

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.795 OF 2019

Naresh Shamrao Yuvnate,
Aged about 38 years, occupation : labour,
Resident of Jamgaon, taluka Warud,
District Amravati. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
Through Police Station Officer,
Police Station Shendurjana Ghat,
Taluka Warud, district Amravati. **Respondent.**

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Shri J.Y.Ghurde, Counsel Appointed for the Appellant.
Shri M.J.Khan, Additional Public Prosecutor for the
Respondent/State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.

CLOSED ON : 14/12/2022

PRONOUNCED ON : 24/03/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By this appeal, the appellant (accused) challenges judgment and order of conviction and sentence dated 19.6.2019 passed by learned Additional Sessions Judge, Amravati in Sessions Trial No.111/2017 whereby learned Judge below convicted the accused.

For offence punishable under Section 302 of the Indian Penal Code, the accused is convicted and sentenced to suffer rigorous imprisonment for life and to pay fine Rs.1000/-

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and default of payment of the fine amount to suffer rigorous imprisonment for one year.

For offence punishable under Section 201 of the Indian Penal Code, the accused is convicted and sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.600/- and in default of payment of the fine amount to suffer rigorous imprisonment for one month.

Learned Judge below directed that all the sentences of the accused shall run concurrently. However, learned Judge below acquitted the accused of offence punishable under Section 498-A of the Indian Penal code. The accused is also given set-off under Section 428 of the Code of Criminal Procedure since he is in jail.

2. Heard learned counsel Shri J.Y.Ghurde appointed for the appellant/accused and learned Additional Public Prosecutor Shri M.J.Khan for the respondent/State.

3. Brief facts, necessary to dispose of the appeal, are as under:

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the crime is registered, on the basis of report lodged by one Radhu Sunil Kaslikar, the brother of Radhabai (deceased), on 11.4.2017 on allegations that the deceased was his younger sister who was married with the accused prior to fifteen years. From the said wedlock, they are having a daughter and a son namely Neha and Nirmal aged about 13 and 10 years respectively. Both the children are residing with their grandmother as the accused and the deceased were residing at the outskirts of village. The accused was addicted to vices like drinking liquor and he used to beat the deceased. One day prior to incident, the deceased informed him that the accused is beating her by visiting his house. On the same day, the accused also came to his house at about 12:00 noon and took the deceased along with him on a pretext that the deceased has to withdraw amount from bank. On the day of the incident, his nephew Nirmal informed him that his mother (deceased) is sleeping in the house and amount is not withdrawn. The nephew also disclosed that his father assaulted his mother in the night and, therefore, he went to the house and saw blood stains outside the house of the deceased. So, he opened the door and saw the deceased

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inside the house sleeping on a "chatai" (mattress) covering the blanket on her person. He gave a call to the deceased, but she had not responded and, therefore, he uncovered her and saw that there were no clothes on her person. She had suffered injuries on her head and he found the deceased is dead and, thereafter, he approached to the police and lodged the report. On the basis of the said report, the police have registered the offence vide Crime No.116/2017 under Section 302 of the Indian Penal Code.

4. On the basis of the said report, Amravati Rural Police carried out investigation. During the investigating, the Investigating Officer has drawn spot panchanama and inquest panchanama. The accused was arrested. At the instance of the accused, on the basis of his memorandum statement, weapon "stick" of the offence, his blood stained clothes, and blood stained clothes of the deceased were recovered. It further revealed to the Investigating Officer that prior to one month of the incident, the deceased had lodged report against the accused at Shendurjana Ghat Police Station that the accused is coming at home everyday by consuming liquor and assaulting her. On 10.3.2017, she was assaulted and,

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therefore, she approached to the police. The police referred her for medical examination. Her medical certificate was obtained and it revealed that she had sustained abrasions at right ear upper side and contusion on left hand near elbow joint. Therefore, N.C.Report was lodged against the accused. The Investigating Officer has collected all these documents and included the same in the investigation papers. He also collected postmortem report and it revealed that the death of the deceased is caused due to injury to the brain, the lungs, the liver, and spleen. All incriminating articles are forwarded to Chemical Analyzer. After completion of the investigation, the Investigating Officer filed chargesheet against the accused.

5. Learned Magistrate has committed the case to the Court of Sessions. The charge was framed against the accused vide Exhibit-6. The accused pleaded not guilty and claimed to be tried.

6. To substantiate the charge levelled against the accused, the prosecution examined as many as eight witnesses, which are as follows:

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PW1 Radhu Sunil Kaslikar, Exhibit-12, informant;

PW2 Sandip Sheshrao Wankhade, Exhibit-20, pancha on inquest, spot, discovery panchanamas, and memorandum statement of the accused;

3. PW3 Neha Naresh Ivrate, Exhibit-27, daughter of the deceased and the accused;

4. PW4 Balkrishna Govindrao Markam, Exhibit-28, neighbour;

5. PW5 Bali Anil Kadave, Exhibit-31, sister of the deceased;

6. PW6 Subhash Narayanrao Adhau, Exhibit-33, Assistant Sub Inspector who recorded report of the deceased against the accused prior to the incident;

7. PW7 Dr.Pramod Uddhavrao Potdar, Exhibit-39, Medical Officer, and

8. PW8 Sheshrao Laxman Nitnaware, Exhibit-48, Investigating Officer.

7. Besides the oral evidence, the prosecution relied upon following documents:

1. oral report Exhibit-13;

2. First Information Report Exhibit-14,

3. Statement of the informant under Section 164 of the Code of Criminal Procedure Exhibit-15;

4. inquest panchanama Exhibit-22;

5. spot panchanama Exhibit-23;

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6. memorandum statement of the accused Exhibit-24;
7. discovery panchanama Exhibit-25;
8. stick resealing panchanama in presence of the Medical Officer Exhibit-26;
9. oral report by the deceased against the accused prior to the incident Exhibit-34;
10. letter to the Medical Officer to refer the deceased for medical examination dated 10.3.2017 Exhibit-35;
11. N.C. Report by the deceased Exhibit-36;
12. postmortem report Exhibit-40;
13. query report Exhibit-41, opinion of the Medical Officer on the said query report Exhibit-42;
14. letter to the Medical Officer Exhibit-43;
15. opinion by the Medical Officer Exhibit-44;
16. letter to the Medical Officer referring the accused for medical examination Exhibit-45;
17. medical certificate of the accused Exhibit-46,
18. letter to the Medical Officer for obtaining medical samples of the accused Exhibit-47;
19. letter to the Chief Executive Officer, Zilla Parishad calling two employees to act as panchas Exhibit-49;
20. seizure memo of blood samples of the deceased and the clothes of the deceased Exhibit-50;

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21. letters to Chemical Analyzer Exhibits-52 and 54;

22. Chemical Analyzer's Reports Exhibits-60 to 62 and Exhibit-5;

23. house extract of the house of the accused Exhibit-67;

24. injury certificate of the deceased dated 10.3.2017 Exhibit-68;

25. seizure memo of article seized from the spot Exhibit-69;

26. arrest panchanama of the accused Exhibit-70, and

27. seizure memo of memory card Exhibit-71.

8. All incriminating evidence are put to the accused in order to obtain his explanation regarding the evidence appearing against him by recording his statement under Section 313 of the Code of Criminal Procedure. The defence of the accused is of total denial and of false implication.

9. Learned counsel Shri J.Y.Ghurde for the accused submitted that there is no direct evidence available against the accused. The prosecution witness PW4 Balkrishna Markam admitted that there was cordial relationship between the accused and the deceased and, therefore, there was no

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motive for the accused to commit the offence. The entire case of the prosecution is based on circumstantial evidence which is not proved by the prosecution. Thus, the finding of learned Judge below holding the accused guilty is erroneous and liable to be set aside.

10. On the other hand, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that the evidence of PW1 Radhu Kaslikar, the brother of the deceased, is not only corroborated by PW5 Bali Kadave, who is the sister of the deceased, but also corroborated by the evidence of PW6 Subhash Adhau who recorded the First Information Report of the deceased lodged prior to one month of the incident. The evidence of the Investigating Officer also shows that he received the information from the police patil that there was a quarrel between the accused and the deceased and the wife had sustained injuries on her face. The accused has also sustained the injuries which are not explained by him. The accused has also not explained in what circumstances the death of the deceased is caused in view of Section 106 of the Indian Evidence Act. He submitted that admittedly only the accused and the deceased were residing

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in the house where the alleged incident had taken place. There is no possibility of entering any intruder in the house. The circumstances, that there was a quarrel between the deceased and the accused and subsequently the dead body of the deceased was found in the house, are sufficient evidence to prove the charge against the accused. Hence, no interference is called for in the judgment and order of the conviction and the sentenced impugned in the appeal.

11. As regards the homicidal death of the deceased is concerned, the material evidence adduced by the prosecution is the testimony of PW7 Dr.Pramod Potdar, examined vide Exhibit-39. As per his evidence, on 12.4.2017 the dead body of the deceased was referred to him for postmortem examination. On examination, he found following injuries on her person:

- (i) whole face shows small contusions multiple in nature all over it;
- (ii) small circular incised wound, size 1x1 cm over the chin and frontal aspect of the scalp;
- (iii) multiple contusion over the whole scalp;
- (iv) multiple contusion over the chest and abdomen;

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(v) multiple contusion over the both upper lip and over the elbow;

(vi) multiple contusion over the knee and lower limb, and

(vii) multiple contusion over the back.

On internal examination, he found that multiple small hematoma under the scalp, no fracture of skull bone seen, however the brain shows subdural subarchoid hemmorrhages. In thorax, fracture of fourth, fifth, sixth, and seventh ribs both sides. Hemothorax present on both sides. Both lungs shown laceration at the anterior surface. On abdomen examination, he observed there is hemoperitonium. In stomach, approximately 100 ml of blood seen. He further observed contusion and laceration on the liver and rupture of spleen.

On the basis of the external and internal examinations, he opined that the death is caused due to injury to the brain, the lungs, the liver and the spleen. Accordingly, he prepared the postmortem notes Exhibit-40. Subsequent to the issuance of the postmortem notes, on

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13.4.2017, he received the letter from the police by referring the weapon "stick" asking his opinion whether the injuries caused to the deceased are possible by the weapon like "stick". Accordingly, he issued the query report Exhibit-42. As per the said report, he opined that the injuries mentioned in column No.17 in the postmortem report are possible by the weapon like "stick". On 29.6.2017, he received another letter from the police asking the exact time of death to which he opined that the death of the deceased might have been caused approximately 24 to 40 hours prior to conducting of the postmortem, which is at Exhibit-44.

12. Though PW7 Dr.Pramod Potdar was cross-examined, nothing incriminating is brought on record. The cross-examination only shows that ribs can be fractured if one falls on a stone. Injury on the head can be possible if one falls on head or on hard surface. Blood was collected in stomach as there were injuries to the liver, the lungs and the spleen. The death can be occurred due to injury on brain and fracture on ribs. Thus, general possibility of causing of injuries is brought on record during the cross-examination.

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13. Besides the oral evidence of the Medical Officer, the prosecution placed reliance on the evidence of PW2 Sandip Wankhade, who acted as a pancha on inquest panchanama. As per his evidence, in his presence panchanama was drawn. Investigating Officer PW8 Sheshrao Nitnaware, who drawn the said panchanama, testified that while drawing the inquest panchanama, he noted the injuries on the person of the deceased sustained by her on her face. Thus, the medical evidence and inquest report disclose that the deceased had sustained the injuries on her head, face, and stomach.

14. A medical witness, who performs a postmortem examination, is a witness of fact though he also gives an opinion on certain aspects of the case. This proposition of law has been stated by the Honourable Apex Court in the case of Smt. Nagindra Bala Mitra and vs. Sunil Chandra Roy and another, reported at 1960 SCR (3) 1 wherein the Honourable Apex Court observed that "the value of a medical witness is not merely a check upon the testimony of eyewitnesses; it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. If a person is shot, at close range, the marks of tatooing found by the

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medical witness would show that the range was small, quite apart from any other opinion of his. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person." Thus, the testimony of medical witness is very important and it can be safely accepted. The evidence adduced by the Medical Officer corroborated by the inquest panchanama shows that the deceased died homicidal death.

15. The Medical Officer has observed hemoperitonium which sometimes called as infra-abdomnial hemmorage or intra-peritonium hemorrhage is a type of internal bleeding in which blood gathers in peritoneal cavity. This is the space between organs and the inner lining of abdominal wall. There are many causes of hemoperitoneal. In traumatic hemoperitoneum, a blunt traunt or penetrating injury can damage the organs usually liver or spleen. Here, in the present case, 100 ml blood was seen by the Medical Officer in the stomach. He further observed contusions and lacerations on the liver which resulted into rupture of spleen. The "stick" was referred to the Medical Officer vide letter Exhibit-41 and

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he opined that injuries mentioned at column No.17 are possible by weapon like "stick" which was referred.

16. Thus, the evidence adduced by the Medical Officer and corroborated by the inquest panchanama sufficiently shows that the death of the deceased caused at her matrimonial house is homicidal death.

17. Sydeny Brandon in his book 'Violence in Family' wrote, "Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur".

18. The present case is one more example of a domestic violence on a woman in the house. The deceased is the wife of the accused. As per the allegations, in the First Information Report and the prior report lodged by the deceased, are that the deceased was addicted to vices like consuming the liquor and he used to be beat the deceased on regular basis.

19. To prove the said fact, the prosecution placed implicit reliance on the evidence of PW1 Radhu Kaslikar,

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examined vide Exhibit-12, who is the brother of the deceased, and PW5 Bali Kadave, examined vide Exhibit-31, the sister of the deceased, which shows that the deceased and the accused were residing separately and children were residing along with their grandmother (the mother of the accused). The said two witnesses further deposed that the accused was addicted to consume the liquor and he used to beat the deceased under the influence of liquor. Regarding the alleged incident, the evidence of PW5 Bali Kadave shows that the mother of the accused informed her that the quarrel took place between the the deceased and the accused and the deceased died. Her evidence further shows that she asked the accused, "तु का बर अस केलस" and the accused told her that, "मी तर केले तुम्हाला जे करायचे आहे ते करा".

These two witnesses are cross-examined at length. During their cross-examination, it further came on record that the accused and the deceased were residing at the outskirts of the village. Whereas, the children were residing along with their grandmother. Rest of the cross-examination of PW1 Radhu Kaslikar is in denial form. During the cross-

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examination of PW5 Bali Kadave, nothing incriminating came on record.

20. Besides the oral evidence of PW1 Radhu Kaslikar and PW5 Bali Kadave, the prosecution further placed reliance on the evidence of PW3 Neha Ivrate and PW4 Balkrishna Markam. PW3 Neha Ivrate is the daughter of the accused and the deceased. Admittedly, she was not residing along with her parents, but was residing with her grandmother. She specifically stated that she is not aware how her mother died. Her evidence further shows that in the house, in which her mother was residing, only the deceased and the accused were residing. Her cross-examination further confirms that the said house is situated at the outskirts of the village.

PW4 Balkrishna Markam is the neighbour who deposed that on the day of the incident he saw that the quarrel was going on between the accused and the deceased. On the next morning, he came to know that the deceased died. During his cross-examination, an attempt was made to bring on record that there was a cordial relations between the accused and deceased. However, he denied the suggestion

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that the police only asked him his name and place of the incident. He also denied the suggestion that he had not stated before the police regarding the quarrel. During his re-examination, he stated before the police that the facts which he knows.

21. As per the prosecution case, it was the accused who used to beat the deceased by consuming liquor. The prosecution has adduced the evidence by examining PW6 Subhash Adhau, who was working as the Assistant Sub Inspector at Shendurjana Ghat Police Station. As per his evidence, on 10.3.2017, the deceased approached to the police station and lodged the report against her husband (the deceased) alleging that her husband consumes liquor regularly and assaults her. She had suffered injuries on lips and ears and, therefore, he referred her for medical examination along with letter Exhibit-35.

22. Thus, PW6 Subhash Adhau proved the report lodged by the deceased and recorded by him as well as the letter referring her for medical examination. On the basis of the said report, N.C. Report was registered against the accused

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which is at Exhibit-36. The medical certificate of the deceased dated 10.3.2017, Exhibit-68, shows that she had sustained the injuries, abrasions on right ear upper side and contusion on left hand near elbow joint. Though PW6 Subhash Adhau is cross-examined, nothing incriminating came on record. The report Exhibit-34, and N.C.Report Exhibit-36 show that the crime was registered against the accused prior to one month of the incident on 10.3.2017 as he assaulted the deceased. The letter referring her for medical examination and medical certificate Exhibit-68 also support the contention.

23. Thus, from the above said evidence, the fact that the deceased was assaulted prior to the incident, is proved by the prosecution through the oral evidence of PW6 Subhash Adhau as well as documentary evidence Exhibits-34, 35, 36, and 68. This piece of evidence also corroborates the evidence of PW1 Radhu Kaslikar and PW5 Bali Kadave. The evidence of PW4 Balkrishna Markam and Investigating Officer PW8 Sheshrao Nitnaware shows that on the date of the incident also there was the quarrel between the deceased and the accused. The evidence of PW8 Investigating Officer Sheshrao Nitnaware shows that on 11.4.2017 he received a phone call

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of police patil Shri Dongre who informed him that Naresh Shamrao Yuvnate of his village had quarreled with his wife and his wife suffered injuries on her face and her dead body is lying in the house. The accused had also sustained the injuries which are not explained by him. PW7 Dr.Pramod Potdar testified that on 12.4.2017 the accused was also referred to him and he found seven injuries in the nature of abrasions on the person of the accused which are abrasions on right elbow joint posteriorly, left elbow joint posteriorly, lateral aspect of the right eye, left side of sternum, left shoulder joint, abrasion of lumbar region, and abrasions on both knees and both legs and ankles. Thus, the possibility, that the accused had received the injuries during the struggle, cannot be ruled out. Moreover, the accused has not explained the said injuries when his statement under Section 313 of the Code of Criminal Procedure was recorded. He merely denied the same.

24. The another material circumstance, on which the prosecution relied upon, is the spot panchanama. To prove the spot panchanama, the prosecution has examined PW2 Sandip Wankhade. As per his evidence, the police called him at the house of the accused. It was a kaccha house having

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two rooms and a bathroom was situated in a courtyard. On inspection of the bathroom, there was a bath stone which was having blood stains. They also observed the blood in the house which were collected with the help of cotton swab. They have observed the blood all over in the house. The police have collected the simple and the blood stained soil. The evidence of Investigating Officer PW8 Sheshrao Nitnaware is also material on this aspect. He also testified that during the spot panchanama the spot was inside the house of the accused. The blood was scattered on the floor. He collected the blood samples from the floor as well as collected the blood stained soil. He further observed that ear tops and yellow metal broken bangles were lying on the spot. He handed over the said articles to the informant. These both witnesses cross-examined by the defence. Except denial during the cross-examination, nothing is brought on record to shatter the evidence of PW2 Sandip Wankhade and Investigating Officer PW8 Sheshrao Nitnaware. These incriminating articles, i.e. the blood stained soil, the simple soil, and the blood collected with the help of cotton ball, are forwarded to Chemical Analyzer. Exhibit-61, Chemical Analyzer's Report, shows that

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Exhibit-A1 is the blood stained soil from the spot. Exhibit-A-2 is simple soil. Exhibit-A-3 is the sample of cotton ball by which the blood stains are collected from verandah of the house. Exhibit-A-4 is also cotton ball by which blood samples are collected from the spot and Exhibit-A-5 is the blood stains found on stone and collected with the help of cotton ball. Exhibit-A-6 is the blood stains collected from the living room of the house and collected with the help of cotton ball. The blood stains are found on these articles which is a human blood.

25. The incriminating articles, the "stick" and the blood stained clothes of the deceased and the accused, are discovered at the instance of the accused as the accused made a voluntary statement in presence of PW2 Sandip Wankhade, another pancha, and PW8 Investigating Officer Sheshrao Nitnaware. The evidence of PW2 Sandip Wankhade shows that the accused gave a confessional statement to the police in his presence and shown his readiness to produce the "stick", blood stained clothes, and clothes of his wife and, therefore, he led them to Jamgaon. He took them at the courtyard of his house near the heap of cotton stems and

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produced the "stick" which was concealed by him over there. The cover of the "stick" had come out and having blood stains. Some hairs were also stuck on the said "stick". The said "stick" was seized by the police which is at Article A-1. Thereafter, the accused took them inside the house and produced the clothes which were kept inside the cupboard. The clothes were pant and shirt stained with blood. From the beneath of the cupboard, he produced saree and petticoat which were stained with the blood. The said clothes were seized and sealed. The evidence of PW8 Investigating Officer Sheshrao Nitnaware also discloses that on 13.4.2017 on enquiry with the accused he shown his willingness to give disclosure statement and, therefore, he called two panchas Sandip Wankhade and Vilas. The accused gave disclosure statement in their presence that he is ready to produce the "stick", his blood stained clothes, and the blood stained clothes of his wife. Accordingly, he led them in his house and took them in the verandah of the house wherein there was heap of cotton stems. The accused took out one stick from the side of the heap and there were two blood stains on the "stick" and bundle of hairs of woman was also stuck on the

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said "stick". Thereafter, the accused produced his clothes from the cupboard having blood stains on it and also produced the clothes of the wife from the northern side of the cupboard which were having blood stains. These both witnesses are cross-examined by the defence, but except the suggestion, nothing is brought on record to falsify the version of these two witnesses regarding the aspect of recovery of the articles at the instance of the accused.

26. The recovered articles, blood stained clothes of the accused and the deceased and the blood stained sticks, are forwarded to the Chemical Analyzer. The article full pant Exhibit-C-1, article full shirt Exhibit-C-2, saree Exhibit-C-3, and petticoat Exhibit-C-4 are found to be stained with human blood as per Exhibit-61. The "stick" which is at Article C-6 was also referred to the Chemical Analyzer on which also human blood was found.

27. Thus, the incriminating articles are seized at the instance of the accused.

28. The requirement of Section 27 of the Indian Evidence Act is founded on the principle that if any fact is

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discovered, after search is carried out, on the search of any information obtained from the prisoner, such discovery is guaranteed that the information supplied by the prisoner is true. It goes without saying and, therefore, that recovery of articles at the stance of the accused has to be proved by independent witness.

29. Section 27 of the Indian Evidence Act is recently interpreted by the Honourable Apex Court in the case of **Subramanya vs. State of Karnataka**, reported at **2022 LiveLaw (SC) 887** and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(i) discovery of fact in consequence of an information received from accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must in Police custody when he gave information, and

(iv) so much of information as relates distinctly to the fact thereby discovered is admissible.”

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It is further held by the Honourable Apex Court that what is admissible is the information the same has to be proved and not the opinion formed on it by the Police Officer. In other words, the information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary that the benefit of both i.e. accused and the prosecution that information given should be recorded and proved and if not so recorded the exact information must be adduced through the evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from prisoner such a discovery is made on the strength of any information obtained from a prisoner, such discovery is guarantee that the information supplied by the prisoner is true. It is further held by the Hon'ble Apex Court that mere statement that the accused led the Police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

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30. In the light of the well settled legal position, it is to be seen whether the evidence adduced by the prosecution witnesses PW2 Sandip Wankhade and Investigating Officer PW8 Sheshrao Nitnaware is sufficient to prove the discovery at the instance of the accused. After perusal of the evidence of both these witnesses, it reveals that the accused made a voluntarily statement and in pursuance of the said statement the articles were discovered. It is clear from the evidence that the articles were kept in a concealed position. The evidence further discloses that the spot of the incident is the house of the accused wherein only the accused and the deceased were residing. Not only the chief-examinations of the prosecution witnesses PW3 Neha and PW5 Bali Kadave show that only the accused and the deceased were residing in the house, but also the cross-examination of PW3 Neha, the daughter of the deceased, shows that only the accused and the deceased were residing in the said house. Thus, nothing is on record to disbelieve the evidence of PW2 Sandip Wankhade and Investigating Officer PW8 Sheshrao Nitnaware regarding the discovery panchanama and memorandum statement. So far as the evidence, regarding the chemical

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analysis Exhibit-61 is concerned, the blood group is not detected on the said articles.

31. The Honourable Apex Court in the case **Kishore Bhadke vs. State of Maharashtra**, reported in **2017 ALL CRI 1316** held that the presence of the human blood on clothes recovered at the instance of the accused and mere absence of evidence regarding blood group cannot be fatal to the prosecution.

32. In the present case, the said incriminating circumstance is put to the accused for obtaining his explanation, but no explanation is put forth by the accused explaining the circumstance regarding the blood stains appearing on his clothes. The Investigating Officer has collected the house extract Exhibit-67 which shows that the house is standing in the name of the accused.

33. Admittedly, the present case is rested on circumstantial evidence. The law is settled regarding the circumstantial evidence that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. Those circumstances should be of a

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definite tendency unerringly pointing towards the guilt of the accused. The strong circumstances in the present case against the accused is that the death of the deceased was caused in the matrimonial house when she was residing with the accused. The Honourable Apex Court in the case of Trimukh Maroti Kirkan v. State of Maharashtra, reported at (2006) ALL MR (Cri) 3510 held that if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. It is further held that where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it

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is a strong circumstance which indicates that he is responsible for commission of the crime. Section 106 of the Evidence Act, in such circumstances, comes into play. When the prosecution proves the chain of circumstances, burden is shifted on the accused to explain or offer explanation regarding the death of the deceased. The said Section, lays down Rule that when the accused does not throw any light upon facts which are especially within his knowledge, and which could not support any theory or hypothesis compatible with innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

34. We have considered the submissions and appreciated the evidence on record on the principles laid down by the Honourable Apex Court. In that context, the evidence of informant PW1 Radhu Kaslikar and PW5 Bali Kadave, who are brother and sister, shows that the deceased was subjected for assault by the accused prior to the incident also. This fact is also corroborated by the evidence of PW6 Subhash Adhau who recorded the First Information Report prior to one month of the incident against the accused which was lodged by the deceased. The recital of the First Information Report are

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proved by PW6 Subhash Adhau wherein the deceased alleged that her husband consumes liquor regularly and assaults her. Not only the report, on the basis of which the N.C.Report was registered, but also the medical certificate shows that she was assaulted by the accused prior to one month of the incident and she sustained the injuries. The evidence of neighbour PW4 Balkrishna Markam and Investigating Officer PW8 Sheshrao Nitnaware also shows that on the day of the incident also there was the quarrel between the deceased and the accused. Investigating Officer PW8 Sheshrao Nitnaware specifically stated that he received the information by telephonic call from the police patil that the quarrel took place between the deceased and the accused and the deceased has sustained the injuries on her face. The medical evidence adduced by PW7 Dr.Pramod Potdar shows that the deceased had sustained the injuries on the head, the abdomen and the other parts of the body. Multiple small hematoma was seen under the scalp. The deceased had also fracture of ribs and there was collection of the blood in the stomach. Injuries were seen on the liver. The cause of the death of the deceased is due to the injuries to the brain, the lungs, the

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liver, and the spleen. Though the witnesses are cross-examined, nothing is brought on record to show that there was any other reason due to which the deceased had sustained the injuries. Admittedly, at the relevant time, the deceased and the accused were only residing in the house. The children were residing with their grandmother. No explanation is put forth by the accused how the death of the deceased is caused. As the death of the deceased is caused inside the house, wherein only the accused was residing along with her, burden is shifted on the accused to offer explanation regarding the death of the deceased.

35. Section 106 of the Indian Evidence Act lays down rule that when accused does not throw any light upon facts, which are especially within his knowledge and which could not support any theory or hypothesis compatible with innocence, the Court can consider this failure to adduce any explanation as an additional link which completes the chain.

36. Thus, the entire evidence on record sufficiently shows that the death of deceased was caused in the house of the accused due to the assault under the influence of liquor.

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37. Insofar as the intention of the accused is concerned, the nature of the intention has to be gathered from surrounding circumstances like the kind of weapon used, the amount of force used, the parts of the body hit, and the circumstance attendant upon the death. Admittedly, the direct evidence would not be available to gather the intention as the intention is the inner compartment of that person's mind.

38. Here, in the present case, the weapon "stick" was used by the accused and the deceased had sustained the injury to her brain. Thus, vital part of the body was hit by the accused by the "stick". The force used by the accused can be ascertained from the injuries sustained by her. She had sustained the fracture injuries that is the fourth to sixth ribs of both the sides. Due to the assault, the blood was collected in her stomach. Even contusions and lacerations are observed on the liver. Thus, the attending circumstances sufficiently show that the deceased was assaulted by the accused with an intention and knowledge to commit her murder. The accused has not shown any sympathy towards her while assaulting her which resulted into her death. Learned Judge below rightly

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appreciated the evidence and observed that the accused was having knowledge that due to the assault she may die. Thus, with an intention and knowledge the accused assaulted the deceased which resulted into her death which is sufficient to show that the accused is guilty of the offence punishable under Section 302 of the Indian Penal Code.

39. Though the accused is convicted for the offence punishable under Section 201 of the Indian Penal Code, the evidence on which learned Judge below relied upon is not sufficient to held him guilty. Mere fact, that the accused has not informed the police about the death of the deceased, is not sufficient to held him guilty. For attracting the offence punishable under Section 201 of the Indian Penal Code, ingredients, that the committal of an offence, person is charged for the said offence under the said Section, must have knowledge or reason to believe that an offence has been committed, a person charged with the said offence should have caused disappearance of evidence and the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have

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given information respecting the offence which he knew or believed to be false.

40. Here, in the present case, the dead body was found in the house. Merely because the accused has not informed the police is not sufficient to attract the offence under Section 201 of the Indian Penal Code.

41. Thus, in view of the evidence, though the death of the deceased has occurred in the house, wherein the deceased and accused were residing, no explanation has come forward from the accused in what circumstances the death of the deceased is occurred. The facts which are within the personal knowledge of the accused are not explained by the accused.

42. It is a settled law that where incident occurs inside house in a secrecy, then after proving material facts, burden shifts on accused to give an explanation regarding the nature and circumstances in which death of the deceased has occurred. In a case, based on circumstantial evidence, when no eyewitness account is available, the another principle of law which must be kept in mind is that when the incriminating

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circumstances are put to the accused and the accused offers no explanation or offers an explanation, which are found to be untrue, the same become additional link in the chain of circumstances to make it complete. By applying these principles, if the evidence of the prosecution witnesses in the present case adduced is considered, the prosecution has proved that (1) the death of the deceased has occurred at her matrimonial house wherein the deceased was residing along with the accused; (2) there was previous complaints by the deceased registered at the police station showing that the accused assaulted her; (3) the evidence of neighbour PW4 Balkrishna Markam and Investigating Officer PW8 Sheshrao Nitnaware shows that there was the quarrel between the deceased and the accused and the deceased sustained the injuries and subsequently she was found dead; (4) the medical evidence shows that the death of the deceased is due to the injuries to the brain, the liver, the lungs, and the spleen along with external injuries on her person; (5) the recovery of the incriminating articles "stick" and the blood stained clothes at the instance of the accused; (6) the facts which are especially within the knowledge of the accused that how the

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death of the deceased occurred are not explained; (7) the injuries on the person of the accused are also not explained, and (8) the Chemical Analyzer's Reports show the blood stains on the clothes of the accused and on clothes of the deceased and the "stick" is recovered at the instance of the accused and no explanation is put forth.

43. Thus, it is fully established that the deceased was assaulted by the accused under the influence of liquor. The medical evidence also shows that the deceased died due to injuries sustained by her.

44. In view of the above circumstances and the evidence adduced, which unerringly point out that the accused is guilty of the offence punishable under Section 302 of the Indian Penal Code, no interference is called for in the judgment and order of the conviction and the sentence impugned in the appeal.

45. Insofar as the offence punishable under Section 201 of the Indian Penal Code is concerned, the finding of learned Judge below deserves to be set aside as no evidence

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is available on record to prove the offence punishable under the said Section.

46. In view of the above observations, the appeal deserves to be allowed partly and, therefore, we proceed to pass following order:

ORDER

- 1) The criminal appeal is **partly allowed**.
- 2) The judgment and order of conviction and sentence dated 19.6.2019 passed by learned Additional Sessions Judge, Amravati in Sessions Trial No.111/2017 convicting the accused for the offence punishable under Section 302 of the Indian Penal Code is maintained.
- 3) The judgment and order of conviction and sentence dated 19.6.2019 passed by learned Additional Sessions Judge, Amravati in Sessions Trial No.111/2017 convicting the accused for the offence punishable under Section 201 of the Indian Penal Code is quashed and set aside.

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4) The accused is acquitted of the offence punishable under Section 201 of the Indian Penal Code.

5) Fees of learned counsel Shri J.Y.Ghurde appointed for the appellant are quantified and it be paid as per Rules.

Accordingly, the criminal appeal is **partly allowed** and **disposed** of.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!