

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.249 OF 2009

Iqlak Fakir Mohammad Shaikh	]	
Aged about 27 Yrs., Occ.: Repairing	]	
R/at Yarkhan Complex, 416,	]	
New Mangalwar Peth, Pune – 411 011.	]	
[At present in judicial custody and	]	 Appellant /
lodged at Yerwada Central Prison, Pune]	]	[Org. Accused No.1]

Versus

The State of Maharashtra	]	 Respondent
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Mr. Sachin B. Chandan, Appointed
Advocate, for the Appellant.

Mr. H.J. Dedhia, A.P.P., for the Respondent-
State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH NOVEMBER, 2015.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. The Appellant / Original Accused No.1 in Sessions Case No.230 of 2006, who stands convicted by the Judgment and Order dated 15th January, 2009, passed by the Additional Sessions Judge, Pune, has

preferred this Appeal challenging his conviction and sentence for the offences punishable under Sections 302, 201 and 380 of the IPC. By the impugned Judgment, Appellant is sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer S.I. for nine months for the offence punishable under Section 302 of the IPC, whereas he is sentenced to suffer R.I. for seven years and to pay fine of Rs.5,000/-, in default to suffer S.I. for nine months for the offence punishable under Section 201 of the IPC and R.I. for three years and to pay fine of Rs.1,000/-, in default to suffer S.I. for three months for the offence punishable under Section 380 of the IPC. All the substantive sentences are to run concurrently and he is held entitled to set off for the period already undergone in Jail from 8th January, 2006.

2. Facts, as are necessary, for deciding this Appeal may be stated as follows :-

Deceased Dr. Gudrun was a German lady and was residing in the Flat No.8 in "C" Building of Liberty Society at Koregaon Park, Pune. She was acquainted with the family of PW-1 Dr. Farookh Wadia, PW-2 his daughter Shirin Wadia and PW-3 his wife Statira Wadia. She was also having acquaintance with PW-4 Dr. Tonny Panackal and PW-5 Mohan

Agashe. She was not seen alive by these persons after 31st December, 2005. Her maid-servant PW-6 Manisha Chavan has also lastly served in the house of the Deceased on 31st December, 2005. Though she visited the house of Deceased on 2nd January, 2006, and thereafter she found it to be locked and closed. As all these witnesses neither heard from the Deceased nor seen her after 31st December, 2005, they became suspicious that something might have gone wrong with her. PW-1 Dr. Farookh Wadia hence contacted PW-28 PI Mahendra Pardeshi of Bund Garden Police Station and with his assistance, with the spare key, which was lying with PW-3 Mrs. Statira Wadia, the flat was opened. Inside the flat, they found the beheaded body of the Deceased lying in the bathroom with the blood stains spread on the plastic curtains of the bathroom and its walls. Her dead body was identified by PW-1 Dr. Farookh Wadia and PW-3 Mrs. Statira Wadia. The Inquest Panchanama of the said dead body was drawn vide Exhibit-42 by PW-26 API Vithal Shinde and the dead body was referred for postmortem examination. However, before doing it, PW-8 Dattatraya Kulkarni clicked the photographs of the dead body and the scene of offence. PW-9 Dr. Shreekant Chandekar conducted the autopsy over the dead body on 8th January, 2006 and found seven chopped wounds on the base of the neck and several stab injuries on the rest of the body.

3. PW-28 PI Pardeshi, in the meanwhile, recorded the complaint of PW-1 Dr. Farookh Wadia vide Exhibit-27 and on the said complaint, C.R. No.21 of 2006 came to be registered. He took over further investigation of the case. On the spot of incident, he drew the Scene of Offence Panchanama (Exhibit-68) and collected one cheque drawn on ICICI Bank, Kondhawa Branch, Pune, having blood stains thereon. Further, he also collected other blood stained articles from the spot like the mat, curtains etc. The inspection of the said flat was taken in the presence of the witnesses and it was transpired that from the said flat, one set of computer of Samptan Make, one colour T.V. of Philips Make and one Diskman of Sony Company were found missing. PW-2 Shirin and PW-3 Statira also disclosed that the silver bunch of keys, which Deceased used to hang to her waist, was also missing from the dead body. Their statements to that effect then came to be recorded.

4. On the same day, at about 9 pm, on the tip off, the Appellant came to be arrested, when he came to the house of his brother-in-law at Sunshine Tower, Koregaon Park. He was brought to the Police Station and his search was taken. In the said search, one silver bunch of seven keys was found. On the next day, it was shown to PW-2 Shirin, who identified the same as belonging to the Deceased.

5. Meanwhile, the Appellant was arrested under Panchanama (Exhibit-70). At the time of arrest, some biting marks and injuries were found on the hand of the Appellant and, therefore, he was referred for medical examination. During custodial interrogation, the Appellant guided the Police and Panchas to Mundhawa-Kharadi Bridge and from the river bed, he produced one black bag containing two blood stained knives and the head of the human being, with injuries thereon. They were seized under Panchanama (Exhibit-98). The head was sent to Sassoon Hospital, Pune and it was verified that it belonged to the dead body of the Deceased.

6. During the course of further investigation, at the instance of the Appellant, the stolen articles, like, the computer, the T.V. and Diskman came to be seized under Panchanama. The clothes of the Appellant were also seized at his instance u/s. 27 of the Evidence Act, with blood stains thereon. They were also sent to Chemical Analyzer.

7. As a part of further investigation, the statements of various witnesses were recorded. It was found that the biting injuries found on the hand of the Appellant were tallying with the dental impressions of the Deceased. It was also revealed that the cheque drawn on the ICICI Bank was from the account of the Appellant. In interrogation of the Appellant,

the role of Accused No.2 Mohd. Shafi Mohd. Yakub Shaikh, from whom the stolen TV was recovered, also transpired. Hence, he was arrested. Thus, after completion of due investigation, Charge-Sheet came to be filed in the Court of Judicial Magistrate, First Class, Pune on 3rd April, 2006. In due course, the case was committed to the Sessions Court.

8. The Trial Court framed charge against the Appellant vide Exhibit-2. The Appellant pleaded not guilty and claimed trial, raising the defence of innocence and false implication.

9. In support of its case, the Prosecution examined in all 28 witnesses and on appreciation of their evidence, the Trial Court held the guilt of the Appellant to be proved beyond reasonable doubt for all the offences charged against him and convicted and sentenced him, as aforesaid. Accused No.2 Mohd. Shafi Mohd. Yakub Shaikh was, however, acquitted giving him the benefit of doubt.

10. This Judgment of the Trial Court is challenged in the present Appeal by learned counsel for the Appellant, whereas, supported by the learned A.P.P. In our considered opinion, before advertng to the rival submissions advanced by them at bar, it would be useful to refer to the evidence on record.

11. This is a case of brutal murder of an old German lady of 79 years, who was residing all alone in the flat. The case of the prosecution is based on the circumstantial evidence alone and at the outset itself, we are constrained to observe that the circumstances proved on record by the prosecution in the present case are so strong and forbidding, forming a chain so complete that no other inference but of the guilt of the Appellant can be drawn from the proved circumstances on record. The circumstances relied upon by the prosecution can be categorized as follows :-

➤ **Recovery of beheaded body of the Deceased from her flat**

12. The first and foremost circumstance relied upon by the prosecution is that of the homicidal death of Deceased Dr. Gudrun. There is evidence of PW-1 Dr. Farookh Wadia, PW-2 his daughter Shirin and PW-3 Statira, his wife, which revealed that they did not hear from the Deceased since 31st December, 2005. As per evidence of PW-2 Shirin, Deceased was lastly seen in her flat on 30th December, 2005. Thereafter, when she made phone call to the Deceased on 2nd January, 2006, there was no reply. Upto 6th January, 2006, there was no information at all about the Deceased. There is also evidence of PW-6 Manisha Chavan, who was working as

maid-servant in the house of the Deceased that on 31st December, 2005, Deceased had asked her to clean her another flat in “D” Building of Liberty Society. Thereafter, on 2nd January, 2006, when she reported for her usual work, she found that the flat of the deceased was locked from outside. She waited there for 10 to 15 minutes and left. She again came on Wednesday and Thursday, however, the flat was found locked.

13. The evidence of PW-1 to PW-3, Dr. Wadia and his family members, reveal that as they did not hear from the Deceased for a long time, they got suspicious, especially, when they came to know from Dr. Shanti Pappu that Dr. Gudrun has not been to Chennai, where she was supposed to go. Hence they informed the Police and then along with the Police, they went to the flat of the Deceased. PW-3 Mrs. Statira Wadia was having the spare keys, with which they opened the flat of the Deceased in the presence of PW-28 PI Pardeshi and other Police Officers. There they found the beheaded body of the Deceased lying in the bathroom. There were some dry blood stains on the bathroom curtains and the walls. Telephone wire of the flat was also cut off. The evidence of PI Pardeshi also reveals that near the dead body, they found several articles, like, the pamphlet of Vasundhara Herbal Beauty Saloon and Slimming Centre, one wrist watch of golden colour, one blood stained napkin and, most

importantly, one cheque drawn on ICICI Bank, Kondhawa Branch, Pune having blood stains thereon were found. The photographs of all these articles and the dead body were taken and then dead body was referred for postmortem examination to Sassoon Hospital, Pune.

➤ **Homicidal Death**

14. The evidence of PW-9 Dr. Chandekar, who was attached to Sassoon Hospital, Pune and who has conducted the postmortem, reveals that, on examination of the dead body, he observed that the changes of decomposition were present; lividity was minimal and discolouration of internal organs was also minimal, thereby indicating significant blood loss from the body. On internal examination of chest, he found left infra clavicular hemorrhage 3 x 4 cm, hyoid, thyroid were missing; lungs and heart were also decomposed and no blood was present in the heart cavity.

15. He found on the dead body, as many as, twenty-two external injuries, which were in the nature of incised and stab wounds along with abrasions, with corresponding internal injuries.

➤ **Recovery of the head and the knives at the instance of the Appellant**

16. Meanwhile, PI Pardeshi, on tip off, has arrested the Appellant on the very same night and in the search of the Appellant, one silver bunch of seven keys was recovered, which later came to be identified by PW-2 Shirin as belonging to the Deceased. During Police custody on the next day, the Appellant gave a disclosing statement in the presence of the Panch PW-21 Somnath Taru. His statement was reduced to Memorandum Panchanama (Exhibit-97). Thereafter, the Appellant guided the Police and Panchas to the Mundhawa-Kharadi Bridge. From the railings of the Bridge, he showed the black bag, which was lying in the river-bed. Then Appellant took the Police and Panchas to the end of the river-bed and opened the said bag. There they found the head of a woman in one compartment and two knives with blood stains thereon in another compartment of the bag. These articles were seized under Panchanama (Exhibit-98). The head was sent for postmortem examination.

17. PW-9 Dr. Chandekar has conducted the postmortem on the head on 9th January, 2006. On gross examination of head and neck portion of the body, along with rest of the portion i.e. trunk and limbs, considering sex complexion, size and proportion with reciprocally corresponding parts at

site of separation, he has opined that both the parts, the trunk and the head, were belonging to one and the same person i.e. the Deceased. He found several incised wounds on the head part, which he has noted in the Postmortem Report. De-composition was also present to some extent. He referred the trunk and head to Anatomy Department for the purpose of getting them identified and they were found to be of the same lady by Anatomy Department also. According to Dr. Chandekar, the cause of the death was *“multiple injuries with evidence of alcohol consumption”*. He has further opined that the incised and chopped injuries found on the body of the Deceased were possible by sharp edged weapons, like, knives, Article Nos.9 and 10, recovered at the instance of the Appellant. He has further opined that the injuries found on the hands and forearms of the Deceased were defence injuries, which might have been caused while she was resisting the attack.

18. The only point on which evidence of Dr. Chandekar is challenged is that, according to him, the decomposition process has just started as regards the head part. Hence, it is submitted that if the death has occurred on the night of 31st December, 2005 or on 1st January, 2006, then the process of decomposition should have been completed by the time postmortem examination was conducted on 9th January, 2006. It is

submitted that Dr. Chandekar has admitted that the process of decomposition of the head, if completed, would have resulted into the peeling of the superficial skin, the dropping of scalp hair and liquefying of eye balls. It is urged that, as none of these signs were present, in the present case, it would be difficult to accept that the death had taken place six to seven days prior to the recovery of the head. However, PW-9 Dr. Chandekar himself has given explanation for the delay in the process of decomposition of the head. According to him, cold atmosphere and increased moisture of surrounding area had delayed the process of decomposition. In the instant case, the head was found in the river-bed and, secondly, it was the month of January; therefore, of biting cold. Hence, naturally, as regards the head, the decomposition process was delayed. It was on-going, though not complete. As deposed by him, only in case of extreme decomposition, there can be the symptoms, like, the peeling of superficial skin, dropping of scalp hair etc., which was not the case herein.

19. As to the grievance of the learned counsel for the Appellant that the evidence of the Panch PW-21 Somnath Taru reveals that at the time of Memorandum and Recovery Panchanama of Appellant, the Appellant was handcuffed by the Police and hence his statement recorded under Section

27 cannot be said to be voluntary one, this grievance is without any legal basis, in view of the law laid down by the Apex Court in ***Gurudeep Singh @ Deep Vs. State (Delhi Administration), AIR 1999 SC 3646***. In this reported authority, the Apex Court has held that, “the fact of handcuffing of accused or presence of another policeman in recording room with chain of his handcuff in the hand or presence of armed guards outside the room cannot be a ground to turn the confessional statement as made involuntarily”. The Apex Court held that such statement is admissible in evidence.

20. In our opinion, the recovery of the head of the Deceased, along with the knives, at the instance of the Appellant, in pursuance of the memorandum statement given by him under Section 27 of the Evidence Act, is more than a clinching piece of proof against the Appellant. Absolutely, nothing is elicited either in the cross-examination of the Investigating Officer or even in the cross-examination of the Panch PW-21 Somnath Taru to disbelieve them in any way. There is also no cross-examination of PW-9 Dr. Chandekar to disbelieve the fact that the head recovered at the instance of the Appellant was of the same lady i.e. Dr. Gudrun, whose dead body was found in her flat.

➤ **Presence of biting marks of injuries on the hand of Appellant**

21. Another clinching piece of evidence against the Appellant is that of the biting marks of injuries found on his hand at the time of his arrest. There is evidence on record to that effect of PW-28 PI Pardeshi and the Panch Witness PW-11 Khandu Shitole in whose presence the Appellant was arrested on the very night. The Arrest Panchanama (Exhibit-70) clearly refers to these biting injuries found on his hand. The evidence of PW-20 Dr. Bhagwan Andhare proves that on 8th January, 2006, when Appellant was referred to Sassoon Hospital for his medical examination, he had given the history of human bite on 1st January, 2006 at about 9:45 pm. On his examination, PW-20 Dr. Andhare found following injuries :-

- (i) *Healing tooth injury mark CLW on left hand thumb
2 x 1 cm, 2 cm x ½ cm dorsal aspect, base of
thumb one mark one palmer aspect ½ cm x ¼ cm
and on tip near base of nail 1 cm, black colour
mark.*
- (ii) *Healing tooth mark on left hand index finger on
terminal inter phalangeal joint one on medially and
one on laterally 1 cm x ¼ cm each.*

- (iii) *Tooth mark on left hand middle finger terminal internal phalangeal joint 1 cm x ¼ cm dorsally.*
- (iv) *Healed tooth mark left hand ring finger on terminal inter phalangeal joint. One on dorsal 1 x ¼ cm and one on palmar aspect 2 x ¼ cm.*
- (v) *Cut injury on the right hand index finger middle phalangeal 2 cm long two in number & ¼ cm broad palmar aspect.*
- (vi) *Cut injury on right hand palm palmar aspect in between thumb and index finger 3 x ¼ cm into skin deep.*
- (vii) *CLW on right hand by palmar region ¼ x ¼ cm.*
- (viii) *Cut injury on right hand little finger terminal phalanx 2 cm long.*
- (ix) *Abrasion on nose left side near eye 2 cm long, red color.*

22. According to him, Injury Nos.1 to 8 were caused within eight days of

his examination. He has further opined that Injury Nos.1 to 4 could be caused by the human teeth, whereas Injury Nos.5, 6 and 8 could be caused by sharp object like knife. He has issued the medical certificate accordingly vide Exhibit-93.

23. The evidence of PW-13 Dr. Vivek Pakhmode proves that in order to verify whether biting injuries found on the hand of the Appellant were possible due to the teeth of the Deceased, a panel of three Doctors was formed, of which he was a member. They took the impressions of the upper and lower jaws of the Deceased and they found that the biting injuries appearing on the hand of the Appellant were tallying and were possible by the teeth of the Deceased. It is clearly opined that all the natural teeth, which might have caused these injuries, were present in the jaw of the Deceased and these injuries could be caused due to biting more than once.

24. There is absolutely no cross-examination of these witnesses to challenge their evidence in any way. In our considered opinion, therefore, the presence of the biting injuries on the hand of the Appellant, that too caused by the human teeth of the Deceased, leaves again no manner of doubt about the involvement of the Appellant in the offence, in the light of

the fact that no satisfactory explanation has been offered by the Appellant about the same.

25. There is also evidence of PW-14 Dr. Mukhatar Deshmukh, to whom the Appellant has approached on 2nd January, 2006 with injuries on his head and with a history that he has sustained those injuries in the quarrel on the day of new year. He has given treatment to those injuries and the medical certificate of the same is also produced on record at Exhibit-80. This evidence again leads to no other inference but that of Appellant sustaining injuries in the incident in question.

➤ **Recovery of stolen articles at the instance of Appellant**

26. Another crucial piece of evidence is the recovery of the stolen articles, again at the instance of the Appellant. There is evidence of PW-2 Shirin and PW-3 Statira proving that the Computer of Samptron Make, Colour T.V. of Philips Make and Diskman of Sony Company were missing from the house of the Deceased. Evidence of PW-28 PI Pardeshi goes to prove that, during custodial interrogation with the Appellant, Appellant has shown his readiness and willingness to produce these stolen articles. His statement was reduced to Memorandum Panchanama (Exhibit-104) in the presence of the Panch PW-25 Chandrakant Khamitkar. Thereafter, firstly,

the Appellant guided the Police and Panchas to the house of his sister PW-24 Rajiya Khan and at the instance of the Appellant, she produced the Computer, which came to be seized under Panchanama. The statement of PW-24 Rajia Khan was also recorded simultaneously. Further, the Appellant guided the Police and the Panchas to the house of Accused No.2 Mohd. Shafi Mohd. Yakub Shaikh, who, on the instructions of the Appellant, produced the Colour T.V. of Philips Make along with its remote, which came to be seized under Panchanama. Lastly, the Appellant guided the Police and the Panchas to the house of PW-23 Vasim Tamboli, who has produced the Diskman of Sony Company. All these three articles, i.e. Article Nos.14, 15 and 16, which were seized from these witnesses under Panchanama (Exhibit-105) were shown to the witnesses i.e. PW-1 to PW-3, the members of Wadia family, and they have identified the same as belonging to the Deceased. Thus, recovery of the stolen articles at the instance of the Appellant, constitutes one more strong link in the chain of circumstantial evidence connecting the Appellant to the offence.

27. The only ground on which the evidence relating to recovery of stolen articles is challenged is that the Panch to the said Panchanama, namely, PW-25 Chandrakant Khamitkar is a habitual Panch. In our considered opinion, even if the evidence of the Panch is excluded from

consideration, it will not affect the recovery evidence in any way. The legal position relating to it is very well settled and time and again it is held that there is absolutely no reason to disbelieve the evidence of the Investigating Officer on this aspect. The law nowhere provides that there has to be independent evidence of the Panch Witness to prove the recovery evidence under Section 27 of the Evidence Act. If at all any authority is required for this legal proposition, then one can safely place reliance on the observations of the Apex Court in the case of ***State Government of New Delhi Vs. Sunil, 2000 DGLS 1678***, wherein the Apex Court has held that, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused, the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. According to the Apex Court, the Court has to consider the evidence of the Investigating Officer, who deposed to the fact of recovery based on the statement elicited from the accused, on its own worth. As per Apex Court, it is an archaic notion that actions of the Police Officer should be approached with initial distrust. It was observed that, “when a Police Officer gives evidence in Court that certain articles were recovered by him on the strength of the statement made by the accused, it is open to the Court to believe the version to be correct if it is not otherwise shown to be

unreliable. It is for the accused through cross-examination of the witnesses or through any other materials, to show that the evidence of the Police Officer is either unreliable or at-least unsafe to be acted upon in a particular case”.

28. The same legal position is reiterated by our own High Court in the case of ***Satyaprakash @ Suresh Shankar Dahiwale Vs. State of Maharashtra, 2007 ALL MR (Cri.) 2451***, wherein in the context of Section 27 of the Evidence Act, it was held that, *“recording of confessional statement of accused in the presence of independent witness is a rule of prudence and not a legal requirement. In appropriate case, it is permissible to rely on the evidence of the Investigating Officer unless it is shown that he acted in a biased manner”*.

29. If these legal propositions are kept in mind, then whether the independent witness was available or not at the time of recording the statement of the Accused or at the time of recovery of articles at his instance under Section 27 of the Evidence Act and whether the Panch who has signed on the Memorandum and Recovery Panchanama, is ultimately found to have acted in other Panchanamas also and hence his evidence is excluded from consideration, the fact remains that the evidence of Investigating Officer, in this case of PW-28 PI Pardeshi, has to

be judged on its own worth. It cannot be discarded merely because the Panch is found to be habitual one. In this case, we do not find that Defence has succeeded in eliciting anything worth the name in the cross-examination of PW-28 PI Pardeshi to discredit him or to suspect his evidence in any manner so as to show that he has acted in a biased manner.

30. As regards the submission advanced by learned counsel for the Appellant that PW-24 Rajiya Khan and PW-23 Vasim Tamboli, both have not supported the prosecution case and, therefore, the recovery evidence is suspect, this submission also cannot hold any worth for the simple reason that PW-24 Rajiya Khan is the sister of the Appellant, whereas, PW-23 Vasim Tamboli is closely associated with the Appellant and that is why the Appellant has given them the stolen articles. Hence, their turning hostile cannot make any dent in the prosecution case.

➤ **Recovery of silver bunch of keys**

31. As stated above, even the silver bunch of seven keys, which was seized from the possession of the Appellant at the time of his arrest, (under Panchanama Exhibit-70), was also properly identified as belonging to the Deceased by PW-2 Shirin. Not only that, but the Investigating

Officer has even confirmed that the keys in the said bunch were that of the locks of the flats belonging to the Deceased. The evidence of the Panch PW-11 Khandu Shitole and PI Pardeshi goes to prove the said circumstance beyond reasonable doubt.

➤ **Finding of blood-stained cheque of Appellant at the scene of offence**

32. The plea of Appellant that he is falsely involved in the case is completely demolished by the presence of the blood stained cheque found at the scene of offence near the dead body. The Panchanama of the scene of offence (Exhibit-68) establishes that the signed cheque drawn on ICICI Bank for the amount of Rs.20 lacs was seized from the spot and it was having blood stains thereon. The evidence of the Panch Witness PW-10 Ashok Deshmukh and PI Pardeshi is clear to that effect.

33. The prosecution has also examined PW-19 Mr. Akhatar Shaikh, the employee of ICICI Bank to prove that the said cheque was from the Cheque-Book issued in the name of the Appellant. The Appellant has not explained as to how the said cheque reached to the scene of offence.

34. The presence of this cheque at the scene of offence also proves the

motive, as alleged by the prosecution against the Appellant. As per prosecution, the Deceased wanted to sell her another vacant flat in “D” Building in Liberty Society and Appellant has approached her for the purchase of the said flat with the cheque. But then finding her all alone and with an intention to grab her property, he has assaulted her mercilessly. There is further evidence of PW-15 Dilip Thakur, who was working as Estate Agent, to whom the Deceased had told to search for the purchaser of the flat and had given the key of the said flat to him on 24th and 25th December, 2005. Further, there is evidence of PW-12 Priti Acharya, who had approached the Estate Broker Ibrahim and Ibrahim has sent the Appellant along with this witness to show the flat in “D” Building of Liberty Society. As per her evidence, the said flat belonged to German lady, the Deceased in the case, and the present Appellant has shown the said flat to her.

35. The evidence of PW-18 Abdul Inamdar, who was working as 'Supervisor' in Liberty Society, also goes to prove that the Deceased was residing in Flat No.C-1 in the Liberty Society. She was having another flat in the said Society in “D” Building, which she wanted to sell.

36. On the instructions of the Deceased, he has shown the said flat to

the Estate Agents, namely, one Saroj and Ibrahim. Ibrahim was working as Real Estate Agent in Koregaon Park and Ibrahim had shown the said flat of Deceased to one customer through his brother-in-law i.e. the Appellant.

37. In our considered opinion, this evidence is more than sufficient to prove not only the involvement of the Appellant but also the motive on his part to do away with the Deceased. For the sake of argument, if it is assumed that the evidence as regards the motive is not clearly spelt out, even then the fact remains that the motive is something which is within the exclusive knowledge of the Accused and, therefore, the prosecution cannot be expected to bring full proof evidence about the motive. Moreover, again even assuming that motive is not established beyond reasonable doubt, it is only one aspect of the prosecution case. When all other circumstantial evidence is of a clinching nature, motive pales into insignificance and can hardly become a deciding factor to tilt the balance in favour of the Accused.

➤ **Blood stains of Deceased on clothes of Appellant**

38. The prosecution, in the present case, has also relied upon the C.A. Report (Exhibit-60), which prove that the human blood of “A” group was

found on the shirt, pant and right shoe of the Appellant. The articles which were found at the scene of offence, namely, the mat, the pamphlet, the cheque, the wrist watch, even the curtains, were also found to be having the human blood of “A” group, which was of Deceased. Appellant has not offered any explanation as to how the stains of blood group of the Deceased were found on his clothes. The said clothes were recovered again at his instance under Section 27 of the Evidence Act, when he has guided the Police and Panch to his house and produced the plastic bag from his bathroom containing his clothes and the shoe, which came to be seized under Panchanama.

39. Here in the case, therefore, there is ample and conclusive evidence on record to prove the guilt of the Appellant beyond reasonable doubt. Each and every circumstance alleged and proved by the prosecution, with the help of cogent evidence, is individually also sufficient to seal the fate of the case. The chain formed by these circumstances is so complete that there is no other alternative but to hold that the Appellant and Appellant alone is guilty of the offences charged and proved against him. The Trial Court has, therefore, rightly convicted the Appellant. Appeal, hence, holds no merit and, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]