

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

CRIMINAL APPEAL NO.270 OF 2013

Balu Mukunda Pawar, .. Appellant
Age-47 years, Occu-Labourer,
R/o. Bangeshwar Bhilati,
Samoda, Tq. Sakri, Dist. Dhule

Versus

1. State of Maharashtra .. Respondent

Mr.R.M.Deshmukh, Advocate for the appellant (appointed)
Mr.V.M. Kagane, APP for the respondent/State

**CORAM : S.S.SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 26.07.2017

PRONOUNCED ON : 14.09.2017

J U D G M E N T [PER:S.M. GAVHANE, J.]

. The appellant (hereinafter referred to as the accused) who has been convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.2000/- (Rupees Two Thousand), in default to suffer simple imprisonment for two months for the offence punishable under Section 302 of the Indian Penal Code (for Short the IPC) as per the judgment and order dated 30.10.2009 passed by the Additional Sessions Judge, Dhule in Sessions Case No.15 of 2009 has preferred this appeal

challenging the said judgment and order of conviction and sentence recorded against him.

2. The facts of the prosecution case, in short, are as under:-

A. The informant Shamrao Shankar Malich (PW-1) who is resident of Mhasadi, Tq. Sakri, Dist. Dhule is the father of the deceased Ushabai who was married to the accused Balu Pawar who is resident of Gangeshwar Bhilati, Samoda, Tq. Sakri, Dist. Dhule 10 years prior to the incident of her death. The deceased and the accused have three sons namely Kanhaiyalal (PW-2), Dinesh and Tushar.

B. After marriage the deceased went to the house of the accused for cohabitation. She has begotten three sons as above. It is alleged that at the time of Pola festival of the earlier year of the incident the deceased, her husband/accused and their children had come to the house of the informant. At that time the deceased had told her father (informant) that the accused is suspecting her character and on that count he was torturing her. Thereupon, the informant gave understanding to the accused and they were sent to their village Samoda on 05.09.2008.

C. It is further alleged that in the morning on 06.09.2008 informant(PW-1) came to know from his relative Bhavsha Bharat Pawar that in the night accused killed Ushabai assaulting her by an axe and ran away. PW-1 rushed to the house of the accused and found Ushabai lying in the pool of blood having sustained incised injuries on her neck, ribs, hands and back. PW-1 asked his grand-son Kanhaiyalal (PW-2) and upon asking his grand son Kanhaiyalal told that accused assaulted the deceased by an axe in the night and ran away from the back door of the house. (PW-1) thereupon, immediately went to the Police Station Pimpalner and accordingly lodged the complaint. Treating the said complaint as FIR Crime No.57/2008 for the offence punishable under Section 302 of the IPC was registered against the accused in the said police station on the same day on 06.09.2008 at 06.30 am. and Assistant Police Inspector Avhad immediately went to the spot of incident and prepared inquest panchanama. Thereafter, he prepared panchanama of spot of incident i.e. house of the accused and seized the simple soil and soil mixed with blood as well as quilt having blood stains under the same panchanama. So also, he sent dead body in the Primary Health Centre, Pimpalner, Tq. Sakri, Dist. Dhule for postmortem examination where Medical Officer Dr. Mohane (PW-3) and Dr. Sonwane conducted the postmortem

examination and issued postmortem report (Exh.17). They had opined that the deceased died due to hemorrhagic shock due to cutting of neck vessels as per injuries mentioned in column No.17. They had also taken viscera for chemical analysis. The Police Head Constable Bhagwan Deochand Salve of Pimpalner Police Station seized the clothes i.e. petticoat and blouse having blood stains of the deceased and prepared panchanama. Thereafter, API Avahad arrested accused on the same day i.e. 06.09.2008 and seized the pant and full sleeve shirt on the person of the accused in presence of Panchas between 16.50 to 19.30 hours and since then the accused was in custody. Thereafter an axe was seized at the instance of accused in presence of panchas and separate panchanama was prepared. API Avhad recorded the statements of some witnesses including statement of Kanhaiyalal (PW-2) and others on the same day. So also, the statement under section 164 of Code of Criminal Procedure was recorded by JMFC, Sakri. Seized clothes of accused, the deceased, axe and samples of blood of the accused and the deceased were sent to the Chemical Analyzer by API Avahad with letters for analysis and report. He collected the reports of the Chemical Analyzer.

D. After completion of the investigation API Avahad submitted the charge-sheet against the accused in the

Court of JMFC, Sakri for the offence punishable under Section 302 of the IPC. As the offence under Section 302 of the IPC was exclusively triable by the Sessions Court, the learned JMFC committed the case to the Sessions Court, Dhule, which was then made over to the Additional Sessions Judge, Dhule.

E. The charge was framed against the accused for the offence punishable under Section 302 of the IPC to which the accused pleaded not guilty and claimed to be tried. His defence is total denial and as it appears from the trend of cross-examination of API Avhad his defence is that unknown person has committed murder of his wife Ushabai and on the say of complainant (PW-1) his father-in-law his son Kanhaiyalal (PW-2) is shown eye witness to the incident and false complaint is filed. No witness in defence has been examined by the accused.

F. The prosecution has examined in all five witnesses to prove charge against the accused and relied upon the Panchanamas referred to above.

G. Upon considering the evidence adduced by the prosecution the learned Additional Sessions Judge, Dhule held that the prosecution has proved that death of the deceased is homicidal and the accused has committed her

murder and as such held the accused guilty for the offence punishable under Section 302 of the IPC and sentenced him as mentioned earlier in introductory para (supra) by the impugned judgment and order dated 30.10.2009.

H. Being aggrieved by the said judgment and order the accused has preferred this appeal alongwith delay condonation application bearing No.3339 of 2013 which was condoned by the order dated 09.07.2013. The accused has challenged the impugned judgment and order mainly on the ground that the trial Court has erred in relying upon the evidence of PWs. 1 to 5. It has further erred in accepting the evidence of PW-2 Kanhaiyalal a child witness of 9 years when said witness has admitted in the cross-examination that there was dark inside the house and the trial Court has failed to appreciate that there was every possibility of tutoring Kanhaiyalal (PW-2) by his grand-father Shamrao Malich (PW-1). The trial Court has failed to consider the in consistency in the evidence of Shamrao (PW-1) and the FIR (Exh.36) lodged by him as he has deposed that incident took place after three days of Pola festival, whereas in the FIR it is stated that incident took place on the next day of Pola festival and that said in consistency makes the evidence of Shamrao Malich (PW-1) un-trust worthy. It has failed to

appreciate that the prosecution has not examined Mukunda father of the accused and Bhavsha Pawar who informed Shamrao Malich (PW-1) about the incident and as such non-examination of the said witnesses is fatal to the prosecution case. The trial Court has also failed to appreciate that prior to arrest of the accused there was seizure of axe as per panchanama (Exh.45). So also, provisions of Section 313 of the Code of Criminal Procedure are not properly followed. On the above grounds accused has prayed to set aside the impugned judgment and order and to acquit him of the offence under Section 302 the IPC by allowing the appeal.

3. In response to the notice learned APP has appeared on behalf of the respondent/State.

4. Learned counsel for the appellant-accused made submissions in the light of aforesaid grounds of appeal and more particularly he submits that the evidence of Kanhaiyalal (PW-2) who is admittedly the son of the deceased and the accused and the child witness is not properly considered by the trial Court when it is settled law that a child witness being susceptible to tutoring their evidence should be accepted with great caution and the evidence of such witness cannot be implicitly relied on. Further, it is submitted that conviction of the

accused cannot be based on sole testimony of PW-2-child witness and evidence of child witness is to be evaluated carefully and adequate corroboration to the said witness is required from other evidence. It is submitted that the evidence whatever brought on record by the prosecution is not sufficient to state that the prosecution has proved offence alleged against accused beyond reasonable doubt and therefore, accused is entitled to be acquitted of the offence for which he has been convicted by allowing appeal.

5. In support of his submissions learned counsel for the accused has relied upon following decisions.

A] In the case of Vikram Babasaheb Jadhav Vs The State of Maharashtra reported in 2012 ALL MR (Cri) 2548 the Bombay High Court in paragraph Nos. 15 and 16 observed as under:-

"15. Undoubtedly, a child is competent to testify if he can understand and rationally answer the questions put to him. However, it is well settled that the children are often unable to distinguish between what is true and what is imaginary. They can easily be taught stories, and once they have learnt a story by heart, it would be difficult for them to distinguish it from real happenings. The child witnesses are susceptible to tutoring. The appreciation of their evidence is a difficult task, as any

mistake or discrepancy in their statements, can easily be ascribed to innocence or failure to understand and undue weight is often given to what can merely be a well taught lesson. It is therefore, well settled that the evidence of a child witness should be accepted with great caution.

16. Considering the infirmities in the evidence of Saurabh, such as non disclosure of the manner of beating, method of beating, weapon, if any, used during the beating, the reaction of the victim i.e. Pushpa, while the beating was going on, the reaction of the appellate after the assault was over, and the reaction of the witness himself during and after the assault, it is difficult to believe that Saurabh is narrating something, from his memory of what he had seen. If he had seen the incident, he would be expected to reveal some of the details with respect to the incident, as have been mentioned above. When his testimony is so brief and incomplete, it would be difficult to conclude that he had actually seen the incident. Though the prosecution case was that the appellant had assaulted Pushpa with an axe and a stick, no efforts were made by the Assistant Public Prosecutor to get the necessary details from Saurabh during his examination in chief. This creates suspicion that Saurabh would not have been able to say anything more than what he said viz. he saw that his mother was being beaten by his Pappa and that mother became unconscious and that she was taken to the Hospital and that she died there. The narration of these facts, therefore, it is quite likely, was not based on what was observed by Saurabh but on the basis of his knowledge of the happenings which he might have derived

subsequently from others. It is remarkable that the statements, such as 'mother was taken to hospital' and 'mother died in the Hospital' are found in his evidence, which, obviously, are not based on his personal knowledge. It is nobody's case that he was taken to the Hospital alongwith the mother or he was present in the Hospital when his mother died there."

B] In the case of **Bhagwan and others Vs State of M.P., AIR 2003 Supreme Court 1088** in paragraph Nos. 19 to 22 it was observed as under:

"19. The law recognizes the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the Court to be a witness whose sole testimony can be relied without other corroborative evidence. The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the Court looks for adequate corroboration from other evidence to his testimony. See Panchhi and others Vs State of U.P.(1998)7 SCC 177"

20. In the case before us, the trial judge has recorded demeanour of the child. The child was vacillating in the course of his deposition. From a child of six years of age, absolute consistency in deposition cannot be expected but if it appears that there was a possibility of his being tutored the Court should be careful in relying on his evidence. We have already noted above that Agyaram, maternal uncle of the child, who first met him after the incident and took him alongwith his younger brothers to his

father's village, has not been produced by the prosecution as witness in the Court. It was most likely that if the child had seen the incident and identified the three accused, he would not have narrated it to Agyaram as the latter would have naturally inquired about the same. The conduct of his father Radheshyam who was produced as a witness by the prosecution is also unnatural that before recording the statement of the child by the police, he made no inquiries from the child.

21. We find some force in the submissions made by the learned counsel appearing for the State of Madhya Pradesh that looking to the age of child and his two younger brothers, it was most likely that they were with the mother and sleeping with her when she had gone to stay with her deceased father Mata Prasad. But the other possibility of the children being fast asleep when the elders of the house were attacked and killed cannot be ruled out as the incident is alleged to have happened in the midnight. Mere presence of the children in the house at the time of incident is no assurance to the case of the prosecution that the eldest child got up on hearing hue and cries and had not only seen the incident but also identified the accused. Taking into consideration the child psychology a lad of six years having seen his mother being assaulted would have raised a cry; but he says that he quietly went back to sleep. It is also most unnatural even for a child after witnessing his mother being assaulted by known persons he would go back to sleep to wake up late in the morning only when his maternal uncle Agyaram came to fetch him and his younger brothers to his father's village Alampur.

22. It is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were any possibility of coaching and tutoring him. See Paras 14-15 of State of Assam Vs Mafzuddin Ahmed (1983)2 SCC 14. In that case evidence of child witness is appreciated and held unreliable thus: 14. The other direct evidence is the deposition of PW-7, the son of the deceased, a lad of 7 years. The High Court has observed in its judgment:-

....the evidence of a child witness is always dangerous unless it is available immediately after the occurrence and before there were any possibility of coaching and tutoring.

15. A bare perusal of the deposition of PW-7 convinces us that he was vacillating throughout and has deposed as he was asked to depose either by his Nana or by his own uncle. It is true that we cannot expect much consistency in the deposition of this witness who was only a lad of 7 years. But from the tenor of his deposition it is evident that he was not a free agent and has been tutored at all stages by someone or the others."

6. Learned APP on the other hand submitted that Kanhaiyalal (PW-2) was a child witness aged 9 years at the time of incident. The incident took place on the intervening night between 05.09.2008 and 06.09.2008 while this witness was sleeping in the house with his two brothers, deceased his mother and the accused his father

and therefore, when there is no dispute regarding presence of this witness and the accused in that night in the house there is no reason to disbelieve the evidence of this witness particularly when there is no material to show that there was possibility of his tutoring. The trial Court has rightly believed evidence of this witness and held the accused guilty for the offence of murder of his wife Ushabai. Thus, learned APP has claimed to dismiss the appeal.

7. We have carefully considered the submissions made by the learned counsel appearing for the accused and the learned APP appearing for the respondent/State and with their able assistance we have perused the evidence adduced by the prosecution.

8. There is no dispute that on the night intervening between 05.09.2008 and 06.09.2008 the deceased and her three children were sleeping in the house of the accused and at about 03.00 am death of the deceased was caused and that her death is not natural. Case of the prosecution is that death of the deceased is homicidal. The accused in fact does not dispute the same. However, to prove the same the prosecution has relied upon evidence of Dr. Mohane (PW-3) and postmortem report (Exh.17). Dr.Mohane who was Medical Officer in the

Primary Health Centre, Pimpalner at the relevant time has deposed that on 06.09.2008 he performed the postmortem on the dead body of Ushabai. He noticed following three external injuries:

1] Incised wound anterior triangle at neck, obliquely directed at the level of thyroid cartilage, reddish brownish in colour, margin sharp, clear cut everted 8 cm x 2.5 cm x 2.5 cm.

2] Incised wound-left side lower chest astero lateral aspect from inframammary region directed downward.

3] Incised wound to left elbow lower arm, lateral aspect, obliquely directed, reddish brownish colour, margin sharp, clear cut, everted, three in numbers of size 2 x 1/2 x 1/2 cm.

. According to Dr. Mohane above all injuries were ante-mortem and possible by a sharp edged weapon such as axe and that the said injuries are possible by Muddemal Article-6 axe shown to him. He further deposed that cause of death is due to hemorrhagic shock due to cutting of neck vessels and also injuries mentioned in column No.17. In the cross-examination his evidence that he noticed above mentioned external injuries on the person of the

deceased and as regards cause of death has gone unchallenge. So also, he stated that he given opinion (Exh. 41) that the said injuries are possible by Muddemal (Article-6) axe. The postmortem report (Exh.17) also shows that Dr. Mohane noticed above mentioned external injuries Nos. 1 to 3 as mentioned in the column No.17 of the postmortem report and cause of death of the deceased as mentioned in the postmortem report is as referred above as deposed by him. Thus, on the basis of evidence of Dr. Mohane, postmortem report (Exh.17) and particularly on the basis of cause of death as deposed by Dr. Mohane given in postmortem report, we hold that the death of the deceased was caused due to injury No.1 on the neck of the deceased and as such death of the deceased was homicidal and the trial Court has rightly held so.

9. Now it is to be seen, whether the accused is responsible for causing external injury Nos. 1 to 3 referred above and particularly for causing injury No.1 i.e incised injury on neck due to which death of the deceased was caused. To prove this fact the prosecution has relied the evidence of following category.

(i) The evidence of eye witness Kanhaiyalal (PW-2)

(ii) The circumstantial evidence of the following

nature.

(a) Death of the deceased was caused in the house of accused in the night intervening between 05.09.2008 and 06.09.2008 and false plea of the defence of the accused.

(b) Seizure of axe having blood stains from the accused.

(c) Seizure of clothes of the accused having blood stains.

(d) Finding of human blood on seized clothes and axe as per report (Exh.49) of the Chemical Analyzer.

(e) Conduct of the accused to flee away in the night after the incident and of not reporting the incident to the police.

(f) Motive behind committing the offence.

10. Now coming to the evidence of Kanhaiyalal (PW-2) who is admittedly son of the deceased and the accused. He was aged about 9 years and he was studying in 4th Std. when his evidence was recorded on 03.08.2009. As such, it

is obvious that he was a child witness. Keeping in mind the principles regarding appreciation of evidence of child witness given by the Apex Court in the case of Bhagwan Singh (Supra) and by the Bombay High Court in the case of Vikram Babasaheb Jadhav (Supra) we shall proceed to consider the evidence of PW-2.

11. The evidence of Kanhaiyalal (PW-2) is that he has two brothers Dinesh and Tushar. The deceased was his mother and the accused is his father. Alongwith his parents he had gone to Mhasadi at his grand-father's (PW-1's) house and it was Pola festival. They returned at 05.00 pm to their village. Further he deposed that they all three brothers were sleeping in that night in the house. He heard noise and therefore he got up. He saw his father assaulting his mother by axe. His father ran away from the back door of the house. He shouted. He went to his grand-father and told that his father killed his mother. He came there and police enquired with him. His say was recorded. His statement was recorded at Sakri in the Court. He identified Muddemal (Article No.6) axe.

12. In the cross-examination he stated that he has been grazing cattle at Mhasadi. He does not want to go to Samoda i.e. place of his father the accused. There was dark inside the house but out side it was visible. In the

night they three brothers were sleeping in the centre of the room. Ushabai was sleeping towards back side of the door. He has denied that in the night Balu-accused had gone to work in the field of Sahebrao Dahite to irrigate the crops. So also, he has denied that Shamrao Malich (PW-1) told him what statement should be given before the police. He stated that Rohidas Sonwane is his neighbor. He was in visiting terms to their house. Prior to Pola festival, first time quarrel between his father and mother took place. Except that quarrel his father and mother were okay. He denied that he is deposing false that his father killed his mother. So also, he has denied that he had seen the person going out side the house looks like his father and therefore, he told that his father killed his mother. Moreover, he has denied that his grand-father Shamrao (PW-1) tutored him and accordingly he is deposing false. He has denied that his father came in the morning and he was weeping by holding the dead body of his mother/deceased. He has stated that when he got up he saw that his father ran away from back door of the house. Thus, nothing is found in favour of the accused in the cross-examination of PW-2.

13. As far as competency to depose of PW-2 a child witness is concerned as noted above when his evidence was recorded he was studying in 4th Std. and he was aged 9

years old. It appears from his deposition (Exh.39) that to ascertain whether he is competent to depose and to know whether he is having maturity and understanding the learned Additional Sessions Judge, put him as many as eight questions which were answered by him properly and on the basis of answers to said questions it can be definitely said that PW-2-Kanhaiyalal is a competent to depose.

14. As noted above it has come in the evidence of PW-2 that when his evidence was recorded he was residing at Mhasadi naturally at the village of his grand-father (father of the deceased) and he has stated that he does not want to go to Samoda village of accused. He claims that he saw the accused assaulting his mother-the deceased by axe and then accused ran away by the back door of the house. Naturally therefore, due to apprehension of accused he must be saying that he does not want to go to Samoda at the house of the accused. Moreover, he has denied the suggestions given to him in the cross-examination on behalf of the accused that he is deposing false that his father-the accused killed his mother, he had seen the person going outside the house looks like his father and therefore, he told that his father killed his mother and that his grand-father Shamrao Malich-(PW-1) tutored him and therefore he is

deposing false. Therefore, when he has denied suggestions as above he is competent to depose and when his mother was assaulted by an axe by his father-the accused the possibility of tutoring him by his grand-father Shamrao Malich (PW-1) has been ruled out. On the contrary when he along with his two brothers was sleeping in the house and when he heard shouts of the deceased after she was assaulted by axe by his father-the accused it was quite natural for him to wake up and to see the incident of assaulting his mother by his father-the accused. The accused is his father and deceased was his mother. Therefore, when he saw the incident as above of assaulting his mother by his father-the accused, there is no reason for him to unnecessarily implicate his father. Leaving the real culprit.

15. Another aspect to be noted is that as noted above Kanhaiyalal (PW-2) has denied suggestions given to him that accused had gone to the work in the field of Sahebrao to irrigate the crops in that night and further he has denied that accused came in the morning and was weeping by holding the dead body of the deceased. By these suggestions accused wanted to show that he was not in the house in the night of the incident. But when Kanhaiyalal (PW-2) has denied suggestions as above, when accused has not stated anything in this respect in his

statement under Section 313 of the Code of Criminal Procedure, when Sahebrao in whose field as per suggestion the accused had allegedly gone in that night to irrigate the crops has not been examined and when API the Investigating Officer has also denied suggestions given to him on behalf of the accused that unknown person had committed the murder of Ushabai it cannot be said that accused was not present in his house in the night of incident and as such defence as above of the accused is not acceptable.

16. It has come in the evidence of Kanhaiyalal (PW-2) as referred earlier that after the incident he went to his grand-father and told his grand-father that accused killed his mother. Whereas it has come in the evidence of his grand-father Shamrao Malich (PW-1) that one Bhavsha came to him and told him about incident and Shamrao Malich (PW-1) does not claim that Kanhiyala (PW-2) informed him about the incident. Thus, there is inconsistency in this regard in the evidence of PW-1 and PW-2. But the said is not material inconsistency and sufficient to discard the direct evidence of Kanhaiyalal (PW-2) son of the deceased. For the above reasons and careful evaluation of evidence of Kanhaiyalal (PW-2) we hold that the evidence of Kanhaiyalal is quite natural and trust worthy and on the basis of his evidence an

interference can be drawn that on the intervening night between 05.09.2008 and 06.09.2008 at 03.00 am his father-the accused assaulted his mother the deceased by axe and then accused ran away from the back door of the house. As referred earlier Dr. Mohane has stated that external injury Nos. 1 to 3 and more particularly injury No.1 incised wound of the neck of the deceased noticed by him is possible by axe Article-6. Therefore, it can be said that evidence of Dr. Mohane has corroborated the evidence of Kanhaiyalal (PW-2) that the accused assaulted the deceased by axe. Therefore, there is absolutely no reason to disbelieve the evidence of Kanhaiyalal (PW-2) and trial Court has rightly believed the said evidence.

17. Naturally therefore, the arguments advanced by the learned counsel appearing for the accused that there is possibility of tutoring to Kanhiaylala (PW-2) by Shamrao Malich (PW-1) is not acceptable.

18. Now coming to the circumstantial evidence (a) to (f) as regards the circumstance (a) there is no dispute that the deceased and her three children including Kanhaiyalal (PW-2) were present in the house in the night of incident. So also, as observed earlier PW-2 has denied suggestion given to him that the accused was not present in the house in the night of incident and it is held that

the accused was very well present in the house in the night of incident. Admittedly the dead body of the deceased was found in the night of incident in the house of the accused. In such circumstances when accused was very well present in the house in the night of incident with the deceased and his three sons and dead body of the deceased was found in his house and when his plea of absence in the house in the night of incident is not accepted as observed above it was incumbent on the accused as per Section 106 of the Evidence Act to explain as to how the death of the deceased was caused. It was tried to suggest Kanhiyalal (PW-2) that he had seen the person going outside the house who looks like his father-the accused and therefore, he told that his father killed his mother but he has denied the said suggestions. So also, API Avhad (PW-5) Investigating Officer as referred earlier denied suggestion given to him that unknown person had committed murder of Ushabai. The accused has not stated anything in this respect in his statement under Section 313 of the Code of Criminal Procedure. So also, he has not examined any defence witness to bring on record the fact that somebody else committed murder of the deceased. Moreover, there was no suggestion in this respect to the witnesses except PWs-2 and 5. Therefore, there is absolutely nothing on record to state that the accused has explained under what circumstances death of

his wife-the deceased was caused and how he is not responsible for the death, in the light of provision under Section 106 of the Evidence Act. Thus, failure of the accused to explain under what circumstances death of the deceased was caused is a circumstance against him.

19. As regards circumstance (b) regarding seizure of clothes i.e. pant having blood stains and full sleeve shirt having blood stains of the accused as per panchanama (Exh.15) is concerned the accused has admitted seizure of the said clothes. As regards circumstance (c) regarding seizure of axe Article-6 at the instance of accused as per panchanama (Exh.45) is concerned it has come in the evidence of panch Pramod Patil (PW-4) and API Avhad (PW-5)-Investigating Officer that on 06.09.2008 while accused was in police station he produced axe (Article-6) and the same was seized under panchanama between 18.00 to 18.30 hours i.e. between 06.00 pm to 06.30 pm and evidence of said witnesses in this respect is not shuttered in the course of their examination except the fact that after the said Panchanama (Exh.45) of the seizure of axe on 06.09.2008 the accused was arrested as per panchanama (Exh.15) between 15.50 to 19.30 on the same day. Simply because axe was seized earlier and then accused was arrested it can not be said that there was any illegality or irregularity in the

investigation in respect of seizure of axe. Thus we hold that prosecution has proved seizure of axe and clothes of accused having blood stains as per panchanama (Exh.15 & 45).

20. As regards circumstance (d) it is the case of the prosecution that seized clothes of the accused, deceased and axe as well as sample of the blood of the accused and deceased were sent to the Chemical Analyzer and the reports of the Chemical Analyzer (Exh.18,19 and 49) were collected. Exh.18 C.A. Report in respect of blood of the deceased shows that blood group of the deceased cannot be determined as the results are inconclusive. The Chemical Analyzer's report (Exh.49) shows that human blood was found on Article-6 i.e. axe. Article-7 full pant and Article-8 full shirt of the accused. Of course this report does not show that the blood of a particular group was found on the said articles. The blood group of the deceased was not determined as per report (Exh.18) of the Chemical Analyzer as stated above. Therefore, it cannot be said beyond doubt that whatever blood was found on the clothes of the accused and axe (Article-6) as per Chemical Analyzer's report (Exh.49) was blood of the deceased. However, the fact remains that human blood was noticed on the clothes of the accused and on the axe seized at his

instance. Therefore, he was under obligation to explain how human blood was found on his clothes and axe. But he has not given any explanation in this respect. Therefore, finding of human blood on the clothes of the accused and axe is also an incriminating circumstance against him.

21. As regards circumstance (e) it has come in the evidence of Kanhaiyalal (PW-2) son of the accused that accused assaulted the deceased by axe and accused ran away by the back door of the house. This evidence of Kanhaiyala has gone un-challenged in his cross-examination. As discussed earlier accused tried to show his absence in the house in the night of incident but said plea of the accused is not accepted. Thus, it is obvious that after the incident in the night the accused fled away. So also, it is not the case of the accused that he informed police about death of his wife, Thus this conduct of accused to flee away from the spot of incident after the incident of death of his wife the deceased and non informing the incident to the police is an additional incriminating circumstance against him which points out his guilt.

22. As regards the circumstance (f) it is the case of the prosecution that one day earlier to the incident i.e. on 05.09.2008 accused, deceased and their son

Kanhaiyalal (PW-2) had come to the house Shamrao Malich (PW-1) at the time of Pola festival and at that time the deceased had told her father that the accused was suspecting her character. Shamrao Malich (PW-1) convinced and sent them to Samoda village of accused. Shamrao Malich (PW-1) has deposed in accordance with above contention of the prosecution. In his cross-examination his evidence in this respect is not shattered. Naturally therefore, it can be said that the accused had motive to commit the offence of murder of his wife-deceased as he was suspecting her character.

23. For the reasons discussed above on the basis of circumstances (a) to (f) which are proved it can be said that said circumstances have sufficiently corroborated the evidence of eye witness Kanhaiyalal (PW-2) a child witness who has no reason to depose false against his father-the accused in respect of murder of his mother by the accused. It is held that death of the deceased is homicidal. Thus, we hold that the accused has caused external injury Nos. 1 to 3 noted by Dr. Mohane (PW-3) on the person of the deceased including external injury No. 1 i.e. insized wound over the neck which can be caused by the axe as deposed by said Dr. Mohane which ultimately resulted into death of the deceased. Therefore, we hold that the prosecution has proved the offence under Section

302 of the IPC beyond reasonable doubt against the accused. Trial court has rightly held so. The sentence recorded by the trial Court for the said offence against appellant-accused is also in proportionate to the sentence provided for the offence under Section 302 of the IPC. Thus, there is absolutely no reason to interfere with the impugned judgment and order of conviction and sentence recorded against the accused. The accused is in jail. Thus, the criminal appeal being devoid of merits the same is liable to be dismissed. Accordingly we dismiss the same.

24. Learned Advocate Mr. R.M. Deshmukh, was appointed to represent the appellant-accused. We appreciate his sincere efforts in conducting the matter to arrive at the proper conclusion. We quantify his fees at Rs.7,500/-.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]