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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CONFIRMATION CASE NO. 1 OF 2025

The State of Maharashtra
Through Police Station Officer,
Police Station, Peth Beed,
District - Beed

APPELLANT

VERSUS

Santosh s/o Jaydatta Kokane
Age - 45 years, Occ - Nil
R/o Takwa Colony, Shukrawar Peth
Beed, Taluka and District - Beed

RESPONDENT

.....
Mr. S. D. Ghayal, APP for Appellant - State
Mr. S. S. Thombre, Advocate for the Respondent
.....

WITH
CRIMINAL APPEAL NO. 101 OF 2025

Santosh s/o Jaydatta Kokane
Age - 45 years, Occ - Nil
R/o Takwa Colony, Shukrawar Peth
Beed, Taluka and District - Beed

APPELLANT

VERSUS

The State of Maharashtra
Through Police Station Officer,
Police Station, Peth Beed,
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RESPONDENT

.....
Mr. S. S. Thombre, Advocate for the Appellant
Mr. S. D. Ghayal, APP for Respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, &
MANJUSHA DESHPANDE, J. J.]

RESERVED ON : 5th MAY, 2025
PRONOUNCED ON : 23rd JULY, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. The Accused, who stand convicted for offence punishable under section 302 of the Indian Penal Code and sentenced to death, by Sessions Judge, Beed, vide judgment and order dated 12th December, 2024, in Sessions Case No. 7 of 2021, has filed an appeal, challenging his conviction and sentence. The Sessions Judge, under Section 366 of the Criminal Procedure Code, has submitted a Reference, to this Court for confirmation of the death sentence. The confirmation case and the Appeal filed by the Accused are, therefore, being decided by this common judgment.

2. Facts, which are necessary for decision of the confirmation case and the Criminal Appeal may briefly be stated thus -

PW-1, informant, Sandeep Kokane, brother of the accused, lodged First Information Report (Exhibit-52) on 24th May, 2020, stating that 16 years before, his brother, Accused Santosh married with Sangita Dattatraya Wanarase. Three children, Mayuresh (12 years), Siddhesh (10 years) and Kalpesh (8 years) were born out of the said wedlock. They separately reside as his neighbours at Takwa Colony, Shukrawar Peth, Beed. Santosh was doing business of selling snacks (kurkure), food articles. He used to go at 8.00 in the morning and used to return at 10.00 to 10.30

in the night. Due to corona lock down, Santosh was staying at home. Since the lock down, Santosh realized that his wife Sangita used to talk on phone with somebody for longer time, because of that there used to be quarrels between them. Sangita, wife of Santosh, left home prior to 20 days. Thereafter, after 5 days, it was learnt that she was at the house of Vishal Wadmare at Barshi Naka, Peth Beed. On receiving the said information, his brother Santosh went to Barshi Naka, Peth Beed and brought Sangita home and gave her understanding.

On 24th May, 2020, at about 12.00 to 12.30 noon, he came out of the house on road. At that time, Baliram Teke and Sachin Jagdale were standing on the road, in front of his door. They asked him as to where he was going. He told that there was quarrel between his brother and sister in law and, therefore, he is going to Peth Beed Police Station. Then they asked him whereabouts of his brother Santosh and sister in law Sangita. He told them that, his brother has gone to Peth Beed Police Station and sister in law Sangita and her children were not seen outside, since morning and the house seems to be closed. Thereafter, he, along with Baliram Teke and Sachin Jagdale went inside the house of his brother and they saw Sangita and her son lying there having bleeding injuries. He, therefore, went to Peth Beed Police Station. At that time, his brother Santosh was standing

outside Peth Beed Police Station. When he asked Santosh about the incident, Santosh told him that on that day, at about 4.00 in the morning, he killed his wife Sangita and two sons, Siddhesh and Kalpesh by assaulting them with wooden bat, stone and killed Kalpesh by drowning him in the barrel of water. Therefore, he took Santosh inside the Police Station and handed him over in the custody of police.

On the basis of the first information report (Exhibit-52), Crime No. 150 of 2020 for the offence punishable under section 302 of the Indian Penal Code was registered on 24th May, 2020 at 22.35 hours and the investigation was handed over to Police Inspector, Shri Patil (PW-15). Spot Panchanama (Exhibit-30) was conducted in the presence of PW-2. The Investigating Officer recorded statements of witnesses on 25th May, 2020 and arrested the accused vide arrest Panchanama Exhibit-107.

During investigation, PW-15 collected CCTV footage wherein accused is seen coming to the spot of the incident and returning back from there at the relevant time. On completion of investigation, charge sheet was filed and the case was committed to the Sessions Court.

Charge under section 302 of the Indian Penal Code was framed against the Accused. He abjured his guilt and claimed to

be tried. Prosecution, in support of its case, examined 15 witnesses. Trial Court found the Accused guilty and hence convicted and sentenced him as aforesaid. Hence, the present Appeal and the Confirmation Case.

3. Learned Advocate for the Accused assailed the impugned judgment and order of conviction contending that, admittedly, this is a case of circumstantial evidence and the prosecution has utterly failed to prove the complete chain of circumstances. Vital links from the chain of circumstances are missing in the prosecution evidence. According to him, presence of the Accused, at the spot of the incident, in the fateful night, is not proved by the prosecution. Except CCTV footage, which is disbelieved by the Trial Court, there is no other evidence on record to prove that the accused was present at his house in the fateful night, more so, in view of the evidence of PW-14 Rajesh Satpute. He submits that the prosecution has failed to prove motive for the commission of the crime. Merely because there used to be quarrels between the Accused and his deceased wife, it cannot be concluded that the Accused had motive to eliminate his wife and two sons. The Accused had filed missing complaint of Sangita and Kalpesh and on finding her at the house of PW-13 Vishal Wadmare, he had taken her back. If he had any doubt on the chastity of Sangita, he would not have brought her back with

him from the house of Vishal Wadmare. Therefore, the Prosecution has failed to prove motive on the part of the Accused to commit the crime in question.

4. He submits that, the FIR is belatedly registered, which creates doubt about the prosecution case. PW-1, informant has not supported the prosecution case and, therefore, the prosecution has not proved the extra judicial confession made by the Accused. Similarly, PW-14 Rajesh, brother in law of the Accused has also not supported the prosecution case, he, however, has specifically deposed that, in the fateful night, the Accused, along with his son Mayuresh, had been to his house and slept there. In this view of the matter, presence of the Accused at his own house, where the incident has taken place, is doubtful and the Trial Court has erred in holding that, the Accused was present at the time of the incident at his own house. He submits that, when the prosecution has claimed that wife and two children were killed during the night time, how come that nobody from the neighbourhood have heard any noise. He, therefore, submits that the prosecution has failed to prove that, the Accused was present at the spot of the incident in the fateful night. Hence, the Accused may be acquitted.

5. In support of his submissions, he relied on the following

citations :

- a. *“Anvar P. V. V/s P. K. Basheer” (2014) 10 SCC 473*
 - b. *“Arjun Panditrao Khotkar V/s Kailash Kushanrao Gorantyal and Others”*
 - c. *“Bachan Singh V/s State of Punjab” MANU/SC/0055/1982*
 - d. *“Macchi Singh and Others V/s State of Punjab” MANU/ SC / 0211 /1983*
 - e. *“Sharad Birdhichand Sarda V/s State of Maharashtra” (AIR 1984 1622)*
 - f. *“Pradeep Kumar V/s State of Haryana” (Criminal Appeal No. 1338/2010 SC)*
 - g. *“Nusrat Parween V/s State of Jharkhand” (Criminal Appeal No.(S) 458/2012 SC)*
 - h. *“Darshan Singh V/s State of Punjab” (MANU/SC/0018/2024)*
 - i. *“Raju V/s State of Rajasthan” (MANU/SC/1199/2022)*
 - j. *“Harishchandra Ladaku Thange V/s State of Maharashtra” (2007 DGLS (SC) 969 (SC))*
 - k. *“Raju Mahesh Dhruv V/s State of Maharashtra” (2016 DGLS (Bom) 1628) Bombay High Court Nagpur Bench*
 - l. *“Nilesh V/s State of Maharashtra” (MANU/MH2778/2015)*
 - m. *Kailas Tukaram Patil and Another V/s State of Maharashtra (2005 BCI 371) Bombay High Court*
 - n. *“Basudev @ Vasude Behare V/s State of Maharashtra” (2004 (2) Bom CR (cri.)627*
 - o. *“Sagar and Others V/s State of Maharashtra” (MANU/MH/1929/2002)*
 - p. *“Lalchand Cheddilal Yadav V/s Stte of Maharashtra 2000 Bom CR (Cri.) 585 Bombay High Court*
 - q. *”Anandrao Dhondiba Falke V/s State of Maharashtra” 2000 (sup) Bom C. R. 765*
6. Per contra, learned APP supported the impugned judgment

and order of conviction and imposition of death sentence by the Trial Court. He submitted that homicidal deaths are not disputed by the Accused and they are proved in medical evidence. Motive, that, Sangita had illicit relations with Vishal Wadmare is proved by the prosecution. PW-8, PW-10, PW-11, PW-13 have proved the fact that, the Accused was having suspicion about the character of Sangita and that she had illicit relations with Vishal Wadmare. It is submitted that, information given by the deceased to PW-13 about beatings given by the Accused to her and her apprehension that the Accused will kill her and her children, is admissible under section 6 of the Indian Evidence Act. Dead bodies of the 3 victims were found in the house of the accused. Initially, bodies of only Sangita and Siddhesh were noticed by PW-1, however, after hearing extra judicial confession of the Accused, it was realized that Kalpesh is drowned in water barrel. It is submitted that relevant portions from the FIR are proved in the evidence of PW-4, who registered the FIR. By relying on ***“Govardhan and Another V/s State of Chhatisgarh¹”***, it is submitted that the FIR has been proved by the statement of PW-4 and merely because PW-1 has turned hostile, it cannot be said that the FIR would lose its relevancy and cannot be looked into for any purpose. It is submitted that, the Accused claims to have stayed at the house of PW-14, which as per the Google map, is at

1 (2011) 2 SC 198

a distance of only 350 meters from the spot of the incident i.e. house of the Accused. This Court can take judicial notice of the distance on the Google map. Even PW-14 has admitted that, the Accused and Mayuresh were sleeping in hall and he went to sleep in the bedroom. In his statement recorded under section 164 of the Criminal Procedure Code, he has stated that when he woke up in the morning, he saw the Accused coming towards his house in frightened condition and when asked, the Accused told him that he had gone for a morning walk. Accused has failed to give any explanation under section 106 of the Evidence Act as to in which circumstances deaths of Sangita, Siddhesh and Kalpesh have taken place. Blood stains were found on the clothes of the Accused. All these circumstances prove the involvement of the Accused in the crime.

7. Learned APP submitted that, the Trial Court has erred in rejecting the evidence of CCTV footage on the ground that certificate under section 65 B of the Evidence Act is not given by the competent person. According to him, PW-4 who is specially trained officer in that behalf, who has downloaded the CCTV footage in the memory cards, has given the certificates. He submitted that certificate under section 65 B of the Act can be issued by person, who has extracted CCTV footage. Since he is expert in that field, by relying on the words, *"a person occupying*

a responsible official position in relation to operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it”, used in sub section 4 of section 65 B of the Act, he submits that since PW-4 was holding responsible official position, he was entitled to issue certificate under section 65 B of the Evidence Act. Therefore, said evidence ought to have been accepted by the Trial Court. CCTV footage is also proved in the evidence of PW-3 Pancha, in whose presence CCTV footage was downloaded on the memory cards. Exhibit-65. The report of the forensic lab about the memory cards on which CCTV footage was downloaded, also supports the prosecution case, since in all the three CCTV footage, the accused is seen coming towards the house and going towards the house of PW-14 at the time of the incident. This is one of the strong circumstance proving involvement of the Accused in the present crime.

8. He submitted that, even if it is accepted for the sake of arguments that the FIR, was registered belatedly, the same may be due to the lapse on the part of the Investigating Officer. But that would not help the Accused, in view of other circumstances

proved on record by the prosecution. It is submitted that, PW-14 has admitted that his statement under section 164 of the Criminal Procedure Code was recorded and after reading, he signed it. This statement corroborates prosecution case. It is further submitted that in reply to the questions under section 313 of the Criminal Procedure Code, the Accused has admitted that there were illicit relations between deceased Sangita and Vishal Wadmare. This corroborates prosecution case that the Accused had motive to kill Sangita. By relying on following citations, he submitted that no interference is warranted in the judgment of conviction recorded by the Trial Court and this is a fit case to confirm the death sentence awarded by the Trial Court.

- i. *“Vijay Singh and Another V/s The State of Uttarakhand” (Criminal Appeal No. 122 of 2023)*
- ii. *Govardhan and Another V/s The State of Chhatisgarh” (2025) 3 SCC 378*
- iii. *Premising V/s State of NCT of Delhi” 2023 Live Law (SC) 2*
- iv. *Anees V/s State Government of NCT” (Criminal Appeal No. 437 of 2015)*

9. With the assistance of the learned Advocate for the Accused and the learned APP, we have carefully perused the record.

10. Present case is based on circumstantial evidence. The law,

on the cases based on circumstantial evidence, is very succinctly enumerated by the Apex Court in **“Sharad Birdichand Sarda V/s State of Maharashtra²”**. Relevant observations of their Lordships are as follows :

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra 1973CriLJ1783 where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence”.

11. We will have to consider the prosecution case, in the light of aforesaid guiding principles. From the material placed on record, it appears that the prosecution mainly relied on the following circumstances:

- i. Finding of dead bodies of Sangita, Siddhesh and Kalpesh, wife and sons of the Accused in their residential house.
- ii. Electronic evidence of CCTV footage.
- iii. Conduct of the accused in commission of the offence.
- iv. Extra judicial confession made by the Accused.
- v. Discovery of dead body of Kalpesh in plastic barrel containing water, pursuant to the extra judicial confession made by the Accused.

- vi. Recovery of blood stained clothes from the Accused.
- vii. False plea of alibi raised by the Accused.
- viii. Scientific evidence in the nature of CA reports.

12. In order to deal effectively with the rival contentions raised before us, by the learned Advocate for the Accused and the learned APP and also looking at the magnitude of the crime, it would be appropriate to refer to the evidence of the prosecution witnesses.

13. Post mortem on the dead bodies of wife and two sons of accused came to be conducted by PW-12 Dr. Dipali Gavhane. She noticed following injuries on the dead body;

External Injuries:-

- (i) CLW left parietal region, measuring 5 x 2 x bone deep,
- (ii) Left eye contusion measuring 5 x 4 c.m.
- (iii) Nose fracture, right mandible fracture,
- (iv) contusion right parietal associated with fracture measuring 5 x 3 c.m.
- (v) contusion right lateral neck measuring 10 x 7 c.m. greenish blackish colour,
- (vi) fracture left and right fronto parietal bone,

Internal Injuries:-

- (i) fracture right and left fronto parietal bone.
- (ii) subdural hematoma and sub archnoid heamatoma present under fracture site measuring 12 x 8 c.m.

She opined that death of deceased Sangita was due to head injury. Post Mortem report of Sangita is at Exhibit-84. Provisional post mortem cum death certificate of Sangita is at Exhibit-85. She therefore stated that death was homicidal in nature. She deposed that internal and external injuries mentioned by her can be caused by article 1 stone and article 2 bat.

Post mortem on the dead body of Siddesh Kokane also came to be conducted by PW-12 Dr. Dipali Gavhane. She noticed following injuries;

External Injuries:-

- (i) CLW left parietal with underline bone fracture, measuring 9 x 2 c.m. x bone deep,
- (ii) Left parietal bone fracture,
- (iii) Right parietal bone fracture,
- (iv) Right eye contusion measuring 4 x 2 c.m.
- (v) Left Fronto parietal bone fracture.

Internal Injuries:-

- (i) linear fracture of skull bone,
- (ii) Left fronto parietal bone fracture,
- (iii) right parietal bone fracture,
- (iv) heamatoma under fracture side, subdural hematoma measuring 10 x 7 c.m.

She opined that cause of death was due to head injury. She stated that external and internal injuries mentioned by her can be caused by article 1 stone and article 2 bat and death was homicidal. Post Mortem report of Siddesh is at Exhibit-81 and death certificate is at Exhibit-82.

Post Mortem on the dead body of Kalpesh also came to be conducted by PW-12 Dr. Dipali Gavhane. She noticed following injuries;

External Injuries:-

- (i) Contusion left hand, measuring 5 x 4 c.m.
- (ii) contusion left eye (black eye) measuring 5 x 4 c.m.
- (iii) Left parito occipital contusion measuring 5 x 3 c.m.
- (iv) Right fronto parietal contusion measuring 7 x 3 c.m.

Internal Injuries:-

- (i) hemorrhagic contusion, over brain parenchyma hematoma right fronto parietal bone measuring 5 x 3 c.m. under scalp.

After conducting post mortem examination, she opined that death was homicidal in nature and it can be caused by bat (article 2), if a person is beaten by bat on his head and is put in water then death can be caused by drowning. Post mortem report of Kalpesh is at Exhibit-87 and death certificate is at Exhibit-88.

14. In the cross, Dr. Dipali stated that size of injury is not mentioned in respect of injury No. 2, 3, and 5 in column No. 17 in post mortem notes Exhibit-81. All the injuries mentioned in column No. 17 cannot be caused by one blow. To cause these injuries it is not necessary to give five blows, but more than one blow is required. It may not be necessary that a person may shout if a blow was given to him. She volunteered that if a death blow is given the person may not shout. Shouting of a person would depend on the part of body where first blow was given. Her attention was drawn to injury no. 2 and 3 mentioned in column No. 17, she deposed that both fractures can be caused by one stroke. Injury no. 2 can be caused if a person is beaten by flat front portion of the bat. She denied that contusion cannot be caused by article 2 bat. She denied that if a sleeping person is assaulted by bat, injuries mentioned in column No. 17 cannot be caused. If a person is sleeping on his chest injury mentioned at

Sr. No. 5 in column no. 17 would depend upon the position of his head.

15. In respect of post mortem notes Exhibit-84, she stated that weight of stone Article No. 1 may be approximately 15 kg, it is not possible for a common man to assault with said stone by a single hand and by throwing like a ball. If a person is assaulted with stone Article No. 1 size of injury would be more than what is mentioned by her in injury No. 1 of column No. 17. She denied that if a person is assaulted either by stone or bat, size of injury would be more than what is mentioned by her in injury No. 2 of column no. 17.

16. In respect of post mortem notes Exhibit-87, she stated that she has not mentioned on left hand where exactly injury No. 1 in column No. 17 was caused. If a person is assaulted by stone Article-1, his eyes may pop out and if a person is assaulted by bat Article-2 his eyes may not pop out, in respect of injury No. 2. Crush injury may occur if a person is assaulted by stone, and crush injury may not occur if a person is assaulted by bat in respect of injury No. 3 and 4. Sudden death may not occur due to all injuries mentioned in column No. 17. Time of exact death is not mentioned in the post mortem reports.

17. Accused has not seriously disputed about homicidal death

of his wife and two sons. Prosecution by leading evidence of PW12- Dr. Dipali Gavhane has proved homicidal death of Sangita, Siddesh and Kalpesh.

18. PW-1 Sandeep Kokane, who is brother of the Accused, is the informant. He states that Accused Santosh is his brother. His family consists of his mother, wife and four daughters. Marriage of the Accused was solemnized with Sangita 16 years back. Sangita then gave birth to three sons, namely Mayuresh, Siddhesh and Kalpesh. Accused Santosh, along with his family members, was living adjacent to his house. His brother Santosh earlier used to work in a grocery shop. Then prior to few months back, he started selling snack products. For selling the snacks, he used to leave home at about 8.00 in the morning and used to return at about 10.00 to 10.30 in the night. He was not aware what Santosh was doing during lock down period.

On 24th May, 2020, at about 11.00 a.m. he was standing outside his home. At that time, Sachin Jagdale and Baliram Teke were chitchatting with him in front of his house. They both enquired about whereabouts of sons of Santosh. He told them that he had also not seen them since morning. At the relevant time, door of the house of Santosh was found closed. As it was late in the morning, to see what had happened, he, Sachin and

Baliram pushed door of the house of Santosh and the door opened. At that time, they saw Siddhesh, son of Santosh lying in injured condition and blood oozing from his head. Further, besides Siddhesh, Sangita was lying in a pool of blood. They, therefore, came out of the home. He then went to Peth Beed Police Station. He then informed about the incident, in the police station. At the relevant time, Santosh was not at home and he was not knowing his whereabouts. Thereafter, along with one lady constable, and one male police officer, he again returned to house of Santosh. He had shown the spot of the incident. Police then took search of other son of Santosh. At that time, inside the home of Santosh, in one plastic barrel, body of Kalpesh was found. Thereupon, as per the say of police, he himself, his wife and other relatives went to police station. There, police told them that his brother Sanjay killed Sangita, Kalpesh and Siddhesh. Police then obtained his signature on one paper. The report shown to him was bearing his signature.

He further states that it did not happen that contents in the report were correctly recorded by the police as per his say. He denied having narrated to the police that due to corona and lock down, Santosh used to remain at his home. He did not inform the police that Santosh then learned that his wife Sangita used to frequently talk for a longer period on phone and, therefore,

quarrels used to take place between them. He informed the police that prior to 20 days of the incident, Sangita had left home and prior to 5 days it was learnt that Sangita was at the house of Vishal Wadmare at Barshi Naka, Peth Beed and hence, Santosh went there, convinced Sangita and brought her back. He denied that on 24th May, 2020, at about 11.00 hours, he came out of the home, that time, Baliram and Sachin met him and asked him as to where he was proceeding and on that he told them that quarrel had taken place between his brother and his wife and hence, he was going to Peth Beed Police Station and on that both of them asked him about whereabouts of Santosh and Sangita and he told them that Santosh went to Peth Beed Police Station. He denied that thereafter, when he reached Peth Beed Police Station, Santosh was found present outside the Police Station and when he asked him about the incident, he told him that on 24th May, 2020 at about 04.00 hours, he killed Sangita, Siddhesh and Kalpesh, by wooden log, bat, stone and further killed Kalpesh by dropping him in water barrel. He denied that, thereafter, he himself took Santosh inside the police station and handed him over to the police.

19. At this stage, PW-1 was declared hostile and the Court permitted the learned APP to cross-examine him as per Section 154 of the Indian Evidence Act.

20. In the Cross examination conducted by learned APP, he deposed that -

“5. It is not correct that the contents in the report correctly recorded by the Police as per my say. It is not correct that I have narrated to the Police that due to Corona and lock down Santosh used to be remain at his home. It is not correct that, I informed to the Police that Santosh then learnt that his wife Sangita frequently used to talk with someone for a longer period on phone and therefore quarrel held in between them.

6. It is not correct that on 24.05.2020 about 11.00 hours in the morning I came out of home, that time Baliram Teke, Sachin Jagdale met me and asked me as to where I am proceeding, on that I told them that quarrel was held between my brother and his wife and hence I am going to Police Station Peth Beed and on that both of them asked me about whereabouts of Santosh and Sangita and I told them that Santosh went at Police Station Peth Beed. It is not correct that thereafter, when I reached at Peth Beed Police Station, Santosh was found present outside the Police Station and when I asked him about incident, he told me that on 24.05.2020 about 04.00 a.m. he killed Sangita, Siddhesh and Kalpesh by wooden log, bat, stone and further he killed Kalpesh by dropping him in water barrel. It is not correct that thereafter I myself took away Santosh inside Police Station and handed over him to Police. The portion mark “A” to “D” from my report now read over are incorrect, I am unable to state as to why it was so recorded by the Police. The portion mark, “A”, “B”, “C” in my statement recorded before the Magistrate is incorrect. I am unable to state why it was so recorded. It is not correct that there was no pressure upon me at the time of recording of my statement before the Magistrate. I again say that when I put the signature on the report, it was not a blank paper, but contents

were there. I used to put the signature on going through contents of the documents. It is not correct that the report also read over by me and then I put the signature. It is not correct that, as Santosh is my real brother, to save him, I am narrating false evidence. It is not correct that portion mark "A", "B", "C", "D" in report and "A", "B", "C" in statement before Magistrate are correctly recorded as per my say."

21. Portions mark 'A', 'B', 'C' and 'D' brought on record in his cross are as follows;

Portion Mark 'A'-

"Since lock down my brother realized that his wife Sangita used to talk with somebody on phone for a considerable time and therefore there used to be quarrels between them."

Portion Mark 'B'-

"On 24.05.2020 in the afternoon at about 12.30 p.m. I came on the road from my house. That time Baliram Teke and Sachin Jagdale were standing in front of door on road. That time they asked him where are you going. I told them that my brother had quarrel with his wife and therefore he is going to Peth Beed Police Station."

Portion Mark 'C'-

"Therefore when I was going to Peth Beed Police Station my brother Santosh was standing outside the Peth Beed Police Station. When I asked him about the incident, he told him that today on 24.05.2020 at

about 4.00 a.m. in the morning he killed his wife Sangita and two sons Siddesh and Kalpesh by assaulting with wooden bat, stone and has drowned Kalpesh in the water barrel."

Portion Mark 'D'-

"The complaint given by him is typed on computer and I have read it and it is correct."

22. Evidence of PW-1 is assailed by the defence submitting that he is a hostile witness and his evidence should be entirely discarded. The FIR is belatedly registered and since PW-1 has not supported the prosecution case, therefore, the prosecution has failed to prove the extra judicial confession made by the Accused.

23. Obviously, PW-1, has turned hostile so as to save his brother i.e. the Accused. However, he has admitted his signature on the report stating that police obtained his signature on the blank paper. He further admitted that, when he put signature on the report, it was not blank, but contents were there. He has also admitted that he used to put signature on going through contents of the document. He has denied that the Accused made extra judicial confession before him. The fact remains that, the statements made in portion marked "A", "B", "C" and "D", stated by him in the FIR were confronted to him and, they are proved in

the evidence of PW-4, PSO, who has recorded the FIR. In the said portions, he has narrated the incident as well as the extra judicial confession made by the Accused, having killed his wife and sons. Thus, it is clear that first information report (Exhibit-52) is lodged at the instance of PW-1 and its registration is proved by PW-4 Police Station Officer.

24. In this respect, observations of the Apex Court in **“Govardhan”** (supra) may usefully be referred :

“31. Though the FIR is not a piece of substantive evidence, especially, when the Complainant, i.e., PW-6 did not fully support the contents of the FIR, yet, it cannot be totally ignored and is to be treated as a relevant circumstance if the same is proved by other prosecution witness, in this case by PW-14, the SHO who recorded the report in the form of FIR as stated to him by the complainant.

32. In this regard, we may profitably refer to the decision of this Court in Bable v. State of Chhattisgarh, (2012) 11 SCC 181 wherein it was observed as follows:

“14. Once registration of the FIR is proved by the police and the same is accepted on record by the court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. The FIR, Ext. P-1, has duly been proved by the statement of PW 10, Sub-Inspector, Suresh Bhagat. According to him, he had registered the FIR upon the statement of PW 1 and it was duly signed by him. The FIR was registered and duly formed part of the records of the police station

which were maintained in the normal course of its business and investigation. Thus, in any case, it is a settled proposition of law that the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstance of the evidence produced by the investigating agency. Merely because PW 1 had turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose.”

25. The FIR is registered on 24th May, 2020 at 22.35 hours. Law, on the point of evidentiary value of evidence of hostile witness is well settled. Statement of hostile witness can be relied on by the Court, to the extent it supports prosecution case and is corroborated by other evidence. (see **“Govardhan”** (supra) and **“Shymal Ghosh V/s State of West Bengal³”**). We, therefore, reject the argument of the defence that since PW-1 has not supported the prosecution case, his evidence and FIR lodged by him is of no assistance to the prosecution case.

26. We, therefore, are of the considered view that first information report (Exhibit-52) corroborates the prosecution case as well as the extra judicial confession made by the accused and the same also discloses motive of the Accused to commit murder of his wife and sons.

27. Prosecution has also examined PW-14 Rajesh Satpute, brother in law of the Accused. He deposed that he stays along

3 (2012) 7 SCC 646

with his wife and two children. His wife has two brothers, elder one is the Accused and the younger one is Sandeep. They stay at Kala Hanuman Thana, Takwa Colony, Beed. Accused had 3 children, elder one Mayuresh, second was Siddhesh and younger was Kalpesh. From all the 3, Mayuresh is alive. Sangita - wife of the Accused died on 24th May, 2020. In the evening on 23rd May, 2020, Accused came to his house along with Mayuresh. After dinner, the Accused slept in the hall of his house and he went to sleep in the bedroom. Then, he denied that in the morning on 24th May, 2020, he saw Accused Santosh coming in frightened condition. When he asked him, he told that he is returning from walk. He denied that the Accused told him that he was going to police station and went away. He denied that around 1.00 p.m. he received call of Sandeep who told him that Sangita, Siddhesh and Kalpesh have been murdered. He denied that when he went to the house of the Accused, police had come there. He denied that when in the police station he asked the Accused, he told him that at 4.15 a.m. he went to his house, there assaulted Sangita and Siddhesh on their heads by bat and also assaulted Sangita by stone on her head, she died and thereafter, he assaulted Kalpesh by hitting bat on his head and thereafter drowned him in barrel filled with water, he died and thereafter he returned to his house at 6.00 a.m. PW-14 was declared hostile and was cross

examined by the learned APP.

In the cross examination conducted by the learned APP, PW-14 has deposed that after this incident police enquired with him. Portion Mark 'A' i.e. *"Next day on 24.05.2020 at about 06.00 a.m. Santosh Kokane alone was seen coming from outside. At that time I asked him from where he had come. At that time in a frightened condition he stated that he had gone for a walk and he has come back. Thereafter we had tea and breakfast. Thereafter Santosh Kokane said that he will go to the Police Station and left alone. In the afternoon at 01.00 hrs., I received a call from Sandip Kokane that Santosh Kokane's wife Sangita, children Siddesh and Kalpesh are murdered"*, was read over to him. He denied that he had stated so to the police.

He further denied having stated portion mark 'B' viz, *"Thereafter when he inquired with Santosh Jaydutt Kokane resident of Takwa Colony, Shukrwar Peth, Beed, he told that from my house at about 04.15 hrs he woke up from the sleep and alone went to Sangita at his house. After reaching home he assaulted Sangita and Siddesh on head with wooden bat in the house. Thereafter he hit Sangita on head with stone. That time they both expired. Thereafter he hit Kalpesh on head with wooden bat and then drowned him in the water barrel. Then he*

expired. Thereafter he again returned to his house (PW 14's) at about 06.00 hrs."

He admitted that his statement was recorded in the Court as per his say. He was shown his statement. On perusal of the statement, he stated that it was recorded as per his say and he signed it thereafter. While recording the said statement, he and Magistrate were only present. He denied that he came to the Court with his mother in law. He denied that when he went to the house of the Accused, he saw rope was tied for hanging. He stated that, when he went to the house of the Accused on 24th May, 2020 at that time, the Accused was present in the Police Station. Complaint was filed by brother of the Accused. He did not have knowledge that the incident was told by the Accused to his brother Sandeep, who lodged the first information report. He denied accompanying Sandeep to the police Station. He admitted that when the incident happened, there was lock down and due to the lock down all the works were stopped. He did not know that there was quarrel between the Accused and the deceased. He denied that on 25th May, 2020, the Accused had filed N C against Sangita and he had come to his house. He admitted that since Santosh is his brother in law, he felt that he should not be punished.

28. In the cross examination, conducted on behalf of the defense, he stated that, Santosh was in his house from 23rd May, 2020 till the next day. He did not come to the Court along with police. He received phone call from police for recording statement, after that he came to the Court. In the Court, he met police. He was brought by the police in the Court for recording his statement. He gave statement in the Court as per say of police. Accused was wearing same clothes which he was wearing on the previous day. He had no concern whether the Accused is convicted or acquitted as per law.

29. Much stress is laid by the defence on the statement made by this witness that, the Accused had come along with son Mayuresh on previous evening and slept in his house and the Accused was at his house till the next morning. It is to be noted here that PW-14 is brother in law (sister's husband) of the Accused. He has supported the Accused so as to save him.

30. PW-14 has admitted in his evidence that the Accused and Mayuresh had slept in hall and he had gone to sleep in the bedroom. PW-14 has denied having made the statement under portion marked "A" which is to the effect that, *"on next day on 24th May, 2020, at about 6.00 a.m. Santosh Kokane was seen coming from outside. At that time, he asked him from where he had come. At that time, in frightened condition, Accused has stated that he had gone for a walk and he had come*

back.” Thereafter, after breakfast, Santosh stated that he will go to the police station and left. PW-14 further denied having stated portion marked “B” i.e. extra judicial confession made by the Accused to him to the effect that, “from his house at about 4.14 hrs, Accused woke up from sleep and alone went to Sangita at his house and after reaching home, he assaulted Sangita and Siddhesh on head with wooden bat in the house. That time they both expired. Thereafter he hit Kalpesh on head with wooden bat and then drowned him in the water barrel. Then he expired and he again returned to PW-14’s house at about 6.00 hours”.

Both these statements, portion marked “A” and “B” are proved in the evidence of PW-15 vide Exhibits-104-105.

31. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (vide Bhagwan Singh v. The State of Haryana, AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, AIR 1977 SC 170; Syad Akbar v. State of Karnataka, AIR 1979 SC 1848 and Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853).

32. On the point of appreciation of evidence of hostile witness, the Apex Court, in **“Rameshbhai Mohanbhai Koli and Others V/s State of Gujrat”**⁴ has made following observations:

“In State of U.P. v. Ramesh Prasad Misra and Anr., AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543; Gagan Kanojia and Anr. v. State of Punjab, (2006) 13 SCC 516; Radha Mohan Singh @ Lal Saheb and Ors. v. State of U.P., AIR 2006 SC 951; Sarvesh Naraian Shukla v. Daroga Singh and Ors., AIR 2008 SC 320 and Subbu Singh v. State, (2009) 6 SCC 462”.

33. In **“Bhajju V/s State of MP”**⁵, the Apex Court held :

“35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the Appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Code of Criminal Procedure., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains

4 2010 ALL MR(Cri) 3968 (SC)

5 (2012) 4 SCC 327

admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

41. These are matters of serious consequences and render the statement of all these three witnesses unreliable and undependable. Thus, these statements we would refer and rely (examination in chief) only to the extent they support the case of the prosecution and are duly corroborated, not only by other witnesses but even by the dying declaration and the medical evidence.”

34. Statement of this witness under section 164 of the Criminal Procedure Code is recorded before learned Judicial Magistrate, First Class. In this statement, he has stated that, the Accused came to his house at 9.30 p.m. on 24th May, 2020 for sleeping along with elder son Mayuresh. They had dinner. Accused and his son were sleeping in adjacent room. He was not aware as to when the Accused went to his home. There was quarrel between the Accused and his wife and they had gone to police station. The accused told him that the Police had called them in the morning. When he woke up at 6.00 a.m., that time, the Accused had come from outside. When he asked the Accused as to where he had been, that time, Accused told that he had gone for a walk. Thereafter, they had breakfast and the Accused went to police station. Sandip Kokane called him and told that Sangita, wife of

the Accused and sons Nilesh and Kaplesh have died. Thereafter, he went to the house of the Accused. Police were present there. Police enquired with him and thereafter recorded his statement in the police station.

It is pertinent to note that, this witness has admitted that, his statement under section 164 of the Criminal Procedure Code was recorded in the Court, as per his say. When his statement was shown to him, on perusal of the same, he stated that it was recorded as per his say and he signed it thereafter. He has also stated that while recording the said statement, only he and Magistrate were present.

35. Principles for appreciation of retracted statement under section 164 of the Criminal Procedure Code are laid down by the Apex Court in **“Vijaya Singh and Another V/s State of Uttarakhand”**⁶, wherein it is observed ;

27. The jurisprudence concerning a statement under Section 164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In R. Shaji v. State of

6 (2025) 3 SCC 378

Kerala, this Court discussed the two-fold objective of a statement under Section 164 CrPC as:

“15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted ...”

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:

“16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced ...”

28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and

corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record”.

36. It is necessary to mention here that portion marked “A” and “B” from the statements u/s 164 of the Criminal Procedure Code of PW-1 (informant) and PW-14 are proved to have been made by them, in the evidence of PW-4 and PW-15.

37. In **“Karamjit Singh v. State (Delhi Admn.)”**⁷, it is held that,

⁷ (2003) 5 SCC 291

“The testimony of the police personnel should be treated in the same manner as the testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.”

38. In **“State Government of NCT of Delhi V/s Sunil and Another”⁸**, the Apex Court has observed;

“It is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and recovery evidence unreliable. It is an archaic notion that actions of police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, court cannot start with the presumption that police records are untrustworthy. As a proposition of law the presumption should be other way round. That official acts of the police have been regularly performed is a wise principle and presumption and recognized even by the legislature”.

In the light of aforesaid observations, we do not find any reason to doubt the testimony of the police witnesses, PW-4 and PW-15, who have proved portion marked statements of PW-1 and PW-14 from their previous statements and statements made u/s 164 of the Criminal Procedure Code.

8 (2001) 1 SCC 652

39. In the light of above principles and from the statements, answers in the cross-examination, previous statement u/s 161 of PW-1 informant and PW-14 and their statements recorded u/s 164 of the Criminal Procedure Code, before the Magistrate, we hold that evidence of PW-1 and PW-14 corroborates prosecution case as well as the extra judicial confession made by the Accused.

40. PW-5 Vilas Bamne, neighbour of the Accused has not supported the prosecution case. He denied that on 24th May, 2020, he got up at 4.30 a.m. for toilet and saw the Accused going to his house.

In the cross examination conducted by the learned APP, he admitted that his statement was recorded by police. He, however, denied having stated to the police that *"On 24.05.2020 at about 4.30 a.m. in the morning he woke up for urination. At that time he saw towards house of Santosh Jaydatta Kokane. Santosh was seen entering his house."* (Portion Mark 'A'). When this statement was confronted to him he denied it. He could not assign any reason as to why portion marked 'A' is mentioned in his statement.

He being neighbour of the Accused, he can be said to be a natural witness. Statement of this witness, under portion marked

“A” corroborates the prosecution case. As this witness has seen the Accused entering his house at about 4.30 a.m.

41. PW-6 Sanjay Wadekar, neighbour of the Accused denied that on 24th May, 2020 at 5.15 a.m. while he was going for a walk, he saw the Accused coming out of his house. He was declared hostile.

In the cross-examination conducted by the learned APP, he denied having stated to the police that *“On 24.05.2020 at about 5.15 a.m. when I was going out of the house for exercise he saw Santosh Jaydatta Kokane was going out of his house. I came back from walk. After coming home I got fresh and stayed home due to Corona.”* (Portion Mark ‘A’). He could not assign any reason as to why portion marked ‘A’ is mentioned in his police statement.

Though this witness has not supported the prosecution case, in view of ratio in **“Bhajju”** (*supra*), we hold that his statement under portion marked “A” that, on 24th May, 2020, at about 5.15 a.m. when he was going out of the house for exercise, he saw the Accused going out of his house, corroborates prosecution case.

42. PW-7 Sachin Jagdale deposed that he knows Accused. On 24th May, 2020, he was present near his house. Brother of the

Accused Sandeep told him that children of the Accused were missing. He and Sandeep went in the house of the Accused, there they saw a woman was lying dead. Sandeep went to police station. Police came there. One boy was missing. He was found in the water barrel. He and Suresh Chandane took the boy out of the barrel.

In the cross-examination, he admitted that he did not state to the police that Sandeep Kokane told him that children of the Accused were missing and that Sandeep Kokane went to police station.

43. PW-8 Rahul Wanarase, is brother of deceased Sangita. He deposed that Accused is his brother in law. Sangita married with the Accused before 16 years. They had 3 children, Mayuresh, Siddhesh and Kalpesh. Accused was doing marketing of confectioneries and eatable like kurkure. During the Covid-19 lock down, there were constant quarrels between the Accused and Sangita. Accused used to call him and used to tell that he was suspecting character of deceased Sangita. Sangita called him and told that the Accused has threatened her and she was having an apprehension that the Accused would kill her and her children. When he tried to give understanding to the Accused, he threatened him and also threatened to kill Sangita. Thereafter, he

came to know about the incident. He learned that the Accused committed murder of Sangita, Siddhesh and Kalpesh. Police enquired with him twice.

In the cross-examination, he stated that it was not mentioned in his statement that as to who gave him information about death of Sangita and her children. He admitted that the Accused had told him on phone that Sangita had gone to the house of another person. He had received photograph of that person on mobile, but his name was not told to him. He denied that the Accused called him 150 to 200 times and that the Accused had forwarded him mobile number of Vishal Wadmare. He had received call from unknown number. His sister had called him from that number. Name of the unknown number was reflected on true caller relating to police department. He denied that when he called back on that unknown number, his sister and Vishal Wadmare talked to him. Sanjay Jadhav is his uncle. He stays at Baramati. He was elder member of the family and was present in the marriage. He told him regarding dispute between the Accused and Sangita. Prior to lock down, they did not visit Beed to ascertain relations between the Accused and Sangita. He denied that the Accused called him on phone and asked him to come to Beed and give understanding to Sangita. He denied that since last one year, the Accused was telling him about illicit

relations of Sangita. He volunteered that prior to 2 days of the incident, he learnt that Sangita had gone with another person to his house. That was told to him by the Accused. Since Sangita was not having mobile phone, he could not talk to her. He denied that the Accused enquired with him whether Sangita had come with two children to his house and he told the Accused to file missing complaint with the police. He had called on unknown number twice and talked with that unknown person. He told that life of deceased was under threat and she was safe there. He told that person to take Sangita to police station. On next day, when Sangita left house, he tried to call that person again, but the phone was switched off. He told that person to take Sangita to her matrimonial house. He volunteered that, that person told that Sangita was like his sister. He denied that the Accused told him that Sangita was not behaving properly and asked him to take her back and since the Accused was constantly complaining about Sangita, he stopped talking to him. He could not tell the date and time when he gave understanding to the Accused. Sangita did not talk to him, she talked to his uncle. He denied that the Accused is not responsible for death of Sangita and her children.

44. PW-11 Sanjay Jadhav is uncle of deceased Sangita. He deposed that, the Accused is husband of daughter of his sister in

law. Sangita married with accused 15 years ago. They had three children. Accused was selling package of food articles. He received phone call of Sangita during the period of Covid lock down. Phone call was received few days prior to the incident. She said that the Accused was threatening to kill her and her children. He told that vehicles were not plying on the road and he gave her understanding not to quarrel and assured that he would come after lock down restrictions are lifted. After 2 days, he received phone call of Rahul Wanarase (PW-8) that the Accused had killed Sangita and her two sons. Beed police came to Baramati and enquired with him. He told that he had talked Sangita two days prior and he had recorded conversation in the mobile. His mobile was seized by police in the presence of Pancha vide Panchanama (Exhibit-77). He identified the mobile (Article-22).

In the cross-examination, he deposed that Sangita used to tell about ill treatment to Rahul, who in turn used to tell him and thereafter he used to give understanding to the Accused and Sangita. He could not tell date, month or year when he gave understanding to them. He was respected by the family of the Accused. He denied that the Accused called him and told that Sangita was having illicit relationship and asked him to give understanding to her. He did not remember when he received

phone call from Sangita, name appeared was of Vishal Wadmare. After death of Sangita, he did not come to Beed, as there was lock down.

45. Evidence of PW-8 and PW-11 is attacked on the ground that they are related to the deceased and they are interested witnesses, therefore, their evidence should be disbelieved. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent.

46. In ***“Jayabalan v. State (UT of Pondicherry)”***⁹ the Apex Court observed :

“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested Page 54 of 62witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

47. In the light of the aforesaid observations, we are not inclined to agree with the submission of the defence that PW-8

9 (2010) 1 SCC 199

and PW-11 are related to the deceased and they are interested witnesses and hence their evidence should be discarded.

48. Evidence of PW-8 and PW-11 is consistent on the point of ill-treatment and threats given by the Accused to deceased Sangita and corroborates the prosecution case and also proves motive on the part of the Accused.

49. Prosecution has examined PW-13 Vishal Wadmare, with whom, Sangita allegedly had illicit relations. He deposed that he knew Sudhir Wanjare who stays in his locality. He knew him since they both were working together on brick kiln. Thereafter he went to work with accused. Sudhir Wanjare used to call to the house of accused. Two to three times Sudhir Wanjare called at the house of accused from his mobile phone. Wife of Santosh Kokane was calling on his mobile phone. She used to tell him on phone that accused used to beat her and she is facing ill treatment from the Accused. She used to tell that accused was threatening to kill her. On 15.04.2020 Sangita came to his house along with her son Kalpesh. He asked her as to why she came. She told that accused had beaten her and threatened to kill her. Hence she came to his house. She stayed in his house for three days. Accused had filed missing complaint, due to that police personnel came to his house. On 21.04.2020 they were taken to

Peth Beed Police Station. Police made enquiry. From the Police Station, Sangita along with her son Kalpesh went to the house of accused. On 22.05.2020 Sangita came at Barshi Naka and called him on phone. She told that there was dispute between her and accused and accused beat her. On 24.05.2020 police personnel from Peth Beed Police Station came to his house and he was taken to Peth Beed Police Station. They inquired with him. At that time accused was present in the police station. In the Police Station he learnt that accused killed Sangita and her two children. His statement was recorded in the Court on 14.07.2020.

50. In the cross he stated that he knows Sudhir Wanjare since childhood but denied that they were relatives and they belong to the same community. He belongs to Scheduled Caste. He did not know whether police constable Wadmare came to Barshi Naka to take him, he did not know whether he was his relative. His statement was recorded on 24.05.2020. Police did not come to him after 24.05.2020. He did not go to Police Station thereafter. He did not tell Sangita when she called on phone that, he will inform her husband or her parental relatives. He did not know whether parental house of Sangita was at Solapur. He was not knowing Rahul Wanarase, brother of Sangita. His mobile number is 9552360518. He denied that mobile numbers of parental relatives of Sangita were saved in his mobile. His mobile was

seized during the investigation and same was given back to him. He denied that his sister used to talk with Sangita on phone and that on 20.02.2020 he along with Sangita had gone to parental home. He denied that since relatives of Sangita did not like him going there, he came back. He did not go to Police Station after Sangita complained him about ill treatment given by accused. On 15.04.2020 he did not call Sudhir Wanjare on phone when Sangita came to him and did not inform him about it. He came to know about Sangita through Sudhir Wanjare. He could not assign any reason why he did not inform Sudhir Wanjare. He denied that as he wanted to marry Sangita hence he did not inform Sudhir Wanjare about it. He is not married. He had no reason to take care of Sangita. His house is at a distance of approximately 1000 feet from Barshi Naka police chowki. He did not inform any police chowki when Sangita came to his house. He did not feel that there was dispute between accused and Sudhir Wanjare. He did not purchase mobile phone for Sangita. She took one sim card from him, when she came to his house on 15.04.2020. She used to call him from said sim card. He denied that he used to talk to Sangita regularly after accused went on his work. Once Sudhir had shown the house of accused to him. He denied that prior to 15.04.2020 Sangita came to his house 15 to 20 times. Since he did not have mobile numbers of relatives of Sangita he did not

inform them that Sangita was calling him and coming to his house. He denied that since he had accepted the responsibility of Sangita with her two children, she was staying in his house, and that Sangita was asking him to marry her and he refused to marry. He denied that Sangita threatened to commit suicide if he refused to marry. He admitted that he received call from Sangita telling him that she was going to Kankaleshwar, he asked her to go home. He denied that Sangita was constantly coming to his house and he was avoiding her. Sangita had come to his house with Santosh. He denied that she stayed over night. He denied that Sangita was insisting to marry him and he denied and due to that he committed murder of Sangita and her two children. He denied that witnesses in this incident were his relatives. He denied that in collusion with police constable Wadmare he gathered false witnesses and implicated accused in the crime. He denied that since accused used to go to sell kurkure, he committed the crime.

51. It is necessary to mention here that the Accused had made unsubstantiated suggestion to this witness that, he has committed murder of Sangita, Siddhesh and Kalpesh, as Sangita was insisting him to marry her and he was not ready for the same. However, nothing in this behalf is brought on record by the Accused to substantiate this suggestion.

52. Prosecution has examined PW-2 Raju Wanjare, an employee of Municipal Council, Beed. He is panch to the spot panchnama. On 24.05.2020, he was in the office and on direction of his superior officer he and his colleague Anil Madhukar Rokde went to Police Station Peth Beed to act as panch. Santosh Kokane had shown the spot. Along with police they went to Shukrawar Peth at the house of Santosh Kokane. It was a house (बाडा) having tin roof. In front of open space their room was there. In the room one tile (stone), wooden bat was lying. There was blood on the stone. Police seized both the articles and prepared panchnama. Apart from that one handle of bat, white colour rope, green colour pieces of bangles and bangle, water sample from blue colour plastic water tank, blood samples, blue colour plastic tank, old handkerchief, one yellow red green rose colour scarf were also separately seized from the spot and sealed. Same is mentioned in spot panchnama Exhibit-30. He identified the article No. 1 Stone, article No. 2 bat, article No. 3 handle of bat, article No. 7 pieces of bangle, blood sample, article No. 6 rope, article No. 11 old handkerchief, article No. 12 scarf. He also identified the signature over the seal. Three dead bodies were found. Head of lady was found pressed. Blood was oozing from ear and nose. One dead body of boy aged about 10 years having head injury was also lying beside the dead body of the lady. Next dead body

of boy was found in blue colour plastic tank containing water. Hands of said body was tied by scarf. Inquest panchnamas of three dead bodies were prepared in their presence vide Exhibits- 31, 32 and 33.

53. In the cross he stated that towards eastern side of said room, room of brother of Santosh is there. Towards northern side tenants were residing. The distance between room and surrounding room were so close to each other that if anybody talk in any particular room it can be heard in another room. The house of accused was surrounded by 100 houses. There is no special mark over seized articles. On that day about 12-13 signature were obtained on chits, those chits were affixed on the articles in their presence in the police station. He denied that panchnamas were not prepared on the spot and they were prepared at police station.

54. Prosecution by examining PW-3 Rahul Gopal Korde, panch, has proved the panchnama (Exhibit-43) of seizure of clothes of Sangita i.e. chocolate colour Salwar (Article -13) and cream colour top (Article - 14), clothes of Siddesh i.e. pink colour shirt (Article-15), blue colour jeans, a blue colour underwear (Article-17) and seizure of blood stained yellow colour t-shirt (Article - 18) and green colour pant (Article-19) of Kalpesh.

Panchnama (Exhibit-46) of seizure of clothes of accused Santosh i.e. chocolate colour full shirt article-20, cream colour pant article-21 is also proved by this witness.

55. He is also panch to the panchnama of obtaining CCTV footage from one house at Mauli Chowk, from house of Sarda and from New Diamond Confectionery. Thereafter, police took him and another Panch Akash to Mauli Chowk, in front of one house. He did not remember name of the person who stayed there. CCTV camera was installed outside the house. They were shown CCTV footage by the owner of the house. They saw the Accused in the CCTV footage going from Mauli Chowk to Kala Hanuman Thana. CCTV footage was obtained in a memory card, which was sealed in their presence and their signatures were obtained on it.

From there, they proceeded to Kala Hanuman Thana Chowk. While going there, they came across house of Sarda. There was CCTV camera outside the house. They went inside the house and saw the CCTV footage, wherein the Accused was seen going from in front of the house of Sarda towards Kala Hanuman Chowk. Said CCTV footage was obtained in a memory card and the memory card was sealed in their presence and their signatures were obtained.

From there, they went to the Kala Hanuman Thana Chowk and from there, they started towards Shukrawar Peth, on the way, shop called New Diamond Confectionery was seen. CCTV cameras were installed outside the shop. They inspected CCTV footage. The Accused was seen going from in front of the shop towards Mondha Naka. CCTV footage was obtained in the memory card and the memory card was sealed in their presence and their signatures were obtained on it. All these findings and recoveries were recorded in Panchanama Exhibit-47.

Three sealed envelopes containing memory cards were opened in the Court during his evidence and the memory cards were given Articles "A" and "B".

56. On 30.05.2020, Police took him and Akash to Sarda road to see CCTV footage. They went to Rashtriya Nagari Co-operative Credit Society. Bank Manager Mukeshkumar Dhage was present. On the request of police, Bank Manager showed CCTV footage dated 24.05.2020. In the CCTV footage he saw accused going towards Kala Hanuman Thana. Police obtained copy of CCTV footage in the memory card and obtained their signature on it and the memory card was sealed. Panchnama (Exhibit-48) was prepared in their presence. He also identified the memory card Article-C.

57. In the cross he stated that he went to the police station at 9.00 a.m. and panchnama was started around 9.15 a.m. The clothes were already kept separately by the police. When Article-13 was shown to him he stated that same is designer top of yellow, blue, black colour. All the clothes did not bear any chit having his signature. He has deposed that said clothes belong to deceased as he was told it during the panchnama. He admitted that Article-15 is not of red colour. Police did not ascertain ownership of house from where CCTV footage was copied. He said that police inquired with the owner and he was present there. For panchnama police carried with them laptop and stationery. He did not know Vishal Wadmare resident of Barshi Naka, Beed. Panchnama was conducted during first stage of Corona pandemic. It was mandatory for the person to wear mask. He admitted that face of a person in the footage is covered by handkerchief. He denied that he cannot identify the person in the footage as his face is covered by handkerchief. He admitted that to identify a person his nose, lips and chin should be visible and in the footage nose, lips and chin of the person is not visible. In another footage back of the person is visible.

58. Prosecution has also examined PW-10 Kailas Wable, Assistant Sub Inspector, who has investigated the missing

complaint. He testified that on 17.04.2020, he was present in Peth Beed Police Station, on that day accused lodged missing complaint which was registered as Missing Complaint No. 7/2020. It was handed over to him for investigation. He identified the missing complaint (Exhibit-71). He was also handed over copy of missing person registration No. 7/2020 (Exhibit-72). He tried to search missing person with relatives. During inquiry of the missing complaint accused told him that his wife and son were at Barshi Naka. He went to the house of Vishal Wadmare (PW-13). There he found Sangita and Kalpesh. He brought them to the police station. Accused was present in the police station. When he asked Sangita the reason why she left house, she told him that accused used to beat her and her son on trivial reasons. He gave understanding to them. He recorded statement of Sangita and accused. Thereafter Sangita and her son went with the Accused to matrimonial home. He then filed first information report Exhibit-73 to P.I. and handed over the complaint and missing report to P.I. along with statement of Sangita and accused.

59. In the cross he stated that in the complaint it was mentioned that Sangita was constantly talking on phone and she left home without informing anybody. He searched with two relatives of accused. He did not contact Sangita's parents. In

Sangita's statement it is mentioned that she got angry due to behavior of accused. She called Vishal Wadmare on mobile phone and told that accused beat her, she does not want to stay and called him. He accordingly came on his motorcycle and she went to his house at Barshi Naka where she stayed. Since her statement was referred to him in the cross, it was marked at Exhibit- 74. He further stated that he went to Barshi Naka and brought Vishal Wadmare to police station. He did not record his statement. Any previous complaint filed by Sangita was not handed over to him for inquiry. Santosh happily took Sangita and Kalpesh to his house after they were handed over to him.

60. Prosecution has examined PW-4 PSI Rajendra Bankar, who at the relevant time was working as PSO at Peth Beed Police Station. He deposed that on 24.05.2020, he was working as PSO. On that day, Sandip Jaydatta Kokane (PW-1) came to police station and told him that his brother Santosh had killed his wife Sangita, sons Siddesh and Kalpesh with bat and stone and thereafter put Kalpesh in water barrel. He had brought accused to police station with him. Accordingly complaint (Exhibit-52) was recorded as per his say. He and complainant put their signatures on the complaint. Portion mark 'A', 'B', 'C' and 'D' were recorded as per say of complainant, they were given Exhibit-53. He accompanied I.O. to gather information regarding movement of

accused from the spot and to collect CCTV footage. Panchas were with them. They went to Mauli chowk. They found CCTV cameras installed outside the house of Tiwari. On inspecting footage collected from camera No. 1 and 2 accused was noticed. That footage was copied and pasted in the memory card of Toshiba company. Hash value was obtained. Memory card was seized and sealed in presence of panchas. When they went ahead they noticed CCTV camera outside the house of Sarda. They inspected the CCTV footage. Accused was seen in it. The footage was copied and pasted in the memory card. Hash value was obtained. Memory card was seized and sealed in presence of panchas. Thereafter they came near Diamond Confectionery shop. They noticed CCTV camera outside the shop. They inspected the CCTV footage. Accused was noticed in it. The footage was copied and pasted in memory card. Hash value was obtained. Memory card was seized and sealed in presence of panchas. He had obtained training in computer operations, collection of data from electronic devices, storing the data, obtaining hash value etc. He had knowledge of the aforesaid things. He issued certificate under Section 65B of Indian Evidence Act (Exhibit-54).

61. He went along with I.O. to Rashtriya Nagari Sahakari pat-Sanstha on 30.05.2020. They inspected the CCTV cameras there. Accused was located in the footage. He was noticed going

towards the spot. Said footage was copied and pasted in memory card. Its hash value was obtained. Memory card was seized and sealed in presence of panchas. Thereafter he gave certificate under Section 65B of Indian Evidence Act (Exhibit-55). He has mentioned regarding device used by him for collecting the footage. He has also filed hash value number obtained from screenshots regarding hash value from his computer. They are part of certificate (Exhibit-55). The footage were collected as they were. The instruments used for collecting the footage were in proper condition. Accused noticed in the footage and present in the Court is one and the same.

62. In the cross he denied that he has deposed false that informant came with accused to Police Station and that portion mark 'A', 'B', 'C', and 'D' were not told by informant. It did not happen that he asked the question to the complainant and he answered and accordingly complaint was recorded. He knows typing. He has certificate of MSCIT. He denied that complaint at Exhibit-52 was not recorded as per the say of informant. He further stated that while collecting hash value he used Karens Hasher software, the same is mentioned in panchnama (Exhibit-47). Screenshots did not bear his signature. Panchas were called by I.O. prior to going for panchnama. He had seen accused from the distance of 50 feet. He admitted that during training they

were taught how to recognize a person. A person can be identified on observing his eyes, nose and ear. He volunteered that a person can be identified from his body language, head movement, hand movement etc. He observed CCTV cameras when he went with I.O. In his presence. I.O. did not take the ownership document of the house. For conducting both panchnamas he carried with him computer, memory card reader, 03 memory cards, his mobile of OPPO company and external hard-disc. There are 3 to 4 types of Hard-drive. No separate panchnama was conducted that the memory card was empty. He volunteered that it is mentioned in the panchnama that memory card was empty. On being questioned *"Whether a new folder was created after taking footage and whether it was named?"* he answered that *"footage was taken in hard-drive. It was attached to computer and from there it was directly taken in memory card."* Footage can be edited before taking hash value. Footage was firstly collected in hard-drive and thereafter it was transferred in the memory card. Original footage is in DVR. Clone copy was not done by them. Clone copy is not available with them. He denied that he edited the footage in his laptop. He admitted that screenshot of hash value was not signed by him, it was signed by I.O. There is no date below his signature at Exhibit-54 and 55. He denied that since he was not owner of the DVR he

had no authority to issue certificates at Exhibit-54 and 55. He denied the suggestion that he is deposing false that CCTV footage was taken in his OPPO mobile, that he deposed false regarding hash value and no footage was collected from the house of Tiwari, Sarda and Rashtriya Nagari Sahakari Pat-Sanstha and he is deposing false.

63. Prosecution has examined PW-9 Sunil Algat, Police Head Constable, who was working at Peth Beed Police Station as Police Naik. On 24.05.2020 he was present in the police station. At around 1.45 p.m. he received call from his friend Girish Bagde informing him that a foul smell was coming from house in Takia Colony, Peth Beed. He accordingly informed to P.I. Shri. Patil, he took entry in station diary (Exhibit-67) and they went towards the spot. On 09.06.2020 he was given two letters and muddemal in Crime No. 150/2020 by Mohril and I.O. to deposit with Forensic Laboratory. He deposited the muddemal in Forensic Laboratory and obtained acknowledgment (Exhibit-68).

64. In the cross he stated that there were 22 sealed envelopes. Panchnama was not conducted while handing over muddemal to him.

65. In re-examination he stated that on 25.02.2021 he was on duty, he was handed over two letters and four sealed envelopes

in Crime No. 150/2020. On the same day evening he went to Mumbai along with sealed envelopes and letters and deposited it in Forensic Laboratory on 26.02.2021 .

66. Police Inspector Vishwas Patil PW-15 is the investigating officer. Spot panchnama, inquest panchnama and complaint were handed over to him. He recorded statement of Rajendra Satpute as per his say. Portion Mark 'A' and 'B' in his statement are as per his say. They were given Exhibit-104 and 105 respectively. He seized clothes of deceased Sangita, Siddesh, Kalpesh and clothes of accused vide panchnamas Exhibits-43, 44, 45 and 46. He arrested the accused vide panchnama Exhibit-107. He collected CCTV footage from three places wherein accused was seen walking. Prior to collecting the footage, notices (Exhibits-108, 109 and 110) were given to concerned house owners. They gave consent and thereafter CCTV footage was collected. Panchnama (Exhibits-47 and 54) were conducted at the time of collecting CCTV footage. He proved the letter (Exhibit-113) given to Court for recording statements of PW-1 and PW-14 under section 164 of the Criminal Procedure Code. He proved portion mark 'A' in the statement of PW5- Vilas Bamne, which was marked Exhibit-111. He proved portion mark 'A' (Exhibit-112) in the statement of Sanjay Wadekar. He stated that portion mark 'A' from the statement of Sanjay Wadekar (PW-6) is recorded as per his say.

He then described the steps taken by him during the course of investigation including recording of statements of witnesses, forwarding of articles to Forensic Laboratory, forwarding of pen drive containing CCTV footage and its report Exhibit-118. He obtained PTR record of the house of accused (Exhibit-116). During the investigation it was revealed that accused had committed murder of Sangita, Siddesh and Kalpesh.

APPRECIATION OF EVIDENCE

67. HOMICIDAL DEATH OF SANGITA, SIDDHESH AND KALPESH

Homicidal death of Sangita, Siddhesh and Kalpesh is proved by the Prosecution in the evidence of PW-12. The defence has not disputed the homicidal deaths of Sangita, Siddhesh and Kalpesh.

68. MOTIVE:

- a. It is the case of the prosecution that the accused was suspecting that deceased Sangita had illicit relations with PW-13 Vishal. To prove the motive of the Accused, the Prosecution has led evidence of PW-8 Rahul, brother of deceased Sangita, PW-11 Sanjay Jadhav, uncle of the deceased and PW-13 Vishal Wadmare.
- b. PW-8 Rahul had categorically deposed about ill-treatment

given by the accused to deceased Sangita. It has come in his evidence that, there were constant quarrels between Accused and Sangita and the Accused used to call him and tell that he was suspecting character of deceased Sangita. Sangita called him and told that the Accused had threatened her and she was having apprehension that the Accused would kill her and her children. He has further testified that, when he tried to give understanding to the Accused, the Accused threatened him and also threatened to kill Sangita.

- c. PW-11 Sanjay Jadhav, uncle of the deceased, also deposed about the ill-treatment given to Sangita by the Accused. Few days prior to the incident, he had received a phone call from Sangita and she told that the Accused was threatening to kill her and her children. In the cross, suggestion was given to him by the defence that the Accused told him that Sangita was having illicit relations and asked him to give understanding to her. Thus, the Accused himself has suggested about illicit relations of Sangita with PW-13 Vishal Wadmare.
- d. Ill-treatment given by the Accused to deceased Sangita is also stated by PW-13 Vishal Wadmare. He has stated that

Sangita used to call on his mobile phone and used to tell him that the Accused used to beat her and she is facing ill-treatment from the Accused and the Accused was threatening to kill her. On 15th April, 2020, Sangita had gone to his house along with son Kalpesh. When he asked the reason for coming to him, she told that the Accused had beaten her and threatened to kill her. Therefore, she had come to his house. At that time, Sangita stayed at his house for 3 days. The Accused had filed missing complaint due to that Police Personnel from Peth Beed Police Station come to his house and on 21st April, 2020, they were taken to Peth Beed Police Station. Then, again on 22nd May, 2020, Sangita came to Barshi Naka and called him and told that there is dispute between her and the Accused and the Accused beat her.

- e. It has also come in the prosecution evidence that prior to the month of the incident, Sangita, along with her son Kalpesh left the company of Accused and Accused had filed Missing Complaint (Exhibit-71), which was registered at Missing Person Registration No. 7 of 2020 (Exhibit-72). PW-10 Kailas Wable was entrusted with the said inquiry. During the inquiry, the Accused told him that his wife and son were at Barshi Naka, at the house of Vishal Wadmare. When PW-

10 went there, he found Sangita and Kalpesh. He brought them in the police station. When he made inquiry with Sangita, she told that the Accused used to beat her and her son for trivial reasons, therefore, she left the house of the Accused. He recorded statements of Sangita and the Accused and gave them understanding. Thereafter, Sangita went along with the Accused to her matrimonial house.

- f. From the aforesaid evidence, the prosecution has established that relations between the accused and deceased Sangita were strained. According to Sangita, the Accused used to beat her and, therefore, she had left company of the Accused and went to Vishal Wadmare to stay with him. The Accused was aware about this fact. From the evidence of PW-8 and PW-11, it is brought on record that the Accused was suspecting character of deceased and the deceased was apprehending that the Accused would kill her and her children.
- g. The Accused, in his answer given to Question No. 161 in the statement recorded under section 313 of the Criminal Procedure Code, has admitted that there were illicit relations between Sangita and PW-13 Vishal.
- h. All the aforesaid evidence establishes that the Accused had

strong motive to kill Sangita and her two children. On appreciation of this evidence, we are of the considered view that the Prosecution has proved that the Accused had motive to kill Sangita.

69. EXTRA JUDICIAL CONFESSION BY THE ACCUSED :

- a. Extra judicial confession by the Accused is reflected in the first information report (Exhibit-52) as well as in the statement of PW-1, recorded under section 164 of the Criminal Procedure Code, on 27th May, 2020. Relevant extra judicial confession is marked as portion "C" in the said statement.
- b. It has come in the evidence of PW-1 Sandip and PW-7 Sachin that, when they went inside the house of the Accused, they saw dead bodies of Siddhesh and Sangita were lying in a pool of blood. Obviously, they did not notice Kalpesh at that time and they were not knowing about his whereabouts. Evidence of PW-1 and PW-7 is consistent on these points.
- c. Admittedly, after noticing the dead bodies of Sangita and Siddhesh, PW-1 proceeded to the police station. As is mentioned in the FIR (Exhibit-52), the Accused met him outside the police station. When PW-1 asked the Accused

about the incident, the Accused confessed to him that, *'on that day, at about 4.00 a.m. in the morning, he has killed his wife Sangita and two sons Siddhesh and Kalpesh, by assaulting them with bat and stone and by drowning Kalpesh in water barrel'*. On hearing this confession, PW-1 took the Accused inside the police station and handed him over to the Police and lodged the FIR (Exhibit-52). The fact of PW-1 bringing the Accused in the police station, at the time of lodging of the FIR (Exhibit-52) is also stated by PW-4 Rajesh Bankar, Police Sub Inspector, who registered the crime No. 150 of 2020, on the basis of the FIR (Exhibit-52). The fact of handing over of custody of the Accused to the police by PW-1 further supports the making of extra judicial confession by the Accused.

- d. Evidence on record further reveals that pursuant to the extra judicial confession, the whereabouts of dead body of Kalpesh were made known to PW-1 and the same were reported by him to the police vide FIR (Exhibit-52). In the portion marked "C", in the statement of PW-1 recorded before the Magistrate under section 164 of the Criminal Procedure Code also, in verbatim the same extra judicial confession is mentioned. This further lends support to the prosecution case that, the Accused made extra judicial

confession having killed his wife and two sons.

- e. There is evidence on record that, after lodging of the FIR (Exhibit-52), police, along with PW-1 and PW-7 went to the scene of offence. They searched and found dead body of Kalpesh, in a barrel containing water. This fact is corroborated by PW-7 Sachin. This fact also corroborates extra judicial confession made by the Accused, wherein he has disclosed that first he beat Kalpesh with bat and then drowned him in a barrel containing water. This also corroborates the prosecution case that the Accused made extra judicial confession.
- f. Discovery of dead body of Kalpesh on the information given by the Accused, exhibits knowledge or mental awareness of the Accused as to the existence of dead body of Kalpesh in the water barrel and proves his complicity in the present crime. The discovery of the dead body of Kalpesh in the water barrel, on the basis of extra judicial confession of the Accused further lends support to the prosecution case and proves the fact of Accused making extra judicial confession.

70. CCTV FOOTAGE / ELECTRONIC EVIDENCE :

- a. In the present case, the police collected CCTV footage from

the houses of Anand Mahesh Tiwari, Sharad Sarda and from New Diamond Confectionery. The CCTV footage was collected by PW-4 Rajendra Bankar, who claims to have obtained training in computer operations, collection of data from electronic devices, storing data etc. He has issued certificate under section 65B of the Evidence Act on all the memory cards on which he had downloaded the CCTV footage. The memory cards were also forwarded to the forensic laboratory, which has issued examination report (Exhibit-56), confirming that *“male person present in questioned video file found as Exhibit-1, Exhibit-2 and Exhibit-3, appears to be similar with reference photograph”*. (Said to be Santosh Jaydatta Kokane).

- b. The Trial Court has rightly disbelieved electronic evidence / CCTV footage evidence, by relying on decision of the Apex Court in **“Arjun Panditrao Khotkar V.s Kailas Kishor Goryantal¹⁰”**, wherein it is held that a person who gives certificate must be the person who occupies a responsible official position in relation to the operation of the relevant device.
- c. Admittedly, in the present case, certificates under section 65B of the Evidence Act, are not issued by the owners of

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the CCTV and, therefore, said certificates, issued by PW-4 are not valid and, hence, the Trial Court is justified in discarding the electronic evidence in the present case.

- d. We do not agree with the submission of the learned APP that PW-4, having obtained computer training and being expert in the field, has issued certificates under section 65B of the Evidence Act in official capacity. Requirement of sub clause "a" of clause 2 of section 65B of the Evidence Act is that, the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer.
- e. PW-4 cannot be said to have lawful control over the use of computers and, therefore, he was not competent to issue certificate under section 65B of the Evidence Act. In this view of the matter, there is no merit in the said argument of the learned APP.

71. FALSE PLEA OF ALIBI :

- a. It is the case of the prosecution that the Accused planned murders of Sangita, Siddhesh and Kalpesh. He, therefore,

went to the house of PW-14 in the night between 23rd and 24th May, 2020. He came from there at 4.00 a.m., entered his house, killed Sangita, Siddhesh and Kalpesh and returned back to the house of PW-14, at about 5.30 to 6.00 a.m.

- b. The Accused contends that he was not at all present in the house, when the incident had taken place and he was at the house of PW-14. This stand of the accused is supported by PW-14 in his evidence. However, the fact remains that PW-14 has admitted in his evidence that the Accused came to his house in the evening on 23rd May, 2020 along with Mayuresh. After dinner, the Accused slept in the hall and he went to sleep in bedroom. He has resiled from his police statement. As per the portion marked "A" in his police statement, he has stated that on 24th May, 2020, at 6.00 a.m. he saw Santosh (Accused) coming from outside in frightened condition. On asking, he disclosed that he had gone for a walk. After having breakfast, the Accused left for the police station. Thus, it is clear that, to execute his plan of killing wife and sons, the Accused had gone to the house of PW-14 and as per his plan, he went to his own house at 4.00 a.m. and killed Sangita, Siddhesh and Kalpesh and returned to the house of PW-14.

- c. The Accused failed to bring on record any evidence to show that he was far away at such a distance from the spot of incident at the relevant time, so that it was impossible for him to remain present at the spot of the incident at the relevant time. Even the distance between his house and house of PW-14 is not deliberately brought on record by the Accused. We are inclined to accept the submission of the learned APP in this behalf that as per Google Map, distance between spot of incident and the house of PW-14 is 350 meters and judicial notice of the same can be taken, in the interest of justice.

72. In **“Jagannath Laxman Pawar V/s State of Maharashtra¹¹”**, this Court has held :

“22. Their evidence thus does not substantiate the plea of alibi at all as raised by the Appellant. It needs to be stated that the plea of alibi postulate the physical impossibilities of the presence of the Accused at the scene of offence by reason of his presence at some other place. Such a plea can succeed only if it is shown that the Accused was far away at the relevant time that he could not be present at the place where the crime was committed. Such plea should be capable of meaning that having been regard to the time and place, where and when offence is committed, Accused could not have been present. The burden to prove the plea of alibi lies on the Accused and he has to discharge the said burden strictly by producing convincing and reliable evidence on record.”

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73. In the light of the aforesaid observations, there is no substance in the plea of alibi raised by the Accused. Thus, the false plea of alibi taken by the Accused can be held to be an additional circumstance against him.

74. FORENSIC EVIDENCE :

- a. PW-15 Investigating Officer forwarded the seized articles to the forensic laboratory, vide Exhibit-16, which included square stone having blood stains, wooden cricket bat with broken handle, blood stained clothes of Sangita, Siddhesh and Kaplesh, blood stained clothes of the Accused, blood samples of Sangita, Siddhesh and Kalpesh etc.
- b. PW-9, Police Head Constable Sunil Algat carried the articles to the forensic laboratory. The report of the forensic laboratory is at Exhibit-13. As per the CA report, stone, cricket bat without handle, broken handle of cricket bat and glass bengals found on the spot of the incident, were stained with blood. Handkerchief of the Accused was found with moderate number of blood stains. Blood stains were found on the clothes of Sangita, Kalpesh and Siddhesh. Blood of blood group "A" was found on the handkerchief of the Accused, clothes of Sangita, Siddhesh and Kalpesh as well as on the right sleeve of the shirt of the accused and

on the lower portion of his pant. Blood group of Sangita, Siddhesh and the Accused is "A".

- c. It is necessary to mention here that the Accused had no injury on his person, when he was arrested, vide arrest Panchanama (Exhibit-107). Blood of blood group "A" found on his clothes and handkerchief is a strong incriminating circumstance, which goes against the Accused. The CA report (Exhibit-13) is also relevant incriminating circumstance against the Accused, which supports the prosecution case.

75. DELAY IN REGISTERING FIR:

- a. Learned Advocate for the Accused vehemently argued that, FIR (Exhibit-52) is belatedly registered and therefore, the prosecution case should be disbelieved. It has come in the evidence that, PW-9 received information about foul smell coming from a house in Takia Colony. Station diary Entry (Exhibit-67) was taken and police proceeded towards the spot. It is pertinent to note here that, the spot was shown by the informant, Sandip Kokane (PW-1). It is recorded in the Spot Panchanama that, information was received at 15.00 hours on 24th May, 2020 about murder committed at the house of the Accused. Spot Panchanama was conducted between 15.00 and 16.30 hours.

From the spot of the incident, Articles used in the commission of the crime i.e. wooden cricket bat with broken handle, handle of cricket bat, water barrel in which dead body of Kalpesh was found, pursuant to the confession of the Accused and other incriminating articles were seized. Immediately, thereafter, inquest Panchanamas (Exhibit-31, Exhibit-32 and Exhibit-33) were conducted on the three dead bodies, between 16.35 hours and 18.15 hours. Record further reveals that, thereafter, on the basis of information given by PW-1, FIR at Crime No. 150 of 2020 for offence punishable under section 302 of the Indian Penal Code was registered at 23.35 hours and the investigation was handed over to Police Inspector, Patil (PW-15). While handing over the investigation, spot panchanama and inquest panchanamas were also handed over to PW-15.

b. It appears that though the informant (PW-1) approached the police station along with the Accused and disclosed commission of offence of murder by the Accused, the Police failed to register FIR and crime immediately. It seems that, police kept the Accused in the police station and accompanied the informant to the spot of the incident and conducted spot panchanama and inquest panchanamas. There appears some delay on the part of the police authorities in registering the FIR.

Fact remains that the defence has failed to cross-examine police station officer (PW-4) and investigating officer (PW-15) on the point of delay in registering the FIR and crime.

c. It is by now settled that merely because there are lapses on the part of police to register the crime at the earliest, that by itself is not sufficient to give benefit to the Accused.

d. In **“Ravinder Kumar and Others V/s State of Punjab¹²”** it is held:

13. The attack on the prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a

¹² AIR 2001 SC 3579

delay. There can be a variety of genuine causes for FIR lodgment to get delayed.....”

e. In **“State of Karnataka V/s K. Yarappa Reddy”**¹³ the Apex Court has observed:

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise, the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer’s suspicious role in the case.”

f. Applying aforesaid ratio to the facts of the present case, merely because there is some delay on the part of the police to register the crime at the earliest, we are not inclined to give benefit of the same to the Accused. The Accused has

13 (1999) 8 SCC 715

failed to show that due to the delayed registration of crime, serious prejudice is caused to him. The prosecution, by leading cogent evidence, has proved that the Accused is the author of the crime.

76. CONDUCT OF THE ACCUSED:

- a. The Accused appears to have planned the murders. He went to the house of PW-14 in the evening of 23rd May, 2020 along with elder son Mayuresh and slept there. At 4.00 a.m. in the morning, he went to his house, killed his wife and two sons and returned back to the house of PW-14. Thereafter, he went to the police station and met his brother, PW-1 Sandip, outside the police station. On asking, he confessed commission of the crime. PW-1 then took the Accused inside the police station and surrendered him.
- b. The plea of alibi raised by the Accused is found to be false and not proved by him. Taking into consideration the distance between the house of the Accused and the house of PW-14 being 300 meters, it was easy for the Accused to go to his house, kill his wife and sons and return back to the house of PW-14.
- c. While answering the questions put to him in his statement under section 313 of the Criminal Procedure Code, the

Accused has gone to the extent of denying his relationship between him and his brother, PW-1 Sandip and that his family consists of his mother, wife and four daughters, the Accused has answered the said question by saying “no”.

The conduct of the Accused is an additional link in the chain of circumstances, proved by the prosecution showing his complicity in the crime.

77. PRESUMPTION UNDER SECTION 106 OF THE EVIDENCE ACT:

- a. The incident in question has taken place during Covid-19 time, when there were restrictions on the movement of people. Admittedly, at the relevant time, the Accused was staying along with his family, which included his wife Sangita and sons Mayuresh, Siddhesh and Kalpesh. All the family members of the Accused were, therefore, in the custody of the Accused at the time of the incident. It was, therefore, duty of the Accused to explain in what circumstances his wife Sangita and sons Siddhesh and Kalpesh suffered homicidal deaths in the fateful night. The Accused has failed to give any explanation in that behalf.
- b. Except giving unsubstantiated suggestion to PW-13 that he killed Sangita, Siddhesh and Kalpesh, no explanation

whatsoever is offered by the Accused about the homicidal deaths of his wife and sons, who were in his custody.

- c. In this view of the matter, we hold that the Accused has miserably failed to discharge the burden under section 106 of the Indian Evidence Act. This, therefore, needs to be taken as additional circumstance against the Accused.

78. On careful scrutiny of the material placed on record, we are of the considered view that prosecution has proved beyond reasonable doubt that :

- a. Accused was perturbed because of the illicit relations of Sangita with PW-13 Vishal.
- b. Prior to one month of the incident, Sangita had left company of the Accused and went to stay at the house of PW-13 along with Kalpesh.
- c. On 15th April, 2020, when PW-13 asked the reason of her coming to his house, she told that the Accused beat her and had threatened to kill her. She stayed in his house for 3 days.
- d. Accused filed Missing Complaint (Exhibit-71), which was registered at Missing Person Register No. (7 of 2020) (Exhibit-72). He disclosed to police that

Sangita, along with her son, was staying at the house of PW-13.

- e. On 21st April, 2020, PW-10 Kailas Wable went to the house of PW-13 and brought PW-13, Sangita and Kalpesh to Peth Beed Police Station and made inquiry with them. He recorded statement of Sangita (Exhibit-74). On the same day, Sangita and Kalpesh went with the Accused.
- f. On 22nd May, 2020, Sangita came at Barshi Naka and called PW-13 on phone and told him that there was dispute between her and Accused and the Accused beat her.
- g. During Covid-19 lock-down, there used to be constant quarrel between the Accused and Sangita.
- h. Accused used to call Sangita's brother PW-8 Rahul and used to tell him that he was suspecting character of Sangita and Sangita used to tell Rahul that the Accused had threatened her and she was having apprehension that the Accused would kill her and her children.
- i. When PW-8 Rahul tried to give understanding to the

Accused, he threatened him and also threatened to kill Sangita.

- j. Accused had also told PW-8 that Sangita had gone to the house of another person.
- k. Sangita, in a phone call made few days prior to the incident to PW-11 Sanjay Jadhav, told that Accused was threatening to kill her and her children.
- l. Accused, along with elder son Mayuresh, went to the house of PW-14 in the evening of 23rd May, 2020. Accused woke up around 4.00 a.m. in the morning and went to his house and killed Sangita by hitting wooden bat and stone on her head. In similar manner, he killed Siddhesh by hitting cricket bat on his head and left them in a pool of blood.
- m. Accused then hit younger son Kalpesh with bat on head, then tied his hands and drowned him in a barrel containing water.
- n. PW-5, neighbour of the Accused saw the Accused at 4.30 a.m. on 24th May, 2020, when he woke up for toilet.

- o. PW-6 saw the Accused at 5.15 a.m. on 24th May, 2020, going outside his house.
- p. On 24th May, 2020 at about 6.00 a.m. PW-14 saw accused coming from outside in frightened condition. When asked, the Accused disclosed that he had gone for a walk.
- q. On 24th May, 2020, at about 11.00 a.m. PW-1 came out of his house. Baliram Teke and Sachin PW-7 met him and asked him whereabouts of Santosh (Accused) and Sangita (deceased). He told them that the Accused had gone to police station. That time, door of the house of Accused was closed. PW-1, informant, Sachin and Baliram went to the house of the Accused and pushed the door. On being pushed, the door opened. They saw Siddhesh lying in injured condition and blood oozing from his head. Besides Siddhesh, Sangita was found lying in pool of blood.
- r. They, therefore, came out of the house and PW-1 went to Peth Beed Police Station.
- s. Outside the Police Station, PW-1 met the Accused. He enquired about the incident and the Accused

confessed to him that he killed his wife Sangita and two sons, Siddhesh and Kalpesh in the same morning at about 4.00 a.m. by hitting them with wooden bat and stone and by drowning Kalpesh in barrel filled with water.

- t. After hearing said confession, PW-1 took the accused in the police station and handed him over in the custody of police. He then informed the incident to police, including the extra judicial confession made by the Accused.
- u. In the meanwhile at 1.45 p.m., on receipt of phone call about bad smell of dead body coming from the house of the Accused, PW-9 took station diary entry (Exhibit-67) and proceeded to the spot along with Police Inspector Bharati, PSI Bankar, PHC Wadmare and other police constables.
- v. The spot of the incident was shown by PW-1 and Spot Panchanama (Exhibit-30) was conducted in the presence of Pancha PW-2 Raju Wanjare at 14.50 hrs.
- w. As disclosed in the extra judicial confession, dead body of Kalpesh was found in the barrel containing

water, which was not noticed by the informant and PW-7, when they initially went to the house and opened door, they had only noticed dead bodies of Siddhesh and Sangita lying in pool of blood.

- x. From the spot of the incident, cricket bat with broken handle having blood stains, its handle and square stone having blood stains, plastic barrel in which dead body of Kalpesh was found, blood spread on the post of the incident, blood stained handkerchief of the Accused etc. were seized.
- y. Inquest Panchanamas on dead bodies of Siddhesh (Exhibit-31), Sangita (Exhibit-32) and Kalpesh (Exhibit-33) were conducted on 24th May, 2020 between 15.00 hrs and 18.15 hrs in presence of PW-3 Rahul Korde.
- z. On the basis of information given by PW-1, FIR at Crime No. 150 of 2020 for the offence punishable under section 302 of the Indian Penal Code was registered by the PSO, PW-4 at 23.35 hrs.
- aa. On the basis of first information report (Exhibit-52) lodged by PW-1, crime No.150 of 2020 for offence

punishable under section 302 was registered at Peth Beed Police Station on 24th May, 2020 at 23.35 hrs and the investigation was handed over to Police Inspector Patil, PW-15.

- ab. Accused was arrested on 25th May, 2020 at 00.25 hrs, vide arrest Panchanama (Exhibit-107). Blood stained clothes of the accused were seized on 25th May, 2020 at 11.10 to 11.40 a.m. vide Panchanama (Exhibit-46).
- ac. PW-12 Dr. Dipali Gavhane conducted post mortem on the dead body of Siddesh on 25th May, 2020 and gave report (Exhibit-81) and opined that cause of death is due to head injury.
- ad Post mortem report of Sangita is at Exhibit-84 and cause of her death is stated to be 'death due to head injury'.
- ae PW-12 also conducted post mortem on the dead body of Kalpesh on the same day and gave report Exhibit-87 and opined that cause of death is due to drowning associated with head injury.
- af. PW-15, Investigating Officer, seized clothes (Articles 13 and 14) of deceased Sangita vide Panchanama

Exhibit-43; PW-15 also seized clothes of Siddhesh (Articles – 15, 16 and 17) vide Panchanama (Exhibit-44). He seized clothes of Kalpesh (Articles 18 and 19) vide Panchanama (Exhibit-45).

- ag. Investigating Officer thereafter obtained CCTV footage from the houses of Anand Mahesh Tiwari, Sharad Sarda and from New Diamond Confectionery, through PW-4 in the presence of Pancha PW-3.
- ah. Investigating Officer then forwarded CCTV footage and Articles seized during the course of investigation from the spot etc. to forensic laboratory, through PW-4 vide Exhibit-68.
- ai. CA report Exhibit-13 shows that blood stains of blood group “A” were found on the shirt and lower part of the pant of the Accused.
- aj. As per Exhibits-14, 15 and 17, blood group of Sangita, Siddhesh and the Accused is “A”.
- ak. On 27th May, 2020, statement of PW-14 under section 164 of the Criminal Procedure Code was recorded before the Magistrate.

- al. On 27th May, 2020 statement of PW-1 informant under section 164 of the Criminal Procedure Code was recorded before the Magistrate, which is in tune with the FIR.
- am. Admission of the Accused about illicit relations between Sangita and PW-13 in the statement recorded under section 313 of the Criminal Procedure Code.
- an. Due to the alleged illicit relations between Sangita and PW-14, the Accused had strong motive to kill Sangita and her children.
- ao. Extra judicial confession finds support from the statement made in the FIR as well as from the fact that, on making such confession, informant PW-1 handed over custody of the accused to police at the time of lodging of the first information report (Exhibit-52).
- ap. Medical record is in conformity with the first information report (Exhibit-52) lodged by PW-1 and thus corroborates contents of the FIR.
- aq. No plausible explanation is offered by the Accused

about death of his wife and two sons while they were in his custody. Therefore, the Accused has failed to discharge burden under section 106 of the Evidence Act and this is an additional circumstance against the Accused.

79. In “**Govardhan** (*supra*) the Apex Court has observed:

“20. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

21. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

22. It will be relevant to discuss, at this juncture, what is meant by “reasonable doubt”. It means that such doubt must be free from suppositional speculation. It must not be the result of minute

emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense as observed in Ramakant Rai v. Madan Rai, (2003) 12 SCC 395 wherein it was observed as under :

“24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.”

23. While applying this principle of proof beyond reasonable doubt the Court has to undertake a candid consideration of all the evidence in a fair and reasonable manner as observed by this Court in State of Haryana v. Bhagirath (1999) 5 SCC 96 as follows:

“8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression ‘reasonable doubt’ is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.

9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Edn.) as follows:

‘It is difficult to define the phrase “reasonable doubt”. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed

is that given by Chief Justice Shaw in the Webster case . He says:

“It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”

10. In the treatise *The Law of Criminal Evidence* authored by H.C. Underhill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus:

‘The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt.’

80. In **“Ramakant Rai V/s Madan Rai¹⁴”** it is held:

“23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of

14 (2003) 12 SCC 395

probability amounts to “proof” is an exercise particular to each case.”

81. On this point, Lord Denning, J. in **“Miller v. Miller of Pensions”**¹⁵ has observed:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the court of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice. ”

82. In **“Govardhan”** (supra), it is further held :

“66. We must also keep in mind that in a trial, the assessment of evidence cannot be made in a technical manner and the realities of life must be kept in mind for arriving at the truth as observed by this Court in State of H.P. v. Lekh Raj (2000) 1 SCC 247 as follows;

“10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886] held: (SCC pp. 285-86, para 23)

‘23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of

15 (1947) 2 ALL ER 372m 373 H

different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.'

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper technical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought

but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind.”

83. Reference can also be made to the decision of the Apex Court in **“Sucha Singh V/s State of Punjab”**¹⁶ wherein, the Apex Court has reiterated the principle in the following words:

“20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See Gurbachan Sing V Satpal Singh¹⁷). The prosecution is not required to meet any and every hypothesis put forward by the accused..... A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish”.

84. Keeping in mind the aforesaid observations and the golden

16 (2003) 7 SCC 643

17 (1990) 1 SCC 445

Rules in **“Sharad Birdichand Sarda V/s State of Maharashtra¹⁸”** case, and applying them to the facts of the present case, we find that, circumstantial evidence against the accused, taken cumulatively, forms a chain so complete that there is no escape from the conclusion that, within all human probability, the crime was committed by the accused and none else. Each of the circumstance established against the Accused is incriminating and all the circumstances cumulatively prove the complicity of the Accused. Circumstantial evidence relied upon by the prosecution lends assurance to the genuineness and voluntary nature of the extra judicial confession. The entire evidence on record completes chain of events and establishes case of the prosecution beyond reasonable doubt. The FIR corresponds the prosecution case. Medical evidence corroborates prosecution case and thus corroborates contents of the FIR and the confessional statement of the Accused.

85. The chain of circumstances proved by the prosecution is so interwoven to each other that it leads to no other conclusion than guilt of the Accused. According to us, every other hypothesis except guilt of the Accused is ruled out in the present case. We are, therefore, of the considered view that the conviction awarded by the Trial Court to the Accused, for the offence

18 1984 AIR 1622

punishable under section 302 of the Indian Penal Code, warrants no interference.

86. Since we have held that accused is guilty of the offence punishable under Section 302 of IPC, now the question to be decided by us is as to whether the death penalty for the offence under Section 302 of IPC given by the Trial Court needs to be confirmed or whether some other penalty to be imposed on the accused.

87. Learned advocate for the accused submitted that taking into consideration report of the probation officer, Jail as well as report from the Department of Psychiatry, Government Medical College, Aurangabad, the death sentence awarded by the Trial Court is harsh and excessive. According to him, this is not the rarest of rare case wherein death sentence is required to be imposed.

88. As against this, learned APP by relying on Psychological evaluation report of the Accused, strenuously submitted that, six members' Medical Board has opined that, there is less scope for reformation in the Accused. He submitted that, the Accused suspected character of his wife and he killed her because of the said suspicion. However, two minor innocent sons are also done to death by the Accused. Kalpesh was drowned in water after

assaulting him on head and after tying his hands. Murders of 3 innocent persons are committed in most cruel and brutal manner. Accused assaulted vital parts of the bodies of all the three victims i.e. head. Therefore, the Trial Court is justified in imposing death penalty on the accused.

89. The law as to in what circumstances death penalty should be awarded has been succinctly laid down by the Constitution Benches of the Apex Court in "**Jagmohan Singh vs. State of Uttar Pradesh**"¹⁹, "**Bachan Singh vs. State of Punjab**"²⁰, and the bench of three Hon'ble Judges of the Apex Court in "**Macchi Singh and Others vs. State of Punjab**"²¹. The Apex Court in "**Shabnam vs. State of Uttar Pradesh**"²², has culled out aggravating circumstances and mitigating circumstances as follows;

"25. The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarized in Ramnaresh v. State of Chhattisgarh, MANU/SC/0163/2012 : (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382. The said are extracted as under : (SCC pp. 285-86, paras 76-77):

"Aggravating circumstances":

(1) The offences relating to the commission of heinous

19 1973 (1) SCC 20

20 1980 (2) SCC 684

21 1983 (3) SCC 470

22 2015 (6) SCC 632

crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

- (2) The offence was committed while the offender was engaged in the commission of another serious offence*
- (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.*
- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.*
- (5) Hired killings.*
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*
- (7) The offence was committed by a person while in lawful custody.*
- (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.*
- (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.*
- (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying*

with a father/uncle and is inflicted with the crime by such a trusted person.

- (11) When murder is committed for a motive which evidences total depravity and meanness.*
- (12) When there is a cold-blooded murder without provocation.*
- (13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.*

“Mitigating circumstances”:

- (1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.*
- (2) The age of the accused is a relevant consideration but not a determinative factor by itself.*
- (3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.*
- (4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.*
- (5) The circumstance which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.*
- (6) Where the court upon proper appreciation of evidence is*

of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

- (7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though prosecution has brought home the guilt of the accused.*

77 . While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

“Principles”:

- (1) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.*
- (2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.*
- (3) Life imprisonment is the rule and death sentence is an exception.*
- (4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.*
- (5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."*

90. In the aforesaid rulings the Apex Court has laid down various aggravating circumstances and mitigating circumstances.

The Apex Court has laid down that death sentence should be awarded only in rarest of the rare case. In Indian Criminal Jurisprudence awarding death penalty is an exception and life sentence is a rule. It is further laid down that death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime.

91. Keeping in mind aforesaid guiding principles we will first consider the aggravating circumstances as culled out by the Apex Court in the case of ***Shabnam*** (*supra*).

Aggravating Circumstances:

- (1) There is no record that the accused has committed offences relating to commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. There is also no prior record of his conviction. Therefore, aggravating circumstance no. 1 would not be available in the present case.
- (2) There is no material on record to show that the present offence was committed by the accused while he was engaged in commission of another serious offence. Thus, aggravating circumstance no. 2 would not be available in the present case.
- (3) There is no evidence that offence was committed with an intention to create a fear psychosis in the public at

large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person. As such aggravating circumstance no. 3 is also not available in the present case.

- (4) Offence of murder was not committed for ransom or like offences to receive money or monetary benefits. Thus, aggravating circumstance no. 4 would not be available in the present case.
- (5) Present case is not a case of hired killing and as such aggravating circumstance no. 5 would also not be available in the present case.
- (6) Material on record does not indicate that offence was committed outrageously for want only while involving inhumane and torture to victim. Therefore, aggravating circumstance no. 6 would not be available in the present case.
- (7) Material on record indicates that offence is committed by the accused while he was having lawful custody of Sangita, Siddhesh and Kalpesh. As such aggravating circumstance no. 7 would be fully available in the present case.
- (8) This is not a case where murder or the offence is committed to prevent a person lawfully carrying out his duty like arrest or custody. Therefore aggravating circumstance no. 8 would also not be available in the present case.

- (9) Aggravating circumstance no. 9 is also not available inasmuch as though accused has committed murder of his wife and two sons this cannot be prompted to be an attempt to murder entire family or members of particular community.
- (10) In the present case prosecution has proved that victim Sangita and minor sons Siddhesh and Kalpesh were innocent, helpless and they relied upon trust of relationship with accused and they are inflicted with the crime by the accused who was husband and father. Therefore, aggravating circumstance no. 10 would be available in the present case.
- (11) Material on record indicates that illicit relations of wife Sangita with PW13 drove accused to commit the murder. Therefore it cannot be conclusively said that murders were committed for a motive which evidences total depravity and meanness. As such aggravating circumstance no. 11 is not available in the present case.
- (12) Accused has committed murder of his helpless wife and two minor sons in a cold blooded manner and drowned Kalpesh after tying his hands in a barrel containing water. But the element of provocation is present in this case. As such aggravating circumstance no. 12 is partly available in the present case.
- (13) Material on record indicates that accused has committed crime in a brutal manner which pricked or shocked not only the judicial conscience but even the

conscience of the society. As such aggravating circumstance no. 13 is also fully available in the present case.

92. Let us now examine that what are the mitigating circumstances in the present case.

Mitigating Circumstances:

- (1) Material on record indicates that the offence was committed by the accused in extreme mental or emotional disturbance or extreme provocation. As per the prosecution illicit relations of wife Sangita with PW13 led the accused to commit the murders. As such said circumstance is available in the present case.
- (2) At the time of commission of offence accused was 42 years old. This circumstance, therefore, can be taken in favour of the Accused.
- (3) There is no material on record to show that there are chances of accused indulging in commission of the crime again.

From the report of accused received from the prison authority, it can be seen that after he was admitted in the prison, he was made aware of the discipline and prison rules and his counseling was done. He is placed in the high security section of the prison and he is regularly taking his food and he is

observing and following rules. He is of quiet nature and he follows daily instructions given by officers and employees of prison. He gives proper and satisfactory answers to the questions asked to him. He maintains cleanliness. His behavior in the prison is satisfactory.

In the psychological evaluation report submitted by board of six doctors including Dean, Government Medical College, Head of professor and Head of Psychiatry, Assistant Professors and expert doctors in clinical Psychology and medical superintendent, it is stated that there is no evidence of malingering. He is not pretending to be mentally ill. There is no evidence of psychopathology. The Board in answer to question "Is there capability in examinee to be reformed?" has answered, "Though, examinee has admitted to killing his wife, with wooden bat, while she was asleep, in early hours of morning, he is persistent with denial about killing two children. He also mentioned about his inability to forgive himself about what happened. To overcome the guilt, he is engaging in jaapa and puja rituals. He does have an aging mother, to which, he intends to care for. He expressed concern about the son's education. In view of limited self acceptance, in

spite of there being family reasons to live, there is less scope for reformation in the examinee.”

Considering the above answer we do not agree with the opinion expressed by Medical Board that there is less scope for reformation in the accused. Our view is based on prison report as well as the statements made in the answer given by Medical Board.

In the light of the above, we hold that mitigating circumstance No. 3 would be available in the present case.

- (4) There is no material on record that accused was mentally defective and the defect impaired his capacity to appreciate the circumstance of his criminal conduct. As such mitigating circumstance no. 4 would not be available.
- (5) The circumstance of illicit relations of Sangita with PW13 has led to commission of murders. This in our view had been the effect of giving rise to mental imbalance in that given situation. In the facts and circumstances of the case, the accused believed that he was morally justified in committing murder of his wife. As such this circumstance would be available in the present case.
- (6) This is not a case based upon testimony of sole eye

witness. The prosecution on the basis of circumstances which are proved beyond reasonable doubt has fully established the case that accused has committed the crime. Therefore, this circumstance would not be available in the present case.

93. In the light of the aforesaid discussion, we find that, in the present case, three aggravating circumstances i.e. aggravating circumstances No. 7, 10, 13 are fully available and aggravating circumstance No. 12 is partly available against the Accused. Whereas, mitigating circumstances No.1, 2, 3 and 5 are fully available.

94. Infidelity of wife has provoked accused to commit her murder. Possibility cannot be ruled out that due to infidelity of wife, accused might be under impression that Siddhesh and Kalpesh were not his sons. In the fit of anger, therefore, he appears to have killed his two sons. Fact remains that accused has not used any dangerous weapon, but has used cricket bat and stone to inflict blows on the head of deceased.

In the spot panchnama (Exhibit-30), a noose of cotton rope was found tied to the roof. It appears that the accused intended to commit suicide after committing the murders. However, he could not muster the courage to do so and he went to police station and outside the police station, he confessed to his brother

PW-1 that he has committed murders of his wife and sons. We are of the view that this factor needs to be taken into consideration as one of the mitigating circumstance in favour of the accused.

95. After assessing the aggravating and mitigating circumstances, as enumerated hereinabove and keeping in mind the principles laid down in **“Shabnam”** (*supra*), that life imprisonment is rule and death sentence is an exception, coupled with the fact that infidelity of his wife has led the Accused to commit the murders and the Accused intended to commit suicide after committing the murders, we are of the considered view that this case does not fall within the four corners of the principles of rarest of rare case in which death penalty should be awarded.

However, taking into consideration the brutal manner in which the Accused has killed his wife and two innocent sons, particularly Kalpesh, we are of the view that sentence of imprisonment of life would be grossly inadequate.

96. The prosecution has failed to bring on record anything to show that the Accused is continuous threat to the society and that he is beyond reform and rehabilitation, which is required to be proved by the prosecution as held by the Apex Court in the

case of **“Rajesh Kumar V/s State through Government of NCT of Delhi.”**²³

97. While deciding the quantum of punishment, we are guided by the decision of the Apex Court in **“Swamy Shraddananda @ Murli Manohar Mishra V/s State of Karnataka”**²⁴, wherein it is held:

"92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years' imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the

23 (2011) 3 SCC 706

24 (2008) 13 SCC 767

sentence of 14 years imprisonment would amount to no punishment at all.

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of the rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh (supra) besides being in accord with the modern trends in penology.

94. In light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be."

98. We are inclined to follow the aforesaid middle path as laid down by the Apex Court in **"Swamy Shraddananada"** (supra).

99. Taking into consideration circumstances of the case, in our view, it will be in the interest of justice to commute the death sentence in the sentence of life imprisonment with further direction that the Accused must serve in jail for a minimum period of 30 years without remission, before his case can be considered for premature release.

100. Criminal Appeal is therefore, partly allowed. Death sentence awarded to the Accused by the learned Sessions Court

is commuted to the sentence of life imprisonment. However, we direct that the Accused Santosh s/o Jaydatta Kokane must serve in jail for minimum period of 30 years, without remission before consideration of his case for premature release.

101. The Reference stands disposed of in the aforesaid terms.

102. The Reference and the Criminal Appeal are accordingly disposed of.

[MANJUSHA DESHPANDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE