

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL CONFIRMATION CASE No.4 OF 2016

The State of Maharashtra.

... APPELLANT

VERSUS

Nitin Balkisan Gaikwad,
Age: 32 years, Occu. Service,
R/o. Quarter No.E-5, Krushi Mahavidyalaya
Employees Quarters, Parola Road, Dhule

... RESPONDENT

(Ori. Accused No.1)

...

Mr. A.B.Girase, Public Prosecutor with
Mr.M.M.Nerlikar, A.P.P. for Appellant - State.
Mr.Joydeep Chatterji Advocate for Respondent-
Accused.

...

WITH

CRIMINAL APPEAL No. 701 OF 2016

- 1) Nitin Balkisan Gaikwad,
Age: 32 Years, Occu. Service,
R/o. Quarter No.E-5, Krushi Mahavidyalaya
Employees Quarters, Parola Road, Dhule.
- 2) Vimalbai Balkisan Gaikwad,
Age: 67 years, Occu.: Housewife.
- 3) Dnyaneshwar Balkisan Gaikwad,
Age: 40 Years, Occu. : Labour,

- 4) Pappu Balkisan Gaikwad,
Age: 37 years, Occu. : Driver,

Appellant Nos.2 to 4 R/o. Koliwada,
Ganapati Ghat, Tq. Rahuri,
Dist. Ahmednagar.

... APPELLANTS
(Ori.Accused Nos.
1 to 4)

VERSUS

The State of Maharashtra

... RESPONDENT

...
Mr.Joydeep Chatterji, Advocate for Appellants -
accused.
Mr.A.B.Girase, Public Prosecutor with
Mr.M.M.Nerlikar, A.P.P. for Respondent - State.
...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 3RD MARCH, 2017.

DATE OF PRONOUNCING JUDGMENT: 20TH MARCH, 2017.

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

1. In Sessions Case No.182 of 2014 the learned Additional Sessions Judge, Dhule has awarded death sentence to accused No.1 therein, the proceedings in the said case, have been

therefore forwarded to this Court for confirmation under Section 366 of the Criminal Procedure Code.

2. Accused No.1 along with other accused i.e. accused Nos.2, 3 and 4 have also preferred Criminal Appeal No.701 of 2016, challenging the Judgment and order dated 10th November 2016, passed by the Additional Sessions Judge, Dhule in Sessions Case No.182 of 2014. The Additional Sessions Judge, Dhule vide Judgment and order dated 10th November 2016, convicted accused No.1 Nitin Balkisan Gaikwad for the offence punishable under Sections 302, 498-A and 506 of the Indian Penal Code. Accused No.1 is convicted for the offence punishable under Section 302 of the Indian Penal Code, and he is sentenced to Death. Accused No.1 Nitin is convicted under Section 498-A of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for three months. Accused No.1 Nitin

is also convicted for the offence punishable under Section 506 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.3000/-, in default to suffer rigorous imprisonment for one month.

. Accused No.2 Vimalbai Balkisan Gaikwad, accused No.3 Dnyaneshwar Balkissan Gaikwad and accused No.4 Pappu Balkisan Gaikwad are convicted for the offence punishable under Section 498-A read with 34 of the Indian Penal Code, and are sentenced to undergo rigorous imprisonment for one month each and to pay fine of Rs.3000/- each, in default to undergo rigorous imprisonment for fifteen days.

3. As both the matters are arising out of one judgment, the arguments in both the matters are simultaneously heard and we find it expedient to decide both the matters by common reasoning. However, since the very conviction has been

challenged by the convict, the only proper course would be to first decide the Criminal Appeal so filed by the accused, for the reason that, only if the order of conviction is maintained by this Court, the further question will arise whether or not the death sentence awarded by the trial Court is sustainable and is to be confirmed or otherwise.

4. Heard the learned Public Prosecutor for the State and the learned counsel appearing for the accused.

5. The factual matrix of the prosecution case in brief as stated before the trial Court is as under:

A) The prosecution case disclosed from charge sheet and the relevant police papers, is a heinous crime which shows the social menace of dowry and strong emotions of vengeance can lead

harassment of a woman to the extent of heinous and brutal murder of her.

B) Accused No.1 Nitin is husband of Pranita (deceased) and accused nos. 2, 3 and 4 are the mother and brothers of accused No.1 Nitin. Before about 2 months of the date of incident i.e. 25th July, 2014, victim Pranita and accused No.1 Nitin got married. Accused No.1 was working in Agricultural College, Dhule, as a Driver and was residing in the campus of the Agricultural College in staff quarters. On the day of incident i.e. the fateful night of 24th July, 2014 and 25th July, 2014, only accused No.1 Nitin and his wife Pranita were present in the Quarter No.E-5.

C) Regarding the incident, one Dr. Pravin Rathod working in the Agricultural College, Dhule as a Specialist gave report on 25th July, 2014 at about 11.00 a.m., that while he was on duty at 10.00 a.m., on that day one staff member namely,

Prachi Kale told him that the house of accused No.1 Nitin is closed from inside and he or his wife are not opening the door, therefore, something is wrong there. On her say, the complainant along with other staff went to Quarter No.E-5, where they saw that people have gathered over there and front door as well as the rear door of the house was closed from inside. Hence he peeped from the window situated above the door and found that in pool of blood accused No.1 Nitin and his wife Pranita were lying on the mattress and profuse bleeding had taken place from injuries of his wife. By that time, Police Officers and Policemen from Azad Nagar Police Station, Dhule, came on the spot and they broke opened the door of the house and found that accused No.1 Nitin was lying in unconscious condition. While there was no movement of the body of his wife. Her neck / throat was seen cut and due to the bleeding her clothes were stained with blood. Near her, accused No.1 Nitin was found lying with the cuts injuries

on his throat - chest and wrists of both hands. A blade, a knife and a sickle stained with blood were lying near him. In the said room near the T.V., one chit was kept which was signed in English by accused No.1 Nitin. It was mentioned in the contents of the chit that the father in law of Nitin, namely, Bhausahab Ghane had taken hand loan of Rs.7,00,000/- from accused No.1 which he had paid at the behest of his wife. Both accused No.1 and his wife Pranita were brought to Civil Hospital, Dhule, where Pranita was declared dead, while accused No.1 Nitin was given immediate medical treatment in the Civil Hospital. According to the first informant, accused No.1 Nitin had married Pranita before two months and while staying in his house with her, due to some reasons, he has committed murder of his wife by inflicting serious injuries on her neck with the help of sharp weapons like sickle, knife and blade. According to the informant, accused No.1 Nitin had also wrote down a chit mentioning the

name of his father in law in it and with intention to commit suicide had inflicted injuries on his throat and both wrists with blade or knife and he has also murdered his wife.

D) After registering the First Information Report, the investigation was started. From the spot of offence i.e. from the house of the accused No.1, the blade and other articles lying there were seized under Panchnama. The blade was sent for chemical analysis report. Spot Panchnama and Seizure Panchnama of the Articles lying over there like sharp weapons sickle, knife, blade and bottle of poison as well as blood stained clothes etc. were seized. Postmortem of the deceased Pranita was conducted. The seized Articles were sent for chemical analysis report. The provisional postmortem report was obtained. Thereafter the postmortem report was obtained. Accused No.1 Nitin was clinically examined and injury certificate was issued by Civil Hospital, Dhule.

The Panchnama of the spot was executed, map of the spot was prepared, after the postmortem the clothes of deceased Pranita were seized by executing Panchnama.

E) Similarly, clothes of accused No.1 Nitin which he was wearing at the time of incident were also seized. A chit which was found near T.V. was seized under Panchnama. The specimen handwriting of accused No.1 Nitin was obtained and along with it the chit recovered from the spot of offence was sent for getting opinion of the handwriting expert by the Investigating Officer. The statement of the witnesses were recorded. Immediately after admitting accused No.1 Nitin in the Civil Hospital, Dhle his statement was recorded by the Executive Magistrate. From the spot of offence, under Panchnama besides the sharp weapons like sickle, knife, blade of Super Max company and bottle of poison having name "Tactic", a cover of mattress, a steel glass, two mobiles of Samsung

company, a chit written on A-4 size paper on which the contents were in Marathi while the signature was in English, the ball pen of blue ink and of Reynolds company, the sample of blood from the pool of the blood found in that house from both the sides of the mattress were seized. Blood was also collected by scratching the plywood of the cot kept in that room for specimen of the blood. The blue half T-shirt with red sleeves which was torn from the neck till navel of the accused No.1 with the blood stains on it as well as gray coloured tracksuit pant with blood stains which was on the person of Accused No.1 Nitin were seized, while from the body of Pranita (deceased) a saree of pink and white colour with green border and with blood stains, pink coloured petticoat with blood stains, black coloured blouse having blood stains near the neck portion of the blouse and under wear of black colour with flower design of the deceased were seized. The seized Articles were labelled and sealed and sent for chemical

analysis report.

F) The viscera of deceased Pranita was also sent for chemical analysis report. Inquest Panchnama of the dead body of Pranita was executed. The blood of accused No.1 Nitin as well as deceased Pranita was obtained for getting chemical analysis report. The seized bottle of poison and steel glass were sent for chemical analysis report.

G) After the completion of the investigation, the Investigating Officer prepared the charge-sheet and sent it to Court of Judicial Magistrate, First Class-6, Dhule. The concerned Magistrate, the offence under Section 302 of the Indian Penal Code being exclusively triable by Sessions Court, committed it to Sessions Court.

H) During the investigation, the statements of the witnesses disclosed that Accused Nos.2, 3

and 4 had harassed deceased Pranita in furtherance of their common intention with Accused No.1, for their demand of remaining amount of dowry of Rs.50,000/-, hence, other accused were also added with addition of relevant Sections of the Indian Penal Code for harassing deceased Pranita.

I) Charge was framed and it was read over and explained to the accused in vernacular. They all pleaded not guilty and claimed to be tried. The defence of accused No.1 Nitin emerged from the cross-examination of the prosecution witnesses was that Pranita assaulted him which resulted his becoming unconscious and he does not know as to what happened thereafter. The another defence emerged while recording statement under Section 313 of the Code of Criminal Procedure is that during that night, accused No.1 and Pranita slept by putting off the light and in the dark, somebody gave blow to him by weapons and he became unconscious and hence, he does not know as to what

happened thereafter. Accused Nos.2, 3 and 4 have contended that they are falsely implicated in the case for the purpose of giving trouble to them.

. After recording the evidence and conducting full fledged Trial, the Trial Court convicted and sentenced the accused in a manner stated in Para 2 herein above.

6. The learned Public Prosecutor appearing for the State invites our attention to the evidence of the prosecution witnesses and submits that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. He submits that the prosecution has brought on record clinching evidence which would clearly demonstrate that on the fateful night accused No.1 Nitin and his wife Pranita were only present in the house. The spot of incident is house of accused No.1. Both the doors of the house were closed from inside. When

it was noticed by the other employees residing in the vicinity of the house wherein accused No.1 was residing, that the accused did not attend his duties in the office, the employee PW-6 Kumar, who is residing adjoining the house of the accused, though gave call at 8.30 a.m., there was no response from accused No.1. It is submitted that accused No.1 was obliged to explain under which circumstances Pranita died. It is submitted that the spot panchnama was conducted, weapons are seized from the spot of incident. Those weapons were found blood stained and the C.A. report clearly demonstrate the human blood on said weapons. It is submitted that defence taken by accused No.1 that some other person entered in the house and assaulted him and his wife Pranita is not probable since both the doors of the house were closed from inside. He invites our attention to the medical evidence and submits that prosecution has convincingly proved that death was homicidal. He invites our attention to Para 72

of the Judgment and submits that the trial Court upon appreciation of the entire evidence on record found that accused No.1 committed murder of Pranita in extremely brutal manner, gruesome, diabolical, cold-blooded, cruel and painful manner and therefore thought it fit to award death sentence to accused Nitin. In support of his contention that the death sentence awarded by the trial Court deserves to be upheld, he pressed into service exposition of law in the following reported/ unreported cases:

(1) **Bachan Singh vs. State of Punjab**¹ (2) **Rajendra Pralhadrao Wasnik vs. State of Maharashtra**² (3) **Purushottam Dashrath Borate and another vs. State of Maharashtra** (decided by the Supreme Court on 8th May 2015 in Criminal Appeal No.1439 of 2013), (4) **The State of Maharashtra vs. Viran Gyanlal Rajput** (decided by the High Court of Bombay at Principal Seat on 16th February 2015 in Confirmation Case No.3 of 2014 with Criminal Appeal No.760 of 2014), (5) **Vasanta Sampat Dupare vs. State of Maharashtra**³ (6) **State of**

1 (1980) 2 S.C.C. 684

2 (2012) 4 S.C.C. 37

3 (2015) 1 S.C.C. 253

Maharashtra and another vs. Rakesh Manohar Kamble @ Niraj Ramesh Wakekar and another⁴ (7) The State of Maharashtra vs. Shatrughna Baban Meshram (decided by the High Court of Bombay Bench at Nagpur on 12th October 2015 in Criminal Confirmation Case No.01 of 2015 with Criminal Appeal No.321 of 2015) (8) Mangal Singh vs. State of Uttar Pradesh⁵ (9) Perumal Perumal alias Thankachan vs. State of Kerala⁶ (10) Suresh Surya Sitaram vs. State of Maharashtra⁷ (11) Dhananjay Chatterjee alias Dhana vs. State of West Bengal⁸ (12) Laxman Naik vs. State of Orissa⁹ (13) Shivaji @ Dadya Shankar Alhat vs. State of Maharashtra¹⁰

7. On the other hand, Mr. Chatterji, learned counsel appearing for the accused, has tendered across the Bar written arguments and submits that accused No.1 Nitin had no motive or reason to murder his wife because his neighbour, PW-6 Kumar Bhoje has clearly admitted in Para 6 of his cross-examination that relations between Nitin and his wife were good. He further submits that

4 (2014) 2 Bom.C.R. (Cri.) 664

5 (1975) 3 S.C.C. 290

6 (1975) 4 S.C.C. 109

7 (1975) 3 S.C.C. 820

8 (1994) 2 S.C.C. 220

9 (1994) 3 S.C.C. 381

10 (2008) 15 S.C.C. 269

allegations about cruelty as deposed by PW-2 Bhausaheb Ghane, father of deceased Pranita are vague, sweeping and omnibus against all the accused. In cross-examination, PW-2 Bhausaheb admits that his deceased daughter was always insisting him to return the money of the accused and that financial condition of accused No.1 was better than PW-2 Bhausaheb. The learned counsel further submitted that the allegations of cruelty constitute a vital link in the chain of circumstances and the link is not established in the present case and therefore the conviction under Section 302 of the Indian Penal Code is unsustainable.

8. Learned counsel appearing for the accused further submitted that accused No.1 Nitin sustained multiple injuries on his body caused by sharp pointed weapon and PW-4 Dr. Madhuri has admitted in cross-examination that those are possible due to assault by another person.

Moreover, the arrest Panchnama proved by PW-5 Subhash Karne, depicts several injuries from chest to navel of accused No.1 which are stitched. So the defence raised under Section 313 of the Code of Criminal Procedure of assault by somebody in the dark, appears probable. Learned counsel appearing for the accused further submits that PW-1 Dr. Pravin Rathod has stated that there was one window on the upper side of the door of house. Possibility of an intruder entering through that, assaulting accused No.1 and deceased Pranita and exiting, cannot be ruled out. All the articles sent to the Chemical Analyser were found stained with Blood Group "A" which is of accused No.1. The blood group of the deceased Pranita could not be determined. It is submitted that PW-6 Kumar Bhoje has admitted in his cross-examination that police had seized one chit from the spot which was read over to him and therein it was stated that Pranita is committing suicide. The said chit thus fortify the theory of suicide. But the

prosecution has suppressed the same and and therefore an adverse inference needs to be drawn. Learned counsel appearing for the accused submits that though PW-1 Dr. Pravin Rathod and PW-6 Kumar Bhoye have stated that there were two doors to the quarter, PW-6 Kumar stated in his examination in chief that only the front door was closed and therefore the possibility of the back door being opened, has not been ruled out by the prosecution.

9. Learned counsel appearing for the accused also invites our attention to the grounds taken in the Appeal Memo and also the evidence of the witnesses and submits that the prosecution has not convincingly proved that the door from the back side of the house was closed. The defence taken by accused No.1 is probable. The benefit of doubt deserves to be extended in favour of accused No.1. He submits that entire case rests upon the circumstantial evidence. The prosecution has not proved the chain of circumstances. Relying upon

the Judgment of the Supreme Court in the case of **Hanuman Govind, Nargundkaar and another vs. State of M.P.**¹¹ the learned counsel submits that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused and the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

10. Learned counsel appearing for the accused

¹¹ A.I.R. 1952 S.C. 343

further pressed into service exposition of law by the Supreme Court in the case of **Shankarala Gyarasilal Dixit vs. State of Maharashtra**¹² and submits that in a case pf circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused.

11. Without prejudice to the arguments/contentions raised herein before, in the alternative, learned counsel appearing for the accused submits that, in case this Court is not inclined to interfere into the findings recorded by the trial Court, at least this Court may modify the sentence since there are number of mitigating circumstances in favour of accused No.1. He submits that the neighbour of accused No.1 and also father of Pranita in their evidence have stated that relationship between accused No.1 Nitin and his wife Pranita was cordial. He submits

12 A.I.R. 1981 S.C. 765

that at the time of alleged commission of offence, the age of accused No.1 was of 31 years and he has no any criminal record earlier and therefore death sentence may be reduced to life. In support of his submissions, the learned counsel invites our attention to the Judgment of the Supreme Court in the case of **Machhi Singh and others vs. State of Punjab**¹³, wherein the Supreme Court has laid down guidelines to be followed by the Courts while considering the aggravating and mitigating circumstances so as to give the appropriate sentence.

12. We have heard the learned Public Prosecutor appearing for the State and learned counsel appearing for the accused at length, with their able assistance perused the entire notes of evidence so as to re-appreciate the evidence in its entirety. We have also perused the Judgments cited across

13 A.I.R. 1983 S.C. 957

the Bar by the Public Prosecutor appearing for the State and learned counsel appearing for accused / appellant. The prosecution in order to prove its case, examined Dr. Pravin Kisanrao Rathod as PW-1. In his deposition, he stated that from 30th November, 2011 to 2nd June, 2015 he was attached to Krishi Mahavidyalaya [Krishi Vidnyan Kendra, Dhule] coming under Rahuri Krishi Vidyapeeth as Subject Matter Specialist. He identified the accused in the court hall. He stated that accused was working as Driver with College. He also stated name of the accused. He further stated that accused No. 1 was residing in Staff Quarters of the Agricultural College along with his wife. The marriage of accused No. 1 was performed prior to two months of the incident. He further stated that the incident occurred on 25th July, 2014. At that time PW-1 was supervising sowing of maize. At that time PW-1 received the call that doors of the house of accused No.1 could not be opened and all other staff went there. Said

phone call was made by Prachi Kale Madam. Thereafter, PW-1 Dr.Pravin also went there. There were two doors to the quarter of accused No.1. At that time both the doors were closed from inside. He further deposed that there was one window on the upper side of the door. Somebody had seen from the said window and it was noticed that accused No.1 and his wife were lying in the pool of blood. Accordingly, they called Azad Nagar Police Station. Police staff came on the spot. They pushed the door and opened it. They broke the said door. After police entered the house, PW-1 also went inside. PW-1 noticed that accused No.1 and his wife were lying in the pool of blood. Blade, sickle and knife stained with blood were lying near them and there was one nod kept near T.V. Accused No.1 and his wife were sent to the Civil Hospital by ambulance. In the Civil Hospital, Doctor examined wife of accused No.1 and declared her as dead. There were wounds on the throat of wife of accused No.1. There were

injuries on the wrist and forearm of accused No.1. Medical treatment was given to accused No.1 in Civil Hospital. PW-1 realized that, accused No.1 has assaulted his wife. PW-1 was called by Police Inspector in Azadnagar Police Station, he went there and filed FIR. When the report was shown to him, PW-1 identified the same to be correct.

. During his cross examination, PW-1 deposed that as both the doors of the house of accused No.1 were closed from inside he felt that accused No.1 has committed murder of his wife. He reiterated that Police broke open the door and went inside the house. He further deposed that he also went inside the house at about 12.00 to 1.00 p.m. and he lodged the FIR after 2.00 p.m.

13. Upon careful perusal of evidence of PW-1, it clearly emerges that the spot of incident was

official residence i.e. Quarter No.E-5 of accused No.1. Both the doors of the house were closed from inside. There was one window on the upper side of the door. However, this witness has stated that the door of the house was broke open by the police. It has also come on record in the spot panchnama that the articles which are used to lock the door were lying inside the house. Therefore, the argument of the counsel appearing for accused No.1 that there was one window on the upper side of the door and possibility of entry of other person / persons inside the house, is completely ruled out. The police personnel were required to break open the door is indicative of the fact that both the doors of the house were closed from inside, as stated by PW-1 Dr. Pravin. The evidence of PW-1 Dr. Pravin in material particulars gets corroboration from the evidence of PW-6 Kumar Kondaji Bhoje. In his evidence, PW-6 Kumar stated that he is serving as peon in Krishi Vidnyan Kendra, Dhule since 2011. He was

residing in the Quarters situated in the campus of Agricultural College, Dhule. He deposed that he knows accused No.1. Accused No.1 is serving in their Department as a Driver. Accused No.1 was residing in the quarters of their Department. PW-6 was residing in quarter No.2 and the accused No.1 was residing in quarter No.5. Prior to one month of the incident, accused No.1 started residing in the said quarter. Initially, accused No.1 was residing with his wife and his mother. Incident occurred on 25th July, 2014, mother of accused No.1 resided there for about 8 days and thereafter, she went away.

14. PW-6 further deposed that on 25th July, 2014, he started for office at about 8.30 a.m. PW-6 called accused No.1 at the time of leaving the quarter but as there was no response, PW-6 went to the office. PW-6 received a phone call from mother of accused No.1 after 10.00 a.m. to 10.15 a.m. As accused No.1 was residing near

PW-6, mother of accused No.1 was having mobile number of PW-6. Mother of accused No.1 had called PW-6 for inquiring about accused No.1. Accused No.1 was also having mobile phone. Mother of accused No.1 told PW-6 that accused No.1 is not attending the phone and therefore she requested to tell regarding whereabouts of accused No.1. As accused No.1 was absent on his duties, officers told PW-6 to go to the house of accused No.1 and take search. So PW-6 again returned to the quarter i.e. residence of accused No.1 and called accused No.1, but nobody responded from inside the house. Door of the house of accused No.1 was closed from inside. PW-6 made phone call in his office and told that there was no response from the house of accused No.1. So all the Officers from their office visited the quarters. There were two doors to the quarters. The front door of the quarter was closed from inside. There was one window to that quarter. The said window was also closed. The Principal of the College called police

and police visited the spot. Police were called as there was no response from inside the house. Police broke the front door and opened the same. After opening the door it was found that, accused No.1 and his wife were lying streamed in blood. As accused No.1 was alive, he was sent to the Hospital. But his wife expired on the spot. On the spot, sickle, knife, one bottle, ball-pen and paper were found. There were blood stains on the sickle and the knife. There were two mobile handsets on the spot. PW-6 identified those articles. Police collected samples of blood lying on the spot. Police seized all those articles. Police has sealed all those articles and obtained signature of PW-6. Police prepared a panchnama.

. PW-6 further deposed that on 26th July, 2014, he was called in the police Station for seizure panchnama of the clothes recovered from the spot. He signed the said panchnama as Panch. There were blood stains on the clothes. The blue

coloured T-shirt and ash coloured tracksuit i.e. Article Nos.14 and 15 were shown to him. He stated that the seizure of those clothes was in his presence.

. In his cross examination, PW-6 stated that there is a distance of about 20 feet in between his house and house of accused No.1. He was not on visiting terms to the house of accused No.1. But he used to go to office together with accused No.1. PW-6 has admitted in his evidence in cross-examination that relations in between accused No.1 and his wife were good. He specifically stated that he was present in his house at night prior to the day of incident, however he did not hear any noise or shouts from the house of accused No.1.

. The seizure Panchanama was duly proved by PW-6 Kumar Bhoje. The seizure of blood stained clothes of accused No.1 and deceased Pranita were

also duly proved by him. The seizure of weapons - knife, sickle and blade were also proved by him. On perusal of these seized weapons and their sizes, it indicates that the severe blows sustained by the deceased Pranita can be given by these weapons and these weapons are sufficiently lethal/ deadly to cause death if injuries are inflicted with the help of it.

15. Learned counsel appearing for accused No.1 tried to suggest that PW-6 has not stated, whether rear door of the house was closed from inside or otherwise. As already observed, PW-1 Dr.Pravin has categorically stated that, both the doors of the house were closed from inside. Merely because PW-6 Kumar in his evidence has not made specific statement that both the doors of the house were closed from inside, would not nullify his specific contention that, since the front door of the house of accused No.1 was closed from inside, the police were required to break open the

door, and then entered into the house of accused No.1.

16. There is also evidence of PW-7 Swapnil Subhash Mahajan. He stated that he was serving as Driver in the Agricultural College. Incident occurred on 25th July, 2014. He further deposed that, he met accused No.1 prior to 7-8 days of the incident and at that time accused No.1 asked PW-7, what punishment is to be awarded to a Government servant if he commits any offence. PW-7 asked accused No.1 as to what he was thinking. However, accused No.1 smiled and went away. PW-7 further deposed that on 25th July, 2014, he went to the office as usual. Even though much time was lapsed, accused No.1 did not attend the office. So, Shri Kumar Bhoje (PW-6) suspected something and called the other staff members on the spot. After reaching there, they also called accused No.1 but he did not reply. Many persons gathered there, and called to Principal of College. When

somebody peeped from the window, it was noticed that accused No.1 and his wife were lying in the pool of blood. Then police were called. Immediately police came near the house of accused No.1. It was noticed that, the door of the house of accused No.1 was closed from inside. Police broke open the doors and went inside. PW-7 was standing outside along with other staff members. After opening the door, PW-7 noticed that accused No.1 and his wife were lying in the pool of blood. There was sickle, knife and blade. Two mobile handsets were also there. When all those articles were shown to PW-7, he identified the same. PW-7 further deposed that after going inside the house, police told him that lady has expired but accused No.1 is still breathing, and therefore accused No.1 was shifted to Civil Hospital.

. During the course of cross examination of PW-7, nothing useful to the defence has been elicited and brought on record.

17. If the evidence of PW-1 Dr. Pravin, PW-6 Kumar and PW-7 Swapnil is considered in its entirety, it leads to the definite conclusion that the spot of incident was residential quarter i.e. Quarter No.E-5, of accused No.1. Secondly, dead body of Pranita, and accused No.1 found lying in unconscious condition, was noticed by these three witnesses and also the other persons gathered there including police personnel. The fact that both the doors of the house were closed from inside has been stated by PW-1 Dr. Pravin, and further the police were required to break open the door is also stated by all witnesses. Therefore, their evidence unequivocally indicates that, both the doors of the house of accused No.1 were closed from inside. Wife of accused No.1 was lying in pool of blood with multiple injuries on her body and accused No.1 was also lying in unconscious condition in the said house. The witnesses have noticed the sickle, knife and also the blade

stained with the blood lying on the spot. The prosecution has convincingly proved through witnesses that, on the relevant night of the incident and second day morning till door was broke open, only accused No.1 and his wife Pranita were present in the said house and none else. It is only accused No.1 who knew what happened during the said night since those facts were within his special knowledge. The evidence of the prosecution witnesses indicates that, it was impossible for anybody to enter or come out from the window, which was on the upper side of the front door of the house. All the weapons found on the spot were blood stained. Though the suicide note was found near T.V., but there were no blood stains on it. The witnesses noticed multiple injuries around the neck of deceased Pranita. However, the injuries on the person of accused No.1, were only on wrist and one or two abrasions on neck and chest. It has also come on record that accused No.1 was able to speak when he was brought to the Hospital. We will

be discussing little later the evidence of the Medical Officer, who has examined Appellant No.1 and deceased Pranita.

18. If the evidence of PW-1 Dr. Pravin, PW-6 Kumar and PW-7 Swapnil is considered in its entirety, it unambiguously shows that, during the night of the incident, both the doors of the house were closed from inside and only accused No.1 and his wife were present inside the house. The prosecution has discharged its burden through said witnesses that, none else than accused No.1 and Pranita (deceased) were present in the house. Therefore, what happened during the said fateful night, was within the special knowledge of accused No.1 and therefore he was obliged to discharge his onus by offering explanation under what circumstances Pranita died.

19. The prosecution has examined Dr.Ajit Pathak as PW-3, who conducted postmortem on the

dead body of Pranita. In his examination in chief, he deposed that he was attached to Government Medical College from 1st February, 2000. He has conducted approximately 5000 postmortems. On 26th July, 2014, dead body of Pranita Nitin Gaikwad was brought by police of Azadnagar Police Station for postmortem examination. On the same day, in between 10.40 a.m. to 11.40 a.m., postmortem was conducted by PW-3 along with Dr. A.R.Patil. PW-3 further deposed that as per police report, the history was "assault by sharp weapon over neck". The deceased was wearing pink printed saree, black blouse, red petticoat and gray nicker. Clothes of deceased were stained with blood. PW-3 found following injuries on the dead body of Pranita which were mentioned in column No. 17 of the postmortem report:

1. Incised wound over neck, right side, 2 cm below right mastoid process, 5 x 1.5 cm x muscle deep.

2. Incised wound 3 cm below injury No.1, 5 x 1 cm x muscle deep, tailing medially.

3. Incised wound over right submandibular region, 3 x 0.8 cm x muscle deep.

4. Incised wound over anterior part of neck, in midline, horizontal, 3.5 x 1.5 cm x cavity deep, underlying vessels cut.

5. Incised wound parallel to and 1 a.m. below injury No.4, 3.5 x 1.5 x cavity deep underlying vessels and structures cut through and through.

6. Incised wound, right lateral and 5 cm below to injury No.2, 4 x 1.5 cm x cavity deep, underlying vessels cut.

7. Incised wound over neck, right side, 3 cm above right clavicle, 3 x 1.5 cm x cavity deep, underlying vessels cut.

8. Incised wound over neck, right side, 1 cm above right clavicle, 3x 1.5 cm x cavity deep.

9. Multiple incised wounds over neck,

laterally on right side, in the area of 12 x 7 cm. Ranging from size 7 x 0.4 cm to 9 x 0.4 x muscle deep.

10. Incised wound 2 cm below and right lateral to injury No.2, 3 x 1 cm, bleeding ++.

11. Incised wound over dorsum of terminal phalynx of middle finger of right hand, 1 x 0.5 cm x bone deep, indicative of defense injury.

12. Incised wound over dorsum of terminal phalynx of ring finger of right hand, 0.7 x 0.5 cm x bone deep, indicative of defense injury."

. PW-3 Dr. Ajit further deposed that there is haematoma in neck muscles in anterior and right lateral part of neck. All those injuries mentioned in column No.17 are possible by sharp weapon. Injures were ante mortem in nature and fresh within 0 to 6 hours of death. PW-3 further deposed that they noticed Trachea cut through and through. He further deposed that he preserved viscera for

chemical analysis. Ante-mortem injuries present on the body of the deceased were sufficient in normal course to cause death. He further deposed that in his opinion cause of death of deceased Pranita Nitin Gaikwad was shock and haemorrhage following stab injuries over neck. He further deposed that accordingly postmortem notes were prepared. PW-3 identified the postmortem notes shown to him. PW-3 further deposed that he himself and Dr.Ajit Patil signed on the said postmortem notes. He has specifically stated in his evidence that result of analysis was general and specific chemical testing does not reveal any poison in Exhibit Nos.1, 2 and 3. So there is no change in their final opinion about the death of Pranita. He has specifically stated that he knows sickle and knife and the injuries mentioned in column No.17 of postmortem notes are possible by both, sickle and knife. During his cross examination, he has specifically denied the suggestion that injuries mentioned in column No.17 of postmortem notes are

possible due to self infliction. He has specifically stated that, they have to consider all the injuries together while forming opinion. He stated that if considered individually, may be injury No.1 self inflicted or may be possible in case of homicidal injury. He further deposed that injury nos. 11 and 12 can be inflicted injuries, but in the present case, both these injuries are suggestive of defence injuries for homicidal assault. He has specifically stated in his cross examination that injury nos. 2 and 3 mentioned in column No.17 of postmortem notes may be self inflicted or homicidal. Injury nos. 4 to 8 are not possible by self infliction, as the injuries are cavity deep and underlying structures. He further deposed that, if any person tries to self inflict injury, the injury in cavity deep and cutting the underlying structures is only possible on the abdomen and thorax. If a person inflicted injury on his neck, only single injury cavity deep and cutting the underlying structures can

be possible.

20. Prosecution examined Dr.Madhuri Suryawanshi as PW-4, who medically examined accused No.1 and found following injuries on his person:

1. Right wrist joint, 5 x 3 x 2 cms
2. Left wrist joint, 6 x 3 x 1 cms
3. Over left cubital fossa 6 x 3 x 3 cms
4. Multiple abrasions over neck and chest

. PW-4 stated that accused No.1 was admitted in the Hospital at 12.15 p.m. with alleged history of self inflicted injuries. She stated that cause of injuries was due to sharp pointed weapon. Age of injuries was within 6 hours. During her cross examination, PW-4 stated that alleged history was told by the person who brought the patient in the Hospital. She stated that such type of injuries are possible due to assault by another person.

21. Upon careful perusal of evidence of PW-4, age of injuries was stated to be within 6 hours. It appears that accused No.1 was brought to the Hospital at 12.15 p.m. on 25th July, 2014. Therefore, reasonable inference can be drawn that the injuries sustained by accused No.1 were in between 6.15 a.m. to 12.15 p.m. on 25th July, 2014.

22. The prosecution examined Bhausahab Rangnath Ghane as PW-2, to prove the motive for commission of offence by the accused. He is father of deceased Pranita. He deposed that marriage of his daughter Pranita was performed with accused No.1 on 24th May, 2014. After marriage for the first time Pranita came to his house and after few days, went to her matrimonial home. Pranita stayed at her matrimonial house for 15 days and again came back. Again accused No.1 came for taking her to matrimonial house. Accused No.1 took her to Rahuri. At that time accused No.1 was serving at

Dhule, but he was residing at Rahuri. Other family members of accused No.1 were also residing jointly. Prior to 8-10 days of the incident, accused No.1 and Pranita started residing at Dhule. At that time her mother in law also started residing with them at Dhule. Said fact was told by Pranita to her father on telephone.

. PW-2 has specifically stated that it was agreed to give dowry of Rs.2,00,000/- in the marriage of Pranita. He paid Rs.1,50,000/- in the marriage and Rs.50,000/- was remained to be paid. Accused nos. 1 and 2 were harassing Pranita for remaining amount of dowry. Both of them were assaulting her for the said demand. The said fact was told by Pranita to PW-2 on telephone. Pranita was telling him that he should give the remaining amount. Said amount was remaining amount of dowry. PW-2 assured accused nos. 1 and 2 that he will pay the amount of Rs.50,000/- within one and half months period. Then, after 15 days, PW-2 went to

Dhule for taking Pranita. At that time his daughter Pranita and accused No.2 were present in the house. Accused No.1 had gone to Rahuri. So PW-2 halted there for one night. On the next day accused No.1 returned in the morning. Thereafter, PW-2 went to Ghodegaon along with Pranita. Thereafter, all the accused came to Ghodegaon for taking remaining amount of Rs.50,000/-. PW-2 assured the accused that he will pay remaining amount within one month and accused should not harass his daughter. Though PW-2 was not allowing Pranita to go with the accused, but they forcefully took Pranita with them. Prior to one day of the incident, PW-2 called his daughter, at that time she was crying on phone. Then PW-2 called accused No.1 and asked him as to why Pranita was crying, but accused No.1 disconnected the call. On next day i.e. on 25th July, 2014, P.I. Shelke called PW-2 and told him about the incident. Then PW-2 along with the family members went to Dhule. They took dead body of Pranita and

performed funeral at Ghodegaon.

. During his cross examination, PW-2 stated that Pranita was always saying him on the phone that he should return their money. He also admitted that he was short of money. However, he has denied the suggestion that accused No.1 had given him an amount of Rs.7,00,000/- and he assured accused No.1 that, he will return that amount within 15 days. He denied the suggestion that he threatened accused No.1 that he will not return the said amount of Rs.7,00,000/-, and he will take his daughter back to his house.

23. Learned counsel appearing for accused submitted that PW-2 in his evidence stated that his daughter was always saying him on the phone that he should return their money. According to him, in consonance with the statement of accused No.1 in the note which was recovered from the spot of incident, the amount of Rs.7,00,000/- was given

to PW-2 and since he was not inclined to return the said amount even on insistence of Pranita and accused No.1, they both decided to commit suicide and accordingly the chit/ note which was recovered from the spot is suicide note prepared prior to attempt of commission of suicide by accused No.1 and Pranita (deceased).

24. Upon careful perusal of statement of PW-2 in examination in chief and also in the cross examination, he has made it clear that Pranita was saying him on the phone that he should return their money, i.e. remaining amount of Rs.50,000/- towards dowry. Therefore, the prosecution has established the motive for commission of offence by accused No.1 through PW-2 Bhausahab.

25. In the case of **Mulakh Raj and others Vs. Satish Kumar and other**¹⁴, while considering the case based upon the circumstantial evidence and in

¹⁴ [1992] 3 SCC 43

particular on the point of motive, the Supreme Court in para 17 observed thus:

"17. The question then is, who is the author of the murder? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the

accused with the crime, nor militates against the prosecution case. The question, therefore, is whether Satish Kumar alone committed the offence of murder of his wife? In this regard Sri Lalit pressed into service the evidence of DW 4, the uncle of the respondent who stated that respondent 1, his brother and father were in the shop at the relevant time and that the respondent also stated so in his statement under section 313 C.P.C. This evidence clearly establishes that the respondent was not at home when the occurrence had taken place. This evidence has to be considered in the light of the attending circumstances and the conduct of Satish Kumar. It is established from the evidence that the deceased and the first respondent alone were living in the upstairs room. The occurrence took place in the broad day time in their bed room. The deceased at that time was having three months old child. What had happened to the child at the time when the ghastly occurrence had taken place is anybody's guess. Normally three months child would be in the lap of the mother unless somebody takes into his/her lap for play. It is not the case. It would be probable that after the murder, the child must have been taken

out and the dead body was burnt after pouring kerosene and lighting fire. Therefore, the one who committed the offence must have removed the child later from the room. Admittedly the day of occurrence is a Sunday and that too in the afternoon. Therefore, the shops must have been closed. DW 2, Post Office Superintendent, examined by the defence, categorically admitted that the handwriting of all the four telegrams was of the same person. Satish Kumar admitted that he issued two telegrams including the one to PW 15 and the two were issued by his father. Therefore, four telegrams were issued by respondent 1 alone. When the wife was practically charred to death an innocent and compassionate husband would be in a state of shock and would not move from the bedside of the deceased wife and others would attend to inform the relations. It is also his case that he phoned to the police station and informed of the occurrence. Evidence is other way about. An attempt was made to have the matter compromised, but failed. Thereafter they were found to be absconding. The evidence of DW 4 (maternal uncle) that respondent 1 was in the shop thus gets falsified and his is a perjured evidence.

This false plea is a relevant circumstance which militates against his innocence. The death took place in the bedroom of the spouse and the attempt to destroy the evidence of murder by burning the dead body; the unnatural conduct of Satish Kumar, immediately after the occurrence; the false pleas of suicide and absence from house are telling material relevant circumstances which would complete the chain of circumstantial evidence leading to only one conclusion that Satish Kumar alone committed the ghastly offence of murder of his wife, Shashi Bala."

. Therefore, it is not always necessary for the prosecution to prove motive when the case is based upon the circumstantial evidence.

26. The prosecution examined Kiran Baburao Kamble as PW-8, who was serving as Awwal Karkoon in Collector office, who recorded the statement of accused No.1 Nitin when he was taken to the Hospital. Since accused No.1 Nitin survived, the said statement cannot be considered as dying

declaration. During his cross examination, PW-8 stated that there were injuries on the neck of the patient i.e. accused No.1 Nitin. PW-8 has specifically denied the suggestion that as there was wound on the neck of the patient i.e. accused No.1, he was not able to speak properly. Even the Medical Officer (PW-4), who examined the patient i.e. accused No.1, stated that the patient was in a position to give statement and accordingly statement of Nitin was recorded. Therefore, his deposition in cross examination clearly reveals that there was no wound on the neck of the accused No.1 and he was able to speak properly and accordingly his statement was recorded by PW-8.

27. Navnath Damodhar Lahange (PW-9) was the Investigating Officer, who carried out the investigation of Crime No.168 of 2014, registered by PW-1 Dr.Pravin. PW-9 has narrated details of visiting the spot, preparing the spot panchnama, recovery of sickle, blade and knife which were

stained with blood. He further stated that there was one bottle of poison named 'Tactic', was lying on the spot, one steel glass, blade of super max company, two mobiles and one chit, one ball-pen were also lying near it. All the said articles were seized. There were blood stains on the bed. There were pool of blood where accused No.1 and deceased Pranita were lying. Blood samples were taken. There was blood on the mattress so cover on the mattress was seized. In all 13 Articles were seized from the spot and after following procedure, those articles were sent to the Chemical Analyzer. The clothes of accused No.1 i.e. T-shirt and pant was also recovered. The clothes of deceased Pranita were also recovered and sent to chemical analyzer. PW-9 has also narrated details about the recovery of alleged suicide note. He further stated that said suicide note was sent to the handwriting expert and it was revealed that said handwriting was of accused No.1 Nitin. PW-9 has also adverted to the contents of

the said suicide note during his cross examination. However, he has specifically stated in the cross examination that PW-2 Bhausahab has not stated in his statement the particulars of dates, months and year when the accused have demanded dowry or subjected deceased to cruelty.

28. Upon considering the evidence in its entirety, the following circumstances emerged on record, and are proved by the prosecution:

i] Death of Pranita was within two months from the date of marriage. The said fact is proved by the prosecution by examining PW-2 Bhausahab. His evidence to that effect remained un-shattered.

ii] The prosecution has also proved through PW-2 motive that he was supposed to pay balance amount of Rs.50,000/- to accused No.1 towards the remaining amount

of dowry. However, he could not pay due to his poor financial condition. One day prior to the incident, he received phone call from Pranita and he heard that, she is crying. When he made enquiry with accused No.1, accused No.1 did not respond to his call.

iii] The prosecution has proved through PW-1 Dr.Pravin, PW-6 Kumar, PW-7 Swapnil, and other witnesses that the spot of incident was official residence of accused No.1 at Dhule.

iv] The prosecution has also proved that, on the relevant night and till front door of the house was broke open only accused No.1 and deceased Pranita were present in the house. The house was closed from the inside. PW-1 Dr. Pravin has stated in his evidence that both the doors of the

house were closed from inside. The other witnesses have also stated that the front door of the house was closed from inside. They have also stated that when the police arrived at the scene of occurrence, they broke open the door and all of them found that Pranita (deceased) was in dead condition, having multiple injuries around her neck and lying in pool of blood and accused No.1 Nitin was also found lying there in unconscious condition. None other than deceased Pranita and accused No.1 Nitin were found in the house.

v] A chit, as claimed by accused No.1, as suicide note, lying near T.V., was recovered from the house of accused No.1. However, there were no blood stains noticed or found on said suicide note. Admittedly, said suicide note was not signed by deceased Pranita, and it reveals

that, it was unilateral act of accused No.1, to write contents of such note and keep the same near the T.V.

vi] It can be gathered safely from the evidence of the prosecution witnesses that, it was not possible to enter through window or come out from said window, which was on the upper side of the front door of the house of accused No.1.

vii] The prosecution has proved through the evidence of witnesses that sickle, knife and blade were lying on the spot and same were stained with blood.

viii] Upon careful perusal of the evidence of two Medical Officers i.e. PW-3 Dr.Ajit and PW-4 Dr.Madhuri and also the postmortem notes it is noticed that, injuries of deceased Pranita and accused

No.1 were inflicted at different times. PW-3 Dr. Ajit in his evidence, has ruled out the possibility of death of Pranita due to suicide, inasmuch as except injury nos. 2 and 3, he has stated that all other injuries are ante-mortem in nature and death is homicidal. Therefore, possibility of commission of suicide by Pranita or attempt of suicide by accused No.1 as stated in a chit / note recovered from the spot, is completely ruled out. PW-4 Dr. Madhuri, who examined accused No.1, and also PW-8 Kiran, in their cross examination have stated that injuries sustained by accused No.1 Nitin were not deep. PW-8 Kiran has stated in his evidence that when accused No.1 Nitin was brought in the Hospital he was able to speak.

ix] The defence taken by accused No.1 in his statement recorded under Section 313 of

the Criminal Procedure Code that some other person / persons came inside the house and assaulted Pranita and Nitin or Pranita assaulted deceased, is completely ruled out in view of the evidence of PW-1 Dr. Pravin and other prosecution witnesses, who have stated that both the doors of the house were closed from inside. If the third person/persons would have entered in the house, and assaulted accused No.1 and Pranita, in that case they could have assaulted indiscriminately, without choosing particular portion of neck of deceased Pranita or wrist of accused No.1. It cannot happen that Pranita sustained injuries around the neck and accused No.1 sustained injuries only on wrist and abrasions on neck and chest. It is stated by Dr. Ajit Pathak [PW-3] that, he has gone through the C.A. report regarding the samples collected by him. The result of

analysis was general and specific chemical testing does not reveal any poison in Exhibit Nos.1, 2 and 3. It has also come on record that, a bottle of poison which was found on the spot, was in fact sealed with a plastic cover on it over its lid which further leads to a conclusion that the bottle of poison was not even opened by the accused.

x] It is stated by PW-6 Kumar that mother of accused No.1 Nitin called Nitin on telephone during the morning hours on the date of incident, however, she could not get any reply and therefore she asked the witness PW-6 to find out the whereabouts of Nitin and accordingly at about 10.15 a.m. he knocked the door of accused No.1, however, there was no response. Therefore, it appears that mobile phone of accused No.1 was kept in switched

off condition.

xi] The prosecution has proved, by bringing on record cogent and convincing evidence, that during the relevant night and till door of the house was broke open, deceased Pranita and accused No.1 Nitin only, were present in the house, and therefore accused No.1 Nitin, was obliged to discharge the onus under which circumstances Pranita died, since those facts were within his special knowledge.

. It is the duty of the accused to explain the incriminating circumstances proved against him while making a statement under Section 313 of the Code of Criminal Procedure. Taking more than one defence with falsity, is an additional link in the chain of circumstances to sustain the charges against him. Accused No.1 Nitin in his statement under Section 313 of the Criminal Procedure Code

has stated thus:

"During that night, me & my wife slept in our house, but there was no light as we had switched off the light, in the dark somebody gave blows with weapons on me and I became unconscious. I do not know who did it. I do not know as to what happened after the blows sustained by me."

. However, in the chit recovered from the spot, accused No.1 tried to suggest that he himself and his wife Pranita decided to commit suicide since PW-2 Bhausahab refused to return the amount of Rs.7,00,000/- which was given by him to PW-2 Bhausahab. In fact accused No.1 had not led any evidence to that effect by examining the defence witness. Accused No.1 was working as a driver and how he was having such huge amount of Rs.7,00,000/-, is also not brought on record by accused No.1 by examining the defence witnesses. As already observed, if the evidence of both the medical officers i.e. PW-3 and PW-4, and

postmortem notes and other medical evidence is considered in its entirety, the age of injuries inflicted to deceased Pranita and accused No.1 Nitin are stated at different times. Therefore, the possibility of commission of suicide either by Pranita or attempt of commission of suicide by accused No.1, is completely ruled out.

29. As already observed, accused No.1 Nitin has taken different stands/ raised more than one defence and thereby avoided to discharge the onus shifted upon him under Section 106 of the Indian Evidence Act, to explain under which circumstances Pranita died. It would have been different matter, if one defence would have been raised by accused No.1, either by relying upon the contents of the chit/note recovered from the spot of incident or the defence taken by him under Section 313 of the Code of Criminal Procedure or that Pranita assaulted him. However, Accused No.1 avoided to discharge the onus shifted upon him under

Section 106 of the Indian Evidence Act, by taking improbable defence and relying upon contents of chit recovered from the house.

30. The Supreme Court in the case of ***State of Rajasthan Vs. Thakur Singh***¹⁵ while explaining the scheme of provisions of Sections 101 to 106 of the Evidence Act, 1872, and its scope, in para 22 to 24 held thus:

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her

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and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this."

31. In the facts of the present case,

accused No.1, instead of offering explanation chose to take improbable defence. Therefore, the subsequent conduct of the accused No.1 is also an additional circumstance which can be added in the chain of circumstances elaborated herein above, by taking recourse to Section 8 of the Indian Evidence Act.

32. Upon re-appreciating the entire evidence on record, we are of the considered view that, each circumstance in the chain of circumstances has been firmly established by the prosecution. The chain of the circumstance is complete. The facts established are consistent only with the hypothesis of the guilt of accused No.1 Nitin. The evidence brought on record and circumstances established lead to only one conclusion that, accused No.1 committed an offence punishable under Sections 302, 498-A and 506 of the Indian Penal Code. Therefore, in our considered opinion, the findings recorded by the Additional Sessions

Judge, Dhule in the impugned Judgment are in consonance with the evidence on record, which need no interference. The trial Court has rightly convicted accused No.1 for the offences punishable under Sections 302, 498-A and 506 of the Indian Penal Code.

33. So far as other accused i.e. accused Nos.2, 3 and 4 are concerned, except the evidence of PW-2 Bhausahab, that too without mentioning specific overt acts qua those accused, we are of the opinion that the alleged offence punishable under Section 498-A against them is not proved. We find it difficult to sustain their conviction for the offence punishable under Section 498-A of the Indian Penal Code. It has come on record that on the date of incident nobody was residing with the couple at Dhule except accused No.1 and Pranita. Other accused were residing at Rahuri. Therefore, there is serious doubt about the involvement of accused Nos.2 to 4. Therefore, we are of the

opinion that benefit of doubt deserves to be extended in favour of accused Nos. 2, 3 and 4.

34. In the light of discussion in foregoing paragraphs, we are of the considered view that, the conviction of accused No.1 Nitin Balkisan Gaikwad for the commission of offence punishable under Section 302, 498-A and 506 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure by the Trial Court is proper and sustainable and accordingly same stands confirmed.

35. The next question is whether the death sentence awarded to the accused No.1 is sustainable on the facts and circumstances of the case, i.e. whether the present case can be termed to be "rarest of the rare case".

36. The circumstances brought on record against accused no.1 by the prosecution clearly

shows that, accused no.1 preplanned the offence when he got opportunity while the deceased Pranita was alone in his company and with extreme cruelty and brutality, committed her murder with sharp weapons. The circumstances on record show that, the murder of the victim was committed in the manner which was extremely brutal, gruesome, diabolical, cold-blooded, cruel and painful manner. Accused no.1 had no regard for human life. He had no feelings of humanity or compassion for the poor woman who has stayed in his company for two months in his own house as wife. However, in the facts of this case, there are few mitigating circumstances in favour of accused no.1. The neighbor of accused no.1 i.e. PW-6 Kumar stated in his cross examination that, relations between accused no.1 Nitin and his wife Pranita was cordial. PW-2 Bhausahab, father of deceased Pranita, in his cross examination stated that, Pranita wanted to stay with accused no.1. The prosecution has not brought on record

criminal antecedents / past criminal record, if any, against accused no.1. The age of accused no.1 at the relevant time was 31 years.

37. Therefore, keeping in view the parameters applied by the Supreme Court in the cases of (i) **Bachan Singh Vs. State of Punjab**¹⁶, (ii) **Macchi Singh and others Vs. State of Punjab**¹⁷, (iii) **Shankar Kisanrao Khade Vs. State of Maharashtra**¹⁸, (iv) **Sandeep Vs. State of Uttar Pradesh**¹⁹ and (v) **Neel Kumar Alias Anil Kumar Vs. State of Haryana**²⁰, we cannot subscribe the order of the learned Trial Court imposing death sentence on the accused. Thus, in the facts and circumstances of the case, we set aside the death sentence and award life imprisonment to accused no.1. The accused no.1 must serve a minimum of 30 years in jail without remissions, before consideration of his case for

16 (1980) 2 S.C.C.684

17 (1983) 3 S.C.C.470

18 (2013) 5 S.C.C.546

19 (2012) 6 S.C.C.107

20 (2012) 5 S.C.C.766

premature release. The sentence imposed for the offence under Section 498-A of the Indian Penal Code shall maintain as it is awarded by learned Trial Court.

38. All the sentences imposed on accused no.1 to run concurrently.

39. The conviction of accused nos.2 to 4 for the offence punishable under Section 498-A read with 34 of the Indian Penal Code stands quashed and set aside and they stand acquitted from the offences for which they were charged.

40. Accused no.1 be given set off under Section 428 of the Criminal Procedure Code.

41. In view of the above, Criminal Appeal No.701/2016, to the extent of accused no.1 Nitin Balkisan Gaikwad stands dismissed. Criminal Appeal No.701/2016 to the extent of accused No.2 -

Vimalbai Balkisan Gaikwad, accused no.3 -
Dnyaneshwar Balkisan Gaikwad and accused no.4 -
Pappu Balkisan Gaikwad, stands allowed.

42. The Confirmation Reference stands
answered accordingly.

[K.K. SONAWANE, J.]

asb/MAR17

[S.S. SHINDE, J.]