

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 77 OF 2016**

Jayesh Gurudas Naik,
major of age, Indian,
House No.62, Cotta, Balli,
quepem, Goa, (currently in
custody at Central Jail,
Colvale, through his next
friend Rashmi Rajan Naik,
major, House No.24,
Cotto, Fatorpa, Fatorpa-
Goa.

... Appellant

V e r s u s

The State of Goa,
Through Police Inspector,
Cuncolim Police Station,
Cuncolim, Salcete, Goa.

... Respondent

Shri Ryan Menezes, Advocate for the Appellant.
Shri S. R. Rivankar, Public Prosecutor for the Respondents.

**CORAM: Nutan D Sardessai, &
Prithviraj K. Chavan, JJ**

**Reserved for Judgment on : 17 February 2018
Judgment Pronounced on : 22 March 2018**

JUDGMENT (per Nutan D. Sardessai, J):

This Appeal takes exception to the Judgment of conviction rendered by the learned Sessions Judge, South Goa, Margao, convicting the Appellant and sentencing him for the commission of the offence punishable under Section 302 of the India Penal Code.

2. The Appellant is the original accused while the respondent-State which had initiated the prosecution against him would be referred to in the said status for brevity's sake hereinafter.

3. The case of the prosecution against the accused was that on 12.09.2014, between 10.00 hours to 10.45 hours, the accused had committed the murder of his wife Vaishali @Jiya Naik, sister of the Complainant at Cotta, Balli, Quepem, by causing multiple injuries by stabbing in her stomach and slitting her throat with a knife thereby committing an offence punishable under section 302 of the IPC. The then learned Sessions Judge vide the order dated 02.02.2015 held that there was prima facie material on record to frame charge against the accused and ordered charge to be framed under section 302 of the IPC which was accordingly framed and to which the accused pleaded not guilty and claimed to be tried.

4. The case of the accused in defence was one of denial simplicitor of the case of the prosecution carved out against him in his statement recorded under section 313 of the Cr.P.C. Rather his case was that on the fateful morning, he had gone to drop his two minor children to school and after coming back, he noticed that there was a noise near his house and immediately ran inside to see what had happened and saw his wife being murdered. On coming out of the house he met

Shailendra Udaykar (Pw.7) who stated that he had committed the offence and fearing false implication he had taken the pleasure scooter and run away from the scene and gone to his sister. While he was coming back to surrender at the Police Station and to tell the Police that he was innocent, he was arrested and falsely implicated in the crime. In other words, it was his defence that he was not the author of the crime but that he had seen his wife being murdered by some other person.

5. Be that as it may, the learned Sessions Judge examined 18 witnesses and on the basis of the material on record, concluded that the prosecution had proved the case against the accused beyond all reasonable doubt, held him guilty for the commission of the offence punishable under Section 302 of the IPC and sentenced him accordingly giving rise to the Appeal at his instance.

6. Shri Ryan Menezes, learned Advocate came to be heard on his behalf who adverted to the evidence of the star witness Archana Naik (Pw.6) and the other statements on record particularly of the Constables who had rushed to the spot apart from another material witness Shailendra (Pw.7) and submitted that there was variance in their version which did not inspire confidence and therefore the accused was

entitled to the benefit of such doubt and a reversal of the Judgment in his favour. It was his contention that though the scene of offence was conducted on 12.09.2014 i.e. the date of the offence, a blood stained T-shirt was purportedly recovered from the same scene at the instance of the accused five days later under the disclosure panchanama carried out under section 27 of the Indian Evidence Act. Such a recovery was doubtful when it could otherwise have been located on the date of the scene of offence panchanama itself. The case of the prosecution was based on circumstantial evidence and every circumstance had to unerringly point to the involvement of the accused in the crime which was not the case.

7. Shri Ryan Menezes, learned Advocate for the accused adverted to the impugned Judgment qua the sketch of the scene of offence to show that it did not bear out the distance between the house of the accused and that of Archana (Pw.6). It was therefore unbelievable that Archana(Pw.6) could have heard the shouts/alarms raised by the deceased about the crime and the alleged perpetrator. There was also no basis to consider the said statement of the deceased as a dying declaration when it was not recorded in her words. He also pointed out to another anomaly in the case of the prosecution which also failed to note the footprints

seen at the scene of crime on the date of the scene of offence panchanama itself and which were recovered purportedly at the instance of the accused about five days later. In any event, the case of the prosecution did not inspire confidence and therefore the accused was entitled to a reversal of the Judgment. It was his further contention that there was no finger print evidence qua the weapon of assault i.e. the knife while the footprint of foot on tile lifted of the accused was several days later under section 27 panchanama. This was despite the fact that there was a thorough search of the scene during the scene of offence panchanama. The blood stained T-shirt was recovered several days later under the panchanama from beneath the sink and there was no explanation on behalf of the prosecution as to how the same remained to be attached at the time of the scene of offence panchanama on 12.09.2014 itself. It was a clear indication that the T-shirt was planted some days later to falsely implicate the accused. It was also his contention that the presence of the accused in the house on which much reliance was placed by the Trial Court was not unnatural. Motive had not been proved by the prosecution and evidence on record of Archana(Pw.6) regarding the so-called character of the deceased was not to her personal knowledge. The evidence on record did not inspire confidence and therefore the accused

was entitled to a reversal of the Judgment and an acquittal in his favour.

8. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State adverted to the evidence of the Police constables and submitted that there was no discrepancy in the case of the prosecution against the accused even when read in the context of the testimony of Archana(Pw.6) and Shailendra (Pw.7) who were initially present at the scene of crime. The action of the accused was pre-planned who had despatched his children to school and thereafter committed the crime. The prosecution had established the motive by the examination of Shailendra (Pw.7). The injuries on the person of the accused were unexplained and therefore an adverse inference had to be drawn against him. There was blood on the T-shirt being O Rh positive which tallied with the blood group of the deceased. In any event, and in case there was a lapse by the Investigating Officer in the process of recovery, such a lapse could not enure to the benefit of the accused. The false explanation given by the accused qua the injuries on his person would also show that the accused was suppressing the truth and his case was not in consonance with that of the prosecution against him. There was no fit case for a reversal of the Judgment of conviction and therefore this Court had to confirm the Judgment of conviction against the accused.

9. Shri Ryan Menezes in reply placed a comparative chart of the deposition of the various witnesses to show the divergent version brought forthwith by the so-called witnesses of the prosecution which did not inspire confidence in the case of the prosecution. The Appeal had therefore to be allowed and the accused acquitted of the charge under Section 302 of the Indian Penal Code.

10. We have heard Shri Ryan Menezes, learned Advocate for the accused at length and Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State on the tenability of the judgment under challenge namely whether there were discrepancies in the context of the statement of the witnesses and whether they were fraught with inconsistencies failing to inspire confidence in the case of the prosecution against the accused as to give him the benefit of doubt and acquit him of the charge under section 302 of the IPC. It would therefore be necessary to appreciate the evidence brought on record viz a viz the discrepancies pointed out by Shri Ryan Menezes, learned Advocate for the accused and to find out whether the learned Sessions Judge was still in error to record a finding of guilt against the accused.

11. The case of the prosecution at the cost of repetition was that the accused who was suspecting the

character of his wife Jiya, since deceased, had dropped off his children to school on the morning of 12.09.2014 and thereafter taking advantage of the availability of the deceased alone at home, had slit her throat with a knife and by inflicting multiple injuries by stabbing her in the stomach with a knife and other parts of the body and causing her death. The case of the accused juxtapositioned with this case was that he was falsely implicated, that when he reached home after dropping his children, he noticed some commotion in his house and that some person was assaulting his wife who thereafter made good his escape. He was confronted by Shailendra(Pw.7) and he in desperation took to his heels. He was not the author of the crime and was coming towards the Police Station to report to the Police when he was placed under arrest. It is therefore to be seen whether the prosecution case as brought on record bereft of the defence inspires enough confidence and whether the learned Sessions Judge was right to consider this evidence and return a finding of guilt against the accused.

12. The material witness of the prosecution was Archana (Pw.6) who was in the verandah of her house on the morning of 12.09.2014 around 08.30 hours when she noticed the accused initially going on his scooter with his minor children to drop them at school and returning a short while later. At that time, she had heard the sound of a woman's

voice namely of Jiya, since deceased, shouting in a loud voice that the accused had stabbed her with a knife in her stomach and to call the police. She had rushed to the house of the accused alongwith Pratima, Devki and Mala on hearing the shouts of the deceased. At the relevant time, the main door of the house was slightly open but by the time they reached the house, the main door was found closed. From the open window of the house, she saw the blood stained hands of Jiya which she showed to them and soon thereafter, the window too was closed. She was instrumental in contacting the ambulance, the Police Station and one Shailendra(Pw.7) and told them to come to the spot. Shailendra(Pw.7) rushed to the spot followed by the Police who thereafter went to the house of the accused. Shailendra(Pw.7) had called out to the accused who did not open the main door but instead came out from the back door of his house and told the police that Jiya had small injuries and that he had sent her to her sister's house and left the house on his pleasure scooter. She had told the police that she was still inside the house who thereafter broke open the main door.

13. The statement of Archana (Pw.6) was otherwise recorded before the JMFC under section 164 Cr.P.C. It was borne out in her cross examination that though the house of the accused was not visible from her house, it was nonetheless

visible from the courtyard of her house and in the absence of any structures between the two houses there was clear audibility. Her cross examination had borne out that the house of Pratima was close to her house while the house of the accused was barely 15 to 20 metres away with the back door visible from her house. She was unshaken that she had heard the shouts of the deceased for help while she was talking to Pratima in the courtyard and that she contacted Shailendra on the mobile and waited for his arrival. Thereafter, the four of them namely Archana(Pw.6), Devki, Mala and Pratima had rushed to the house of the accused and in the meantime, people too started gathering nearby. She had categorically denied the case put to her that she had not heard what exactly was said by the deceased when she was shouting for help.

14. Archana(Pw.6) confirmed the presence of Shailendra(Pw.7) at the spot with the arrival of the Police who came within 10 to 15 minutes of contacting them. She maintained that the accused had left the house from the back door on the Pleasure scooter. In case she was a tutored or untruthful witness, she could have bolstered her statement but such was not the case when she agreed in fairness that she did not know what were the clothes worn by the accused while running away and also she had not noticed any blood

stains on his clothes. Suffice it to say that her testimony being that of a natural witness residing in the vicinity of the house of the accused and deceased inspires enough confidence insofar as she having heard the shouts of the deceased for help, having seen the accused leave the house in the morning with the children and return a short while later when she heard the shouts of the deceased. Even otherwise, she had relented that her relations with the accused were good and who would be in constant touch with her whenever he did not find his wife available at home and tried to find out her whereabouts with her. It is therefore to be seen whether the so called discrepancies in the version of the Police create a dent in the prosecution case from what is brought out by Archana(Pw.6) who was a natural witness of the prosecution.

15. P.C. Nilesh Desai (Pw.1), had reported at the scene of crime on the instructions of PI Asre. On reaching the spot with another constable D. Desai, he learnt that the accused had run away from the spot using his Pleasure scooter and they proceeded towards Fatorpa but could not locate the accused. His role was limited to inform PI Asre, the next day that the accused was available in the house of his stepsister at Mapusa and thereafter to nab him when he was proceeding towards Porvorim on the noon of 13.09.2014. He was not shaken despite his cross examination and even otherwise

there was no particular dispute about the fact that the accused was nabbed as per his version while on his way to the Police Station.

16. PC Ganraj Desai (Pw.2), had been informed by PSI Chavan on the morning of 12.09.2014 that a lady had been stabbed at Cotta, Balli and to go to the spot. He had gone alongwith PSI Chavan and two Police Constables on two motorcycles to proceed to the spot. PC Gautam, who was knowing the accused earlier had pointed out to the house of the accused on reaching near the Saraswati Temple at Cotta and at that time he noted that the accused had moved out from the house with a red colour Pleasure scooter which identity was given by PC Gautam. PSI Chavan went with one Constable behind him, he followed on another while PC Gautam waited at the spot. The accused initially went towards Fatorpa and then took the Canaguinim road and in the meantime he overtook him with his motorcycle across and stopped the accused from proceeding ahead. The accused nonetheless gave a dash with the scooter due to which he fell down at the side of the road and the accused made good his escape. PSI Chavan and PC Bidkar reached the spot and they all gave a chase and somehow the accused managed to escape. What emerges from his testimony is that PC Gautam was instrumental in identifying the accused to him and that he

had continued at the spot while the witness PC Ganraj alongwith PC Chavan and another Constable had given a chase to the accused on their two motorcycles.

17. The evidence of PC Ganraj(Pw.2) had borne out that they were waiting by the side of the katcha road about ten metres away from the house of the accused which was visible from that position. He had seen the Pleasure scooter for the first time when it was driven by the accused from the compound of his house. He had also confirmed PC Gautam as keeping watch near the house of the accused but the accused had made good his escape from the front of the house. There is nothing in his testimony which fails to inspire confidence thus far.

18. PC Gautam (Pw.4) had reported to the house of the accused on the motorcycle with PC Bidkar while PSI Chavan and PC Ganraj(Pw.2) had gone on another motorcycle. He noticed the accused astride a Pleasure scooter coming to the main road and pointed him out to PSI Chavan. PSI Chavan and PC Bidkar followed the accused on one motorcycle while he continued to remain near the house of the accused and noticed one Shailendra(Pw.7) present outside his house who told him that they would chase the accused. He was also informed that the deceased was lying in the house of the accused in an injured condition. He and Shailendra(Pw.7) had

opened the gate to the courtyard and on going near the house of the accused, found the main door closed. They had peeped inside the house from the window and found Jiya lying in a pool of blood on the floor in the bedroom and thereafter arranged to shift her to the hospital alongwith other police. His cross examination had borne out that he was aware about the house of the accused even prior to his visit on that day which had one main door but he was presently not aware if there was a rear door.

19. PC Gautam (Pw.4) had seen the accused on the Pleasure scooter while it was in motion which was driven on the left side of the road to go towards Fatorpa. His evidence has also confirmed the version of Archana (Pw.6) that there were no structures between the house of the accused and the road and further that PSI Chavan and PC Bidkar had given a chase to the accused. His cross examination too had borne out that the house of the accused was barely 200 to 300 metres away from that of Shailendra(Pw.7) which corroborates the version of Archana(Pw.6) that she had contacted him on the said morning and that he rushed to the spot soon thereafter. In any event, it was further borne out from his cross examination that his mother had intervened in the quarrels between the accused and the deceased and that the

inquiries with the neighbours had revealed that the accused would come home drunk and assault her.

20. Shailendra(Pw.7), knew the deceased as she used to visit his house to collect milk parcels and during such time, she had disclosed to him that the accused was suspecting her on her character and used to harass her on that count. She would treat him like a brother and in that relation had disclosed her angst to him. He had received a phone call on 12.09.2014 on his mobile around 10.10 hours from one Maie residing in the neighbourhood of the accused who told him to come to the residence immediately as the accused had stabbed his wife and she had shown both her hands in blood through the side window and moreover she had seen her at her house. He had immediately rushed to the house of the accused, waited outside and called out to him and thereupon on his asking, had identified himself by his name. The front door was closed while the accused came out from the back door, came to him and spoke when he told him that he had received information that he had stabbed his wife and made inquiries about her. The accused on the contrary told him that he had sent his wife to her sister's house as he had called the Doctor for treatment and that she had sustained some injuries due to the knife. He noticed the accused leaving the house on his Pleasure scooter and in the meantime noticed also the

Police reaching the spot. PC Gautam(Pw.4) went to the courtyard of the house by opening the gate and at that time, the front door was closed. He had seen Jiya lying in a pool of blood on the floor of their bedroom when he looked through the side window alongwith PC Gautam followed by the arrival of more Police at the spot and some giving a chase to the accused.

21. Shailendra (Pw.7) knew PC Gautam (Pw.4) and none of the other policeman who had reached the spot. He conceded that he had not entered the house of the accused and went away within 5 to 10 minutes of the arrival of the Police. He too confirmed the location of the house of Archana (Pw.6) @ Maie being 10 to 15 metres away from the house of the accused while the back door and the front door of the house of the accused were visible from the courtyard of her house. He further confirmed that the deceased had told him that the accused assaulted her and at times drove her out of the house due to his suspicion about her character and he had spoken to the accused about the accusations made by Jiya to him and tried to make him understand. The accused had told him that he would not continue his acts of causing harassment to Jiya and these talks were about a month and a half to two months prior to the incident. His unrebutted testimony had clearly borne out that the relations between the accused and

the deceased were strained on account of the suspicion harboured by the accused about his wife's character and he would assault her on account of such suspicion.

22. Shailendra(Pw.7) was also unshaken on the fact that he had received a call on his mobile from Archana (Pw.6) and that he had rushed to the house of the accused from his house barely 200 to 300 metres away soon thereafter. He too was unable to recall if there were blood stains on the clothes of the accused and was not knowing in which direction the accused had left the house carrying the helmet in his hand. Suffice it to say that his presence at the spot was based on the telephone call given to him by Archana (Pw.6) and which was most natural being a person from the neighbourhood residing barely 200 to 300 metres away from the house of the accused. His testimony had also corroborated the version of Vaibhav (Pw.5) that the accused was suspecting the character of his wife Jiya, since deceased, and that it provided the right motive for the accused to cause harm to her.

23. Laxmi (Pw.8), the mother of the deceased had stated that the deceased would visit her sometimes and report that the accused would assault her for money. She rather confirmed during her cross examination that she had asked the accused why he was assaulting the deceased. The dispute between the accused and the deceased was on account of his

demand for money. Akshada (Pw.9), the sister-in-law of the deceased, presented another facet of the relationship between the accused and the deceased inasmuch as her testimony bore out that the accused would contact her telephonically while working abroad and make inquiries with her whether his wife and children were at home or otherwise. Jiya, since deceased, used to complain that the accused was not sending her money, that he would abuse her with bad words in case he did not inform him while leaving the house and treating her in a manner indicating her that he was doubting her character. Rather her cross examination has indicated that Jiya had pawned her gold jewellery to meet a demand of ₹15,000/- on the basis of a mobile message and denying the suggestion that there were no quarrels between the accused and the deceased raising doubt about her character.

24. Vishnu (Pw.14), the uncle of the deceased stated that the deceased had visited his house at Torshem, Pernem with her two children in February 2014 and during such time, she had informed him that the accused used to harass her, consume alcohol, assault her and demand money and gold from her. She had again made a visit prior to Ganesh Chaturthi festival when he made inquiries with her about her visit and she disclosed to him that her husband i.e. the accused was physically and mentally harassing her and that

she did not want to go to reside with him. The accused had come to his house during the Chaturthi festival of 2014 and made inquiries about the deceased and that he told her that she had not come to his residence. He had questioned the accused regarding the abuses and the assault on his wife apart from demanding money and gold but he had denied the same. The accused finding that his wife was not available, had given his mobile number and left his house. Three days later, the deceased had gone to an Advocate to take advise to file a divorce case against the accused. She had come back to his house and after getting message from the Cuncolim Police Station to report, had left his house alongwith her two children.

25. Vishnu (Pw.14) confirmed during his cross examination that the deceased would come and stay at his residence at Torshem but there was never any occasion when the accused had phoned up his residence or told him that his wife was not at home. He maintained that from his talks with the deceased whenever she came to his house, it was apparent that the accused was assaulting her and demanding money and gold from her which she was not giving him. From his testimony too, it is borne out that the accused did not treat the deceased properly, made unreasonable demands on her and otherwise subjected her to assault and abuses. A detailed

discussion of all the evidence is made particularly of the star witnesses Archana (Pw.6), Shailendra (Pw.7), Gautam (Pw.4), Ganraj (Pw.2) since a frantic attempt was made by Shri Ryan Menezes learned Advocate for the accused to point out the discrepancies in their testimony as not to inspire confidence in the case of the prosecution. The aspect whether Ganraj (Pw.2) saw the accused moving out on his scooter qua Gautam (Pw.4) pointing out the accused to PSI Chavan, viz-a-viz, the statement of Archana (Pw.6) that the accused was inside the house and Shailendra (Pw.7) that the accused had told him that he had sent his wife to her sister's house, are not vital discrepancies in their version as to create a serious doubt in the prosecution case. Each of them narrated the incident as natural witnesses from their perspective and these so-called contradictions are not at all material to disbelieve the case of the prosecution against the accused. The fact remains as proved from the evidence of Archana(Pw.6) that she had first heard the shouts of Jiya raising an alarm that she was assaulted by the accused, rushing near her house and seeing her hands stained with blood and soon thereafter the window and door of the house being closed by the accused. Shailendra (Pw.7) had rushed to the house of the accused on getting the frantic call from Archana (Pw.6) and asked the accused what had happened who had told him that he had sent his wife to her sister for some minor injuries suffered by

her. At one time, the accused wants the Court to believe that he was in a state of panic since Shailendra (Pw.7) had virtually accused him of killing his wife and having taken to his heels out of fear and at the other to disbelieve the presence of Shailendra (Pw.7) at the scene of crime. The discrepancies therefore do not enure in favour of the accused much less create any doubt in the version of the prosecution.

26. HC Padkar (Pw.3), had reported at the spot based on the instructions of PI Arse and found him available at the spot with the other staff. He had entered the house of the accused and found the deceased lying unconscious in a pool of blood in the bedroom and, as such, she was lifted in Robot vehicle and taken to PHC Balli, where the Doctor declared her dead. His un rebutted testimony also shows blatant falsehood in the case of the accused that his wife had sustained minor injuries and again in contradiction to his plea in defence that he had seen someone assaulting his wife on entering the house after dropping his children and yet had had no altercation with the assailant to save his wife from the so called assailant.

27. The testimony of Dr. Mandar Kantak (Pw.12) assumes significance to the case of the prosecution. He was working in the Forensic Medicine, Department of Goa Medical College in September 2014 when he received the request

letter from the Cuncolim Police Station to conduct the medical examination of the accused apart from his blood grouping. With the consent of the accused he had carried out his examination and when he noticed five abrasions and three incised wounds on his person of varying dimensions located over his right hand and which incised wounds had clean cut margins with acute angles and crust formation. He however did not rule out the possibility of all these injuries i.e. the abrasions and the incised wounds could have been caused to the accused at one particular time leaving out any scope for prevarication on that count. The accused had come with a clear case that he had not sustained any injuries is a false defence carved out by him. It was for the accused to explain the presence of these injuries on his person particularly the incised wounds with clean cut margin coinciding with the occurrence of crime which he failed to do. It also does not reconcile with his specific case in defence that he had seen some persons assaulting his wife on entering his house and his reaction not to resist the assailant or to prevent any injuries being inflicted on the person of his wife. Rather shows that all these pleas advanced in defence were purely as an afterthought to wriggle out of the case of the prosecution brought on record.

28. Dr. Hari Nagarali (Pw.15) had independently corroborated the prosecution case that Jiya, since deceased, was brought to the PHC Balli by the Police with no sign of life and with history of assault by her husband. Accordingly, he sent the letter requesting to conduct the post mortem examination. Dr. A. Pujari (Pw.17), was the Police Surgeon attached to the Hospicio Hospital, Margao who had received the request to conduct the post mortem examination on the body of the deceased alongwith the copy of the Police panchanama and the Police report. He had conducted the post mortem examination on her body with history of homicidal nature of death. On external examination, he had noticed an incised wound with clean clear margins on the face just below the chin, a second incised wound with clean cut margins both angles acute below the right lobule downwards, third incised wound with clear cut margins both angles acute on the left side of the neck below the left lobule, fourth incised wound with clean clear margins both angles acute on the left lateral aspect of the neck, the fifth incised wound with clean clear margins both angles acute on the front of the neck, the sixth incised wound with clean clear margins both angles acute below the s.s.notch, the seventh wound being two linear abrasions on the left supramammary area, the injury no.8 being an incised stab wound with clean clear margins, both angles acute and subcutaneous, peritoneal fat and intestinal

loops protruding of the size 3.5 x 1 cm on the abdomen, the ninth incised stab wound with clean clear margins both angles acute, cavity deep, incised injury no.10 with clean clear margins both angles acute, on the right wrist area bone deep at lower end of the radius and ulna, the eleventh injury-contusion with diffused margins on the left upper arm, the twelfth injury being an incised wound with clean clear margins both angles acute on the left elbow at medial epicondyle, the thirteenth incised wound with clean clear margin both angles acute, fresh on left forearm, the fourteenth incised wound with clean clear margins both angles acute on the left hand fingers on palmer aspect, the fifteenth incised wound with clean clear margins both angles acute on the left hand in web space of index and middle finger and injury no.16 being an incised wound with clean clear margins both angles acute on the left thigh bone deep and caused by a sharp edged weapon.

29. Dr. A. Pujari (Pw.17) had done the needful apart from giving the details of the post mortem examination and opined that the injury nos.1 to 16 were ante-mortem in nature and collectively sufficient to cause death in the ordinary course of nature while the external injury nos.5, 8 and 9 were nevertheless sufficient to cause death in the ordinary course of nature. He had opined the cause of death due to haemorrhage and shock due to multiple incised wounds and

incised stab wound by sharp edged weapon and drawn the Autopsy Report. He had forwarded the exhibits for chemical examination and sent the blood group of the deceased to the blood bank. He identified the knife with blade of steel having the length of 20 cms with a pointed end and two more as being the weapons with which the incised wounds could have been caused on the body of the deceased. He was unshaken that one surface of the blades had a sharp edge and the other surface was serrated and that if the weapon like the blade was inserted in the body, it could result in both ends of the injury being acute. From the examination of Dr. Pujari, the prosecution had clearly established that the death of Jiya was homicidal.

30. Suchita (Pw.16) was the stepsister of the accused to whose house he had gone on 13.09.2014. The Police were mainly instrumental in coming to her house on 20.09.2014 to carry out the attachment panchanama in respect of his passport which he had earlier handed over to her.

31. Mahendra Gosavi (PW.11) was the pancha to the scene of offence panchanama conducted in the house of the accused and the deceased. He described the position of the house and revealed that on reaching the hall, they noticed blood stains, foot prints and furniture in the hall. They next entered the bedroom and noticed a pool of blood apart from

the blood foot prints which were in the directions of the hall and the kitchen and then bedroom. There was also blood on the floor and also on the wall of the bedroom and besides there were two knives in the blade portion and one was lying beneath the bed and there were three black colour handles of the broken knives lying in the room which were of plastic handles lying else where. They had then entered the kitchen where they saw a blue colour bag lying on the floor and stained with blood and also noticed yellow colour bangles in broken condition lying on the floor and a plastic file folder also stained with blood on it. A jean pant was in the bathroom of which the smell was given to the dog which went upto the road and came back followed by the photographer taking photographs. He identified the articles in Court apart from the packing, seals and signatures.

32. Mahendra (Pw.11) also revealed that on 18.09.2014, he was brought to the cabin of PI Asre where the accused was later brought in and who made his disclosure in konkanni. PI Asre had then made a record and thereafter they had all gone in the Police jeep as per the directions given by the accused. They had followed the accused to his house of which the main door was found closed and the police arranged for the keys and opened the door. The accused led them inside initially through the kitchen, pointed out to the wash

basin and the empty place below it and removed a red colour T-shirt with blood stains on it and duly photographed by the Police staff which was duly packed and sealed. Besides his passport, marriage certificate and birth certificate were attached at his instance. He had then led them to the hall where he showed his foot print in blood and then the Police took a tile of one of those foot prints and packed and sealed in an envelope. In this connection, it was the contention of Shri Ryan Menezes, learned Advocate for the accused that the case of the prosecution on the purported recovery particularly on the T-shirt was unbelievable as it could have been attached on the date of the scene of offence itself. From the version of Mahendra (Pw.11), it is amply borne out and unrebutted in the cross examination that it was the accused who had made the disclosure in their presence and only then as per his disclosure, was the T-shirt recovered from the space beneath the wash basin. It was not even remotely suggested to the witness that the T-shirt was ordinarily visible and was otherwise available to the Police and therefore such a contention that it was available for attachment on the date of the scene of offence panchanama is not at all tenable. The other contention of Shri Ryan Menezes that it was planted by the Police cannot stand the test of scrutiny inasmuch as it has been borne out that after the scene of offence panchanama, the house of the accused was locked and policemen were kept

on guard. Besides, it is rather too farfetched to assume that the Police would lay hands on a T-shirt stained with the blood of the deceased and plant it in the house in the place beneath the wash basin as to be readily available to the Police. Therefore, his contention that this circumstance does not enure to the prosecution does not stand the test of scrutiny. No doubt, the tile with the blood stained foot prints were available earlier and not attached, which could at the highest be the lapse of the Investigating Officer but which circumstance would not be fatal and otherwise not affect the prosecution case for the lapse of the Investigating Officer. This witness was materially unshaken on the disclosure made by the accused and the recovery made at his instance bringing the case of the prosecution at full circle based on the circumstantial evidence.

33. PI Ram Asre, (Pw.18) had recorded the complaint of Vaibhav(Pw.5), registered an offence vide the Cr. No.104/2014 under section 302 of the Indian Penal Code against the accused and then had conducted the scene of offence panchanama in the presence of Mahindra (Pw.11). He had attached several exhibits in that course. PSI Chavan had referred the body to the Hospicio Hospital, Margao for its preservation, conducted the inquest panchanama and sent the body to the Police Surgeon for conducting the post mortem

examination. He had personally carried out the arrest panchanama of the accused, forwarded him under the letter Exhibit 69 to the Police Surgeon for his medical examination. He had recorded the statements of the witnesses in succession, recovered the blood stained T-shirt at the instance of the accused on 18.09.2014 and saw that the whole procedure was photographed by the police photographer. He had requested the JMFC, Quepem to record the statement of Archana (Pw.6) under Section 164 of the Cr.P.C., called the call details of the accused from SP South and on receipt of the various reports, had filed the chargesheet against the accused.

34. Pw.18, R. Asre, confirmed during his cross examination that when he reached the house of the accused in the afternoon of 12.09.2014 for conducting the scene of offence panchanama, Police Constables were seen guarding the house, the two doors of the house were locked and the keys were with the Constables. The police staff had entered the house and no local persons were allowed to enter the house in his presence. He too confirmed that he had seen blood foot prints in the hall, a pool of blood in the bedroom and kitchen and blood stains on the walls of the bedroom. He conceded that he had attached one floor tile having blood stain foot print during the course of the recovery panchanama which was earlier lifted by the finger print expert and being of the

accused. He relented that no legible finger prints were found on the handles of the two knives. He was categorical in his assertion that it was none other than the accused who was involved in the crime on examining the facts and circumstances of the case and that the motive of the crime was that he suspected the character of his wife and as per the statement of the witnesses bore out that there were frequent quarrels and fights between the accused and his wife on the day of the incident and one or two days prior thereto. He also confirmed that on conclusion of the scene of offence panchanama, he had taken precautions to see that the rear door was latched from inside and the front door was latched and locked from outside and besides a Constable was kept on guard for some days and which position continued even after 18.09.2014.

35. The learned Sessions Judge on considering the evidence brought on record, found that the circumstance of the accused running away from the scene of crime was a relevant circumstance against him. He had injuries on his person in respect of which he has not given any explanation or history and which was an additional incriminating circumstance against the accused. The learned Judge found that there was sufficient motive for the accused to kill his wife whose character he was suspecting. The learned Judge on assessing

the evidence of Archana(Pw.6), had found that the shouts reproduced by her of the deceased amounted to the dying declaration of the deceased made soon before her death. Accepting the contention of Shri Ryan Menezes that this could not be treated as a dying declaration since it was not in the exact words of the deceased, even then the unrebutted testimony of Archana (Pw.6) amply demonstrates that she was the first person to hear the shouts of the deceased that she was being assaulted by the accused and followed by seeing the blood stained hands of the deceased and seeing the deceased lying in a pool of blood in her house from the window of her house. The accused was also the last person seen in the company of the deceased and with none in the vicinity and his defence being found to be false that he had seen someone assaulting his wife coupled with the other circumstances. The only irreversible conclusion which can be drawn and as rightly drawn by the learned Judge was that the accused had committed the murder of his wife by stabbing her with the knife and also slitting her throat causing incised wounds which were fatal in the ordinary course of nature. The learned Sessions Judge had rightly concluded on the basis of the available evidence that the accused had caused incised wounds and stabbed the deceased in the stomach with the intention of causing her death and in view thereof, held that he had committed the offence of culpable homicide amounting

to murder. The conclusions so drawn by the learned Judge do not call for any interference as the accused has failed to create any doubt in the case of the prosecution. There is thus no scope to hold otherwise or to reverse the findings of guilt rendered by the learned Judge against the accused.

36. We, therefore, do not find any merit in this appeal and therefore pass the following :

ORDER

The Appeal is dismissed and the Judgment of conviction is confirmed.

PRITHVIRAJ K. CHAVAN, J. NUTAN D. SARDESSAI, J.