

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 223 OF 2012

Ghanshyam s/o. Masaji Jondhale,
Age Major Yrs., Occu. Nil,
R/o. Jaibhim Nagar, Nanded,
Tq. & Dist. Nanded

APPELLANT
[Orig. Complainant]

VERSUS

The State of Maharashtra,
Through Police Station
Vazirabad, Nanded,
Tq. & Dist. Nanded

RESPONDENT

...
Mr. Shriniwas Kulkarni, Advocate for the Appellant
Mr. A.V.Deshmukh, APP for the Respondent – State
...

**CORAM : S.S. SHINDE &
A.I.S.CHEEMA, JJ.**

Date of Judgment: 06.07.2015

JUDGMENT [Per S.S.Shinde, J.]:

1] This Criminal Appeal is filed by the Appellant [original accused], challenging the Judgment and Order dated 25.11.2011 passed by the learned Additional Sessions Judge-1, Nanded in Sessions Case No. 217 of 2007, thereby convicting the appellant for the offence punishable under Section 302 of Indian Penal Code for the murder of Gayabai and Sunita and sentenced to suffer life

imprisonment, which shall not be less than 28 years of actual jail sentence, meaning that the accused should remain in jail for minimum 28 years and to pay a fine of Rs.1000/-, in default to suffer another one year.

Facts of prosecution case, in brief, are as under:

2] The accused is the husband of deceased Sunita and son-in-law of deceased Gayabai and complainant Dinkar Kandhare. The complainant Dinkar Kandhare lodged the report on 13.09.2007. The marriage of accused and deceased Sunita solemnized five years prior to the incident. As the accused was not having any child from his first wife, he married with Sunita, with the consent of first wife. After 1 ½ years of the marriage, accused started suspecting the chastity of wife and on that ground, he used to beat her and ill-treat her. The fact of suspecting the character and ill-treatment was narrated by deceased to the father. In April, 2007, accused beat the wife, suspecting her chastity, at that time deceased Sunita came to the house of parents and since then she was residing at parent's house. On 04.09.2007, deceased Gayabai was hospitalized in

Government Hospital for the operation of eye. Deceased Sunita used to remain with mother in Hospital.

3] On the day of incident i.e. 13.09.2007, accused went to the house of younger daughter of complainant Vanita Venkatesh and asked her whereabouts of his wife. Vanita told him that, she was in Hospital. Therefore, accused went to Government Hospital during 10.30 to 11.00 a.m., went in the Ward No.10 i.e. eye ward, and assaulted deceased Sunita and Gayabai with axe. As per the prosecution case, after assaulting Sunita and Gayabai, accused threw the axe on the spot. Hearing the shouts of patients in the ward, the security guard and police of said Hospital came on the spot, and caught hold the accused on the spot. Immediately after the incident, the injured were medically treated. The matter was intimated to the Police Station, Police came on the spot and took the accused in custody. While the treatment was going on, unfortunately Gayabai died after some time and in the night hours Sunita died.

4] After some time of incident, the father lodged

the report, offence was registered. Investigation Officer rushed to the spot and prepared the spot panchanama. From the spot, one blood stained axe, pair of slipper, one knife, and pieces of bangles were seized. Around 3.30 p.m. accused was arrested, thereafter his blood stained clothes were seized. After the death of Gayabai and Sunita, inquest panchnamas were prepared and bodies were sent to the post mortem. Post mortem reports were procured. The cause of death of Gayabai was 'due to the cardio respiratory failure due to head injury with intra cerebral bleeding'. The death of deceased Sunita was caused due to the hypo volmic shock due to the liver injury and bleeding due to the stab. The clothes of Sunita and Gayabai were also seized.

5] During the investigation, the statements of witnesses were recorded by two Investigation Officers, the seized property was sent to C.A. and C.A. reports were procured. The map of the spot was also drawn by Revenue Officer. The list of employees of the Hospital present on the day of incident and list of the patient admitted in the Eye Ward were also collected. While accused was in

custody, his confessional statement was recorded by Special Judicial Magistrate.

6] It is revealed during the investigation that, accused was suspecting the character of wife Sunita. He was ill-treating her, therefore, she left the company of husband and in spite of insistence of accused, wife was not ready to come back to the house of accused, and therefore, accused was frustrated, and for getting rid from both i.e. wife and mother in law, he committed the murder of them. Therefore, charge sheet was filed in the court of Chief Judicial Magistrate. The offence being triable by Sessions Court, it was committed to the Sessions Court.

7] The charge was framed under Section 302 of Indian Penal Code. Accused pleaded not guilty and claimed to be tried.

8] To prove the prosecution case, total 18 witnesses were examined by the prosecution. Thereafter, the statement of accused under Section 313 of Criminal Procedure Code was recorded. The specific defence of the

accused was of total denial. His defence is that, he was called by Police on the pretext and thereafter he was arrested in Police Station. Neither there was any ill-treatment to the wife, nor any dispute. He had never gone to the Hospital and he had never committed any act. Nobody was examined by the side of accused.

9] The trial Court after conducting full-fledged trial convicted the appellant for the offence punishable under Section 302 of I.P. Code for murder of Gayabai and Sunita.

10] The learned counsel Mr. Shriniwas Kulkarni [Appointed] submits that, the evidence of eye witness is not reliable. The presence of PW-15 Laxmibai Shankar Mahajan is not proved by the prosecution. It is submitted that, it is highly impossible that, appellant went in the Hospital and killed Gayabai and Sunita. It is submitted that, PW-9 Shila Vasant Padghane has admitted in cross examination that, she was not assigned the duty of supplying food to the patients, and therefore, at the relevant time, her presence at the place of incident was doubtful. It is submitted that, the alleged recovery of axe and knife is not proved by the

prosecution, evidence of all prosecution witnesses suffers from serious infirmity, and therefore, not believable.

11] The learned APP appearing for the Respondent – State invited our attention to the evidence of the prosecution witnesses and also findings recorded by the trial Court and submits that, there is overwhelming evidence on record, which indicates guilt of the accused, and therefore, the trial Court has rightly convicted the appellant.

12] We have given careful consideration to the submission of the learned counsel appearing for the appellant and the learned APP appearing for the Respondent – State, with their able assistance, perused the entire evidence on record so as to re-appreciate the same. The prosecution examined PW-2, PW-9 and PW-15 to prove the spot of incident and involvement of the appellant in commission of crime.

The prosecution examined Shila Vasant Padghane / Kapse as PW-9, in her deposition before the Court, she stated that, she is working as a Staff Nurse in Civil Hospital

Nanded since 1990. Gayabai was admitted in their Hospital since 06.09.2007. On the day of incident, her duty hours were from 7.30 a.m. to 3.00 p.m. in Ward No.10, which is Eye Ward. It was a female ward. At about 10.30 to 11.00 a.m., she was moving the trolley to serve breakfast to the patients. There were patients and relatives of the patients in the Ward. She heard some shouts suddenly. She turned around and saw that one person was present there, who was relative of the patient and he was there with axe in his hand. The said person gave blows with an axe on his hand on the patient, who was on bed. He also assaulted daughter of the patient who was lying on the floor. The said person threw the axe. Then the other persons gathered there along with the police from the police chowki, which is situated in the campus of the Hospital. Security Guard also came there, and all of them caught hold of that person. She informed the incharge of the Ward to make a phone call to Officers, who then made a phone call to DMO, RMO, CS, Dean etc. Mrs. Kahalekar Madam was the then D.M.O. She called for the pad, bandaged etc. and put the same on the wounds of the patient, and her relative and then they shifted the patient to casualty ward and also shifted the relative of the said patient to ICU. There was a

pool of blood near the bed of the patient. She further deposed that, the said person who was there in the Hospital and assaulted on the patient is present in the court hall and is sitting in the dock.

13] The defence counsel cross examined this witness in detail. Certain questions were asked to her about allowing the relatives of the patient to enter into the ward, and whether any register was maintained by the Hospital to maintain entry of the relatives of the patient. However, she stated that, there was no any procedure for taking the entry of visitors in the register kept at the channel gate. She stated that, Gayabai was admitted in Ward No. 10 from 6th September, 2007. She further stated that, being a senior staff it is not her duty to provide breakfast. The learned counsel appearing for the appellant submits that, PW-9 has admitted that, it was not her duty to provide breakfast, and therefore, her evidence cannot be believed. In fact, there was no specific question asked to her whether on the date of incident, she was asked to serve breakfast, and therefore, merely because she stated that, being a senior staff, it was not her duty to provide the

breakfast, could not nullify her statement in examination in chief that, on the day of incident her duty hours were from 7.30 a.m. to 3.00 p.m. in Ward No.10 wherein deceased Gayabai was admitted for eye treatment and she witnessed the incident. She has no reason to falsely implicate the appellant being an independent witness. Therefore, her evidence deserves acceptance and rightly accepted by the trial Court. She has stated spot of incident and also assault by the accused on Gayabai and Sunita.

14] The prosecution examined Laxmibai Shankar Mahajan as PW-15. She witnessed the incident, she stated that, on the date of incident, she was present in Ward No. 10, Civil Hospital, Nanded. She was admitted for the purpose of carrying her eye operation. The surgery on her left eye was already over. She was able to see by her right eye. Deceased Gayabai was having bed adjacent to her bed. Sunita was Gayabai's daughter and she used to stay with her mother in the Hospital. It was 10.30 a.m. when the incident took place. At that time, son in law of Gayabai came there. Quarrel took place between him and Gayabai. He kept the axe in his hand by hiding its existence, and

with the said axe he gave a blow on the head of Gayabai. He gave 2-3 blows successively on the head of Gayabai. At that time, Gayabai was sitting on the bed. Blood started oozing out from her head. Sunita was also present there. The accused also gave blow on her right side chest. The accused threw the axe there only and ran away from the place. Then after accused was caught hold. Gayabai and Sunita were removed from the ward for the purpose of treatment. They all were also removed from the ward. The name of the son in law of Gayabai is Ghanshyam. She can identify him, who is sitting in the Court Hall.

15] This witness was cross examined by the defence counsel. It appears that, she stated that, her admission card was not prepared. Hospital has not given any record about the operation carried out on her eye or her signature was not obtained by the Hospital. However, she specifically stated that, she was given bed no. 3 in the said ward. On the day of incident, she left Hospital in between 10 to 11 a.m. However, she has specifically denied the suggestion that, she was never admitted in the Civil Hospital and that no operation / surgery was carried

out on her eyes in the Hospital. She denied suggestion that, she did not witness the incident. It appears that, this witness is from village, and therefore, she stated approximate time of living of the Hospital, that does not mean that, she did not witness the incident. The prosecution has proved through other witnesses that she was admitted in the Ward No.10 on adjacent bed of Gayabai, and therefore, she had every opportunity to witness the incident. The prosecution has brought on record the documents to show that, she was admitted in Ward No. 10 and she was taking treatment on the day of incident in the said ward. Therefore, her evidence is natural truthful and does not suffer from infirmity and deserves acceptance and same is rightly accepted by the trial Court.

16] The prosecution examined Mohan Jamnasingh Rathod as PW-2, who was called in Ward No.10. He saw that, one axe, one knife and bangle pieces were lying. There was blood on the cot and floor. There was one chappal, lying there on the spot. An axe was stained with blood. Police seized the articles and prepared the spot panchanama and obtained his signature.

Therefore, the prosecution through this witness, Investigating Officer and also through PW-9 and PW-15 has proved the spot panchanama.

17] PW-2, during his cross examination, stated that, another panch namely Madhav Dhage is serving as Security Guard in Civil Hospital. Staff room is on southern side of the Ward No.10. There is entry to Ward No.10 from its Western side. There are cots for ophthalmic patients on western side of Ward No.10. Shantabai is also serving as Security Guard in the Hospital. So many persons had gathered on the spot. The blood was seen on the bed sheet and the floor. He cannot say if the chappal and bangle pieces as well as cloth were stained with blood. Police men were present on the spot before he reached there. Police collected articles from the spot. He does not know if besides the staff and police men there were other persons on the spot.

He denied suggestion that, there were no blood stains on axe. He further denied suggestion that all the articles were already collected by police before he reached

the spot. He denied suggestion that, spot panchanama was not drawn in his presence, and that he signed the panchanama on the say of police. He denied suggestion that, axe article no. 1 before the Court was not seized from the spot. He denied all the suggestions given to him.

18] The prosecution examined Purushottam Zariba Pawar as PW-14. In his examination in chief, he stated that, in September, 2007, he was working as a Circle Officer, Revenue Sajja, Nanded Revenue Circle. He received a letter from Tahsildar, Nanded city for visiting Civil Hospital, Nanded and preparing a map of scene of offence. The letter received from Tahsildar now shown to him is the same. He has brought with him the original copy of the said letter, which is at Exh.66. API Ghuge came to his office on 25.10.2007. API Ghuge himself showed him the place of incident by and after going to Civil Hospital, Nanded. He prepared the map of the scene of offence and handed over to Shri Ghuge. The map now shown to him is the same, which is at Exh.67. He prepared fair copy of the map and forwarded it to API Ghuge along with covering letter. Covering letter now shown to him is the same. It bears his

signature, all the contents in it are correct and same is at Exh.68.

19] At the relevant time, Ashok Kishanrao Ghuge was working as API. He was examined as PW-17 by the prosecution. He received a phone call from the Civil Hospital, Nanded. He went to ward No.10 and found that blood was spread over there. Therefore, he also witnessed the spot of incident. Therefore, the prosecution did prove the spot of incident of ward No.10 in Civil Hospital, Nanded, through PW-9, PW-15, PW-2, PW-11, PW-3, PW-14 and PW-17.

20] The prosecution proved inquest panchanama through PW-7, PW-9, PW-10 and PW-16, inquest panchanama is at Exhibit 49. All these witnesses have stated injuries as noticed by them on both the dead bodies. The defence has not disputed injuries on the dead body.

21] The prosecution proved that the death of Gayabai and Sunita was homicidal. As already observed, the witnesses to the inquest panchanama have stated

about injuries on the body of Gayabai and Sunita. The prosecution examined Dr. Venkatesh Vithal Paratwagh as PW-3. He was working as an Medical Officer at Civil Hospital, Nanded on 14.09.2007. Dead body of one Sunita Ghansham was referred for postmortem examination. He conducted the P.M. on the said dead body. On 14.09.2007, between 1.20 p.m. to 2.30 p.m. on examination he found following external injuries on the person of dead body.

- i] A wound over the right sub-costed region about 4 to 5 inch in length and its age was within 28 hours. Probably caused due to stab. Subcutaneous tissues are dead.
- ii] Sub-occipital region wound 2 to 3 inch in length.

On internal examination, he found following injuries.

- i] 11th and 12th ribs medial end fracture, pleura congested, both lungs congested.
- ii] Peritoneum was thick and injured. Blood and fluid came in the cavity.
- iii] Liver sub-total removed due to injury by operation.

The blood sample was retained. The injuries in column no. 17 were ante-mortem. In his opinion, the cause of death is due to Hypo-voluminous shock due to the liver injury and bleeding due to stab [post operative bleeding also not stopped]. Accordingly, he has issued the report of P.M. Examination. Report was shown to him, which bears his signature. He stated that, contents thereof are true and correct. He further deposed that, P.M. report is at Exh. 13, injury no. 1 shown in column no. 17 is sufficient to cause the death in normal course. The said injury is possible by means of axe blow. Due to this injury, the internal injury is caused to liver which resulted in non stop of blood flow.

22] Upon careful perusal of the cross examination of PW-3, the defence counsel has not brought on record anything which can be useful to the defence. PW-3 has given answers in general that, in case the injury is caused by means of axe, there is possibility of corresponding injury as per the size of the axe blade and if it was given on ribs there is possibility of fracture of the ribs. He further stated that, the injuries shown in column no. 17 probably might have been caused by sharp pointed object. In case of injury

by means of axe, there is possibility of tampering. In case, both the lungs become empty. He further stated that, the injury to peritoneum is not fatal. He cannot say about the stage of process of rigor mortise. The process of digestion becomes slow as soon as the injuries shown in P.M. report are sustained. He has shown the age of injury as approximate on his guess.

23] The prosecution examined PW-5 Vanita Venkatesh Gonerao. In her examination in chief, she stated that, deceased Sunita was his sister. After her marriage with the accused, their relation *inter se* were cordial for first one and half year. But, thereafter, her husband started ill-treating her by suspecting her chastity. He was beating her also on the same count. Her sister used to tell them about her ill-treatment whenever she used to come to their village. She further stated that, after marriage, her sister was living with her husband at Jai Bhim Nagar. Her husband, thereafter, went to Dhargaon-Purna by physically assaulting her sister. He also took her sister with him to Dhargaon. There also he continued the same ill-treatments. She further stated that, thereafter, her sister

and her husband both came at Jai Bhim Nagar to reside there. There also he assaulted her thereby her sister came back to house of their mother. The said incident took place in the month of April/May, 2007. Her sister lodged a complaint against her husband in Shivajinagar Police Station and since then she started living with her mother only. She further stated that, on 6th September, her mother was admitted to Hospital to undergo an eye operation. She was admitted in Civil Hospital at Nanded in Ward No.10. Sunita used to stay with her mother in the Hospital throughout the day. On 13th September, accused had come to her house in between 9.00 to 9.30 a.m. and asked her whereabouts of Sunita. He gave abuses in filthy language by asking the whereabouts of Sunita. She told him that, she had gone to Hospital in Ward No.10. At that time, Smt. Gaikwad, Smt. Gavant were there. She further stated that, she received a phone call at 11.00 a.m. in the shop of Shri Kirtane. It was a phone call of Kantabai Pangarekar. She informed PW-5 on phone that, PW-5 should immediately come to the Hospital as her mother and sister are being assaulted by Ghansham. Thereafter, she rushed to the Hospital and went to Ward No.10. She saw that, her sister was lying on the floor while her mother was on the bed

having sustained bleeding injuries on her head. Her mother had bandage on her head. Her sister had also sustained injuries on her ribs. She further stated that, at about 1.30 p.m. her mother expired on that day and sister also expired at 8.00 p.m. Accused Ghansham is present in the Court and he is sitting in the dock. Her mother's eye operation was not carried out prior to her death.

24] During her cross examination, she has specifically stated that, on the day of incident when accused had been to her house, he abused her, however, she did not inform her husband about the said fact. She denied suggestion that, on 13th September, 2007, she had not gone to the Hospital.

25] The prosecution examined Kantabai Shamrao Kamble as PW-6. In her examination in chief, she stated that, she was working as a Security Guard in Civil Hospital, Nanded. Her duty hours are from 8.00 a.m. to 2.00 p.m. On 13.09.2007, she was on duty. She arranged a substitute and went to check her grand son along with her daughter. When she came back, she heard shouts at the main gate of

ward. She went ahead by running to ward No.10. All security persons came towards the said ward. Police Jamadar Alewar came there. She saw that, accused was standing there, and there were blood stains on his person. Police took the accused into their custody. She further saw that, Gayabai was lying on the bed, while her daughter Sunita was lying on the floor in pool of blood. There was an axe on the bed and the knife was on the floor. Medical Officers came there and they took both of the injured to the casualty Department for the purpose of checking. She then contacted Vanita on phone. She narrated the incident to Vanita on phone and called her immediately to the Civil Hospital because no relatives were there with them. She identified the accused before the Court, who was sitting in the dock.

26] During her cross examination, the defence counsel did ask certain questions about how many security persons are appointed for the security of the Civil Hospital and other details about the Hospital. It further appears that, PW-6 stated about relationship between Sunita and Vanita. She further stated that, she knew Vanita as well as

Sunita. She knows parents of Vanita as well. The defence counsel tried to bring on record certain omissions during cross examination. This witness has stated that, though she stated before the Police that, when Ghansham was apprehended in the Hospital, there were blood stains on his person. However, she does not know why said statement is not appearing in the police statement. However, she denied suggestion that, she gave false evidence so as to support prosecution case.

27] The prosecution examined Dr. Suryakant Ramrao Lonikar as PW-7. His evidence is at Exhibit 36. In his examination in chief, he stated that, the dead body of Gayabai was referred to him for the purpose of postmortem. A corpse was referred to him by PSI Vazirabad Police Station. The P.M. was carried in between 6.00 p.m. to 7.00 p.m. The dead body was of 55 years age. She was having one white colour blouse stained with blood and chocolate colour sari, which was also stained with blood. The head was covered with cotton bandage. He found following injuries on her person:

- i] CLW on chin of size 5 x 3 cm x muscle deep.
- ii] CLW over left temporal region of head.
- iii] CLW mid parietal region of head with brain matter seen. Size was 7 x 3 cm x brain matter deep.
- iv] CLW left parietal region of head, 5 x 3 x bone deep with scalp haematoma, size 5 x 3 cm.
- v] Fracture parietal bone of size 5 x 3 cm on left side.
- vi] Fracture right parietal bone of size 5 x 3 cm which were irregular in dimensions.

Evidence of E/o intra cerebral bleed in parietal region of head.

Evidence of 10 cc blood in skull cavity. All organs were pale. The death occurred due to cardio respiratory failure due to head injury with intra cerebral bleed. He issued a provisional cause of death certificate. He identified the said certificate, which was shown to him, which bears his signature. He further deposed that, the P.M. notes bears his signature. Its contents are correct. It is marked at Exh.38. Barring one injury on the chin, all the other injuries were on the head of the deceased. He was shown muddemal article 8 [axe]. He stated that, the

injuries on the person of deceased can occur with such weapon. Since the brain matter has come out of the skull and there is a fracture of skull, in his opinion, the blow was given with full force.

28] It appears that, during cross examination question was asked to him about the size of injury of temporal region. However, he replied that, he has not specifically given size of the said injury no. 2 in column no. 17. He has denied suggestion that, injuries mentioned in column no. 17 are not possible due to axe blow.

29] The prosecution examined Ganesh Ranganathrao Allewar as PW-8. In his examination in chief, he stated that, on 13.09.2007, he was attached to Vazirabad Police Station and was posted in the Police Chowki situated in the campus of Civil Hospital, Nanded. His duty hours were from 8.00 p.m. one P.C. Paikwad B. No. 1205 was also with him. When they were on duty, they heard some shouts from the upper floor in the Hospital as if somebody was calling for help. Therefore, he himself P.C.Paikwad and security guard rushed to the ward. He

further stated that, the name of the security guard was Shri Giri, Shri Suryawanshi, Shri Bhakne and Kantabai. On going to the first floor there they found one person having blood stained clothes on his person found in the eye ward no. 10 in front of sisters room. He was in a frightened condition. They accosted him there on the spot. He was telling that, he gained success in his work. They went inside the room and found one lady on the bed in a seriously injured condition. Another lady was found lying on the floor. One axe was also there. The lady who had fallen down on the floor had sustained severe injuries. Blood stains were found there as well as the area was in a pool of blood. The blade of the axe was stained with blood. He further stated that, they brought the said person towards police chowki and there they asked his name. He gave him name as Ghansham Jondhale. He made a phone call to RI of the Police Station and narrated him all the above said incident. Shri Ghuge, PSI, who was on DO duty came there and took the accused into his custody. Dead body of Gayaba was sent to post mortem room. There they prepared the inquest panchanama on the dead body in presence of panchas. They found that, the deceased Gayabai had sustained injury on her forehead and bandage was applied

on all over face. She had a wound on the left eye brow. He further stated that, she had also sustained injury on her lips. Panchanama was drawn accordingly. Panchanama shown to him is the same. Both the panchas have affixed their T.I. while the third panch have signed. There was one more injury on the chin of the deceased. The inquest panchanama was shown to this witness. He identified contents and put signature on the said inquest panchanama. He identified accused, who was sitting in the dock. He also identified clothes and axe and also stated particulars about blouse and sari wore by the Gayabai at the relevant time on the day of incident. It appears that, during his cross examination certain details were asked about location of room of security Guard and also how many Guards are deputed in Hospital. He has stated in minute details about how many Security Guards are deputed inside the Hospital. Upon careful perusal of his cross examination, nothing useful to the defence has been brought on record.

30] The prosecution has examined Pandurang Piraji Gajbhare as PW-10. In his examination in chief, he stated

that, on 14.09.2007, he was called by the Police in the Civil Hospital, Nanded. Another panch was with him but he does not remember his name. They saw the dead body of Sunita. He has not seen as to whether there was any one present near the dead body. They had seen that, there were injuries on the back side of the head of Sunita and also on her forehead above the left eye brow. She had one more injury on left side of chest and on her abdominal portion at back side, and also on her fingers of right hand. There was injury on her right thigh. Panchanama was written. It was read over. Then, he signed the panchanama. It bears his signature, contents in it are correct, which is at Exh.49. It appears that, during his cross examination, he stated that, Gayabai was related to him. However, merely because he is related to Gayabai, is no reason to disbelieve his evidence in detailed particulars.

31] The prosecution examined Shaikh Jani Shaikh Ibrahim as PW-11. In his examination in chief, he stated that, he was attached to office of S.P.Nanded as a Photographer since March, 1980. On 13.09.2007, a call was received in their office to the I-Car Unit from Vazirabad

police Station. He further stated that, he went to the Government Hospital, Ward No.10 [Eye Ward], Nanded. He was instructed to take the photographs of the incident spot. He has a digital camera with him, make Nikkon. He took out in all 12 photographs of the scene of offence. The photographs now shown to him are the photographs taken out by him with his camera. Those are 12 in numbers. The photographs which were taken out by digital camera were taken out on a CD and from CD through computers, the prints out were taken out. He has not brought with him the said chip. The photographs were taken out as per the situation of the spot. He sent the photographs to the Police Station. As per the chip, they took out the relevant photographs which are required on a pen drive and by taking the said pen drive to the Lab, they prepared the CD from the Lab. He is produced the CD before the Court along with the list. He further deposed that, he handed over the photographs to the Vazirabad Police Station. Those photographs are marked at Exhibit 54 to 66.

32] During his cross examination, he admitted that, no written letter was given to him to take photographs, nor

he sought permission from the Civil Surgeon. However, it appears that, he was working in Investigation-Car Unit at the relevant time in the office of the Superintendent of Police, Nanded. However, on the whole, his evidence remained unshattered.

33] The prosecution examined Ramkishan Nagorao Gardanmare as PW-12. In his examination in chief, he stated that, on 19.05.2007, he was attached to Shivajinagar Police Station. One NC bearing No. 241/2007 was filed before the Shivajinagar Police Station, which was given to him for inquiry and report. One deceased Sunita Ghansham Jondhale had lodged the said NC, alleging that, she had an apprehension of her life from her husband Ghansham Jondhale – accused. On inquiry, he initiated a Chapter Proceeding under Section 107 of Criminal Procedure Code against Ghansham. He has brought with him the original register of the year 2007. The entry in respect of concerned N.C. is on page No. 243, which is in handwriting of PSO Madrewar. He identified the handwriting. The said entry is marked at Exhibit-57. He has brought with him the chapter case register for the year 2007. The entry in

respect of Chapter Case against Ghansham is on page No. 177. It is in his handwriting. The entry is marked at Exh. 58. Accused before the Court is the same. Interim bond from Ghansham was obtained.

The questions asked to this witness during cross examination are relates to the motive for commission of offence. However, in the present case, since there is direct evidence in the nature of eye witnesses motive looses its importance. Therefore, in earlier inquiry into N.C. No. 241/2007 whether anything adversed to Ghansham had come on record is not important. The evidence of PW-12 is important since Sunita lodged the N.C. against accused stating that, she had apprehension to danger of her life from the accused – Ghansham.

34] The prosecution examined Subhash Bhimrao Suryawanshi as PW-13. In his examination in chief, he stated that, he was attached to Vazirabad Police Station during the year 2007 to 2008. API Mr. Ghuge was attached to Vazirabad Police Station. He knew him as he worked with him. He further stated that, on 13.09.2007, API Mr.

Ghuge was on duty. On that day at about 11.10 a.m. PHC Allewar informed the Police Station on phone that, in the Female Ward No.10 of the Government Hospital, one person has attempted to cause death of two ladies. He was there in the Police Station. Accordingly, he went to the Hospital along with API Mr. Ghuge by giving information to the Senior Officer. They went to the Government Hospital and reached to Ward No.10 and found that, an axe stained with blood. They saw pool of blood on the floor and also bed stained with blood, pair of sleepers was also there. API Mr. Ghuge and PI Mr. Sonwane asked him to stay on the spot in protection of the spot. Accordingly, he remained on the spot. A panchanama of scene of offence was prepared in his presence. He further stated that, on 19th he carried the seized articles to CA, Aurangabad. All those articles were sealed and the seal was intact. A forwarding letter was given to him which was signed by Deputy Superintendent of Police Mr. Sharma. He reached those articles to the office of C.A., obtained acknowledgment of O/C and produced the O/C at Vazirabad Police Station. The articles were produced in the office of C.A. in the same conditions in which he had received those articles. The O/C bears signature of Shri Sharma, Dy. S.P. He identified his

signature. The acknowledgment bears the rubber seal of the office of CA, Aurangabad. The O/C is marked at Exhibit 60.

The evidence of PW-13 is important to the extent that, on the date of incident at about 11.00 a.m. the information was received from the Police Head Constable Mr. Allewar i.e. PW- 8 informed that, one person has attempted to cause death of two ladies in Ward No. 10 of the Government Hospital and then this witness accompanied API Mr. Ghuge to the Hospital. During his cross examination, the defence counsel has not brought anything substantial on record, which can be said to be useful to the defence.

35] PW-16 [Sayed Shaiuddin Syed Mohd. Ali gave inquest panchanama of dead body of Sunita.

36] We have discussed in the foregoing paragraphs the evidence of all the prosecution witnesses. The evidence of Laxmibai Mahajan, who was eye witness to the incident, clearly shows the involvement of the accused in killing

Gayabai and Sunita. The presence of the PW-15 Laxmibai, on the relevant date and time in Ward No.10 of the Government Hospital, has been convincingly proved by the prosecution. Exhibit-84, which is on record, relates to the names of the patients in ward No.10 at the relevant date. The registration number and the addresses of the patients are entered in the said register, and the certified true copies signed by the concerned Medical Officer is produced on record. At serial No.15 name of Gayabai is appearing. Against her name her address of Ganeshnagar is given and the date of admission is mentioned as 06.09.2007. The name of Laxmibai i.e. PW-15 is appearing in the said list, her address is shown 'Tamsa Hadgaon' and her date of admission is given as 11.09.2007. Duty list of Eye Ward was also produced before the Court, which is duly certified by the Medical Officer. The evidence of PW-15 and PW-9, who are actual eye witnesses to the incident, gets corroborated from the evidence of each other. There are other prosecution witnesses, who immediately arrived to the spot and saw that, Gayabai lying on the cot with injuries and Sunita was lying on floor in pool of blood in Ward No. 10. There is overwhelming evidence brought on record to prove guilt of the accused. The accused was caught hold

on spot itself. Axe and knife were recovered from the spot. There is enough corroboration to the direct evidence brought on record by the prosecution. The medical evidence unequivocally indicates that the death of Gayabai and Sunita was homicidal and injuries are on vital part. Therefore, we have no hesitation to hold that, the appellant killed Gayabai and Sunita by using axe and the same is produced by the prosecution beyond reasonable doubt. The findings recorded by the trial Court are in consonance with the evidence on record.

37] The trial Court ordered that, the accused Ghanshyam shall undergo life imprisonment for committing the murder of Gayabai and for committing murder of Sunita Ghansham Jondhale, which shall not be less than 28 years. In order to find out whether the sentence of minimum 28 years ordered by the trial Court is appropriate or otherwise, it would be worthwhile to make reference to the observations of the Supreme Court in the case of **Jai Kumar Vs. State of M.P.**¹, it is observed that, Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better off situation. Law

1. [1999] 5 SCC 1

courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to sub-serve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day.

38] In the present case, the appellant went to the Government Hospital with axe and knife and committed murder of Gayabai and Sunita. The evidence brought on record by the prosecution leaves no doubt in the mind that, the appellant went fully prepared to kill Gayabai and Sunita. The act of the appellant was cold blooded murders. The manner in which Gayabai and Sunita were killed by inflicting blows on their vital part in the Government Hospital, not only created terror in the Government Hospital, which is a public place, but the said act must had impact on the society. Therefore, the trial Court keeping in view the Judgment of the Supreme Court in the case of ***Hari Ghos Vs. State of West Bengal***², rightly held that

2. 2009 All MR [Cri.] 3097

imprisonment for life means through out the life of the accused thereby the period of his imprisonment shall not be less than 28 years.

39] In our opinion, the trial Court has rightly ordered that, the appellant shall undergo minimum 28 years sentence. The Supreme Court in the case of ***Mulla & another Vs. State of Uttar Pradesh***³ in the facts of that case, held that, punishment of life sentence to the appellant – accused must extend to their full life, subject to any remission by Government for good reasons.

40] The Hon'ble Supreme Court in the case of ***Mohd. Jamiludin Nasir Vs. State of West Bengal***⁴ in para 175 observed that, the sentence to be awarded should achieve twin objectives: [a] Deterrence, [b] Correction. The court should consider social interest and consciousness of the society for awarding appropriate punishment. Seriousness of the crime and the criminal history of the accused is yet another factor. Graver the offence longer the criminal record should result severity in the

3. [2010] 3 SCC 508

4. [2014] 7 SCC 443

punishment. Undue sympathy to impose inadequate sentence would do more harm to the public. Imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.

41] In the light of the discussion in the foregoing paragraphs, we are of the considered view that, appeal sans merit, hence dismissed. We quantify Rs.3000/- [Rs.Three Thousand only] towards fees and expenses of the learned appointed counsel Mr. Shriniwas Kulkarni.

Sd/-

[A.I.S.CHEEMA, J.]

Sd/-

[S.S. SHINDE, J.]

DDC