

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.276 OF 2013

- 1) Gajendra s/o Babu Gorad,
Age-32 years,
- 2) Sau Padmini w/o Gajendra Gorad,
Age-25 years,

Both R/o-Arali (Dahyachi),
Tq-Akkalkot, Dist-Solapur,
At present: R/o-Gorad Vasti-
Village, Nilgaon Shivar,
Tq-Tuljapur, Dist-Osmanabad

...APPELLANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.V.R. Dhorde Advocate for Appellants.
Mr.K.S. Patil, A.P.P. for Respondent.
...

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

DATE OF RESERVING JUDGMENT : 11TH JULY, 2017.

DATE OF PRONOUNCING JUDGMENT: 17TH JULY, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the

Judgment and order dated 20th June, 2013, passed by the Sessions Judge, Osmanabad in Sessions Case No.55 of 2012 thereby convicting accused No.1/Appellant No.1 - Gajendra Babu Gorad and accused No.2/Appellant No.2 - Sou. Padminbai Gajendra Gorad for the offence punishable under Section 302 read with 34 of the Indian Penal Code (for short "I.P. Code") and sentencing them to suffer imprisonment for life and to pay fine of Rs.25000/- each, and in default, to suffer further rigorous imprisonment for five years each.

2. The prosecution case, in brief, is as under:-

A) It is the case of the prosecution that, during intervening night of 26th December, 2011 to 27th December, 2011, accused persons in furtherance of their common intention, intentionally caused death of Santosh Nagnath Gorad.

B) Informant is the father of the deceased Santosh Gorad. Deceased Santosh met with homicidal death. He died due to shock due to hemorrhagic shock and throat cut injury. He sustained two of such fatal injuries, one on head, the vital part, causing hemorrhage and another grievous injury on neck. Both the injuries are sufficient in ordinary course of nature to cause death.

C) The family of the deceased consisting of his wife and children, parents, brother and wife of brother, resides in habitant, called "Gorad Vasti". Inter-se, both accused are husband and wife. They reside nearby and in the Gorad Vasti. The dead body of the deceased Santosh was found in the first room, after entrance on right hand side of house of accused lying in a pool of blood on a blanket. The accused persons and informant know each other not only because they are neighbours but because they are close relatives. Accused No.1 is cousin of deceased. PW-1 Nagnath is father, PW-2 Vithabai is wife and PW-3 Anil is the brother

of the deceased.

D) It is the prosecution case that, there were illicit relations in between Santosh and Padminbai since 1 and 1/2 years prior to the incident. It is the case of the prosecution that the deceased was called by accused for dinner on earlier night. The deceased went to attend the dinner in the house of accused persons. Therefore, PW-1 Nagnath, PW-2 Vithabai and PW-3 Anil all state that the deceased was last seen in the company of accused persons.

E) It is further the case of the prosecution that on the day of incident, at about 1.00 O'clock, between intervening night of 26th December, 2011 to 27th December, 2011, PW-3 Anil woke up for the purpose of starting electric pump installed from inside the well, so as to fetch the water and give it to the field. While returning back from the well, PW-3 Anil saw both accused hurriedly going by a path way leading to village

Nilegaon at about 2 O'clock in that night, and he asked them about Santosh who was with them during night for a dinner, but they did not pay heed to Anil and went away speedily on the path-way.

F) It is the case of the prosecution that thereafter PW-3 Anil went to the house of Gajendra and peeped through the window and found that dead body of Santosh was lying in the house of Gajendra. After hearing shouts of Anil, PW-1 Nagnath and PW-2 Vithabai also came there and saw the dead body of Santosh lying in the house of accused.

G) On receiving the information about the incident, Police Station Officer directed the PW-10 Baburao Wakodkar, P.S.I. to visit the spot. He visited the spot of incident. PW-1 Nagnath informed him about the incident. Thereafter Nagnath reached to the police station and as per the information given by Nagnath, PW-10 Baburao Wakodkar registered the First Information Report

bearing Crime No.182 of 2011 under Section 302 read with 34 of the I.P. Code and handed over investigation to PW-11 API Shetkar. After arrests being made, accused allegedly made voluntary disclosure in respect of place where their clothes and weapons used for offence, were kept in lonely place of their knowledge.

H) From in front of their house from the fodder, an axe, stone roller and clothes put on by both accused on their person at the time of committing of murder as per their memorandum have been produced during the course of investigation. All the clothes were stained with human blood.

I) The investigating Officer conducted spot panchnama, inquest panchnama and sent the dead body for post-mortem for knowing the exact cause of death. The Investigating Officer contacted the persons acquainted with the facts of the case and reduced their statements into writing, sent the muddemal for chemical analysis with carrier PW-9.

After completion of investigation, the Investigating Officer submitted charge-sheet in the Court of J.M.F.C., Tuljapur. In due course the J.M.F.C., Tuljapur committed the case to the Sessions Court.

J) A charge for an offence punishable under Section 302 read with Section 34 of the I.P. Code was framed against both the accused and the same was explained to them. The accused pleaded not guilty and claimed to be tried, with the defence of denial and raising plea of alibi. According to the accused, door of their house was shut from outside without lock, when they were out station and some one must have killed the deceased and thrown him in their house and they are innocent.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted both the accused/ Appellants for the offence punishable under Section 302 read with 34 of the I.P. Code and sentenced them to suffer life

imprisonment and to pay fine, as afore-stated. Hence this Appeal is preferred by the original accused challenging the conviction and sentence.

4. Mr. V.R. Dhorde, learned counsel appearing for the Appellants, referring to the grounds taken in the Appeal, submitted that the prosecution has not brought on record to show that the Appellants were in the house on the intervening night of 26th December, 2011 and 27th December, 2011 and that the Appellants have caused death of Santosh. He further submits that the learned Sessions Judge has observed that, there is no explanation as to how the dead body of the deceased was found in the house of the accused persons, and convicted the Appellants on surmises and conjectures, when admittedly there is no eye witness and the evidence is only circumstantial. The prosecution has miserably failed to prove that the alleged incident took place in the house of the Appellants. The learned Sessions Judge erred in holding that the Appellants had called Santosh

for dinner and they were present in the house, when the evidence of PW-1 Nagnath is hear-say. The evidence of PW-1 Nagnath, PW-2 Vithabai and PW-3 Anil that deceased Santosh was taken for dinner by the Appellants, is false and incorrect. He further submits that the testimony of PW-1, PW-2 and PW-3 clearly indicates that there is no evidence of illicit relation between deceased Santosh and Appellant No.2. The evidence of PW-3 Anil is exaggerated and there are serious omissions and contradictions in his evidence and the same is not trustworthy. The oral testimony of prosecution witnesses PW-1, PW-2 and PW-3 that they have seen the dead body at 2.00 a.m. from the window is unbelievable, as the prosecution has not adduced any evidence to show that there was any source of light in the said room. The First Information Report (in short "FIR") registered at the behest of PW-1 Nagnath, father of deceased, is also an afterthought. The evidence of panch witness PW-4 Nagnath Dombale cannot be believed as he is a got up witness and he is not resident of the said

village. Panch witness PW-5 Dattatraya cannot be relied upon as admittedly he is a habitual police witness.

. Learned counsel appearing for the Appellants further submits that even though there are villagers residing in houses in the said locality, nobody has seen Santosh at his home at 9.00 p.m. on 26th December, 2011 and that he was called by the Appellants and in fact he had gone to the house of the Appellants. Therefore, the theory of 'last seen together' is not at all proved as per the submission of learned counsel. He further submits that the clothes were seized on 27th December, 2011 and those were sent for chemical analysis on 2nd January, 2011, and there is no explanation as to why the Muddemal articles were kept in the police station till 2nd January, 2011 without any seal after seizure of said articles. There are various omissions and contradictions in the evidence of PW-11 Suresh and the same cannot be relied upon.

. Learned counsel further submits that in the FIR PW-1 Nagnath has not stated that PW-3 Anil stated him that he woke up at 1.30 to 2.00 so as to start the electric pump for watering the crop and at that time he saw the Appellants walking fast on the path way to Nilegaon. He submits that in the FIR the informant has not stated the material facts about the incident. He further submits that it was incumbent on the part of the informant to state all the material facts while lodging the First Information Report. In support of his submissions, the counsel placed reliance on the case of Ram Kumar Pande vs. the State of M.P.¹ The learned counsel further submits that admittedly in the present case there is no eye witness to the incident and the entire case is based on circumstantial evidence. He submits that when the case is based on circumstantial evidence, all circumstances proved must be consistent only with hypothesis of guilt of the accused. In

1 A.I.R. 1975 S.C. 1026(1)

support of his said submission, the learned counsel placed reliance on the case of Sujit Biswas vs. State of Assam², and the case of Vikramjit Singh alias Vicky vs. State of Punjab³. In support of his submissions, the learned counsel also placed reliance on the case of Sunil Kundu and another vs. State of Jharkhand⁴. Therefore he submits that the Appeal may be allowed.

5. As against this, the learned A.P.P. appearing for the State submitted that though the case of the prosecution is based on the circumstantial evidence, the chain of circumstances on which reliance was placed by the prosecution has been established beyond reasonable doubt by the prosecution. He further invites our attention to the evidence of PW-1 Nagnath, PW-2 Vithabai and PW-3 Anil and submits that all these prosecution witnesses have categorically stated that they have seen the dead body of Santosh lying

2 2013 Cri. L.J. 3140

3 2007 Cri. L.J. 1000

4 (2013) 4 S.C.C. 422

in the house of the accused. The deceased was last seen in the company of the accused. The weapons which were used in the commission of offence were recovered at the instance of the Appellants/accused from the place which was exclusively in the knowledge of the Appellants. The witnesses have stated that there were illicit relations between deceased Santosh and Appellant No.2 and hence there was motive to commit murder of Santosh. He further submits that after considering the entire evidence on record the trial Court has convicted both the accused and the findings recorded by the trial Court are in consonance with the evidence brought on record. He, therefore submits that the Appeal may be dismissed.

6. We have carefully considered the submissions of the learned counsel appearing for the Appellants and learned A.P.P. appearing for the State. With their able assistance, we have carefully perused the entire notes of evidence so

as to find out whether the findings recorded by the trial Court are in consonance with the evidence brought on record or otherwise.

7. The prosecution examined PW-7 Dr. Chandrakant Vithal Kshirsagar. He deposed that in December, 2011 he was attached to Primary Health Center, Andoor as Medical Officer. On 27th December, 2011, dead body of Santosh Nagnath Gorad was referred to him for post-mortem by Naldurg police station. He carried out the post-mortem in between 8.40 a.m. to 9.40 a.m. The clothes on the person of dead body were stained with blood. Body was well nourished and cold. Rigor mortis had partially developed in both upper and lower limbs. There was evidence of seminal ejaculation. There was (1) contusion on forehead right side 6 cm. X 4 cm. (2) CLW on left side of neck 12 cm. X 3 cm. X 4 cm. This injury was increasing from mid line to left side with cut trachea partially and great vessels cut. (3) CLW on right side of neck in suprasternal area 10 cm. X 2 cm. X 4 cm. with

cutting of underlying great vessels and nerves, muscles. All the injuries were ante-mortem. Evidence of hemorrhage under scalp tissue in right frontal area. Injury No.19(1) corresponds to external injury No.1 in Column No.17. Larynx was pale with blood in larynx and left side laterally trachea cut. Left side interval juglar when cut, carotid artillary vessels cut. Stomach contained partially digested food. Cause of death was hemorrhage shock and cut throat. He further deposed that injuries in Column No.17 in ordinary course of time are sufficient to cause death. Injury in Column No.17(1) is possible with Article No.10 - stone roller. Injury Nos.2 and 3 in column No.17 are possible with muddemal axe i.e. Article No.8. Injury in column No.20(c) is also possible with muddemal axe. At the time when the body was sent for post-mortem, as per the say of police he took out sample of blood of deceased for C.A. report, sealed the same and given the same to police.

. During the course of cross-examination, PW-7 Dr. Chandrakant stated that neck is vital part of the body. He admitted that injury on the neck is grievous if underlying vessels are cut. He denied all the suggestions put to him by the defence counsel.

. Thus from the perusal of the evidence of PW-7 Dr. Chandrakant, it is clear that death of Santosh was homicidal. He further stated that stomach of Santosh contained partially digested food.

8. At this juncture, it would be apt to discuss the evidence of PW-3 Anil Nagnath Gorad. He deposed that Santosh was his brother, who was murdered before 15 months from the date of recording his evidence. At the time of incident, he was staying with his wife, brother, wife of his brother and his parents. Houses of Babu Gorad, Shivaji Gorad, Gajendra Gorad (accused No.1) are near his house. Padminbai (accused No.2) is wife

of Gajendra. His brother had illicit relations with Padminbai for one year before the incident. He further deposed that on the day of incident at about 9.00 p.m. Gajendra and Padminbai called his brother Santosh for dinner and they took him with them. Santosh (deceased) used to consume liquor. He further deposed that they had food and slept. At 1.30 to 2.00 O'clock he woke up because electricity supply starts at that time and he had to water his field. After starting electric motor, he proceeded towards his house by walking on path-way. When he was coming back, he saw Gajendra and Padminbai walking fast on the path-way to Nilegaon. He called them and asked where was Santosh. Without giving any reply, both the accused went speedily on Itkal-Nilegaon road. He went to the house of Gajendra and peeped through the window and found that Santosh was murdered. Blood was oozing. He raised shouts, people from the nearby houses gathered. When he raised shouts, his mother, father and wife of Santosh woke up. He shouted that Santosh was murdered.

. During the course of cross-examination, PW-3 Anil stated that he did not see whether his brother returned after having food. He stated that he had seen Gajendra and Padminbai from a distance of 50 feet and he asked them from the same place. He admitted that he had stated before police that when he shouted, his parents, his wife, wife of his brother got up and started crying. He was unable to assign any reason why the same is not mentioned in his statement. He denied that there were no lights on the street. He denied the suggestion that on the day of incident because Padminbai's father was sick, Gajendra and Padminbai had been to Yeoti to see father of Padminbai. He denied the suggestion that some one killed Santosh and put the dead body in Gajendra's house.

. Thus from careful perusal of the evidence of PW-3 Anil, it is clear that he categorically stated that accused No.2 Padminbai had illicit

relations with deceased Santosh, in the concerned night at about 9.00 p.m. Santosh was called by both the accused persons for dinner and Santosh was last seen in the company of both the accused. During the intervening night at about 1.30 to 2.00 O'clock when he was returning home after starting the electric motor, he had seen both the accused walking fast on the path-way to Nilegaon and when he asked them whereabouts of Santosh who was with them, both the accused said nothing and went fast on the path-way to Nilegaon, he immediately rushed to the house of accused No.1 Gajendra and seen the dead body of Santosh lying in the house of Gajendra.

9. PW-1 Nagnath Govind Gorad, who is informant in this case, deposed about his family. He further deposed that Babu Govind Gorad is his brother and accused No.1 Gajendra is son of Babu Govind. Padminbai, accused No.2 is wife of Gajendra. He further deposed that one year before death, Santosh had illicit relations with

Padminbai and they used to be together. He further deposed that in the night of incident at about 9.00 p.m. Padminbai and Gajendra came to call to Santosh for food. Santosh went with them. Santosh used to consume liquor. He further deposed that at 1.30 to 2.00 O'clock his son Anil woke up and went to start the electric motor. Anil shouted and therefore he woke up and came out of his house. His other family members also woke up and came out of the house. Anil said that Santosh was murdered. They all went to the house of Gajendra and peeped through the window. His son Santosh had bleeding. Santosh had got a blow on his neck and sustained injuries on his head. Police from Naldurg police station came and took him to Naldurg. He narrated the FIR which was written down and the same was read over to him. Then his thumb impression was obtained on the same. He further deposed that from Naldurg police took him to Gorad Vasti. Police opened the house of Gajendra with key. Dead body of Santosh was taken out and sent the same for post-mortem. He further deposed that Gajendra and

Padminbai killed his son Santosh because he had developed illicit relations with Padminbai.

. During the course of his cross-examination, various suggestions were put to him regarding the past life of Santosh and about his illicit relations with other two women in the village, but this witness had denied all those suggestions put to him by the defence. He further denied the suggestion put to him that his son Santosh had quarrels with other villagers. He denied that Santosh had enmity with many villagers. He further denied that Santosh used to harass the family members under the influence of liquor.

. Thus from the perusal of the evidence of PW-1 Nagnath Gorad, it is clear that he had stated that there were illicit relations between accused No.2 Padminbai and Santosh, on the concerned night at about 9.00 p.m. Santosh was called for dinner by both the accused and thus he was last seen in

the company of the accused. He saw the dead body of Santosh in the house of the Appellants/accused and immediately the incident was informed to the police and promptly the FIR was lodged.

10. The evidence of PW-1 Nagnath Gorad is criticized by the learned counsel for the Appellants on the ground that it suffers from serious improvements. He submits that PW-1 Nagnath in his FIR/complaint has not stated that PW-3 Anil stated him that he woke up at 1.30 to 2.00 O'clock so as to start the electric motor for watering the field and at that time Anil saw Gajendra and Padminbai walking fast on the path-way to Nilegaon when he was coming to home and further that Anil asked the accused persons regarding whereabouts of Santosh however without giving any reply they went speedily on the path-way to Nilegaon. According to the counsel appearing for the Appellants there is only evidence of PW-3 Anil stating that he saw Gajendra and Padminbai walking fast from the path-way to Nilegaon and there is no corroboration to

his evidence, since in the FIR the aforesaid version of PW-3 Anil is not stated by PW-1 Nagnath. In respect of the aforesaid contentions of the counsel, it can be said that the FIR is not an encyclopedia and it is not expected that the entire prosecution case should reflect in the FIR. The Supreme Court in the case of Mukesh and another vs. State of NCT of Delhi and others⁵, has taken a view that, FIR is not an encyclopedia which is expected to contain all details of prosecution case; it may be sufficient if broad facts of prosecution case alone appear. The evidence on record reveals that evidence of PW-1 Nagnath is corroborated by the evidence of PW-2 Vithabai, PW-3 Anil and PW-4 Nagnath Dombale.

11. The prosecution examined PW-2 Vithabai w/o Santosh Gorad, wife of deceased Santosh. She deposed that she was staying in Gorad Vasti with her husband, in-laws, brother-in-law and children. Her husband Santosh is no more. He was murdered.

5 A.I.R. 2017 S.C. 2161

She further deposed that houses of Babu, Shivaji, Gajendra are near their farm house. Padminbai is the wife of Gajendra. One year before the incident, her husband Santosh and Padminbai had illicit relations. She further deposed that in the concerned night, at about 9.00 p.m. Gajendra Gorad and Padminbai came to her house and called her husband for dinner and took Santosh with them. She further deposed that her husband sometime consumes liquor. At about 1.30 to 2.00 a.m. her younger brother-in-law raised shouts and they woke up. She went to Gajendra's house and peeped through the window. She saw that her husband was killed. Entire body of her husband was full with blood. When Anil raised shouts, he was near Gajendra's house. Anil told her that before some time, he saw Gajendra and Padminbai walking on the path-way to Nilegaon, he called them but they did not look at him and ran away.

. During the course of her cross-examination, PW-2 Vithabai admitted that she had

stated before the police that her husband some time consumes liquor. She was unable to assign any reason why the same is not mentioned in her statement. She further stated that, she had not stated before police that Anil told her that before some time Gajendra and Padminbai were walking to Nilegaon path-way and when he called them, they did not look at him and ran away. She admitted that she stated before the Court for the first time that her husband had illicit relations with Padminbai, they called him and took him for dinner.

. Thus, it is clear from the evidence of PW-2 Vithabai that, Padminbai had illicit relations with Santosh, in the concerned night, both the accused came to her house and took Santosh with them for dinner and Santosh was last seen in the company of the accused and that soon after the incident she noticed dead body of Santosh lying in the house of the accused.

12. The evidence of PW-2 Vithabai is criticized by the counsel appearing for the Appellants on the ground that she first time stated before the Court that her husband had illicit relations with Padminbai and that accused Nos.1 and 2 called her husband at the relevant night and took him for dinner. Even if we accept the contentions of the counsel for the Appellants that PW-2 Vithabai deposed for the first time before the Court and stated that her husband Santosh was called for dinner at 9.00 p.m. by the Appellants, still there is evidence of PW-1 Nagnath and PW-3 Anil, and also sufficient circumstantial evidence is brought on record by the prosecution, which clearly suggest that dead body of Santosh was seen in the house of the Appellants/ accused by PW-3 Anil between 1.30 to 2.00 O'clock and thereafter the same was seen by the other witnesses and after police arrived at scene of offence, they opened the house of Gajendra with key.

13. The prosecution examined PW-4 Nagnath Ambadas Dombale. He is resident of Handge Vasti. He deposed that Gorad Vasti is at half kilometer away from Handge Vasti. He deposed that he heard that there were illicit relations between Santosh and Padminbai. When Santosh killed, after dinner he was sleeping in his house. He heard shouts at 2.00 O'clock. He ran to Gajendra's house where people had gathered. He saw that Santosh was lying dead in Gajendra's house. Santosh had injuries on his neck and on head there was bleeding. Anil, Nagnath and other family members of Santosh were present. Anil told him that at 9.00 p.m. Gajendra and Padminbai called Santosh for dinner and they took him with them. Anil also told that at 2.00 O'clock he asked them to stop but they ran away. He further deposed that on 27th December, 2011 Naldurg police called him in police station at 12.00 noon for drawing panchnama of the clothes of Santosh. Arun Palve was the other panch. He deposed that constable had brought the said clothes. Those were white pant, yellow

shirt, banyan with sleeves, underwear and saffron colour cloth. The clothes were stained with blood. Police seized the clothes and sealed them. Panchnama of seizure of clothes was drawn. Panchnama Exhibit-20 bears his signature. This witness was extensively cross-examined by the defence, but nothing contrary was brought on record.

14. The prosecution examined PW-5 Dattatraya Shrimantrao Mote. He deposed that on 29th December, 2011 API Shetkar had called him in Naldurg police station. He was called to draw panchnama. Chandrakant Gawali was the other panch. API Shetkar took them near the lock-up and said that they should listen to what accused says. Accused Gajendra said that the axe used for killing was kept in the heap of fodder in front of his house along with his own clothes and he will produce the same. Police prepared panchnama Exhibit-22. He further deposed that, then they were taken to ladies lock-up by the guard.

Padminbai was present there and she said that she would produce the stone roller used for assault and her clothes i.e. sari and petticoat which were hidden in the heap of fodder in front of her house. Police prepared panchnama Exhibit-23.

. PW-5 Dattatraya further deposed that along with Gajendra and Padminbai and other police personnel, they went to Gorad Vasti as per the say of Gajendra. In front of the house there was heap of fodder. Gajendra took out the axe and the clothes from the heap of fodder. Axe had a handle and there were blood stains on the axe. Clothes were white shirt and pant, which were blood stained. The articles were seized, packed and panchnama Exhibit-24 was drawn. He further deposed that Padminbai was called near the heap of fodder. She produced the stone roller, sari and petticoat from the heap of fodder. The roller was made up of stone. It was stained with blood. Sari was yellow and petticoat was reddish in colour. Police prepared panchnama Exhibit-25. He identified the

muddemal Article Nos.8 to 12.

. During the course of cross-examination, PW-5 Dattatraya deposed that his house is at 50 feet from Naldurg police station and he has deposed 2-3 times as a panch for Naldurg police. He denied the suggestion that because he is habitual panch, on the say of police he deposed falsely.

. Thus, it is clear from the evidence of PW-5 Dattatraya that in his presence both the Appellants produced the weapons used in the commission of offence and the clothes which were on their person at the time of commission of offence, which were kept hidden at the place which was in the exclusive knowledge of the Appellants. The place was heap of fodder and the same was not open place accessible to all.

15. The prosecution examined PW-6 Gopal Anna Dombale. He deposed that on 27th December, 2011 he

was called by the police of Naldurg police station. He was called in Gajendra Gorade's house, for drawing panchnama. Dayanand Ambadas Dombale was the other panch. Nagnath Gorad shown the spot of incident. House of Gajendra is situated in Gorad Vasti in Nilegaon area facing to North. He entered the house which was three rooms and a veranda. They went in the first room. They saw that Santosh Gorad was murdered. The dead body was on a blanket. He saw blood in the house. He further deposed about the details regarding the house of accused and the household articles in the house. He further deposed that spot panchnama Exhibit-28 was drawn and thereafter inquest panchnama Exhibit-29 was also drawn. He further deposed that there was injury on the neck of deceased and there was bleeding, deceased had injury to the head. There was blood below the head of deceased.

. During the course of his cross-examination, PW-6 Gopal denied that the first door

of the house of Gajendra does not have any window. The window of the room is in the front side wall. The window was open. It does not have any door.

16. Relying on the deposition of this witness PW-6 Gopal, learned counsel for the Appellants submits that there was no door to the window. But the same does not mean that the window was without grills and it was all along open.

17. The prosecution examined PW-8 Limbaji Rama Kadam. He deposed that on 27th December, 2011 from 8.00 a.m. to 2.00 p.m. he was P.S.O. Naldurg police station. Police Naik Bondar gave report that he is producing clothes of deceased Santosh Gorad in the Crime No.182 of 2011 registered in police station Naldurg under Section 302 read with 34 of the I.P. Code, after post-mortem. Then he called two panchas by name Arun Palve and Nagnath Dombale. He asked them to draw panchnama of seizure of clothes of deceased after post-mortem. Panchnama was drawn, clothes were seized after

panchnama. Labels with his signature and signatures of panchas were affixed to the clothes. Clothes were white pant, yellowish shirt with three buttons and white banyan with sleeves, bluish underwear and saffron Gamja. It was stained with blood. He proved panchnama Exhibit-20.

18. PW-9 Bhimsen Vasantbuwa Bharti, police naik is a carrier of the muddemal to C.A. Aurangabad. He deposed that on 2nd January, 2012 API Shetkar asked him to submit the muddemal in Crime No.182 of 2011 to C.A. Aurangabad. He collected muddemal and a letter. Muddemal was sealed. He submitted the muddemal on 3rd January, 2012 and got acknowledgement. Muddemal was given to C.A. Aurangabad in sealed condition.

19. The prosecution examined PW-10 Baburao Vishwanath Wakodkar. He deposed that in December, 2011, he was P.S.I. in Naldurg police station. On 27th December, 2011 at 1.30 a.m. the P.S.O. told him that there was some incident of assault in

Gorad Vasti at Nilegaon. He went there with three staff members. A dead body was seen through the window of a closed house in pool of blood. Father and relatives of the deceased were waiting outside. Nagnath Gorad, father of deceased told that it was a case of murder. He took Nagnath to the police station. FIR was recorded, it was read over to Nagnath, who confirmed it to be correct. Nagnath put his thumb impression on it. He deposed that FIR Exhibit-16 bears his signature also. He registered Crime No.182 of 2011 under Section 302 read with 34 of the I.P. Code and gave the investigation to API Shri Shetkar.

. During the course of cross-examination, PW-10 Baburao admitted that thumb impression on FIR does not mention that it is of Nagnath Gorad. It is not mentioned in the FIR that Anil, son of Nagnath had gone to start the electric motor at 1.30 a.m. to 2.00 a.m. It is also not mentioned in the FIR that Anil raised shouts and they woke up, and that Anil shouted that Santosh was assaulted.

He stated that Nagnath has not stated that he saw through the window and found that Santosh was dead. It is not mentioned in the FIR that when Nagnath saw through window, he found that Santosh had a head injury and mark of blow on his neck. As already observed, the FIR is not an encyclopedia and it is not expected that the entire prosecution case should reflect in the FIR.

. Thus, from the evidence of PW-10 Baburao, it is clear that soon after the incident, this witness visited the spot of incident in the night and immediately thereafter at 4.30 a.m. itself the crime was registered.

20. PW-11 Suresh Shivajirao Shetkar, is an investigating officer. He deposed about the manner in which he has carried out the investigation of the crime. He deposed that P.S.I. Wakodkar registered the crime and handed over investigation to him on 27th December, 2011 at 4.30 a.m. He went to the spot and prepared the spot panchnama. Spot

of incident is house of accused. Dead body was lying in pool of blood. It was the dead body of Santosh. Samples of blood stained soil and dry soil were obtained from the spot. They were sealed and seized in presence of panchas. The panchnama Exhibit-28 was drawn during 5.20 a.m. to 5.50 a.m. Inquest panchnama Exhibit-29 was drawn. Dead body was sent for post-mortem. He had asked the officer to take sample of blood of the deceased and to preserve his clothes. He recorded statement of eight witnesses. He arrested the accused. He further deposed that, at first accused Gajendra made a statement before the panchas Dattatraya Mote and Chandrakant Gawali that he would produce the axe and clothes which he was wearing at the time of offence, and which were hidden under the heap of fodder and he would produce the same. Then Padminbai made a statement that she would produce the stone roller, her sari and petticoat which she was wearing at the time of offence, and which were hidden under the heap of fodder. He further deposed that, then the accused, panchas, he

himself and the staff members went to the place as directed by the accused. They went to Gorad Vasti. Accused asked them to stop. They walked to the heap of fodder. Gajendra produced the axe and the clothes which were hidden on the North side of the heap of fodder. The clothes and axe were sealed in presence of panchas and panchnama of seizure was drawn. He further deposed that Padminbai produced the stone roller, sari and petticoat from the heap of fodder. the same were seized in presence of panchas. Panchnama Exhibit-25 was drawn. He further deposed that on 2nd January, 2012 he sent the muddemal articles for chemical analysis. He collected post-mortem notes, map of the spot drawn by the circle inspector. Blood groups of the accused were checked and the doctor informed the blood groups of the accused. He further deposed that after completing the investigation, charge-sheet was filed.

. During the course of cross-examination, PW-11 Suresh stated that dead body was seen on the

blanket, on the floor of the house of accused. He stated that he recorded statement of PW-2 Vithabai. In her statement, she has not stated that some time her husband consumes liquor. He admitted that Vithabai has not told that she peeped through window of Gajendra's house. He further stated that Anil has not stated that when he raised shout, his parents, his wife and wife of his brother woke up and started crying.

. Thus from the perusal of the evidence of PW-11 Suresh, it is clear that after getting knowledge about the incident, in the concerned night itself, he immediately visited the spot of incident. The spot panchnama Exhibit-28 was drawn during 5.20 a.m. to 5.50 a.m. The weapons used in the offence and clothes wore by the accused at the relevant time of incident were recovered at the instance of the accused persons. It is argued by the counsel appearing for the Appellants that blanket by which dead body of Santosh, was covered was not sent for C.A. When as many as 11 Articles

were sent to C.A. and on all those Articles blood of group "B" i.e. blood group of deceased was found, hardly there is any substance in the said argument.

21. It is submitted by the counsel appearing for the Appellants that illicit relations of accused No.2 Padminbai with deceased Santosh are not proved by the prosecution. However after careful perusal of the evidence on record, it is clear that PW-1 Nagnath, PW-2 Vithabai and PW-3 Anil have categorically stated that deceased Santosh had illicit relations with Appellant No.2 Padminbai. PW-4 Nagnath Dombale also stated that he had heard that deceased Santosh had illicit relations with Padminbai. Thus, the prosecution has brought on record through these witnesses, that there were illicit relations between deceased Santosh and Appellant No.2 Padminbai.

22. PW-3 Anil has stated that, at the relevant time the Appellants have left the house

and they were proceeding fast on the path-way to Nilegaon and soon thereafter the prosecution witnesses saw the dead body of Santosh in the house of the Appellants. Therefore, it was obligatory on the part of the Appellants to discharge the onus to explain how the said dead body came in their house. Their defence appears to be of a simple denial and that they were not in the house at the relevant time. However the prosecution has brought on record sufficient evidence which unequivocally indicates that there was no possibility of throwing or keeping the dead body in the house of the Appellants by some other person. There is prompt lodging of the FIR. The police immediately visited the spot and saw that the dead body of Santosh was lying in the house of the Appellants and immediately further steps were taken. It is clear from the evidence of PW-1 Nagnath that after arrival at the spot of incident, police opened the house of Gajendra with key. Therefore, the possibility of concoction is ruled out.

23. PW-3 Anil stated in his evidence that during the relevant night at 1.30 to 2.00 O'clock he woke up because electricity supply starts at that time and he had to water his field and after starting electric motor, he proceeded towards his house by walking on path-way and at that time he saw Gajendra and Padminbai walking fast on the path-way to Nilegaon. Thus, the evidence of PW-3 appears to be natural and he has no reason to falsely implicate the accused persons. The prosecution has brought on record so many incriminating circumstances against the accused. The weapons which were used for the commission of offence were concealed in the heap of fodder. The perusal of the C.A. report discloses that the blood appearing on the Article Nos.1 to 11, was of group "B", which was the blood group of deceased i.e. group "B". It is submitted by the counsel appearing for the Appellants that the blood samples of the Appellants were not sent for determination of blood group and therefore C.A.

report deserves no consideration, has no any substance. It is not the case of the Appellants that they sustained some injuries and their own blood was spread on their clothes.

24. Learned counsel appearing for the Appellants submitted that the reliance cannot be placed on the oral testimony of the prosecution witnesses PW-1 Nangnath, father of deceased, PW-2 Vithabai, wife of deceased Santosh and PW-3 Anil, brother of deceased, as they are the interested witnesses. Merely because the witnesses are interested or partisan, is no ground to discard the evidence. Only the Court has to scrutinize their evidence carefully. The Supreme Court in the case of Maslati and others vs. The State of Uttar Pradesh⁶, held that the evidence of partisan and interested witnesses needs to be carefully scrutinized and considered, and same cannot be rejected merely on the ground that witnesses are interested, partisan or in relation of victim.

⁶ A.I.R. 1965 S.C. 202

25. In the given facts and circumstances, and the evidence brought on record by the prosecution, the only possible view was guilt of the accused. Though there is no eye witness to the incident and the prosecution case is based on circumstantial evidence, the chain of circumstances has been established beyond reasonable doubt by the prosecution, and all the facts established are so consistent with only hypothesis of the guilt of the accused.

26. The trial Court has considered all the evidence brought on record in its proper perspective and recorded the findings which are in consonance with the evidence on record and convicted the Appellants/ accused. The conclusions reached by the trial Court are in consonance with the evidence brought on record by the prosecution. There is no perversity as such.

27. In the light of discussion herein above,

we are of the opinion that there is no merit in
the Appeal. The Criminal Appeal stands dismissed.

[S.M. GAVHANE, J.]

asb/JUL17

[S.S. SHINDE, J.]