

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

CRIMINAL APPEAL No. 403 of 2016

Gautam S/o Bhagwan Shinde,
age 45 years occupation Centring work
R/o Vadji (Saindane) Taluka and Dist. Dhule ...Appellant

VERSUS

The State of Maharashtra and others
Through : Police Station Officer,
Police Station, Dhule Taluka and Dist. Dhule ...Respondent

Mr. P.S. Paranjape, Advocate for appellant
Mr. K.D. Mundhe, Addl. Public prosecutor for the Respt./State

CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.

DATE : 9th March, 2020

J U D G M E N T : (Per : T.V. NALAWADE, J.)

1. This appeal is filed against the judgment and order of Sessions Case No. 146 of 2012, which was pending in the Court of the learned Additional Sessions Judge, Dhule. The Trial Court has convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay fine of Rs. 5000/-. Both the sides are heard.

2. In short, the facts leading to the institution of the appeal, can be stated as follows:

Deceased Surekha was a daughter of informant Shantabai. About 15 years prior to the date of incident, she was given in marriage to appellant Gautam Shinde. After 7 to 8 years of the marriage, the family of the appellant shifted to village Udane Taluka and District Dhule to earn livelihood. One daughter by name Dhanashree of Surekha was kept with the parents of appellant in village Wadjai. For some time the family of appellant, which consisted of Surekha and two sons Ramakant and Kiran, lived in the house of informant Shantabai as she was alone in that house. About six months prior to the date of incident, this family took the house of one Wasant Dhaku Thorat situated in the lane of Shantabai on rent basis and they started living there.

3. On 5th June 2012, Shantabai visited the house of Surekha and there she took lunch. When she was present in the house of Surekha, at about 6.00 pm, the appellant returned home and he had brought meat with him. He asked Surekha to prepare dinner by using the meat and accordingly the dinner was prepared and all of them took dinner in the house of Surekha.

4. On the night between 5th June 2012 and 6th June 2012 at about 4.00 am, informant heard the shouting of Surekha and so she rushed to the residential place of Surekha with Ramakant. They noticed that appellant was beating to Surekha and he was giving threats of life. Informant intervened in the incident to save Surekha. When she made inquiry with Surekha, Surekha informed that appellant was asking her to have sexual intercourse with her and as he was doing it repeatedly, she had refused to it and due to that he was assaulting her. Informant and Surekha then went away from the house of Surekha to answer nature's call. After that, Surekha slept in the courtyard of the house of informant for some time and then she returned to the house taken on rent from Wasant Thorat. At that time, informant noticed that appellant was sitting on the *Ota* portion of their house. Surekha was sleeping on the cot, which was kept in courtyard of the house. Informant and Ramakant were sleeping in the courtyard of the house of Shantabai, informant. After some time, informant again heard shouting of Surekha and so she rushed to the house of Surekha.

5. This time, the informant noticed that appellant was assaulting Surekha on her head by using iron bar. Informant started shouting and due to that, persons of the vicinity rushed to the spot.

Appellant then ran away with the iron bar. Some persons attempted to chase him and hold him but he escaped.

6. Informant noticed that Surekha was lying injured on the cot and there was blood all over. They thought that she was alive and so with the help of some villagers, informant shifted Surekha to the Civil Hospital, Dhule, but doctors from the Civil Hospital declared that Surekha was already dead. Informant approached the police on the same day and gave report about the incident. Crime Regn. No. 138 of 2012 came to be registered in Dhule Police Station for offences punishable U/Ss. 302, 504, 506, etc., of the Indian Penal Code, at about 8.30 am.

7. During the course of investigation, the spot panchnama came to be prepared, inquest panchnama came to be prepared and dead body was referred for post mortem examination. Most of the investigation was made by Devidas Kisan Dhumane (P.W.5), A.P.I., who was attached to Dhule Police Station at the relevant time. The post mortem report revealed that the death had taken place due to head injuries. As many as three contused lacerated wounds were found on the head and face. Some injuries were found on the arms. These injuries had caused fracture of nasal bone & frontal bone (comminuted) and fracture anterior cranial fossa. Frontal lobe was

found to be crushed and there was subarachnoid hemorrhage and dura had torn and brain matter had come out through one injury. These injuries were ante-mortem in nature.

8. During the course of investigation, statements of witnesses, which include Ramakant (P.W.6), came to be recorded. The Chappals of both, the accused and deceased, were lying on the spot of incident and those were seized. The earth samples, the earth mixed with blood and ordinary earth samples were seized under spot panchnama on the basis of the statement given by accused under Section 27 of the Evidence Act, iron bar was recovered and seized during the investigation. The clothes of the accused were also taken over and all these articles were sent to the office of the Chemical Analyser. After completion of investigation, the chargesheet came to be filed for the offence of murder. The charge was framed and plea was recorded. The accused pleaded not guilty.

9. The prosecution examined in all six witnesses to prove the offence. The accused took defence of total denial. No defence witness was examined by the accused. The Trial Court has believed both the informant (P.W.3) and Ramakant (P.W.6). There is direct evidence and there is circumstantial evidence against the appellant

and on that basis, the Trial Court has given conviction to the accused.

10. In the appeal, the attention of this Court was drawn to some inconsistencies appearing in the evidence of the two eye witnesses. The learned Counsel for appellant submitted that the story given in the F.I.R. is different from the version given in the Court by the two witnesses. He submitted that the lot of confusion was there about the weapon used. He submitted that initially, Article 12, which is also iron bar, was identified as a weapon but subsequently it was submitted in the Trial Court that the Article 17 was used as weapon by the accused. He submitted that the prosecution has failed to prove that the spot of offence is visible from the courtyard of the house of Shantabai (P.W.3) and so it is not probable that the two eye witnesses had heard any cry, they had rushed to the place of incident and they had an opportunity to witness the actual incident of assault. On the other hand, the learned Addl. Public prosecutor submitted that in view of the evidence as a whole given by the two eye witnesses and the circumstance that they had shifted the deceased to the hospital immediately after sustaining of injuries and the circumstantial evidence which is available against the accused like the presence of

blood on banian of the accused and presence of blood found on the iron rod recovered on the basis of the statement of the accused, the conviction is based. He submitted that the incident took place in early hours of 6th June 2012 when the appellant was supposed to be at home and so it was necessary for him to show something as to where he was at the relevant time and as that is not done by the appellant, adverse inference needs to be drawn against him.

11. The submissions made and the record shows that the defence has not disputed that Surekha died homicidal death. Only to ascertain as to whether the medical evidence is giving corroboration to the versions of the eye witnesses, this Court is discussing the medical evidence.

12. Dr. Patil (P.W.1) has given evidence that he was working in Government Medical College and Hospital, Dhule, as the Medical Officer and he conducted the post mortem examination on the dead body of Surekha on 6th June 2012. He has deposed that following injuries were found on the dead body:

- " 1. C.L.W. over frontal region horizontal 16cm X 5.5 cm X brain deep with brain matter crushed and oozing out
2. C.L.W. just behind injury No.1, 5 X1cm X bone deep

3. *C.L.W. above right eyebrow 5 X 1 cm X bone deep*

4. *Two scratch abrasions over right arm laterally 1 cm each reddish. "*

13. Dr. Patil (P.W.1) deposed that on internal examination, he found that there was haematomma under frontal and both parietal region of scalp. According to him, there was fracture of frontal bone (comminuted) and there was the fracture of anterior cranial fossa. He has deposed that frontal lobe was found to be crushed and there was subarchnoid hemorrhage. He has deposed that dura had torn and brain matter had come out through aforesaid injury No.1. He has deposed that the death took place due to the head injury. The post mortem report prepared by him is duly proved in his evidence at Exh. 21. He has deposed that aforesaid surface wounds 1 to 3 correspond to aforesaid internal injuries mentioned by him and they are sufficient to cause the death in ordinary course of nature.

14. Dr. Patil (P.W.1) has given evidence that aforesaid injuries can be caused by giving forceful blows of hard and blunt object. He has deposed that police had requested him to give opinion about weapon which could have caused such injuries. He has deposed that he had given opinion as above and Exh. 24 is the

same. It appears that during his evidence, Article 12, other iron rod, was shown to him. He has deposed that this article was not shown to him. The evidence of the doctor shows that he had described the weapon in his opinion at Exh. 24 and there was some marking on the weapon and it was TNT iron bar. Exh.24 shows that the weapon, which was sent to him, had some stains of blood and it was TMT bar having torque. It appears that this witness was recalled by the prosecution and then Article 17 was shown to him and he identified that article as the same article, which was shown to him by the police. The description of Article 17 tallies with the description given in Exh. 24.

15. The prosecution has examined panch witness Subhash Karne (P.W.2) and the Investigating Officer Devidas Dhumane (P.W.5) to prove the discovery of the weapon. Subhash (P.W.2) has deposed that accused made statement to the police in his presence on 6th June 2012 and the memorandum of the statement was prepared, which is Exh. 29. He has deposed that after recording the statement of the accused, he took police and panchas to village Udane and from the place where there was thorny fencing, he took out one iron rod and it was seized by the police under panchnama Exh. 30. The iron rod had marking like Laxmi 500. The iron rod,

which was shown to him during the examination in chief, was different and so he said that the iron rod was not seized by the police. This witness was also recalled and then Article 17 was shown to him. He identified Article 17 as the same iron bar, which was seized under panchnama Exh. 30. Such bars are usually used for RCC construction and the description of the iron bar, which was seized under panchnama Exh. 30, tallies with the Article 17.

16. Investigating Officer Devidas Dhumane (P.W.5) had identified Article 17 as the same article, which was discovered on the basis of the statement given by the accused. It appears that he had handed-over the investigation to the other officer on 10th June 2012. However, his signature appears on label of this article. No evidence is given by the prosecution and the covering letter with which the article must have been sent to the C.A. office, is not produced. Muddemal property receipt prepared by the police is on the record but that receipt cannot help the prosecution to connect the property seized in the present matter with the C.A. report. It appears that the clothes of the accused were also seized under panchnama after his arrest and blood was found on his banian. There is C.A. report to that effect but the covering letter is not produced. Due to this circumstance, this Court is not discussing the evidence of the C.A.

report.

17. The aforesaid evidence shows that the prosecution proved that the wife of the appellant died homicidal death and heavy object like metal bar was used to assault her on her head. Police did recover such metal bar on the basis of the statement given by the accused and in the recovery panchnama there is mention that there were bloodstains on this weapon. To some extent, this evidence can be used if there is other convincing evidence to prove that it is the accused, who had assaulted the deceased by using the iron bar. The circumstance that there was blood on his banian when he was arrested on the same day, is also incriminating in nature. They were sleeping in courtyard of house as it was month of June, Summer. In ordinary course, village people sleep with such garments in Summer.

18. Shantabai (PW 3), mother of deceased Surekha, has given evidence that the accused was living in her village Udane with the deceased and her son. It is her evidence that the house of the accused, which was taken on rent basis, was situated at the distance of about 15 feet from her residential place. In cross-examination of this witness, the defence has brought on record that between her house and house of the accused, there is house of Dagdu and there

is a *pan* stall. Due to such admission to the suggestion put to her in cross-examination, it can be said that the distance between the two houses is more than 15 feet but it cannot be inferred that she could not have heard the noise of shouting coming from the house of the accused or from the courtyard of the house of the accused. It is brought on record that these two houses are situated on the same road and on the same side of the road. It needs to be kept in mind that the evidence is given that on that night, the witnesses were sleeping in the courtyard of the house of Shantabai (PW 3) and the incident took place in the courtyard of the house of the accused.

19. Evidence is given by Shantabai (PW 3) that Ramakant (PW 6) was living with the accused and he was in her company. She has deposed that on the previous night, she had taken dinner in the house of the accused and then she and Ramakant (PW 6) were sleeping in the courtyard of her house. She has deposed that at about 4.00 am, she heard noise of the first quarrel, which was going on between accused and the deceased. She has deposed that she and Ramakant (PW 6) went to the house of accused and after settling the dispute, quarrel, she came back to her house. She has given evidence that the quarrel was going on, on the count that accused wanted to have sexual intercourse with the deceased and

the deceased had refused to allow him to have sexual intercourse with her. Shantabai (PW 3) has deposed that she and the deceased then went away for answering nature's call and after answering the nature's call, the deceased again returned to her house for sleeping.

20. Shantabai (PW 3) has given evidence that after returning to the house, the deceased slept on the cot kept in the courtyard of the house of the accused and after some time, she again heard noise of the quarrel. She has given evidence that she and Ramakant (PW 6) again went to the house of accused and she noticed that accused was assaulting the deceased on her head by using iron rod. She has deposed that she noticed that the deceased had sustained injuries on her head. She has deposed that the accused then ran away with the iron rod. She has deposed that she started shouting and crying, due to which persons of that locality gathered there. She has deposed that with the help of her relatives from that village, she shifted the deceased to the Civil Hospital. The doctors from the Civil Hospital declared that Surekha was dead. In the evidence of Shantabai (PW 3) the prosecution has proved the F.I.R. given by her at Exh. 32.

21. The F.I.R. (Exh. 32) is consistent on the material points with the substantive evidence of Shantabai (PW 3). The F.I.R. has

given necessary corroboration to the substantive evidence, as provided under Section 157 of the Evidence Act. The corroboration is on the point of two incidents of quarrels, witnessing of the incident by Shantabai (PW 3) and on both the occasions rushing of Shantabai (PW 3) to the spot of incident when she heard the noise of quarrels.

22. The defence has pointed out that there is no mention in F.I.R. (Exh. 32) that on the second occasion, Shantabai (PW 3) had gone to the spot of incident alongwith Ramakant (PW 6). The evidence on the record shows that Ramakant (PW 6) was aged about 12 years at the relevant time. There is mention of Ramakant in the F.I.R. and the evidence on the first part of the incident that he had gone to the house of accused with Shantabai (PW 3) when the first quarrel took place, is there and there is corroboration of the F.I.R. to that part of the evidence. There is omission in F.I.R. and it does not show that on the second occasion, Ramakant (PW 6) had gone to the spot of incident with Shantabai (PW 3). The defence Counsel submitted that the evidence of Shantabai (PW 3) on the point of presence of Ramakant (PW 6) on the spot of offence at the time of commission of offence is hit by omission of that fact in F.I.R.. Police statement of Ramakant (PW 6) was not recorded U/S. 161 of Cr.P.C. and this circumstance was also argued by the learned Counsel for

the appellant. These circumstances are being discussed while discussing the evidence of Ramakant (PW 6).

23. Shantabai (PW 3) identified Article 12, iron bar, as the weapon when it was shown to her in the examination-in-chief. It is already observed that iron bar having torque was produced as the weapon by the police in the Court though subsequently and the C.A. report is also in respect of such bar. The incident took place in the night time and it can be said that iron bar, which is ordinarily of Black or Gray colour, is not visible in the dark and ordinarily it is not possible for a witness to describe the surface of the bar. Thus, the discrepancy is created due to identification of Article 12 as a weapon in examination-in- chief by Shantabai (PW 3) but that discrepancy cannot go to the root of the matter. Other circumstances are required to be considered. Even if the weapon was not produced in the present matter, the Court could have held that the offence was proved if the direct evidence was convincing in nature. The evidence on the record shows that the witness (PW 3) was recalled and after recalling, Shantabai (PW 3) identified Article 17 as the weapon, which was used in the incident.

24. Ramakant (PW 6) has given evidence, which is similar to the evidence given by Shantabai (PW 3). His evidence shows that

on that night, he was sleeping in the courtyard of the house of Shantabai (PW 3). His evidence shows that when the first quarrel had taken place, he and Shantabai (PW 3) had rushed to the courtyard of the house of accused and after settling the quarrel, Shantabai (PW 3) had taken deceased with her and they had gone away for answering nature's call. Ramakant (PW 6) has given evidence that the deceased had then returned to the house of the accused.

25. Ramakant (PW 6) has deposed that he noticed that after returning to the house after the first incident, the deceased was sleeping on a cot. He has given evidence that he and Shantabai (PW 3) had slept in the courtyard of the house of Shantabai (PW 3). He has deposed that after some time, they heard noise of his mother and then he and his grand-mother Shantabai felt that there was again some quarrel and they rushed towards the spot of offence. He has deposed that he noticed that accused was giving blows of iron rod on the head of the deceased and she sustained bleeding injuries on her head. He has deposed that after seeing them, accused ran away with the iron rod. His evidence shows that his mother was taken to the Civil Hospital, Dhule, by him, Shantabai (PW 3) and other relatives. He identified Article 17 as the weapon,

which was seized during the investigation. In examination-in-chief he has deposed that he had disclosed the incident to police. In cross-examination he has, however, admitted that he had not disclosed the incident to anybody prior to giving evidence in the Court. In any case, his evidence is consistent with the evidence of Shantabai (PW 3), on material points.

26. In the cross-examination, Ramakant (PW 6) has admitted that Shantabai (PW 3) had rushed to the spot first when noise of the second quarrel was heard. He has given few admissions in the cross-examination to the suggestions put to him. He has admitted that when he went there, he noticed that the deceased had sustained injuries and Shantabai (PW 3) had taken head of the deceased on her lap. It was not suggested to him that the accused was not present on the spot when there is specific evidence of this witness that he had seen the accused assaulting the deceased by using iron rod.

27. Adhar Hake (PW 4), a panch witness and the Investigating Officer Devidas Dhumane (PW 5) have given evidence on the spot panchnama, which is proved as Exh. 37. The spot panchnama and the oral evidence show that there is *Ota* portion in-front of the house of the accused and beyond that, there is drainage

channel. The evidence shows that on the *Ota*, there was wooden cot having frame work of nylon rope. The evidence shows that there was blood on its rope. The evidence shows that there were two pairs of chappals i.e. sleeper pair of lady and a pair of gent's chappal near the cot. The evidence shows that two pairs of chappals, earth sample mixed with blood, etc. were taken over under spot panchnama (Exh. 37).

28. In the cross-examination, Adhar (PW 4) has admitted that the distance between the house of Shantabai (PW 3) and the spot of offence is around 500 meters. This admission cannot make much of in favour of the accused as there is direct evidence, which is already discussed above, consisting of specific suggestions given to Shantabai (PW 3) to show the distance between the two spots. Further, in spot panchnama (Exh. 37) it is mentioned that on the North side of house of accused, there is house of Dagdu, which is referred by the Defence Counsel in the cross-examination of Shantabai (PW 3). From the evidence on record, if considered as a whole, it cannot be said that distance between the house of Shantabai (PW 3) and the spot of offence is around 500 meters. It is a village and the evidence on record shows that on the both occasions, Shantabai (PW 3) had rushed to the spot of offence

immediately after starting of the quarrel.

29. Devidas (P.W.5), Investigating Officer, has given evidence that on the day of the incident, he arrested the accused. He has deposed that while in police custody, accused gave him statement in the presence of panch witnesses that he had kept weapon -iron bar in the thorny fencing of one Budha Gosavi. Similar evidence is given by Subhash (PW. 2), panch witness. In his evidence, memorandum of the statement of accused is proved as Exh. 29. Both these witnesses have given evidence that accused then took police and panchas towards the said fencing and from thorny fencing he produced one iron rod having bloodstains. The evidence on record shows that till 26th February 2015 when the examination-in-chief of Devidas (P.W.5) was recorded, weapon Article 17 was not produced in the Court. This witness has specifically stated in her evidence that Article 12 was not the iron rod, which was recovered on the basis of the statement of the accused. Similar evidence is given by Devidas (PW 5). it appears that after said evidence, Article 17 was produced in the Court and on this article there were labels bearing signatures of panchas. These witnesses were recalled and then they identified Article 17 as the weapon recovered by the police. This circumstance needs to be kept

in mind as these witnesses have not given evidence mechanically as per the suggestions of the Prosecutor. Only after production of Article 17, they identified the weapon. There was blood on this weapon. The seizure panchnama of this article is proved as Exh. 30. Exhs. 29 and 30 are consistent to the oral evidence of these two witnesses.

30. Evidence is given by I.O. Devidas (PW 5) on arrest of accused and recovery of his clothes at the time of his arrest. It appears that the C.A. reports at Exh. 57 to 59 are also on the record. In the C.A. report there is mention of human blood found on banian and also the iron bar – Article 17. However, as already observed, covering letter, with which the property was sent to the C.A. office, is not produced by the prosecution and the Carrier Constable is also not examined. Though such evidence is absent, on the basis of evidence given on seizure of weapon and seizure of banian, this Court holds that the prosecution has proved that there was blood on the weapon discovered on the basis of the statement of the accused and there was blood on his banian-inner garment.

31. Circumstantial evidence discussed above shows that it gives general corroboration to the direct evidence of Shantabai (PW 3) and Ramakant (PW 6). There are more circumstances like ,F.I.R.,

was given immediately on the same day and the name of the accused was mentioned therein and the incident was also described in entirety in F.I.R. The defence has not disputed that deceased Surekha was cohabiting with accused at the relevant time. The incident took place after 4.00 am and, in the ordinary course, male persons do not leave the house at such hours for work. Further, the incident took place in the courtyard of the house of accused. That is established by direct evidence and evidence of spot panchnama. So, it was necessary for the accused to offer some explanation about his knowledge in respect of the incident. The evidence on record shows that Shantabai (PW 3) was required to take steps like shifting the deceased to Civil Hospital to save her and to give report about the incident to police. Thus, there are circumstances, establishing that the accused had opportunity to commit the offence and this circumstance is relevant U/S. 7 of the Evidence Act. The absence of any explanation from accused in respect of aforesaid circumstances makes possible for the Court to draw adverse inference against accused as provided U/s. 114 of the Evidence Act.

32. There is corroboration of evidence of motive in the form of evidence of Shantabai (PW 3). She has given specific evidence that on that night, when the first quarrel took place, the deceased

disclosed the reason of the quarrel that the accused was quarreling with her as she was not allowing to have sexual intercourse. No other reason is given for the quarrel by the defence during cross-examination. This motive is established by the prosecution and this evidence is relevant U/S. 8 of the Evidence Act.

33. There is evidence on the record that the accused was working on construction site. Articles like Article 12 or 17 - iron rods are used as construction material. The availability of such bar in the house of the accused and use of said bar for committing such offence, is also relevant in the case like present one U/S. 8 of the Evidence Act.

34. The learned Counsel for the appellant argued much in respect of evidence of Ramakant (PW 6). The Trial Court has held that even if it is presumed that Ramakant (PW 6) had reached the spot when incident was over, in view of the admissions given by him in the cross-examination, there is evidence of Ramakant (PW 6) to prove the offence. The learned Counsel for the appellant submitted that when police statement of Ramakant (PW 6) was not recorded and when he admits that he had not disclosed the incident to anybody prior to giving evidence in the Court, he cannot be believed. This submission is not acceptable. It is already observed

that in the F.I.R., name of Ramakant (PW 6) was mentioned as the witness, who was in the company of Shantabai (PW 3) on that night. There is corroboration of the substantive evidence of Shantabai (PW 3) that when the first incident of quarrel took place, she and Ramakant (PW 6), both together had gone to the courtyard of the house of the accused. The tenor of cross-examination of Ramakant (PW 6) also shows that the defence did not dispute that Ramakant (PW 6) was sleeping in the courtyard of house of Shantabai (PW 3) on that night. If Ramakant (PW 6) had rushed to the spot after the first quarrel, it was possible for him to hear noise of the second quarrel also and he had an opportunity to rush to the spot immediately at the time of second quarrel also and so there is no reason to disbelieve Ramakant (PW 6) in respect of the evidence given by him on the incident in question also.

35. The aforesaid circumstances show that the circumstance of not recording police statement of Ramakant (PW 6) during investigation and not making available such statement to defence, has not caused prejudice to the defence. The provision of Sections 161 and 162 of Cr.P.C. if read together show that the police statement can be used for limited purpose, to contradict a witness and impeach the credibility of a witness, as provided in proviso to

section 162(1) of Cr.P.C. It can be said that contradiction with reference to previous statement of evidence of a witness is possible as provided in Section 145 of the Evidence Act and this section also needs to be read with Section 162 of Cr.P.C. In view of this provision, this Court holds that absence of police statement of Ramakant (PW 6) is not such a circumstance in the present matter that the evidence of Ramakant (PW 6) needs to be discarded.

36. There is one more provision, like Section 165 of the Evidence Act. It gives power to the Court to call any person and examine him as a witness if the examination is necessary for deciding the matter or for unearthing the truth. The evidence of Ramakant (PW 6) shows that his evidence is not there to fill in lacuna as there was no lacuna in the evidence of Shantabai (PW 3). It can be said that Ramakant (PW6) is a son of accused and as the deceased was a daughter of Shantabai (PW 3), the evidence of Ramakant (PW 6) was necessary to confirm that Shantabai (PW 3) was telling the truth. So, this Court holds that examination of Ramakant (PW 6) as a witness was within the power of the Court and his examination has not caused prejudice to the defence.

37. The discussion of the evidence made above shows that the prosecution has proved that it is the accused-husband of the

deceased, who committed her murder by using iron bar as weapon. This Court holds that the Trial Court has not committed any error in convicting appellant-accused for the offence of murder and there is no reason to interfere in the decision given by the Trial Court.

38. In the result, the appeal stands dismissed.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Madkar