

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

CRIMINAL APPEAL NO. 581 OF 2014

Bhatu S/o Himmat Akhade,
Age : 29 years, Occu. Labour,
R/o. Bhagwan Housing Society,
Mahindale Shivar, Dhule.

.. Appellant
(Orig. Accused)

Versus

The State of Maharashtra,
Through Police Station Officer,
Dhule Taluka Police Station,
Dhule, Tq. & Dist. Dhule.

.. Respondent

...
Mr P. S. Paranjape, Counsel for the appellant
Mr. P. S. Patil, Additional Public Prosecutor for the respondent /
State

...

**CORAM : SUNIL P. DESHMUKH
AND
B. U. DEBADWAR, JJ.**

**Reserved on : 13-08-2020
Decided on : 21-08-2020**

JUDGMENT [Per : B. U. Debadwar, J.] :-

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") has been preferred against the Judgment & Order dated 15.07.2014, passed by learned Additional Sessions Judge, Dhule, in Sessions Case No. 93 of 2013, whereunder appellant is convicted of offences punishable under Sections 302 and 309 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and has been sentenced respectively, to suffer life imprisonment

and to pay fine of Rs. 5000/-, in default of payment of fine, to suffer further simple imprisonment for six months for the offence under Section 302 of the IPC and to suffer simple imprisonment for one year and to pay fine of Rs. 1,000/-, and in default of payment of fine, further simple imprisonment for two months for the offence under Section 309 of the IPC.

2. Facts of the case unfolded before trial Court may be summarized as follows: -

Deceased – Sangita was the wife of appellant-accused and younger sister of Mangesh Ratan Sonawane-first informant, resident of Subhash Nagar, Old Dhule. Marriage of Sangita with appellant was solemnized about five years prior to the incident. Deceased Sangita, from the wedlock with appellant, gave birth to two children namely; Krushna and Divya. Appellant was the Auto-rickshaw driver. He used to ply his own Auto-rickshaw as a source of livelihood. He was addicted to vices viz. drinking and gambling. From the beginning, he used to ill-treat his wife Sangita raising doubt about her fidelity. Though deceased-Sangita made complaint to her parents and brother about harassment and ill-treatment being meted out by the appellant raising doubt about her character, they did not take criminal action against the appellant, however, time and again, gave him understanding but no change took place in attitude and

conduct of the appellant. On fateful day i.e. 09.02.2013, the appellant while present in the house along with wife Sangita and both the children, at about 06:15 a.m. after picking up quarrel committed assault on person of Sangita by giving blows of pestle (मुसळ) and Blade on her neck and other vital organs of the body with an intention to finish her. The injuries caused by the appellant were so serious that Sangita succumbed to those injuries instantly. After causing the death of wife Sangita, appellant attempted to commit suicide by inflicting injuries on his neck and both the hands by sharp edged object. One Shobhabai, resident of Subhash Nagar, Old Dhule, where appellant was residing with his family, informed about the aforesaid incident to Sonali, younger sister of the deceased Sangita, on her cell phone. Sonali, in turn, informed the same to her elder brother Mangesh Ratan Sonawane. Upon getting the information, Mangesh Ratan Sonawane, brother of deceased – Sangita along with one Bharat (brother-in-law of appellant) rushed to the house of the appellant situated at Subhash Nagar, on motorcycle and verified the situation i.e. Sangita's lying on the mattress in her house in pool of blood with multiple grievous injuries on her person. After getting the details about the incident from the inhabitants of the locality who had gathered near the house of the appellant including Shobhabai, he realized that, after

committing assault on wife Sangita, appellant moved out of the house in injured state and in naked condition, therefore, shifted to Civil Hospital, Dhule. He then visited the Civil Hospital, Dhule, saw the appellant being treated there and thereafter lodged the FIR at about 8:15 hrs. on very same day.

3. On the basis of FIR lodged by Mangesh Ratan Sonawane (first informant), Crime bearing no. 33/2013 came to be registered at Rural Police Station, Dhule, against the appellant for the offence under Sections 302 and 309 of the IPC. During the course of investigation, spot panchanama was drawn, articles lying on the spot were seized, dead body of Sangita was sent to the Civil Hospital at Dhule for autopsy, after preparing inquest panchanama, statements of material witnesses including Dr. Ajit Patil (PW1), who conducted post-mortem on the dead body of deceased Sangita, Krushna Akhade (PW4) a minor son of the appellant and deceased Sangita, Mahesh Abhimanyu Pagare (PW3) who opened the grille door of the house of the appellant using tommy and then carried the appellant to the various hospitals in his Taxi Jeep, then sent muddemal articles seized from the spot to the Forensic Lab for examination & report, arrested the appellant drawing memo, collected post-mortem report and injury certificate of appellant and CA report from the Medical and Forensic Authorities, respectively and after

completion of investigation, charge-sheeted the appellant before the Judicial Magistrate First Class, Dhule for the offences punishable under Sections 302 and 309 of the IPC.

4. Learned Judicial Magistrate First Class, Dhule, committed the case to the Court of Sessions, Dhule, as the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions. In turn, Sessions Judge, Dhule made it over after registering it as Sessions Case No. 93 of 2013 to the Additional Sessions Judge, Dhule, who after hearing Additional Public Prosecutor and Defence counsel, framed charge for the aforesaid offences against the appellant–accused on 20.07.2013 vide Exh. 4, read over the same in vernacular to the appellant–accused, to which he pleaded not guilty and claimed to be tried. As such, conducted the trial and at it's conclusion, held the appellant guilty as stated above.

5. While taking us through evidence on record, Shri. P. S. Paranjape, learned counsel for the appellant vehemently argued that, the impugned judgment and order, suffers from many factual and legal aspects. Learned Addl. Sessions Judge, Dhule failed to appreciate the evidence on record in proper perspective and arrived at wrong conclusion. Learned Addl. Sessions Judge failed to appreciate that the prosecution has not

examined material witness Shobhabai from whom Mangesh Ratan Sonawane (PW2) received the information about alleged incident. Non-examination of Shobhabai, though she was available, is serious lapse on the part of the prosecution. Besides, the learned Sessions Judge failed to appreciate that, Krushna Akhade (PW4), a child witness was fully tutored by Mangesh Ratan Sonawane, first informant and his maternal uncle. Ld. Additional Sessions Judge, Dhule wrongly put Master Krushna Akhade (PW4) into the category of eye-witnesses and blindly believed his version. Evidence of Dr. Ajit Patil (PW1) has been wrongly believed by learned Addl. Sessions Judge, though it was too vague to prove as to which injury was probably caused by which object alleged to be seized from the spot. Though the prosecution has failed to prove the contents of Injury Certificate of appellant (Exh.23), Addl. Sessions Judge, relied on the same and wrongly held that appellant got inflicted the same in attempt to commit suicide.

6. According to Mr. P. S. Paranjape, learned counsel for the appellant, alleged act of the appellant moving inside and outside the house after allegedly committing the crime in naked condition is not normal act. No sane person would move after committing such a serious crime in naked condition in a locality where his house situates. Such abnormal conduct of the

appellant establishes that, at the relevant time, the appellant was of unsound mind and u/s 84 of the IPC, nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. It was the duty of the Investigating Officer, having regard to the abnormal behavior of the appellant, to refer him to the Psychiatrist for examination. No such attempt was made by the Investigating Officer. Ld. Addl. Sessions Judge has also not considered this material aspect and as such, has wrongly held the accused guilty.

7. It is the contention of Mr. P. S. Paranjape, learned counsel for the appellant that, severe injuries on vital part i.e. neck suffered by the appellant clearly indicate that, during the alleged quarrel, deceased-Sangita and accused inflicted injuries to each other. Having regard to the same, it was necessary on the part of the Investigating Officer to investigate as to who initiated the quarrel and as to who was the aggressor but he failed to investigate into this material aspect. According to Mr. P. S. Paranjape, in view of the case of prosecution and evidence on record, possibility of committing assault on Sangita and appellant both by third person cannot be ruled out. There is no explanation about the serious injuries suffered by the

appellant from the side of prosecution. Impugned judgment and order as far as offence of attempt to commit suicide, is based on assumption and surmises. Ld. Addl. Sessions Judge also failed to appreciate aforesaid two material aspects like other aspects discussed above and held the accused guilty for offences of murder and attempt to commit suicide, though there was no clear, cogent and convincing evidence. Thus, appellant deserves to be acquitted by allowing appeal and setting aside impugned judgment and order. In support of his contention, Mr. P. S. Paranjape, learned counsel representing the appellant placed his reliance on two judgments rendered by Hon'ble Supreme Court. One is **Lakshmi Singh and Ors. Vs. State of Bihar** (Criminal Appeal Nos. 284 and 285 of 1971), decided on 10.09.1976 and another is **Majid and Ors. Vs. State of Maharashtra and Ors.** (Criminal Appeal No. 132 of 2008) arising out of S.L.P. (Cri.) No. 2809 of 2007, dated 21.01.2008.

8. Per contra, Mr. P. S. Patil, learned Addl. Public Prosecutor vehemently argued that, incident took place within the four walls early in the morning. At the time of incident, except appellant, deceased-Sangita and their two tender aged children, nobody was present. People residing in neighbouring houses including Mahesh Abhimanyu Pagare (PW3) rushed to the house of the appellant and deceased Sangita, on hearing the

cries of their children. At that time the house was locked from inside. Appellant has not disputed the genuineness of most of the documents relied upon by the prosecution including spot panchanama, inquest panchanama, clothes seizure panchanama under which clothes on the person of the deceased Sangita after autopsy were seized, post-mortem report, injury certificate etc. Spot panchanama (Exh.17) throws light as to how appellant brutally killed his wife Sangita. Evidence on record establishes that, at the time of incident, the house where the incident took place was locked from inside. Mahesh Abhimanyu Pagare (PW3) clearly deposed that, he along with one Sonu opened the grille door of the house by means of Tommy, as appellant did not remove the lock and open the door, despite being requested. When incident took place, house was locked from inside and except appellant, deceased Sangita and their very tender aged two children, nobody was present in the house, burden lies on the appellant to explain as to how wife Sangita succumbed to the multiple injuries and also as to how he suffered injuries on his neck and wrist of both the hands. He has not given any explanation on both the aspects. Circumstances came on record through spot panchanama and conduct of the accused after incident prove that, initially after picking up quarrel, with the help of pestle (मुसळ), sword and blade, appellant caused multiple

grievous injuries on the vital parts of deceased-Sangita including neck and thereafter he attempted to commit suicide by getting inflicted injuries on his neck and both the hands by same blade which was used for inflicting injuries to deceased-Sangita. Spot panchanama also demonstrates that, in attempt to commit suicide, appellant also tried to get ablazed by moving to latrine after removing the clothes and burning the same. Circumstantial evidence on record is cogent and satisfactory to explain the injuries suffered by appellant. Therefore, submissions pertaining to non-explanation of injuries suffered by the appellant bear no force.

9. As far as non-examination of Shobhabai, Mr. P. S. Patil, learned APP submitted that, Shobhabai was the person like other neighbours rushed to the house of the accused after hearing cries of the children. Whatever she saw inside the house from outside, informed the same to Sonali, younger sister of the deceased -Sangita. She was not the actual eye-witness of the incident. Looking to her role referred to above, her examination as a witness was not necessary. As such, no adverse inference as argued by learned counsel representing the appellant can be drawn.

10. According to Mr P. S. Patil, learned APP, merely on

the basis of abnormal conduct of the appellant after commission of crime i.e. moving in naked condition, inference of his unsoundness of mind cannot be drawn. Burden was on the appellant to prove that the case is covered by exception. He has not adduced any *prima facie* evidence to prove his unsoundness of mind, therefore, arguments made by learned counsel representing the appellant based on Section 84 of the IPC, cannot be considered.

11. Mr. P. S. Patil, learned APP further submitted that, Krushna Akhade (PW4), son of appellant and deceased Sangita was present in the house when the incident took place. He was 4 year old tender aged child. His evidence reveals that, he saw the incident not fully but, partially. However, his evidence lends full support to the case of prosecution that it was the appellant who committed assault on deceased-Sangita after picking up quarrel with her. According to Mr. P. S. Patil, learned APP, even if the case is treated to be based on only circumstantial evidence, the circumstances proved by the prosecution are quite cogent and sufficient to prove the guilt of the accused. As far as charge under Section 302 of the IPC is concerned, the case is squarely covered under clauses 2 and 3 of Section 300 of the IPC. So also, circumstantial evidence proves beyond doubt that, injuries suffered by the appellant were self-inflicted injuries. Those were

inflicted after committing murder of wife Sangita while attempting to commit suicide. Therefore, impugned judgment and order is correct, proper and legal on all aspects, as such, no interference therein is called for. In support of his submissions, Mr. P. S. Patil, learned APP, placed reliance on four judgments, out of which three were rendered by the Hon'ble Supreme Court and remaining one is rendered by this Court, viz.,

- 1] **Brajendrasingh Versus State of M.P.**
2012 AIR (SC) 1552
- 2] **Rafiq Ahmed @ Rafi Versus State of U.P.**
2011 AIR (SC) 3114
- 3] **Dattu Ramrao Sakhare Versus State of Maharashtra**
1997 (5) SCC 341
- 4] **Rajendra Pandurang Sonwane Versus State of Maharashtra**
2012 (3) Bom. C.R. (Cri.) 393

12. The intense scrutiny of the evidence adduced by the prosecution reveals that, the case of the prosecution is mainly resting on the circumstantial evidence. Though Krushna Akhade (PW4), a tender aged child, was present in the house when the incident took place, he had not seen the incident in its entirety and his evidence is restricted to appellant's giving blows of pestle (मुसळ) to the deceased-Sangita after picking up quarrel with her, therefore, he cannot be treated as eye-witness of the entire incident.

13. The prosecution primarily kept implicit reliance on the following incriminating circumstances to bring home the guilt of the accused.

- [i] Appellant was suspecting infidelity by deceased Sangita and mal-treating and ill-treating her constantly on that count.
- [ii] Though the family of appellant was consisting of wife Sangita, their two tender aged children, his parents and brother, however, on the fateful day, except appellant, deceased-Sangita and their two tender aged children, nobody was present in the house.
- [iii] Much prior to the incident, parents of appellant had left the house for visiting Char Dham Yatra (Four Pilgrimage Sites in India), whereas, on earlier day of incident, brother of the appellant by name Nitin had left the house and gone to Shegaon.
- [iv] The house of the appellant where the incident took place was consisting of three rooms situated one after one. Main entrance of that house was facing to north. Articles lying in the house viz. quilt, mattress, bed-sheets, sword, blades and wooden log/logs were stained with blood. Besides, blood was spread in large quantity in all the three rooms and also in latrine.

- [v] Ash of the burnt clothes found in latrine.
- [vi] Main door of the house was made of iron grille and it was locked from inside.
- [vii] On breaking open the grille door with the help of 'tommy', a weapon of bending and cutting steel, appellant came out of the house in naked condition in injured state.
- [viii] Hair on the head of the appellant were burnt.
- [ix] It was Mahesh Abhimanyu Pagare (PW3), who shifted appellant initially to the private hospital and then finally to the Civil Hospital at Dhule, in his Taxi-Jeep.
- [x] Appellant-accused neither disputed injuries suffered by the deceased-Sangita nor injuries suffered by him.
- [xi] Appellant has not given plausible explanation about the injuries suffered by deceased-Sangita and injuries suffered by him.

14. In the instant case, the issue of homicidal death of deceased Sangita was not seriously disputed by the appellant. Dr. Ajit Patil (PW1) has conducted autopsy on the dead body of the deceased-Sangita. Post-mortem report (Exh.18) not disputed

by appellant and proved in his evidence establishes following surface wounds and injuries and also corresponding internal injuries.

Surface wounds/injuries:-

1. Chop wound over neck anteriorly at the level of thyroid cartilage 7.5 cm in length & 3 cm maximum breadth, cavity deep, oval in shape, margins clean-cut with underlying structures (trachea, muscle & vessels) cut through & through.
2. Incised wound 0.5 cm below lower margin of injury no. 1) 1.5 cm x 0.5 cm x cavity deep, margins clean-cut.
3. Multiple incised wounds over Ltd. Wrist flexor aspect over area of 4 x 2.5 cm, underlying tissues & vessels cut & bones exposed.
4. CLW over (Rt.) eyebrow 2 cm x 0.5 cm x bone deep, swelling present over surrounding area of (Rt) side of forehead.
5. (Lt.) ear lobule cut through & through in middle portion approx. 1.5 cm in length.
6. (Lt.) ear pinna cut through & through in middle portion approx. 2 cm in length.
7. Swelling over (Lt.) mandibular region 5 x 3 cm.

8. Incised wound over (Lt.) forearm middle 1/3rd 1 cm. X 0.5 cm x muscle deep.
9. Contusion over (Lt.) shoulder posteriorly 6 x 4 cm.

Internal injuries:-

1. Haematoma & frontal (Lt.) parietal regions of scalp.
2. Depressed frontal bone (Rt.) side.
3. Brain-pale. Cerebral oedema.

15. After conducting Post-mortem, Dr. Ajit Patil (PW1) opined that, death of deceased Sangita was caused due to shock and hemorrhage following cut in throat injury with multiple incised wounds over the wrist. In addition to that, Dr. Ajit Patil (PW1) clearly deposed that, injury no. 4 i.e. CLW over (Rt.) eyebrow 2 cm x 0.5 cm x bone deep, swelling present over surrounding area of (Rt.) side of forehead mentioned in clause 17 of post-mortem report (Exh.18), could be possible by means of pestle (मुसळ) (article 15) and injury no. 3 mentioned in clause 17 viz. multiple incised wounds over (Lt.) wrist flexor aspect over area of 4 x 2.5 cm, underlying tissues & vessels cut & bones exposed, could be possible by blade (article 10). It is pertinent to note that, appellant did not cross-examine Dr. Ajit Patil (PW1) though opportunity of cross-examination was given to him. From the

deposition of Dr. Ajit Patil, it is clear that, appellant through his advocate had declined to cross-examine him. When appellant did not dispute genuineness of the post-mortem report (Exh.18), in reply to the notice under Section 294 of the Cr.P.C. and by way of declining to cross-examine Dr. Ajit Patil (PW1), who conducted post-mortem and issued post-mortem report (Exh.18), merely on the basis of bracketed remark made by Id. Addl. Sessions Judge in para no. 1 of deposition of Dr. Ajit Patil (PW1) that "admitted in the evidence on behalf of the defence, by which the defence cannot raise any objection about the contents of P.M. Notes vide Exh.18", inference cannot be drawn that learned Addl. Sessions Judge prevented the appellant-accused from cross-examining Dr. Ajit Patil (PW1). Had the remark of declining to conduct the cross-examination by appellant through advocate not appeared in the deposition of Dr. Ajit Patil (PW1), such inference could have been possible. Said remark makes it clear that, opportunity to cross-examine Dr. Ajit Patil, who conducted the post-mortem on the dead body of Sangita and issued post-mortem report (Exh.18) was given to the appellant, however, he willingly declined to cross-examine him. Therefore, the submissions made by Mr. P.S. Paranjape, learned counsel representing the appellant, merely based on aforesaid remark bear no force and substance and on the basis of said submissions, surface wounds and injuries and internal injuries

suffered by deceased-Sangita cannot be said to be unproved. Injuries found on the body of deceased Sangita mentioned in post-mortem report (Exh.18) also get support from Inquest Panchanama (Exh.14) and ocular evidence of Mahesh Abhimanyu Pagare (PW3), which are not disputed by the appellant. Thus, aforesaid injuries are clear, cogent and sufficient to establish that death of Sangita is homicidal.

16. Once it is proved that, death of Sangita is homicidal, then question arises as to the nexus and proximity of the appellant-accused with death of Sangita. We have already referred to in foregoing paragraphs that, the case of the prosecution is based on circumstantial evidence. To prove the circumstances connecting the appellant with the homicidal death of Sangita, prosecution has examined as many as six material witnesses and has placed reliance on Spot Panchanama (Exh.17), Cloth Seizure Panchanama (Exh.16) and Injury Certificate of appellant (Exh. 23).

17. Mangesh Ratan Sonawane (PW2, brother of deceased-Sangita and first informant), is an important witness. Material portion of his testimony, which is corroborated by FIR (Exh.26), runs as under:

. "Deceased-Sangita was residing at her matrimonial house situated at Bhagwan Society, Dhule, along with husband (appellant-accused), two children namely, Krushna, aged four years and Divya, aged two years, parents-in-law and brother-in-law. Appellant-accused was in habit of drinking and gambling. He used to pick up quarrel with deceased-Sangita and beat her after raising doubt about her character. On 09.02.2013, at about 06:00 a.m., his younger sister Sonali received phone call of Shobhabai informing about killing Sangita by the accused after picking up quarrel and accused's wandering in courtyard in naked condition by holding sword with him. In pursuance of the said phone call, he along with Bharat (brother-in-law of the accused) rushed to the house of the accused situated at Bhagwan Society, Old Dhule. After reaching there, he found door of the house was opened and his sister-deceased Sangita was lying on the mattress. Besides, he found injuries on her neck so also he saw wooden rod (मुसळ) and sword lying there. He also saw pieces of bangles including Mani Mangalsutra scattered there. He noticed blood on the neck of sister Sangita. He found Sangita in dead condition. On enquiry, Shobhabai, who was present outside the house, told him that, quarrel of his sister Sangita and accused was going on since dawn (early morning) and during the said quarrel, his sister died. Besides, Shobhabai told him that, accused was wandering outside the house in naked condition. Accused was taken to the hospital. Prior to that, he was found in a vehicle hiding himself. He had seen the accused visiting the hospital in injured state. He noticed injuries on his neck, ear and wrist of both the hands. Besides, he found hairs on the head of the accused burnt to some extent. Thereafter, he went to Police Station and lodged the report (Exh.26) about the incident."

18. Aforesaid testimony of Mangesh Ratan Sonawane (PW-2) gets full corroboration from the FIR (Exh.26) lodged by him. It is true that, there are some omissions in his testimony. They are pertaining to accused's wandering outside the house in naked condition with sword and accused was hiding himself in vehicle known as 'Kali-Piwali' (काली-पिवळी), but merely on the basis of said omissions, which are of little significance, his

testimony on material particulars including motive, cannot be discarded. On the contrary, material came on record through his cross-examination strengthens the case of the prosecution that, on fateful day, except accused, Sangita and their two tender aged children, nobody was present in the house.

19. Nothing is brought on record through cross-examination of Mangesh Ratan Sonawane (PW2), which would create doubt about his version before the Court. It is pertinent to note that, material circumstances appearing on record through the evidence of Mangesh Ratan Sonawane (PW2) have not been denied by the appellant-accused giving suggestions. Therefore, there is no reason to discard evidence of Mangesh Ratan Sonawane (PW2), which throws light on relevant aspects viz. character of accused i.e. he was in habit of drinking and gambling, him ill-treating wife-Sangita after raising doubt about her fidelity. After information received from Shobhabai, he rushed to the house of the accused, saw sister-Sangita lying in injured state inside the house and also saw the accused in hospital in injured state and naked condition.

20. Mahesh Abhimanyu Pagare (PW3), neighbouring person, is also material witness. The material portion of his evidence is as under:-

. "His house is situated in front of house of the appellant-accused. Accused was residing in his house along with wife, parents and children. On the day of incident, parents of the accused had gone to visit four pilgrimage sites in India (Char Dham Yatra) and brother of the accused namely Nitin had gone to Shegaon. On 09.02.2013, at about 06:00 a.m., he heard the noise of Krushna, the tender aged son of appellant-accused and deceased-Sangita. On hearing the noise of Krushna, he awakened from sleep and went towards the house of the appellant-accused and on reaching there, saw through the door of the house that accused was wandering in naked position. The house of the accused was in locked condition. It was locked from inside. He also saw the children were weeping in the room by sitting on the cot in front room and saying 'Papa open the door'. He asked the accused to open the lock of the house but, accused was unable to hear as he has received cut injury to his neck. Accused had also received injuries to wrists of both the hands. Deceased-Sangita was lying in the house in pool of blood. She did not respond to the call given by him. He with the help of Sonu opened the door by pulling the same by means of tommy. On opening the door, accused came outside the house in naked condition. After entering into the house, they confirmed that, Sangita died. Wooden log (Musal), Sword and Blades found lying there. Blood was spread in the kitchen room. He found clothes viz. Blanket, Shirt and Pant were burning in the latrine. After coming out of the house, he found accused wandering there in naked condition. He along with Sonu put the accused in his vehicle. Accused was making signs but they were unable to understand the signs. He took the accused to the hospital. He identified the muddemal articles viz. Wooden Rod (Musal), Sword and two Blades found lying in the house. From his cross-examination, it has come on record that, the door of the house of the accused, locked from inside, was grill door with net and soon after his opening the door with the help of tommy, accused moved outside the house in frightened condition. In further cross-examination, he has made it clear that, Mangesh Ratan Sonawane (PW2) came to the spot before his taking the accused in his vehicle to the hospital."

21. Thus, from the aforesaid evidence of Mangesh Ratan Sonawane (PW2), it is crystal clear that, when the incident took place, the grille door of the house of accused was locked from inside and he forcibly opened said door with the help of 'tommy'.

His evidence in respect of the above fact is corroborated by spot panchanama (Exh.17) and evidence of Ramrao Sonawane-Investigating Officer (PW6) at Exh.33. Spot panchanama (Exh.17) & sketch map (Exh.21), demonstrate that, the house of accused had two doors, front door was facing north and backside door was facing south. Ocular evidence of Mahesh Abhimanyu Pagare (PW3) as discussed above, abundantly makes it clear that, when the incident took place, front door was locked from inside. As far as backside door is concerned, Ramrao Sonawane-Investigating Officer (PW6) in his evidence at Exh.33 deposed that, it was in closed condition when he visited the house of the accused immediately after receiving the information about the incident and had inspected the same. This statement of Ramrao Sonawane-Investigating Officer (PW6) has not been challenged by the accused during cross-examination by giving suggestion denying the same. The evidence of Ramrao Sonawane-Investigating Officer (PW6) lends full corroboration to the evidence of Mahesh Abhimanyu Pagare (PW3) as well as Mangesh Ratan Sonawane (PW2 & first informant) on material aspects. It is pertinent to note that, through the scanty cross-examination of Ramrao Sonawane-Investigating Officer (PW6), nothing is brought on record on the basis of which, case of the prosecution can be discarded.

22. Master Krishna Akhade (PW-4), son of deceased Sangita and the appellant –accused, was 4 year old tender aged child. It is abundantly clear from the evidence of Mr Mangesh Sonawane (PW-2) and Mr Mahesh Pagare (PW-3) that, Krishna Akhade (PW-4) was present in the house when the incident took place. As already referred to in foregoing paragraphs, master Krishna Akhade (PW-4) had not seen entire incident. Material portion of his testimony is as under:

“I am taking education in Balwadi. My mother’s name is Sangita. The name of my father is Bhatu. The name of my sister is Divya. There was quarrel on that day in between my mother and father. My father beat to my mother by means of wooden log. I had seen the said incident. There was smoke in the house. Door was opened by Sonu uncle and Golu Uncle.”

23. Record reveals that, before recording the evidence learned Additional Sessions Judge, Dhule ascertained as to whether master Krishna Akhade is a competent witness and whether oath can be administered to him by putting certain preliminary questions. Record further reveals that, considering very tender age of master Krishna Akhade, learned Additional Sessions Judge, Dhule decided not to administer oath to him. During cross-examination master Krishna Akhade clearly stated that, he had been awakened from sleep hearing shouting, which clearly establishes that, he had seen the incident not fully, but partly. Nothing is brought on record through his

cross-examination, on the basis of which, his evidence can be discarded branding it to be tutored. No doubt, cross-examination of master Krishna Akhade (PW-4) reveals that, 1½ months prior to recording of his evidence maternal uncle Mangesh Sonawane (PW-2) had taken him to his house from the house of parental grandfather and grandmother. Merely for the reason that, master Krishna Akhade (PW-4) was in the custody of Mangesh Sonawane (PW-2) prior to his entering into the witness box, inference cannot be drawn that, Mr Mangesh Sonawane (PW-2) had tutored him before coming to the court for giving evidence. It is pertinent to note that, on very next day of the incident, statement of master Krishna Akhade under Section 161 of CrPC was recorded. Testimony of master Krishna Akhade is free from any omission or contradiction. Since the statement of master Krishna Akhade (PW-4) under Section 161 of CrPC was recorded on very next day of the incident when he was in the custody of parents of the appellant, question of his tutoring at that time by his maternal uncle Mr Mangesh Sonawane (PW-2) does not arise.

24. In the matter of **Dattu Ramrao Sakhare Vs. State of Maharashtra, 1997 (3) Mh.L.J. 452**, the Hon'ble Supreme Court while dealing with the aspect of competency and credibility of child witness under Section 115 of the Indian Evidence Act, 1872, in paragraph no.5 of the Judgment, held as under :

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

25. It can be gathered very well that, the evidence of master Krishna Akhade (PW-4) in the light of the aforesaid principles laid down by the Hon'ble Supreme Court, referred above, is reliable one and there is no likelihood of him being tutored. When tests of reliability and free from tutoring are satisfied, merely for the reason that oath was not administered to master Krishna Akhade (PW-4), his evidence cannot be kept out of consideration under Section 118 of the Indian Evidence Act, 1872. From any angle, the arguments advanced by Mr P.S. Paranjape, learned counsel for the appellant-accused that, master Krishna Aakhade was not only incompetent, but also tutored child witness, cannot be accepted, since nothing is brought on record to substantiate the same either from his cross-examination or from any *prima facie* cogent evidence.

26. Section 106 of the Indian Evidence Act, 1872 provides that, 'when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him'.

27. In case at hand, it is proved beyond doubt that, at the time of incident, except Sangita, the appellant – accused and their two tender aged children, nobody was present in their house, which was locked from inside. It has also been proved very well that, elder child master Krishna was tender aged child, below 5 years and daughter of deceased Sangita and appellant by name Divya was younger to Krishna (PW-4) was hardly three year old. As already stated earlier that, master Krishna Akhade (PW-4) had not seen the incident fully and whatever incident he had seen, had been stated before the Court. In such circumstances, under Section 106 of the Indian Evidence Act, 1872, burden lies on the appellant - accused to explain by adducing *prima facie* evidence as to how incident took place. At the cost of repetition, we may say that, the appellant – accused has not brought on record any material fact either from cross-examination of witnesses examined by prosecution or by producing any defence witness on the basis of which inference can be drawn either that during fateful morning at the instance of Sangita quarrel broke out and in that quarrel Sangita had attacked appellant and while defending himself he

assaulted Sangita or that some third person either for committing theft or for other reason had entered into the house and assaulted Sangita and appellant, both. The discussion hereinbefore rules out possibility of third person entering into the house when the incident took place. Therefore, the possibility argued by Mr P.S. Paranjape, learned counsel for the appellant holds no water. In the absence of even semblance, possibility of quarrel with Sangita and her attacking appellant gets ruled out completely.

28. In addition to the motive behind crime, evidence came on record makes it clear that, it was the appellant who in the fit of anger picked up quarrel with wife Sangita and brutally assaulted her by means of sharp edged object viz. sword, blade and hard and blunt object viz. pestle (musal) recovered from the spot under panchanama (Exh.17), which is not denied by the appellant-accused.

29. It is important to note that, shortly after the incident spot panchanama (Exh.17) was drawn and under that panchanama all the incriminating articles lying there were seized and on very next day those articles were sent to Forensic Lab, Nashik for examination and report under requisition (Exh.19). CA report (Exh.11) speaks volumes that, the blood group of

deceased Sangita was 'B' and all the articles seized from the spot bore the group 'B' blood stains. This is also the clinching circumstance, which entwines guilt of the appellant – accused.

30. The appellant – accused used to suspect infidelity by Sangita, therefore, the relations between them were strained. This would certainly provide as a motive for the offence. The evidence of Mr Mangesh Sonawane (PW-2) on this important aspect went unchallenged. The appellant - accused has not denied the same by giving suggestion during his cross-examination, also strengthens the case of the prosecution that it was none other than appellant- accused who inflicted very serious injuries on vital parts of deceased Sangita. Post-mortem report (Exh.18) shows the gravity of those injuries. Having regard to the totality of evidence, it can be said without hesitation that, the injuries suffered by deceased Sangita were sufficient in ordinary course of nature to cause her death and the appellant - accused caused the same with intention, therefore, the case of prosecution is squarely covered by clause three of Section 300 of IPC.

31. As far as submissions made by Mr P.S. Paranjape, learned counsel for the appellant – accused, of unsoundness of mind of the appellant – accused when incident took place and

benefit of Section 84 of the IPC, we may say that, plea of unsoundness of mind of the appellant – accused was not taken either at the time of remand or at the time of framing charge or thereafter till judgment was pronounced by learned Additional Sessions Judge, Dhule. For first time during the course of final argument, Mr Paranjape, learned Counsel, raised such plea since appellant – accused was found moving naked after the incident inside and outside the house, without being supported by any evidence.

32. Section 84 of the IPC contemplates that, 'nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.'

33. Section 105 of the Indian Evidence Act, 1872, deals with the burden of proving case of accused comes within exceptions. According to this provision, 'when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the

Court shall presume the absence of such circumstances.'

34. In the case of **Shrikant Anandrao Bhosale Vs. State of Maharashtra, 2003 SCC (Cri) 144**, the Hon'ble Supreme Court held as under:

"The burden of proving the existence of circumstances bringing the case within the purview of Section 84 of IPC lies upon the accused under Section 105 of the Indian Evidence Act. Under the said section, the court shall presume the absence of such circumstances. Undoubtedly, the state of mind of the accused at the time of the commission of the offence is to be proved so as to get the benefit of the exception. Further, the nature of the burden of proof on the accused to prove insanity is no higher than that which rests upon a party to civil proceedings."

35. In case at hand, the appellant – accused has not adduced any evidence on the point that, he was suffering from unsoundness of mind prior to the incident, at the time of incident or thereafter so as to prove the same on preponderance of probability. It is pertinent to note that, neither suggestions to this effect were not given to the witnesses examined by the prosecution during the course of their cross-examination, nor has brought on record medical papers showing that, the appellant was and / or is taking treatment for unsoundness of mind or insanity. He has also not stated anything in respect of the same in his statement recorded under Section 313 (1)(b) of CrPC. Under such circumstances, merely having regard to the

fact that, the appellant – accused after incident was found moving in naked condition, it cannot be held that, at the time of incident, he was insane and the fact of insanity has been proved by him on the preponderance of probabilities as contemplated in Section 105 of the Indian Evidence Act, 1872.

36. Spot panchanama (Ex.17) and evidence of Mr Ramrao Sonawane, Investigating Officer (PW-6) reveal that, after committing brutal murder of wife Sangita the appellant – accused being terribly frightened, out of fear took decision to commit suicide and in attempt to commit suicide initially got inflicted injuries on his neck and wrist of both the hands by the blade and then tried to burn himself. However, him being taken to the hospital by Mr Mahesh Pagare (PW-3), he survived.

37. Injury Certificate (Exh.23), genuineness of which not disputed by the defence, demonstrates that, during the incident, referred above, the appellant – accused suffered in all four injuries viz. right hand ventral surface three cut margins, left hand ventral surface one cut margin, cut in throat 3x4 cm vertically, abrasion over chest and legs. In addition to that, this Injury Certificate (Exh.23) states that, ash was seen on head (as he tried to burn himself) and blood all over the body.

38. Injury Certificate (Exh.23) clearly demonstrates that,

aforesaid injuries were inflicted by appellant - himself. Thus, Injury Certificate (Exh.23) lends support to the circumstantial evidence, discussed above, establishing that after commission of murder of Sangita, appellant - accused out of fear not only burnt his clothes which were removed from his person, but also attempted to commit suicide by burning and causing injuries himself. Since appellant - accused had removed clothes on his person and burnt the same after the incident, he had no other option than to move inside and outside the house, after opening the grille door of the house by Mr Mahesh Pagare (PW-3), in naked condition. This circumstance makes it clear that, how the defence of insanity is not correct and is an afterthought.

39. In the course of statement recorded under Section 313 of the CrPC, the appellant - accused has admitted some of the incriminating circumstances and avoided to either admit or deny the rest of the incriminating circumstances. This also lends support to the case of the prosecution.

40. Submissions made by Mr P.S. Paranjape, learned counsel for the appellant - accused pertaining to non-examination of Shobhabai and drawing adverse inference, we say that, role of the Shobhabai was limited to the extent of informing younger sister of Sangita about whatever she gathered

from the place of incident and not more than that. Therefore, no adverse inference as to the genuineness of the evidence of Mr Mangesh Sonawane (PW-2) or genuineness of the case of the prosecution can be drawn.

41. In the case of **Majid and Ors Vs. State of Maharashtra & Ors, Criminal Appeal No.132 of 2008 (arising out of S.L.P. (Cri.) No.2809 of 2007)**, the Hon'ble Supreme Court held that,

'the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.'

42. In case at hand, the witnesses examined by the prosecution are neither interested nor inimical. We have discussed as to how their evidence is trustworthy and reliable. We have seen that, while the incident took place inside the house, front and rear doors which are entry points were locked and closed from inside. There was no scope for third person to enter and at the time of incident, except appellant- accused, Sangita and their tender aged two children, nobody was present in their house. In such circumstances, it was necessary on the part of the appellant – accused not only to explain as to how the incident took place, but also as to how he sustained injuries on

his person. He has failed to explain the same.

43. On the contrary, the evidence adduced by the prosecution, discussed herein before, makes it clear that, it was the appellant – accused, who first committed murder of his wife deceased Sangita by inflicting multiple grievous injuries on her person by means of sharp edged object viz. sword, blade and hard and blunt object viz. pestle, which were recovered from the spot during panchanama conducted immediately after the incident and then with the help of sharp edged object got inflicted injuries on his person with an intention to commit suicide. In the circumstances, aforesaid observations by the Hon'ble Supreme Court no way help the appellant – accused for claiming acquittal.

44. In the case of **Lakshmi Singh and Ors Vs. State of Bihar, Criminal Appeal Nos.284 and 285 of 1971**, the Hon'ble Supreme Court set aside the conviction holding that,

"High Court has not considered important circumstances which completely demolish the prosecution case. In fact the High Court has hardly made any real attempt to analyse or discuss the evidence and has merely affirmed the finding of the Sessions Judge by narrating the evidence relied upon by it. We have already pointed out that on one of the most important points arising in : a criminal trial, namely, the non-explanation of the injuries on the person of the accused by the prosecution, the High

Court has not only committed an error of fact but an error of law by showing a lack of proper appreciation of the principles decided by this Court.”

45. Facts of the case at hand are quite different. We have discussed, as to how defence of the accused that third person or thief initially committed assault on his wife Sangita and then on him, is improbable and false. There is clinching evidence on the aspect that, the house where the incident took place was locked and closed from inside. After the incident its front door was broken open by Mr Mahesh Pagare (PW-3) with the help of one Sonu. Mr Ramrao Sonawane, Investigating Officer (PW-6) has made it clear that backside door was also closed when spot panchanama was drawn immediately after incident. Somebody else or thief entering into the house was not at all possible. Therefore, it was impossible for the prosecution to prove the injuries on the person of the appellant – accused. However, circumstantial evidence discussed at length shows that, injuries noticed on the person of the appellant – accused were inflicted by him with an intention to commit suicide after committing murder of wife.

46. At this juncture, it would profitable to make a reference to legal guidelines delineated by Honourable Apex Court in the case of **Musheer Khan alias badshah Khan vs. State of M.P.**, 2010 (2) Mh.L.J. (Cri.) (S.C.) 505 = LEX (SC) 2010, 170

in which, it has been observed that,

'while appreciating the circumstantial evidence the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances. It was held that the facts alleged on the basis of any legal inference from circumstantial evidence must be proved beyond any reasonable doubt. It must create a complete chain of circumstances, which would lead to inescapable inference of guilt of the accused. The circumstances must be consistent with the guilt of the accused and inconsistent with their innocence.'

47. Herein this case, the circumstances complete the chain leading to the conclusion that, none other than the appellant is assailant and after committing murder of wife had attempted to commit suicide.

48. In view of the above, we are of the considered opinion that, the conclusion drawn by the learned Additional Sessions Judge, Dhule for conviction of appellant – accused on both the counts and resultant sentences imposed on him are just, proper and reasonable. There is no perversity or error in the findings by learned Additional Sessions Judge, Dhule. Present appeal being devoid of merits, deserves to be dismissed. Accordingly, Criminal Appeal stands dismissed.

(B. U. DEBADWAR)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE