

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

CRIMINAL APPEAL NO. 494 OF 2020

Rajendra Shankar Raut

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 1620 OF 2024
IN
CRIMINAL APPEAL NO. 494 OF 2020**

**.....
CRIMINAL APPEAL NO. 295 OF 2020**

Harichandra @ Hari Motiram Pawar

..Appellant

Versus

The State of Maharashtra

..Respondent

Mrs. Pushpa Ganediwala a/w. Ms. Anima Mishra, Mr. Anuj Singh,
Ms. Ritu Singh and Mr. Onkar Bajaj i/b. Dhaara Legal for the
Appellant in Appeal/494/2020.

Mr. Nitin Sejpai for the Appellant in Appeal/295/2020.

Ms. Kranti T. Hiwrale, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATE : 09 JULY 2025

JUDGMENT : (PER SARANG V. KOTWAL, J.)

1. These two Appeals are decided by this common Judgment because they arise from the same Sessions Case. The Appellant Rajendra Shankar Raut in Criminal Appeal No.494 of 2020 was the original accused No.1 and the Appellant Harichandra @ Hari Motiram Pawar in Criminal Appeal No. 295 of 2020 was the original accused No.2 in Sessions Case No.29 of 2014 before the learned Additional Sessions Judge-3, Nashik. The learned Judge, vide the Judgment and order dated 06.02.2020 convicted and sentenced the Appellants as follows:

The Appellant Rajendra Shankar Raut was convicted and sentenced as follows:

- i) He was convicted for commission of the offence punishable U/s.302 of the I.P.C. and was sentenced to suffer life imprisonment without remission and to pay a fine of Rs.10000/- and in default to suffer R.I. for two years.
- ii) He was convicted for commission of the offence punishable U/s.120(B)(1) of the I.P.C. and was sentenced to suffer life imprisonment and to pay a fine of Rs.10000/- and in default to suffer R.I. for two years.
- iii) He was convicted for commission of the offence

punishable U/s.498-A of the I.P.C. and was sentenced to suffer simple imprisonment for the period of three years and to pay a fine of Rs.5000/- and in default to suffer S.I. for six months.

The Appellant Harichandra @ Hari Motiram Pawar was convicted and sentenced as follows:

- i) He was convicted for commission of the offence punishable U/s.302 of the I.P.C. and was sentenced to suffer life imprisonment and to pay a fine of Rs.10000/- and in default to suffer R.I. for two years.
- ii) He was convicted for commission of the offence punishable U/s.120(B)(1) of the I.P.C. and was sentenced to suffer life imprisonment and to pay a fine of Rs.10000/- and in default to suffer R.I. for two years.

All the sentences for both the accused were directed to run concurrently.

For the sake of convenience, both the Appellants are referred to by their status before the trial Court. Therefore, the Appellant Rajendra Shankar Raut is referred to as the Accused No.1 and Harichandra @ Hari Motiram Pawar is referred to as the Accused No.2 in the following discussion.

2. Heard Mrs. Pushpa Ganediwala, learned counsel for the Appellant in Criminal Appeal No.494 of 2020, Mr. Nitin Sejpal, learned counsel for the Appellant in Criminal Appeal No.295 of 2020 and Ms. Kranti Hiwrale, learned APP for State/Respondent.

3. It is the prosecution case that, the Accused No.1 had got married with his wife Priyanka on 29.05.2013. He started suspecting her character. He also wanted money from her family. On both these counts, he started harassing her. He hatched a conspiracy with the Accused No.2 and another accused who was a child in conflict with law. They decided to eliminate his wife Priyanka. He purchased two knives. He paid amount of Rs.10000/- as advance money to the Accused No.2 with a promise to pay in all Rs.50000/-. On 22.10.2013, the Accused No.1 and his wife had gone to Nashik for the purpose of shopping for Diwali. They started from Nashik to their house in Surgana, in the night. There was one Chirai Ghat on the way. According to the prosecution case, the Accused No.1 stopped their two wheeler at a secluded spot and gave blows with a knife on Priyanka. The other two accused i.e. the Accused No.2 and the child in conflict with law

came there. The ornaments worn by Priyanka and the weapon was given by the accused No.1 to the other two accused. Those two accused went away from the spot and concealed the weapon and the other articles. The Accused No.1 on his part inflicted some superficial minor injuries on his person. He called his friend vaguely informing about the incident. According to the prosecution case, the Accused No.1 made a show of becoming unconscious at the spot. His friend, as per the Accused No.1's phone call reached the spot and saw that the Accused No.1 and his wife were lying at the spot. He immediately informed the police; who came at the spot shortly. The Accused No.1 and his wife were taken to the hospital. His wife was declared dead. The Accused No.1 was having superficial injuries on his forearm and on his abdomen. He was treated there. The mother of Priyanka registered an F.I.R. vide the C.R.No.54 of 2013 at Surgana police station against unknown persons. The investigation was started and it was revealed that the offence was committed by the Accused No.1 himself and he had made a show that some dacoits had committed that offence.

4. The investigation continued. Postmortem was performed

on the dead body of the deceased Priyanka. The spot panchanama was conducted. Some articles like chilly powder, a cap and a knife etc. were seized from the spot. Both the accused were put under arrest. The Accused No.2 showed his willingness to show the place where he had burned his own clothes, where he had concealed the ornaments and where he had concealed the weapon. Pursuant to his statement the recovery was effected in presence of the panchas. It was also the prosecution case that the Accused No.2 had kept the amount of Rs.10000/- with the wife of his friend. He had also used that friend's two wheeler to reach the spot. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During the trial, the prosecution examined 12 witnesses. They were the police officers, the panchas, the friend of the Accused No.1 who had reached the spot at the first instance, the friend of the Accused No.2 whose wife was given Rs.10000/- by the Accused No.2, the person from whom the Accused No.1 had purchased the knives, the mother of the deceased and also the medical officers.

6. The Accused No.1 took up a specific defence in answer to the questions put by the learned Additional Sessions Judge and also by giving a written statement U/s.313 of the Cr.p.c. According to him, he was innocent and he was falsely implicated. On 22.10.2013, the Accused No.1 and his wife Priyanka were going towards Surgana. They passed through Chirai ghat in the night. At one place, some persons came in front of their motorcycle. They threw chilly powder on the face of the Accused No.1 and stabbed him. At that time, the Accused No.1 was wearing a cap. They assaulted the Accused No.1 and his wife. Because of this sudden assault, the Accused No.1 became unconscious and fell on the road. He had suffered injuries on his both hands and on the abdomen. When he was being assaulted, he could hear that his wife was also being assaulted and he had heard the shouts. After that, he became unconscious. He did not know what had happened thereafter. When he regained his consciousness, he was admitted in Surgana Rural Hospital. After that the police treated him as an accused and arrested him. According to him, he had never doubted his wife's character and that he had not committed her murder out

of greed for the money. He had no connection with the co-accused.

7. The learned Trial Judge considered the evidence produced on record which was circumstantial in nature. He also considered the defence taken by the Accused No.1. The defence of the Accused No.2 was of total denial. After considering all the aspects, both the accused were convicted and sentenced, as mentioned earlier.

8. The prosecution opened its case by examining PW-1 Police Naik Dinkar Mahale who had lodged the F.I.R. He deposed that, he was on duty in the night. He was attached to Surgana police station. He was on Anti-dacoity duty and was on patrolling duty. At about 10:40p.m., Police Naik Sabale informed him on his mobile phone that one male person and one female person were lying injured in Chirai ghat. He and other police officers went there. They reached the spot and saw one Hero Honda motorcycle was parked at the spot. One male person was lying near that vehicle. His clothes were stained with blood and his shirt was torn. PW-1 Dinkar tried to wake him up but he did not respond. He was

unconscious. His bag was lying in a scattered condition. His cap was also lying there. They also saw one female person lying adjacent to a valley at a distance of 50 to 60ft. from that male person. She was lying near a big stone in the shrub. Her clothes were stained with blood. They attempted to move her, but she did not give any response. At that time, two persons came on a motorcycle. One of them was Shantinath Waghmode who is examined as PW-10 and the other was one Bombale. They told the police that they were teachers in the school. They identified the Accused No.1 and his wife. They informed that the Accused No.1 was a teacher. PW-1 Dinkar then intimated the police station. Both of them were lifted and brought to Surgana Primary Health Center by an Ambulance. Dr. Bangar treated both of them. The Doctor declared that the woman was dead. It was advised that the Accused No.1 be taken to the Civil Hospital. According to him, there were five serious injuries on the stomach and the chest of the woman. The injuries on the person of the Accused No.1 were described by PW-1 Dinkar as 'normal'. He then went to the police station and lodged his F.I.R. against unknown persons on

23.10.2013 at about 1:30a.m. The F.I.R. is produced on record at Exhibit-18. He identified the Accused No.1 in the Court.

In the cross-examination, he deposed that he was in the Rural Hospital from 11:25p.m. to 12:30a.m. in the night. At that time, the police had not recorded the statement of Waghmode. He was present at the spot of the incident for about one and a half hour. He admitted that, there used to be apprehension about dacoity in Chirai ghat. He admitted that, he had not mentioned in the F.I.R. that the male person was lying unconscious.

9. Shantinath Waghmode was examined as PW-10. He has deposed that, he was working as a Primary teacher at Shirishpada, Surgana. The Accused No.1 was his distant cousin and they had joined the service in the same year. The Accused No.1 and the deceased were residing on the first floor and he was residing on the ground floor of the same building. On 22.10.2013, he had attended his duty. The Accused No.1 and his wife were in the house. At about 4:30p.m. to 5:00p.m. he had returned home. Till

8:30p.m. he did not see both of them, therefore, he called the Accused No.1 at 8:30p.m. Priyanka answered the call and told him that they were at Nashik and they had started to return. At 11:30p.m. there was a call from the Accused No.1 and this witness could vaguely hear the name of Chirai ghat. He got worried. He called his other friend Gajendra and then both of them proceeded towards Chirai ghat. They saw that the Accused No.1's two wheeler was parked on the side of the road. They saw that the Accused No.1 and his wife were unconscious. They informed the police and within 10 minutes the police reached the spot along with an Ambulance.

In the cross-examination, he stated that the Accused and his family were on visiting terms to his house. The police had not made inquiry with Priyanka's parents in his presence. He added that, in his presence, there was no dispute between the Accused No.1 and Priyanka and that she had not made any complaint to him.

10. PW-2 Vitthal Bhoje was a pancha for the inquest

panchanama, but he had turned hostile and did not support the prosecution case.

11. PW-3 Hari Mahale was a pancha for the spot panchanama. He deposed that, he was called at the spot by the police. He saw that one motorcycle was standing by the side of the road. One chilly powder bag and one cap was lying there. There was one pair of sunglasses. There was one blue coloured purse with ten rupees in it. There was another blue coloured bag. One knife having black handle and big steel blade was lying near the motorcycle. The police seized all the articles. The spot panchanama was produced on record at Exhibit-26. This panchanama was conducted between 7:00a.m. to 7:45a.m. on 23.10.2013.

12. PW-4 Sham Sahuji is another important witness. He was a pancha for the important panchanamas. On 23.10.2013, he was called by the police officers of Surgana police station. In his presence, the clothes of the Accused No.1 were seized. Along with the clothes, one mobile phone of Samsung company and cash

amount of Rs.2000/- were also seized. That panchanama is produced on record at Exhibit-38. It was conducted on 23.10.2013 at 7:00a.m.

13. Again on 25.10.2013 he was called at the police station. The Accused No.2 made a statement that he would show the place where he had thrown the ornaments and knife. At his instance the weapon was recovered from the spot near a bridge. The weapon knife was concealed under a stone; it was blood stained. It was seized. He then took the police and the panchas near Fanaspada where he used to reside. He then took them towards a heap of stones and he removed the articles kept in a handkerchief. They were some ornaments viz. a broken *mangalsutra*, two golden ear rings, one finger ring and one wrist watch. Those articles were seized.

14. On 28.10.2013, the Accused No.2 made a statement that he would show the place where he had burned his clothes under the bridge near a river. At that time, he showed the spot where he had burned his clothes and also showed the spot where he had

concealed two mobile phone handsets belonging to the Accused No.1 and his wife. Both these panchanamas are produced on record at Exhibits-68 and 95.

15. Again he was a pancha for the panchanama carried out on 29.10.2013 when the Accused No.1 had shown the place from where he had purchased the knives. However, that may not be very significant because nothing was recovered pursuant to that statement. He was again a pancha for the panchanama dated 29.10.2013 when the Accused No.2 informed them that he had used the motorcycle of one Prabhakar Choudhary and he had given Rs.10000/- to his wife. The motorcycle was produced by Prabhakar Choudhary and Rs.10000/- were produced by Prabhakar's wife Shevantabai. That panchanama is produced on record at Exhibit-97.

16. PW-6 Mahendra Dhule stated that, he was a driver. He was proceeding towards Surgana from Nashik. At about 9:30p.m. they had reached Nagzari phata. At that time, he had seen one motorcycle bearing No.1927. There was a lady and a man on that

motorcycle. On the next day, he came to know that there was a murder in the Chirai ghat. He went to the spot and saw that the same motorcycle bearing No.1927 was parked there. He informed the police about what he had seen.

In his cross-examination, it was revealed that his statement was recorded on 30.10.2013.

17. PW-8 Prabhakar Chaudhari deposed that 10 days prior to 22.10.2013, the Accused No.2 had given Rs.10000/- to his wife for keeping it in safe custody being an amount of scholarship and bank amount. PW-8 Prabhakar had a two wheeler. The Accused No.2 had taken the key from this witness's house and had taken that two wheeler with him on 22.10.2013.

18. PW-7 Nitin Aher was the person from whom the Accused No.1 had purchased the knives. He has deposed that the Accused No.1 had come to his shop prior to the festival of Bakri-Eid and had purchased two knives. He identified the knives as Articles 'D' and 'N' produced in the Court.

In the cross-examination, he admitted that the police

had told him that those two knives were purchased from him and that knives like Articles D and N were easily available in the market.

19. PW-11 Manga Bangal was a Branch Manager of Nashik District Co-Op. Bank. He has deposed that, his record showed that the Accused No.1 had withdrawn the amount of Rs.10000/- on 15.10.2013. His salary of Rs.10022/- was deposited on the same date and out of that, Rs.10000/- were withdrawn by the Accused No.1.

20. PW-9 Padmini Madla was the mother of the deceased. She stated that, after the marriage, Priyanka started residing with the Accused No.1's family at Surgana. One month after the marriage, she informed that the Accused No.1 was suspecting her character. He used to beat her. Priyanka used to call this witness when the Accused No.1 was away. She further deposed that the Accused No.1 used to tell Priyanka that he would stab her and used to threaten her. Priyanka's family's economic condition was not good. The Accused No.1 used to tell her that he would throw

her in the *ghat*. After the incident, the brother of the Accused No.1 had told them about the assault. She was also informed by the police officer of Surgana police station.

In the cross-examination, she admitted that the Accused No.1 was a distant relative. After the marriage, PW-9's family had suggested a proposal of marriage for the Accused No.1's brother Atul.

21. PW-5 Dr. Ramdeo Bangar is an important witness in this case. He had conducted the postmortem examination. He deposed that there were ornaments on the toes of both legs, there were nose ring and anklet on the dead body. He found the following injuries:

- i) CLW over left ear to be 1x0.5cm horizontal in nature.
- ii) CLW over right ear to be 2 x 0.5 horizontal in direction, 2x0.5cm vertical also due to pull out of ear ring.
- iii) Abrasion over right side chin small three in no.0.1x0.1cm, Abrasion 0.2x0.1cm over left side of left nostrils.
- iv) Five incised injury over abdomen. Three over right side and two over left side, hypocondric region at level of lower aspect margin-

Right side -

- (a) 3x1cm – cut (incised) 7cm deep right side.
- (b) 3x1 cm – middle incised (stab) 4cm deep
- (c) 5x1.5cm-7cm deep incised (stab).

Left side -

- (a) Left upper 5x2x7cm deep (incised) horizontal in direction.
- (b) Lower 5x2x8cm incised sharp edge omentum come out from that injury.

- v) Contusion over left upper chest 1/3 – 3x3cm black colour.

According to him, five injuries on the abdomen were grievous in nature. They could have been caused by a weapon like knife. The knives produced in the Court were shown to him and according to him, those injuries were possible by those two weapons. The cause of the death was mentioned as “Death due to grievous type (stab) injury”. They were homicidal in nature. The Postmortem Notes are produced on record at Exhibit-47.

22. Significantly, this medical officer had also examined the Accused No.1. He had issued the Medico Legal Certificate. He had examined the Accused No.1 at 12:45a.m. in the midnight. The age of the injuries was within 5 to 6 hours. He had described the injuries as, 'caused by tip of a sharp object, superficial, simple

injuries and self inflicted'. He proved the medical certificate of the Accused No.1 at Exhibit-49. He found the following injuries:

1. CLW over forearm middle 1/3 anterolateral horizontal in direction – 5x0.1cm.
2. Injury by a tip of sharp object over abdomen from left side to right side, 15x0.5cm – just above umbilicus.
3. Incised injury over right forearm upper 1/3, 2x0.1cm- anterolateral – horizontal in direction.

The same certificate mentions the injury by tip of a sharp object superficial – simple injury. There was a question mark and then it was written as 'self inflicted'.

In the cross-examination, this witness stated that he was not sure about the injuries being self inflicted and, therefore, he had put the question mark. He further stated that the defence injuries could be sustained on palm, forearms and on fingers.

23. PW-12 PSI Shantaram Ahire had conducted the investigation. He had visited the spot of the incident and had drawn the spot panchanama. He had arrested the accused. He had effected the recovery panchanamas referred to herein above.

In the cross-examination, he was shown a letter which is produced on record at Exhibit-133 which mentions that the Accused No.1 was unconscious when he was taken to the hospital. He admitted that the Accused No.1 was unconscious at the spot and was admitted in the hospital till his arrest. He also admitted that the fingerprint expert had visited the spot between 4:00am to 5:00a.m. He had taken the photographs of the spot of the incident, but those photographs were not filed along with the charge-sheet. Exhibit-133 referred to by him, is a letter addressed to the Medical Officer of the Primary Health Center, Surgana, wherein, there is a reference that the Accused No.1 and his wife were assaulted in Chirai ghat and they were admitted to Government Health Center for the treatment. A requisition was made for the opinion whether the injured was in a position to give his statement.

This, in short, is the evidence led by the prosecution.

24. Learned counsel for the Appellant Rajendra Raut (Accused No.1) made the following submissions:

That the F.I.R. was lodged against unknown persons.

The Accused No.1 had explained under what circumstances the incident had taken place. He was lying unconscious at the spot as is deposed by the Investigating Officer and the other witnesses including PW-10 Waghmode. This lends assurance to his defence. A cap and the chilly powder were found at the spot which is also corroborating his defence that the dacoits had thrown the chilly powder on his face and then they had assaulted him and his wife. There was no motive strong enough for him to have taken this step of committing murder of his wife Priyanka. The deposition of the mother of Priyanka is quite vague. If Priyanka was really harassed by the Appellant-Accused No.1, her family would not have sent the proposal of another girl from their village for the brother of the Accused No.1. The evidence shows that the injuries were not self inflicted. The Medical officer had put a question mark on the medical certificate, therefore, the Medical Officer was not sure whether the injuries were self inflicted injuries. They were the defence wounds as they were on the forearms. The chain of circumstances is not complete. The Police officers have admitted that it was dacoit-prone area and, therefore, the defence of the

Appellant is true. She submitted that the prosecution has not proved its case beyond reasonable doubt. The prosecution case has to stand on its own legs and the prosecution cannot take benefit from the lacuna in the defence, if any, to prove their own case. In any case, there was no lacuna in the defence of the Accused No.1. His defence is corroborated by the circumstances.

25. Learned counsel for the Appellant Rajendra relied on the Judgments of the Hon'ble Supreme Court in the case of ***Vikramjit Singh Alias Vicky Versus State of Punjab***¹, and in the case of ***Shambu Nath Mehra Versus State of Ajmer***² to contend that the prosecution has to prove its case beyond reasonable doubt, and till it is done, Section 106 of the Evidence Act does not come in the play. Paragraphs-14 and 15 of ***Vikramjit's*** case read thus:

“14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g., where burden of proof may be imposed upon the accused by reason of a statute.

1 (2006) 12 Supreme Court Cases 306

2 AIR 1956 SC 404

15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.”

In *Shambu's* case, the Hon'ble Supreme Court has held in paragraph-9 as follows:

“9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle v. Emperor* (AIR 1936 PC 169) and *Seneviratne V. R.* [(1936) 3 ALL ER 36, 49].”

26. Learned counsel also relied on the Judgment of the Hon'ble Supreme Court in the case of *Tanviben Pankajkumar Divetia Versus State of Gujarat*³. She particularly relied on paragraph-44 of this Judgment, wherein, it was held that falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea may be considered as an additional circumstance if the other circumstances are proved and established to point out the guilt of the accused.

27. Learned counsel for the Accused No.2 made the following submissions.

Even as per the prosecution case, the Accused No.2 has not played any role in the assault causing Priyanka's death. All the circumstances against him at the highest were in the nature of corroborative pieces of evidence. Even those circumstances are not proved by the prosecution beyond reasonable doubt. The amount of Rs.10000/- has nothing to do with the offence. The lady to whom this amount was given was the wife of Prabhakar

3 (1997) 7 Supreme Court Cases 156

Choudhari, but she is not examined. The money was not given to Prabhakar Choudhari. The knife found at the spot was not sent for C.A. examination. Though, the knife allegedly recovered at the instance of the Accused No.2 was sent for C.A. examination and had showed presence of blood of 'A' group. If the prosecution wanted to rely on this as an incriminating circumstance; that circumstance cannot be used against the Accused No.2 because that circumstance was not put to the Accused No.2 in the examination U/s.313 of the Cr.P.C. There is no explanation as to why the knife lying at the spot was not sent for C.A. examination. The gold ornaments and the mobile phones allegedly recovered at the instance of the Accused No.2 were not identified by any witnesses to show their connection with the Accused No.1 and the deceased. The CDRs of the phones were not produced to show that those phones had any connection with the offence.

28. Learned APP, on the other hand, opposed these submissions. According to her, the motive is proved through the evidence of the mother of the deceased. The amount of Rs.2000/- was found with the Accused No.1 which shows that the object of

the offence could not be the dacoity. It was a clear case of murder. The injuries on the Accused No.1 were superficial, therefore, it is quite clear that they were self inflicted injuries. He had made a show of having suffered those injuries at the hands of the dacoits. He had no explanation about the injuries suffered by the deceased. He was alone at the spot with the deceased and, therefore, burden shifted on him to explain what had happened at the spot. The prosecution has proved beyond doubt the basic necessary facts in this case. The chilly powder was not found in the eyes of the Accused No.1 or on his face, therefore, that story is false. The C.A. report was produced on record which showed presence of blood of 'A' group on the knife recovered at the instance of the Accused No.2. She, therefore, submitted that the prosecution has proved its case against both the accused.

29. We have considered these submissions. As rightly submitted by the learned counsel for the Accused No.1, falsity of or lacuna in the defence cannot be the basis of conviction. Those can be taken into consideration if the prosecution establishes its case beyond reasonable doubt independently.

30. In this case, there are certain circumstances which the prosecution has brought on record.

The first circumstance is the motive behind this crime. In that connection, the prosecution has examined PW-9 Padmini, the mother of the deceased. She has deposed as to how within a short period after the marriage, the Accused No.1 started doubting Priyanka's character and started harassing her. She has clearly stated that, he was not only harassing her, but was actually giving threats of committing her murder. The incident took place within five months of their marriage. PW-9 Padmini being the mother of the deceased was the right person to whom Priyanka would have disclosed this apprehension and the nature of harassment caused by the Accused No.1. We do not find any infirmity in the evidence of PW-9 Padmini. Just because their family had suggested a proposal of another girl from their village for the brother of the Accused No.1, it does not mean that the Accused No.1 was not harassing Priyanka. It is quite apparent that, though, Accused No.1 had threatened Priyanka in the past, PW-9 Padmini and her family would have not believed that he would actually take those steps

and would commit Priyanka's murder.

31. The most important circumstance in this case is the injuries suffered by the deceased Priyanka and also the injuries which were seen on the person of the Accused No.1. As we have already mentioned, Priyanka had suffered many injuries; notably five injuries were on her abdomen. They were grievous and serious stab and incised wounds. They were on her vital part. The main purpose of this assault was obviously not dacoity but the blows were given with some force and out of some hatred. It is difficult to believe that the dacoits would leave the husband with very superficial and minor injuries, but mount violent, vicious and serious assault on a lady accompanying him. There are no signs of struggle on her part either. She was brutally assaulted. As against that, the injuries on the person of the Accused No.1 were quite minor. They were absolutely superficial. There were only minor injuries on the forearm. Though the injury on the abdomen was 15x0.5cm – just above umbilicus, it was a superficial injury and it was caused by tip of a sharp object. It was not even stab injury or deep incised wound. Those injuries are obviously self inflicted

injuries. Just because the Doctor had put a question mark in the medico legal certificate, it would not lead us to conclude that they were defence wounds. The nature of the injuries clearly indicates that they were self inflicted injuries to make a show that the Accused No.1 was also assaulted. The medical evidence does not show presence of chilly powder in the eyes or on the face of the Accused No.1. Therefore, that part of his story is also not corroborated. Though, a bag of chilly powder was found at the spot, the main issue was throwing of chilly powder on his face. To that extent, there is no corroboration to the defence taken by the Appellant.

32. Another important aspect is that, if the purpose of this offence was to commit dacoity, there is nothing to show that the Accused No.1 and the deceased were carrying any valuables or big cash amount. The Accused No.1 had not produced any evidence from any record to show what shopping they did at Nashik and how much amount they were carrying which was robbed by dacoits.

33. Another circumstance is that, when the witnesses and the police reached there, they found that the two wheeler of the Accused No.1 was parked at the spot, it had not fallen on the ground. This again is not natural. If the Accused No.1 and the deceased were intercepted by the dacoits and the chilly powder was thrown on the face, there was no time for him to properly park the vehicle; they would have fallen down from the vehicle. This is another aspect which is in favour of the prosecution.

34. According to PW-10 Waghmode, the Accused No.1 had made a phone call from his own mobile phone to this witness and had uttered a word 'chirai chirai'. Thus, he called upon PW-10 to reach the spot. This is against the theory given by the Accused No.1. He has not made any reference to such call. According to him, they were stopped by the dacoits. He was immediately assaulted and he fell unconscious. There was no occasion for him to make a phone call to PW-10 Waghmode. This aspect actually proves the prosecution case that the Accused No.1 had planned to make a show of this incident and was projecting it as if it was a case of dacoity. Therefore, he had to inform somebody and

accordingly, he informed PW-10 Waghmode. Otherwise, there was absolutely no reason as to how PW-10 Waghmode would come to know about the Accused No.1 and his wife lying at that particular spot.

35. As far as, Exhibit-133 is concerned, it was mainly a requisition to the Medical Officer to enable the police officers to record the statement of the Accused No.1. That was the purpose of that document. Therefore, contents of the document would not prove that the Accused No.1 was unconscious when he was admitted to the hospital. In any case, the injuries were superficial. There was hardly any bleeding and, therefore, it is not possible to believe that he was actually lying unconscious at the spot. On the other hand, all these aspects clearly prove that it was none other than the Appellant who had inflicted vital blows on the deceased and then had made some superficial minor injuries on his person to make a show as if he was also assaulted by the dacoits.

36. As far as, the Accused No.2 is concerned, as rightly submitted by Mr. Sejpal, at the highest, the evidence collected by

the prosecution would be in the nature of corroborative evidence, but even then the prosecution has not proved its case against the Accused No.2. As far as, recovery of mobile phones and ornaments are concerned, there is no identification of those articles by any witness. Nobody from Priyanka's parental family had identified the ornaments as those belonging to Priyanka. Similarly, the prosecution has not led any evidence to show that two mobile handsets recovered at the instance of the Accused No.2 were in any way connected with the Accused No.1 or the deceased Priyanka. Therefore, recovery of those articles would be of no assistance to the prosecution. The recovery of half burned pieces of clothes and the knife which was recovered at his instance would have been an important circumstance because those articles were sent for the C.A. examination and they showed presence of blood of 'A' group, but the prosecution has not conclusively established this particular aspect in the trial Court. The C.A. reports were produced after the arguments were over. They were produced at Exhibit-146. They were produced even after the arguments were advanced.

37. Significantly, this particular aspect of presence of blood on those articles was not asked by the learned trial Judge to the Accused No.2 in his statement U/s.313 of the Cr.p.c. It is well settled that, if a particular circumstance has to be held against an accused being an incriminating piece of evidence, then he must be given an opportunity to explain that circumstance in the statement recorded U/s.313 of the Cr.PC. No such opportunity was offered to the Accused No.2. Therefore, this particular circumstance cannot be held against the Accused No.2.

38. As far as, amount of Rs.10000/- is concerned, it was given by the Accused No.2 to one Shevantabai. She was the wife of PW-8 Prabhakat Choudhari. Shevantabai is not examined, therefore, there is no direct evidence about the Accused No.2 giving this amount to Shevantabai. This amount was produced by Shevantabai before the police as per the panchanama, therefore, it was necessary to examine her. Taking the motorcycle from PW-8 Prabhakar by the Accused No.2 is also not an unusual circumstance because his evidence shows that the Accused No.2 used to take his two wheeler on many occasions. Therefore, this

circumstance is also innocuous.

39. The Branch Manager of the concerned bank has proved the bank entry to show that the Accused No.1 had withdrawn the amount of Rs.10000/- on 15.10.2013. The prosecution wanted to show that this amount was given to the Accused No.2 as part payment for helping the Accused No.1. However, PW-8 Prabhakar's evidence shows that, about 10 days prior to 22.10.2013 this amount of Rs.10000/- was given by the Accused No.2 to Shevantabai. This was even before that amount of Rs.10000/- was withdrawn by the Accused No.1. In any case, nothing much turns from these financial transactions in the background of the evidence led by the prosecution on other aspects.

40. The evidence of PW-4 Sham shows that, on one occasion, the Accused No.1 had tried to mislead the police and the panchas by taking them to Chirai ghat and made a show as if he would show the place where he had thrown the ornaments and the knife. This was done only to mislead the investigation.

41. Thus, throughout, the accused No.1 had acted to mislead

the police machinery and to throw them off the proper investigation track. This conduct of the Accused No.1 will have to be taken into consideration. In this context, we are of the firm opinion that the prosecution has proved its case beyond reasonable doubt against the Accused No.1. Therefore, though, the quality of the defence or falsity of the defence cannot form basis of conviction as held by the Hon'ble Supreme Court in the above referred *Tanviben's* judgment, it was also held that the defence can be taken into consideration as a relevant factor.

42. In this case, we are satisfied that, even leaving the falsity of the defence aside, the prosecution has proved its case beyond reasonable doubt. In these circumstances, Section 106 of the Evidence Act would be attracted. The Accused No.1 was alone at a secluded spot with his wife. His explanation that he immediately became unconscious is unacceptable. The injuries suffered by his wife are not satisfactorily explained, if the theory of dacoity is accepted. Therefore, considering all this discussion, we are satisfied that the prosecution has proved its case beyond reasonable doubt against the Accused No.1.

43. As far as, the Accused No.2 is concerned, as a result of the above discussion, we are of the opinion that the prosecution has not proved its case beyond reasonable doubt, for the reasons which we have discussed in respect of the Accused No.2. With the result, the conviction and sentence recorded against the Accused No.2 will have to be set aside. Consequently, there is no evidence that the Accused No.1 had entered into conspiracy with anyone else to commit Priyanka's murder. Therefore the conviction and sentence recorded against the Accused No.1 for commission of the offence punishable U/s.120(B)(1) will have to be set aside.

44. As far as, the Accused No.1 is concerned, he is sentenced to suffer life imprisonment without remission. We do not see any reason to deny him the benefit of remission. He is already in custody since 22.10.2013. More than 12 years have passed. He has no other antecedents. Therefore, to that extent, we are inclined to modify his sentence. The record shows that his behaviour in Jail is also good and he has written some books which are in the public domain. Therefore, we are inclined to show leniency, as far as, the sentencing part is concerned. The learned Judge has not given any

reason as to why the benefit of remission was denied to him. Since the offence is U/s.302 of the I.P.C., there is no scope to reduce it below life imprisonment, but we are inclined to grant him the benefit of remission which he is entitled to as per the rules.

45. Hence, the following order:

O R D E R

- i) The Criminal Appeal No.494 of 2020 is partly allowed.
- ii) The conviction of the Appellant Rajendra Raut U/s.302 of the I.P.C. recorded by the learned Additional Sessions Judge-3, Nashik, in Sessions Case No.29 of 2014, vide the Judgment and order dated 06.02.2020, is maintained. However, his sentence of life imprisonment without remission is modified.
- iii) The Appellant Rajendra Raut is sentenced to suffer life imprisonment, and he will be entitled to the benefit of remissions as per the rules.
- iv) The sentence to pay the fine amount of Rs.10000/- is maintained. However, in default sentence of R.I. for two years is modified to S.I. for two months.

- v) The conviction and sentence imposed on the Appellant Rajendra Raut U/s.120(B)(1) of the I.P.C. is set aside.
- vi) The conviction and sentence imposed on the Appellant Rajendra Raut U/s.498A of the I.P.C. are maintained.
- vii) All the sentences imposed on the Accused No.1 are directed to run concurrently.
- viii) The Appellant Rajendra Raut shall be entitled to set off U/s.428 of the Cr.P.C.
- ix) The Criminal Appeal No.295 of 2020 is allowed.
- x) The conviction and sentences of the Appellant Harichandra @ Hari Motiram Pawar U/s.302 and 120(B)(1) of the I.P.C. recorded by the learned Additional Sessions Judge-3, Nashik, in Sessions Case No.29 of 2014, vide the Judgment and order dated 06.02.2020, are set aside.
- xi) The Appellant Harichandra @ Hari Motiram Pawar shall execute P. R. Bond within two months in the sum of Rs.25000/- U/s.481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (correspondingly U/s.437A of the Cr.P.C.) for his appearance, in case an Appeal is preferred.

xii) With disposal of both the Appeals, the connected interim application is also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)