

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 111 OF 2003

The State of Maharashtra	}	Appellant (Orig. Complainant)
Versus		
1. Vishwas @ Pintya Madhukar Paigude, Age : 27yrs., Occu. Welding,	}	Respondents (Orig Accused)
2. Shankar Sudam Sonawane, Age : 50 yrs, Occu. Labourer,		
Both residing at Kudje, Tq. Haveli. Dist. Pune.		

Mr. H.J. Dedhia, APP for Appellant – State.
None for the Respondents.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : JANUARY 22, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Being aggrieved by the judgment and order passed by the learned 2nd Ad Hoc. Additional Sessions Judge, Pune in Sessions Case No. 116/2002, dated 24.07.2002, whereby respondents herein (Original Accused) was acquitted of the charge for committing offences punishable under Sections 302, 376(g)(2) of Indian Penal Code (for short “IPC”),

the present Criminal Appeal is preferred by the Appellant – State of Maharashtra.

2. At the outset, we may state that though there is a reference of name of the victim in the judgment of the Trial Court, we deem it appropriate to refer the deceased as victim without disclosing her name.

3. Learned APP vehemently submitted that a serious offence is committed by the Respondents and though admittedly the case of prosecution rests on circumstantial evidence the prosecution was successful in establishing the circumstances firstly against the accused and then by forming the chain of circumstances the guilt of the accused persons was proved. Learned APP then submitted that in spite of the evidence more particularly, in the form of witnesses who have seen the accused following the victim and also medical evidence was brought on record in support of the prosecution case but the learned Trial Judge failed to appreciate the evidence in its proper perspective and arrived an erroneous conclusion. Learned APP, thus, prayed for allowing the appeal.

4. None appeared for the Respondents.

5. With the assistance of learned APP appearing for the Appellant – State, we have gone through the material evidence brought on record by the prosecution in support of its case.

6. True it is that the case of prosecution rests on the circumstantial evidence, keeping this aspect in mind, now we may proceed to consider the evidence.

7. As the investigating agency was set in motion on lodgment of the report at the instance of Pandurang Paigude (PW 1) father of deceased, we may refer the evidence of this witness firstly. Pandurang (PW 1) stated before the Court that at the time of incident he was staying at village Khurje with his family members namely, his wife and two daughters including deceased. His both daughters were married and were residing with him. His elder daughter was used to do work as a gardener. His second daughter (deceased) was staying with him on account of her second delivery. His younger daughter delivered a male child at his place and at the time of incident the child was of six months of age. The elder daughter was supporting her father by doing petty work whichever available. He then stated that on 14.11.2001 his younger daughter left the

house in morning to collect dry cow dung (it was the day of Diwali festival). When she left the house she was having a chocolate colour muffler piece of cloth for collection of dry cow dung. Usually his younger daughter was returning to home on 04.00 pm but on that day she did not return till 04.00 pm as such, his wife went for her search. She returned back at about 06.00 pm. Pandurang (PW 1) then made an inquiry with his wife of whereabouts of his elder daughter and it came to his knowledge that his younger daughter had been to factory namely, Paigude Tiles Company. She had collected fire wood and kept the same near the factory and again proceeded for collecting more fire wood. On receiving this information, Pandurang (PW 1) proceeded to forest in search of his younger daughter. In spite of extensive search till 11 – 11.30 pm he was unable to find his daughter anywhere. As his land was situated near the forest he slept in his land in that night. On the next day in the morning he went to his house and again made inquiry about his younger daughter. Even till that time his younger daughter had not returned to home so he along with his elder daughter Vimal went in the forest for search of his younger daughter. Pandurang (PW 1) and his daughter Vimal were accompanied by one Kailash. They found the dead body of

his daughter near stream of Dhawaladara forest. There were injuries on her head. The clothes worn on upper part of body were in torn condition whereas there were no clothes on the lower part of the body. Near the body of deceased there was bunch of collected fire wood and two gunny bags containing dry cow dungs. They found one hair rubber band and pieces of clothes scattered at that place. Then he immediately rushed to the village and informed the police on phone. Police personnel reached the spot within 1 ½ hour. When the police personnel reached the spot Pandurang (PW 1) on the spot itself and he narrated his complaint to the police. His narration was reduced in writing. Thereafter, police authority called dog squad and tracker dog after smelling the articles found at the place proceeded towards village. Pandurang (PW 1) then identified the articles shown to him. He specifically stated that articles no. 15 and 17 are not belonging to his daughter. He further stated that when an inquiry was made with the watchmen of the said factory he disclosed that his daughter had been to the factory and thereafter she proceeded towards forest and the accused persons went behind her. Pandurang (PW 1) further stated that his additional statement was recorded by police on next day i.e. 16.11.2001. He further stated that he know the accused

persons as they are from his village and he identified the accused persons in the Court.

In the cross-examination he admitted that there are many persons in the village having the surname Paigude. He further admitted that his village is 2-3 kms away from Kalundra fountain and the same is in jurisdiction of NDA (National Defence Academy). He further admitted that the area is under the supervision of NDA guard and nobody is allowed to enter in the forest to cut trees or wood. He further admitted that from tar road one cannot see building of Paigude Tiles Company. He further admitted that there is factory to one side of tar road and on the other side there are residential bungalows and in those bungalows the employees of owner of bungalow are staying. Then suggestion was given to him that due to the dispute between in-laws and his younger daughter his younger daughter was staying at his house even after her delivery, this suggestion was denied. He further admitted that after finding dead body of his younger daughter he came to the village and his elder daughter remained at the place where the dead body was found. He further admitted that before the police arrived at the place many villagers have gathered near dead body. He further admitted in the

cross-examination that he cannot read and write English but he only sign in English language. He also admitted that he is hard of hearing. Then an omission is brought on record in respect of cloth piece in the mouth of deceased.

8. Vimal Marne (PW 2) is the elder daughter of Pandurang (PW 1) and also acted as panch to inquest panchanama Exhibit 71. She states about the relations, the deceased going to her parental home for delivery etc. It may not be necessary for us to refer to these things in detail. We may refer only material part of the evidence of this witness. Vimal (PW 2) stated before the Court that as her younger sister was not traced on 14th till late evening. On the next day morning she along with her father and Kailash proceeded to forest in search of her younger sister. They found body of her younger sister in Dhawaldara forest in naked condition. The body was having injuries. Then she found two gunny bags lying near body. Her father then proceeded to village to informed the incident to the police and she remained at the place near the dead body. Police reached on that spot at about 12.00 pm and then shifted the dead body to Sassoon Hospital, Pune. Vimal (PW 2) accompanied the police personnel to Sassoon Hospital and thereafter she returned back to

her village at about 8.30. Her statement was recorded by police. The articles which were found near the dead body were shown to her, she identified the articles 3 to 15 and 17 as they belonging to her younger sister.

In the cross-examination this witness admitted that there was not a single piece of cloth on the body of the deceased when she saw the dead body and the clothes of deceased were lying 20-30 ft. away from the dead body. Then she specifically stated before the Court, in the cross-examination, that neither she herself nor her father covered the dead body with any clothes. Then she admitted in the cross-examination that the gunny bags which were shown to her are the gunny bags which are available in the market and there is no specific identification mark on those gunny bags so as to identify this gunny bag belonging to them. Then a suggestion are given to this witness and it was the attempt of defence Counsel to suggest that the witness had not visited the spot where the dead body was found, this suggestion is denied.

9. Rohidas Manjare (PW 3) is another panch to the inquest panchanama. He stated before the Court that when he reached the place for purpose of drawing the panchanama on a call given by police

authorities he found the dead body. He stated before the Court that the place covered by grass having blood on the grass. He saw one pair of chappal, gunny bags, ropes and piece of red colour nicker. He further stated that he saw one wooden stick having blood stains. Then he saw bunch of fire wood lying 10-20 ft. away from the dead body. He saw one hair rubber band on the spot and one hair clip. He stated that there were in all 15 articles lying on the spot along with two gunny bags and rope.

In the cross-examination he admitted that the gunny bags and chapples were not having any specific mark. He stated in the cross-examination that there was a piece of cloth in the mouth of dead body and also piece of wooden stick.

10. Pausing here if we summarize the version of these three witnesses one can find there are discrepancies in so far as the position of dead body and the articles found on the spot. Pandurang (PW 1) father of deceased stated that the dead body was partially covered whereas Vimal (PW 2) elder daughter and panch to the inquest panchanama stated that dead body was in naked condition and neither she herself nor her father put any cloth on the dead body. Then there is also discrepancy

in respect of cloth piece found in the mouth of dead body. Rohidas (PW 3) only refers to the blood on the grass and wooden stick having blood stains whereas Vimal (PW 2) who is another panch to inquest panchanama makes no mention of such things. Discrepancy in so far as the articles are concerned, Pandurang (PW 1) shown ignorance about the articles 13 and 15 whereas Vimal (PW 2) admits that these were articles of the deceased. Then in the version of Vimal (PW 2) there is no reference to hair clip and the same finds place only in the version of Rohidas (PW 3) who is second panch witness to inquest panchanama.

11. Now we may refer to evidence of Dattatraya Paigude (PW 4). He stated before the Court that on 15.11.2001 when he went to forest Dhawaladara he found that police along with a dog squad and in his presence smell of gunny bags and rope was given to tracker dog. Then dog pass from Paigude Tiles Company, went near Shreyas Bungalow, and then proceeded to village Urje school. Thereafter the dog went towards Mariai temple and then dog went near the room of accused Shankar. Then the trainer of dog again gave smell to the dog of the house and the dog took round of the house. Accordingly, panchnama was drawn.

Nothing was elicited in the cross-examination of this witness

so as to shake version of this witness.

12. Rajendra Paigude (PW 5) who stated before the Court that on 15.11.2001 when it came to his knowledge that younger daughter of Pandurang (PW 1) is dead and her dead body was lying in mountain area, he proceeded to that site. He found that the dead body was lying there, certain articles were also lying near body. Police personnel were there. They called ambulance, lifted the dead body, it it in the ambulance and the dead body was sent to Sassoon Hospital. His statement was accordingly recorded.

Thus, this witness only stated about the dead body found on that place and was lifted from that place and the same was sent to Sassoon Hospital in an ambulance. As such, this witness is not of any help to the prosecution in so far as connecting the accused with alleged offence.

13. Postmortem report Exhibit 24 is proved through Dr. Shrikant Chandekar (PW 6), now we may refer to evidence of this witness in detail. Dr. Shrikant (PW 6) stated in his examination-in-chief that during examination he found that the body was that of female aged about 30 years. She was thin. He noticed blood stains over face, head and

upper lip. There was no injury to external genital or vaginal wall. There was no stains around genitals. He found following external and internal injuries on the dead body of deceased :

- (1) Linear abrasions over – (a) left forearm flexor aspect length varying from 0.5 to 3 c.m. multiple. (b) left arm middle third back transverse 2.5 c.m. (c) above left elbow posteriorly transverse 1 c.m., 1.5 c.m., and 3 c.m. (d) left thigh upper third anteriorly 2 cm. transverse, (e) Left thigh anteriorly middle third 9 cm. transverse. (f) left thigh middle third anteriolaterly – multiple ranging from 0.5 to 2 cm. (g) left foot dorsum vertical proximal 4 cm (h) right leg anteolaterally middle third multiple ranging from 1 cm to 6 cm (I) Right thigh laterally multiple ranging from 1 cm to 8 cm (j) right hip posterolaterally in an area 20x15 cm. multiple ranging from 1 cm to 5 cm most of abrasions were transverse, (k) Right midback – posterolaterally vertical 2 cm., 2.2 cm., and 1.5 cm., (l) left hip posterolaterally in an are – 10x12 cm. multiple ranging from 1 cm to 2.5 cm. All linear abrasions were red.
- (2) Abrasions over – (a) left elbow region multiple 0.2x0.3 to 0.5 cm. (b) left knee region anteriorly multiple 0.3 to 0.4 cm. to .2x2 cm. (c) left shin upper half antiriorly multiple – 0.1x1 cm. to 0.2 x 0.4 cm (d) right knee anterolaterally

multiple 0.1 x 0.2 cm to 0.2 to 0.5 cm. (e) right forearm dorsum multiple 0.1 x 0.5 to 1 cm. (f) right elbow 0.2x0.3 cm (g) 8 cm medial to left shoulder top 1.5x2 cm. (g) left scapular region superolaterally – 0.3x0.8 cm. and 1x1 cm. (h) left mid back 3 cm from spine 1x1.5 cm. All abrasions were red.

- (3) Lacerated wound 3 cm, above right ear top transverse 8 cm x 0.5 to 1 cm. Two lacerated wounds merging with above mentioned injury from upper aspect measuring 2 cm x 0.5 cm each. All injuries bone deep.
- (4) Lacerated wounds over right parietooccipital region in an area 10x7 cm. - (a) situated – 18 cm. above base of nape in mid line, vertical 2.5x0.5 cm. bone deep. (b) inverted 'L' shape wound situated 17 cm. above base of nape 1.5 cm. right of mid line measuring 3.5 cm to 0.5 cm (Transverse limb) and 3x0.4 cm (Vertical limb) bone deep, (c) transverse wound situated 2 cm, above and behind right ear top 4x0.6 cm bone deep, (d) transverse wound situated 6 cm, behind right ear top 3x0.5 cm bone deep.
- (5) Lacerated wound left parietooccipital region, mid vertical 4 cm x 0.5 cm bone deep.
- (6) Lacerated wound 7 cm. above left ear top, transverse

4x0.4 cm. bone deep.

- (7) Lacerated wounds forming across situated over left parietooccipital region 13 cm. above base of nep measuring 3x0.2 to 0.6 cm (Vertical limb) and 3.5x0.5 to 0.8 cm (transversely) bone deep.
- (8) Lacerated wound 9 cm, behind left ear top measuring 2x2.5 cm forming irregular triangle bone deep.
- (9) Lacerated wound 2 cm above left ear top in temporoparietal region measuring 2.5x2.5 cm forming a irregular triangle bone deep.
- (10) Lacerated wound over lateral part of left eyebrow 5.5 cm x 0.3 cm bone deep. Underlying bone showed depressed fracture in an area 0.2 to 0.3 cm x 1.5 cm.
- (11) Lacerated wound 1 cm. above and parallel to injury no. 10 measuring 4x0.3 cm muscle deep.
- (12) Lacerated wound over mid forehead vertical oblique situated 2 cm. above nasion 4x0.5 cm bone deep.
- (13) Lacerated wounds over mid right forehead meeting each other in acute angle towards right, measuring 4 cm x 0.4 cm (upper) and 3.7 cm x 0.5 cm (lower) bone deep.
- (14) Lacerated wound 5 cm. above medial end of left eyebrow,

vertical 3 cm x 0.4 cm bone deep. A lacerated wound merging with above mentioned wound from right in mid region measuring 1 x 0.3 cm muscle deep.

(15) Lacerated wound 6 cm above left eyebrow lateral end. Vertical 4.5 cm x 0.5 cm bone deep. Another lacerated wound crossing it at top measuring 1x0.5 cm bone deep.

(16) Incised nocking injury 8 cm above left mid eyebrow 6.5 cm x 0.2 to 0.5 cm suggital, bone deep.

(17) Lacerated wound 6 cm above lateral end of right eyebrow vertical 4x0.3 cm bone deep margins clean cut at places.

(18) Lacerated wound parallel and 1 cm medial to injury no. 17 measuring 3.7 cm x 0.4 cm bone deep. Above mentioned lacerated wound over forehead are surrounded by irregular faint abrasions measuring 0.5 cm to 1 cm with underline contusion.

(19) Abrasions over – (a) left cheek 0.2 x 0.2 cm to 1.3 cm multiple (b) left sub maddibiller region at angle of mandible 1x0.8 cm (c) upper anterolateral part of left chest vertical olbique 0.5 x 3 cm (d) right upper chest mid region 0.2 x 0.5 cm to 0.3 to 0.5 cm (e) right mid trunk laterally 0.5 cm x 1 cm, 0.3 cm x 2 cm and 1x0.5 cm.

- (20) Contusion right Zygomatic region 2x3 cm.
- (21) Minimal haematoma under scalp over bylateral fronto temporal regions and bylateral parietooccipital regions showed defusedly sprayed haematoma.
- (22) Left temporalist muscle contused.
- (23) Right temporal bone with transverse crack fracture in mid region 4 cm.
- (24) Left base of skull anterior fossa showed crack fractures 1.5 cm, 1 cm in continuation with depressed fracture of left superior orbital ridge.
- (25) Dure and meningas were intact. Subdural and Sub arachoid hemorrhage all over hemispheres.
- (26) Left frontal lobe contused at base.

14. During internal examination he found early automatic changes present in internal organs. During examination of chest he found haematoma over mid sternal region 3x6. He also found blood in anterior mediastenum. During examination of abdominal organs he found root of mesentry was contused 4x6 cm. Her uterus was not pregnant, and the stomach showed greenish fluid 250 cc. He preserved

blood or grouping and scalp hair, pubic hair, vaginal swabs for analysis.

Dr. Shrikant (PW 6) then stated that in his opinion the victim died due to head injury and she might have died 8 to 20 hours before conduction of postmortem examination.

In the cross-examination, Dr. Shrikant (PW 6) replied thus:

It is not correct that it is one of the finding of pubic matting in a sexual assault on a victim, if seminal ejaculation has taken place. It is correct that there were no semen stains on the pubic hair to the deceased and I have not mentioned the same in the report. It is correct that there were no injury on libia majora and minora. It is correct that if the woman is fully conscious and there is sexual intercourse with her against her will there are chances of injury on libia majora and minora. In this case as there were no injuries to the deceased at genital region. I opined that possibility of forceful intercourse with seminal ejaculation removed. It is correct that from vaginal swab in came of seminal ejaculation semen can find. A person may die after two or three house of received the injury shown in injury nos. 24 and 25 in the postmortem report.

15. Kailas Paigude (PW 7) is the witness through whom the prosecution is putting its last seen theory. Kailas (PW 7) stated that since

last 1 year he is staying at Kudaje. His house is situated in the forest near Paigude Tiles Company. He know the deceased and had seen the deceased on 14.11.2001 at about 12-12.30 hours near the Paigude Tiles Company. She put the collected fire wood near the factory and went inside the factory for drinking water, and at that time he say both the accused and one watchmen of the factory near the factory. He stated before the Court that he was knowing these two accused persons since last 5 to 6 years and identified them in the Court. Then he stated that he saw accused persons talking with the victim. Thereafter he saw the victim was proceeding towards the forest and an accused persons went behind her. On the same day, in the evening, parents of the deceased came to this house and made an inquiry with him. On the next day in the morning Panduring (PW 1) father of deceased came to his house and he accompanied him towards Dhawaldara in search of the victim. Then he stated that at a distance of 3-4 kms from the Paigude Tiles Company the find dead body of victim. Then he asked Pandurang (PW 1) to call the police, thereafter police came there. Panchanama was drawn. Dog squad was called and investigation was performed.

In the cross-examination he admitted that on the day of

incident 20-25 person went towards the forest from morning till afternoon. Then he stated in the cross-examination that when he saw the dead body there was a loose saree n the person of dead body. Then he stated that he remained there near the dead body and Pandurang (PW 1) went for informing the police. He further stated that thereafter police took away accused persons and watchman in Jeep to Pune. He further stated that on the next day he was called by the police in police station and his statement was recorded and when his statement was recorded accused persons and the watchman were present in the police station.

It is interesting to note that in the cross-examination this witness improves his version by stating that he saw accused Pintya and Sonawane who came first in the company and he further stated that deceased drinking water by pot / lota. Then he stated that deceased met him and he had some talk with deceased.

The admission of this witness in the cross-examination that on the day of incident 20 to 25 person went towards the forest from morning till afternoon assumes an importance and it cannot be said that the accused were only person who went in the forest after the victim proceeded in the forest. Thus, the so called last seen theory put up by the

prosecution becomes doubtful.

16. Deepak Javale (PW 8) is the police constable and at the relevant time he was attached to special dog squad at Pune. He had acquired special training for dog squad and trainer dog Soni was trained by him. He stated before the Court that trainer dog Soni used for 80 to 90 times for detection of crime. On 15.11.2001 when he was in the office a call was received by him from Haveli Polic Station, accordingly, he proceeded to village Kudaje along with another police constable Bhagwat. An entry to that effect was made in the register. The said register was produced before the Court. Then he stated that at the place of occurrence he found stones, two gunny bags, some blood stained clothes and rope. On inquiry it was informed that the gunny bag and rope were not belonging to deceased. Then he gave smell of the rope to dog Soni. Dog Soni then took round near the place and proceeded towards the Paigude Tiles Company thereafter, towards village Kudaje, then dog proceeded to Sonawane vasti and stopped near the house of accused Shankar Sonawane. Then again the smell of rope was given to the dog, the dog did not move from the place, accordingly, panchanama exhibit 9 was prepared.

In the cross-examination this witness admitted that the Sonawane vasti having 20 to 30 houses. He then further stated in the cross-examination that the police personnel from Haveli Police Station were with him at the place of occurrence, neither photographs were taken nor the panchanama was prepared at the spot.

17. Deepakkumar Saran (PW 9) is the labour who was working in the Paigude Tiles Company at the relevant time. He stated before the Court that he was residing in the company premises alone and there were houses of one Kailas Paigude and Thapa. Then he stated that he was knowing deceased and he had seen her in the morning of Dipawali. He stated that he is not remembering the date. He had seen victim in the afternoon as she came at Paigude Tiles Company, at that time accused Shankar Sonawane and Pintya were also in the factory. He was knowing them as they were frequently visiting the tiles company and they were eating food together. On that day also all three of them ate food. Victim came there for drinking water, she drank water and while she was going back the accused persons went behind her. He stated that the accused Shankar was having a rope with him and accused Pintya was having gunny bag with him. Both of them went towards the forest and after 1½

hours he had seen the accused going to village Kudaje. Then he stated that his statement was recorded by the police as per his say.

In the cross-examination, this witness admits that he is studied up to 2nd standard only. He do not know Marathi reading, writing and speaking. He also don't understand Marathi properly. He further admitted that accused Pintya came in that area of the company after long period with his buffalo. Then he stated that he do not know Kailas had been to the victim on that day. Then he admitted that he do not know on which side the victim went. He further admitted that empty cement bags were lying near the Paigude Tiles Company. He further admitted that if a person passes from the main gate of the factor one cannot see to which direction person went. Then he admitted that on the next day the police person took him along with the accused to Haveli Police Station. He further admitted in the cross-examination that accused Shankar used to come near the factor for cutting the grass and after collecting the grass he used to leave grass on that place. Then he stated that he do not know which clothes were on the person of Shankar on that day. Then he stated that it is true that there is a road which passed from farm of Thapa and which goes down and from that road nobody can see who goes down by

that road.

18. Gundy Bahadur Thapa (PW 10) is the watchman working in the farm of one Rusban at Kudaje village. He used to stay in the farm itself. He stated that farm is at the top and behind the farm forest area starts. On the other side there is open land and on the opposite side there is building of Paigude company. He stated that he know both the accused persons as they used to graze their cattle near the farm and whenever they asked for drinking water he used to provide water to them. He further stated that on 14th in the month of Diwali of last year in between 11 – 12 am accused Pintya came to him and demanded water accordingly, he gave water. Accused Pintya asked him to join for eating food but he refused and stated that he is having work. He then saw accused Shankar cutting grass at the other side of the farm. Then accused Pintya and Shankar went towards the building of Paigude Tiles Company for eating food and thereafter what happened he do not know. He further stated that police made inquiry with him. He further admitted that he do not know Marathi reading, writing or an meaning.

The statement in respect that the accused Pintya came to him and demanded water and he provided water was brought on record by

way of an omission. In the cross-examination this witness admits that building of Paigude Tiles Company is not visible from the front side of the farm. The road passing towards the Paigude Tiles Company from village side is zigzag road. He cannot see a person passing from main gate of Paigude Tiles Company from the place of farm. He then admitted that on that day he had no talk with accused Shankar.

19. Chandrashekhar Ubhe (PW 11) is the panch in whose presence the personal search of accused person was conducted.

20. Dr. Kishore Pedgaonkar (PW 12) is the medical officer who was attached to Sassoon Hospital, Pune at the relevant time. Accused Pintya was examined by him on 17.11.2001 and he found following injuries :

Injury No. 1 : Abrasion right side on fore arm, dorsal aspect,
2"x1/2 cm

Injury No. 2 : Abrasion to right wrist joint blunder aspect.

Injury No. 3 : Abrasion to right fore arm blunder aspect 2" x ½"

Injury No. 4 : Abrasion to left palm middle sizes 2" x 2" cm.

Injury No. 5 : Abrasion to fore arm size 2" x 2" cm.

He further stated that age of injury is within 7 days and cause

of injury is hard and blunt object. He further stated that injuries were possible in scuffle.

In the cross-examination he admitted that age of injuries were not specifically mentioned in the certificate not the colour of injuries were mentioned. He also admitted that it was not mentioned in the certificate of which type injury no. 1 was. He further admitted that it was also not mentioned in the certificate or on which side injuries no. 2 to 4 were. He further admitted that abrasion injury heal within 24 hours and its colour become reddish and after 2-4 days the colour becomes brownish. He also admitted that if the body part comes in contact to hard and blunt object the same type of injuries are possible. Then he stated in the cross-examination that he had not collected the semen in this case.

21. Dr. Shrirang Shelar (PW 13) is another doctor attached to Sassoon Hospital at the relevant time who had examined other accused Shankar on 20.11.2001. His cross-examination was declined. It can be stated at this stage that accused Shankar was subjected to cross-examination nearly 5 days after incident.

22. Devidas Dhokare (PW 14) is the panch to recovery

panchnama Exhibit 41. In the cross-examination this witness admits that when he reached the police station he found that the articles were lying on the table. The articles were shown to him by the police. He made one signature in the police station and left the police station. In the cross-examination it was further brought on record that he had not seen what was written in the panchanama.

23. Gajanan Paigude (PW 15) is the panch to memorandum panchanama of clothes from accused Exhibit 43. He stated that on 18.11.2001 he was called by the police, he went to temple of Bhairoba. Police and accused were present there. Then police asked accused Vishwas @ Pintya regarding the clothes and the accused disclosed that the clothes are kept in the cupboard at his house. Then he proceeded to the house of accused Vishwas along with police. Accused entered in the house, some clothes were kept to the side of cupboard. Accused handed over one Khaki shirt, one pant having blood stains and one underwear to the police. Accordingly, panchanama Exhibit 44 was prepared. Then he along with police party again came to the temple of Bhairoba. There accused Shankar disclosed that he has concealed his clothes in the house. The panch and police personnel along with accused proceeded to his

house, the house was in dilapidated condition. Accused Shankar then produced one checks shirt, one pant and underwear. Accordingly, panchanama was prepared. The witness then identified those clothes.

In the cross-examination this witness admitted that accused Pintya was working in a garage and doing fabrication work. He further admitted that he is unable to tell the difference whether the red colour stains on the clothes were blood stains or red oxide stains or any other colour stains.

24. Hanumant Ghadge (PW 16) is the police constable attached to Haveli Police Station at the relevant time. On that day he was on duty outpost Khadakwasala and went to the place of occurrence along with API Jadhavrao and other police staff. A dead body of female person was seen by him. He took the dead body to Sassoon Hospital and made a report to the Dean of Hospital. Necessary formalities for conducting postmortem were undertaken by doctor attached to Sassoon Hospital.

25. Ajay Jadhavrao (PW 17) is the investigating officer. In the examination-in-chief he stated that on 15.11.2001 he received an information on telephone through Sarpanch of village Kurke about

finding dead body of victim in the forest village of Kurke. He proceeded to the spot. Then he stated about the necessary steps taken by him in the process of investigation such as, recording the complaint, taking photographs of the dead body, drawing various panchanamas, recording statement of witnesses, effecting arrest of the accused, recovery of the articles, conducting the medical examination of the accused through the medical officers, conducting postmortem on the dead body, forwarding the material to the chemical analysis, obtaining the CA reports and filing of charge-sheet in the Court on 11.02.2002.

He stated in the cross-examination that on reaching the spot he found that it was the dead body of a person but he do not recorded the inquest panchanama on the spot as there was no disclosure from the doctor. Then he admitted in the cross-examination that the complainant had made a statement before him that the victim was harassed by her in-laws therefore, she started residing in her parental home. Omissions are proved through this witness.

26. Considering the above referred evidence, it reveals that though the prosecution place heavy reliance on the circumstance of last seen against the accused persons, this last seen theory is not established

by the prosecution against the accused person beyond reasonable doubt. At the cost of repetition, we may state that in the version of witnesses there are material discrepancies, contradictions and omissions. The witnesses examined before the Court by the prosecution so as to submit that they have seen the accused persons following the victim have admitted in the cross-examination that it was not possible for them to see towards which area victim proceeded and it was also not possible for them to see towards which area the accused proceeded. It is also brought on record by the defence that on that day nearly 20-25 person proceeded towards the forest as such, it is not the case that only these two accused persons proceeded towards the forest area. It is stated before the Court by the medical officers in the cross-examination that the injuries on the person of accused Pintya were possible to the part of body which comes in contact with hard and blunt surface. The another accused person was subjected to medical examination after 5 days of the incident. The so called recovery at the instance of accused person is also doubtful for more than one reason. Interestingly the witnesses to this recovery admitted in the cross-examination that they are not conversant with Marathi language and one witness even admitted that he do not know what was

written in the panchanama.

27. Learned Trial Judge thus, on scrutinizing and assessing the evidence of the prosecution recorded the reasons for not accepting the version of witnesses in paragraphs 16 and 17 of the judgment. Learned Trial Judge also disbelieved the so called recoveries in paragraphs 18, 19 and 20 of the Judgment. In so far as the case of prosecution against the accused persons of committing rape and murder of the victim is concerned, the learned Trial Judge assigned the cogent reasons in paragraph 21 of the judgment and the same reads thus:

21. Now, we have to consider the medical evidence regarding the rape and murder of victim. However, prosecution to establish the allegations and charge of rape and murder on victim examined the Dr. Shrikant Chandekar (PW 6) who conducted the postmortem and given his opinion regarding the death of victim. It finds in his evidence that victim was died within 8/20 hrs. earlier at the time of conducting his postmortem. However, taking his evidence into account as to the time since the death is concerned, the most probable time of death of victim could be 10.00 pm on 14/11/2001. However, on calculating and assuming the

death had occurred 20.00 hrs prior to the time of incident as the postmortem was conducted on 15/11/2001 at 6.15 p.m., the time since death of 20.00 hrs being definitely outer limit as stated by this expert medical witness. It further find that the said witness was recalled and reexamined by the defence after amendment of the charge at the request of prosecution. However, in this evidence, it finds that he clearly stated that a person may die after two or three hours if he received the injuries which shown in certificate 24 & 25 in the postmortem report. It is the record that the incident was occurred as per the prosecution between 1.00 a.m. to 2.00 a.m. on 14/11/2001 and therefore, that leaves a gap of unexplained and uncounted gap of eight hours so far as the medical opinion regarding the time of the death of victim.

28. As stated above, the arrest of the accused persons itself was effected after the four days of the incident and in so far as the attempt of the prosecution to submit before the Court that the blood and semen found on the clothes recovered from the accused failed and while assessing this evidence the learned Trial Judge observed thus:

23. *In the present case, the accused persons*

were arrested after four days of the alleged incident and they were medically examined by the doctor. Therefore, on their arrest, they were subjected to medical examination and at that time the clothes on their person were not having blood or semen stain. However, the learned A.P.P. for the prosecution submits that the clothes which were recovered by the investigating officer at the instance of accused persons while taking discovery U/s. 27 of the Evidence Act and these clothes were sent for C.A. for examination of the opinion. The stains found on the clothes of blood and semen and the grouping of the blood was detected 'A'. She further replied upon the C.A. report and invited attention of this Court that the petticoat which was of deceased was recovered by the investigating officer and he got examined it by the C.A. and he reported that the petticoat was containing semen stain and the group of that stain was 'A'. However, the learned A.P.P. tried to establish that the semen stain having a blood group 'A' and the blood of the accused is also 'A'. Therefore, the presumption shall be drawn that the accused had sexual intercourse on deceased. To my mind, presence of semen stain on the petticoat of deceased and the blood stains on the clothes of accused of the same group for that there is no evidence

in this case to prove that the accused is only having 'A' blood group and therefore it is not by itself incriminating piece of evidence connecting the accused with the crime in question. So also, the discovery of blood group stain on the petticoat of deceased cannot be treated as an incriminating piece of evidence against the accused persons connecting them with the crime because, there is no sufficient evidence that the clothes which were recovered by the investigating officer belongs to the accused persons and further possibility of the clothes being stains with the blood or semen of the same person to whom it belonged or the accused whether they were wearing it has not been ruled out. As I have already stated in the above paras that the investigating officer has failed to follow the procedure of Section 27 of Cr.P.C. and prosecution therefore, failed to establish the discovery of the clothes U/s. 27 of Cr.P.C.

29. Learned Trial Judge in paragraph 26 of the judgment discarded the prosecution theory of motive with a proper reasoning, it may not be necessary to reproduce the reasoning. Suffice it to say that the learned Trial Judge committed no error in appreciating the aspect of motive.

30. Learned Trial Judge then observed that on the evidence two possibilities were available and the possibility of the accused being entitled for benefit of doubt on assessment of the evidence was accepted by the Trial Court resultantly, the judgment and order of acquittal was passed, we see no reason to take another view. The view adopted by the learned Trial Court, in our opinion, is just and proper. Appeal, thus, being devoid of any merit, deserves to be dismissed. Accordingly, Criminal Appeal is dismissed.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)