

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 247 OF 1999

The State of Maharashtra	]	...Appellant (Orig. Complainant)
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Versus

Madhusudan N. Mataliya	]	
Age , _ Resi. At Flat No. 19,	]	
No. 3 Kandivali (E)	]	
Bombay 400 001.	]	...Respondent (Orig. Accused)

Ms. S. V. Sonavane, APP for Appellant – State.
Mrs. Rachita Dhuru, Advocate appointed for Respondent.

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

RESERVED ON : 26th NOVEMBER 2019
PRONOUNCED ON: 20th DECEMBER 2019

JUDGMENT (PER S. S. SHINDE, J.)

1. This Appeal is directed against the Judgment and order dated 09th October 1998 passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 1284 of 1992 acquitting the Respondent (Orig. Accused) for the offence punishable under Section 302 of the Indian Penal Code.

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

A. That one Ashwin Navalchand Mataliya i.e. (PW 3) who is the real younger brother of Accused – Madhusudan had lodged a missing complaint in respect of his brother accused – Madhusudan sister in law i.e. deceased Meghna and two children of accused i.e. deceased Urvi and deceased Tejas by going in Kandivali (East) Police Station on 16.07.1992 at about 2.50 p.m. The missing complaint was recorded by Police Officer Sanjay Arjun Kenny (PW 8), the then P.S.I. attached to Kandivali Police Station and who was on day Station House Duty Officer since 8.00 a.m to 6.00 p.m.

B. On 17.07.1992 Tulshiram Munnayya Shirvastav (PW 9) the then Police Sub-Inspector attached to Kandivali (East) Police Station in the year 1992 and who was Day Station House Duty Officer at Kandivali (East) Police Station since 8.00 a.m to 6.00 p.m had received a telephone at about 10.15 a.m from Ashwin (PW 3). Ashwin Navalchand Mataliya (PW 3) told to police officer Shrivastav (P.W. No. 9) that on 16.07.1992 he had lodged a complaint at Kandivali (East) Police Station regarding missing of his brother Madhusudan, his wife Meghna and children Tejas and Urvi. Ashwin (PW 3) further informed that foul smell was coming from the flat of Accused – Madhusudan.

C. That, after receipt of the information by P.S.I. Shiravastav (PW 9)

accompanied by S.I. Kenny and staff went to the flat of Accused – Madhusudan situated at Anand Apartments, Flat No. 19, 3rd Floor, Ashok Cross Road No. 3, Ashok Nagar, Kandivali (East), Bombay. At Flat No. 19 Ashwin (PW 3), Jitendra Ghelani (PW 7) and others were present in the flat. On reaching at flat, Police Officer Shrivastav (PW 9) also found foul smell was coming from the flat, and the same foul smell was coming from the balcony attached to the bed-room. Thereafter, Police Officer Shrivastav (PW 9) peeped through the space in between the wooden frame and the door of the window of the bed-room and noticed three dead bodies lying in the balcony. Police Officer Shrivastav (PW 9) had noticed one female dead body and two dead bodies of children aged about 36, 8 and 4 years respectively. Those dead bodies were lying in the pool of blood in the balcony. Ashwin (PW 3) and Jitendra Ghelani (PW 7) who were present in the flat with Police Officer Shrivastav (PW 9) identified the dead bodies as that of Smt. Meghna wife of Accused Madhusudan, Urvi daughter of Accused Madhusudan and Tejan son of Accused Madhusudan after they peeped through the space of the window.

D. That, Ashwin Mataliya (PW 3) told to S.I. Shrivastav (PW 9) that on 16.07.1992 at about 11.15 hours or so he received an anonymous telephone call and he was informed that there was some foul smell in the house of Accused – Madhusudan. After receipt of the telephone message Ashwin (PW

3) immediately informed his wife Kumud (PW 4) to find out the truth and as such his wife Kumud (PW 4) went to the flat of Accused – Madhusudan at about 12.30 hours and she found the doors of the house was locked from the outside. At that time Kumud (PW 4) heard shouts of Kum. Purvi (PW 1) daughter of Madhusudan and Kum. Purvi (PW 1) told Kumud (PW 4) that she was in the flat and therefore, Kumud (PW 4) arranged to open the door with the help of key-maker and took Kum. Purvi (PW 1) out of the flat and at that time Kumud (PW 4) did not find anybody in the house.

E. That, Kum. Purvi (PW 1) informed Kumud (PW 4) that her father Accused – Madhusudan left the house on 15.7.1992 at about 7 to 8 a.m. saying that her mother along with her brother Tejas and sister Urvi had gone to some hospital to see her maternal uncle, who had met with an accident and Accused – Madhusudan was also going to the hospital to see her maternal uncle. Kum. Purvi (PW 1) further told to Kumud (PW 4) that her father i.e. Accused – Madhusudan told her to wait in the flat and she was locked in the flat till 16.07.1992 upto 12.30 hours.

F. That, after hearing all the circumstances narrated by Ashwin (PW 3) to S.I. Shrivastav (PW 9) and after seeing three dead bodies lying in the balcony and found locked the door of the balcony, so also, after seeing the

swollen throats of the dead bodies with protruding tongues and the eyes of S.I. Shrivastav (PW 9) suspected that Accused – Madhusudan must have killed his wife and children by throttling them. Therefore, he lodged the complaint against Accused – Madhusudan for committing murder of his wife and children. The complaint of Police Officer Shrivastav (PW 9) was got typed by Chandrabhan Ratan Patil (PW 23) the then P.I. of Kandivali (East) Police Station, who was on duty on 17.07.1992 since 8.00 a.m. to 8.00 p.m.

G. That, while compliant of complainant S.I. Shrivastav (PW 9) was being recorded, at that time he asked the writer to inform the control room and call the Fire Brigade Officers at the spot of the incident. On the basis of the complaint P.I. Patil (PW 23) registered C.R. No. 233 of 1992 under Section 302 of the Indian Penal Code. After registration of crime, S.I. Shrivastav (PW 9), P.I. Patil (PW 23) and other staff went to the spot of the incident. Before they reached to the spot of the incident the Fire Brigade Van had already come there. All the police officials along with officers of the Fire Brigade had gone to flat of the Accused – Madhusudan. The officials of Fire Brigade broke open the door and the lock of the balcony. S.I. Shrivastav (PW 9), P.I. Patil and Sr. P.I. Sawant had observed that dead bodied lying in the balcony cautiously and carefully. Thereafter two panchas were called and S.I. Shrivastav (PW 9) recorded spot-cum-inquest panchanama as per the

directions of P.I. Patil. P.I. Patil (PW 23) signed the panchanama. All the three dead bodies were found in decomposed condition and the clothes from the dead bodies were seized, sealed and labels duly signed by panchas were affixed on the same. Blood sample of froth were also collected in separate bottles from the gallery and those bottles were also seized, sealed and labels duly signed by panchas were affixed on the same. The broken lock and kadi-konda of the door leading to the balcony were also taken in charge of under Exh. 21, same were seized, sealed and labels duly signed by panchas were affixed on the same.

H. Thereafter, S.I. Shrivastav (PW 9) came back to the Police Station as per the direction of P.I. Patil at about 2.45 p.m. in order to bring the A.D.R. Forms, he brought in all 9 A.D.R. forms at the place of incident. Thereafter, he filled up the A.D.R. forms 3 of each bodies are handed over the same to a police constable and sent to the Cooper Corroner's Court for post mortem in an Ambulance. Before S.I. Shrivastav (PW 9) left the Police Station to the spot alongwith S.I. Kenny (PW 8), after receipt of the phone from Ashwin (PW 3), S.I. Shrivastav (PW 9) made Station Diary to that effect. S.I. Shrivastav (PW 9) had also made Station Diary entry when he came back to the police station for lodging the complaint.

I. That, while panchanama was being drawn at that time a message was sent to bring Kum. Purvi (PW 1) through a constable to the spot from the house of Ashwin (PW 3). Kum. Purvi (PW 1) came at the spot at about 12.13 p.m. She was asked to sit in the hall and not to talk with anybody. All the seized articles at the spot were sent to the Police Station along with P.S.I. Tambat (PW 20). Police Officer Patil (PW 23) recorded the statement of Kum. Purvi (PW 1) at the spot only. When her statement was being recorded, Kum. Purvi (PW 1) produced one bottle having label “Kurmi-Kuthar Raas” by taking it from the showcase which was kept in the hall. Police Officer Patil (PW 23) called two panchas and the said bottle produced by Kum. Purvi (PW 1) was taken in charge under the seizure panchanama. The bottle was seized, sealed and labeled, labels duly signed by panchas were affixed on it.

J. That, Ramchandra Tukaram Jagtap (PW 18) who was attached to Kandivali (East) Police Station in the year 1992 and was on General Duty on 17.07.1992 and present at the Police Station since 9.00 a.m onwards till 11.30 p.m. recorded the statement of Jitendra Ghelani (PW 7) on 17.07.1992 and statement of Lalit Ghelani (PW 6) on 19.06.1992 as per the directions of Investigation Officer Chandrabhan Ratan Patil (PW 23).

K. That, Bhaskar Krishnadas Tambat (PW 20) who was attached to

Kandiavli (East) Police Station as S.I. was also present in the Police Station on 17.07.1992. he had assisted Chandrabhan Ratan Patil (PW 23) in the investigation of C.R. No. 233 of 1992. Police Officer Tambat had brought the clothes of deceased, so also, the blood sample from the place of incident to the Police Station and made entry in respect of the same in muddemal register. On 17.07.1992, (PW 20) Police Officer Tambat recorded statement of Ashwin (PW 3) and further statement of Jitendra Ghelani (PW 7).

L. That, Pulkeshin Venkatesh Mathadhikari (PW 21) who was attached to Kandivali (East) Police Station since January 1991 to 1993 and was on duty on 17.07.1992 as a Detection Officer had recorded the statement of Smt. Nirmalaben Mataliya (PW 5). On 18.07.1992 and 22.07.1992 he recorded further statement of Ashwin (PW 3). On 22.07.1992 Ashwin (PW 3) had produced 2 open postal envelop bearing postal stamp i.e. original handwritten letter in Gujrati which were taken in charge of by Police Officer Mathadhikari (PW 21) under the further statement of Ashwin (PW 3).

M. That, Subhash Pandharinath Kuber (PW 14) the then S.I. attached to Matunga Police Station and who was working as Detection Officer there in the year 1992, on 12.08.1992 he was on duty in the Police Station from 8.00 a.m on wards and on that day police officer told him that Accused –

Madhusudan who was wanted in a case registered at Kandivali (East) Police Station was sitting in Canara Bank, Sion Branch and thereafter Subhash Kuber (PW 14) and P.I. Patil, P.I. Bhosale, S.I. Mahabole alongwith other police staff went to Canara Bank Branch at Sion where an informant by name Nikhil Vijay Shirur (PW 11) pointed out that the Accused – Madhusudan sitting the bank and identified him, after confirmation Accused – Madhusudan was arrested by Police Officer Kuber (PW 14) and other police officers of Matunga Police Station. Thereafter, accused was brought to Matunga Police Station along with Nikhil Vijay Shirur (PW 11). Personal search of accused Madhusudan was carried out by Police Officer Kuber (PW 14) in the presence of 2 panchas. The Accused – Madhusudan was found in possession of one pouch, which was opened, certain articles were there which were taken in-charge of by Police Officer Kubar (PW 14) under the seizure panchanama. Police Officer Kuber (PW 14) made Station Diary entry as regards to the arrest of Accused – Madhusudan and taking charge of the articles found in his possession.

N. That, P.S.I. Tambat (PW 20) along with P.I. Shrivastav (PW 9) and staff went to Matunga Police Station and took in charge of the Accused – Madhusudan and brought him to Kandivali (East) Police Station after his arrest. All the documents pertaining to C.R. No. 233 of 1992 were also

brought with the articles to Kandivali (East) Police Station from Matunga Police Station. All these documents and articles were handed over to P.I. Patil. The entry as regards to the muddemal was taken in the muddemal register of Kandivali (East) Police Station.

O. On 15.08.1992 Police Officer Pulkeshin (PW 21) interrogated the accused and obtained his specimen handwriting on blank papers. So also, on 16.06.1992 specimen handwriting of the Accused – Madhusudan were obtained by Police Officer Mathadhikari. On 17.08.1992 Accused – Madhusudhan was prepared to make a voluntary statement and therefore, two panchas were called by Police Officer Mathadhikari in the Police Station and in the presence of both the panchas Accused – Madhusudan made a voluntary disclosure in Hindi that he was ready to point out the iron wire. The memorandum of Accused – Madhusudan to that effect was recorded by the Police Officer – Mathadhikari in the presence of two panchas. Thereafter, Accused – Madhusudhan led the police party and panchas in a police jeep to Ashok Nagar Cross Road No. 3. The jeep was halted at the instance of Accused – Madhusudan in front of Anant apartments. After the jeep halted panchas, police party and Accused – Madhusudan led the police party and panchas on foot inside the compound of Anand Apartments at the rear side of the building. Accused – Madhusudan took out the iron wire from below the

bush and produced it before Police Officer Mathadhikari – P.W. No. 21, in the presence of two panchas. The iron wire was taken in charge of by Police Officer Mathadhikari (PW 21) in the presence of two panchas under the seizure panchnama's. Thereafter, all the police personnel alongwith accused - Madhusudan came to the Police Station and a muddemal entry in Muddemal Register as regards to the iron wire was taken.

P. On 15.9.1992 Police Officer Mathadhikari sent all the specimen handwriting to the handwriting expert along with covering letter. On 03.11.1992 Police Officer Mathadhikari (PW 21) sent all the clothes of the three deceased to Chemical Analyzer under a covering letter. On 12.09.1992 Investigation Officer Chandrabhan Ratan Patil (PW 23) recorded the statement of Prabhakar Santappa Shanbag (PW 19). On 05.11.1992 Investigation Officer Patil – P.W. No. 23 received the reports of viscera. Patil (PW 23) received the Chemical Analyzer's report in respect of the result of the articles sent to Chemical Analyzer. After completion of the investigation and receiving all the relevant documents pertaining to C.R. No. 233 of 1992 Investigation Officer Chandrabhan Ratan Patil submitted the charge-sheet against Accused – Madhusudan in 43rd Metropolitan Magistrate's Court, Borivali, vide C.C. No. 2423/P/92. On 09.11.1992 learned Metropolitan Magistrate committed the case to the Court of Sessions.

Q. Learned Additional Sessions Judge had framed the charge against Accused – Madhusudan under Section 302 of the Indian Penal Code, its contents were read over and explained to the accused in vernacular, for which he pleaded not guilty and claimed to be tried. After recording evidence and full fledged Trial, the learned Additional Sessions Judge, acquitted the accused under Section 302 of the Indian Penal Code. Hence, this Criminal Appeal filed by the State against the order of acquittal.

3. Learned APP Mrs. S.V. Sonavane appearing for the Appellant - State submitted that, the Trial Court has not properly appreciated the evidence of Kum. Purvi Mataliya (PW 1). At the relevant time daughter of the accused was in 8th standard. The prosecution through Kum. Purvi Mataliya (PW 1) had proved that on 14.07.1992 the accused was present alongwith the victims in Flat No. 19, at the place of crime. Three days prior to 14.07.1992, the accused had told them that he will bring worms medicines. On 14.07.1992 the accused gave tablets to victim and Kum. Purvi Mataliya (PW 1). The accused gave 4-5 tablets to Tejas, to Urvi, 7-8 tablets to Kum. Purvi Mataliya (PW 1) and 12-13 tablets to Meghna. In the cross examination of Kum. Purvi Mataliya (PW 1) she confirms that on 14.07.1992 her father gave tablets not prescribed by the doctor. She confirms that the accused told them that they

would required Ayurvedic medicines for stomach worms. Though Kum. Purvi Mataliya (PW 1) was not subjected to any medical test for long sleeping hours, giddiness suggests that Kum. Purvi Mataliya (PW 1) was under the influence of some tablets. Kum. Purvi Mataliya (PW 1) in his cross examination confirms that on 14.07.1992 the accused was present with the victims. Kum. Purvi Mataliya (PW 1) in her cross examination answered that the accused crushed 4-5 tablets in Khalbatta mixed with honey and gave it to Urvi and Tejas. Her testimony was not shaken regarding the incident that happened between 14.07.1992 to 16.07.1992. She confirmed that she could not go with her father because she felt giddiness. She further confirmed that as soon as they took the tablets they went to sleep. On 15.07.1992 she went to sleep at 4.30 pm. As she was not feeling well and she was feeling sleepy. She stated that, accused left residence on 15.07.1992. Her testimony is consistent about the timing and her physical condition which supports that she was also administered.

It is further submitted that, the learned Trial Court ought to have relied upon the testimony of Kum. Purvi Mataliya (PW 1) which indicates that the accused was present on the scene of crime and he had given tablets to the victims and Kum. Purvi Mataliya (PW 1). Those tablets contained chemical Diazepam poisoning of which has caused the death of the victims.

It is submitted by learned APP that, post mortem was conducted by Dr. Rajaram Marathe (PW 22) and Dr. Shinde. Mr. Ambadas Mane (PW 12) in his evidence confirmed that the death of all three was due to Diazepam poisoning. The body of Meghna, Urvi and Tejas were decomposed and maggots were found. There were no injuries on the body of Urvi and Tejas. Injury shown in Column 17 of post mortem report of Meghna can be possible by iron wire and injury shown in Column 19 can be caused when person resisting strangulation. Compose is used for tranquilization and sedation. The contents of calampose are diazepam. The timing of death was 2-4 days prior to post mortem i.e. between 14.07.1992 to 16.07.1992. In cross examination his testimony was unshaken and he confirmed that the death of Meghna was due to toxic dose of diazepam. Dr. Rajaram Marathe (PW 22) in his cross examination stated that, he cannot rule out the possibility of death of all the three deceased having taken place even on 16th morning or at 12.00 noon.

4. The learned Trial Court has not appreciated this evidence and acquitted the accused. There is no explanation in the statement recorded under Section 313 of Code of Criminal Procedure regarding the absence of the accused from his house i.e. scene of crime. The accused was absconding after the incident rather the missing complaint was also lodged. It is submitted by learned APP that, the trial Court failed to appreciate the evidence and

acquitted the accused. Therefore, learned APP appearing for the Appellant – State submits that, Criminal Appeal deserves to be allowed.

5. On the other hand, learned counsel appearing for Respondent-Accused invites our attention to the findings recorded by the Trial Court and also the evidence of prosecution witnesses and in particular Kum. Purvi Mataliya (PW 1) and Dr. Rajaram Marathe (PW 22) and submits that, there is contradictory evidence of Kum. Purvi Mataliya (PW 1) and Dr. Rajaram Marathe (PW 22) about time of the death, so also whether death can occur by consuming 5-6 or 10-12 diazepam tablets. Dr. Rajaram Marathe (PW 22) in his evidence stated that, to cause death due to consumption of diazepam tablets it is possible when 50-60 tablets of 5 miligram are consumed.

6. Learned counsel submits that, the entire episode of the evidence, the motive/reason of killing the deceased wife and children's not brought on record hence the prosecution is not able to establish the charges leveled against the Respondent. The prosecution failed to establish *mens rea* in prosecution story. The date and time of death is contradictory to the story of the prosecution. Expert opinion is totally different from the evidence of witnesses. The accused and deceased had cordial relation till the day of incident. The statement of Kum. Purvi Mataliya (PW 1) is not reliable and full of doubt and

same is not supported by other witnesses. The dose of calmpose / diazepam sold by the Medical shop owner; if presumed to be given to the deceased was not fatal as per medical evidence. The evidence of relatives of deceased are contradictory to each other. The evidence regarding date and time of death are contradictory, if the same is compared with evidence of expert. It is submitted that, the statement recorded under Section 313 of Cr.P.C. of Cr.P.C. is more probable and can be relied if compared with the evidence of all witnesses. Hence, learned counsel appearing for the Respondent – Accused submits that, Criminal Appeal deserves no consideration and may be dismissed.

7. The prosecution has examined Kum. Purvi Madhusudan Mataliya (PW 1). In her examination in chief she stated that, she is residing at Rajkot, with her maternal uncle. In the year 1992 she was residing at Kandivali, (E), Ashoknagar, Anand Apartment, with her parents. She, her father, her mother, her sister and her younger brother were residing there. Name of her father is i.e. accused - Madhusudan Navalchand Mataliya. The accused before the Court is her father Madhusudan Navalchand Mataliya. Name of her mother was Meghna Madhusudan Mataliya. Name of her younger sister was Urvi Madhusudan Mataliya and name of her younger brother was Tejas Madhusudan mataliya. Her mother Meghna, sister Urvi and brother Tejas are not alive. They died on 14th July 1992. At the time of

death her sister Urvi and brother Tejas, Urvi was eight years old and Tejas was four years old. At the time of incident she was studying in 8th standard, her sister Urvi was studying in 2nd standard and her brother Tejas was studying in K.G.

8. She stated that, at the time of incident her uncle by name Ashwin Navalchand Mataliya (PW 3) was staying in Rajgiri Apartment at Kandivali. The residence of her uncle was about five minutes of walking distance from her residence. Name of her grand mother was Nirmalaben Navalchand Mataliya. She was staying with her uncle at that time. Her uncle Ashwin (PW 3) was residing with his wife by name Kumud Ashwin Mataliya and his two children. Her uncle was working in Union Bank of India at that time. Her father i.e. accused was working with Vijay Variety Store at Sion.

9. On 14.07.1992 she had gone to her school to attend her exam at about 7.00 a.m. She returned back to home at about 11.00 a.m. her father, i.e. accused came home at about 4.00 p.m. on that day. Thereafter, she went to attend her tuition classes. She returned back to home at about 6.00 to 6.30 p.m. Her father i.e. accused told her that, he was suffering from headache and therefore, she should go to their family doctor and to bring the medicine. Accordingly, she went to their family doctor by name Piyush Parikh, along

with her younger brother. She returned back along with her brother at about 7.30. p.m. Thereafter at about 8.00 to 8.30 p.m. they all had their meal. Thereafter they had engaged themselves to see the T.V. serial, except her father i.e. accused, because he was busy in reading magazine. When she had returned back along with her brother to her home from the doctor at that time doctor had given her nine tablets for her father. It was directed to her by the doctor that she should tell to her father i.e. accused that he should take three tablets at a time. She gave all the tablets given by the doctor to her father. Her father had taken one dose in her presence however, she does not know whether he had taken the other doses or not.

10. Her mother Mrs. Meghna cleaned all the utensils after their meal and arranged the beds for their sleep. Thereafter at about 9.30 to 10.00 p.m. her father i.e. accused took out one bottle, which was kept in the showcase. That showcase was kept in the hall where they used to sleep. Her father i.e. accused told them all that it was a medicine for killing worms, in the stomach. That bottle was plastic made of white colour, covered with yellow wrapper. Her father i.e. accused had told them that he would bring the medicine to kill the worms in the stomach, three days prior to 14.07.1992. They all were having the worms in their stomach at that time. After her father took out the bottle from the showcase, he asked her to bring water. Thereafter her father

gave to her sister Urvi and her brother Tejas four to five small tablets to each along with honey. Her sister Urvi and brother Tejas had taken the same. Thereafter her father gave her seven to eight the same tablets and accordingly she had taken the same with water. Those tablets were small in size and of white colour. The tablets which were given by the doctor to her for her father were different than the tablets which were given by her father to them. Thereafter her father had given twelve to thirteen small tablets to her mother from the same plastic bottle. She had taken along with water. Before that her mother had asked to her father i.e. accused as to why he had given so many tablets to her, on which her father told her that those tablets were Ayurvedic Tablets and as she was elder therefore she required the same and also told that it was course of six months. After taking the tablets given by her father to them, they all had gone to sleep. However her father i.e. accused did not take those tablets, which were given to them. Her father kept the same plastic bottle, from which he had given the tablets to them, again in the showcase. Her father also told them that they should preserve the said bottle in order to show the same to the medical store for next time.

11. She and her sister Urvi had gone to sleep on a Diwan, however her father i.e. Accused, her mother Meghna and her brother Tejas had gone to sleep on floor.

12. On 15.07.1992 at about 7.00 to 7.30 a.m. She got up and noticed that her father i.e. accused was standing near by her. She did not see her mother Meghna, her sister Urvi and her brother Tejas in the house at that time and therefore, she asked to her father where were they. Her father told her that her maternal uncle by name Lalit who was residing at Meera Road at that time, met with an accident and hence her mother, sister and brother had gone to see her maternal uncle Lalit in the hospital. He also told her that, her mother had tried to wake her up but, she did not wake up therefore, her mother told him to bring her with him. Her father further asked her, whether she was going with him, on which she replied in affirmative. She tried to get up but she could not, because she was feeling giddiness at that time. Her father told her to go to sleep. Her father asked her that where her mother had kept the keys of the locker, at that time she told to her father that keys were lying under the Sarees. Thereafter she had gone to sleep. After sometime her father was about to go outside and hence she again got up in order to close the door, at that time she had seen a black suitcase in the hand of her father. Her father told her that, she should not close the door from inside because he was going to close the door from the outside by putting lock. He further told her that her mother would come within half an hour and therefore, she should not close the door from inside. Thereafter she had gone to sleep. At about 2.30

p.m. she got up and took wash and had some breakfast. At that time she was feeling weakness and hence again she had gone to sleep. At about 10.00 to 11.00 p.m. She felt that somebody had rang the bell of her house and hence she got up and by taking the help of the wall of her house came near the entrance door of the house. At that time she switched on the zero bulb and saw from the peep hole that one person with white pant and white shirt was going down from the staircase. Thereafter again she had gone to sleep by coming to diwan.

13. Thereafter, on 16.07.1992 she woke up at about 9.30 a.m., she took bath and also had some breakfast and thereafter she engaged herself in reading her books. After sometime she heard the voice of her Aunt Kumud from the outside of her entrance door. At that time her aunt Kumud was talking with her neighbour. After hearing her voice she gave call her from inside of her house saying as 'Kaki Kaki'. She came near the entrance of their house and asked her as to since when she was inside. She told her that as her mother, father, sister and brother had gone to see her maternal uncle and therefore since 15.07.1992 she was inside. Her aunt asked her whether they had told her anything or not on which she told her aunt that they had told her, that they would come within half an hour but they did not. She asked to her aunt to take her out, on which her aunt told her that she should wait for

sometime and then she would make her out.

14. After half an hour her grandmother Nirmalaben and brother of her aunt by name Kamlesh had come to her residence. Both of them asked her since when she was inside, on which she told them that her father, mother, sister and brother had gone to see her maternal uncle in the hospital, and they told her that they would come back within half an hour but they did not and, therefore since 15.07.1992 she was inside. She told to her grandmother that she had a phone number of her maternal uncle Jitendra, who was working in a company at Grant Road and she should ask him. She had given phone number to her grandmother, and accordingly she had gone the house of her neighbour for making telephone to her maternal uncle. Her aunt who had come earlier to her residence did not take her out of her house because it was locked from outside and she did not have the key of the same. Her father i.e. accused had put lock from the outside of the door of their house, and she had taken away all the keys with him.

15. After five to ten minutes the brother of her aunt who had come with her grandmother to their residence, had brought one key maker. The key maker by preparing the another key opened the lock of the door of their house and thereafter her grandmother and brother of her aunt had taken her with

them to the residence of her uncle Ashwin at Rajgiri Apartment. Her aunt gave her meal and accordingly, she had ate, and thereafter she had gone to sleep. Thereafter at about 5.00 p.m. when her uncle Ashwin and her maternal uncle Jitendra came to her residence of her uncle Ashwin, then she came to know from her uncle Ashwin and maternal uncle Jitendra that her mother, father, sister and brother were missing. Her uncle Ashwin and her maternal uncle Jitendra went to the police station and lodged the complaint to that effect.

16. On 17.07.1992 she came to know that her mother, brother and sister are dead and their dead bodies were lying in the balcony of their house. Thereafter, police had come to the residence of her uncle Ashwin and took her with them to their house. Police recorded her statement at her residence, police asked her as to where that plastic bottle was, accordingly she produced the same before the police by taking it out from the showcase. Police took charge of the said bottle which was produced by her under the seizure memo.

17. In her cross-examination she stated that, it is true that she did not tell to anybody that her father had given the tablets to her, to her mother, to her sister and to her brother on 14th July 1992 till her statement was recorded

by the police. She admitted in her cross-examination that, till she met her aunt, grandmother and brother of her aunt Kamlesh, she did not talk to any other residents of building in which she is residing with her parents. She stated that, her grandmother took her to the residence of her uncle on 16th July 1992. She also stated that, the maternal uncle and uncle Ashwin (PW 3) were anxious to know as to what had happened to her mother, sister and brother and where they were?. Still she did not feel it to tell the uncles that her father i.e. accused had given some tablets to her, her mother, her sister and her brother on 14th July 1992 at night. She also stated that, when she was taken out from her house by grandmother and Kamlesh at that time Kanchanben was present. The aforesaid version in her cross-examination shows her unnatural conduct as much as at the earliest opportunity available to her to disclose about alleged tablets given by her father to herself, her mother, her brother and her sister, however, till her statement was recorded by the police she did not disclose about the same to the grandmother or to her uncles.

18. In order to find out whether the death is accidental, suicidal or homicidal, the Prosecution has examined Dr. Rajaram Marathe (P.W. 22) Medical Officer. In his examination in chief he stated that, at present he is attached to Police Hospital, Nagpada as a Medical Officer. In the year 1992 he was attached to Additional Coroner's Court Juhu as a Medical Officer. As a

part of his duty he had to perform the post mortem on the dead bodies received by him. He has conducted twenty thousand post mortem on the dead bodies of human being.

19. On 18.07.1992 he was present in Coroner's Court Juhu and Dr. Shinde was on duty as a Medical Officer on that day and he assisted him. On 18.07.1992 three dead bodies that is of Meghna, Urvi and Tejas were brought by Police constable buckle no. 9757 of Kandivali (E) Police Station to Juhu Coroner's Court for conducting post mortem. All these above referred dead bodies were received by Juhu Coroner's Court on 17.07.1992 at about 7.30 p.m.

20. On 18.07.1992 first in point he performed post mortem on the dead body of Urvi, in between 12.30 p.m. to 1.10 p.m. While conducting autopsy on the dead body of Urvi along with doctor Shinde, he did not notice any external injury on the person of Urvi. So also no internal injuries were seen by him or doctor Shinde on the dead body of Urvi after post mortem. During the course of post mortem of Urvi, Dr. Shinde who was along with him had taken the post mortem notes. He was conversant with the handwriting of Dr. Shinde so also his signature, being his colleague. The post mortem notes were prepared by Dr. Shinde in his presence. He has also put his

counter signature on the post mortem notes. The original post mortem notes of deceased Urvi dated 18.07.1992 are the same, and same are in the handwriting of Dr. Shinde, signed by Dr. Shinde and him.

21. While conducting post mortem on the dead body of Urvi he had preserved viscera of Urvi i.e. (a) stomach and intestine and their contents (b) and pieces of liver, spleen and kidney (c) preservative samples. All the above referred three contents were preserved separately in three bottles. Those were sent to chemical analyzer. Subsequently he received the chemical analyzer's report. Pieces of heart, lung, trachea, kidneys and liver were sent to histopathology department. He received the report of the same from histopathology department. The chemical analyzer's report dated 29.10.1992 is the same which he received. Only after receiving the chemical analyzer's report and report from histopathology department Dr. Shinde has opined as to the cause of death of Urvi as 'death due to dizepam poisoning'. As per his opinion Urvi might have died two to four days prior to the post mortem. The body of Urvi was decomposed maggots were present on the body. Hence he opined that the death of Urvi might have been caused two to four days prior to the post mortem. Larynx, trachea and bronchi were congested so also right lung left lung were also congested due to poisoning. Liver, spleen and kidneys were congested may be due to poisoning due to diazepam.

22. After completing the post mortem of Urvi, he and Dr. Shinde performed post mortem on the dead body of Tejas in between 1.15 p.m. to 2.00 p.m. on 18.07.1992. During the course of post mortem on the dead body of Tejas he and Dr. Shinde did not notice any external as well as internal ante mortem injuries on the dead body of Tejas. During the course of post mortem on the dead body of Tejas, Dr. Shinde prepared the post mortem notes in his presence. He was conversant with the handwriting and signature of Dr. Shinde being his colleague. The original post mortem notes of deceased Tejas dated 18.07.1992 are the same, and same are in the handwriting of Dr. Shinde, signed by Dr. Shinde and himself.

23. During the course of post mortem on the dead body of Tejas, he had preserved viscera i.e. (a) stomach and intestine and their contents, (b) pieces of liver, spleen and kidney (c) preservative samples. All the above referred three articles were preserved in three separate bottles. He sent the stomach intestine and their contents to chemical analyzer's report, so also he had sent the pieces of liver, spleen and kidney to chemical analyzer. Preservative samples were also sent to chemical analyzer. However pieces of heart, liver, lungs, trachea and kidney were sent to histopathological department. Subsequently he received both the reports such as chemical

analyzer's report and report from histopathological department. Both the reports i.e. chemical analyzer's report and report from histopathological department in respect of Tejas are missing from their office record. He had gone through the contents of the report after those were received by him. After going through the contents of chemical analyzer's report and report of histopathological department, Dr. Shinde had opined that the cause of death of Tejas is 'death due to diazepam poisoning'. As per his opinion Tejas died two to four days prior to the post mortem. The body of deceased Tejas was highly decomposed, maggots were found on the dead body of Tejas.

24. After completing post mortem on the dead body of Tejas, he and Dr. Shinde performed post mortem on the dead body of Meghna in between 2.05 p.m. to 3.05 p.m. on 18.07.1992. The dead body of Meghna was highly decomposed, maggots were found on the body. Eyes were protruding. Tongue was partially out. Blood tinged fluid oozing from nose. These things had happened due to decomposition of body of Meghna. During the course of post mortem they both doctors found one external injury, that is ligature mark 15 cm X 6 cm over anterior aspect of neck at thyroid cartilage, horizontally placed. The said injury was ante mortem in nature. On internal examination haematoma measuring 5 cm X 7cm was found. Under scalp on occipital region, brain was liquefied. There was haematoma on larynx anteriorly.

Trachea was congested internally. Lungs, liver, spleen kidney were found congested probably due to diazepam poisoning. He had preserved viscera i.e. (a) stomach intestine with their contents (b) pieces of liver, spleen and kidney (c) preservative samples for chemical analysis. Pieces of lung, liver, spleen, heart, kidney and trachea were preserved for sending the same to histopathological department.

25. Accordingly, he sent the viscera to chemical analysis along with preservative sample and pieces of liver, spleen and kidney. So also he sent the pieces of heart, lungs, spleen, kidney and trachea to histopathological department. Till the receipt of report from chemical analyzer and from histopathological department the final cause of death of deceased Meghna was reserved. During the course of post mortem on the dead body of deceased Meghna Dr. Shinde prepared the post mortem notes in his presence. Subsequently he received the chemical analyzer's report and report from histopathological department. Dr. Shinde has opined the cause of death of deceased Meghna as 'death due to diazepam poisoning'. Dr. Shinde has discussed with him as regard to the cause of death before giving his final opinion in this case, he concurred with Dr. Shinde on the point of cause of death of all the three deceased. He opined that, Meghna might have died two to four days prior to post mortem.

26. The ligature mark which is mentioned in the post mortem note in column no. 17 can be possible by a iron wire which is used for ironing, if the person is strangled with it. The internal injury on trachea is corresponding to external injury. The injury mentioned in column no. 19 of the post mortem notes can be caused when a person resisting strangulation. The contents of calampose are diazepam. After consumption of diazepam with medicine dose one goes to sleep. Diazepam are available in the form of tablet, injection and liquid. One tablet of diazepam is of 2.5, 5 or 10 milligrams. Within thirty to sixty minutes the action of diazepam could be seen after it is taken. If diazepam is taken in excess it gives over sleep or respiratory decompression or death. The medicinal dose of diazepam depends upon the age. A person of about 30 years of age or above that can be prescribed a dose of diazepam of 2.5 to 5 milligram. However dose of diazepam is concerned it varies person to person depending on age. If the dose of diazepam is administered 10 to 20 times of the medicinal dose then person may go to death. Generally the diazepam is not prescribed for the children. He stated that, he cannot tell, what will the effect if the children below 10 years is administered the six to seven tablets of diazepam, at a time.

27. As there was only one ligature mark appeared on the person of deceased Meghna, so also no other external injuries were found on the person

of deceased Tejas and Urvi, and diazepam level was found in viscera in excess and toxic and they were left untreated or unattended medically and hence he and Dr. Shinde came to the conclusion as regards to the final cause of death of all the three deceased as the death due to poisoning of diazepam. In his opinion the diazepam level found in the viscera, which was left medically, was sufficient to cause the death of all the three deceased in the ordinary course of nature.

28. Dr. Rajaram Marathe (PW 22) in his cross examination stated that, he has performed near about 20,000 autopsies. However, he did not come across any case out of 20,000, concerning to calmpose. According to him levels of diazepam more than 50 milligram per liter are lethal concentration. He admitted that, normally human body contains 5 to 6 liter blood. He accepted the suggestion that, fatal dose of dizeepam would be 250 milligram to 300 milligram. He stated that, "it is true that to have a fatal dose one has to administered or take minimum 50 to 60 tablets of 5 milligram weight." He further stated that, he cannot say from the report of viscera that how much diazepam would have been consumed by the deceased.

He further stated that, he cannot rule out the possibility of death of all the three deceased having taken place even on 16th morning or at 12.00

noon. He stated that, decomposition of dead body can take place internally or externally at one and the same time. He admitted that, there were no prolapse either on uterus or anus. In winter season and summer season there is difference in timing for taking decomposition of body. In winter it takes longer time, however, in summer it takes short time. The maggots is found within 8 to 24 hours during summer. As far as internal organs are concerned putrefactive is a same as decomposition. The putrefactive changes can be in following order:-

1) Larynx and trachea. 2) Stomach, intestine and spleen. 3) Liver, lungs. 4) Brain 5) Heart. 6) Kidney, bladder, uterus. 7) skin muscles tendon. 8) Bones.

He stated that, it is true that, no putrefaction was found in larynx and trachea in connection of all the three dead bodies. So also no putrefaction was found on stomach and intestine of the dead bodies of three deceased. So also no putrefaction was found on liver of the dead bodies of three deceased. He stated that, larynx and trachea can get putrefy and intestine and putrefy within 24 to 36 hours in summer. He further stated that, the liver and lungs get putrefy within 24 to 26 hours in summer. He stated that, it is not correct that in the light of above observation the death of three deceased would have taken place within 24 hours.

29. He admitted that, he did not perform any test to determine whether ligature mark found on the dead body of Meghna was ante mortem or otherwise. That, Dr. Rajaram Marathe (PW 22) is to perform 7 tests in order to determine whether the ligature mark or wounds are ante mortem or otherwise. In case person is strangled with a wire by putting it around the neck then the ligature mark would appear around the whole neck. He agreed with the proposition that, strangulation with a ligature is sometime employed as a means of suicide.

30. It is clear from the cross examination of Dr. Rajaram Marathe (PW 22) that he has given vital admissions by accepting suggestions given by the defence, which creates dent to the prosecution case.

31. We have discussed herein above evidence of Kum. Purvi Mataliya (PW 1) and Dr. Rajaram Marathe (PW 22) who are the main witnesses. It is true that, the prosecution has examined 23 witnesses, however, the entire prosecution case is rests upon the evidence of Kum. Purvi Mataliya (PW 1) and Medical Officer Dr. Rajaram Marathe (PW 22). Depending upon acceptance or rejection the case may be, of the evidence of aforesaid two witnesses, the outcome of appeal depends. The evidence of Kum. Purvi

Mataliya (PW 1) is the sole basis as per prosecution case to suggest that accused had administered the calampose / diazepam to the deceased persons. However Kum. Purvi Mataliya (PW 1) has made contradictory statements in that regard. As it is reflected in the deposition of Kum. Purvi Mataliya (PW 1) that on 14th July 1992 the accused i.e. father of Kum. Purvi Mataliya (PW 1) came to home at 4.00 p.m and Kum. Purvi Mataliya (PW 1) went to attend her tuition classes and returned at 6 to 6.30 p.m. As per the version of Kum. Purvi Mataliya (PW 1) her father i.e. accused was suffering from headache and told to her to go to family doctor and bring the medicines. Kum. Purvi Mataliya (PW 1) in her evidence stated that she went along with her younger brother to Dr. Piyush Parikh and returned at 9.30 p.m., with medicine since accused was suffering from headache. It is also stated by her that three tablets were consumed by accused in the said night. Accused has denied the contention of Kum. Purvi Mataliya (PW 1) that on 14th July 1992 evening he was suffering from headache and told Kum. Purvi Mataliya (PW 1) to go to Dr. Piyush Parikh and bring medicine. Since accused denied the said contention, it was incumbent upon the prosecution to examine Dr. Piyush Parikh. Dr. Piyush Parikh was not examined by the prosecution. Therefore, the contention of Kum. Purvi Mataliya (PW 1) that accused was suffering from headache and therefore, he told her to go to Dr. Piyush Parikh and bring the medicine has no corroboration from evidence of other witnesses and therefore,

her contention that she went to Dr. Piyush Parikh to bring medicine cannot be believed.

32. It is stated by Kum. Purvi Mataliya (PW 1) that Urvi, Tejas and Meghna (all deceased) had meal at about 8.00 to 8.30 p.m. on 14th July 1992. She also stated that at about 9.00 to 9.30 p.m. accused took out the bottle from showcase and told her to bring water and thereafter accused gave four to five tablets to Urvi and Tejas (deceased). Accused also gave seven to eight tablets to Kum. Purvi Mataliya (PW 1) and twelve to thirteen tablets to Meghna (deceased) i.e. wife of accused and kept remaining tablets in plastic bottle. However, her statement is not supported by Mr. Prabhakar Shanbag (PW 19). It is important to note that Kum. Purvi Mataliya (PW 1) herself in her evidence stated that after tablets were given to Urvi, Tejas and Meghna (all deceased) and Kum. Purvi Mataliya (PW 1), he kept the said bottle again in the showcase and told Kum. Purvi Mataliya (PW 1) and other family members that again they will have to consume the said tablets for the purpose of killing worm in stomach.

33. The prosecution has examined Mr. Prabhakar Shanbag (PW 19) shopkeeper from whom three days prior to 14th July 1992 accused had purchased the tablets. At this juncture it would be appropriate to refer the

evidence of medical officer Dr. Rajaram Marathe (PW 22), who in his cross-examination stated that, death of deceased Urvi, Tejas and Meghna did not occur in the night of 14th July 1992, however, the same had taken place on 16th July 1992 at 12.00 noon. Apart from it in his evidence he has also opined that, Urvi, Tejas and Meghna died due to diazepam poisoning. Dr. Rajaram Marathe (PW 22) in his cross-examination stated that, according to him the fatal dose of diazepam would be 250 mg to 300 mg. Therefore, it is abundantly clear from experts evidence i.e. Dr. Rajaram Marathe (PW 22) to have a fatal dose, one has to administer or to consume minimum 50 to 60 tablets of 5 mg then only there is possibility of death. In the first place, the prosecution has not proved the exact time of death of aforesaid Urvi, Tejas and Meghna. On the contrary, the evidence brought on record by the prosecution clearly shows that Urvi, Tejas and Meghna died on 16th July 1992 and not on 14th July 1992 as alleged by the prosecution. Secondly, even if the prosecution case is taken as it is that, accused gave four to five tablets to Urvi and Tejas and 10 to 12 tablets to Meghna, if the experts evidence is considered, the consumption of said tablets was not fatal and would have not caused death in view of the opinion of Dr. Rajram Marathe (PW 22) that, it is only after 50 to 60 tablets of 5 mg are consumed there may be death of said persons, who has consumed the tablets. It is also relevant to mention that, if the accused had intention to kill his wife, son and daughter in that case he might have removed

the bottle containing said tablets from show casue with a view to cause disappearance of evidence. However, according to version of Kum. Purvi Mataliya (PW 1) the accused again kept that bottle containing tablets in showcase. If Urvi and Tejas died due to consumption of four to five tablets as per prosecution case in that case Kum. Purvi Mataliya (PW 1) who consumed eight to ten tablets may not have chance of survival. The prosecution has not brought on record medical evidence to suggest that Kum. Purvi Mataliya (PW 1) had really consumed eight to ten tablets and she experienced giddiness.

Kum. Purvi Mataliya (PW 1) in her statement stated that till the statement was recorded by the police she did not disclose administering tablets by accused to herself and other three members of the family even to Ms. Nirmala N. Mataliya (PW 5) and Mr. Lalit L. Ghelani (PW 6) to whom she met on 15th July 1992. This appears to be an unusual conduct, in the sense when the Kum. Purvi Mataliya (PW 1) had opportunity to disclose alleged administration of tablets to her and other three family members on 14th July 1992 as alleged her mother, sister and brother were missing on 15th and 16th July 1992, in that case it would have been natural for Kum. Purvi Mataliya (PW 1) to disclose to her (maternal) uncle and aunt on 15th July 1992 about such administering tablets by accused.

34. Importantly, the prosecution has not brought on record motive / reason of killing the deceased wife and children by the accused. The ocular evidence of Kum. Purvi Mataliya (PW 1) and medical evidence of Dr. Rajaram Marathe (PW 22) is contradictory. An opinion of the expert is totally different than the evidence of witnesses. It is not the prosecution case that the relation of accused with his wife and other family members were strained. It appears that the accused and the deceased had cordial relations till the date of alleged incident. Upon considering the medical evidence so also evidence of Kum. Purvi Mataliya (PW 1) the prosecution story appears to be unreliable and full of doubts. The evidence of Kum. Purvi Mataliya (PW 1) does not get support from the other witnesses. The evidence of other witnesses appears to be contradictory. The doses of calmpose / diazepam sold by the medical shop owner, if presumed to be given to the deceased was not fatal as per medical evidence. The evidence brought on record by the prosecution regarding date and time of death are contradictory, if the same is compared with experts evidence. The accused in his statement recorded under Section 313 of Cr.P.C in reply to query that whether accused want to say anything more in his defence, he stated thus:

“My daughter Purvi had come to home at about 6.00 p.m. from her tuition classes by that time her bag was ready as she was intending to go to the house of my brother Ashwin on

14th July 1992, because I did not have a colour T.V. with cable connection, I was having only black and white T.V. at that time, however there was a colour T.V. with cable connection at the house of my brother Ashwin. Purvi went to the house of my brother Ashwin alone on 14th July 1992 in the evening. On that day I was also prepared to go outside Bombay because the party from whom I had borrowed money to run side business, had threatened me that if I would fail to pay their amount, they would kill me. I had told about the same to my wife Meghna. I had also told to her that after 15 to 20 days when the matter became cool I would come back and if by that time the money lenders would have come to my residence they could have not cause any harm to my wife and children. I left my residence on 14th July 1992 at about 7.00 to 7.30 p.m. I went to Surat by train. However while leaving Bombay I had not told the fact to my brother Ashwin P.W. No. 3., which I had told to my wife Meghna. I wrote two letters from Surat, one was addressed to Ashwin and another was addressed to Meghna. In the letter I had wrote to my wife Meghna to tell the fact to Ashwin P.W. No. 3., which I had told to her. Exh-14 colly is in my handwriting.

The part of Exh-15 colly., i.e. the original letter written in Gujarathi language is got written from me by the police officer forcibly in the night of 12.08.1992 after I was arrested on 12.08.1992. There was no lock to the door of the gallery

from the side of the bed-room actually the said gallery of my flat was being used by my brother Ashwin PW. No. 3 as a bed room when he was residing with me with his wife. There was a lock system to the door of the gallery from the side of the gallery Purvi P.W. No. 1 might have deposed against me at the instance of her maternal uncle. I am innocent and have committed no offence as alleged by the police, I have been falsely implicated in this case by the police.”

35. The aforesaid defence appears to be more probable in view of the evidence of Dr. Rajaram Marathe (PW 22) that the death of the Urvi, Tejas and Meghna occurred on 16th July 1992.

36. We have carefully gone through the findings recorded by the Trial Court, in our considered view the findings recorded by the Trial Court after adverting to the evidence of the prosecution witnesses are in consonance with the evidence brought on record. There is no perversity as such. The view taken by the Trial Court is plausible and therefore, no case is made out to cause interference in the order of acquittal. The law is well settled by the catena of decision of the Hon’ble Supreme Court, so also various High Court that, if the possible view is taken by the Trial Court, and even if another view is possible on the basis of the evidence available on record, is no ground to cause interference in the order of acquittal.

37. In that view of the matter there is no substance in the Criminal Appeal. Hence, Criminal Appeal stands dismissed. Bail bonds of the Respondent – Accused, if any, stands canceled.

38. Since Ms. Rachita Dhuru, learned counsel is appointed to prosecute the case of the Respondent – Accused, his fees and expenses are quantified at Rs. 10,000/- (in words Ten Thousand only) and she would be entitled for actual expenses incurred by her. We direct the High Court Legal Services Sub-Committee, Mumbai to pay the aforesaid fees and expenses to the learned appointed Counsel within four weeks from receipt of copy of this judgment.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)