

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.624 OF 2017

Lahu Harischandra Dhopat

Appellant

versus

The State of Maharashtra

Respondent

Ms.Rupali Akolkar for appellant appointed by Legal Aid, High Court.
Mr.Pandurang H. Gaikwad, APP, for Respondent-State

**CORAM : PRASANNA B. VARALE AND
PRAKASH D. NAIK, JJ.**

DATE : 5th August 2020

JUDGMENT : (Per - Prakash D. Naik, J.) :-

1. The appellant was prosecuted for the offence punishable under Section 302 of Indian Penal Code ('IPC'). This appeal is preferred u/s 374 of Code of Criminal Procedure ('Cr.PC') challenging the judgment and order dated 29-2-2016 passed by learned Sessions Judge, Thane in Sessions Case No.329 of 2013.

2. The appellant has been convicted for the offence punishable u/s 302 of IPC and sentenced to suffer life imprisonment and to pay fine of Rs.1,000/-, in default to undergo rigorous imprisonment for fifteen days.

3. The brief facts of the prosecution case are as under :

(a) The deceased Smt.Sarita Deepak Kedare was residing live with her husband Deepak Kedare, daughters Tejaswini aged 8

years and Kavita aged 7 years at Dnyansagar Apartments, 'A' wing, Plot No.104, Mumbradevi Colony, At Diva East, District Thane;

(b) The accused was acquainted with the husband of deceased and he was on visiting terms at the house of deceased. Umesh Kadam who was nearby resident, was also on visiting terms with the family of deceased;

(c) On 24-3-2013 at about 6.30 pm, the deceased was present in her house with her minor daughter Tejaswini. The other minor daughter Kavita had gone to the house of Umesh Kadam. The accused came to the room of deceased, threw chili powder in her eyes and stabbed her in the presence of Tejaswini;

(d) After watching the occurrence of the incident, Tejaswini ran towards ground floor and informed about the assault to Shrikant Gore, Bikanprasad Upadhyay and Nitin Gavre, who were chitchatting near the pump house of Dnyansagar Apartment. All of them ran to the spot and saw dead body of deceased lying in pool of blood in veranda in front of room no.104. They came to know from Tejaswini that one person carrying black sack assaulted the deceased and fled away with the sack. The said persons took search of the assailant up to nearby building but could not find him. When they returned to Dnyansagar Apartment, they saw the accused near the gate holding one black bag. His hands and clothes were stained with blood. They apprehended the accused;

(e) Police reached the spot and took the accused to Police Station, Mumbra. The FIR was lodged by Shrikant Gore. Police

searched the black bag which was in possession of accused and it was found containing blood stained knife, blood stained rubber hand gloves and one chit. Police seized these articles. The clothes of the accused were also seized. Spot panchanama was recorded in presence of panch witnesses. Plastic bag containing chili powder, one rubber hand glove (surgical), jute rope were seized from the spot of incident. Post mortem was conducted. The seized articles were sent to forensic laboratory for chemical analysis. On completing investigation charge sheet was filed.

4. Charge was framed for offence u/s 302 of IPC vide order dated 7-6-2014. The prosecution examined 13 witnesses in support of its case. On completing recording of evidence, the statement of accused was recorded u/s 313 of Cr.PC.. After hearing both the sides, the appellant was convicted by judgment and order dated 29-2-2016.

5. The Trial Court analyzed the evidence of witnesses. Taking into consideration evidence on record, the Trial Court gave a finding that prosecution has proved that Sunita Kadam died homicidal death and the accused caused her death and committed offence punishable u/s 302 of IPC.

6. We have scrutinized the evidence on record. The prosecution case is based on direct and circumstantial evidence. On scrutiny of evidence we find that the prosecution has been able to prove its case beyond all reasonable doubts against accused.

7. PW-1 Shrikant Gore is the first informant. He is the resident of Dnyansagar Apartment, 'B' wing. According to him he was

chitchatting opposite pump house of the building with Bikanprasad Upadhyay (PW-3), Vishal, Nitin Gavre (PW-4), Samir and Vijay Shetty. One young girl came down from 'A' wing. She was crying and told them to go upstairs. They went on the first floor of 'A' wing. They saw one lady lying in the pool of blood. The girl told them that her uncle killed her mother and ran away with black bag. They went to search the assailant. They went up to Varekar School but could not find him. They returned back. At that time they saw one person standing near the gate. There were blood stains on his clothes and hand. He was having a black bag. They suspected that he is the same person about whom the young girl told them. They tried to apprehend him. He ran away from the spot. He was chased and caught near Tapasya Apartment and brought at Dnyansagar Apartment. On making inquiry he confessed that he killed the lady namely Sunita Kedare. Thereafter police came at the spot. The suspect was handed over to police. On opening his bag by police one knife was found in the bag. There were blood stains on the knife. He identified the accused in Court. He also identified the knife and the bag.

He was cross-examined by defense. In the cross he deposed that the deceased was residing in Room no.104 on the first floor. There are about six flats on each floor of A and B wings. The pump house is about 15 to 20 feet away from 'B' wing. He is not able to identify the colour of shirt of accused when he saw him near the gate. In their presence the black bag of the accused was not opened by police. Suggestions about denial of the incident were denied by him.

8. PW-3 Bikanprasad Upadhyay is resident of Dnyansagar Apartment, 'B' wing. He stated that he was sitting on the pump house structure in the building with PW-1, PW-4 Nitin Gavre, Samir Bhutal, Vishal Raotale (PW-9) and Vijay Shetty. He stated that one girl came running from 'A' wing. She was shouting that her mother was killed by Kaka. All of them went to 'A' wing, first floor, and saw woman lying in pool of blood. The girl told them that one person ran away with black bag on his shoulder. They went in search of said person up to Varekar School and since they could not trace the suspect, they returned to Dnyansagar building. The accused was found near building. He tried to run away, however, he was caught by them. There was blood on his hand and clothes. He was having black colour bag. Thereafter police came at the spot and took that person in to custody. Police opened the bag. It contained knife, chili powder, one rope and two hand gloves. There were blood stains on the knife and the hand gloves. The said person was wearing black and yellow colour shirt and black colour pant. He identified the knife, bag, shirt, pant and hand gloves. He also identified the chili powder in plastic pouch, rope and one hand glove.

He was cross-examined by defense. In the cross it was stated that the girl did not disclose the name of Kaka. Most of the flat holders were inside the flats. Doors of some flats were open. He did not hear shouting of any woman. The beat marshal police came at the society at about 7 to 7.30 p.m.. He denied that police did not open the bag of the accused in their presence. He also stated that he did not know that one person by name Umesh Kadam was frequently visiting the house of deceased and he had illicit relations with the deceased. He denied that in his police statement he did not state

that one knife, chili powder, hand gloves, rope were found in the bag of accused.

9. PW-4 Nitin Gavre was accompanying PW-1 and PW-3. He deposed that he was sitting with PW-1, PW-3 and other persons referred to by above witnesses. One girl aged about 5-6 years came near them and told that Kaka killed her mother. They went to first floor. The deceased was lying in passage in pool of blood. The girl told them that Kaka was having black bag. They went in search of suspect upto Warekar School. Accused was not found. They returned one person was coming down from first floor. He attempted to run. They apprehended the accused. He was holding a black bag on his shoulder. Police visited the spot. The bag was opened and it was found containing a knife, chili powder, hand gloves, rope. The accused disclosed his name as Lahu Dhopat to police. He identified the knife and other articles.

He was cross-examined by the defense. He deposed that it takes about 30 to 45 minutes to reach the society from Mumbra Police Station. Police arrived at the spot at around 7.00 p.m.. He denied that police did not ask the name of accused nor opened the bag in his presence. He did not know whether Sunita Kedare and Umesh Kadam had illicit relations. He denied that Umesh Kadam had committed the crime and that he being his friend, gave false information to police and false evidence in Court.

10. The evidence of PW-1, PW-3 and PW-4 is consistent with regards to the fact that on the day of incident they were sitting together and chitchatting. One girl came crying and told them to go

upstairs and that her uncle had killed her mother. They took search of the suspect and apprehended the accused after some time. He was holding bag on his shoulder which was containing incriminating articles.

11. PW-2 Sunil Salvi is the panch witness for spot panchanama. According to him, he was called by Police for recording panchanama. The other panch was Vishal Raotale (PW-9). The panchnama was prepared at Dnyansagar Apartment, 'A' wing, Room No104. One young girl was standing near the premises at the spot of incident. The lady was lying in pool of blood in the passage. On the floor and mat there was red chili powder, two hand gloves of white colour and a bundle of jute rope was also found. Blood was found on floor of kitchen, hall and passage. Chili powder and hand gloves were seized from the spot. He identified the articles. Spot panchanama was marked as Exhibit-18.

In cross-examination he stated that his building is nearby the building of deceased. He knows the husband of lady Sunita. He did not remember the name of police who called him for panchanama. In the panchanama, there is no reference of sealing the seized articles.

12. PW-9 is the other panch witness in relation to spot panchanama. PW-9 Vishal Raotale has stated that he was present near building Dnyansagar Apartment. He was called by API Sawant to act as panch at the place of incident. A girl aged about 7 years showed the spot. The blood stains were noticed in the kitchen. Chili Powder was also found on the mat and side of the wall. White

colour hand gloves were lying in the room. One polythene bag was also lying in the room. The polythene bag, hand gloves, chili powder and jute rope were collected by police. The blood was noticed from the entrance up to kitchen. He identified the articles.

He was cross-examined. He stated that he was sitting near Dnyansagar Apartment from 5 pm to 6pm.. The other panch was with him when he went inside the room for panchanama. He had seen the hand gloves when police collected it. The collected chili powder was red in colour and the one showed to him in Court is yellowish in colour. He did not know whether the deceased had illicit relations with some person.

13. PW-5 Sunil Nikam is the panch witness. He has stated that he was called by Police at Mumbra Police Station on 24-4-2013. The accused were present at the police station. He was holding one black bag. There was knife having blood stains, two hand gloves having blood stains, chili powder, rope, black and yellow colour shirt, one black colour pant having blood stains. One hand written chit was also found. The articles were seized by police and Japti Patrak was prepared. He identified the articles. The japti-patrak was marked as Exhibit-25 and the chit was marked as Exhibit-26.

He was cross-examined by advocate for accused. He stated that he was residing in Dnyansagar Apartment. He was not knowing the deceased Sunita Kedare. He was not present when the incident had occurred in the building. He did not remember the name of police who called him and who signed the japti-patrak. No statement was made by the accused at the time of japti-patrak. He

denied that the articles were not taken out and seized in his presence, accused was not present at that time, and japti-patrak was already prepared before his arrival at the police station and his signatures were obtained thereafter. He also denied that no handwritten chit or any other article was seized.

14. PW-6 Deepak Kedare is the husband of deceased. He stated that he knows the accused Lahu Dhopat. He was introduced to him by his friend More about two to three years prior to the incident. He knows his friend Umesh Kadam. He is the resident of another building in the society. In October-2012 he was doing poultry and dairy farm business with his wife and some other persons. The accused also joined the same business. On 15-3-2013 he saw a message in the mobile phone of his wife received from Umesh Kadam stating "I love you". He inquired with his wife about the said message and she stated that she did not know why the message was there. She was given warning by him. On 23-3-2013 he had gone to laundry for bringing clothes. When he returned home he saw accused sitting in the house. His wife was asking Lahu Dhopat as to why he has put water on her mobile sim card. On inquiry with the accused by the witness, the accused stated that he would replace the sim card. On 24-3-2013 at about 6.30 am, he received phone call from accused and he greeted good morning with intention to tease him. The witness told him to replace the sim card of mobile and not to enter his house in his absence. Thereafter the mobile was switched off. He received a call from the phone of his wife and police informed him that she has been murdered by Lahu Dhopat. On the next day his daughter Tejaswini reported him that Lahu Dhopat has killed his wife. Before that he had told his wife to call

Umesh Kadam but she did not call him. Thereafter accused took out chili powder and thrown in the eyes of his wife. He stabbed her in her stomach and twisted the knife and also injured her by making injury on throat and both hands and thereafter left the premises with black bag. Tejaswini ran on the ground floor shouting and called the persons sitting near pump house. His statement was recorded on 30-3-2013.

In the cross-examination he stated that he was not present at the house at the time of incident. He did not know the name of police who called him on his phone. He was not allowed to enter the house by police when he returned home from duty. He could not see the dead body as it was covered by cloth.

15. PW-7 Tejaswini Kedare is a child witness aged about 9 years. Her statement was recorded in chamber. She has deposed that she knows accused Lahu Dhopat. He used to come to her house. Her father used to leave for job early in the morning at 7 am and return at 9 pm. The day of incident was Sunday. She along with her mother and sister were in the house on the day of incident. Her father had also left for job in the morning. Her younger sister was taken by Umesh Kadam at his house at 4 p.m. Her mother was preparing food in kitchen and she was watching cartoon on television in the hall. The accused knocked the door. Her mother opened the door and accused came in house. He was holding one plastic bag and one black colour bag on his shoulder. Her mother asked him as to what is in his hand but he declined to show. Her mother went to kitchen and came out of kitchen after finishing her work. The accused sprinkled chili powder in the eyes of her mother.

The accused dragged her mother in the kitchen. She followed the accused and her mother. The accused stabbed her mother with knife in the stomach and twisted it and also injured her on her hand and neck by knife. The accused then pulled her from kitchen. Her mother was asking for water. Due to fear she could not bring the water. She went down in the campus of the building while shouting and gathered people sitting in the campus. Her mother was lying in the passage. She tried to call neighbour but due to fear the neighbour did not come out. At the time of stabbing with knife the accused was wearing hand gloves. He was wearing shirt of yellow strips and black pant. There was blood stains on the clothes of accused. Her mother was wearing maxi/gown and red colour petticoat. The accused ran away with bag. She reported this fact to police and her father. She identified the knife as the weapon used by the accused. She also identified white colour hand gloves and shirt with yellow strips. She identified the pant which was on the person of accused and the bag which was in possession of accused.

She was cross-examined by the Advocate for accused. The cross-examination was very brief. She deposed that two uncles had come to their house on the day of incident. One was Umesh Kadam and another was Lahu Dhopat. Earlier Umesh Kadam came at the house and left the house. Thereafter she was in the front room and her mother was in the kitchen. She could not see what her mother was doing in the kitchen and what was going on. Thus, in the cross-examination the defense has brought on record that accused has visited the house on the date of incident.

16. PW-8 Umesh Kadam is acquainted with the family of deceased.

He knows accused Lahu Dhopat. The accused used to visit the house of deceased and her husband. Deepak Kedare (PW-6) had introduced him to Lahu Dhopat at their house. Sunita and her family used to reside as tenants at Shrikrupa Apartment. Sunita used to pay rent to the owner through the witness. In 2012 Sunita and her family shifted to reside at Diva at Dnyansagar Apartment. When the witness had been to the house of Sunita in 2013, the husband of Sunita and Lahu was present at the house. On the say of Sunita and her husband, the witness became member of Ashakiran Company. On 24-3-2013 he went to the house of deceased. At that time deceased and her two daughters were present in the house. He took parcel of biryani. The daughter of his neighbour was also with him. They had dinner at the house of deceased. At 6 pm he returned home with younger daughter of deceased Sunita and the daughter of neighbour. He received call from Sunita. He told her that she should take away her daughter after some time. At about 7.30 pm he called Sunita on her phone. Phone was received by unknown person. The said unknown person told him that he is police constable. He went to Dnyansagar Apartment. Lahu Dhopat was arrested by police. He came to know from police that Lahu Dhopat has committed murder of Sunita. His statement was recorded on 26-3-2013.

In the cross-examination he denied that he had given room in a chawl to Sunita on rent. He came to know about Kedare family when they started living in the building. For the first time he met Lahu Dhopat at the time of filing of membership form of the company. There was quarrel between Sunita in the month of February-2013. He met Lahu last time in the month of March-2013. On the day of incident, he brought daughter of Sunita to his house.

He reached home. He do not remember the number of mobile phone from which Sunita has phoned. He did not remember the mobile number which he was possessing at that time. He does not remember the phone number from which he had called Sunita as earlier phone number is closed. He did not send any SMS to Sunita nor he received any SMS from her.

17. PW-10 Maruti Sawant is Assistant Police Inspector. He was attached to Mumbra Police Station in March-2013. He visited the spot of incident. He called two panchas. The spot was shown by Tejaswini Kedare. He noticed pool of blood in the passage. Chili powder was found on the mat as well as near wall. One polythene bag was seen kept by the side of television on the table in that room. The polythene bag was containing chili powder, white colour hand glove and jute rope. These articles were seized. The blood was found in the kitchen. On the kitchen platform there was Polpat-Latne, dough of wheat flour and other articles. Spot panchanama was prepared.

In the cross-examination he deposed that pool of blood was found in the passage. The hand gloves found in the room were not made of cotton but rubber like plastic and it was of white colour.

18. PW-11 Shailendra Nagarkar was Police Inspector attached to Mumbra Police Station. On 24-3-2013 he was present at the police station. The FIR was lodged by Shrikant Gore (PW-1). It was recorded by him. The offence was registered. API Navnath Jadhav and Maruti Sawant were sent at the spot of incident. Patrolling beat marshal and some residents produced the accused at police station.

The clothes of the accused were stained with blood. Black colour bag was in possession of the accused. The clothes from the person of accused were seized. One chit, blood stained surgical rubber hand gloves, knife, mobile phone and bag were seized. Inquest panchanama was prepared by API Jadhav. The accused was arrested on 24-3-2013. The articles were sent for chemical analysis to forensic laboratory at Kalina, Mumbai. The statement of witnesses were recorded. The letter was issued to Deputy Commissioner of Police, Thane to obtain CDR of mobile of deceased and Umesh Kadam. Letter was issued to Nodal Officer by Deputy Commissioner of Police. The nodal officer had sent CDR of concerned mobile numbers to DCP. On completing investigation charge sheet was filed. In the cross-examination he deposed that during investigation he had seized mobile of accused and not of complainant and deceased. It was transpired during the investigation that apart from the husband, the deceased had relations with one third person.

19. PW-12 Dr.Mangesh Ghadge is medical officer who conducted autopsy on the dead body of the deceased. He stated that he noticed stab wounds over front of abdomen right hypochondriac region 8 cm below breast and 5 cm to the right of midline. 4.5 cm x 1.5 cm x cavity deep in size. Stab wound over right side chest near fold of breast 6 cm to the right of midline 4 cm x 0.5 cm x cavity deep. Incise wound over left forearm, neck right side, neck midline below thyroid cartilage, face and skin deep below the left side of breast and palm base of right thumb. The injuries were sufficient to cause death in the ordinary course of nature. The stab wounds were possible due to sharp and pointed weapon and incised wounds are possible due to sharp weapon. All injuries were possible due to knife

shown to him (Article-3). The probable cause of death was haemorrhage shock due to injuries to vital organs caused by multiple stab wounds and incised wounds caused by sharp pointed weapon. The post mortem report was marked as Exhibit-60.

He was cross-examined by the advocate for accused. He stated that out of 12 injuries, two injuries are stab injuries and others are incise wounds. He cannot tell the distance of spray of blood from the body after causing stab wound. In case of stab wound no.2 all the chest muscles will be cut. There was no injury on the right side of the neck. There will be minimum clotting of blood. He has not mentioned in the post mortem notes as to which arteries and blood veins were damaged. He stated that oozing of blood means arteries and blood vessels were cut. He did not mention time of preparation of post mortem notes below his signature. He did not mention the blood group of the deceased but volunteered that only blood sample was preserved for the blood grouping which was handed over to police for referring it to forensic lab. He denied that multiple stab injuries to vital organs will not result into death. He did not measure the length and breadth of the weapon as it was not shown to him.

20. PW-13 Mr.Baby John is working as Nodal Officer in Tata Teleservices Company. He received letter from DCP, Region-I, Thane regarding CDR of Mobile No.7208283342. He verified the subscriber details and call details of the said number and provided the same to DCP, Zone-I, Thane. In the cross he denied that they have private agency to conduct investigation. He don't have certificate from Central Government under the provisions of I.T.Act.

21. Learned advocate Ms.Rupali Akolkar appointed to represent the appellant submitted that the appellant has been falsely implicated in this case. The evidence adduced by the prosecution is not sufficient to convict the appellant. There are serious discrepancies in the evidence of witnesses. PW-1, PW-3 and PW-4 are neighbours of the deceased and they were interested witnesses. There are infirmities in the evidence of recovery of articles. The hand gloves were found at the scene of offence as well as in the bag. The crime is committed by PW-8 and the appellant has been implicated in this crime at his instance. The japti-patrak relating to seizure of articles cannot be relied upon. It refers to the articles found in the bag which was allegedly recovered from the possession of accused. On perusal of Exhibit-25 it can be seen that there is no reference to chili powder, and rope in the japti-patrak, although PW-5 has deposed that said articles were found in the bag. The prosecution has heavily relying upon the child witness who is not trustworthy. There are discrepancies in her evidence. In the cross-examination she stated that she could not see what was happening in the kitchen. She was minor at the time of incident and is not of age of understanding and hence only on the basis of the evidence of the child witness Pw-7 who is allegedly the sole eye witness to the incident, the appellant cannot be convicted. She has not identified the appellant in Court. She has referred to two uncles visiting her house. PW-1 in cross-examination has stated that in his presence black bag of the accused was not opened by police. He is not able to identify the colour of shirt and pant of the accused. There is no motive for the appellant to commit murder of the deceased. PW-8 was having illicit relationship with deceased. The CDR produced by the Nodal Officer indicates that he had made several calls to the

deceased and vice-versa. There was quarrel between PW-8 and the deceased. The appellant has no reason to kill the deceased. In the circumstances prosecution has failed to establish beyond reasonable doubt that the appellant has committed the crime.

22. Learned counsel relied upon the decision of Hon'ble Supreme Court in the case of **Kaliram Vs. State of Himachal Pradesh (AIR-1973-SC-2773)** and the decision of Madhya Pradesh High Court in **Jagdish @ Munna Vs. State of Madhya Pradesh delivered in Criminal Appeal No.309 of 2002.**

23. Learned APP submitted that the case is based on direct as well as circumstantial evidence. The evidence of PW-7 who is the eye witness to the incident cannot be doubted. She was questioned by the Court before recording evidence and the Court was satisfied that she understands the nature of questions put to her. She has given details of the incident and was also cross-examined by defense. From her examination-in-chief and the cross-examination it is apparent that the child witness was confident and her evidence was consistent. She is corroborated by evidence of other witnesses. The evidence of PW-1, PW-3 and PW-4 establishes the prosecution case. The accused was apprehended by these witnesses after the child witness had disclosed the incident to them. He was found with the bag and his clothes and hands were blood stained. He was handed over to police. The evidence of panch witnesses with regards to spot of incident viz PW-2 and P-9 supports the prosecution case. PW-5 was examined in respect to the contents of the bag recovered from the accused. There are no discrepancies in the evidence of PW-6 and PW-8. The accused had admitted his presence at the place of

incident through cross-examination of PW-7. The defense of the accused u/s 313 of Cr.PC also indicates that he has admitted his presence near the building. It is submitted that in the light of the nature of evidence adduced by prosecution, the findings of the Trial Court convicting the appellant by assigning reasons may not be interfered with. The Trial Court has taken into consideration oral and documentary evidence and on analyzing the same convicted the appellant.

24. We have scanned the evidence on record. On appreciation of evidence we are of the considered view that prosecution has been able prove guilt of the accused. Evidence of PW-7 inspires confidence, although she is a child witness. The evidence of PW-1, 3 and 4 corroborates her version and establishes the involvement of appellant in crime. PW-2, PW-9 and PW-5 being independent witnesses have supported prosecution case.

25. PW-1, 3 and 4 were informed by PW-7 Tejaswini about the murder and they apprehended the accused, who tried to run away. PW-1 lodged the FIR. PW-1, 3 and 4 have deposed that on 24-3-2013 they were chitchatting in front of pump house near Dnyansagar Apartment when they were informed by girl who came from 'A' wing of the said building, that uncle assaulted her mother and ran away with black sack. They rushed to the spot and found the deceased in pool of blood. From their evidence it emerges that they could not locate the accused but when they returned after search, they saw him with black bag with blood stained clothes. Since the suspect tried to run away, he was chased by them and apprehended near Sthapatya Apartment. Thereafter he was handed over to police. They were

cross-examined by defense. However, nothing was brought on record to discard their evidence. Merely on the ground that PW-1 could not remember the colour of cloths worn by him at the time of occurrence or the statement in the cross-examination that the bag was not opened in his presence, is not sufficient to demolish his evidence. PW-3 and 4 have admitted that bag was opened in their presence. They have identified the clothes of the accused. They cannot be called as interested witnesses. PW-4 has deposed the incident slightly in a different manner. According to him when he returned to Dnyansagar Apartment, the susupct was coming down from first floor. The trial Court has observed that theory narrated by this witness furnished explanation as to why initially accused was not found when all the nearby residents searched the assailant who was holding black colour sack. Probably after the assault, the accused climbed up upper floors and then came down to run away from the spot when he was spotted by residents. There were no material contradictions in the testimony of PW-1, 3 and 4 that they apprehended the accused after occurrence with black colour bag containing blood stained knife and blood stained hand gloves. Thus, witnesses are reliable to establish that after the occurrence, the accused was apprehended near Dnyansagar Apartment with black sack in his possession. Although they were the residents of 'B' wing of the building, their presence near the pump house, information being provided to them by PW-7 and apprehending the accused, is natural and cannot be disbelieved. They have corroborated the version of PW-7. There is no reason for them to depose against the accused.

26. Panch witnesses PW-2 and 9 and API Maruti Sawant (PW-10) have proved the spot panchanama, seizure of specimen blood sample

lying on the spot, chili powder and one hand glove in the hall and the blood of deceased. These witnesses have proved that blood was found on the floor of kitchen and in the hall of flat. The chemical analyzer report shows that human blood of 'B' group was found on the blood specimen collected from kitchen as well as hall of Flat No.104. The contention of learned counsel for appellant is that hand gloves were found in the bag as well as at the place of incident. Thus, it is difficult to believe that accused was carrying two pieces of hand gloves. However, considering the evidence of panch witness and API PW-10 and other circumstances on record, the submission of learned counsel cannot be accepted to disbelieve the prosecution case. PW-5 panch Sunil Nikam and PW-11 S.R.Nagarkar proved the seizure of black sack from the possession of accused containing blood stained knife and blood stained surgical hand gloves. The evidence of PW-5 inspires confidence. There is nothing to create doubt regarding truthfulness of testimony of PW-5 and 11. The C.A report shows that human blood was found on the clothes of accused and on knife and human blood of group 'B' was found on the clothes of deceased. The blood found on gloves was human and 'B' group. Thus, seizure of blood stained clothes and knife from the possession of accused and seizure of blood stained hand gloves bearing blood group of deceased, is sufficient to connect the accused for the assault on Sunita.

27. According to defense the evidence of PW-7 ought not to have been considered by the Trial Court. The evidence of child witness is required to be scrupulously evaluated. It is submitted that there are discrepancies in her evidence. The learned counsel for appellant had relied upon her cross-examination wherein she has stated that she

was in the front room and her mother was in kitchen. She could not see what her mother was doing inside the kitchen and what was going on in kitchen. Thus, she is not the eye witness to the occurrence of incident. However, on scrutiny of evidence of PW-7 we find that her evidence is direct and she is an eye witness to the incident. She has categorically stated that in her presence her mother was stabbed by accused inside her house. Her testimony is free from all infirmities. She is the daughter of deceased. She was aged about seven years at the time of occurrence. The Trial Court had asked preliminary questions to the witness to ascertain whether she is intelligent and understand the questions put to her. The Trial Court has observed that she is intelligent and she can understand the questions. Hence oath was not administered to this witness. On that ground her testimony cannot be discarded. On perusal of evidence of PW-7 it can be seen that she has categorically deposed before the Court that on the date of incident it was Sunday and she was present at house with her mother and sister as her father had gone outside for work. According to this witness, initially at about 4 pm, PW-8 visited her house and he left house with younger sister. Thereafter accused came to her house and he was holding one plastic bag in his hand and one black colour sack. When the deceased came in the hall after completing her work from kitchen, the accused threw chili powder in the eyes of deceased and by holding her hair dragged her inside the kitchen. According to PW-7, she followed the accused and her mother in the kitchen room and saw that the accused inflicted knife blows on the abdomen, hands and neck of her mother and thereafter accused dragged her mother out of kitchen. She ran away from the house while shouting. However, no immediate neighbour came for help. She stated that the accused was wearing hand gloves

and yellow colour shirt with lines on it and black pant. She also described the clothes of the deceased. According to her, accused ran away from the spot with bag. She has identified the shirt, pant, sack which were on the person of accused at the time of incident. She identified the knife and hand gloves used by accused at the time of assault. She was cross-examined by the defense very briefly. In the cross she admitted that on the day of incident Umesh Kadam and the accused Lahu had visited her house. Umesh Kadam came first at her house and when he left she was watching television in the hall and her mother was in the kitchen and she could not see what her mother was doing in the kitchen room and what was going on in kitchen. The submission of the defense that in the cross-examination she has stated that she could not see what was happening in the kitchen and therefore she is not the eye witness to the incident cannot be accepted. Her examination-in-chief is very clear. The version in the cross of PW-7 has been explained by Trial Court in paragraph 19 of the decision wherein it is observed that plain reading of this cross examination makes it clear that admission of PW-7 that she could not see what her mother was doing in the kitchen room and what was going on in the kitchen, was in reference with when Umesh Kadam left the house and when this witness was watching television programme in the hall. This admission cannot be stretched up to the incident of assault which began in hall when accused threw chili powder in the eyes of deceased and dragged her in the kitchen by holding her hair. PW-7 in her examination-in-chief made it clear that she followed the accused and her mother in kitchen and watched the act of stabbing her mother by the accused. We do not find any reason to deviate from the observation of learned Trial Court. The witness was confident and she has clearly deposed

in her evidence that the accused was instrumental in killing her mother. The other evidence on record corroborates her version. The other contention of learned counsel for appellant was that she has not specifically identified the accused in Court. It is not that she has failed to identify the accused in Court. In her entire evidence she has referred to the incident and the role played by the accused. In her cross-examination in fact the defense has established presence of accused in the house where the alleged incident had occurred. The cross-examination of PW-7 was very short and no infirmity was brought through her cross-examination.

28. Thus, there is direct as well as circumstantial evidence against the accused. It is true that there is sole eye witness to the incident. PW-7 is the child witness. Before her evidence was recorded preliminary questions were asked to her by the Court. Her evidence was recorded in the chamber. The Court has recorded that the witness was interviewed for about five minutes by asking different questions to her and it was found that she is very smart capable to understand as to why she has been called in Court. She remembered the incident and she disclosed that she was residing earlier at Diva and her father was at Ambarnath. Hence she was examined as witness. The confidence of PW-7 reflected in her examination-in-chief where she has given ocular account of the incident, identified the articles, attributed specific overt act to the accused and faced the cross-examination of the defense, reflects child witness's intelligence to understand the nature of questions put to her. She faced cross-examination of defense successful. Nothing is brought by the defense to suggest that PW-7 is tutored. Her testimony is free from contradictions/omissions. Presence of PW-7 at place of incident has

not been denied by the defense. Evidence of PW-7 is corroborated by medical evidence of PW-12. Hence, there is no reason to discard the evidence of PW-7. The evidence of independent witnesses PW-1, 2, 3, 4, 5, and 9 corroborates her.

29. A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. Even in the absence of oath, the evidence of a child witness can be considered u/s. 118 of the Evidence Act, provided, that such witness is able to understand the questions and able to give rational answers thereof. The Court, however, has to bear in mind while assessing the evidence of a child witness that the witness must be a reliable one and he/her demeanor must be like any other competent witness and there is no likelihood of being tutored.

30. PW-7 at the time of occurrence was about 7 years of age and she is the solitary eye witness. The time and place of occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eye witness. The evidence of child witness cannot be rejected per se, but as a rule of prudence, the Court is required to consider such evidence with close scrutiny and on being convinced about the quality of the statements and its reliability base conviction by accepting the statement of child witness. There is sufficient corroboration on record to rule out the possibility of PW-7 being tutored or used for ulterior purposes by alleged interested persons. In fact, it is not even the suggestion of the defense that the child witness was tutored. Her presence at the scene of offence has been established. In the absence of any inherent defect, we do not find any substance in the submission of the defense

that the testimony of the child witness be rejected. PW-7 has narrated the incident in detail. She was cross-examined and the questions put to her were confidently answered by her. Her evidence is corroborated by PW-1, 3 and 4. The evidence of other witnesses also corroborates the version of PW-7. The Medical Officer has deposed that the injuries sustained by the deceased were sufficient to cause her death and the weapon seized during the course of investigation which was also identified by PW-7 is sufficient to cause the injuries sustained by the deceased which had resulted in her death. Knife was recovered from the bag which was in possession of the appellant.

31. The Trial Court has elaborately analyzed the evidence of the child witness. There is no reason as to why she would be falsely implicating the accused. The prosecution has been able to bring home its accusations beyond the shadow of doubt. The Trial Court on careful examination of the evidence was satisfied about the child's capacity to understand and to give rational answers. It cannot be said that PW-7 had no maturity to understand the import of the questions put or to give rational answers. She has described in detail the incident implicating the accused to be the author of crime. The evidence of PW-7 has credibility which reveals a truthful approach and her evidence put has ring of truth. There are no exaggerations and she has stuck to her statement made during investigation in all material particulars. Thus, the Trial Court was justified in placing reliance on her testimony. In addition the evidence relating to recovery, the reports of forensic science laboratory, the evidence of independent witnesses provide support to the prosecution version.

32. Learned counsel for the appellant had relied upon the decision of the Madhya Pradesh High Court in the case of Jagdish @ Munna (supra) in which the Court had considered the evidence of the child witness and while assessing the evidence it was observed that the evidence of such witness requires close scrutiny. The motive attributed by the said witness was very weak. Her conduct is not trustworthy. The observations were made in the facts of that case. On analyzing the evidence, the Court had also observed that the evidence of child witness was not in conformity with the medical evidence and there were contradictions in evidence which does not inspire confidence. Hence, the Court disbelieved the evidence of child witness.

33. In the context of appreciating the evidence of child witness, reference can be made to several decisions of the Hon'ble Supreme Court. In **Dattu Ramrao Sakhare and others Vs. State of Maharashtra (1997)5-SCC-341**, it was observed as follows :

"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 u/s 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 he/her demeanor must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such witness

be corroborated before a conviction can be allowed to stand but, however, as a rule of prudence, the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record."

34. In **Suryanarayana Vs. State of Karnataka (AIR-2001-SC-482)**, the Supreme Court had considered the the reliability of the evidence of child witness who was aged about four years at the time of incident. The witness have attributed specific overt act to the accused having assaulted the deceased with knife and inflicting injuries on her neck, chest and other parts of body causing severe bleeding resulting in death of the victim. The child rushed to the house and informed her parents about the occurrence specifically mentioning that the accused had stabbed the deceased. The prosecution case was mainly based upon the statement of child witness. The defense challenged the evidence of the child witness by submitting that it would not be safe to base conviction on sole testimony of the child witness. There were discrepancies in the deposition of the witness. The witness was about four years of age and is the only solitary eye witness who was not given oath. The Court observed that the fact of being a child witness would require the Court to scrutinize the evidence with care and caution. If it is shown that the child witness has stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who under the

normal circumstances would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the Courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the Courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. When the child witness appeared before the Trial Court, she was aged about 6 years. On questioning her, the Trial Court found that though the witness is 6 years old, she is active and she understands everything. Without administering the oath to the witness, her statement was recorded. The Court further observed that there is sufficient corroboration on record to rule out the possibility of the witness being tutored or used for ulterior purposes by interested persons.

35. In **Ratansingh Dalsukhbhai Nayak v/s State of Gujarat (2004)1-SCC-64**, the evidence of child witness was under scrutiny. On the basis of evidence of the child witness, the Trial Court convicted the accused after finding the evidence to be truthful. The age of the witness during examination was about 10 years. The Supreme Court observed that the Indian Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Indian Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to the questions, because of tender age, extreme old age,

disease, whether of mind or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. The Court referred to the decision in Wheeler Vs. United States (159-US-523...40LED244(1895)). It was further observed that the evidence of child witness is not required to be rejected, per se, but the Court as a rule of prudence considers such evidence with close scrutiny and only being convinced about the quality thereof and reliability, can record conviction based thereon. It is further observed that the decision on the question whether the child witness has sufficient intelligence primarily rest with the Trial Court who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the Trial Court may, however, be disturbed by the higher Court, if from what is preserved in the records, it is clear that the conclusion was erroneous. This precaution is necessary because the child witnesses are amenable to tutoring and often leave in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of child witness.

36. In State of Madhya Pradesh Vs. Ramesh and another (2011)4-SCC-786, the Court considered the law regarding appreciation of evidence of child witness. It would be appropriate to quote

observations in paragraph 14 to that effect :

"In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether a child had been tutored or not, can be drawn from the contents of his deposition."

37. In the light of the law laid down in several decisions, we have considered the evidence of PW-7. The Trial Court ascertained that the witness is in position to depose before the Court. The satisfaction has been recorded before recording the evidence of PW-7. Even while assessing the evidence of PW-7 as stated hereinabove, we do not find any infirmity in her evidence. The child witness is apparently confident and has categorically deposed before the Court. We do not find that there is any material to tutor her. Nothing is on record to indicate the said fact. The defense has not been able to establish through cross-examination that the witness is unbelievable and that she is not speaking the truth. It is relevant to note that the accused had assaulted the mother of the witness in her presence by inflicting repeated blows with knife. Her mother was in pool of blood. The witness was shocked. She managed to run down from the first floor of the building and informed the persons who were sitting near the pump house of building and informed them that her mother is being assaulted by uncle. Hence, she is the material witness and her evidence cannot be discarded for any reason. The

Trial Court was in a position to observe her confidence, her demeanor while deposing before the Court.

38. Next submission of the defense advocate is that there was no motive for the appellant to commit the crime. He has been falsely implicated. From the evidence on record we find that there is direct evidence against the appellant that he was instrumental in inflicting blows by knife upon the deceased which had resulted in her death. PW-7 is the eye witness to the incident. There is other evidence which also corroborates the involvement of the appellant in the crime. There is recovery of knife, recovery of clothes, recovery of other articles and the C.A reports which establishes the involvement of the appellant in the crime. It is pertinent to note that the defense of the accused emanating from the statement u/s 313 of Cr.PC is that Umesh Kadam (PW-8) called him near Dnyansagar Apartment at about 5 pm. At about 6 to 6.15 pm when he was proceeding towards that building, he met Umesh Kadam. Umesh Kadam informed the accused that he had killed Sunita Kedare and thereafter he left. The appellant went near Dnyansagar Apartment. People were gathered there. Police were also present there. Police took him to Mumbra Police Station and gave one bag in his hand. He was on visiting terms with Deepak Kedare, Police arrested him on suspicion. He is no way concerned with the murder. Thus, he has admitted his presence near the building. It may be that the conviction may not be based on such defense but in the light of the overwhelming evidence against the appellant showing his involvement in the crime, we do not find that assuming that motive is not established, the appellant cannot be convicted for the offence. It would be also relevant to note that chit was found in the bag which was in his possession

containing knife and other articles. The said chit is exhibited in evidence as Exhibit-26. The said chit is allegedly written by the appellant on 23-3-2013 stating that there was a quarrel between him and Umesh Kadam at the house of Sunita Kedare and he was threatened by Umesh Kadam. In the event something happens to him, Umesh Kadam and Sunita Kedare be punished in accordance with law. In the cross-examination the defense had tried to suggest that PW-8 has committed the crime and the appellant has been falsely implicated in this case. However, the defense could not be established. The evidence of the prosecution witnesses could not be demolished in cross-examination. In the cross-examination of PW-7 the defense has brought on record through her evidence that PW-8 and the accused had come to the house on the date of incident. PW-8 came and he left the house. Thus, the appellant has invited his presence at in the house on the date of incident through the cross-examination of PW-7.

39. The role of accused in the crime stands clearly established. Even if motive is not proved, in our view it is of no consequence. The ocular evidence is clear and convincing in this case. In *Yunis @ Kariya V/s State of Madhya Pradesh AIR 2003 SC 539*, The Supreme Court has observed that, it is settled law that, establishment of motive is not sine qua non for proving the prosecution case.

40. In *Mulakraj and others Vs. Satish Kumar and others (1992)3-SCC-43*, it was observed as follows :

"Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without

motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear, it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime nor militates against the prosecution case."

41. During the course of investigation the CDR was collected by the Investigating Officer from the Nodal Officer who has been examined by the prosecution as PW-13. From his evidence it appears that the mobile phone of PW-8 was seized and the CDR was in relation to the said cell phone. No other cell phone was apparently seized. Although in the evidence it had appeared that PW-8 was closely acquainted with the deceased and that he was on visiting terms. It is also in evidence that even the accused was visiting the house of the deceased. The evidence of PW-13 and the call record placed on record do not lead further to any inferences. It is neither useful for the prosecution nor to the defense in any manner. But as enumerated hereinabove, there is sufficient evidence against the appellant showing his involvement in the crime. Learned counsel for the appellant had submitted that the benefit of doubt, if any, must be given to the appellant. She had relied upon the judgment of the Supreme Court in the case of Kaliram Vs. State of Himachal Pradesh (supra) and stressed on the observations in paragraph 25 of the said decision wherein it is observed that another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the

accused should be adopted. It is further observed that this principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. In present case, from the evidence on record, it can be seen the prosecution has established its case against the accused beyond reasonable doubt. The question of giving benefit of doubt to the appellant does not arise in the light the nature of evidence. Hence, we do not find substance in the submissions of defense. The appeal must fail and thereby the conviction of the appellant is required to be sustained.

42. Hence, we pass the following order :

ORDER

- (i) Criminal Appeal is dismissed;
- (ii) Fees of the learned counsel appointed to prosecute the cause of the Appellant is quantified at rate of Rs.5,000/- (Rs.Five Thousand only). Registry to ensure that the fees are paid to the counsel within four weeks from today;
- (iii) Copy of this Judgment be forwarded to the prison authorities where appellant is detained.

43. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

(PRASANNA B. VARALE, J.)