his younger son. On 4<sup>th</sup> October 2012, PW5 received on telephonic message from one Anil Mhaswadekar that decoity has taken place in the house of the accused in which Archana was killed. The testimony of PW5 makes amply clear that his daughter Archana used to complain about the accused that he is having love affair with one girl. So also the accused used to ill-treat Archana for the said reason. He also threatened to kill Archana. The accused had also asked Archana to sign on the stamp paper (Ex.31).

19           At this juncture, it will be appropriate to peruse the stamp paper produced by the prosecution vide panchanama Exh.33. The said stamp paper shows that as there were disputes between Archana and the accused and as he was having love affair with another girl he wanted to marry with her. Archana decided to separate herself from the accused and

for that purpose, the accused promised to transfer 5 Acres of land in her name. Archana expressed her 'no objection' allowing accused to marry with another girl. Significantly, stamp paper was taken charge by Police from the cupboard kept below the T.V. Thus, stamp paper also supports the allegations of PW5 against the accused that the accused was having love affair with another girl and therefore, he wanted to get rid of Archana and accordingly, he insisted her to give divorce to him. The testimony of PW5 is not shattered in his cross-examination. PW5 admitted that he did not lodge complaint against the accused. Evidence of PW5 shows that accused used to ill-treat Archana. PW5 is found to be a trustworthy witness. It was argued by the learned Advocate for the accused that although the search of house was taken on 4<sup>th</sup> October 2012 no stamp paper was taken charge and it was seized on 15<sup>th</sup> October 2012 in the presence of PW3. In this context, it can be said that at that point of time Police might have not taken inspection of the documents.

20 Evidence of PW2 - Gauri Popat Londhe examined by the prosecution shows that the accused was in love with the said lady. The testimony of PW2 shows that she was serving in the same Company where the accused was working as Site Manager. The accused used to call her on her mobile number, so also he used to send SMS. The accused promised to marry her. The accused also asked PW2 not to marry with another boy. Once the accused disclosed to PW2 that he was already married and was

having one daughter. He however, clarified that the relations between him and his wife were strained and his wife used to quarrel with him. Thereafter PW2 refused to marry with the accused. The accused still insisted PW2 to marry with him. He used to repeatedly contact her on mobile phone and send SMS to her and pressurised her for marriage. The accused informed PW2 that he will divorce his wife or else kill her. PW2 deposed that she suggested him not to kill anyone and she refused to marry with him. On 1<sup>st</sup> October 2012, the accused took PW2 to Kondhawa and they both stayed together in one hotel. According to PW2, the accused said that if they will not die by consuming medicine then great problem will be created. The accused informed to PW2 that he will transfer 5 Acres of agricultural land in the name of his wife and give divorce to her. The accused then left her to her house. At that time also PW2 refused to marry with the accused. Thus, the testimony of PW2 and PW5 indicate the motive of the accused. It appears that the accused was madly in love with PW2 and therefore, he used to ill-treat his wife Archana and he had threatened to kill her.

21 On 4<sup>th</sup> October 2012, PW2 received a phone call from the accused stating that he wanted to attend marriage of his friend Haji. His mother had already gone to attend the said marriage and subsequently, he would attend the same. The accused asked her whether their love affairs would be successful and also informed that he is ready to marry with her. At that time, PW2 disconnected his phone. At about 4.30 pm, PW2 again



received phone call of the accused. He informed that the marriage of Haji was performed, however, as one of his relatives died therefore, the said marriage was not properly performed. The accused told PW2 as to how the love of Haji succeeded. PW2 then disconnected the phone. At about 5.30 pm she saw two missed calls of the accused, therefore, at 6.30 pm she called the accused. At that time, he informed that he was proceeding to his office. At about 7.30 pm, PW2 again gave a missed call to the accused, however, the accused did not reply to the said missed call. At about 10.30 pm, the accused informed her that there was a problem in his house and he will call her lateron. In the extensive cross-examination, PW2 admitted that when the accused met her for the first time, he took her to a lodge and they established sexual relationship in the lodge. Evidence of PW2 shows that PW2 and accused were in love with each other and they were in physical relationship. The said testimony also indicates that although PW2 was aware that the accused was a married person, she was involved in him and also they were in contact with each other on mobile phone. Testimony of PW2 corroborates with the testimony of PW5, on the aspect of accused having love affairs with PW2. So also the behaviour of the accused with Archana and that he wanted to take divorce from her. Testimony of PW2 was assailed during her cross-examination on the point of her fidelity and establishing sexual relationship with accused, which she admitted. The

evidence of PW2 is not shattered in the cross-examination on material aspects.

22 In order to prove the spot panchanama, the prosecution examined PW1 – Rajkumar Pawar. The spot panchanama shows that there was a common safety door for flat no.4 belonging to the accused and there was also a wooden door to the said flat. The said door was in open condition. There was no indication that the said door was opened forcefully so also there was no evidence that the door of flat no.1 was opened by using force. Windows of flat no.4 were in closed condition. There was a photo hanging on the wall. At the backside of the said photo frame, one red colour purse was found. It was containing the amount of Rs.7,000/-, one small mangalsutra, three small gold rings and two gold almond shape pendants. Police took charge of those articles and sealed it by affixing lable bearing the signatures of the panchas and Police. There was a showcase in the bedroom of the house. All the articles were intact in the said cupboard. The blood was lying on the floor. Similarly one chhanni of 6 inches in length and having 8 angles was seen in flat no.1 belonging to Kulkarni. So also in the said flat also, blood was found on the floor. Chhanni was taken charge by the Police under panchanama.

23 Spot panchanama demonstrates that no forceful efforts were made by anyone to open the door of either flat no.4 or flat no.1. So also

jewellery and cash were found behind the photo frame in the house of the accused indicating that no robbery had taken place in the said flat. It appears that no outsider has entered inside the house of the accused. It is worthwhile to note that the FIR filed by the accused shows that same articles were shown as missing from his house. Except the gold chain weighing 8 tolas which was never traced out, was found in the house of accused itself. The accused offered no explanation for the same. The said circumstances go against the accused.

24 In order to show conduct of the accused prior to the incident and after the incident, the prosecution examined PW8 and PW7. PW8 – Haji testified that he was knowing the accused since his childhood. Two months prior to the incident, PW8 visited the house of the accused and at that time, the mother of the accused told PW8 – Haji that the accused is not behaving properly and he used to return home in drunken condition and he wanted to marry another girl. The mother of the accused requested PW8 to convince the accused on the said aspect. Accordingly PW8 tried to convince the accused. However, the accused did not respond to the suggestions of PW8. On 3<sup>rd</sup> October 2018, the accused met PW8 as the marriage of PW8 was to be performed on the next date at Kondhawa. The accused informed him that he would attend his marriage and he had already taken leave for the same. PW8 stated that he requested the accused to attend his marriage along with his mother, wife and children. Significantly, PW8 stated that he

had only seen mother of the accused attending the marriage and accused, his wife and children were absent. On 4<sup>th</sup> October 2012, at about 8.15 pm, he received telephonic message from one Atlam Kamble that theft has taken place in the house of accused and someone has killed his mother, wife and daughter.

25 Evidence of PW8 shows his contact with the accused prior to the date of incident. Accused had taken leave on 4<sup>th</sup> October 2012 on the pretext of marriage of his friend PW8, however, he did not attend the said marriage. PW8 had not seen accused attending his marriage and only mother of the accused attended the said marriage. So also wife and child of the accused were absent during the said marriage. The testimony of PW8 further shows that mother of the accused had complained PW8 about the behaviour of the accused in the house and that he wanted to perform marriage with another girl. She also requested PW8 to convince the accused. However, the accused did not give any response to the advice given to him by PW8. There is nothing to disbelieve the testimony of PW8. It corroborates the evidence of PW2 to the effect that accused was having love affairs with one girl and he wanted to marry with her. His testimony also strengthens the case of prosecution that on the date of incident the accused had already taken leave however, he did not attend the marriage of PW8 whereas the mother of accused was present in his marriage.

26 PW7- Abhijit Shinde deposed that the accused was his friend. They were working together with D.T.S. Company Magarpatta, Hadapsar, Pune. Two years prior to the incident the accused was transferred to Flame Campus, Bavdhan as Facility Manager. His testimony further shows that Gauri Londhe (PW2) was working as Supervisor in Flame Campus, Bavdhan. There was love affair between Gauri Londhe and the accused. PW7 stated that he tried to give understanding to the accused that he is A married person having daughter and he should not get involved with that lady. PW7 stated that the accused told him that his relations with his wife were not good and he wanted to give divorce to her and then get married with Gauri Londhe.

27 According to PW7, on 4<sup>th</sup> October 2012, at about 6.15 to 6.30 pm, the accused along with Deepak Choudhary visited his office. He stated that on that day the accused had not attended his duty. He asked the accused to hand over one parcel to the office of Vodafone at Hadapsar. However, the accused stated that he is in hurry and he is not able to hand over any parcel. At that time, he wanted to reach his house earlier. At 7.30 pm, PW7 received telephonic message from the accused that his wife and mother are lying in injured condition. The accused was crying on phone. The testimony of PW7 shows that the accused was having love affair with

Gauri Londhe. On the date of incident the accused was on leave and he visited the office at about 6.15 to 6.30 pm.

28 The evidence of PW8 that accused did not attend his marriage indicates that the accused was at home. The accused in Question No.47 of his statement recorded u/s.313 of Cr.P.C., did not dispute the fact that his mother went for marriage and he was to proceed later on. This fact again indicates the presence of the accused in his house in the afternoon.

29 As far as the medical evidence is concerned, as discussed above, PW12 – Madhusudan Kulkarni had received injuries on his head whereas all three deceased were declared to be dead as they had sustained injuries. Testimony of PW13 – Dr. Abhijit Bele, Medical Officer shows that on 4<sup>th</sup> October 2012, he examined PW12 – Madhusudan Kulkarni. On examination he found contused lacerated wound on the occipital region. There were two injuries on his head. The patient was conscious but not oriented. PW12 was hospitalized till 17<sup>th</sup> October 2012. On 10<sup>th</sup> October 2012 as the patient was conscious and oriented his statement was recorded. PW13 made endorsements on the statement of PW12 on Exh.91 and 92 respectively. PW13 had deposed that patient had two injuries on occipital parietal region admeasuring 3 x 1 x 1 cm and 2 x 1 x 1 cm respectively. According to



PW13, the injuries sustained by PW12 are possible by hammer (Article 24K).

30 PW13 further deposed that apart from other Radiology examination the patient was referred for C.T. Scan. According to PW13, the C.T. Scan indicates grievous injuries. PW13 clarified during his further examination-in-chief by the prosecution that C.T. Scan report indicates grievous hurt and not simple hurt as mentioned by him in Exh.93. Thus, the testimony of PW13 clarifies that till 10<sup>th</sup> October 2012 the statement of PW12 was not recorded. It is significant to note that the age of PW12 at the time of his evidence was 81 years old which means that at the time of incident in October 2012, PW12 was about 78-79 years old. Considering the said aspect and also considering that PW12 had received grievous injury to the occipital region, it appears that Police has recorded his statement on 10<sup>th</sup> October 2012. The portion marked – A (Exh.127) in the statement of PW12 shows that it was mentioned in the statement before the Police that there was grievous injury to his head, he was not remembering anything therefore, at that time, he did not tell anything to the Police. No doubt the said fact is denied by PW12. The testimony of PW12 coupled with the testimony of PW13 explicits that PW12 was hospitalized till 17<sup>th</sup> October 2012 and on 10<sup>th</sup> December 2012 when the patient was conscious and well-

oriented, the Police recorded his statement. According to Investigating Officer PW14, PW12 was not in a position to speak till 10<sup>th</sup> December 2012.

31 PW6 – Dr. Ajay Taware conducted autopsy on the dead bodies of Kimaya Masalkar, Shobha Masalkar and Archana Masalkar respectively. On 5<sup>th</sup> October 2012, PW6 conducted autopsy on the dead body of Kimaya. On examination of the dead body of Kimaya, he noticed oozing of whitish froth from nose and her finger nails were cyanosed. The following injuries were found on her body:-

- (i) Abrasion over nasion of face, of size 0.5 x 0.5 cm. Red in colour.
- (ii) Contusion of size 0.5 cm. Lateral to right eye brow of size 0.5 x 0.5 – Blue in colour.
- (iii) Laceration over frenulum of upper lip 0.5 x 0.5 cm. Subcut deep. All the above injuries were anti mortem and fresh.

32 PW6 opined the cause of death as death due to asphyxia due to smothering. He issued post-mortem report at Exh.52. PW6 categorically stated that if a person takes the last meal at about 12.00 noon, then the stomach findings would show semi-digested food material between 2 to 4 hours of the last meal. He further clarified that if the death is caused between 2.00 to 4.00 pm, the findings of semi-digested food in the stomach is possible, if the meal is taken at about 12.00 noon. PW6 deposed that the

post-mortem of Kimaya was conducted in between 10.00 am to 11.00 am. The advance cause of death was opined by PW6 at Exh.53.

33 PW6 then conducted post-mortem on the dead body of Shobha Masalkar in between 11.00 pm to 12.00 noon on the same day. On external examination, PW6 noted the following injuries:-

- (i) Contused lacerated wound 0.5 cm above right eye brow, horizontal 4 x 1 cm. Bone deep.
- (ii) Contused lacerated wound 6 cm. Above left ear, over left ear, over left parietal region of head 3 x 2 cm bone deep, underlying bone fractured, vertically oblique.
- (iii) Contused lacerated wound, over right occipital region of head, 3 x 2 cm. Bone deep, underlying bone fractured vertically oblique.
- (iv) Contused lacerated wound, over mid parietal region of head, posterior aspect, horizontal, 3 x 1 cm., bone deep, underlying bone fractured.
- (v) Contused lacerated wound, 3 cm below and left lateral to injury No.4, 3 x 1 cm. Bone deep, underlying bone fractured.

34 On internal examination of head, he noticed haematoma in the scalp over left parietal region 5 x 4 cm, mid parietal region 6 x 5 cm and occipital region 10 x 8 cm, dark red in colour. He noticed displaced fracture running from left parietal region to mid occipital region, 16 cm in length. Subdural haematoma of size 16 x 8 x 0.5 cm was seen over occipital lobe.

Subdural haematoma of size 4 x 4 x 0.5 cm was seen over frontal lobe of right side. According to PW6 all the injuries were anti mortem and fresh. The cause of death was due to hemorrhagic shock, due to head injury. He issued post-mortem report Exh.54. According to PW6 injuries mentioned in post-mortem were sufficient to cause death in ordinary course of nature and the injuries were possible by hammer (Article 24K) and chhanni (Article 5).

35 PW 6 conducted post-mortem on the dead body of Archana Masalkar in between 12.00 to 1.00 pm. On examination, he pointed out the following injuries :-

- (i) Contused lacerate wound 6 cm. above and behind right ear, horizontal, 3 x 1.5 cm bone deep.
- (ii) Contused lacerated wound 8 cm. Anterior and above injury No.1, 1 x 1 cm. Bone deep.
- (iii) Contused lacerated wound over mid occipital region 4 x 2 cm. Bone deep.
- (iv) Contused lacerated wound 1 cm. Below and right lateral to injury No.3, admeasuring 2 x 1 cm. Bone deep.
- (v) Contused lacerated wound over right parietal region of head 3 x 3 cm. Bone deep.
- (vi) Contused lacerated wound over mid parietal region of head, 5 cm. Behind injury No.5, admeasuring 3 x 1 cm. Bone deep.
- (vii) Contusion over right arm upper one third region medial aspect 3 x 1 cm. Bluish black.
- (viii) Abrasion over right elbow, 1 x 0.5 cm. Reddish.

- (ix) Contusion over right wrist, dorsally, lateral aspect 1 x 0.5 cm. Bluish black.
- (x) Contusion over base of right little ringer dorsally 2 x 0.5 cm. Bluish black.
- (xi) Contusion over base of left little and ring finger dorsally 1 x 0.5 cm. Blue.

36 According to him, the cause of death was due to traumatic and hemorrhagic shock and due to head injury. PW6 - Dr. Ajay Taware stated that if a person takes last meal at 12 noon then stomach findings show semi-digested food material between 2 to 4 hours of the last meal. According to him, the injuries mentioned in paragraphs 17 to 19 of the post-mortem report (Exh.56) can be possible by assault by hammer (Article 24K) and chhanni (Article 5). Thus, the ocular testimony of PW12 is consistent with the medical evidence adduced by PW6. Similarly, the testimony of PW6 clarifies that deceased Kimaya died due to asphyxia, due to smothering whereas death of deceased Shobha and deceased Archana Masalkar was due to traumatic and hemorrhagic shock, due to head injury. The injuries on the dead body of Shobha and Archana were caused due to hammer (Article 24K) and chhanni (Article 5).

37 Now coming to recovery at the instance of accused, the prosecution heavily relied upon testimony of PW 11. On 6<sup>th</sup> October 2012, PW 11 was required to act as a panch. According to him, the accused made

a voluntary statement that he had hidden hammer in a canal at B.T. Kawade Road and showed his willingness to show that place. Accordingly, Memorandum of Panchanama was drawn (Exh.83). Accused led Police and panchas to the said place at B.T. Kavade Road and then to the canal near one temple. Police called for two swimmers. Those swimmers took out one bag containing hammer from the canal. The said hammer (Article 24K) was seized by Police under panchanama (Exh.84). The veracity of the witness was attacked during his cross-examination on the ground that the accused was handcuffed at that time hence, it cannot be termed as discovery under section 27 of the Evidence Act and the said circumstance is of no assistance to the prosecution. In our considered view this cannot be a reason to discard the evidence of PW11, which corroborates with the evidence of panch witness and the Investigating Officer. The learned APP placed reliance upon the judgment in case of *Putlabai Bhimashankar Pattan v. State of Maharashtra*<sup>1</sup>, wherein the same view has been taken by this Court. The aforesaid discovery of the hammer in a canal, which was within the exclusive knowledge of the accused, supports the case of the prosecution as such.

38 On the point of seizure of clothes of accused, the testimony of PW10 shows that on 6<sup>th</sup> October 2012, the Police called him to act as a panch. The accused showed his willingness to point out the place where he

1. 2010 All MR (Cri) 2084

had hidden burmoda, T-shirt and broken mangalsutra. Accordingly, memorandum panchanama was drawn (Exh.80). The accused led Police and panchas to the place at M.B. Stall, Hadapsar and then in front of Gate No.2 of Spika Company. The accused then took out from beneath the shrubs one plastic bag containing burmoda having blood stains, one T-shirt with blood stains and one broken mangalsutra. Police took charge of the said articles under panchanama (Exh.81).

Nothing damaging was elicited during the cross-examination of this witness.

39 It was the contention of the learned counsel for the accused that none of the witnesses have stated about accused wearing those clothes at the time of incident. It is already discussed above that the present case is based upon circumstantial evidence. Hence, there is no question of anyone seeing the accused wearing those clothes at the time of incident.

40 It is undisputed fact that the accused himself reported the matter to the Police about the commission of robbery in his house and finding of dead bodies of his mother, wife and child. In case of the FIR lodged by the accused the law is very well settled. Confessional part of the FIR is not admissible in evidence except to the extent permissible under

section 27 of the Evidence Act. Non-confessional part of the FIR however can be used against the accused as evidence of conduct under section 8 of Evidence Act.

41 In case of *Bheru Singh s/o Kalyan Singh vs. State of Rajasthan*<sup>2</sup>, it is held by the Hon'ble Apex Court that where FIR is given by accused himself to a Police Officer and amounts to confessional statement, the proof of confession is prohibited by section 25 of the Evidence Act. No part of the confessional statement can be proved or received in evidence, except to the extent it is permitted by section 27 of Evidence Act. The FIR recorded under section 154 of Cr.P.C. is not a substantive piece of evidence. It may be used to corroborate the informant under section 157 of the Evidence Act or to contradict him under section 145 of the Evidence Act, in case the informant appears as a witness at the trial. Where the accused himself lodges the FIR, the fact of his giving the information to the Police is admissible against him as evidence of his conduct under section 8 of the Evidence Act and to the extent it is non-confessional in nature, it would also be relevant under section 21 of the Evidence Act but the confessional part of FIR by the accused to the Police Officer cannot be used at all against him in view of the ban of section 25 of the Evidence Act.

2 (1994) 2 SCC 467

42 In the instant case, the FIR (Exh.100) discloses that the accused reported to the Police that at about 3.30 pm, he left his house. He along with his friend Deepak Choudhary proceeded to meet PW8 - Haji Mastan Shaikh at about 5.30 pm. At about 6.00 pm he visited his office and at about 7.45 pm he returned from his office to his house and at that time, the accused first entered in the house of PW12 - Kulkarni and he saw him lying in the pool of blood on the bed which was kept in the hall of the house. In our considered opinion, the contention of the accused that at 5.30 pm he went to meet PW8 - Haji has no corroboration from the evidence of Haji. PW8 - Haji categorically stated that mother of the accused attended his marriage and he had not seen the accused at that time. PW8 nowhere says that the accused met him in the evening at 5.30 pm. The FIR however reveals that the accused made inquiry with PW12 - Kulkarni and PW12 informed that he slipped down in the kitchen and therefore, he received injury. As against this, evidence of PW12 shows that it was the accused who assaulted him on his head by means of hammer. However, the fact remains that the accused reported that PW12 - Kulkarni informed him that he slipped down in the kitchen and therefore, he received injury appears to be a false statement given by the accused. Furthermore, on seeing darkness in both the flats, electric lights were off, entering of the accused in the house of PW12 first in point of time on returning home at about 7.45 pm although it was dark in his house, also appears to be unnatural conduct on his part.

Under normal circumstances, accused should have entered in his own house as there was a small child in his house and old mother and then to his neighbour's house, particularly when he found that the safety door of his house was in open condition. The accused instead of entering into his house made inquiry with his other neighbour PW1 – Rajkumar Pawar, whether he had seen anyone visiting house of Kulkarni (PW12) and after gathering of the other society members, entered his house. The said fact shows that the accused deliberately gathered the people and thereafter in front of them entered inside his own house, switched on the light and then he noticed his wife and mother lying in the pool of blood and daughter Kimaya lying on the bed. The said unnatural conduct of the accused certainly goes against him. It simply indicates that accused wanted to make a farce that he was unknown about the said incident.

FIR further shows that the accused noticed empty jewellery box found on the bed and thereafter he informed about the said incident to the Police. Significantly, the jewellery which was informed by the accused missing from his house particularly mangalsutra, three small gold rings, two almond shape pendants and an amount of Rs.7,000/- all those articles were found hidden behind the photo frame affixed on the wall of the house which must be within the knowledge of the accused. The gold chain weighing about 8 tolas was never traced out by the investigating agency indicating thereby that accused falsely reported about the said chain.

43 In this context, a useful reference of the guidelines issued by the Hon'ble the Apex Court in case of *Aghnoo Nagesia v. State of Bihar*<sup>3</sup> will be necessary. It was observed by the Hon'ble Apex Court that where the accused himself gives FIR, the effect of his giving information is admissible against him as evidence of his conduct under section 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under section 21 of the Evidence Act and is relevant.

44 In case of *Pawan Kumar @ Monu Mittal v. State of Uttar Pradesh and Anr.*<sup>4</sup>, in paragraph 28 of its judgment, the Hon'ble Apex Court observed thus :

“The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.”

45 Considering the contents of FIR (Exh.102), it is observed that it is not in the form of confession however, it can be duly considered as admission under the Evidence Act.

3 AIR 1966 Mh.L.J. 113: 1966(1) SCR 134

4 2015 Cr.L.J. 2418

46 In case of *Thakarda Lalaji Gamaji v. The State of Gujarat*<sup>5</sup>, it is held by the Hon'ble Apex Court that FIR lodged by the accused can be used by the prosecution to show motive and presence of accused at the scene of occurrence. In the case of *Mohan Lal and Anr. v. Ajit Singh and Anr.*<sup>6</sup>, it was held that acceptance of inculpatory portion of the accused's statement not improper where the evidence on record disproves the exculpatory portion of the accused's statement. In the instant case, the accused has lodged a false FIR in respect of the commission of robbery of jewellery and the cash amount from his house, which is found to be a false reporting to the Police. In view thereof, the statement of the accused with regard to the fact that on the date of incident he was at home can be certainly accepted. In that case, the case of the accused is that at about 3.30 pm he left the house and when he returned home at 7.45 pm he saw the dead body of his relatives, appears to be a false statement given by him and in that case, the burden shifts on the accused to show that at the time of incident he was not present in the house.

47 The accused has misdirected the investigation. In this context, a useful reference can be made of the judgment, in case of *Rumi Bora Dutta v. State of Assam*<sup>7</sup> wherein, it is held by the Hon'ble Apex Court that

5 (1974) 3 SCC 639

6 (1978) 3 SCC 279

7 2013 SC 2422

false grounds taken by the accused is also incriminating circumstance against him. In case of *State of Maharashtra v. Suresh*<sup>8</sup>, it was held that false answer offered by the accused when his attention was drawn to the circumstances, it renders circumstances to be of inculpatory nature. In such circumstances, a false answer can be counted as missing link for completing the chain. In the instant case also the accused has lodged totally a false complaint that robbery was committed in his house, when those articles were found in his house itself hidden behind the photograph hanged on the wall. So also in a question put up to him under section 313 of Cr.P.C., on the point of recovery the accused stated that his signature was taken on a blank paper neither he offered any answer to the questions put up to him nor he stated that the said factum of recovery at the place of incident was false.

48 Suffice it to say that the FIR lodged by the accused, is not inculpatory in nature and it could be read as evidence under section 27 of the Evidence Act, in order to prove the conduct of the accused under section 8 of the Evidence Act.

49 The meticulous scrutiny of the testimony of PW12 shows that at the time of incident, PW12 was residing at Champaratna Society in his own flat. At that time, PW12 was retired from his service in Railway. He was

8 1999 Supp(5) SCR 215

residing alone. His wife died prior to 30 years and he had no issue. The family of accused used to reside in his neighbourhood. Shobha used to do work of cleaning utensils. She was also working at his house. Shobha was having one daughter namely Aboli. PW12 had helped Shobha in marriage of her daughter Aboli. There used to be quarrels between accused on one hand and his mother and wife on the other. Accused was intending to marry another lady and he was intending to give divorce to Archana. Shobha and PW12 were against this as accused was already married. It is further stated that PW12 heard noise of shouts and cry after 12.00 noon and noticed deceased Archana along with her daughter Kimaya standing outside their house and they both were crying. The said fact indicates that at the relevant time Archana as well as her daughter Kimaya were alive and they both were crying. It also indicates that there was some quarrel going on in their house and therefore, they were crying. In this context, it is worthy to note that the mother of accused had already left the house at about 8.30 am as reflected in the FIR (Exh.100) and it appears that she returned home about 2.00 to 2.30 pm and thereafter the incident had taken place.

The evidence of PW12 explicits the presence of accused in the house and quarrels with wife. The fact remains that as per the FIR lodged by the accused as he was on leave on that day, for attending the marriage of his friend Haji, he was at home. The evidence of PW12 shows an improvement on the aspect that he as well as Shobha were against the

accused as he wanted to give divorce to Archana and marry with another lady. However the said fact is not at all in dispute. The testimony of PW12 further shows that he received head injury by hammer. There is an improvement with regard to the fact that accused was holding the hammer and PW12 saw him going away. The said omission no doubt creates a serious doubt about PW12 seeing the accused assaulting him. The fact however remains that the circumstances on record show that it was none else than the accused who assaulted PW12. The deposition of PW12 thus shows that there used to quarrels between deceased Archana and Shobha at one hand and the accused on the other side as the accused was intending to give divorce to Archana and get married with another lady. From evidence of PW12 it also appears that there was quarrel in his house and therefore Archana came out of their house with her daughter and they were crying, indicating thereby that all was not well in the house of accused on the date of incident. Significantly PW12 was owner of flat no.1 and he was all alone. He used to extend financial help to the family of accused. He helped Shobha in the marriage of her daughter. Thus, PW12 was financially sound. In these circumstances, it is not digestible that the robbery would take place in the house of accused instead of house of PW12.

50            Now, coming to the medical evidence of PW13, it shows that the injuries received on the occipital region of PW12 were grievous in

nature and were possible by hammer (Article 24K). The Medical Officer (PW13) has categorically stated that the injuries were sufficient to cause death in ordinary course of nature, if they were not treated in time.

51           The deposition of the Medical Officer - PW6 his evidence makes amply clear that as the semi-digested food was found in the stomach of dead bodies of Shobha and Archana, it indicates that meal was taken by them at about 12.00 noon and their death was caused in between 2.00 to 4.00 pm. Thus, if at all death was caused between 2.00 to 4.00 pm as per the evidence of PW6 – Medical Officer Dr. Taware, in that case the burden shifts upon the accused to explain under what circumstances the death of his wife, mother and child is caused, as according to him he left the house at about 3.30 pm. In this context, it is worthwhile to note that no one had seen the accused leaving his house at about 3.30 pm. There is absolutely no evidence on record to show that the accused left his house on that day at about 3.30 pm. Even assuming that the accused left his house at 3.30 pm still the fact remains that death of the deceased has been caused in between 2.00 to 4.00 pm as per the medical evidence indicating thereby that accused left his house after commission of the murder.

52           The only evidence available on record is of PW7 - Abhijit Shinde which shows that the accused has visited his office in between 6.15 to 6.30 pm. There is no evidence on record to show that prior to 6.30 pm

the accused was out of his house. To put it in other words, there is no evidence on record that in between 3.30 to 6.15 pm the accused was not present in his house. If at all it is the case of the accused that he was on leave on that day and he had left his house at about 3.30 pm and if he fails to discharge the said burden, it is presumed that the accused was present in his house, till he reached his office at 6.15 pm. There is no evidence on record to show the distance between the house of the accused and the office and how much time was taken by him to go from one place to other and the said fact remains unexplained.

53 It is worthwhile to note that the recovery of hammer at the instance of accused which is established by the prosecution beyond reasonable doubt makes amply clear the involvement of the accused in the present case. Similarly, chhanni which was found at the place of incident also strengthens the case of the prosecution that chhanni was used while committing the present offence of murder of Shobha and Archana while PW12 – Kulkarni though was assaulted, survived. The medical evidence well supports the prosecution case. So also the blood stained clothes of the accused clearly indicate his involvement in the offence.

54 CA report Ex-14 indicates blood of A group of deceased Archana. Significantly, blood of A group was found on the clothes of Archana, Kimaya and the burmoda pant belonging to the accused for which

the accused had offered no explanation. It is not the case of the accused that he had received any injury on his body. The said blood of deceased Archana was of A group. CA report also shows that the clothes of Shobha were stained with blood of AB group whereas the clothes of Archana and the clothes of the accused were stained with A group. No doubt, the blood group of Shobha was not detected by the CA office. However, the fact remains that the accused failed to explain as to why the blood of A group was found on his clothes. Needless to mention that the blood group of the accused was not determined and the reasons remained inconclusive.

#### MOTIVE

55 The testimony of PW2 shows that there were love affairs between the accused and PW2 and though PW2 was engaged with someone and thereafter, also they were in contact with each other. More importantly, the accused desired to marry with her. It appears that PW2 was equally interested to marry with him and therefore she kept on attending phone calls of the accused and she called him on her own. It further appears that due to the said relationship between the accused and PW2 the accused decided to kill Archana. Once the accused said to PW2 that he would give divorce to his wife or otherwise kill her, it goes to show ill intention of the accused as well as his motive to kill his wife Archana. The testimony of PW5, father of deceased Archana corroborates the version of Archana on the

material aspects of accused having love affairs with PW2 and he threatened that he would kill Archana.

56           The learned counsel vociferously argued that even considering that accused had love affairs with PW2 he had no intention to kill his wife and there was no reason to commit murder of his mother and daughter. It is already discussed above that the incident took place within four walls of the house. Nobody has witnessed the said incident. It was the accused who was present in his house on the date of incident. The incident had taken place in broad daylight. Nobody has seen the accused going out of his house. The testimony of PW7 – Abhijit Shinde simply shows that accused attended his office in between 6.15 to 6.30 pm. The medical evidence shows that all three murders have taken place in between 2.00 to 4.00 pm. If that is the case it was none else than the accused who committed murder of his wife, mother and child. So far as murder of mother of accused is concerned, as she was opposing the relations between the accused and PW2 there used to be quarrels between them as deposed by PW12 and PW5. Hence, the accused also planned to kill her. The daughter was hurdle in the way to marry with PW2 hence, she was also not spared by the accused.

57           As far as CCTV footage is concerned, the trial Court has not relied upon the said CCTV footage for want of certificate under section 65-B of the Evidence Act. In paragraph 89 of the judgment of the trial Court it is

discussed that the Investigating Officer PW14 – Bajirao Mohite has collected the CD (Exh.44) through PW4 – Deepak Patankar and the seizure memo was prepared in presence of PW9 – Sachin Pawar. The said CD indicates that at about 4.28 pm on the date of incident, the accused was going out of Champaratna Society on his motorcycle.

58           The learned trial Judge has relied upon the judgment of the Hon'ble Apex Court in the case of *Anvar P.V. v. P.K. Basheer* reported in Civil Appeal No.4226 of 2012 decided on 18<sup>th</sup> September 2014 decided by three Judges Bench of the Hon'ble Apex Court wherein the law is laid down that if the electronic record is produced without certificate under section 65-B of the Indian Evidence Act, such evidence is inadmissible. Significantly, no one has identified the accused. No doubt, the testimony of PW4 – Deepak Patankar shows that in their society there were 4 CCTV cameras, out of them two were fixed at the entrance gate and two are inside the building. Champaratna Society where the accused was residing is situated at the distance of 300 meter from their Society and the road passing towards Champaratna Society is covered by two CCTV cameras affixed at the entrance of their Society. On 4<sup>th</sup> October 2012 Police requested him to see the footage of two cameras. Accordingly, he himself so also the Police saw the footage. It was noticed in the said footage that at about 3.22 pm one lady wearing biscuit colour sari was going towards Champaratna Society. At

4.28 pm, one person wearing jeans pant and purple colour T-shirt was going on motorcycle through Champaratna Society towards East side. Significantly, it was the Society where many persons must be residing. Therefore, it would be difficult to come to the conclusion that it was the accused who was proceeding on motorcycle from Champaratna Society. The prosecution has not examined any witness from the said Society or any person who would have identified the accused. PW12 did not state anything about CCTV. During the cross-examination PW4 fairly stated that he is a Civil Engineer and he has not done any diploma in software or hardware. PW4 denied that he had no knowledge of preparing copy of CD. He further stated that coverage of CCTV footage stored in the disk remains for 30 days and thereafter, the data is automatically deleted from the disk. In the instant case, no hard disk is produced. PW4 admitted during his cross-examination that on 4<sup>th</sup> October 2012 he had personally not seen any person while proceeding from in front of their society.

59 In any case, the fact remains that no certificate as per the requirement under section 65-B was produced by the prosecution. In view thereof, CCTV footage cannot be relied upon. Hence, CCTV footage cannot be read in evidence.

60 In the instant case, we got an additional link against the accused. As discussed above, the present case is mainly based on circumstantial evidence. The law in case of circumstantial evidence is well settled. In case of *Sharad Birdhichand Sarda V. State of Maharashtra*<sup>9</sup>, the following golden principles have been laid down by the Hon'ble Supreme Court :-

*“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made :*

*“certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”*

- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused. That is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
- (3) the circumstances should be of a conclusive nature and tendency,*
- (4) they should exclude every possible hypothesis except the one to be proved, and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

9 AIR 1984 SC 1622

61 Evidence of PW12 shows that there was some dispute in the family of the accused and this must be the reason that Archana and her daughter were found crying outside their house at about 12 noon on the date of incident. The said fact indicates that all was not well in the house of the accused on that day. False FIR of the accused coupled with the fact that the recovery of the incriminating articles such as mangalsutra, blood stained clothes at his instance so also seizure of hammer under section 27 of the Evidence Act strengthens the case of the prosecution against the accused. The medical evidence supports the case of the prosecution with regard to the time of death between 2 to 4 pm and the ante mortem injuries on the dead bodies. All these factors leave no room of any probable doubt that the accused might have not committed murder of his wife, child and mother. The prosecution has thus proved that it was the accused who has committed all three murders. As discussed above, the accused was involved with PW2 and that was motive for committing the said brutal murder. In order to screen himself, the accused has lodged a false complaint as well as he had hidden the jewellery and cash amount behind the photo frame in his own house. Similarly, as the accused was on leave, present in his house, has not discharged his burden to explain the situation. On the contrary, he tried to screen himself by lodging a false report. All these factors prove the case of the prosecution beyond reasonable doubt. Only because the dog squad did

not point out towards the accused, does not rescue him from his guilt. As regards finding of odhni, chhanni and grey colour purse, at the place of incident which was not identified by any one, as discussed above is no eye witness to the incident. The accused has not left a single member from his family. Father of deceased Archana (PW5) was not residing with them. Hence, there is no question of identifying those articles by anyone. PW12 is an old person. Hence, it cannot be expected from him that he would identify the said articles. To sum up the articles lying on the spot must be from the house of accused. Thus, all these facts confirm the guilt of the accused and there is no question of someone else's involvement in the offence. So also it is not at all the case of prosecution that anyone else was seen in CCTV footage, entering the house of accused.

### SENTENCE

62 We have extensively heard Ms. Payoshi Roy with Dr. Yug Chaudhary, learned counsel appearing for the accused and the learned APP Mr. Arfan Sait for the State.

63 The learned APP submits that the present case squarely fits in the category of rarest of rare case. It is submitted that the accused has done to death three innocent persons, for getting married with PW2 and thus satisfying his lust. For no comprehensive reason the child about two years old was killed by the accused. The accused did not spare even his old

mother who had given birth to him. It is thus submitted that the accused has not valued human life. He has finished his entire family. It is further submitted that considering the mental set up of the accused there are no chances of reformation or rehabilitation. On the contrary, there are chances that the accused would indulge in the same activities. He was after PW2 who was engaged with other person and now married with someone else. The conduct of the accused shows that he is nothing but menace to the society. Considering it, the learned APP submits that the present case should be considered as rarest of rare case and the death sentence be confirmed.

64 It is, therefore necessary to decide whether the death penalty under the offence punishable under section 302 of IPC needs to be confirmed or whether some other penalty is to be imposed on the accused herein.

65 The learned counsel for the appellant submitted that the accused is too young in age. It appears that the accused had no intention to kill his mother. He used to love his mother. He even did not have intention to kill his wife, although he wanted to marry with PW2. It is submitted that the divorce petition was already pending in the Court of law. The accused in fact was fighting for the custody of his child. There is nothing on record to show that the accused was beyond reform or rehabilitation. Behaviour of

the accused with the jail inmates is very good. According to the learned counsel all these are mitigating circumstances and as such leniency be shown to the accused and death sentence be commuted to life imprisonment. The learned counsel for the accused as well as the learned APP have placed on record voluminous judgments supporting their contentions.

66 The law and principles laid down in catena of judgments of the Hon'ble Apex Court, succinctly lay down whether the death penalty would be warranted or not and under what circumstances it would be warranted. The Hon'ble Apex Court has referred to the provisions under section 354 of Cr.P.C. and in case of *Bachan Singh vs. State of Punjab*<sup>10</sup>, in case of *Machhi Singh and Ors. v. State of Punjab*<sup>11</sup> so also in *Jagmohan Singh v. State of Uttar Pradesh*<sup>12</sup>. The Hon'ble Apex Court has issued guidelines and explained various legal positions.

67 In case of *Shabnam v. State of Uttar Pradesh*<sup>13</sup>, guiding principles are laid down by the Hon'ble Apex Court. It would be appropriate to reproduce paragraphs 24 and 25 of the said judgment which read as under :

10 1980 (2) SCC 684

11 1983 (3) SCC 470

12 1973(1) SCC 20

13 2015(6) SCC 632

“24. We would not lumber the discussion by tracing the entire death penalty jurisprudence as it has evolved in India, but only limit the exercise to cull out the determinants which would weigh large in our mind to award appropriate sentence while balancing the mitigating and aggravating circumstances. We are mindful of the principles laid down by this Court in *Jagmohan Singh v. State of U.P.*, *Bachan Singh v. State of Punjab* and *Machhi Singh v. State of Punjab* as followed by this Court upto the present. The aforesaid decisions indicate that the most significant aspect of sentencing policy in Indian criminal jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in "rarest of rare cases." Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. The circumstances which should or should not be taken into account, and the circumstances which should be taken into account along with other circumstances, as well as the circumstances which may, by themselves, be sufficient, in the exercise of the discretion regarding sentence cannot be exhaustively enumerated.

25. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarized in *Ramnaresh v. State of Chhattisgarh* (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382. The said are extracted as under (SCC pp. 285-86, paras 76-77):

68 In case of *Shabnam v. State of Uttar Pradesh* (*supra*), as discussed above, the following aggravating circumstances have been culled out: -

**“Aggravating Circumstances:**

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused

*with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.*

- (2) *The offence was committed while the offender was engaged in the commission of another serious offence.*
- (3) *The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.*
- (4) *The offence of murder was committed for ransom or like offences to receive money or monetary benefits.*
- (5) *Hired killings.*
- (6) *The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*
- (7) *The offence was committed by a person while in lawful custody.*
- (8) *The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty Under Section 43 Code of Criminal Procedure.*
- (9) *When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.*
- (10) *When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.*
- (11) *When murder is committed for a motive which evidences total depravity and meanness.*
- (12) *When there is a cold blooded murder without provocation.*

- (13) *The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.*

**Mitigating Circumstances:**

- (1) *The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.*
- (2) *The age of the accused is a relevant consideration but not a determinative factor by itself.*
- (3) *The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.*
- (4) *The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.*
- (5) *The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.*
- (6) *Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.*
- (7) *Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.”*

*While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above*

*considerations in imposition or otherwise of the death sentence.*

**Principles:**

- (1) *The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.*
- (2) *In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.*
- (3) *Life imprisonment is the rule and death sentence is an exception.*
- (4) *The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.*
- (5) *The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.”*

69 Thus, their Lordships have held that most significant aspect of sentencing policy in Indian Criminal Jurisprudence regarding award of death penalty is that life sentence is a rule and death sentence is an exception only to be awarded in “the rarest of the rare case”.

70 The Hon’ble Apex Court has culled out various aggravating circumstances and mitigating circumstances. Similarly, the Hon’ble Apex Court has laid down principles requiring the Court to apply the test to determine, if it is rarest of the rare case for imposition of death sentence. Only in case when the life imprisonment appears to be inadequate

arrangement, death sentence must be imposed. The Court to come to the conclusion that imposition of life imprisonment would be completely inadequate and would not meet the ends of justice. Death sentence should be imposed when the option to impose sentence of imprisonment of life cannot be exercised, considering the nature and circumstances of the crime. It is to be considered whether the offence was planned and the manner in which it was committed. The Hon'ble Apex Court has laid down aforesaid guiding principles.

71           Considering the aforesaid guiding principles, the aggravating circumstances and mitigating circumstances as culled out by their Lordships are to be considered.

### **Aggravating Circumstances**

1.           The offence is caused with a motive to marry with PW2 and both the deceased i.e. mother and wife of the accused were opposing for the same. The accused therefore inhumanly committed their murder including his two years old daughter.

2           Accused caused murder of his entire family in a brutal manner to achieve his goal i.e. to marry PW2.

3. As discussed above, the victims were innocent, closely related to the accused depending upon him. So also having trust in him and they have been killed by the accused. The act of killing mother is of extreme ingratitude towards the source of life. So also the wife would always have trust in her husband and would expect care and security from him. So also is the case with the daughter. In fact, there was no need to kill wife in such a brutal manner, particularly when the accused had option to take divorce from her. The accused has even not spared his two years old daughter for no fault of her. Thus, killing of daughter, wife and mother in such a ruthless manner, cannot be justified.

4. The accused has committed cold blooded murder. In order to screen his act, he made a show of robbery in his house. The accused has also attempted to commit murder of 76 year old neighbour for no reason. It appears that the accused thought that the said neighbour i.e. PW12 may suspect him as a culprit and open his mouth before the Police. Therefore, the accused tried to kill him also. We find that murder is committed for a motive which evidences total depravity and meanness.

5. In the present case, there does not appear to be any case of provocation. It is a planned cold blooded murder of 3 persons in family, for achieving a goal of marriage with a lady to whom the accused was madly

loving. In fact the accused deceived PW2. He did not allow her to get engaged with another boy. Although he was a married person, he suppressed the said fact from PW2. Thus the accused appears to be a cunning and untrustworthy person. Hence, this circumstance is available in the present case.

6. As discussed above, the gruesome act of the accused shocked conscience of the society, due to the heinous act of the accused.

### **Mitigating circumstances**

So far as the mitigating circumstances are concerned, there are no mitigating circumstances in the present case except that the accused was of young age at the time of incident. As on today, the accused is aged about 32 years old. At the time of incident, he was 25 years old. The age of the accused is a relevant consideration but not determinative factor by itself. Considering the nature of crime and the manner in which it is committed by the accused, the said mitigating circumstance would not be in his favour.

72 Significantly the accused was intending to marry with PW2 although she was engaged with someone else. He suppressed the fact from PW2 that he is a married person having a daughter. The accused deceived PW2. He broke her engagement with another boy. Thus, he did not allow PW2 to marry with him. On the day of incident although the accused was on leave, did not attend the marriage of his friend Haji. The mother of

accused attended the said marriage. She left the house at 8.30 am itself and returned from marriage around 2.30 pm to 3.30 pm. PW12 saw deceased Archana and her child crying and standing outside their flat. PW12 heard shouts prior to that. Those shouts may be due to the quarrels between accused and Archana. The accused finished his entire family and then left the house at about 3.30 to 4.00 pm. Pertinently not a single member from the house of the accused was seen by anyone alive after the accused left the flat around 3.30 pm. In the circumstance the burden lies on the accused to explain under what circumstances the incident had taken place. Accused visited his office at about 6.30 pm although he was on leave, to show his presence at that place. After returning home at 7.45 pm deliberately he did not enter his house, instead he went to the flat of PW12, gathered people in the society and then in their presence entered inside his flat to show that he was not aware of anything. Accused made a show of robbery which failed. Thus, the accused does not deserve any sympathy.

73           It can be thus seen that the aforesaid aggravating circumstances are available whereas none of the mitigating circumstances are available. After giving full weightage to the mitigating circumstances also, balance sheet of aggravated circumstances fully tilts in favour of aggravating circumstances.

74 Only because the accused is young only about 32 years old, cannot be considered as mitigating circumstance. Complying the aforesaid principles as laid down by the Hon'ble Apex Court in case of *Shabnam (supra)*, we are of the considered view that the instant case is “the rarest of the rare case” for imposition of death sentence. Life imprisonment would be completely inadequate and would not meet the ends of justice. No doubt, life imprisonment is the rule and death sentence is an exception. However, considering the brutality of the crime, in the given facts and circumstances of the case, it would be just and proper to impose death penalty which is an exception. On complying the fifth principle, it is found that the method and the manner in which the crime was committed warrants death penalty.

75 Both the sides have placed reliance on various judgments of the Hon'ble Apex Court. However, we have referred to the judgments of their Lordships of the Hon'ble Apex Court, which are relevant to decide the present case.

76 In our considered view, we have drawn elaborate balance sheet of the aggravating and mitigating circumstances. There are only 6 aggravating circumstances available in the present case. As against this, none of the mitigating circumstances are available. The balance sheet of aggravating and mitigating circumstances tilts in favour of the aggravating

circumstances. In view thereof, we find that the present case deserves to be treated as rarest of rare case.

77           The conduct of the accused and his act of killing his mother - Shobha, wife - Archana and her daughter - Kimaya clearly indicate that the accused is unfit to revert back in the civilized society. The accused may be even dangerous for PW2, as she is already married with someone else. Thus, the conduct of the accused is beyond reproachment. The evidence of PW2- Gauri and PW5- Vijaykumar makes amply clear that the accused was ready to kill Archana if she would not have divorced him. All the aforesaid aggravating circumstances explicit that it is the rarest of rare case and the accused has thus committed a diabolic and brutal murder of his wife, mother and child and being a heinous offence, it pricks the judicial conscience. By finishing the family, the accused has tried to shatter the basic foundation of the society. In view thereof, in our considered view, sentencing the accused with imprisonment for life would not be a proper sentence for him.

78           It has been made clear by the Hon'ble the Apex Court that the rarest of rare case test depends upon the perception of the Society and the approach should be "society-centric" and not "judge centric". The test has to

be applied whether the society will address awarding of death sentence to the crime in question.

79           It appears that the accused has manufactured a case of robbery. There can't be a murder of two year old child for a robbery of the jewellery worth about sixty seven thousand. Surprisingly, there was no robbery in the adjacent flat i.e. in the flat of PW12 whose financial condition was better than the accused. PW12 was staying alone in his flat. He had no family responsibility as such. He had assisted deceased Shobha in the marriage of her daughter. Shoba was working as a maid servant of PW12. There was a common entrance gate to the flat of accused and flat of PW12. Instead of entering into the flat of PW12, there is no reason for anyone to commit robbery in the flat of the accused and kill a two years old child and two ladies. No one has seen the alleged culprits while entering or leaving the society. Robbers would not have left cash and ornaments on spot or then concealed the same behind photo frame. The accused was simply a Manager of a Company. It is unbelievable for want of any evidence that his gold chain of 8 tolas was taken away by the culprits in the course of alleged robbery, particularly when investigating agency did not find any chain as such. The accused has committed a planned cold blooded murder considering that all these were helpless and hapless persons, depending on him. The accused did not spare his two years old daughter also. Even the

mother who brought him on this earth was not considered sympathetically, may be because she used to oppose the accused for having illicit relationship with PW2, as deposed by PW12. The accused also attempted to commit murder of PW12 Kulkarni. Kulkarni also used to oppose the relationship between him and PW2. The accused might have thought that PW12 may express his suspicion before the Police if left alive. Therefore, he attempted to commit his murder and tried to screen himself. The accused thought that Kulkarni is dead. However, Kulkarni survived. Since the entire planning of the accused did not materialize, he was compelled to lodge a false complaint of robbery against the unknown culprits. The muddemal articles reported to be missing from his house, were found in his own house. Those ornaments were returned to Aboli i.e. sister of accused. The accused threatened that he would kill his wife and accordingly expressed it before PW2 Gauri and PW5 father of deceased. The accused had a strong motive to kill his wife in order to marry with PW2 though she got engaged with some one else. It appears that as the mother of the accused also opposed the love affair between the accused and PW2, the accused killed his mother also. The accused must have felt that the child would be a hurdle after his marriage with PW2, he finished her also. It is nothing but a well planned cold blooded murder.



80           The recovery of hammer at the instance of accused and his clothes, so also finding of blood stains on it strengthens the case of prosecution. Similarly, the hidden jewellery kept behind the photo frame points out the guilt of the accused. Non-finding of 8 tolas of gold chain which was never in existence also shows the involvement of the accused in lodging a false complaint of robbery in his house. No one from the family of the accused was seen alive after the accused left his house at 3.30 pm. The arguments were advanced by the defence counsel that the prosecution has tried to suppress the genesis of crime and has failed to show the involvement of the co-accused as per charge framed and to connect it with three articles of unknown person viz. Odhni, chhanni and ash colour money purse (Article - 12) found on spot and dog from dog squad proceeding towards Railway crossing. There is no substance in such contention as such, for the simple reason that the said fact even assuming to be correct, for the sake of argument, would not absolve the accused from the guilt. The accused was on leave on the day of incident. He left his house around 3.30 pm. No one had seen any of the family members of the accused alive thereafter. PW12 had seen Archana and her daughter alive at about 12.00 o'clock in house. The unnatural conduct of the accused i.e. after returning home instead of entering in his flat, going to the adjacent flat although it was dark inside both the flats and the electric lights were off, unerringly points out towards his guilt and in these circumstances in view of the

provisions u/s 106 of Evidence Act the burden lies on the accused to explain under what circumstances the incident has taken place. It is exclusively within the knowledge of the accused and he has to explain the same. Since it has been duly established that the accused was in his house along with all three deceased, the accused has failed to produce any evidence on record to show that during the period from 2.00 pm to 4.00 pm, he was not in the company of the deceased. Thus, the circumstances have been fully established. The facts so established are consistent with the guilt of the accused. The false FIR lodged by the accused, in respect of the robbery in his house strengthens the case of the prosecution pointing out the guilt of the accused. The accused has failed to discharge his burden.

81           The accused does not deserve any sympathy and he is nothing but a menace to the society. After finishing his entire family now there is no question of reformation of the accused. He may be dangerous to even PW2 who is married with some other person.

82           In that view of the matter considering the material placed on record, we are of the considered view that the prosecution had proved beyond reasonable doubt that :

1.           The accused was the last person to see all the three deceased alive;

2. The deaths of all three deceased have occurred during 2.00 pm to 4.00 pm as opined by the Medical Officer - PW6;
3. The dead bodies of the deceased were found when the accused returned home at about 7.45 pm from his office. The accused visited the office at about 6.15 pm to 6.30 pm as per the evidence of PW7 and PW8;
4. The discovery of hammer at the instance of the accused under section 27 of the Evidence Act from a place which was distinctly within the knowledge of the accused;
5. The time gap between the accused being present in his house and causing deaths of deceased as compared with the medical report with regard to the time of death leads to no other conclusion than the guilt of the accused;
6. The recovery of the jewellery in the house of the accused, found during conducting the spot panchanama coupled with the lodging of false complaint by the accused with respect to the robbery in his house and misleading the investigating machinery leads to the involvement of the accused in the crime.
7. The recovery of blood stained clothes of the accused under section 27 of the Evidence Act and non-explanation of the accused in that regard proves the guilt of the accused;

8. The strong motive of the accused to get rid of his family members and to marry with PW2 corroborates the case of the prosecution.

83 We are of the considered view that chain of circumstances is proved, beyond reasonable doubt by the prosecution. It is so interwoven to each other that it leads to none other conclusion than the guilt of the accused. The conviction awarded by the Sessions Court warrants no interference.

84 In the result, the reference made by the learned Sessions Judge in Confirmation Case No.2 of 2016 is answered in the affirmative. The death penalty imposed by the learned Sessions Judge for the offences punishable under section 302 of the IPC and other punishments are confirmed.

85 We place on record our appreciation for the valuable assistance rendered by the learned APP and the learned counsel for the appellant.

**(MRS. SWAPNA S. JOSHI, J )**

**(B.P. DHARMADHIKARI, J)**

. In view of section 415(1) of Cr.P.C. the operation and effect of judgment pronounced today is stayed till the expiry of period allowed for preferring the appeal before the Hon'ble Apex Court.



(MRS. SWAPNA S. JOSHI, J )

(B.P. DHARMADHIKARI, J)