

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

CRIMINAL APPEAL NO. 292 OF 2013

Kiran s/o Uttamrao Nannaware,
Age 39 years, Occu. Nil.,
R/o Washi, Taluka Washi,
District Osmanabad
(at present in jail)

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr V.R. Dhorde, Advocate h/f Mr A.S. More, Advocate for appellant
Mr M.M. Nerlikar, A.P.P. for respondent

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING
THE JUDGMENT : 14.9.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 13.10.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. This appeal is preferred against the conviction u/s 302 of the Indian Penal Code and sentence of imprisonment for life and fine of Rs.10000/-, in default, to suffer rigorous imprisonment for one year passed against the appellant by learned Sessions Judge, Osmanabad on 12.07.2013 in Sessions Case No. 59/2012.

2. The facts relevant for deciding this appeal may be stated as follows:

Appellant - Kiran (hereinafter referred to as 'Kiran (A)' resident of Washi, Tq. Washi, Dist. Osmanabad, married to deceased Usha (herein after referred to as 'Usha (D)') from Umbarge, Tq. Barshi, Dist. Solapur, in 1998. One son Suraj, aged 13 years and 2 daughters Priti

11 years and Pranita 9 years at the time of incident in February-2012 were born out of the wedlock. Kiran (A) was serving on a Borewell Vehicle at Pune. His parents were residing at Vashi. His elder son Suraj was residing along with his parents. Deceased Usha and two daughters Priti (PW2) and Pranita (PW3) were residing separately from them in Vashi. Kiran (A) used to visit Vashi occasionally on holidays. It is admitted fact that, on 01.02.2012 at 07:00 to 07:30 PM, when Usha (D) and her two daughters were in the house, Usha was assaulted and stabbed 16 times and as a result died homicidal death.

3. It is the prosecution case that, Usha in her earlier visits one month before the incident, complained to her parents that Kiran (A) was suspecting her character and was taunting, abusing and assaulting her. As her husband was serving at Pune and children used to go to son, she requested her grand-mother Sojarbai-PW1 to give her company and, therefore, Sojarbai-PW1 was residing with her at Vashi since one month prior to the incident. The FIR lodged on 01.02.2012 at 10:15 p.m. by Sojarbai-PW1 (registered as Crime No. 11/12 u/s 302 of IPC) disclose that, at the relevant time at 7.00 to 7.30 p.m. Sojarbai-PW1 was cooking food while Usha was sitting in kitchen and two daughters Priti and Pranita were in the adjoining rooms. At that time, Kiran (A) suddenly came from Pune, pushed aside Sojarbai-PW-1 and all of a sudden inflicted several blows of knife on her chest, abdomen, shoulders, neck, thighs, auxiliary region and thigh and seriously wounded her. Usha was profusely bleeding and Sojarbai-PW1 raised shouts. Priti & Pranita came there and after watching the ghastly incident they ran out and brought the police from Police

Station located nearby the spot. Usha (D) was shifted to Civil Hospital for treatment but she died.

4. After registration of the crime, PW21-Police Inspector-Budhwant visited the spot and collected blood from the spot and drew spot panchanama. The accused surrendered before him and he was arrested. The accused had injury to his little finger. Hence, he was got medically examined from PW20-Dr. Nagesh Mahamuni. The inquest panchanama was drawn on the dead body and clothes of the deceased soaked in blood were seized by drawing seizure memo. On next day, the Investigating Officer recorded the statement of material witnesses. On 05.02.2012, Kiran (A) volunteered to discover knife used as a weapon in the offence in question. Then he led police and panchas to courtyard of his house and discovered blood stained knife from a heap of woods. PW-21-PI Budhwant arranged to get the statements of Priti & Pranita recorded u/s 164 of the Cr.P.C. The clothes of the accused were also stained with blood and those were also seized and they were sent for chemical analysis. After receiving the Chemical Analyser's report, the charge-sheet was submitted in the court.

5. In due course, the case came to be committed to the Court of Sessions. Learned Ad-hoc Additional Sessions Judge, Osmanabad framed charge at Exh.7. The accused pleaded not guilty. The prosecution examined 22 witnesses. The defence of the accused is of denial. According to him, he has not committed the crime. It is also his case that, PW1 Sojarbai, the so-called eye witness was not present in the house, she was at Barshi.

6. After considering the evidence on record and hearing the advocate for the parties, learned Sessions Judge held the appellant guilty and convicted and sentenced him as referred above. Hence, this appeal.

7. Mr Dhorde, learned advocate for the appellant has taken us through the entire evidence on record. His material arguments are as follows:

- (i) The evidence on record shows that, PW1 Sojarbai, the only supporting eye-witness, was at Barshi and after receiving the information of incident she came to Vashi.
- (ii) PW2 Priti & PW3 Pranita, daughters have turned hostile and have not supported the prosecution. PW7 Dilip, PW7 Devidas & PW8 Mahavir Sukae, who heard the eye-witnesses have also not supported the prosecution.
- (iii) PW4 Mahadeo, father of Usha (D) was a Police Constable, therefore, the police have manipulated the investigation.
- (iv) As per evidence, PW2 Priti had visited the Police Station immediately after the incident at 07:30 PM but her information was not recorded as FIR or as a station diary entry and no FIR was registered till 10:30 p.m.
- (v) PW1 Sojarbai stated that, she was present at the time of the incident while PW6 – Head Constable Kshirsagar has helped to shift Usha (D) to the hospital but their clothes were not stained with blood and those were not seized.
- (vi) The so-called dying-declaration of Usha (D) before PW6 Kshirsagar is afterthought and by way of omission.

Deceased Usha was not in a position to make dying-declaration.

- (vii) PW2 & PW3 have stated that, Sojarbai PW1 was not present in the house and two unknown persons had killed their mother. Their statements u/s 164 of Code of Criminal Procedure cannot be used as substantive piece of evidence.
- (viii) The investigating officer has selected panch witnesses brought by PW4 - Mahadeo. They are resident of Umbarge or Barshi which are more than 50 kms away from the spot.
- (ix) The investigation is tainted and the seizure and discovery cannot be said to be proved.
- (x) So-called discovery of knife by the accused Kiran(A) is not proved as panch witnesses have turned hostile.
- (xi) One of the hostile panchas have given admissions that, the knife was recovered from a heap of firewood stocked in the courtyard outside the house whereas; the spot panch admitted that no such heap of firewood was found at the time of panchanama and the accused was in custody from the time of panchnama till discovery.
- (xii) The evidence of PW4 Mahadeo, father of deceased Usha (D) is regarding previous complaint of ill-treatment is afterthought. His entire evidence is by way of omission. The evidence of material witnesses PW1, PW6, PW4-Mahadeo is full of omissions and contradictions and the same does not inspire any confidence. The learned trial Judge has not properly appreciated the evidence. The material discoveries found in their evidence have not been duly considered in the judgment. Hence, the appeal

should be allowed and conviction should be set aside and accused should be set at liberty.

8. Per contra, Mr M. M. Nerlikar, learned APP appearing for the State, strongly supported the impugned Judgment. He argued that, evidence of PW1 Sojarbai is trustworthy and reliable. She was aged 80 years and therefore she might have committed some mistake but she has no reason to falsely implicate the accused. Her evidence is well supported by PW6 - Head Constable Kshirsagar. PW4 Mahadeo has given the previous history of assault that Usha was admitted due to assault by the accused. She had filed criminal case against the accused. Since PW2 & PW3 are residing with the parents of the accused, they have turned hostile but their statements u/s 164 of Cr.P.C. Clearly support the prosecution case. The accused was found in Vashi at the relevant time. There is dying declaration before PW-6. The evidence is supported by discovery of knife by the accused which is found to be blood stained. Hence, there is no justifiable reason to interfere with the conviction and sentence.

1. The points for our determination with our findings are as follows :

(I) Whether deceased Usha met with a
homicidal death ? ..In the affirmative

(II) Whether the accused committed
murder of Usha ? .. Not proved

(III) What order ?

.. The appeal is allowed.
The judgment of conviction and sentence is set aside as per final order

REASONS

9. The prosecution has relied on following facts :

(I) Evidence of eye witnesses :

P.W.1 Sojarbai	.. Grand mother
P.W.2 Preeti	.. Daughter, Aged 13 years, hostile
P.W.3 Pranita	.. Daughter, Aged 11 years, hostile
P.W.7 Deelip	.. Adjacent shop owner, hostile
P.W.8 Mahaveer	.. Adjacent shop owner, hostile
P.W.19 Devidas Rathod	.. Tenant, hostile

(2) Panchas :

P.W.13 Anant Mane	.. Inquest panch
Inquest Panchnama	.. Exh.35
P.W.9 Anil & P.W.10 Punjab	.. Spot panch – hostile
P.W.5 Babruwahan	.. Who drawn map Exh.16
P.W.15 Yuvraj	.. Discovery of weapon, hostile
P.W.21	.. P.I. Budhwant
P.W.14 Motiram	.. Seizure of clothes of deceased by P.I. Budhwant
P.W.16 Vilas & P.W.17 Madhukar	.. Seizure of blood stained clothes of the accused Both hostile, panchnama Exh.42 and Exh.44

P.W.11 Anand & P.W.12 Pravin	.. Photographers
P.W.6 H.C. Kshirsagar	.. Dying declaration and carrier
P.W.4 Mahadeo	.. Previous illtreatment, father of
P.W.1 Sojarbai,	.. Grandmother
P.W.20 Dr. Nagesh Mahamuni	.. Medical evidence
P.W.22 – Mr K.M. Sonawane	.. Judicial Magistrate who recorded statements u/s 164 Cr.P.C. (Exhs.70 and 71)

10. P.W.6 Head Constable Kshirsagar has stated that he saw injured Usha in her house with profusely bleeding injuries. He had taken her to the hospital where she was declared dead. The post mortem was conducted by Dr. Nagesh on 2.2.2012 at 11.30 a.m. He found following multiple stab injuries on her person :

- (I) over left axillary region 6 cm x 2 cm x 5 cm
- (ii) over right side of chin 1 x 0.5 x 1 cm
- (iii) over left side of chin 1 x 0.3 x 1 cm
- (iv) on left clavicular region 4 x 1 x 1 cm
- (v) over front of neck 5 x 1 x 1 cm
- (vi) over right clavicular region 2 x 1 x 1 cm
- (vii) over right side of abdomen 3 x 1 x 1 cm
- (viii) over right iliac region of abdomen 1 x 0.5 x 0.5 cm
- (ix) Three stab wounds of the size of 2 x 0.5x1.2x0.5x1 cm,
2x0.3x1 over left him region (lateral aspect)
- (x) over left thigh (middle 1/3 part) 3 x 1 x 1 cm

- (xi) over left breast (left lateral aspect) 7 x 3 x 6 cm
- (xii) over left breast (medial aspect) 4x1x2 cm
- (xiii) over right hand extensor aspect 3 x 1 x 0.5 cm
- (xiv) CLW over left hand near thumb (dorsal aspect)
3 cm x 0.5 cm x 0.5 cm

As per post mortem notes Exh.52, Usha died due to 'Cardio-respiratory arrest due to deep stab injuries, leading to rupture at left lung and causing collapse of left lung with internal hemorrhage with multiple stab injuries leading to profused bleeding and hypovolemic shock." This evidence shows that Usha met with homicidal death. There is no challenge to this fact.

11. Evidence of P.W.1 Sojarbai and P.W.4 Mahadeo show that P.W.4 Mahadeo was Police Constable, who retired in 2010 i.e. before the incident. Mahadeo was son of P.W.1 Sojarbai and father of deceased Usha. They were residing at Barshi. It is about 50 kms away from Washi. Usha married to the accused on 4.5.1998 and thereafter started co-habiting with him at Washi. She gave birth to two daughters, Preeti, aged 13 years and Pranita aged 11 years. The admitted evidence shows that the accused Kiran's father and other relatives were residing in Washi, but in a separate house. The accused was serving on a bore-well vehicle at Pune. Elder son of deceased Usha was residing with parents of the accused. Usha was residing with her two daughters, P.W.2 Preeti and P.W.3 Pranita in a chawl like structure. At the relevant time, Preeti and Pranita were studying in 5th and 4th standards respectively. The accused Kiran used

to visit Washi occasionally. It is submitted at the bar that Pune is at a distance about five hours journey by bus from Washi. There is no dispute about these facts.

12. P.W.4 Mahadeo and P.W.1 Sojarbai stated that Usha was complaining that her husband accused Kiran was suspecting her character and was assaulting her and threatening to kill her. P.W.4 Mahadeo stated that Usha was assaulted in June 2011 and was hospitalised. She had filed a complaint at the police station, but the said complaint and medical evidence are not produced before the Court. P.W.4 stated that Usha complained that the accused was asking her to bring money from her parents and she had filed complaint under Section 498-A of Indian Penal Code. Usha was constrained to reside at her maternal house for two occasions. As the accused promised to behave well, she resumed co-habitation. The cross-examination of P.W.4 Mahadeo shows that this material evidence of P.W.4 is by way of improvement and is not supported with any documents.

13. It is in the evidence that Usha lost her grandfather on 9.12.2011 i.e. about two months before the incident. That time, Usha and the accused Kiran visited his house. After the rituals were over, Usha returned to Barshi. She had requested P.W.1 Sojarbai to accompany her, as there was harassment to her and she was all alone. Deceased Usha again came to Washi after fifteen days and P.W.1 Sojarbai accompanied her and stayed residing with her at Washi. This fact is strongly disputed. About fifteen days thereafter, according to P.W.4

Mahadeo, he and his wife had gone to bring back his mother, but Usha gave ring to the accused and the accused told P.W.1 Sojarbai that she should stay there for eight to fifteen days more. Thus, on 8.2.2012, the day of incident, P.W.1 Sojarbai was residing with Usha. This is all disputed.

14. As per evidence of P.W.1 Sojarbai, on that day, at about 7.00 p.m., she was cooking food in the kitchen. The arrangement of the house is of three rooms, situated side by side, all having separate entrance into the courtyard. P.W.1 Sojarbai stated that Usha was sitting at the door of the kitchen, while Preeti was in the courtyard and Pranita was studying in adjacent room. P.W.1 Sojarbai stated that the accused came there and stabbed Usha. She (P.W.1) raised cries and she went out and raised shouts. Her grand daughters Preeti and Pranita were sent to the Police Station, which is situated near the house. The accused stabbed Usha several times and she sustained profusely bleeding injuries. Then, one Police came along with Preeti and Pranita.

15. P.W.6 - Head Constable Kshirsagar stated that two girls had been to the police station and told him that their father had stabbed their mother with a knife and he should save her. He accompanied them to the spot. He saw Usha lying in a pool of blood. She had several injuries. She was crying with pains. P.W.1 Sojarbai stated that Usha was wrapped in saree and she was put in a van and taken to the hospital. P.W.1 Sojarbai did not accompany her, but later gone to the police station and had lodged F.I.R. Exh.11. P.W.6 Head Constable Kshirsagar stated that Usha was crying with pains and she told him

that her husband had stabbed her with a knife. He should save her and should not leave him (accused) free. P.W.6 Head Constable Kshirsagar then stated about presence of one old lady (P.W.1 Sojarbai) but it was objected by defence that the learned A.P.P. suggested by uttering words, "old lady" and the Judge has warned the A.P.P. P.W.6 Head Constable Kshirsagar stated that old lady told him that deceased Usha was her granddaughter. He stated that they put Usha in a jeep and took her to the hospital. He stated that Usha gave oral dying declaration before him on the way that her husband had stabbed her with knife. He should save her and should not leave him (accused) free. Usha was admitted in the hospital and after some time she had expired.

16. It is obvious that P.W.2 Preeti and P.W.3 Pranita were most material witnesses. Those were studying in 5th and 4th standard at relevant time and were examined one year thereafter. According to the prosecution, those were eye witnesses, but they have turned hostile. P.W.2 Preeti stated that they were sitting in the courtyard. That time, two persons came from the front with something in their hands. She went into the kitchen and the persons assaulted her mother, she went to the police station and narrated the incident to Police. The police came to the house. They saw Usha lying outside the house and she was not talking. She denied that her father has stabbed her mother. Learned A.P.P. has cross-examined her with the permission of the Court. She denied the prosecution story put up to her by series of questions.

17. P.W.2 Preeti has admitted that she was brought before the Judge on 28.3.2012 and Judge recorded her statement as per her say, but this statement was not shown and read over to her by the learned A.P.P. It is in the evidence that after the incident, P.W.2 and P.W.3 are residing with parents of the accused. There is possibility that the girls are tutored so as to save the accused from punishment. In cross-examination by learned Advocate for the accused, P.W.2 Preeti and P.W.3 Pranita have stated that Sojarbai was not staying with them. She was residing at Barshi with her son (P.W.2 Preeti does not state that she was residing with her grandfather). P.W.2 Preeti stated that after her mother expired, her grandparents and great grandmother came from Barshi.

18. Evidence of P.W.3 Pranita is similar to the evidence of P.W.2 Preeti except that she has denied that Magistrate has recorded her statement as per her say.

19. In the light of the facts stated hereinabove, it was expected that the Police should have recorded F.I.R. of Preeti at 7.30 p.m., but the Police have recorded F.I.R. of P.W.1 Sojarbai at 10.15 p.m. Surprisingly, P.W.1 Sojarbai neither accompanied injured Usha to the hospital nor went to the police station to lodge the F.I.R. immediately after the incident.

20. In cross-examination, P.W.1 Sojarbai has been thoroughly exposed. She has given admission that on the day of incident, she was at Barshi and P.W.4 Mahadeo, her son had accompanied her. She came from Barshi along with her son and daughter-in-law. She stated

that she could not state the boundaries of the house of Usha, as she was not staying there. She was asked specific question whether she came along with Mahadeo and his wife at 9.00 p.m., after receiving phone call from Washi police station. Initially, she stated that she was in Washi, but twice she admitted that she came along with them from Barshi to Washi. She stated that the Police took her and her son and daughter-in-law to the hospital, where Usha was found dead. Thereafter, they had gone to Police Station. Her son Mahadeo sat with police and Mahadeo and Police prepared the writing. The Police asked her to put her thumb impression and she put her thumb impression. That is how, Exh.11 came to be registered. Her evidence shows that after the incident on the same night, they had returned to Barshi and she was at Barshi at 10.00 p.m. Then, there is no explanation how her F.I.R. came to be recorded at 10.15 p.m. She returned to Washi on the next day.

21. P.W.1 Sojarbai has stated that she was cooking food in the kitchen and the accused stabbed Usha in the door of the kitchen and the incident was going on for half an hour. She stated that she came out of the house and raised shouts. It is pertinent to note that as per evidence of Dr.Nagesh, who conducted post mortem, deceased Usha had sustained sixteen stab wounds (the list shows 14 stab wounds, but at serial No.9, three stab wounds are shown together). P.W.1 Sojarbai was cooking food while Usha was stabbed in the door. It was, therefore, impossible for P.W.1 Sojarbai to come out of the house, as she could not have cross the accused and Usha, who were in the door.

22. Besides, P.W.1 Sojarbai stated that Usha was at a distance of one feet from her. In any case, blood stains were expected on the clothes of P.W.1 Sojarbai, as she would have definitely attempted to provide help to injured Usha, but no blood stained clothes of P.W.1 Sojarbai or of P.W.6 Head Constable Kshirsagar were seized by the Investigating Officer.

23. P.W.9 Anil and P.W.10 Punjab are the panchas to the spot panchnama. According to prosecution case, the spot was shown by P.W.1 Sojarbai, but P.W.9 and P.W.10 have stated that besides police, nobody was there to show the spot. They have also admitted that on the spot, no signs of cooking were seen. There were no utensils or no cooked food and the gas stove was not on. The evidence of panch shows that P.W.1 Sojarbai had not shown the spot. P.W.10 Punjab turned hostile. The panchnama was drawn on 1.2.2012 at 11.00 p.m.

24. P.W.1 Sojarbai has stated that she did not tell anyone that accused Kiran has stabbed Usha and she was stating this fact before the Court for the first time.

25. From the evidence, it is certain that P.W.1 Sojarbai is not trustworthy witness. Her presence on the spot itself is in grave doubt. The admissions given by her disclose that she is a planted witness. Even if some concession is given, still it is certain that her evidence does not inspire confidence and raises strong reasonable doubt about the story narrated by her and she cannot be believed.

26. The prosecution examined P.W.7 Deelip, tailor. P.W.8 Mahavir, a neighbourer had a printing press. They were having their shop

premises in front of house of the accused and Usha. They have turned hostile and have not at all supported the prosecution.

27. P.W.2 Preeti and P.W.3 Pranita have also turned hostile. The statement of P.W.2 Preeti under Section 164 Cr.P.C. is admitted by her, but it was not read over and not marked as Exhibit in her evidence. P.W.22 Judicial Magistrate Sonawane has proved the said statement Exh.70 and statement of Pranita Exh.71, but such statements cannot be used as substantive piece of evidence. Those can be used only as corroborative piece of evidence.

28. The role of P.W.19 Devidas is very much relevant. He was eye witness and as per prosecution case, he had tried to save deceased Usha from the assault of the accused, but the accused had threatened to kill him and thereafter he had fled away. As per prosecution case, he was tenant occupying one of the rooms of the accused, where he had kept articles of M.S.E.B., as he was serving as a lineman. He has turned hostile and has denied the prosecution case. Relevant part from his statement Exhs.65, 66 and 67 has been proved by the Investigating Officer P.I. Budhwant. Surprisingly, his statement came to be recorded on 16.4.2012, i.e. two and half months after the incident.

29. It is in the F.I.R. that the accused was suspecting the character of deceased Usha. The evidence shows that two daughters of Usha were not in the kitchen. Though there is evidence that P.W.1 Sojarbai was in the kitchen, the evidence has been falsified by the admissions given by P.W.1 Sojarbai. In the light of these facts, it is material to

note that P.W.2 Preeti in her statement under Section 164 Cr.PC. Exh.70 had stated that at the relevant time, her mother came from outside and gave a ring to Mr Rathod (P.W.19). Rathod came there and he was sitting along with her mother and great grandmother and they were bantering each other and at that time, her father came into the house. This creates a suspicion whether deceased Usha was having any affair with Rathod.

30. The accused was serving at Pune and he had been to Washi on that day. He was arrested by the Investigating officer. The evidence shows that the accused had a cut injury on his little finger and he was examined by P.W.20 Dr. Nagesh at 11.15 p.m. His injury was incise wound 0.5 x 0.2 x 0.1 cm caused by sharp object. He has accordingly issued medical certificate Exh.51. According to accused, he sustained injury in the travelling due to a tin. According to P.W.21 P.I. Budhwant, the accused was arrested by drawing arrest panchnama Exh.54. It shows the time of arrest as 22.45 p.m. The evidence of witnesses disclose that the accused has used mobile and had given ring to P.W.4 Mahadeo at 7.00 p.m. The Investigating Officer could have collected call detail record to find out the location of the accused at the relevant time, but no such record had been collected. As per statement of P.W.2 Preeti recorded under Section 164 of Cr.P.C. by learned Magistrate at Exh.70, the accused after the incident had been to police station when P.W.2 Preeti and P.W.3 Pranita were at the police station. It must be at about 7.30 p.m., but the police have not shown his arrest till 10.45 p.m. Thus, there is no reliable evidence to show at what time the accused came to Washi from Pune and at what

time he was arrested. This was most material evidence, which is not brought on record.

31. P.W.15 - Yuvraj, a panch to the discovery panchnama has turned hostile and has not supported the prosecution in the chief, but he supported the prosecution in leading question by learned A.P.P. He admitted that the accused told that he would produce the weapon used for killing his wife from the heap of firewood in the courtyard. Similarly, evidence of P.W.18 Jalinder supported but did not state that the accused had disclosed the place where he was going to discover weapon of offence, knife. Evidence of P.I. 21 Budhwant on this point is also casually recorded without specific evidence of the spot concealment so as to attract Section 27 of the Evidence Act.

32. No doubt, discovery of weapon without making a statement is admissible as *res gestae*. However, the evidence shows that at the time of spot panchnama, there was no heap of firewood in the courtyard on the date of incident. On the same night, the accused was arrested and on 5.2.2012, the recovery has been made from the courtyard outside the house. This discovery is not reliable.

33. The prosecution has examined two photographers P.W.11 Anand Nanaware and P.W.12 Pravin Ahire. P.W.11 Anand has proved photographs Exhs.25 to 27. These are the photographs of deceased Usha showing the injuries sustained by her. P.W.12 Pravin has produced photographs showing the site, where pool of blood is seen. This evidence is not relevant for determining the complicity of the accused. Similarly, the prosecution has examined P.W.16 Vilas and

P.W.18 Jalinder on the point of seizure of clothes of the accused stained with blood. P.W.16 Vilas has not supported the prosecution and was cross-examined by learned A.P.P., but has given no admissions. P.W.17 Madhukar has also not supported the prosecution on the seizure of clothes of the accused under panchnama Exh.44.

34. The evidence of P.W.14 Motiram on the point of seizure of clothes of the deceased Usha Exh.37 is not much relevant. It, however, shows how the investigation is tainted. P.W.14 Motiram is tenant of P.W.4 Mahadeo and was brought from Barshi.

35. Similarly, P.W.15 Yuvraj is resident of Umbarge, which is home town of P.W.4 Mahadeo.

36. Evidence is summarised as follows :

(I) There is evidence and no dispute that deceased Usha was stabbed sixteen times on 1.2.2012 between 7.00 p.m. and 7.30 p.m. in her kitchen which resulted into her death.

(II) The main witness P.W.1 Sojarbai grandmother of Usha is planted. She was at the relevant time at Barshi which is 50 kms. Away from Washi, the place of incident. She came along with her son P.W.4 Mahadeo after 9.00 p.m. on receipt of information of the incident.

(III) The material eye witnesses P.W.2 Preeti and P.W.3 Pranita daughters of the accused and deceased Usha have turned hostile. They have denied the presence of P.W.1 Sojarbai. Three additional

eye witnesses, P.W.7 Tailor Deelipm P.W.8 Mahaveer and P.W.19 Devidas Rathod have turned hostile.

(IV) The panchas to the recovery of weapon have turned hostile and even otherwise, the said recovery was not reliable as there was no heap of firewood in the courtyard at the time of drawing spot panchnama. Thereafter, the accused in the police custody and thereafter on 5.2.2012, recovery of blood stained knife is shown from the heap of firewood in the courtyard. The seizure of blood stained clothes of accused is also not proved, as P.W.7 Madhukar has not supported the prosecution.

(V) The investigation in this case is very much tainted, which was carried out to help P.W. 4 Mahadeo who was a Police official. He produced witnesses from Barshi who were selected as panchas. P.W.1 Sojarbai was planted as eye witness.

37. The Police have not properly collected material to show that at the relevant time, the accused was present in Washi. He was arrested at 10.45 p.m. i.e. about three hours after the incident.

38. The Police have not recorded F.I.R. of P.W.2 or P.W.3 who had reported the incident to Polcie at 7.30 p.m. The F.I.R. came to be registered after three hours. P.W.1 Sojarbai has admitted that her son Mahadeo narrated the incident and the complaint was drafted and her signature was taken. In the light of this, there is no trustworthy and reliable evidence to show the complicity of the accused in the crime. The learned trial Judge has not taken into consideration this material discrepancies and has come to the wrong conclusion. Therefore, the

conviction and sentence are not sustainable. Hence, the points formulated are answered accordingly. Hence, appeal deserves to be allowed.

ORDER

(I) The Criminal Appeal is allowed.

(II) The accused - Kiran s/o Uttamrao Nannaware is acquitted of the offence punishable under Section 302 of the Indian Penal Code imposed by learned Sessions Judge, Osmanabad on 12.07.2013 in Sessions Case No. 59/2012.

(III) The appellant be set at liberty forthwith, if not required in any other case subject to furnishing P.R. bond of Rs.10,000/- with one surety in the like amount under Section 437-A of Cr.P.C.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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