

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

CRIMINAL APPEAL NO. 239 OF 2014

Akash S/o Pandurang Jahire
Age : 22 Years, Occu.: Labourer,
R/o : Junna, Tq. Mukhed,
District Nanded

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Mukhed,
Tq. Mukhed, Dist. Nanded

... Respondent

....

Mr. Hanmant V. Patil, Advocate for the Appellant
Mr. Anand S. Shinde, A.P.P. for Respondent / State.

....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

Reserved on : 09.08.2021

Pronounced on : 08.09.2021

JUDGMENT (PER V.K. JADHAV, J.) :-

1. This Appeal is directed against the judgment and order of conviction passed by the Additional Sessions Judge, Kandhar, Link Court, Mukhed dated 28.02.2014 in Sessions Case No. 74 of 2012.

2. Brief facts of the prosecution case are as follows:

a. PW-1 Pandurang is having two sons namely Shivaji and the appellant-accused Akash. He was also having two daughters namely Bhagyashri and deceased Ganga. Deceased Dhrupadabai was his wife. Marriage of his daughter Bhagyashri was performed two years prior to the incident. She was residing at her matrimonial home along with her husband and his family members. The elder son Shivaji was residing at Kurduwadi and his wife was residing at her parental house. PW-1 Pandurang was residing at Junna, Taluka Mukhed, District Nanded along with his deceased wife Dhrupadabai, his son Akash (appellant-accused) and deceased daughter Ganga. As per the prosecution story, on 08.09.2012 when all of them were slept in the residential house of PW-1 Pandurang, at about 1.30 a.m. the appellant-accused Akash had committed murder of his mother deceased Dhrupadabai and his sister deceased Ganga by giving blows of axe. As per the prosecution story, though marriage of appellant-accused Akash was likely to be performed with one girl Taibai, which was not performed under one or another pretext, appellant-accused was insisting for performing his marriage as early as possible. According to the prosecution story, the appellant-accused got annoyed

because his marriage was not performed with Taibai. Thus, appellant-accused Akash committed murder of his mother and sister probably in the heat of anger.

b. On the basis of the complaint lodged by PW-1 Pandurang Jahire Exhibit 9, crime no.141 of 2012 for the offence punishable under Section 302 of IPC came to be registered at Mukhed Police Station.

c. On 08.09.2012 at about 2.00 a.m., API Ashok Bele attached to the Police Station Mukhed at the relevant time had received a phone call from the Police Patil, Junna, informing that one person committed murder of his mother and sister. The Police Patil had also informed that the said person was caught hold by the villagers. PW-5 API Ashok Bele thus immediately rushed to village Junna. On reaching to the spot, he found two dead bodies on a cot in the house. PW-1 Pandurang was also present in the house. The villagers caught hold the appellant-accused Akash. The appellant-accused Akash was in angry mood. PW-5 API Ashok Bele also observed that the clothes on the person of appellant-accused were stained with blood at that time. Thus he drew inquest *panchanama* of the dead bodies of the mother and the sister of accused, Exhibits 18 and 19 respectively. He also drew the spot *panchanama* Exhibit 23 in presence of *panchas* and

collected all the articles lying on the spot. He also seized the clothes of the deceased persons, shirt of the complainant, clothes on the person of the appellant-accused by drawing seizure *panchanama*. PW-5 API Ashok Bele also seized an axe by drawing seizure *panchanama* at Exhibit 28. PW-5 API Ashok Bele recorded statements of the witnesses during the course of investigation and also sent the seized articles to the C.A. for analysis. After completion of investigating, PW-5 API Ashok Bele submitted the charge-sheet before the Court against the appellant-accused for having committed an offence punishable under Section 302 of the IPC.

d. Learned Additional Sessions Judge, Kandhar framed charge against the appellant-accused for the offence under Sections 302 of IPC. The contents of the charge-sheet were read over and explained to the appellant-accused. The appellant-accused pleaded not guilty to the charge and claimed to be tried. The defence of the appellant-accused is of denial and false implication. The prosecution has examined in all 5 witnesses to substantiate the charge levelled against the accused. After completion of the prosecution evidence, the appellant-accused has given a statement under Section 313 of Cr.P.C. in response to the examination under Section 313 of Cr.P.C. to explain the intimidating circumstances appearing against him in the

prosecution evidence. The appellant-accused has not examined himself as a defence witness.

e. After hearing both sides, the learned Additional Sessions Judge, Kandhar, by judgment and order dated 28.02.2014 in Sessions Case No. 74 of 2012, convicted the appellant-accused for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer further rigorous imprisonment for six month. Hence, this appeal.

3. Learned counsel for the appellant-accused submits that PW-1 Pandurang Jahire / informant, who happens to be an eye witness, has not supported the prosecution case. PW-1 Pandurang Jahire has denied the presence of the appellant-accused on the spot at the relevant time. He has denied the contents of the FIR. P.S.I. Boinwad has recorded the FIR Exhibit 10, however, the prosecution has not examined him. Learned counsel submits that PW-2 Balaji Jahire, who reached to spot immediately after the incident, has also not supported the prosecution case. As per the prosecution story, PW-2 Balaji Jahire had snatched the axe from the hands of the appellant-accused and handed over the same to the Investigating Officer. However, PW-2

Balaji Jahire has not supported the prosecution case and also not supported the case of seizure of axe.

4. Learned counsel submits that though 20 villagers are named as witnesses in the charge-sheet and number of villagers were allegedly present at the time of arrest of the appellant-accused, no independent witness has been examined by the prosecution. Learned counsel submits that seizure *panchanamas* at Exhibits 25 to 28 regarding clothes and the axe are inadmissible in evidence because the prosecution has not proved the same by examining *panch* witnesses. Those *panchanamas* were exhibited by the trial court on the basis of the evidence of the Investigating Officer. Learned counsel submits that the seizure of the clothes and axe as per *panchanamas* Exhibit 25 to 28 is also doubtful and not reliable because all the those articles, particularly the clothes of the appellant-accused and the axe, were not sealed immediately after the seizure. Thus, the possibility of tampering those articles cannot be ruled out.

5. Learned counsel submits that the arrest *panchanma* Exhibit 41 is also doubtful because the *panch* witnesses are not examined on it. He submits that no independent witness is examined to prove that the appellant-accused was caught hold by the villagers on the spot itself

and was tied to a tree by the villagers and later on handed over to the police. Thus, alleged arrest of the appellant-accused on the spot is also doubtful. Learned counsel submits that though the axe was allegedly seized from the spot itself, as it was snatched from the hands of the appellant-accused, no blood was found on it. Though blood of the deceased was found on the clothes of the appellant-accused, the recovery of clothes of the appellant-accused is not proved and the prosecution has not examined independent witnesses and *panchas* on seizure of the clothes and the axe. The prosecution has failed to prove the case beyond reasonable doubt and in view of the same, the appellant-accused is entitled for the benefit of doubt.

6. Learned counsel on the appellant-accused, in order to substantiate his contention, placed reliance on the following cases :

1. ***Sahebrao Lukdu Jadhav Vs. The State of Maharashtra*** reported in 2015 ALL MR (Cri) 3179.
2. ***Bhanudas Bagaji Salve Vs. State of Maharashtra*** reported in 2006 ALL MR (Cri) 67.
3. ***Sunil S/o Manoharrao Pandhare Vs. The State of Maharashtra***, reported in 2018 ALL MR (Cri) 481.

4. *Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi)*, reported in 2005 ALL MR (Cri) 1775 (S.C.)
5. *Ramchandra Laxman Waghmare Vs. State of Maharashtra*, reported in 2005 ALL MR (Cri) 374.
6. *Lingu S/o Dharma Meshram Vs. State of Maharashtra*, reported in 2004 ALL MR (Cri) 200.
7. *State of Maharashtra Vs. Mandabai Ashok Sawant*, reported in ABC 2016 (II) 173 BOM.

7. Learned APP submits that the prosecution has proved its case beyond reasonable doubt. It is a case of murder of two persons. The prosecution has established the motive for committing murder of deceased Dhrupadabai and deceased Ganga. The appellant-accused got annoyed because though his marriage was fixed, it was not performed under one or another pretext for which he held his mother responsible. He was repeatedly insisting for performing his marriage with Taibai at the earliest. It is not disputed that PW-1 Pandurang Jahire, deceased Dhrupadabai and deceased Ganga and appellant-accused Akash were residing in the house jointly. It has also come in the evidence that in the night of 07.09.2012, deceased Dhrupadabai along with her minor daughter Ganga slept on one cot inside a room in the house. Learned APP submits that though PW-1 Pandurang and

PW-2 Balaji had not supported the prosecution case, however, the conviction on the basis of evidence of a hostile witness is permissible in law if such evidence is corroborated by other reliable evidence. Learned APP submits that in the instant case, the appellant-accused was caught hold by the villagers on the spot itself holding the blood stained axe in his hands at that time. PW-2 Balaji though has not supported the prosecution case, he admitted that when he heard the shouts of the PW-1 Pandurang, he rushed to the house of the appellant-accused, he noticed that the mother and the sister of the appellant-accused were in dead condition on one cot and there were injuries on their heads. He has also admitted that several villagers were gathered there and they caught hold the appellant-accused Akash. He has also admitted in his cross-examination that the villagers tied the hands of the appellant-accused with a rope to a tree to prevent him from running away from the spot. PW-2 Balaji has admitted that when police came to the village, the appellant-accused was in tied condition to a tree. Learned APP submits that PW-1 Pandurang has not supported the prosecution case, however, he has admitted that the marriage of the appellant-accused was fixed with one Taibai, but the same could not be performed in that year because the parents of Taibai had gone for labour work to other place. PW-1

Pandurang has also admitted that his wife had disclosed to him that appellant-accused Akash was frequently asking for performing his marriage. PW-1 Pandurang has also admitted that appellant-accused was caught hold in the house and he was taken out of the house. Learned APP submits that PW-1 Pandurang has admitted in his cross-examination that appellant-accused should be released so that his marriage will be performed. He required a daughter-in-law for doing household work and preparing the meals. He is intending to perform marriage of the appellant-accused Akash to solve his own problem, and therefore, he is intending that appellant-accused Akash should be acquitted in the case. PW-2 Balaji has also admitted in his cross-examination that he is intending that the appellant-accused Akash should not be convicted. Learned APP submits that the postmortem reports of the dead bodies of deceased Dhrupadabai and deceased Ganga indicate that they died a homicidal death. PW-3 Dr. Gajanan Swami, after noticing the injuries on their respective bodies in detail, found that the death of deceased Dhrupadabai was caused due to *hemorrhagic* and *neurogenic* shock due to head injury with multiple fracture on skull vault and the death of Ganga was caused due to *hemorrhagic and neurogenic* shock due to injury of multiple fracture of skull vault. According to him, the injuries on their person are possible

to be caused by sharp and heavy object such as an axe. Deceased Ganga was aged about 13 years. The injuries on their person are homicidal in nature. Learned APP submits that the evidence of the Investigating Officer is important in this case because the villagers handed over the appellant-accused to him during his first visit to the spot of incident. The villagers apprehended the appellant-accused on the spot itself and tied him to one tree. Learned APP submits that the witnesses from the village did not support the prosecution case or they were not likely to support the prosecution case. Consequently, the APP before the trial Court had not examined the *panch* witnesses on the seizure *panchanama* at exhibits 25 to 28 respectively. Learned APP submits that the prosecution, however, proved the seizure of the clothes of the accused and the seizure of the axe. As per the C.A. reports Exhibit 49 and Exhibit 51, the blood of deceased Dhrupadabai and deceased Ganga is of blood group 'O'. The blood detected on clothes of the appellant-accused is of blood group 'O'. Learned APP submits that recovery of the axe immediately after the incident is an piece of evidence. It is thus not fatal for the prosecution if blood was not detected on the axe. It is not disputed that the axe was used for causing murder of deceased Dhrupadabai and deceased Ganga.

Learned APP submits that the prosecution has proved its case beyond reasonable doubt. The appeal is liable to be dismissed.

8. To substantiate his contention, learned APP has placed reliance on the following cases:

1. ***Kashinath Vishwanath Lulekar Vs. The State of Maharashtra*** (Criminal Appeal No. 499 of 2010 decided on 11.08.2011 by the Division Bench of this Court.
2. ***Koli Lakhmanbhai Chanabhai Vs. State of Gujarat***, reported in 2000 (2) B Cr C 65.
3. ***Bhagwan Singh Vs. State of Haryana***, reported in 1975 DGLS (SC) 507 (Supreme Court).
4. ***Khujji Surendra Tiwari Vs. State of Madhya Pradesh***, reported in 1991 DGLS (SC) 307 (Supreme Court).
5. ***Kripal Singh Vs. State of Rajasthan***, reported in 2019 DGLS (SC) 238 (Supreme Court).

9. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witness, the statement of the appellant-accused recorded under Section 313 of Criminal Procedure Code, the evidence of the appellant-accused himself and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in this appeal and the same must be dismissed.

10. PW-1 Pandurang (father of the appellant-accused) and PW-2 Balaji (cousin of appellant-accused) are the important witnesses in this case. However, they have not supported the case of the prosecution. Learned APP before the trial Court had declared both of them as hostile witnesses and subjected them to cross-examination at length after obtaining leave of the Court.

11. It is well settled that the testimony of a hostile witness cannot be rejected in *toto* as the evidentiary value of his testimony is not lost and can be accepted to the extent that the version is found corroborated with other material evidence. So far as this settled legal position is concerned, reference can be made to the following cases on that point.

1. ***Duleshwar Vs. State of Madhya Pradesh (Now Chhattisgarh)***, reported in (2020)11 SCC 440.
2. ***Manoj Suryavanshi Vs. State of Chhattisgarh***, reported in (2020) 4 SCC 451.
3. ***Arjun and another Vs. State of Chhattisgarh***, reported in (2017) 3 SCC 247.
4. ***Birju Vs. State of Madhya Pradesh***, reported in (2014) 3 SCC 421.
5. ***Selvaraj @ Chinnapaiyan Vs. State represented by Inspector of Police***, reported in (2015) 2 SCC 662.

6. ***Koli Lakhmanbhai Cyhanabhai Vs. State of Gujrat***, reported in 2000(2) B Cr C 65.
7. ***Bhagwan Singh Vs. State of Haryana***, reported in 1975 DGLS (SC) 507.

12. Pw-1 Pandurang had deposed that he is having two sons namely Shivaji and Akash and he was having two daughters namely Bhagyashri and deceased Ganga. Bhagyashri is married two years prior to the incident. His son Shivaji was residing at Kurduwadi and Shivaji's wife was residing at her paternal place. In para 1 of in his examination-in-chief, PW-1 Pandurang has deposed that he himself, his wife deceased Dhrupadabai, his daughter deceased Ganga and appellant-accused Akash used to reside at village Junna. He is knowing one Vithal Laxman Bandgire resident of Undri. Taibai is his daughter. Marriage of said Taibai was settled with the appellant-accused Akash. According to him, the incident occurred prior to 15 months approximately. In that night, his wife deceased Dhrupadabai and daughter deceased Ganga were slept in the house and he was slept in the outer room of tin shed. In order to save the appellant-accused Akash, he has tried to explain that his deceased wife Dhrupadabai and his deceased daughter Ganga were slept inside the room by latching the door from inside and he was alone slept on the cot in front of the room. At about 3.00 a.m. approximately, he woke

up for urination. He saw his wife and daughter in dead condition on their cot. There were bleeding injuries on their person. He has further deposed that somebody entered into the house and committed murder of his wife and daughter. However, he has admitted the contents of the FIR Exhibit 9 and further admitted his signature on it.

13. PW-1 Pandurang has further admitted in his cross-examination by the APP that the distance in between his cot and his wife's cot, which was inside the room, was about 15 feet. The bulb in the room where his wife and daughter were slept was on. In that night, the bulbs of both the rooms were burning. He has also admitted that on the date of the incident PW-2 Balaji and one Madhav came to his house. He has also admitted that the parents of Taibai had gone for labour work to other place, the marriage of appellant-accused Akash was not performed in that year. The parents of Taibai were saying not to make hurry for marriage of appellant-accused Akash. Prior to the incident he had also gone for work of sugarcane cutting. Appellant-accused Akash and deceased Ganga had also accompanied him. He has also admitted that his wife deceased Dhrupadabai stated that appellant-accused Akash was frequently insisting for performing his marriage. He has also admitted that the villagers had taken the appellant-accused Akash out of the house. The appellant-accused was

caught hold in the house and he was taken out of the house. He has also admitted in respect of murder of his wife deceased Dhrupadabai and daughter deceased Ganga. He has also admitted that he has lodged the FIR, which was seen by him. The police had written the FIR as per his say and he had made signature on it. The contents of the FIR were read over to him and he admitted the same. According to him, the matter is settled by him. He is intending that the appellant-accused Akash should be released so that his marriage will be performed. He required a daughter-in-law for doing household work and meals, and therefore, he is intending to perform the marriage of appellant-accused Akash to solve his own problem. He is intending that the appellant-accused Akash should be acquitted in this case. According to him, he is an old aged person, and therefore, he desires his son Akash to reside with him. He is intending that his son appellant-accused Akash should not be punished. Though PW-1 Pandurang was subjected to cross-examination by the accused, however, the cross-examination is very brief and nothing has been suggested to him, nor PW-1 Pandurang admitted anything in his cross-examination to discard his above admissions.

14. PW-2 Balaji has deposed that the incident occurred in the house of PW-1 Pandurang (father of the accused). His house is situated to

the side of the house of appellant-accused. He deposed that on hearing the shouts of PW-1 Pandurang, he woke up. Madhav Talikote was with him. After some time, they went to the house of appellant-accused. The door was opened. They entered into the house of appellant-accused. They saw the mother and the sister of appellant-accused in dead condition on same cot. There were injuries on the head of deceased Dhrupadabai and deceased Gangabai. When they entered into the house, there was an axe in the hands of appellant-accused and the same was snatched by PW-2 Balaji. PW-1 Pandurang was weeping at that time. The wife of PW-1 Pandurang and his daughter were died due to injuries. When he returned back to his house, several persons gathered there and they caught hold appellant-accused Akash. He has also admitted in his cross-examination at the hands of the APP that when police came to the village, appellant-accused Akash was in tied condition to a tree. The villagers tied his hands with a rope to a tree. In order to prevent appellant-accused Akash from running away from spot, he was tied with a tree. The police rescued Akash and brought him to the police station. The police brought the rope and the axe along with Akash. He has also admitted in his cross-examination that he is intending that the accused should not be convicted. If his marriage will be performed, the problems of

his uncle Pandurang will be finished. As the marriage of Akash was not performed, the present matter came into existence. There is no cross-examination by the defence counsel on the aforesaid admissions. Only one line cross is there.

15. The testimony of a hostile witness cannot be rejected in *toto* as the evidentiary value of his testimony is not lost and can be accepted to the extent that the version is found corroborated with other material evidence. In the instant case, firstly, most of the facts admitted by PW-1 Pandurang and PW-2 Balaji are not disputed. Secondly, there is enough corroboration to their version which can be considered even though they are declared hostile witnesses by the prosecution.

16. Thus considering their evidence, certain uncontroverted facts can be summarized in the following manner, i.e. Parts A, B, C and D

PART - A

- (i) PW-1 Pandurang, appellant-accused Akash, deceased Dhrupadabai and deceased Ganga, who were only residing in their house at Junna, Taluka Mukhed, District Nanded.
- (ii) The incident occurred in the night time.

- (iii) In that night, deceased Dhrupadabai and deceased Ganga slept in the house.
- (iv) Deceased Dhrupadabai and deceased Ganga found in dead condition on their cot having bleeding injuries on their person.
- (v) The distance in between the cot of PW-1 Pandurang and the cot of his wife, which was inside the room, was about 15 feet and they were at audible distance.
- (vi) On that night the bulbs of both the room were burning.
- (vii) Deceased Dhrupadabai and deceased Ganga slept on the same cot in that night.
- (viii) PW-1 Pandurang slept in the room adjacent to the room where his deceased wife Dhrupadabai and deceased daughter Ganga slept.
- (ix) The appellant-accused Akash was caught hold in the house and he was taken out of the house.

PART – B

- (i) As the parents of Taibai had gone for labour work to other place, the marriage of Akash was not performed in that year.

- (ii) The parents of Taibai were saying not to make hurry for marriage.
- (iii) PW-1 Pandurang had also gone for the work of cutting of sugarcane along with his daughter deceased Ganga 15 days prior to the incident.
- (iv) Deceased wife Dhrupadabai had informed to PW-1 Pandurang that accused Akash was frequently saying for performing his marriage.

PART – C

- (i) PW-1 Pandurang admits the contents of the FIR Exhibit 9 and his signature thereon.
- (ii) According to him, in respect of the murder of his wife and daughter, he lodged the FIR against Akash.
- (iii) According to PW-1 Pandurang, he lodged the FIR about the incident which had taken place and which was seen by him.
- (iv) Police wrote the FIR as per the say of PW-1 Pandurang and he made signature on it.
- (v) The contents of the FIR were read over to PW-1 Pandurang. The same were found correct, therefore, he made his signature on it.

PART – D

- (i) PW-1 Pandurang has deposed that the matter is settled by him.
- (ii) He is intending that the appellant-accused Akash should be released so that his marriage will be performed.
- (iii) He required a daughter-in-law for doing household work and meals.
- (iv) He is intending to perform marriage of appellant-accused Akash to solve his problem.
- (v) He is intending that appellant-accused Akash should be acquitted in this case.
- (vi) He is an old aged person and intending that his son Akash to reside with him.
- (vii) He is intending that his son appellant-accused Akash should not be punished.

17. PW-2 Balaji had not supported the prosecution case, however, his uncontroverted testimony can be summarized in the following manner, i.e. Parts A, B and C.

PART - A

- (i) The incident occurred at the house of PW-1 Pandurang, the father of the accused.

- (ii) On hearing shouts of father of the accused, he woke up. Madhav Talikote was with him.
- (iii) After some time, both of them went to the house of father of the accused. The door was opened. They entered into house of accused.
- (iv) They saw the mother and the sister of the accused in dead condition on same cot.
- (v) There were injuries on the head of deceased Dhrupadabai and deceased Ganga.
- (vi) The wife and the daughter of Pandurang were died due to injuries.

PART – B

- (i) When Balaji returned back to his house, several persons gathered there and they caught hold Akash.
- (ii) The villagers tied hands of appellant-accused with a rope to a tree.
- (iii) In order to prevent accused Akash from running away from the spot, he was tied to a tree.
- (iv) Police rescued Akash and brought him to the police station.
- (v) Police brought the rope and axe along with Akash.

PART - C

- (i) He is intending that the accused should not be convicted.
- (ii) Marriage of Akash will be performed so that problems of his uncle Pandurang will be finished.

18. The evidence of PW-1 Pandurang and PW-2 Balaji to the extent as discussed above inspires confidence. Their evidence is corroborated with the other material evidence.

19. PW-5 API Ashok Bele has deposed that on 08.09.2021 at about 2.00 a.m. he had received a phone call from police Patil Junna, thereby informed that one person committed murder of his sister and mother. The said police Patil also informed that the said person was caught hold by the villagers. PW-5 API Ahok Bele has told Police Patil not to beat the said person and to caught hold of him till arrival of police. He forthwith rushed towards the village Junna along with police staff. On reaching their, he found that the villagers caught hold accused Akash and there were two dead bodies in the house of accused on the cot. The father of the accused as well as the other persons were present in the house. The accused was in angry mood. The villagers told PW-5 API Ashok Bele that accused was not ready to

hand over the axe by which he assaulted his mother and sister. The clothes of the accused were stained with blood at that time. He had drawn inquest *panchanama* of the dead bodies of mother and sister of the accused Exhibit 18 and 19 respectively. He had also drawn the spot *panchanama* Exhibit 23. He had collected the blood fallen on the spot as well as the blood-mixed earth from the spot of the incident. He had sent the dead bodies for postmortem examination. He had also forwarded the seized articles for chemical analysis. He was shown the axe in sealed condition by removing its seal. PW-5 API Ashok Bele has further deposed that it is the same axe, which was seized from PW-2 Balaji. PW-2 Balaji had snatched the said axe after the incident. He has also deposed that the clothes of the accused Akash were found stained with blood. The shirt is at article 'C' and that pant is at article 'D'. The clothes of the deceased were also seized after the postmortem examination and all the seized articles were forwarded for the chemical analysis.

20. We have carefully gone through the contents of the inquest *panchanama* Exhibits 18 and 19, which are admitted by the defence. The injuries on the person of deceased Dhrupadabai and deceased Ganga, who was only 13 years of the age, are mentioned in detail in the inquest *panchanama*. We are shocked to see the injuries on the

head, particularly on the middle portion of the forehead of deceased Dhrupadabai.

21. PW-3 Dr. Gajanan Swami, who has conducted the postmortem examination of both the bodies, has noticed the following injuries on the dead body of deceased Dhrupadabai:

1. Fracture of frontal lobe of scalp size 9 x 4 x 3 cm at middle with brain parts oozing.
2. CLW of size 6 x 4 x 2 cm on middle of nose to right eye with fracture of nasal bone.
3. CLW with fracture of right maxillary bone with right incisor teeth and CLW of size 5 x 3 cm.
4. Fracture of left femoral lobe of skull with CLW of size 3 x 2 x 2 cm”.

In his opinion, the death of deceased Dhrupadabai was caused due to *hemorrhagic* and *neurogenic* shock due to head injury with multiple fracture on skull vault.

22. PW-3 Dr. Gajanan Swami has noticed the following injuries on the dead body of deceased Ganga:

- “1. CLW over palm 4 x 2 x 2 cm.

2. Fracture of 2, 3 and 4th finger from middle of palm.
3. CLW over right maxilla towards right nostril size 4 x 3 x 3 cm.
4. Fracture of right maxillary bone.
5. CLW over forehead to frontal region of scalp size 9 x 3 x 3 cm. towards right eye.
6. Fracture of right fronto occipital region of scalp”.

In his opinion, the death of deceased Ganga was caused due to *hemorrhagic* and *neurogenic* shock due to injury of multiple fracture on skull vault.

23. The injuries on the dead bodies are homicidal in nature and they are possible to be caused by a weapon such as an axe. Postmortem report Exhibit 13 is about the dead body of deceased Dhrupadabai and postmortem report Exhibit 14 is about the dead body of deceased Ganga which are duly proved by the prosecution. Though PW-4 has not supported the prosecution case, however, he has admitted the contents of the spot *panchanama* Exhibit 23. As discussed in detail in the forgoing paras, it is not disputed that the incident had taken place in the residential house of PW-1 Pandurang.

24. PW-5 API Ashok Bele has also drawn *panchanama* Exhibit 25 of seizure of the shirt of PW-1 Pandurang. PW-1 Pandurang has admitted the contents of the FIR. PW-5 API Ashok Bele has also drawn *panchanama* Exhibit 26 and seized the clothes on the person of both the dead bodies. The said clothes were having blood stains. He has also drawn *panchanama* Exhibit 27 for seizure of clothes of accused having blood stains on it. PW-5 API Ashok Bele has also draw *panchanama* Exhibit 28 for seizure of the axe, which was removed from the hands of the accused immediately after the incident.

25. Learned counsel for the appellant has assailed this evidence on the ground that the prosecution has not examined the *panch* witnesses on Exhibits 25 to 28. However, it appears that since the witnesses were not ready to support the prosecution case, the APP has not examined those *panch* witnesses. However, the prosecution has proved the contents of the said *panchanamas* through the Investigating Officer PW-5 API Ashok Bele. We do not find any animus between the Investigating Officer PW-5 API Ashok Bele and the accused in any manner. There is no reason for him to draw falls *panchanamas*. Learned counsel has also assailed the evidence in the form of seizure of the clothes of the deceased and accused Akash and the weapon axe on the ground that those were not sealed. However, it

has come in para 6 of the examination-in-chief of PW-5 API Ashok Bele, that when he was shown the axe in the Court, it was in sealed condition and he was shown the said axe by removing the seal. Further, it appears that the clothes of accused Akash stained with blood i.e. articles 'C' and 'D' were also kept in a box, which was in sealed condition.

26. We have carefully perused the C.A. reports Exhibits 48 to 51. The blood found on the clothes of the deceased persons is of blood group 'O'. The same blood group was detected on the clothes of the appellant-accused Akash. It is pertinent to note that no blood was detected on Exhibit 28, which is the axe. Learned counsel for the appellant has assailed the prosecution evidence on this count that there is no corroboration to the evidence of PW-1 Pandurang, PW-2 Balaji and PW-5 API Ashok Bele to conclude that the weapon axe was seized from the spot after it was snatched from the hands of the appellant-accused. However, we find no substance in it. PW-1 Pandurang, PW-2 Balaji and PW-5 API Ashok Bele, in their uncontroverted evidence, have deposed about the axe being snatched from the hands of the accused immediately after the incident and thereafter it was seized under *panchanama* Exhibit 28.

27. Learned counsel for the appellant has placed his reliance on *Bhanudas Bagaji Salve Vs. State of Maharashtra* (supra), wherein in para 17, the Division Bench of this court has made following observations:

“17. In the circumstances, we find that it would not be safe to base conviction solely on the basis of the evidence of the hostile witness P.W. 4 Chhabu as there is no adequate corroboration by individually proved circumstances and acceptable evidence. There are inherent lacunas in the version given by the hostile witness P. W. 4 and independent witnesses, one of whom was actually named by Chhabu, have not been examined. It is well settled that suspicion, however grave, should not be allowed to take place of proof. In the circumstances, we feel that the benefit of doubt must go to the accused”.

28. In the instant case, however, there is corroboration to the evidence of PW-1 Pandurang and PW-2 Balaji though they have not supported the prosecution case. They have deposed many uncontroverted facts, which are adequately corroborated by the other evidence.

29. In the case of *Sunil S/o Manoharrao Pandhare Vs. The State of Maharashtra* (supra) relied upon by learned counsel for the appellant-

accused, in para 12, the Division Bench of this Court has made following observations :

“12. It is pertinent to note that recovery itself is not proved by prosecution. Both the *panchas* are on confessional statement of appellant and recovery of weapon. Both *panch* witnesses have not supported to the prosecution. Both the *panchas* have not stated in their evidence that appellant confessed to show the weapon used in the crime. They did not state before the Court that appellant discovered knife and it was seized in their presence. Therefore, recovery of weapon itself is not proved. Learned trial Court has wrongly relied upon the sole testimony of Investigating Officer Subhash Dhawale (PW-10).

30. In the instant case, the evidence of PW-5 API Ashok Bele is important. He had immediately rushed to the spot and drawn various *panchanamas*. So far as the weapon axe is concerned, it was seized immediately after the incident by drawing *panchanama* since the weapon axe was allegedly snatched from the hands of the accused.

31. In case of ***Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi)*** (supra) relied upon by learned counsel for the appellant, in para 36, the Hon'ble Supreme Court has observed that, “in the present case,

evidence of PW-1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support the case, accused can rely on that evidence”.

32. In the instant case, we have observed in the forgoing paragraphs that PW-1 Pandurang even though admitted the factual aspects of the case, which he had narrated in the complaint and PW-2 Balaji has also deposed about the same to some extent, however, there is no cross-examination of these two witnesses by the defence counsel and there is nothing in their evidence which can be said to be supportive to the defence.

33. In case of *Ramchandra Laxman Waghmare Vs. State of Maharashtra* (supra), the Division Bench of this Court in para 6 has made the following observations:

“6. They were definitely in dilemma, to support or not to support the case against the accused-father and this must be troubling them from all angles. Their mental condition in such circumstances need to be seen. But at the same stroke, if prosecution unable to place on the record other corroborative evidence, it is difficult to convict any person based, only on the testimony of such

hostile or interested witnesses. No other witnesses have supported or corroborated the prosecution case so far as to the involvement of the appellant”.

34. In the instant case, as discussed in the forgoing paragraphs, there is enough corroboration in the evidence of hostile witnesses PW-1 Pandurang and PW-2 Balaji and to that extent it inspires confidence.

35. In case of *Lingu S/o Dharma Meshram Vs. State of Maharashtra* (supra), relied upon by the learned counsel for the appellant, it is observed that, “the Court must be extremely cautious and circumspect before accepting the evidence of hostile witness. The Court must look for corroboration of the version from other reliable evidence”.

36. In the instant case, though PW-1 Pandurang and PW-2 Balaji, and even though PW-1 is an eye witness to the incident, have not supported the prosecution case, however, the uncontroverted facts of their respective evidence corroborated with other evidence on record unerringly pointed out the guilt of the appellant-accused. It appears that the appellant-accused got annoyed because even though he repeatedly insisted for his marriage to be performed with Taibai, it was not performed under one or another pretext. There were only

four persons residing in the house at village Junna and those are PW-1 Pandurang, appellant-accused Akash, deceased Dhrupadabai and deceased Ganga. Appellant Akash was found in the house at the relevant time and he was tied to a tree immediately after the incident by the villagers. PW-5 API Ashok Bele had immediately rushed to the spot, where he noticed that the appellant-accused was tied with a standing tree and there were blood stains on his clothes. Thus, he brought the appellant-accused to the police station along with the weapon axe, which was allegedly snatched from the hands of the appellant-accused immediately after the incident. The shirt on the person of PW-1 Pandurang of which front pocket was found torn and there were blood stains on the said shirt. Thus cumulative effect of all these circumstances point out the guilt of the appellant-accused. The appellant-accused was caught red-handed on the spot by the villagers. The trial Court has rightly convicted the appellant-accused for having committed murder of his mother Dhrupadabai and sister Ganga, who was only 13 years of the age. The villagers, PW-1 Pandurang, PW-2 Balaji and the other witnesses including the *panch* witnesses have decided not to support the prosecution case for the sole reason that the appellant-accused is the only support of PW-1 Pandurang in his remaining span of life.

37. Considering the entire aspect of the case, we do not find any substance in this appeal. Hence the following order:

ORDER

The Criminal Appeal is hereby dismissed.

(SHRIKANT D. KULKARNI)
JUDGE

(V. K. JADHAV)
JUDGE

S.P Rane