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

## CRIMINAL CONFIRMATION CASE NO.02 OF 2020

The State of Maharashtra.
Through Post.

...APPELLANT

-VERSUS-

Krishna Sitaram Pawar. …RESPONDENT/ ACCUSED

## WITH
## CRIMINAL APPEAL NO.398 OF 2020

Krishna Sitaram Pawar,
Age : 35 years, Occupation : Labour,
R/o Yawalpimpri Tanda,
Tq.Ghansawangi, Dist. Jalna.

...APPELLANT/ ACCUSED

-VERSUS-

The State of Maharashtra.
Through Police Station Ambad,
Taluka Ambad, Dist. Jalna.

...RESPONDENT

…

Shri K.S. Patil, Assistant Public Prosecutor, for the State.

Shri Rajendra Deshmukh, Senior Counsel h/f Shri Devang R. Deshmukh, Shri Govind A. Kulkarni and Shri B.N.Gadegaonkar, Advocates for the accused.

...

CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.

**Reserved on 27th November, 2020**

**Pronounced on 22nd December, 2020**

**JUDGMENT (Per Ravindra V. Ghuge, J.)**:

1. "*Hai maujazan ek kulzum-e-khoon kaash yahi ho*

*Aataa hai abhi dekhiye kya kya mere aage"*

– Mirza Ghalib

We find the above verse by the renowned poet Mirza Ghalib, quoted in ***Bhagwan Dass vs. State (NCT of Delhi), (2011) 6 SCC 396.***

2. By the Confirmation Case, the sentence of hanging by the neck till the accused Krishna Sitaram Pawar is dead, is placed before us under Section 366 of the Code of Criminal Procedure, for confirmation. By an appeal preferred by the accused Krishna Sitaram Pawar, he prays for the quashing of the impugned judgment and sentence dated 18.06.2020 delivered by the learned Additional Sessions Judge, Jalna in Sessions Case No.26/2016.

3. We have heard the learned Assistant Public Prosecutor (A.P.P.) on behalf of the State and the learned Senior Advocate on behalf of the accused, from 20.10.2020 till 23.10.2020, 27.10.2020 till 29.10.2020, on 24.11.2020 and 27.11.2020. Both of them have extensively referred to the appeal paper book, the record and proceedings and the Muddemal.

(I) PROSECUTION STORY

4. An F.I.R. was registered by Akash Dwarkadas Rathod, aged 22 years, on 24.10.2015 at 16.10 hours. Based on the same, the Police have investigated the murder of Sumanbai (mother-in-law of the accused Krishna) and the quick born child (a full term baby girl) and the attempted murder of Lalita and Alkabai. The prosecution succeeded in acquiring the judgment of conviction against the accused Krishna on the following facts:-

(a) Akash, PW-4, is the first informant, who lodged the complaint, Exhibit 20, on 24.10.2015 stating that the accused Krishna was doubting the character of his wife Lalita, who is the sister of Akash. Because of his domestic violence, Lalita returned back to her parental home while being six months pregnant, expecting a second child. On 24.10.2015, the accused Krishna reached the parental house of Lalita and insisted on taking her back. By the time, she was about 09 months pregnant. The deceased Sumanbai (mother of Lalita) told him that he should come along with his parents to Taluka Ambad. Lalita would also come there and there can be a mutual discussion/ understanding. Akash, Sumanbai, Alkabai (real sister of Sumanbai) and Lalita had planned to travel to

Ambad to meet a relative Balasaheb Pawar, who was admitted in a hospital at Ambad.

(b) The above three ladies and Akash travelled to Ambad and upon reaching the hospital, were told that their relative had already been discharged. They reached Walkhed point rickshaw stand so as to travel back to their village Walkhed, at about 02:00 pm. Akash told these three ladies to wait near the Ambedkar Chowk since he wanted to do his personal work in the Tehsil Office, Ambad and would return in a short time. After he left on a motorcycle to do his personal work, he received a call on his mobile phone from one Shri Kailas stating that the accused Krishna had stabbed these three ladies with a knife. Akash, therefore, urgently returned to the spot and he saw the three ladies having collapsed on the ground. The accused Krishna was standing there with a knife in his hand that was blood stained. On seeing Akash, he fled along with the knife. Akash got the three ladies admitted to the Government Hospital at Ambad and reached the Ambad Police Station before 04:10 pm to lodge the complaint. (The complaint was written down at 04:10 PM).

(c) Due to the stabbing of the three ladies by the accused Krishna, Sumanbai died and the girl child in Lalita's womb also died.

(d) The prosecution examined 14 witnesses out of which, Alkabai (PW-6) and two panch witnesses Subhash Lalsingh Jadhav (PW-7) and Ramesh Prabhu Chavan (PW-9), turned hostile. The evidence of Akash (PW-4), eyewitness, was discarded by the Trial Court on the ground that he is a concocted witness. The charge levelled under Sections 302, 307 and 316 of the Indian Penal Code was held to be proved and as the Trial Court was of the view that the case was a "rarest of rare cases", the accused Krishna was awarded the death sentence.

(II) SUBMISSIONS OF THE LEARNED APP/ PROSECUTION

5. The marriage of Krishna and Lalita was five years old on the date of the incident. A son namely Durgesh was born out of the marriage. Lalita became pregnant for the second time and was about six months in her pregnancy when she decided to reside in her parental home due to the constant physical violence suffered at the hands of Krishna, who always doubted her character by alleging that she has illicit relations with one Mr.Baban Gulab Rathod.

6. It is contended that Kailas, had made the phone call to Akash, after witnessing Krishna stabbing Sumanbai, Lalita and Alkabai at Ambedkar Chowk. However, the non examination of Kailas is not fatal to the case of the prosecution as Akash had reached the spot when he

actually saw the three ladies having collapsed in a pool of blood and Krishna was standing at the spot with a blood stained knife in his hand. So also, Lalita (PW-5) survived the attack and has lived to tell her horrific tale. She is a star witness since she actually saw Krishna stabbing Sumanbai, herself and Alkabai. Even if Alkabai (PW-6) has turned hostile in peculiar circumstances surrounding the recording of her testimony, the testimony of Lalita, who has lost her nine months girl child and suffered stab injuries, is enough to establish the guilt of Krishna.

7. Though Alkabai (PW-6) has turned hostile, her cross-examination by the prosecution has sufficiently exposed the guilt of Krishna and her further cross-examination at the hands of the defence counsel clearly indicates an attempt to washout the true version that was extracted by the prosecution.

8. PW-1 (Tukaram Gopichand Pawar) :- PW-1 was the panch and the spot panchanama was prepared in his presence. The deceased Sumanbai is his cousin sister and the informant Akash (PW-4) and Lalita (PW-5) are the children of Sumanbai. He has identified the crime details form/ spot panchanama and he has contended that the contents set out in the spot panchanama are true.

9. PW-2 (Rukhmanbai Rambhau Adhe) :- PW-2 was the panch for the inquest panchanama. She saw the dead body of Sumanbai and her

bleeding injuries. She identified the inquest panchanama. She identified the injuries suffered by the deceased Sumanbai.

10. PW-3 Dr.Sanjay Prabhakar Kulkarni :-

(a) PW-3 is Master of Surgery. He was the Medical Officer at the Civil Hospital, Jalna. He performed the postmortem on the dead body of Sumanbai from 10:10 am till 11:00 am on 25.10.2015. He has described the injuries suffered by the deceased as under:-

> *"(i) Evidence of stab injury near left ilicchest region oblique 5 x 2 x 6 cm, deep. Blood clots present, edges everted and shape elliptical.*
> *(ii) Evidence of stab injury right lower coastal region in mid-clavicle live oblique 4 x 1 cm deep into peritoneal cavity, entering right lobe of live through and through. Blood clots present edges everted shape elliptical."*
>
> Both the injuries are ante-mortem.

(b) The internal examination revealed the following injuries :-

> *(i) Injury to her liver, 3 cm long penetrating through and through whole liver.*
> *(ii) Blood clots present.*
> *(iii) Because of this injury, 2.5 to 3 litres of blood was found in her peritoneal cavity.*

(c) Her death took place due to hemorrhagic shock owing to stab injury to her liver.

(d) He identified the postmortem report and proved it's contents, which is Exhibit 17. According to him, both the injuries may be caused due to a sharp edged weapon. He stated that the first injury may be fatal and

the death has been caused due to the severe stab injury to the liver, which caused immense blood loss resulting in a hemorrhagic shock.

(e) His cross-examination did not bring forth any contradiction. The death certificate Exhibit-18 supports the statement of PW-3.

11. PW-4 Akash Dwarkadas Rathod :-

(a) Akash was the fourth prosecution witness. The deceased Sumanbai was his mother and the injured witness Lalita is his sister. He has stated that the accused Krishna used to doubt the character of his wife Lalita and used to frequently beat her. He supported the version of Lalita that she came to her parental home in her sixth month of pregnancy and was not willing to go back to her marital home since Krishna used to beat her. He stated that Krishna had come to his village at 07:30 am on 24.10.2015 to take Lalita back to the marital home. He was informed that his parents should accompany him for a discussion.

(b) PW-4 then went to Ambad along with mother Sumanbai, sister Lalita and aunt Alkabai to visit his maternal uncle, who was admitted in the Government Hospital. When they reached the hospital, they were told that the maternal uncle was already discharged. Therefore, they returned at about 02:00 pm and when they reached the Dr.Ambedkar Statue at Ambad, he left the three ladies near the statue and went along with Ashok on a motorcycle towards the Tehsil Office.

(c) When PW-4 reached the Tehsil office, Kailas contacted him on the mobile phone and told him that Krishna had assaulted the three ladies with a knife. When Akash reached the Dr.Ambedkar Statue, he saw the three ladies fallen on the ground. Sumanbai had injuries on her stomach and thigh area, Lalita had suffered injuries in her stomach area, on the right hand side and on the lower lip and Alkabai PW-6 had injuries in her stomach area. He saw the accused Krishna standing near the three ladies, who had collapsed, holding a knife. The knife and his shirt had blood stains. He then ran away with the knife. Akash took all three injured women to the Government Hospital, Ambad, along with Sakhubai, Prakash and Sunil.

(d) PW-4 then went to Ambad Police Station and lodged the Police complaint at 04:10 hours. He identified the complaint and verified it's contents. On the next day, he came to know that his mother had expired. On the third day of the incident, he came to know that the child in the womb of Lalita had also died.

(e) In his cross-examination, he reiterated his version. He, however, has stated that Mahaveer Chowk and Ambedkar Statue are about 1.5 to 2 kilometers apart and that he had reached Mahaveer Chowk around 02:00 pm. He had seen the accused at the spot near Ambedkar Chowk. Within five minutes, he had reached the spot at Ambedkar statue. About one hundred to 150 people had gathered due to the attack by the

accused. The injured ladies were taken by an auto rickshaw to the Ambad Hospital. He did not narrate the incident at the Police outpost near the Ambad hospital. He was not with the patients when they were shifted from the Ambad Hospital to the Jalna Hospital. On 25.10.2015, he went to see the patients. He was upset due to the death of his mother. There were no blood stains on his clothes while taking the injured to the hospital.

12. The learned APP submits that there is no discrepancy between the complaint lodged by Akash (PW-4) and his testimony before the Court. No suggestion was put to him as regards his statement in the complaint that he, Kailas Jadhav, Vikas Kapoorchand Rathod, Bhagwan Baburao Jadhav, Sunil Baburao Rathod, Prakash Uttam Rathod, Ashok Shivdas Rathod and Sakhubai Bagu Rathod had taken the injured ladies to the Ambad hospital, vis-a-vis his statement before the Court that Sakhubai, Prakash and Sunil had taken the injured ladies to the Ambad Hospital along with PW-4. He further submits that the quality of evidence recorded has to be seen and not the quantity of witnesses. Failure of the prosecution in examining Kailas, Vikas, Bhagwan, Sunil, Prakash, Ashok and Sakhubai, is not fatal to the case of the prosecution. PW-4 Akash is a natural witness, who has seen the three ladies fallen to the ground with injuries and the accused Krishna standing near the bodies with a blood stained knife in his hand. His testimony cannot be discarded merely on the ground that he

was the son of deceased Sumanbai and brother of the injured Lalita, who is the wife of the accused Krishna. There is no reason for her to implicate her husband so as to send him to the gallows. The accused Krishna is the brother-in-law of PW-4 Akash and therefore, it cannot be gainsaid that Akash has implicated Krishna. The brother of a woman cannot implicate his sister's husband so as to send him to the gallows.

13. PW-5 (Lalita Krishna Pawar) :-

(a) She is the victim and the wife of the accused Krishna. The learned APP referred to the testimony of Lalita (PW-5) and pointed out that she has specifically stated that Krishna used to beat her and she returned to her parental home when she was in the 5-6$^{th}$ month of pregnancy. She has specifically stated that Krishna had come to her parental home on 24.10.2015 at 07:30 am. She has narrated the same version as has been stated by Akash. Since their maternal uncle (Balasaheb Pawar) was already discharged from the Government Hospital, Ambad, these three ladies and Akash started their return journey to their village and came near the Ambedkar Statue at 02:00 pm. Lalita has corroborated the version of Akash that he travelled on a two wheeler along with Ashok to the Tehsil Office for his personal work and the ladies were waiting near the Ambedkar statue.

(b) After Akash left, Krishna came to the spot and first attacked Lalita. He used a knife and inflicted wounds on her stomach, hands and face. He then assaulted Sumanbai and then Alka. Lalita fell to the ground and became unconscious. She gained consciousness only when she was in the Government Medical College, Aurangabad (Ghati). On regaining consciousness, she got the news that her mother Sumanbai had died due to the knife attack by Krishna. The child in her womb had died due to the attack. She was weeping when her testimony was recorded in the Court and she identified the knife, her Saree, blouse and petticoat.

(c) In her cross-examination, Lalita has stated that as she was unconscious, she was not aware as to who brought her to the Ambad Hospital. She did not have any conversation with the doctor at Ambad. She was unconscious even when she was shifted from Jalna to Aurangabad. She gained consciousness on 27.10.2015 and was unable to speak as her mouth was injured. She was able to speak only on 11.11.2015 and her statement was not recorded on 26.10.2015. Her statement was never recorded by the Police. She had not discussed the incident with Akash and she learnt about the death of her mother Sumanbai only after coming back home.

(d) The three ladies were proceeding towards the rickshaw on the date of the incident. Mahaveer statue and Ambedkar statue are hardly 15 feet apart. She lost her consciousness near the Ambedkar statue due to the

knife attack. She has categorically stated in her cross-examination that though she knows Baban Gulab Rathod, there was no relationship between Baban and Lalita prior to her marriage. According to her, Krishna was harassing her as he wanted to cohabit with his first wife and he constantly ill treated Lalita by doubting her character. She denied that Baban Gulab Rathod had attacked her since he allegedly wanted to cohabit with her.

14. PW-6 (Alka Krishna Rathod) :-

(a) The learned APP submits that Alka was examined on 12.10.2018 and she specifically corroborated the version of Akash and Lalita. She also stated that the accused Krishna came to the scene of crime on 24.10.2015 at about 02:00 pm near the Ambedkar statue. He quarreled with Sumanbai and Lalita and assaulted Lalita with a knife. When Sumanbai tried to resolve the issue, he assaulted Sumanbai with the same knife. He then assaulted her (Alka) on her stomach with the same knife. She had fallen unconscious and she gained consciousness in the Ghati Hospital at Aurangabad. The police recorded her statement and she identified the knife and clothes produced before the Court.

(b) In her part cross-examination conducted on the same day 12.10.2018, she stood by her version. She narrated the same story in her cross-examination that the three ladies had come to Ambad along with

Akash to meet their relative Balasaheb Pawar, who was admitted in the Ambad Hospital. The distance between Ambedkar statue and Mahaveer statue is not more than 100 feet. When the incident took place, they were about to proceed to Mahaveer chowk. There was no discussion between her and Akash after the incident. Akash reached the spot, before she had become unconscious.

(c) The learned APP further submits that the defence counsel sought an adjournment for further cross-examination on 12.10.2018. For reasons like Alka having travelled to various places for sugarcane harvesting (she was involved in sugarcane cutting activities), her further cross-examination was conducted by another defence counsel after ten months on 30.08.2019. It was surprising that she suddenly took a somersault and changed her version. In the first paragraph (paragraph No.5) of her cross-examination recorded on 30.08.2019, she stated that while the three ladies were standing near Mahaveer chowk, one motorcycle rider, with his face covered by a handkerchief, came there and assaulted the three ladies, that except his eyes, his face was not visible and that she cannot identify the assailant. The police never recorded her statement when she was in the hospital. In paragraph 6, she has stated that "*according to me, what I stated in my examination-in-chief is false one and what I stated in my cross-examination today is true one".*

(d) The learned APP, therefore, submits that on the one hand, Alka was declared hostile. Her further cross-examination by the prosecution indicates that her examination-in-chief is the truthful version. On the other hand, he prays that appropriate legal action against Alka, be directed by this Court.

(e) In the cross-examination conducted by the prosecution on 30.08.2019, Alka has given contradictory answers. In paragraph 7, she stated that the police did not record her statement in the hospital. When the portion marked A of her statement before the Police was read over to her, she pretended ignorance and stated that she did not make any such statement and she does not know why it was written that way. She denied that the relatives of accused Krishna have contacted her or that she was deposing a false version or that her examination-in-chief was a true version.

(f) The learned APP canvassed that in a situation as like the one created by PW-6 Alka, the Court can consider the portions of such statement as may inspire confidence and are corroborated by other witnesses and merely because a witness has turned hostile, the entire testimony need not be discarded. Reliance is placed upon ***Rameshbhai Mohanbhai Koli and others vs. State of Gujrat, 2011 AIR SCW 378*** (paragraph Nos.8 to 10 and 15 to 26).

(g) The learned APP further submits that the testimony of Akash, Lalita and the examination-in-chief of Alka, all three eyewitnesses, establishes the guilt of the accused Krishna. The hostile testimony of Alka recorded on 30.08.2019 deserves to be discarded as a completely new case has been put forth by Alka that an unknown assailant with his face covered with a handkerchief, had assaulted the three ladies. The discovery and seizure of the knife-murder weapon, during his physical search (अंग झडती), establishes that the theory of an unknown assailant attacking the three ladies put forth by Alka for the first time before the Trial Court, is apparently false and Alka has indulged in perjury.

15. PW-7 (Subhash Lalsingh Jadhav) (Hostile):-

(a) This witness has turned hostile by stating that he has signed on a "ready-made panchanama" and that he knew nothing about the contents of the discovery panchanama.

(b) In his cross-examination by the prosecution, he has stated that he saw one pant, one shirt and one baniyan lying in the police station. Another panch Ramesh Chavan was with him. He signed the panchanama after seeing the clothes. He denied that Krishna was searched in his presence and a knife was recovered from him. He denied that he had signed the seizure panchanama of the knife and that the knife as well as

the clothes were seized in his presence. He admitted that he can identify the knife as well as clothes shown to him and in cross-examination by the defence advocate, he stated on a suggestion that "*it is true that I did not see knife and clothes at all. Hence, I cannot describe it. It is true that, Krishna Pawar was not there at all at the Police Station."* He has said this though Krishna was in police custody.

16. PW-8 (Yashwantgir Kashigir Giri) :-

(a) He was the Assistant Sub Inspector in 2015 and was attached to the Medical Police Chowki, Government Hospital, Jalna. He stated that Dr.Smt.Solanke sent a Medico-Legal Case (M.L.C.) with regard to deceased Sumanbai. He identified the MLC and his signature and endorsement at Exhibit 39. He then prepared a report and identified it's contents and his signature at Exhibit-40. Initially, an accidental death case was registered. He handed over all the papers to the Ambad Police Station. He identified his letter and signature at Exhibit-41.

(b) In his cross-examination, he stated that the MLC was in respect of Sumanbai alone and he did not receive any MLC in respect of Alkabai and Lalita.

17. PW-9 (Ramesh Prabhu Chavan) (Hostile):-

(a) The learned APP referred to the deposition of PW-9, who stated that he signed on a "ready-made panchanama". He was declared hostile and the prosecution conducted his cross-examination. He denied that a pant, a shirt and one baniyan was lying in the Police Station. He denied that he signed the panchanama after seeing the clothes or that there were blood stains on the said clothes. He denied that the police took a physical search of the accused Krishna in his presence or that they recovered one knife or that the knife had a yellow handle and was blood stained. Surprisingly, he stated in the cross-examination that he can identify the knife as well as the clothes if they are shown to him.

(b) In the cross-examination conducted by the defence counsel, he tried to cover up by stating that as he had not seen the knife and the clothes, he cannot describe them.

18. PW-10 (Shriram Ramsingh Jadhav) (Hostile) :- The learned APP has referred to the deposition of PW-10 at Exhibit 54 wherein, PW-10 stated that the police had obtained his signature on "ready-made panchanama". Though he identifies his signature, he did not know its contents. The police seized one Saree, one blouse and a petticoat in his presence. The clothes belonged to the deceased Sumanbai and were sealed in his presence. The Trial Court declared PW-10 as hostile and the learned APP cross-examined him. He denied that he signed the panchanama after

knowing it's contents. He admitted his signature on the labels attached to the clothes and the packet, in which the clothes were sealed.

19. PW-11 (Dr.Sachin Nanasaheb Darandale) :-

(a) The learned APP read out the testimony of PW-11. The said witness had conducted about 2500 postmortems in his 16 years career. He was M.D. in forensic medicine and was attached to the Government Medical College at Aurangabad as an Autopsy Surgeon. He was assisted by another Autopsy Surgeon, namely, Dr.Vikas Rathod. Dr.K.U.Zine, Professor and HoD and Dr.R.W.Wasnik, Associate Professor, for conducting the postmortem upon the dead body of a foetus. He identified the letter dated 06.11.2015 forwarding the foetus. The postmortem was conducted from 05.05 till 06.06 pm. The age of the foetus was about 34 to 36 gestational weeks. The details about the physical structure of the foetus was narrated.

(b) On the internal examination of the head, it was found that the foetus had suffered underscalp haematoma of 8 cm x 6 cm over right perieto-occipatal region. Examination of the brain revealed a diffuse subarachnoid haemorrhage present over both cerebral hemisphere. It is a case of intrauterine death (34 to 36 gestational weeks) with evidence of head injury. As regards the cause of injury, the doctor deposed that this was possible due to forceful localized impact by the weapon shown to him.

(c) He perused the injury certificate of Lalita dated 24.10.2015 and while attention was drawn to a specific injury No.5 caused to her, he stated that the said injury, which is a stab injury over the abdomen, is fatal to the foetus. He further stated that the injury is caused by the localized forceful impact of a sharp pointed weapon, which can lead to corresponding underline injury over the head of the foetus while being in the uterus of the mother. The death of the foetus is possible by such injury suffered by the mother and this can be called as foeticide.

(d) In his cross-examination, Dr.Darandale admitted that there was no external injury on the head or the body of the foetus. There was no penetrative or incise wound on the skull or the body of the foetus. He admitted that the postmortem was conducted after 11 days. Heamatoma is always an internal injury and such an injury is possible even by a blow of the fist on the abdomen of the pregnant woman. He could not say as to what was the condition of the foetus when the girl child died 11 days ago on 24.10.2015.

20. The learned APP, therefore, canvassed that though the stab injury to the mother Lalita may not have penetrated the body of the foetus, the knife injuries caused to her and physical and mental turmoil suffered by her, is the cause of the death of the foetus. He, therefore, canvassed that the accused Krishna was aware about the effects of his

action when he pierced the knife into the stomach of his wife Lalita since he was fully aware that a foetus, with a beating heart, of about 09 months was inside her womb. The Trial Court has, therefore, rightly held the accused Krishna to be responsible for the death of the quick child.

21. The learned APP has referred to the postmortem-cum-provisional cause of death certificate in which, the concerned doctors have mentioned the case of intrauterine foetal death (34 to 36 gestational weeks) with evidence of head injury. He then referred to the detailed postmortem report of the foetus who was said to be a day old girl child and the injuries were those which were stated by Dr.Darandale (PW-11).

22. PW-12 Dr.Bhimrao Fakirrao Dodke :-

(a) PW-12 had examined Lalita and had found the following five injuries caused to her :-

> *"(i) There was incised injury to right arm. Size of injury was 6 x 2 x 3 cm.*
> *(ii) There was incised injury to right forearm flexar aspect, near wrist joint. Size of injury was 5 x 2.5 x 3 cm.*
> *(iii) There was incised injury to right lower lip. Size of injury was 5 x 1.5 x 3 cm.*
> *(iv) There was incised and abrasion over neck below adam apple. Size of injury was 3 x 2 cm abrasion, 0.5 x 0.2 x 0.3 cm incised.*
> *(v) There was stab injury over right hyponchodric region. Size of injury was 1.5 x 11 x 3.5 cm."*

(b) Dr.Dodke (PW-12) opined that all these injuries were caused within 24 hours by a sharp and hard object. Injury No.(i) and (iv) were simple, while Injury Nos.(ii) and (iii) were grievous. Injury No.(v) was dangerous to life. He identified the injury certificate at Exhibit-73 and proved it's contents.

(c) PW-12 then narrated the injuries caused to Alkabai and found the following injury on her person :-

> *"Stab injury over right hyponchodric region of abdomen. Size of injury 2 x 0.5 x 3.5 cm. The injury was within 24 hours. Caused by sharp and hard object. It was dangerous to life. The shape of injury was spindle."*

He identified the injury certificate and it's contents, at Exhibit-74.

(d) He then narrated the injuries caused to the deceased Sumanbai, which are as under :-

> *"There were total two stab injuries. Out of which one was at right hyponchodric, while another was right iliac region. The size of first injury was 3.5 x 0.5 x 4.5 cm. While, size of second injury was 2 x 0.5 x 4 cm. Both the injuries were caused by sharp and hard object. Caused within 24 hours. It was dangerous to life. The shape of injury was spindle."*

(e) He had given primary treatment to Sumanbai and referred her for treatment to the Jalna Civil Hospital. However, she was dead. He identified the injury certificate and proved it's contents at Exhibit-75.

(f) He then narrated the injury caused to the accused Krishna, who was examined at 09.15 pm on 24.10.2015. He had small cuts over left middle and index finger. The size of the injury was 1.5 x 0.3 x 0.3 cm and 1 x 0.3 x 0.3 cm. He opined that the shape of the injury was linear, was of a simple nature and was caused by a sharp and hard object. He identified the injury certificate and proved it's contents at Exhibit-76.

(g) He perused the knife and stated that the knife may have caused the injuries to the three ladies as well as Krishna. Krishna may have suffered a self inflicted injury. He correlated the injuries suffered by Lalita with the death of the child in her womb. He then opined that if the medical treatment was not given in time to Alkabai, the nature of her injury was sufficient to cause her death.

(h) In the cross-examination of PW-12 (Dr.Dodke), he stated that none of the injured women told him anything about their injuries. No relative of the patients was present when he examined Lalita at 02:35 pm, Alka at 02:55 pm, Sumanbai at 3:05 pm and accused Krishna at 09.15 pm. He reiterated the injuries caused to the three ladies and Krishna. He, however, opined to a suggestion that there is possibility of using one more weapon while causing different injuries. He did not agree that the spindle shape injury was possible only if a sickle is used. He did not agree that the knife was required to be turned within the body for causing spindle shape injury. Insofar as the injury suffered by Krishna was concerned, he

answered a suggestion that his injuries may be caused to a person working in the field.

23. PW-13 (Somnath Vasant Shinde):-

(a) PW-13 was attached to the Ambad Police Station in between August, 2015 to June, 2016. He had recorded the complaint lodged by Akash Rathod, son of the deceased Sumanbai, at Exhibit-20. On the basis of the complaint, Crime No.216/ 2015 was registered and further investigation was handed over to PI Mr.Khanan.

(b) In his cross-examination, he stated that Akash had come alone to the Police Station. Before Akash could reach the police station, PW-13 had received information about the crime through the Sub District Hospital, Ambad. Mr.U.V.Chavan from the Primary Health Centre gave him the information. He supported his version in his cross-examination and reiterated that Akash had reached the Police Station alone to lodge the complaint.

24. The learned APP, therefore, drew our attention to the conclusion of the Trial Court at paragraph No.15 wherein, Akash is held to be an unbelievable witness and that he has put forth a concocted story. The learned APP submits that the said conclusion of the Trial Court is baseless as it is founded on the presumption of the Trial Court that the

conduct of Akash of going back to his house after registering the criminal case and returning to the Hospital on the next day, is not a natural or normal behaviour. The learned APP submits that the Trial Court had no reason to apply his own impressions about what would be normal or abnormal behaviour. Akash had rushed to the spot near Ambedkar Chowk after receiving a call from Kailas. He personally saw the three ladies in a pool of blood and Krishna standing near the ladies with a blood stained knife in his hand and blood stains on his clothes. He shifted the three unconscious ladies to the Ambad Hospital and then went to the Ambad Police Station to register the crime. Thereafter, he went to his house with the intention of informing other relatives and merely because he did not visit the hospital in the night, does not make him a concocted witness.

25. PW-14 (Rameshwar Bhanujirao Khanal), Investigating Officer :-

(a) The learned APP has read out the testimony of PW-14. He was attached to the Ambad Police Station since 2015 till 2017. PSI Mr.Shinde had handed over the investigation in Crime No.216/2015 to him on 24.10.2015. After he arrested the accused Krishna, he found that his clothes were stained with blood. He seized those clothes and prepared a seizure panchanama. He identified his signature and the signatures of the panchas. The panchanama is at Exhibit-84. He seized one knife from

Krishna in the presence of panchas and prepared a seizure panchanama at Exhibit-85. He identified the statement of PW-6 Alka at Exhibit-86. He had seized the clothes of deceased Sumanbai, which were stained with blood and prepared a seizure panchanama, which is Exhibit-87. He had issued a letter to the Tahasildar, Ambad to prepare a spot map. The letter dated 31.10.2015 was identified and proved at Exhibit-88. The spot map is at Exhibit-89. The seized muddemal was sent to the Chemical Lab at Aurangabad vide letter dated 04.11.2015, which was handed over to the carrier Mr.Deshmukh on 05.11.2015 and he reached Aurangabad on the same day. The said letter is at Exhibit-90.

(b) PW-14 has deposed that he recorded the statements of some of the witnesses under Section 164 of the Code of Criminal Procedure. He himself filed the charge-sheet. He identified the muddemal knife and clothes of the deceased, of the injured and of the accused. Thereafter, the C.A. reports were obtained, which are at Exhibits 91 to 95.

(c) In his cross-examination, he has stated that the distance between Mahaveer Chowk and Ambedkar statue is hardly 100 to 150 feet. The shop R.K.Automobile is within 100 feet of the Ambedkar statue, in front of which the incident had occurred on the road.

(d) He then stated that till the death of Sumanbai, he had not met any of the three ladies. Even after the death of Sumanbai, he had not met Lalita and Alka. He claimed that he had not met the pregnant lady Lalita

since 24.10.2015 till 06.11.2015. After the death of Sumanbai, he did not record the statement of Akash or Lalita or Alka.

(e) He admitted that the medical examination of Krishna was done before arresting him. In column-9 of the arrest panchanama Exhibit-96, it is not mentioned that the knife was recovered from the accused. He denied that the accused Krishna has been implicated on the basis of wrong investigation.

26. The learned APP submits that the portion marked "A", which is the statement of Alkabai at Exhibit-86, indicates that Alkabai herself has narrated the manner in which the accused Krishna attacked the three ladies. In the left margin of Exhibit-86, the remark of the casualty medical officer indicates that Alkabai was conscious and oriented on 26.10.2015 at 07:05 pm and was in a fit state of mind to give a valid voluntary statement. He, however, submits that though the doctor had declared Alkabai to be fit, conscious and orientated to give a statement, her statement was not recorded on that day. The learned counsel for the appellant/ convict submitted that this is most improbable and the statement of Alkabai was recorded and since it was favouring the accused, it has not been produced before the Trial Court.

27. It is in this backdrop, that we had ordered the production of the case diary, which was perused by the counsel for the respective sides.

The counsel for the appellant opposed the appreciation of the contents of the case diary on the ground that when the said diary was not produced before the Trial Court, was not exhibited and it's contents were not proved, it would be inadmissible in evidence. However, both the counsel for the respective sides perused the entry dated 26.10.2015, which indicated as follows :-

> "तसेच पो. हे. कॉ/४६ चव्हाण यांना आदेश देऊन गुन्हयातील जखमी अलकाबाई कृष्णा राठोड व ललिता कृष्णा पवार हे घाटी दवाखाना औरंगाबाद येथे उपचार घेत असल्याने त्यांचे जबाब व ब्लड सॅम्पल घेणेस पाठविले असता, नमूद पोहेकॉ यांनी जखमी अलकाबाई कृष्णा राठोड हिचा जबाब नोंदविला असून, जखमी ललिता कृष्णा पवार हिचे तोंडाला मार लागल्यामुळे जबाब देण्याचे स्थितीत कळवून दोन्ही जखमींचे ब्लड सॅम्पल काढून हजर केले आहे."

28. The learned APP has then referred to Exhibits 91 to 95, which are reports obtained from the Regional Forensic Science Laboratory, Aurangabad. The blood group of Lalita is "B". The blood group of Alka is "A" and the blood group of deceased Suman is "O". The blood on the shirt label No.1 is human. The baniyan of Krishna label No.2 has blood stains of blood group "B". The blood group of knife label No.4 is inconclusive. The saree, petticoat and blouse have blood stains of blood group "O". Another saree and petticoat (label 11 and 12) have blood group "B". A blouse (label 13) has blood stains of group "B". A saree, a petticoat and a blouse (label 14, 15 and 16) have blood stains of blood group "A". The

blood group of the accused Krishna is found to be "A". It is, therefore, argued that if the blood group of Krishna is A and his baniyan had blood stains of blood group B, it has to be of Lalita, whom he had stabbed first. This would indicate that Krishna was involved in the crime. Had he had suffered an injury to his left hand while performing the agricultural activities, there was no scope for the blood of Lalita being found on his clothes.

29. The learned APP has then turned to the statement of the accused Krishna recorded under Section 313 of the Code of Criminal Procedure. He points out that the most common answers offered by Krishna were "I do not know" and "it is not true". Even as regards his injury, he has offered such answers to questions posed to him, except question No.15 about his marriage to Lalita, which he has specifically admitted. He also denied that Lalita was pregnant. As regards question No.95 pertaining to the injury to his left middle and index finger, he has answered in the affirmative. He also admitted at question No.96 that his injuries have been caused by sharp and hard object. To question No.115 as to why the witnesses are deposing against him, he has stated that his wife Lalita had "immoral" relations with Baban Gulab Rathod. He told this to the deceased Sumanbai. Thereafter, he was falsely implicated in the criminal case with the help of Baban Rathod. However, he declined the opportunity to examine himself or his witnesses.

30. The learned APP, therefore, submits that this Court should carefully peruse the testimony of Akash and it would be noticed that the Trial Court has discarded his deposition purely on the basis of conjectures and surmises. Akash was instrumental in carrying the three injured persons to the Ambad hospital. He was the person who reached the Police Station for registering the complaint, in the shortest time available. This has been proved through the testimony of PW-14/ IO. Thereafter, Akash had gone to his house and had travelled to the hospital at Jalna on the next date. Being in a state of shock and being horrified by the acts of stabbing by Krishna, he cannot be expected to be calm and composed. He was seriously disturbed and on the next date, when he went to the hospital, he learnt that his mother Sumanbai had died due to the stab injuries inflicted by Krishna. He had rushed to the spot of the crime hurriedly and thereafter, he had resorted to the above mentioned steps. A court cannot discard the testimony of an eyewitness on the ground that his behaviour is not normal only because he reached the hospital on the next date. His behaviour has to be seriously abnormal in order to discard his testimony being an eyewitness. The Trial Court has ignored the vital role played by Akash of carrying the injured persons to the hospital. As per Dr.Dodke (PW-12), if timely medical treatment was not given to Alka, the nature of her injury was sufficient to cause her death.

31. He, therefore, submits that Alkabai (PW-6) and Lalita (PW-5) were rescued from the jaws of death only because of the quick reaction shown by Akash. He, therefore, prays that the conclusion of the Trial Court in paragraph 15 that "*Akash is neither an eyewitness to the incident, nor did he reach the spot after the incident and his evidence has no value*", deserves to be set aside and his evidence will have to be accepted by giving it the probative value, which it deserves.

32. The learned APP further submits that the accused Krishna had a motive to attack Lalita and deceased Sumanbai since these two persons were not trusting Krishna when he desired to take back Lalita to her marital home. Sumanbai was taking a tough stand and was insisting that the parents of Krishna should settle the marital discord between him and Lalita. He was, therefore, furious with his wife and mother-in-law. He attacked Alkabai also since she was with the deceased and Lalita. Krishna desired to wipe out the evidence by killing all the three ladies. He inflicted stab injuries to Lalita and Sumanbai. Alkabai, who also suffered a life threatening stab injury, could have died had timely medical treatment not been made available. The learned APP, therefore, relies upon ***Bachan Singh vs. State of Punjab, AIR 1980 SC 898*** (paragraph 196 onwards) and ***Mofil Khan and another vs. State of Jharkhand, 2015 (3) SCC (Cri) 556*** (para 56 onwards) to support his contention that the conviction of Krishna deserves to be sustained.

33. The learned APP further submits that Krishna has planned the murder of Sumanbai and had desired that the other two ladies should also meet the same fate. Because of his multiple stab injuries inflicted on Lalita, a quick born baby died. This planned murder and attempt to kill all four of them, is an outcome of his gruesome act. He already had a first wife and since Lalita was not returning to the marital home because of his continuous physical violence, he had desired to murder all three of them knowing that his wife is almost nine months pregnant. The baby has died because of the ruthless act of Krishna and hence, this case would fall within the category of "rarest of rare cases". He, therefore, prays for confirmation of the death sentence and further prays that the impugned judgment of the Trial Court be sustained by dismissing the appeal preferred by Krishna.

(III) SUBMISSIONS ON BEHALF OF THE ACCUSED/ APPELLANT

34. As noted above, we have extensively heard the learned Senior Advocate on behalf of the accused Krishna. He has also referred to the deposition of 14 prosecution witnesses, threadbare. We do not wish to repeat the depositions of these witnesses, which we have already adverted to in the foregoing paragraphs while considering the submissions of the learned APP, unless specifically required to, in the light of the submissions of the counsel for the appellant Krishna.

35. The learned Senior Counsel has critically analyzed the deposition of the Investigating Officer PW-14 I.O. reproduced verbatim as under :-

| Examination in chief. | Cross-examination | Submissions of the learned Senior Advocate |
|---|---|---|
| Paragraph 1:- Then after arresting the accused. Then I found that, his clothes were stained with blood. | Paragraph 4 :- Now my attention is drawn to arrest Panchnama dated 24/10/2015. It is true that, it was made on 9.10 p.m. the arrest panchnama is at Exh. 96. It is true that, before arresting the accused his medical examination was done. It is true that, in arrest panchnama Exh. 96 in column No. 8 there is nothing mentioned about recovery of knife from the accused. | The Exh-84 and 85 i.e. Seizure Panchnamas reveal that, same are prepared prior to arrest. Arrest Panchnama i.e. Exh.96 reveals arrest is made at 21.10 hrs. **Ref. Sec. 51 & 52 of Cr.P.C.**<br><br>Contrary to PW-12: i.e. Doctor who examined accused at 9.15 p.m. (Para 6 of Chief examination)<br><br>In arrest Panchnama, it reveals that, accused was examined.<br><br>If presumes that, examination was prior to arrest, then prosecution must clarify that, it is prior to seizure of clothes of accused or after. Because PW-12 i.e. Doctor in his cross examination admitted that, he never found blood stains on clothes of accused. |
| Portion marked "A" in statement of the Alka Rathod is shown to me. I recorded it as per her version. | | It is factually incorrect statement on oath made by I.O. as the statement i.e. Exh. 86, has revealed that, same has been recorded by one U.V. Chavhan. |
| Then I recorded the statement of some of the witnesses under section 164 of Cr.P.C. from Judicial Magistrate, Ambad. | | Not the part of charge sheet and same are not produced before the Court. |

36. The learned Senior Advocate, therefore, submits that the whole testimony shows the casual approach of the Investigation Officer in conducting the Investigation. The Prosecution should have examined the

Police Head Constable U.V.Chavhan, who has recorded the statement of Alka (Injured witness) for proving the Portion marked "A" of her Statement. Though the Investigation Officer mentioned about the statement recorded of independent witnesses, the prosecution failed to examine them. Rather, in the light of the fact that, one of the injured witnesses turned hostile and the Informant was held to be untrustworthy, the prosecution should have examined independent witnesses for proving the case beyond reasonable doubt. He submits that from the entire testimony of the I.O., it revealed that, the Investigation Officer failed to explain the delay in compliance of the mandate of Section 157 of the Code of Criminal Procedure i.e. submission of the report to the Magistrate forthwith. Per contra, it revealed from the record that:-

i) The Magistrate has seen the First Information Report on 25/10/2015 at the time of production of the Accused before the court at 6.00 p.m. There is a little delay as the FIR is registered on 24/10/2015 at 4.10 p.m.

ii) The incident happened at Ambad, which is known to be a small town.

37. The learned Senior Counsel has, therefore, emphasized on the object of Section 157 of the Code of Criminal Procedure and submits that

the object of the Section is to avoid manipulation and false implication at the hands of Investigation Officer.

38. The learned Senior Advocate further submits that the prosecution has failed to prove the case beyond reasonable doubts on the following points:-

(a) Testimony of Lalita i.e. PW-5:- This witness categorically admits in cross examination that, her statement was not recorded by the police and she narrates the incident for the first time in the court. The record revealed that her statement was recorded on 7/11/2015 i.e. after 12 days and same bears scoring out in the date column and further thumb mark of witness. The learned Senior Counsel, therefore, submits that there is delay in recording the statement of the injured witness and same has to be explained by the prosecution. The record shows that, the attempt was made by U.V.Chavhan to record her statement on 26/10/2015 at 6.20 p.m. as the endorsement of doctor stated that, she was conscious, oriented and fit to make statement. Then the question arises that if the statement was recorded then why was it not produced? This leads to the only probability that, the same was in favour of the accused. The statement of Lalita is hit by Section 162 of the Code of Criminal Procedure and becomes inadmissible. Hence, there needs to be corroboration from the Medical Evidence and other witness i.e. Alka, who turned hostile. Therefore, the

accused deserves to be acquitted from the Charges framed regarding causing injury to her.

(b) The Medical Officer i.e. PW-12 was examined by the Prosecution and he stated that the injuries caused to Sumanbai and Alka were of spindle shape. Relying on the observations made in the Medical Jurisprudence, the Delhi High Court in the case of Rishi Pal and etc. vs. The State, 1994 Cri. L.J. 1343, held that "*If the weapon is double edged, the wound is spindle shaped with clear edges*". Admittedly, the weapon seized in the present case is of single edged. Even the Medical Officer i.e. PW-12 has stated in his cross examination that, "*there is possibility of using one more weapon while causing different injuries*." In the above facts, it creates reasonable doubt in the mind as to whether, the incident really happened in the way, which the prosecution wants the Court to believe? According to the Defence, it is not in the light of the above evidence.

(c) Delay in sending the report as per Section 157 of the Code of the Criminal Procedure, is fatal to the case of the prosecution. It is very well revealed from the record that, there is delay of 26 Hrs. in sending the report and same is not explained. This fact leads to the following probabilities :-

(i) The Accused is falsely implicated in the case as the defence side has boldly come with the defence of being “framed”.

(ii) Considering the object of the very Section, it mandates the submission of the report forthwith to the Magistrate, just to avoid manipulation. If there is delay on the part of the prosecution in sending the same, it casts duty upon the prosecution to explain the delay.

(iii) In the case in hand, the delay is not explained. Therefore, it creates reasonable doubt about the truthfulness of the prosecution story and does not rule out the possibility of false implication.

(iv) Further, in the light of the fact that, the informant / PW-4 who initially set the law in motion, held to be untrustworthy.

39. The learned counsel submits that the non-examination of independent witnesses also creates reasonable doubts about the truthfulness of the prosecution story. It is an admitted fact that the learned Trial Court discounted the informant and another injured witness turned hostile. Therefore, the whole case is based on the solitary witness i.e. Lalita/PW-6. From the above submissions about the testimony of PW-6, it can be gathered that, her version also does not inspire confidence as the required corroboration is missing. Even the I.O. / PW-14 also admits that, he recorded the statement of the proprietor of R.K. Automobiles in front of whose shop the incident occurred and further recorded the statement

under section 164 of the Code of Criminal Procedure. The incident occurred in broad day light and the spot panchnama revealed that, there were other shops in the surroundings. So it can be said that, the incident must have been witnessed by others. No attempt was made on behalf of the prosecution to examine any independent witness to corroborate the version of Lalita/PW-5.

40. Testimony of the Hostile witness i.e. PW-6:- The learned Senior Counsel submits that he is well aware about the legal position of the reliability of the hostile witness as the same can not be discarded in toto, but, can be relied upon with rule of caution. It is an admitted fact that, the accused is acquitted for the charges leveled against him as far as injuries sustained by Alka/PW-6 i.e. hostile witness are concerned. It is, therefore, submitted by the learned Senior Counsel for the accused, by relying upon various citations, that:-

a) Upon considering the whole testimony of the hostile witness, if it surfaces that, the portion of the statement made by the witness, disproves the probability of the occurrence of the incident, witnessed by her, then the Court should discard the entire testimony of the witness in toto.

b) In the case in hand, the Trial Court believes the witness partially for lending corroboration to the version of Lalita i.e. PW-5 by

picking and choosing the statement from examination-in-chief of the hostile witness which favours the prosecution.

c) But, at the same time, the Trial Court acquitted the accused for charges leveled against him regarding the injuries sustained to the hostile witness.

d) Then the question arises as to who has caused injuries to Alka when admittedly, she accompanied Lalita & Suman?

e) Therefore, it gives scope to advance a submission that, in the said incident, either someone else is involved or the prosecution is hiding something, considering the remainder cross-examination of Alka (PW-6), recorded on 30.08.2019.

f) Even from medical evidence, it creates doubts about the injuries caused to Alka & Sumanbai by the weapon seized.

g) Further, it gives scope to argue that some another weapon is used in the crime. Then, the question arises, where is that weapon? Or rather it substantiates the hostile version of Alka that, a person who covered his face, came on a motorcycle and caused the injuries.

h) As such, the Trial Court committed an error by relying on the testimony of the hostile witness partially, when the above submission requires that the same has to be discarded in toto.

41. The learned Senior Counsel submits that the prosecution mostly examined the witnesses, who are related and hence, they are interested witnesses. For example, PW-2/ Rukhmanbai categorically stated that she saw the body of Sumanbai at Ambad Hospital. Per contra, the Inquest Panchnama revealed that, the same has been prepared at the Civil Hospital, Jalna.

42. The learned Senior Counsel submits that from the above submissions, it can be said that two views are possible i.e. (i) the accused is really the assaulter or he has been falsely implicated. (ii) The evidence led creates reasonable doubts about the involvement of the accused and further creates another view.

43. The learned Senior Counsel submits that for proving charge under Section 316 of I.P.C, the prosecution has examined PW-2. Considering the cause of death of the unborn child and the testimony of the witness, it creates doubt about the injury caused to unborn child on following grounds:-

(i) The witness has failed to prove that the injury caused to child is possible without causing external injury.

(ii) The prosecution or the Trial Court ought not to have relied on this witness on the count of not substantiating his version by producing the medical reports of Lalita like sonography report or Laparoscopy.

(iii) This witness admitted the suggestion regarding the injury caused to the child being possible due to the fist blow, which is not the case of prosecution.

(iv) Delay in conducting the postmortem of the foetus.

44. The learned Senior Counsel then submitted that for proving the seizure Panchanamas (Exhibits-84 and 85) of clothes and knife, the prosecution has examined PW-7 and PW-9, who did not support the prosecution and turned hostile. Considering the approach of the I.O., it can be said that the recovery or seizure of clothes & knife is also suspicious as the same was shown prior to the formal arrest. Further, it has been demonstrated from the medical jurisprudence that, the spindle shape injury is possible by a two edged weapon / knife. Admittedly, in the case in hand, the knife has a single edged. It also creates doubt about the seizure of the knife from the person of the accused.

45. The learned Senior Counsel submits that though the C.A. report supports the prosecution, a question arises as to the conviction being upheld on the sole basis of the C.A. report? Answer to this question is in the negative on the following grounds:-

i) Blood group of the accused is "A". So also, Alka is "A" (i.e. PW-6 injured).

ii) Panchas turned hostile.

iii) The doctor i.e. PW-12 never found blood stains on the clothes of the accused, though examined prior to his arrest.

iv) Injuries sustained by the accused are not explained. The prosecution failed to prove the injury sustained by accused. This fact is fatal to the case of the prosecution as the injury sustained by the Accused leads to an inferance that either it was self-inflicted or sustained during the scuffle. Admittedly, it is not the case of prosecution that prior to assault, there was some scuffle between the parties. This fact also creates doubt about the genesis of the occurrence of the incident.

(IV) WHETHER THE DEATH OF SUMANBAI IS HOMICIDAL

46. There is no dispute that Sumanbai was stabbed in broad day light. She had collapsed at the spot. When she reached the Civil Hospital, she was declared dead on arrival. Her postmortem examination conducted by PW-3, Exhibit-16, dated 25.10.2015 revealed the following injuries:-

(a) Stab injury above her left side of the waist. Ilicchest region/ 5x2x6 cm deep. Blood clots present. Edges everted shape elliptical.

(b) Stab injury on her right lower coastal region in mid-clavicular line/ 4x1 cm deep into peritoneal cavity, entering right lobe of liver, through and through. Blood clots present. Edges everted shape elliptical.

(c) All these injuries were ante-mortem. The cause of death was mentioned as death due to haemorrhagic shock due to stab injury to the liver. The postmortem report is at Exhibit-17 and the death certificate is at Exhibit-18.

47. The appellant has not disputed the cause of death of Sumanbai. It is his case that he has not stabbed her and that the paramour of his wife Lalita, namely, Baban Gulab Rathod was the person who had stabbed Sumanbai, Lalita and Alkabai.

48. As such, there can be no dispute that Sumanbai's death was on account of the stab injury and hence, she has suffered a homicidal death.

(V) WHETHER THE DEATH OF THE FULL TERM BABY CAN BE ATTRIBUTED TO THE STABBING OF HER MOTHER LALITA

49. There is no dispute that PW-5 Lalita was carrying a full term baby. On account of the stabbing of Lalita, the girl child who was delivered in the hospital had already died. The cause of death of the baby as mentioned in the postmortem-cum-provisional cause of death certificate Exhibit-59, is "*a case of intrauterine foetal death (34 to 36 gestational weeks) with evidence of head injury*."

50. PW-11 Dr.Sachin Darandale has deposed that he had conducted the postmortem on the foetus on 06.11.2015, along with autopsy surgeon Dr.Vikas Rathod, Dr.K.U.Zine, Professor and HoD and Dr.R.N.Wasnik, Associate Professor. The postmortem examination indicated the following injuries :-

(a) Underscalp haematoma of the size 8x6 cm present over the right parieto-occipatal region, reddish in colour.

(b) On examination of the brain, there was diffuse subarachnoid haemorrhage present over both cerebral hemisphere.

(c) It was a case of intrauterine death (34 to 36 gestational weeks) with evidence of head injury.

(d) All injuries were ante-mortem.

51. PW-11 Dr.Darandale stated that such death is possible due to forceful localized impact by the weapon. He has then perused the injury certificate of the mother Lalita PW-5 and has stated that the full term baby has suffered a corresponding underline injury over it's head in the uterus of the mother due to a localized forceful impact of a sharp pointed weapon. The doctor, therefore, opined that the death of the foetus is possible by that injury and this can be called as foeticide.

52. In cross-examination, the doctor had stated that there was no external injury anywhere on the body of the foetus. There was no

penetrative or incise wound on the body of the foetus or on it's skull. He then expressed an opinion that the injury suffered by the foetus, leading to it's death, cannot be caused if a pregnant woman was to fall on the ground. He also opined that the foetus was in a dead condition as it was separated from the mother of the child. Haematoma is always an internal injury and such kind of injury may be possible by a fist blow on the abdomen of the pregnant woman.

53. Considering the evidence in relation to the death of the foetus, it is obvious that, had Lalita not suffered stab injuries, the foetus would not have suffered those injuries which led to it's death. As such, though the foetus did not die on account of any stab injury, but it's death occurred since it received a blow to it's skull while it's mother was stabbed by the appellant. The death of the foetus can, therefore, be attributed to the injury suffered by it's mother Lalita.

(VI) SUBMISSION ON SECTION 157 OF THE CR.P.C.

54. The learned Senior Advocate has strenuously canvassed that the Investigating Officer has failed in sending a report under Section 157 to the Magistrate empowered to take cognizance of such offence upon a police report. He submits that the delay caused is fatal to the investigation and therefore, the entire investigation has to fail. Section 157 of the Cr.P.C. reads thus:-

"Section 157. Procedure for investigation :-

(1) *If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:*

*Provided that—*

*(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;*

*(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.*

*[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]*

*(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."*

55. We are not impressed by such a submission. The F.I.R. was registered on 24.10.2015 at about 04:10 PM and the Magistrate has seen the F.I.R. at about 06:00 PM on 25.10.2015. The contention of the accused that such delay had led to manipulation and the entire investigation should fail, is neither supported by any judicial pronouncement, nor are we convinced to accept the same, in the absence of evidence.

(VII-A) WHETHER THE APPELLANT KRISHNA HAS COMMITTED THE CRIME OF STABBING THREE LADIES ON 24.10.2015

56. The learned Senior Advocate has strenuously canvassed that Baban, who had illicit relations with Lalita, had stabbed all the three ladies. He supports his contention by contending that Kailas, who is alleged to have made a phone call to the first informant Akash, was not examined. Kailas is said to have allegedly witnessed the stabbing of Sumanbai, Lalita and Alkabai at Ambedkar chowk, at the hands of the appellant Krishna. It is the case of the prosecution that Akash was informed by Kailas about the stabbing and therefore, Akash turned around and reached the spot where the three ladies were stabbed. The failure of the prosecution in not examining Kailas is fatal to the case.

57. The learned APP submits that even if Kailas was not examined, Akash had reached the spot when the appellant Krishna was standing near the three women who had collapsed to the ground and was

holding a blood stained knife in his hand. As long as Akash has stuck to his stand that it was the call of Kailas to return back forthwith to Ambedkar chowk and the fact that he witnessed the three ladies fallen in a pool of blood, this would amount to sufficient ocular evidence. Had Kailas been examined, it would have further strengthened the case of the prosecution.

58. The learned Senior Counsel has strenuously highlighted the conclusion of the Trial Court that Akash is a manufactured witness and his testimony deserves to be discarded. He, therefore, submits that if the testimony of Akash is watered down, as has been done by the Trial Court, the entire case of the prosecution has to fail. The learned APP submits that even if the testimony of Akash is said to be watered down, PW-5 Lalita, who is the wife of the appellant, is a surviving witness and her testimony is sufficient to prove the offence, being very strong.

59. In the light of the submissions of the respective sides, we have perused the conclusions of the Trial Court in support of it's observation that the testimony of Akash (PW-4) is unbelievable and has no evidenciary value. The learned Trial Court has dealt with the testimony of PW-4 Akash, first informant, from paragraph 12 till paragraph 15. Akash is said to have accompanied the three ladies to Ambad. Alka (PW-6) is the real sister of the deceased and PW-5 Lalita is a married daughter. Both have no where stated that Akash had not accompanied PW-5, PW-6 and the deceased to Ambad. In her examination-in-chief at Exhibit-27 recorded on 12.10.2018,

PW-6 has stated that these three ladies had reached the Ambedkar Chowk at about 02:00 PM on 24.10.2015, when the appellant Krishna reached the spot and started quarreling with the deceased and PW-5. She has stated that Krishna stabbed Lalita on her stomach and inflicted knife injuries upon her neck and hand. The deceased was also stabbed upon her stomach and thigh. He had also assaulted Alka on her stomach inflicting a stab injury. She identified the knife as well as her clothes, which were articles before the Court and were sent to the Forensic Laboratory for analysis. All the three ladies had fallen unconscious, out of which, Sumanbai died instantly. In paragraph 4 of her cross examination conducted on the same day, she has specifically stated that no conversation took place between her and Akash at the Ambedkar statue after the incident, though he had come there before she lost consciousness. We are accepting this part of the testimony of Alka (PW-6) for the reasons recorded hereinafter under the caption “Hostile Witness”.

60. It is quite intriguing that further cross-examination of PW-6 was held after 10 months on 30.08.2019. PW-6 has taken a somersault in the very opening paragraph 5 of her further cross-examination conducted on 30.08.2019. She changed the place of the crime by stating that the offence took place at Mahaveer Chowk, a motorcycle rider approached the three ladies and assaulted them with a knife. The face of the assaulter was covered with a handkerchief. Except the eyes of the assaulter, she could

not identify him. In paragraph 6, she has stated that the contents of her examination in chief are false and the contents of her cross-examination are true. The Court declared PW-6 hostile and permitted the prosecution to cross examine her. PW-6 stated in paragraph 7 that her statement recorded by the Police contains such statements which she had never uttered. She does not know why the police has written down such statements under Section 161 of the Cr.P.C..

61. It is trite law that the testimony of a hostile witness need not be discarded altogether. The statements of such a hostile witness which are corroborated by pieces of evidence brought on record through depositions of other witnesses, can still be utilized for deciding a case. We find that her statement that Akash was with them and Akash was present at the spot of the crime before PW-6 lost consciousness, is a statement which cannot be discarded in the light of the testimony of the victim eyewitness PW-5 Lalita. This is an important piece of evidence, which was completely lost sight of by the Trial Court, which led it to conclude that Akash was not at the scene of crime and was not an eyewitness.

62. We have carefully scrutinized the reasons assigned by the Trial Court in support of it's conclusion that Akash may not have really reached the scene of crime after it's occurrence. The Trial Court has held that since Akash came to the hospital on 25.10.2015, his behaviour was not natural and therefore, he is neither an eyewitness, nor had reached

the spot after the incident. We find that the Trial Court should have been very serious and careful while analyzing the evidence on record and a casual approach has led to the discarding of a vital piece of evidence, though such conclusion did not affect the final verdict of the Trial Court. We find from the testimony of PW-6 that the presence of Akash at the scene of crime after it was committed, is clearly proved. The testimony of PW-5, victim eyewitness, also proves that Akash had accompanied the three ladies on 24.10.2015, for visiting a maternal uncle who was admitted in the hospital. On reaching the Ambedkar statue, Akash informed the three ladies to wait for some time as he was to complete a personal work for which he left on a two wheeler belonging to one Ashok, who was not examined. On receiving the telephonic call from Kailas, he rushed back to the Ambedkar chowk and saw that the three ladies had fallen to the ground with severe stab injuries and the accused Krishna was standing near the ladies with a blood stained knife in his hand.

63. The learned Senior Counsel for the appellant/ Krishna has strenuously canvassed that the behaviour of Akash was unusual and therefore, he was a manufactured witness. Such submission before the Trial Court was found palatable and the Trial Court discarded the testimony of Akash, PW-4 eyewitness. We have perused the deposition of Akash, threadbare. After narrating the prelude to the incident that took place at 02:00 PM, he has stated that it was Kailas who first informed him

on telephone that the appellant Krishna had assaulted the three ladies with a knife. He, therefore, immediately turned back from the Tehsil office road and rushed to the Ambedkar Chowk where he himself saw the three ladies on the ground and Krishna holding a blood stained knife in his hand. His shirt had blood stains. On seeing Akash, the appellant Krishna ran away with the knife, which was subsequently recovered from him by the Police. Akash carried the three ladies to the Government Hospital with the assistance of Sakhubai, Prakash and Sunil. These three persons have not been examined by the prosecution.

64. After the three ladies were brought to the hospital at Ambad, Akash left to reach the Ambad Police Station for lodging a complaint. Exhibit-20 is his complaint dated 24.10.2015 recorded at 16:10 hours. His narration in the said complaint is corroborated by his testimony and the testimony of Lalita PW-5, as well as by the first paragraph of the deposition of Alka PW-6, who subsequently turned hostile. Akash has stated in the F.I.R. what he saw when the appellant Krishna had assaulted the three ladies. He has then narrated that on the next date, he came to know on reaching the hospital that his mother Sumanbai had passed away. The learned Trial Court has taken exception to this conduct of Akash on the ground that the Trial Court had expected him to return to the hospital rather than going home. Akash has further stated that he realized on the

third day that the child in the womb of his sister PW-5 Lalita had also died. The Trial Court took exception even to this statement.

65. In our view, the Trial Court should have analyzed the testimony of Akash in the light of the F.I.R., the testimony of PW-5 Lalita and the examination-in-chief of PW-6 Alka. It could not have overlooked that after the postmortem examination of the deceased Sumanbai on 25.10.2015, the funeral rites of the deceased were also performed. Akash, therefore, may have been held up in such rites and had then again gone to the hospital on 26.10.2015 by which time, his sister PW-5 Lalita had stabilized. In such visit, he realized that the child in the womb of his sister had also passed away.

66. Considering the evidence in it's totality on this issue, we are of the view that the Trial Court has casually come to a conclusion in paragraph 15. Since PW-9 Dr.Dodake had stated that he did not find the relatives near the three ladies when they were medically examined having suffered the stab injuries and one of them being already dead, would not be a ground to hold that Akash was never along with the three ladies, though Akash has truthfully stated in his evidence that he did not travel with the ladies from the Civil Hospital, Ambad to the Civil Hospital, Jalna since he had gone to the Police Station to lodge a complaint. We do find that Akash, a labourer, who was 22 years of age when the incident had occurred, could have continued to stay at the Ambad Civil Hospital and

could have accompanied the three ladies even to the Civil Hospital at Jalna, instead of going to the Police Station. He had then accompanied the Police for the spot panchanama which started from 16:25 and completed at 17:45 hours. He probably may have thought that as the three ladies were already admitted to the hospital, he could proceed to lodge the complaint at the Ambad Police Station. There is no dispute that it was he, who has lodged the complaint (FIR) and the task of writing the complaint was completed at 16:10 hours. He has clearly stated in the complaint/ FIR that he had travelled with the ladies to the Civil Hospital at Ambad and has also stated that the ladies have thereafter, been sent to the Civil Hospital at Jalna.

67. Even otherwise, assuming that the testimony of PW-4 Akash deserves to be discarded, the testimony of PW-5 Lalita, who is a surviving victim of the injuries inflicted by her husband Krishna and taking into account the other pieces of evidence available, we are of the view that the offence committed by the appellant Krishna can be said to be definitely proved.

68. PW-5 Lalita has categorically stated that Krishna assaulted her and inflicted multiple knife injuries, then stabbed his mother in the abdomen and on her thigh and then assaulted PW-6 Alka, with the same knife. She fell unconscious and she has regained consciousness after she

was admitted in the Government Hospital at Aurangabad. After she was fit, conscious and orientated, her statement was recorded on 07.11.2015.

69. The learned counsel for the appellant Krishna has voiced a serious grievance that Alka's statement indicates an overwriting and the date of recording the statement must have been 06.11.2015 and not 07.11.2015. It is vehemently contended that the statement was recorded on 06.11.2015 and since she has stated in her deposition that it was recorded on 07.11.2015, the police has manipulated the said document. We are of the view that much ado is being made by the defence for nothing. Such a minor mistake of correcting a date, could happen in any case and when such overwriting appears only at one place and no such overwriting appears at any other place, we find no reason to discard the testimony of the victim eyewitness.

70. The learned counsel for the appellant/ Krishna submits that the statement of Alkabai PW-6 was recorded by the Head Constable U.V.Chavan and the I.O. has wrongly stated that he has recorded the statement at Exhibit-86. The learned APP submits that the I.O. keeps a writer with him and it invariably happens that the assistance of a writer is taken. The counsel for the appellant submits that the Head Constable U.V.Chavan was issued with summons at Exhibits-77, 78 and 81. Yet, he has not remained present for examination. We are of the view that the non

examination of the Head Constable would not create a doubt as to whether, the appellant has committed the offence or not.

71. The learned counsel for the appellant then submits that Section 157 of the Code of Criminal Procedure was not properly followed. Clause 8 of the arrest form is with regard to the physical search (अंग झडती) and the knife, which was recovered from the appellant in such physical search, has not been mentioned. We find from the record that the knife that was recovered from the appellant, was stained with blood. A single knife was used for causing stab injuries to three victims, out of which, one has passed away. The report of the Forensic Laboratory indicates that the blood on the knife could not be determined.

72. We are of the view that when a single weapon was used to stab three persons, viz. Sumanbai (deceased) with blood group “O”, Lalita having blood group “B” and Alka having blood group “A”, this could be the cause behind the Forensic Laboratory declaring it's chemical analysis test as being inconclusive. For the same reason, the determination of the blood of these three persons, which was found on the earth sample sent to the Laboratory, rendered an inconclusive blood group determination. The blood found on the shirt of the appellant was determined as being human blood. The baniyan that he had worn when he committed the offence, carried blood stains and the blood group was determined as “B”, which is

Lalita's blood group. One sock (one piece out of a pair of socks), which was also picked up by the Investigating Officer, had blood stains and the Forensic Laboratory determined the blood group as “B”. The saree worn by Sumanbai (deceased) was also an article sent to the Forensic Laboratory and the blood found on the said saree was determined as group “O”, which was Sumanbai's blood group. Similar is the case with regard to her petticoat and her blouse. The saree, petticoat and blouse worn by Lalita was analyzed by the Forensic Laboratory and the blood appearing thereon was determined as group “B”, which is Lalita's blood group. So also, the saree, petticoat and blouse worn by PW-6 Alka was also subjected to chemical analysis and the blood appearing thereon was determined as blood group “A”, which is Alka's blood group.

73. The learned counsel for the appellant has strenuously canvassed that because Lalita was having an illicit affair with Baban Gulab Rathod, she, PW-4, PW-6 and I.O. have framed the appellant. He has strenuously contended that Lalita had a grudge about her husband/ appellant. Akash being brother of Lalita, also shared the same grudge. All of them have implicated the appellant.

74. We do not find any merit in such submissions. Primarily, PW-5 Lalita is an injured eyewitness. She survived on account of timely medical assistance. She was nine months pregnant and was on the verge of delivery. She had fallen unconscious on 24.10.2015 after the assault and

after seeing Akash at the scene. She gained consciousness on 26.10.2015 in the Government Medical College and Hospital at Aurangabad. She lost a full term girl child. Her mother Sumanbai, who was about 45 years of age, was also killed. PW-5 was weeping while undergoing examination-in-chief in the Court. We do not find that Lalita would frame her husband merely because he used to ill treat her. The contention of the appellant is that her alleged paramour had killed her mother, her baby and had inflicted stab injuries to her and Alkabai. We find no substance in this submission because, had her alleged paramour Baban Rathod being responsible for the horrific death of her mother and her child and the stab injuries to her and Alkabai, she would have never let Baban Rathod go scot free. It is unconscionable that she would let the actual murderer go scot free and implicate her husband with whom she had spent her married life and had mothered two children, the second child having suffered death because of the attack.

75. The learned counsel for the appellant has then canvassed that PW-12 Dr.Dodake, who had examined PW-5 Lalita, had stated in his cross-examination that there could be another weapon which may have been used. We do not find that such an opinion expressed by the doctor, which could only be termed as being a casual view expressed, could demolish the entire evidence brought on record by the prosecution and which would be a ground for acquitting the appellant. It would also not support the

contention of the appellant that the knife was planted by the Investigating Agency.

76. The learned counsel has then contended that the injuries were spindle shape and as held in ***Rishi Pal vs. The State, 1994 Cri. L. J. 1343***, (paragraphs 10 to 12, 40 and 41), the murder weapon placed before the Court cannot cause spindle injury. Dr.Dodake has stated in his cross-examination that both the injuries caused to the deceased Sumanbai were by using a sharp and hard object. Similarly, the injury caused to the appellant was also by a sharp and hard object. He has then specifically opined in paragraph 8 that the injury to appellant Krishna may be a self inflicted injury. He perused the knife shown to him in the Court and stated that according to him, all injuries caused to all four persons (inclusive of the appellant), may be possible by such kind of knife. As regards one injury of Lalita, he has opined that the said injury has possibly caused the death of the child in her womb. He further opined that if PW-6 Alka, was not given medical treatment in time, the said injury was sufficient to cause her death.

77. The learned APP has canvassed that the appellant declined to explain his injuries, which were on his hand by which he had used the knife to stab three persons. While recording his statement under Section 313 of the Code of Criminal Procedure, he has admitted his injury while answering question No.25. However, he also admitted, while answering

question No.96, that both the injuries suffered by him on the left middle and index finger were caused by a sharp and hard object. He had an opportunity of explaining his injuries while answering question No.118. He has only stated that this is a false case. He did not examine himself or any witness.

78. The testimony of Dr.Dodake with regard to the injuries suffered by the appellant and his admission that the said injury was caused due to a sharp and hard object, would constitute another factor in establishing the case that the appellant had used the said knife for stabbing the three ladies and he himself having suffered injuries while handling the said knife. It was, however, not proved as to whether, the injuries suffered by the appellant, were self inflicted. Notwithstanding the same, it was established that the appellant had used the knife and in the process of stabbing the three ladies, seems to have injured his three fingers. The argument of the learned counsel for the appellant that the injuries may have been caused while indulging in agricultural activities, does not deserve consideration as Krishna himself did not say so.

79. We have perused the Crime Details Form (घटनास्थळ पंचनामा) Exhibit-12. While the said spot panchnama was being prepared, the complainant Akash (PW-4) was present. Since the Police were not aware that Sumanbai had passed away, it was not so mentioned. By that time, the three ladies were already shifted to the Civil Hospital. The time

mentioned on the spot panchanama is between 16:25 to 17:45 hours indicating that PW-4 Akash had lodged the First Information Report at 04:10 PM and then had accompanied the Police to the spot for the spot panchanama, details of which were recorded in between 16:25 to 17:45 hours.

80. Exhibit-96 is the Arrest/ Court Surrender Form. On 24.10.2015 at about 21:10 hours, the appellant Krishna surrendered before the learned J.M.F.C.. His injuries were recorded in the said form. Exhibit-85 is the House/ Property Search and Seizure Form, which mentions that when the appellant Krishna was physically searched, a sharp blood stained knife was recovered from his person. Details of the knife were specially mentioned in the space below clause 12. Exhibit-84 is another House/ Property Search and Seizure Form indicating that the clothes of the appellant Krishna were seized on the same day 24.10.2015. Details of the said clothes and blood stains found thereon are mentioned in the space below clause 12.

81. The learned Senior Counsel has vehemently contended that since it was not mentioned that the knife was recovered from the appellant / Krishna during his physical search (अंगझडती) in column 8 of the Arrest Form Exhibit-96, it would indicate that no knife was seized from the appellant Krishna. We are unable to accept the said contention since

Exhibit-84 and Exhibit-85 clearly indicate that the clothes worn by the appellant Krishna and the knife carried by him were already seized between 20:20 to 20:40 hours and in between 20:25 to 21:00 hours the clothes, respectively. The appellant Krishna appeared before the learned J.M.F.C. at 21:10 hours.

82. In view of the law laid down by the Honourable Supreme Court in the matter of ***Rameshbhai Mohanbhai Koli (supra)*** and ***Veer Singh (supra)***, we compared the statement of Alkabai (PW-6) recorded under Section 161 of the Code of Criminal Procedure, Exhibit-86, on 26.10.2015 and her deposition recorded on 12.10.2018. We need to bear in mind that PW-6 Alkabai was examined and was part cross-examined on 12.10.2018 and was further cross-examined after 10 months and 18 days on 30.08.2019. Her deposition and her part cross-examination as recorded on 12.10.2018 are identical to her statement at Exhibit-86. Her versions about the appellant Krishna having stabbed Lalita (PW-5), deceased Sumanbai and Alkabai (PW-6), are consistent and are further corroborated by the testimony of Akash (PW-4) and the victim eyewitness Lalita (PW-5).

83. It is, therefore, quite apparent and obvious to us that she was influenced in the period of 10 months and 18 days preceding the recording of her residual cross-examination on 30.08.2019. As such, the law as laid down in ***Rameshbhai Mohanbhai Koli (supra)*** and ***Veer Singh (supra)*** convinces us that the portion of testimony of a hostile witness,

which appears to be truthful in the light of the corroborated evidence, can be utilized. Per contra, the story narrated by Alkabai PW-6 on 30.08.2019 is completely foreign/ alien to the case in hand and it is a story which has been introduced for the first time before the Trial Court. We clearly find the said story to be not only false and an unconscionable act on the part of Alkabai (PW-6), but also smacks of having been influenced or won over by the defence. Her statement recorded on 30.08.2019 is clearly a blatant lie and an act of perjury.

(VII-B) HOSTILE WITNESSES

84. I am indebted to my brother Justice B.U.Debadwar for having brought to my notice the judgment delivered by the Honourable Supreme Court in ***Sathya Narayanan vs. State represented by Inspector of Police, (2012) 12 SCC 627*** . In ***Sathya Narayanan (supra)***, the Honourable Supreme Court has held, on the aspect of considering a part of evidence of a hostile witness, in paragraphs 24 and 25 as under :-

> *"24. It is the contention of Mr. Giri, learned senior counsel that in view of the fact that all the prosecution witnesses turned hostile and even the evidence of PWs 1 and 2 are not acceptable in toto, the conviction based on certain statements cannot be accepted. In this regard, it is relevant to refer a decision of this Court in Mrinal Das v. State of Tripura [(2011) 9 SCC 479]. In the said decision, the main prosecution witnesses, viz. PWs 2, 9, 10 and 12 were declared as hostile witnesses. While reiterating that corroborated part of evidence of hostile*

*witness regarding commission of offence is admissible, this Court held: (SCC pp.505-506, para 67)*

*"67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."*

*25. We reiterate that merely because the witness was declared as hostile, there is no need to reject his evidence in toto. In other words, the evidence of hostile witness can be relied upon at least to the extent, it supported the case of the prosecution. In view of the same, reliance placed on certain statements made by hostile witnesses by the trial Court and the High Court are acceptable. Now, let us consider hereunder how far those statements supported the case of the prosecution.*

(Emphasis supplied)

85. In ***Ramesh and others vs. State of Haryana, 2017 (1) Mh.L.J. (Cri.) (S.C.) 673***, the Honourable Supreme Court has concluded in paragraphs 35 to 46 as under :-

*"35. We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during investigation, the Investigating Officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the Court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.*

*36. In some of the judgments in past few years, this Court has commented upon such peculiar behaviour of witnesses turning hostile and we would like to quote from few such judgments. In Krishna Mochi vs. State of Bihar, (2002) 6 SCC 81, this Court observed as under:*

*"31. It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power."*

*37. Likewise, in Zahira habibullah vs. State of Gujarat, (2006) 3 SCC 374, this Court highlighted the problem with following observations:*

*"40. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed and it no longer can constitute a fair trial. The incapacitation may be due to*

*several factors like the witness being not in a position for reasons beyond control, to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface. Broader public and social interest require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State representing by their presenting agencies do not suffer… there comes the need for protecting the witnesses. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth presented before the Court and justice triumphs and that the trial is not reduced to mockery.*

*41. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation. We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice*

*do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies."*

38. *Likewise, in Sakshi vs. Union of India, (2004) 5 SCC 518, the menace of witnesses turning hostile was again described in the following words:*

*"32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327, Cr.P.C. should also apply in inquiry or trial of offences under Section 354 and 377, Indian Penal Code."*

39. *In State vs. Sanjeev Nanda, (2012) 8 SCC 450, the Court felt constrained in reiterating the growing disturbing trend:*

*"99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get*

*away from the clutches of law thereby, eroding people's faith in the system.*

*100. This court in State of U.P. vs. Ramesh Mishra and anothyer, AIR 1996 SC 2766, held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K.Anbazhagan vs. Superintendent of Police and another, AIR 2004 SC 524, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.*

*101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), (2010) 6 SCC 1 and in Zahira Habibullah Shaikh vs. State of Gujarat, AIR 2006 SC 1367, had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked."*

40. *On the analysis of various cases, following reasons can be discerned which make witnesses retracting their statements before the Court and turning hostile:*
*"(i) Threat/intimidation.*

*(ii) Inducement by various means.*
*(iii) Use of muscle and money power by the accused.*
*(iv) Use of Stock Witnesses.*
*(v) Protracted Trials.*
*(vi) Hassles faced by the witnesses during investigation and trial.*
*(vii) Non-existence of any clear-cut legislation to check hostility of witness."*

41. *Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: "witnesses are the eyes and ears of justice". When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah's case as well.*

42. *Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:*

*"11.3 Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise…Time has come for a comprehensive law being enacted for protection of the witness and members of his family."*

43. *Almost to similar effect are the observations of Law Commission of India in its 198th Report [ Report on 'witness identity protection and witness protection programmes'], as can be seen from the following discussion therein:*

*"The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their property. It is obvious that in the case of serious offences under the Indian Penal code, 1860 and other special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under the Indian Penal Code, 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection."*

44. *Apart from the above, another significant reason for witnesses turning hostile may be what is described as 'culture of compromise'. Commenting upon such culture in rape trials, Pratiksha Bakshi : "In Justice is a Secret : Compromise in Rape Trials" has highlighted this problem in the following manner:*

*"During the trial, compromise acts as a tool in the hands of defence lawyers and the accused to pressurise complainants and victims to change their testimonies in a courtroom. Let us turn to a recent case from Agra wherein a young Dalit woman was gang-raped and the rapist let off on bail. The accused threatened to rape the victim again if she did not compromise. Nearly a year after she was raped,*

*she committed suicide. While we find that the judgment records that the victim committed suicide following the pressure to compromise, the judgment does not criminalise the pressure to compromise as criminal intimidation of the victim and her family. The normalising function of the socio-legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live.*

*In other words, I have shown how legality is actually perceived as disruptive of sociality; in this instance, a sociality that is marked by caste based patriarchies, such that compromise is actively perceived, to put it in the words of a woman judge of a district court, as a mechanism for 'restoring social relations in society'."*

45. *In this regard, two articles by Daniela Berti delve into a sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile. In one of his articles [Daniela Berti : Courts of Law and Legal Practice (pp.6-7)], he writes:*

*"For reasons that cannot be explained here, even the people who initiate a legal case may change their minds later on and pursue non-official forms of compromise or adjustment. Ethnographic observations of the cases that do make it to the criminal courtroom thus provide insight into the kinds of tensions that arise between local society and the state judicial administration. These tensions are particularly palpable when witnesses deny before the judge what they allegedly said to the police during preliminary investigations. At this very moment they often become hostile. Here I must point out that the problem of what in common law terminology is called "hostile witnesses" is, in fact, general in India and has provoked many a reaction from judges and politicians, as well as countless debates in newspaper editorials. Although this problem assumes particular relevance at high-profile, well-publicized trials, where witnesses may be politically pressured or bribed, it is a recurring everyday situation with which judges and prosecutors of any small district town are routinely faced. In many such cases, the hostile behavior results from*

*various dynamics that interfere with the trial's outcome – village or family solidarity, the sharing of the same illegal activity for which the accused has been incriminated (as in case of cannabis cultivation), political interests, family pressures, various forms of economic compensation, and so forth. Sometimes the witness becomes "hostile" simply because police records of his or her earlier testimony are plainly wrong. Judges themselves are well aware that the police do write false statements for the purpose of strengthening their cases. Though well known in judicial milieus, the dynamics just described have not yet been studied as they unfold over the course of a trial. My research suggests, however, that the witness's withdrawal from his or her previous statement is a crucial moment in the trial, one that clearly encapsulates the tensions arising between those involved in a trial and the court machinery itself."*

*"In my fieldwork experiences, witnesses become "hostile" not only when they are directly implicated in a case filed by the police, but also when they are on the side of the plaintiff's party. During the often rather long period that elapses between the police investigation and the trial itself, I often observed, the party who has lodged the complaint (and who becomes the main witness) can irreparably compromise the case with the other party by means of compensation, threat or blackmail."*

46. *Present case appears to have been stung by 'culture of compromise'. Fortunately, statement of PW-4 in attempting to shield the accused Ramesh has been proved to be false in view of the records of PGIMS, Rohtak and, therefore, we held that High Court was right in discarding his testimony."*

(Emphasis supplied)

86. We are equally astonished, as the like view expressed by the Honourable Supreme Court in the judgments cited (supra), by the conduct of PW-6 Alkabai. As recorded by us on the basis of the evidence of PW-12, Alkabai PW-6 survived only because of timely medical assistance. She is

the real sister of the deceased Sumanbai and therefore, is the real aunt of the victim Lalita (PW-5), who lost a full term girl child, who was on the verge of being delivered in this world. Despite having lost her sister and her niece having been seriously injured, who lost a baby girl, Alkabai (PW-6) has taken a somersault when her remainder cross-examination was conducted on 30.08.2019. It is apparent that she has been influenced and won over. It is often said that a step taken in the backdrop of bankruptcy of ideas leads to disaster. We clearly notice that the story, which was never ever a part of the case in hand, does not find it's source in any piece of evidence, inasmuch as, even the appellant Krishna does not put forth this version while answering question No.115 recorded under Section 313 of the Code of Criminal Procedure.

87. It is settled law that the testimony of a hostile witness has to be closely scrutinized to evaluate the reliability of his either versions. In ***Yomeshbhai Pranshankar Bhatt vs. State of Gujarat, (2011) 6 SCC 312***, the Honourable Supreme Court has held that the testimony of a hostile witness need not be discarded in its totality. The evidence of a hostile witness may contain elements of truth.

88. In ***Yomeshbhai (supra)***, it was thus concluded in paragraphs 22 and 23:-

> *"22. The learned counsel for the appellant further submitted the doctor had not given his written opinion that the deceased was fit enough to give her*

*statement. Though orally, the doctor said so. Relying on this part of the evidence especially the evidence of the husband of the deceased, the learned counsel for the appellant submitted that even though the husband may have been declared hostile, the law relating to appreciation of evidence of hostile witnesses is not to completely discard the evidence given by them. This Court has held that even the evidence given by hostile witness may contain elements of truth.*

*23. This Court has held in State of U.P. vs. Chetram and others, that merely because the witnesses have been declared hostile the entire evidence should not be brushed aside. [See SCC p.432, para 13 : AIR para 13 at page 1548]. Similar view has been expressed by a three-judge Bench of this Court in Khujji alias v. State of M.P. At SCC p.635, para 6 : AIR p.1857, para 6 of the report this Court speaking through Ahmadi, J. as His Lordship then was, after referring to various judgments of this Court laid down that just because the witness turned hostile his entire evidence should not be washed out."*

89. In ***Veer Singh and others vs. State of Uttar Pradesh, (2014) 2 SCC 455***, the Honourable Supreme Court specifically concluded that, that portion of testimony of such hostile witness in his examination-in-chief, which supports the prosecution case can be taken for consideration. If a part of the testimony of a hostile witness lends credence to the testimony of other witnesses or if such part of the testimony is corroborated by other witnesses, the said testimony can be taken into consideration in support of the case of the prosecution.

90. In ***Veer Singh (supra)***, the Honourable Supreme Court has observed in paragraphs 18 and 19 as under :-

*"18. Hazoor Singh has been examined as PW 5 and in his examination-in-chief he has stated that on the occurrence night he heard the noise of firing coupled with screaming cries from the house of Shisha Singh and Mohar Singh and he went to the house of Jassa Singh and both of them went to the house of Gurdip Singh who accompanied them by taking gun and torch and when they went near the house of Shisha Singh they saw several men and he could not identify any of them and Harbans Kaur met them there and told them that Kartar Singh and other assailants have attacked them. At this point of time he was declared hostile by the prosecution and in the cross-examination he stated that Gurdip Singh had lodged the complaint about the occurrence in the Police Station and when Harbans Kaur narrated the occurrence, he was also present at the place and on the request of Harbans Kaur he went to the tubewell and found Shisha Singh and Mohar Singh lying dead and he informed Harbans Kaur about the same and she became unconscious.*

*19. It is settled law that the testimony of the hostile witness need not be discarded in toto and that portion of testimony in the chief-examination which supports the prosecution case can be taken for consideration. In the present case, in the examination-in-chief itself PW 5 Hazoor Singh has admitted about his going to -the place of occurrence along with Gurdip Singh and Jaswant Singh on hearing the noise of firing and cries emanating from the house of Shisha Singh and Mohar Singh and the narration of the occurrence by Harbans Kaur to them which led to lodging of the complaint. The above testimony of PW 5 lends credence to the testimony of PW 4."*

(Emphasis supplied)

91. As such, in the light of the law applicable, we have no hesitation in forming a view that the examination-in-chief and the part cross-examination of Alkabai (PW-6) recorded on 12.08.2018, is

corroborated by the testimony of PW-4 Akash and PW-5 Lalita. We have also arrived at a firm conclusion, in order to send out a message in loud and clear words to such unscrupulous witness, that legal action needs to be initiated against glaring cases of hostile witness.

92. Rukhmanbai Rambhau Ade (PW-2) deposed that "*Two and half year ago on 25th day I was at civil hospital, Ambad. I saw dead body of Sumanbai in that hospital. I saw bleeding injury on her waist towards left side. There was red colour saree on her person. Police prepared inquest panchanama in my presence. Now, the inquest panchanama is shown to me. It bears my thumb impression. The contents are true and correct. It is at Exhibit 14."* The learned Senior Counsel has vehemently stated that the inquest panchanama Exhibit-14 was drawn on 25.10.2015 at the Government Hospital, Jalna in between 08:05 to 09:00 AM. He, therefore, submits that PW-2 is lying and her testimony deserves to be discarded.

93. We cannot ignore that PW-2 was examined after two and half years of the incident on 26.02.2018. Being a villager and an illiterate lady, her memory must have got jumbled up. The inquest panchanama was indeed prepared on 25.10.2015 at the Government Hospital, Jalna. The thumb impression of PW-2 along with another witness Janardhan, would indicate that PW-2 was present there and due to passage of time, may

have got jumbled up in between the Civil Hospital, Ambad and the Civil Hospital, Jalna. That does not demolish her testimony.

94. Tukaram Gopichand Pawar (PW-1) was the panch witness along with Subhash Ade. Both were called to the Ambad Police Station as per the testimony of PW-1 on 24.10.2015. They both went to Jalna-Shahgad road near R.K. Automobiles Shop at Ambad. They saw blood stained soil and a blue colour sock (one piece of a pair of socks, which was also blood stained. PW-1 has stated in his deposition that the soil as well as the sock was seized by the Police and the panchanama was drawn. He perused the spot panchanama (exhibit 12) dated 24.10.2015 and identified it's contents and his signature at Sr.No.1. In his cross-examination, he stated that the complainant Akash (PW-4) is the son of his cousin sister. He denied that he had put his signature upon a ready-made panchanama without knowing it's contents.

95. We have perused the Chemical Analyzer's report and noticed that the soil sample, though was blood stained, labeled exhibit-5, rendered the blood test inconclusive. The single piece of sock labeled exhibit-7 revealed that the blood was of group "B", which is of Lalita (PW-5). The deposition of PW-1 is, therefore, corroborated by the spot panchanama which bears his signature and the C.A. report indicating the blood group on the sock being "B".

96. Insofar as the hostile witnesses are concerned, we have perused the deposition of Subhash Jadhav (PW-7). He was the panch witness with regard to the seizure of the clothes of the appellant Krishna. He stated that his signature was obtained upon the ready-made panchanama. When declared hostile and cross-examined by the prosecution, he truthfully stated that he can identify the knife as well as the clothes of the appellant Krishna, though he had earlier stated that he had not seen the blood stains on the clothes or the knife. He also tried to falsify the case of the prosecution by saying that Krishna was physically searched and a blood stained knife was found on his person. He tried to cover up in his cross-examination by saying that he had not seen the knife and clothes at all and hence, he cannot describe them.

97. Similar to PW-7, PW-9 Ramesh Prabhu Chavan, panch witness to the seizure of the clothes of the appellant Krishna, turned hostile. He admitted that he was along with PW-7 and both were panch witnesses. He denied that the appellant Krishna was physically searched and the knife was recovered from him. Coincidentally, he also stated that he can identify the knife as well as the clothes if they are shown to him and then tried to cover up in his cross-examination by the defence advocate stating that he did not see the knife and clothes at all. We find that the entire testimony of PW-7 and PW-9 is “word to word” identical and there is no change even of a comma or a full stop in Exhibit-34 and Exhibit-46.

98. In the matter of the ***State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda, (2012) 8 SCC 450***, dealing with hostile witnesses, the Honourable Supreme Court has concluded in paragraphs 98 to 101 as under :-

> *"98. We notice, in the instant case, the key prosecution witnesses PW1 – Harishankar, PW2 – Manoj Malik, PW3 – Sunil Kulkarni turned hostile. Even though the above mentioned witnesses turned hostile and Sunil Kulkarni was later examined as court witness, when we read their evidence with the evidence of others as disclosed and expert evidence, the guilt of the accused had been clearly established. In R.K. Anand, the unholy alliance of Sunil Kulkarni with the defence counsel had been adversely commented upon and this Court also noticed that the damage they had tried to cause was far more serious than any other prosecution witness.*
>
> *99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people's faith in the system.*
>
> *100. This court in State of U.P. v. Ramesh Prasad Misra, AIR 1996 SC 2766, held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K.Anbazhagan v. Superintendent of Police, [AIR 2004 SC 524], this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be*

*creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.*

*101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1] and in Zahira Habibullah Sheikh v. State of Gujarat, [AIR 2006 SC 1367] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked."*

(Emphasis supplied)

99. In dealing with the cases in which the panch witnesses are found to be frequently turning hostile, the Honourable Supreme Court has recently held in ***Mallikarjun and others vs. State of Karnataka, (2019) 8 SCC 359***, in paragraph 23 as under :-

*"23. As pointed out earlier, based on the disclosure statement of accused No.1, MO-1-dagger which was kept hidden in the haystack of fodder in the loft of the cattle shed behind the house of accused No.1 had been seized under Ex.-P9-Panchnama in the presence of panch witnesses PW-8-Chandrappa and PW-9-Mahadevappa Needgera. The said panch witnesses have not supported the prosecution case and turned hostile. MO-2-dagger and MO-3-handle of the axe were recovered from the scene of occurrence under Ex.-P7-spot panchnama. On behalf of the accused, learned*

*senior counsel contended that the evidence of PW-17-PSI as to the recovery of MO-1-dagger at the behest of accused No.1 is doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO-1-dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the Investigating Officer can be relied upon to prove the recovery even when the panch witnesses turned hostile. In Rameshbhai Mohanbhai Koli v. State of Gujarat, (2011) 11 SCC 111, it was held as under:- (SCC pp.121-22, paras 33-35)*

*"33. In Modan Singh v. State of Rajasthan, (1978) 4 SCC 435), it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in Mohd. Aslam v. State of Maharashtra, (2001) 9 SCC 362.*

*34. In Anter Singh v. State of Rajasthan, (2004) 10 SCC 657, it was further held that: (SCC p. 661, para 10)*

*"10. … even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated."*

*35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide Modan Singh case, Krishna Gopal case and Anter Singh case.)"*

*PW-17-PSI has clearly spoken about the recovery of MO-1- dagger at the behest of accused No.1 and MO-2-dagger and MO-3-handle of the axe from the scene of occurrence and his evidence cannot be discarded merely because panch witnesses have turned hostile."*

100. It has been held by the Honourable Supreme Court in paragraphs 15 and 16 in ***Bhagwan Dass vs. State (NCT of Delhi), (2011) 6 SCC 396***, as under :-

> *"15. The mother of the accused, Smt. Dhillo Devi stated before the police that her son (the accused) had told her that he had killed Seema. No doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. Smt. Dhillo Devi also appeared as a witness before the trial court, and in her cross examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed Seema. On being so confronted with her statement to the police she denied that she had made such statement.*
>
> *16. We are of the opinion that the statement of Smt. Dhillo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor. When she was confronted with this statement in the court she denied that she had made such statement before the police. We are of the opinion that her statement to the police can be taken into consideration in view of the proviso of Section 162(1) Cr.PC."*

101. With regard to often repeated submissions and insistence of the defence counsel that the witness should not be related to the victims, it was held in the ***State of Rajasthan v. Teja Ram, (1999) 3 SCC 507***, in paragraph 20 as under :-

> *"20. ….. "The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house, the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such a person as a prosecution wit- ness. Otherwise, merely on surmises the court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also."*

102. Taking into account the entire evidence before us, we are of the view that the testimony of PW-4 Akash cannot be casually discarded merely because he did not stay overnight in the hospital and visited the injured persons on the next day. The Trial Court overlooked the fact that the funeral of Sumanbai, mother of Akash, was also performed and being a son, it was not unusual that he did not visit his sister to find out the health status of the foetus, since he was required elsewhere. The Trial Court should have been conscious to such realities and the conduct of Akash was not so gross so as to conclude that he has been a manufactured witness when all three ladies, including PW-6 Alka, who turned hostile subsequently, have stated that Akash was along with them since they

started from their village to come to Ambad and Lalita was conscious when he reached the spot.

103. The learned counsel for the appellant Krishna has strenuously canvassed that the failure on the part of the Investigating Officer/ Prosecution in examining the independent witnesses, is fatal to the case of the prosecution. Reliance has been placed on the judgment delivered by the Honourable Supreme Court in ***Deepak Kumar vs. Ravi Virmani and another, (2002) 2 SCC 737***. We do appreciate that the I.O./ prosecution could have examined Ashok with whom Akash had left for the Tehsil Office. Similarly, Kailas, who had called Akash on his cellphone, could also have been examined by the prosecution. Nevertheless, their non examination would not demolish the case of the prosecution since PW-5 Lalita, wife of the appellant / Krishna and the surviving eyewitness has strongly supported the case of the prosecution and has also withstood the cross-examination. So also, the deposition of Alka as recorded on 12.10.2018 when she firmly supported the case of the prosecution and turned hostile in her further cross-examination recorded after more than ten months, sufficiently prove the offences committed by the appellant / Krishna. In addition thereto, the testimony of Akash also establishes the guilt of the appellant. As such, the view taken by the Honourable Supreme Court, in the facts and circumstances in ***Deepak Kumar (supra),*** would not apply to the case in hand.

104. The contention of the learned counsel for the appellant, by placing reliance upon paragraph 21 of ***Parminder Kaur @ P.P. Kaur @ Soni vs. State of Punjab, Criminal Appeal No.283/2011 (Supreme Court) decided on 28.07.2020***, would not assist his case. We have perused each question put forth by the Trial Court under Section 313 of the Code of Criminal Procedure (118 questions) after going through the evidence of all 14 witnesses, threadbare. We do not find any ground/ charge or piece of evidence recorded by the Trial Court, having not been put to the accused. The learned counsel for the appellant / Krishna has merely made a submission by placing reliance upon paragraph 21 of ***Parminder Kaur (supra)*** without specifically pointing out any such feature or aspect of the evidence recorded before the Trial Court that can be said to have not been put to the appellant under Section 313.

105. Though it has not been canvassed by the learned counsel for the appellant, we have visited Section 304 of the Indian Penal Code and we find that the acts committed by the appellant Krishna would not fall in either parts of Section 304. Hence, we are of the considered view that the Trial Court has rightly convicted the appellant Krishna Sitaram Pawar under Section 235(1) of the Code of Criminal Procedure for having committed the offence punishable under Section 302 of the Indian Penal Code, having caused the death of Sumanbai. Pursuant to our conclusion that the appellant / Krishna had murdered Sumanbai and had stabbed

Lalita, we find that the conclusion of the Trial Court in paragraph 28 of it's judgment to the following extent is unsustainable in law:-

> *"As far as another lady Alka Rathod is concerned, she turned hostile by saying that, she could not identify the accused. Therefore, as far as Alka is concerned, neither offence under Section 307 nor offence under Section 324 is proved."*

106. The above reproduced conclusion of the Trial Court is unsustainable, for reasons more than one. Firstly, when the Trial Court has come to a conclusion that the appellant Krishna was the person who stabbed Lalita and Sumanbai, even if Alka turned hostile, her examination-in-chief and her first part of the cross-examination could certainly be utilized in the light of the corroborative evidence. Secondly, the evidence sufficient to prove the offence committed by Krishna, clearly indicates that it was an act committed by him of stabbing Lalita, Sumanbai and Alka. We are, therefore, of the firm view that the appellant Krishna was the person who had stabbed the three ladies, which act he committed around 02:00 PM on 24.10.2015. The charge of having stabbed Alka, as a matter of fact, is also proved. However, considering Section 378 of the Code of Criminal Procedure, we cannot conclude that the offence insofar as the assault on Alka is proved under Sections 307 and 324 of the Indian Penal Code, since the State has not preferred an appeal. We hold that the appellant Krishna was rightly convicted for causing the death of the quick

born child punishable under Section 316 of the Indian Penal Code. The sentences as awarded by the Trial Court with regard to the offences punishable under Sections 307 and 316 are maintained.

(VIII) WHETHER, THIS CASE WOULD AMOUNT TO BEING A RAREST OF RARE CASE?

107. The learned APP, while seeking confirmation of the death sentence awarded by the Trial Court, has placed reliance upon the judgment delivered by the Honourable Supreme Court (five judges Bench) in the matter of ***Bachan Singh vs. State of Punjab, AIR 1980 SC 898*** and contended that when an accused commits a heinous and inhuman crime, which would the shock judicial conscience of the Court, the maximum punishment of hanging by the neck until dead, is warranted.

108. The learned counsel for the appellant / Krishna submits that Krishna is innocent and has been framed. So also, even if it is presumed that he has committed the said crime, the offences may have been committed by a frustrated man, who was keen to have his wife in his company and was irritated due to his rejection by his wife, her mother and her brother Akash. The learned APP submits that the appellant had two wives. On the one hand, he was physically violent with the second wife and on the other hand, was begging her to return in his company.

109. We cannot ignore the fact, in view of our conclusions, that the appellant Krishna had two wives. He is said to have ill treated his second wife PW-5 Lalita. Whether, he was unfair to his first wife, has not come on record. He had approached his wife PW-5 and mother-in-law by visiting their residence. While being at their door step early morning at 07:30 AM on the fateful day 24.10.2015, he was returned empty handed and humiliated with the dictate that he should bring his parents along with him to Ambad and both the families would discuss and resolve the issue. This seems to have hurt his ego having been insulted. These thoughts may have been carried by him in his mind and as a consequence of which, he returned with a knife with the intention of teaching a lesson to his wife and his mother-in-law.

110. In ***Paras Ram vs. State of Punjab, 1981 (2) SCC 508***, the Honourable Supreme Court noted that Paras Ram was a fanatic devotee of the Devi and in one of his morning bhajjans, as he reached the crescendo, he ceremonially beheaded his four year old son. Justice V.R. Krishna Iyer, speaking for the Bench, and while confirming the death sentence, has observed as under:-

> "*The poignantly pathological grip of macabre superstitions on some crude Indian minds in the shape of desire to do human and animal sacrifice, in defiance of the scientific ethos of our cultural heritage and the scientific impact of our technological century, shows up in crimes of primitive horror such as the one we are dealing with now, where a blood-curdling*

> *butchery of one's own beloved son was perpetrated, aided by other "pious" criminals, to propitiate some blood-thirsty deity. Secular India, speaking through the Court, must administer shock therapy to such anti-social "piety", when the manifestation is in terms of inhuman and criminal violence. When the disease is social, deterrence through court sentence must, perforce, operate through the individual culprit coming up before court. Social justice has many facets and Judges have a sensitive, secular and civilising role in suppressing grievous injustice to humanist values by inflicting condign punishment on dangerous deviants."*

111. In ***Ediga Anamma vs. State of Andhra Pradesh, 1974 (4) SCC 443***, Justice V.R.Krishna Iyer, speaking for the Bench, observed that deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime. It was further observed that horrendous features of the crime and the hapless and helpless state of the victim, steel the heart of law for the sterner sentence.

112. In ***Charles Sobraj vs. Superintendent, Central Jail, Tihar, New Delhi, 1978 (4) SCC 104***, Justice V.R. Krishna Iyer, speaking for the Bench, reiterated that deterrence was one of the vital considerations of punishment.

113. In ***Bachan Singh (supra)***, the Honourable Supreme Court referred to the William Henry Furman Vs. State of Georgia case, (Supreme Court of United States), wherein, Stewart, J. took the view that the death penalty serves a deterrent as well as retributive purpose. In his view,

certain criminal conduct is so atrocious that the society's interest in deterrence and retribution wholly outweighs any consideration of reform or rehabilitation of the perpetrator and that, despite the inconclusive empirical evidence, only penalty of death will provide maximum deterrence. It was observed in paragraphs 196, 197 and 198 as under :-

> *"196. We will first notice some of the aggravating circumstances which, in the absence of any mitigating circumstances, have been regarded as an indication for imposition of the extreme penalty.*
>
> *197. Pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. In Jagmohan, it was reiterated by this Court that if a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by V.R.Krishna Iyer, J., speaking for the Bench, in Ediga Anamma, in these terms:*
>
> *"The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence."*
>
> *198. It may be noted that this indicator for imposing the death sentence was crystallised in that case after paying due regard to the shift in legislative policy embodied in Section 354(3) of the Code of Criminal Procedure, 1973, although on the date of that decision (February 11, 1974), this provision had not come into force. In Paras Ram's case, also, to which a reference has been made earlier, it was emphatically stated that a person who in a fit of anti-social piety commits "blood-curdling butchery" of his child, fully deserves to be punished with death. In Rajendra Prasad, however, the majority (of 2:1) has completely reversed the view that had been taken in Ediga Anamma, regarding the application of Section 354(3) on this point. According to it, after the enactment of Section 354(3) 'murder most foul' is not the test. The shocking nature of the*

*crime or the number of murders committed is also not the criterion. It was said that the focus has now completely shifted from the crime to the criminal. "Special reasons" necessary for imposing death penalty "must relate not to the crime as such but to the criminal".*

114. In paragraphs 204 and 205 in the ***Bachan Singh's*** case (supra), it was observed as under:-

*"204. Dr. Chitaley has suggested these mitigating factors:*

*"Mitigating circumstances: In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:*

*(1) That the offence was committed under the influence of extreme mental or emotional disturbance.*

*(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.*

*(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*

*(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.*

*(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.*

*(6) That the accused acted under the duress or domination of another person.*

*(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."*

*205. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States of*

> *India, there are in force special enactments, according to which a 'child', that is, 'a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children."*

115. In ***Mofil Khan and another vs. State of Jharkhand, 2015 (3) SCC (cri) 556***, the Honourable Supreme Court has noted in paragraphs 54 to 64 as under :-

> *"54. Having considered the case laws relied on by the learned amicus, we would now revert back to the factual situation of this case. In the instant case, the time, place and manner of the commission of crime are indicative of the motive of the appellant-accused. The appellant-accused have ruthlessly and successively butchered their own kith and kin for obtaining possession of certain passbook, money and immovable property without any provocation. They chose a day when most of the residents of the village including PW 1 had gone out to attend a wedding at an adjacent village and ensured that their despicable act did not suffer any resistance from them. At first, they entered the mosque where the deceased was offering namaz and indiscriminately attacked him with the sword and bhujali. Thereafter, they proceeded towards his house and slew the deceased's two sons, Gufran Khan and Imran Khan, who had come out of the house on hearing their father's cries for help. Committed to their premeditated object, the appellant-accused forced themselves into the deceased's house and killed Kasuman Bibi and her four minor children including a physically disabled child. Being armed with sharp-edged weapons such as sword, tangi, bhujali and spade, the quick succession with which the appellant-accused proceeded to slaughter the eight members of their family classifies*

*their act as pre-planned and reflects the cold-blooded fashion with which the callous design was executed.*

55. *The accused-appellants in their unquenched thirst for land and money extirpated eight innocent lives. The soured relations between the brothers did not restrict them from eliminating the family of Haneef Khan, thereby killing his two young sons, his wife and his four minor sons aged 5, 8, 12 and 18 approximately, respectively, one of whom was physically disabled. Their lack of remorse is reflected from the act of extending threat of life to other members of the family present in the house should they dare to inform the police.*

56. *It is heart-wrenching to fathom the plight of an old mother who witnessed her own sons kill their brother and his family. PW 2, the sole eyewitness, despite being the mother of both the appellant-accused has supported the prosecution case and testified against them. Her testimony has been unassailed, corroborated by her statement under Section 164 of the Code and other witness to the incident. No oblique motive has surfaced from the record which would impregnate her statement with suspicion against her own sons. Usually a brother, a sister or a parent who has seen the commission of crime, may resile in the court from a statement recorded during the course of investigation. It happens instinctively, out of natural love and affection, not out of persuasion by the accused person. The witness has an obvious stake in the innocence of the accused and therefore tries to save him from the guilt. Here, PW 2 has not only come forward by testifying for the prosecution but has also stood unshaken by the family ties in her tryst for justice to the slain half of her family. It would be the paramount duty of the court to provide justice to the incidental victims of the crime—the family members of the deceased persons. Therefore, appropriate and proportional sentence requires to be imposed. On one hand, such sentencing would demonstrate respect to those most personally affected by the grief and horror of murder, on the other it would also be in accordance with the goals of the victims' rights and the principles of restorative justice.*

*57. In Dhananjoy Chatterjee @ Dhanna v. State of West Bengal, 1994 (1) R.C.R. (Criminal) 429 : (1994) 2 SCC 220, this Court has observed that the measure of punishment in a given case depends upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Further that imposition of the appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminal and justice demands that court should impose such punishment which reflects public abhorrence of the crime. This Court highlighted the court's duty to view the rights of the victims of crime and the society while considering imposition of appropriate punishment.*

*58. In Rattan Singh vs. State of Punjab, (1979) 4 SCC 719, this Court lamenting the unfortunate state of victims' right to protection in India observed that "it is a weakness of our jurisprudence that the victims of the crime and the distress of the dependents of the prisoner, do not attract the attention of the law. In fact, the victim reparation is still the vanishing point of our law. This is the deficiency in the system which must be rectified by the legislature."*

*59. In the context of these turbulent social times, we cannot remain oblivious to the substantial suffering of the victims. It stands as a fact that criminal justice reform and civil rights movement in India has historically only paid considerable attention to the rights of the accused and neglected to address to the same extent the impact of crime on the victims. It is not only the victims of crime only that require soothing balm, but also the incidental victims like the family, the co-sufferers and to a relatively large extent the society too. The judiciary has a paramount duty to safeguard the rights of the victims as diligently as those of the perpetrators.*

*60. In Mahesh v. State of Madhya Pradesh, (1987) 3 SCC 80, this Court has deprecated the lenient approach in imposition of the appropriate punishment and observed that it would be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with clear evidence and diabolic acts. This Court held that to award the lesser punishment*

*would be to render the justice system of this country suspect due to which the common man would lose faith in courts. This Court approved the harshest punishment in such cases as here adopting the approach that the accused understands and the society appreciates the language of deterrence more than the reformative jargon.*

61. *In Sevaka Perumal v. State of T.N., 1991 (2) R.C.R. (Criminal) 427 : (1991) 3 SCC 471, this Court stated that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law. Society could not long endure under such serious threats and therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.*

62. *In the instant case, the mitigating circumstances under which the appellants seek refuge have failed to convince us. The age of the appellants is not a relevant circumstance in the present case. They were middle aged at the time of commission of the offence and their faculties were ripe enough to comprehend the implications of their actions and therefore, do not warrant pardon of this Court. Secondly, the circumstance that the appellants have a family and old aged parents, etc. does not convince us, especially in the light of the fact that the parents themselves have testified against the appellant's act of uprooting their brother's family and their utter disregard for blood relations. Thirdly, the mere fact that some of the accused persons of young age have been awarded a lesser sentence than death sentence cannot be made a ground for commuting the sentence of death to imprisonment for life. The manner in which the crime was committed on the helpless members of a family including children of tender age and child with locomotive disability and design of the appellant-accused to eliminate the whole family justifies the grant of death sentence. Lastly, the manner of the commission of crime, the diabolic murder of the young and innocent children of deceased Haneef Khan for property and choice of the day of commission of*

*crime by the appellants belittles the argument with respect to possibility of reformation of the appellants and their possible rehabilitation.*

*63. In our considered view, the "rarest of the rare" case exists when an accused would be a menace, threat and antithetical to harmony in the society. Especially in cases where an accused does not act on provocation, acting on the spur of the moment but meticulously executes a deliberately planned crime in spite of understanding the probable consequence of his act, the death sentence may be the most appropriate punishment. We are mindful that criminal law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. Keeping in view the said principle of proportionality of sentence or what it termed as "just deserts" for the vile act of slaughtering eight lives including four innocent minors and a physically infirm child whereby an entire family is exterminated, we cannot resist from concluding that the depravity of the appellants' offence would attract no lesser sentence than the death penalty.*

*64. In the result, we are in agreement with the reasons recorded by the trial court and approved by the High Court while awarding and confirming the death sentence of the appellant-accused. In our considered view, the judgment(s) and order(s) passed by the courts below does not suffer from any error whatsoever."*

116. In ***Amrik Singh vs. State of Punjab, 1988 (Supp) SCC 685***, the Honourable Supreme Court has concluded in paragraph 2 as under:-

"*2. While confirming the death sentence passed on the appellant on his conviction on two counts under Section 302 of the Indian Penal Code, 1860 for having committed the double murder of the deceased Tarlok Chand and of his neighbour Bahal Singh by successively stabbing them on the chest with a knife, the "special reason" recorded by the*

> *High Court as enjoined by Section 354 of the Code of Criminal Procedure, 1973 is that they were brutal murders executed in cold blood and therefore the appropriate sentence was one of death. We are inclined to share the view expressed by the learned Judges but we are bound by the rule laid down by this Court in Bachan Singh v. State of Punjab where a Constitution Bench of this Court moved by compassionate sentiments of human feelings has ruled that sentence of death should not be passed except in "rarest of the rare" cases, except to the extent that the situation has been retrieved by a three-Judge Bench in Machhi Singh v. State of Punjab (1983 3 SCC 470) indicating the types of cases where a sentence of death may be imposed. We had indicated in Earabhadrappa alias Krishnappa v. State of Karnataka (1983 2 SCC 330 ) that the unfortunate result of the decision in Bachan Singh case is that capital punishment is seldom employed even though it may be a crime against the society and the brutality of the crime shocks the judicial conscience. We wish to reiterate that a sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law, and even at the cost of repetition we wish to stress the following observations made in that case: [SCC p. 341, SCC (Cri) p. 458, para 14]*
>
> *"A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders. Failure to impose a death sentence in such grave cases where it is a crime against, the society— particularly in cases of murders committed with extreme brutality — will bring to naught the sentence of death provided by Section 302 of the Indian Penal Code."*

117. It was thus, held in ***Amrik Singh (supra)*** that if the test laid down in ***Bachan Singh (supra)*** is not fulfilled, the sentence of death needs to be commuted.

118. In ***Shankar Kisanrao Khade vs. The State of Maharashtra, (2013) 5 SCC 546***, the Honourable Supreme Court concluded that the three tests viz. crime test, criminal test and rarest of rare test must be applied and not the balancing test i.e. balancing of aggravating and mitigating circumstances. It was further held that the R-R test must be based on perception, i.e. society-centric and must not be judge-centric. Special reasons are required to be recorded for awarding the death sentence. Special reasons are not required to be recorded for awarding life imprisonment. Having young children is held to be not a mitigating circumstance. The manner in which the murders are committed, should shock the judicial conscience of the Court. The nature, motive, impact of the crime, culpability, quality of evidence, socio-economic circumstances and impossibility of rehabilitation are some of the factors which the Court may take into consideration while dealing with such cases.

119. In ***Ishwari Lal Yadav and another vs. State of Chhatisgarh, (2019) 10 SCC 423***, the Honourable Supreme Court recorded the manner in which the tantrik husband and wife had gruesomely murdered a two year old boy as human sacrifice by severing his head and by cutting his tongue and cheeks. It was held that the accused did not possess basic humanness, they completely lack the psyche mindset which can be amenable for any reformation and they were convicted previously for similar offences, that the death sentence as was modified by the High

Court into imprisonment for life without any remission or parole, was confirmed by the Honourable Supreme Court.

120. In the case in hand, we are of the view that though the appellant Krishna had planned to attack his wife and mother-in-law, it appears to us that it was only a coincidence that the sister of his mother-in-law, Alkabai (PW-6) had also accompanied his wife Lalita and his mother-in-law (deceased Sumanbai). On seeing all three together and owing to the anger that he carried in his head, he may have overcome his sense of reason which led to his stabbing the three ladies with a single weapon. We cannot ignore that this brutal attack resulted in the death of a woman in her mid forties and a child who was about to see her first day on earth. No doubt, the crime is heinous and condemnable. However, we do not find that the appellant Krishna has committed a barbaric and cold blooded act and has not attacked the ladies with such ferocity and brutality, that it would send shivers down the spine of a man, sufficient for demanding that such an appellant deserves to be deprived of his life, not only to punish him, but to deter such murders.

121. In view of the above, we partly allow Criminal Appeal No.398/2020 filed by the appellant Krishna and we pass the following order:-

(a) The appellant Krishna Sitaram Pawar is hereby convicted under Section 235 of the Code of Criminal Procedure for

having committed the offence of murdering Sumanbai, punishable under Section 302 of the Indian Penal Code and shall be sentenced to suffer "rigorous imprisonment for life" and also pay fine of Rs.1,000/- (Rupees One Thousand), in default of payment, to undergo rigorous imprisonment for six months.

(b) The appellant Krishna Sitaram Pawar is also convicted under Section 235 of the Code of Criminal Procedure for having committed the offence of attempting to murder Lalita, punishable under Section 307 of the Indian Penal Code and is sentenced to suffer life imprisonment and also pay fine of Rs.1,000/- (Rupees One Thousand), in default of payment, to undergo rigorous imprisonment for six months.

(c) The conviction and sentence set out in clause (3) of the impugned order in relation to the death of the quick born child, is maintained.

(d) Acquittal granted vide clause (4) of the impugned order for offences punishable under Sections 324 and 498-A of the Indian Penal Code, is maintained.

(e) All sentences shall run concurrently.

(f) The directions set out in paragraphs 6 and 7 of the impugned order are maintained.

(g) The record and proceedings in Sessions Case No.26/2016 shall be returned to the Trial Court at Jalna.

122. We, accordingly, dispose of Criminal Confirmation Case No.02/2020.

123. Before we part with this matter, we need to record our strong displeasure as regards the efforts put in by the PW-14 Investigating Officer Mr.Rameshwar Khanan, as well as the prosecution. When they could have examined (a) Ashok, with whom Akash travelled to the Tehsil Office, (b) Kailas, who had actually seen the appellant Krishna arriving with a knife and attacking the three ladies and (c) anyone amongst Sakhubai/ Prakash/ Sunil, who had accompanied Akash while taking the three injured women to the Civil Hospital, the prosecution has faltered only on account of casualness and lack of sensitivity. Though the failure on the part of the I.O. and the prosecution in examining Ashok, Kailas and one amongst the three, did not affect the case of the prosecution in view of the evidence available, the examination of these three persons would have lent further strength to it's case.

(IX) CONDUCT OF PW-6 ALKABAI, PW-7 SUBHASH LALSINGH JADHAV, PW-9 RAMESH PRABHU CHAVAN AND PW-10 SHRIRAM RAMSINGH JADHAV

124. For the reasons recorded herein above, we have formed a view that these four witnesses, who have turned hostile, need to be dealt with by following the due process of law.

125. In ***Ramji Duda Makwana vs. The State of Maharashtra, 1994 Cri.L.J. 1987 (Bombay High Court)***, the learned Division Bench of this Court held in paragraphs 10 and 28 as under :-

> *"10. We do not need to speculate as to how and under what circumstances this unfortunate situation of panchas turning hostile has been arising in not only this but in several other cases because we are not prepared to accept the contention that the Police have been guilty of wholesale fabrication of documents and that the pancha when he has turned hostile and given evidence to the effect that he was asked to sign blank documents is telling the truth. It is quite obvious that something has happened and it is not difficult for us to conclude what this is, because of the simple inference that there can be only one beneficiary from the pancha turning hostile or disappearing. There will have to be some serious corrective steps taken in cases of this type and as a starter, it will be necessary to take appropriate action as provided by law against PWs 2 and 3 who have obviously given false evidence on oath. Unless the Court adopts such drastic and corrective steps the unfortunate drama that has been enacted in this case will continue unabated. The Registrar of this Court shall accordingly issue notice to the two Panchas, returnable after 15 days, to show-cause as to why they should not be prosecuted for perjury and giving false evidence on oath. The trial Courts shall not hesitate to take action along similar lines so that these corrupt practices are stopped and not permitted to make a mockery of serious judicial proceedings."*
>
> *"28. We had occasion in the earlier part of this judgment to observe that this Court cannot close its eyes or continue to be a mere spectator in a situation where in case after case the panchas are either tampered with, disappear or*

> *turn hostile. In such a situation, to our mind, unless stringent action is taken, the position would go from bad to worse. The Legislature has made specific provisions for rigorous punishment in order to curb the social menace of drug possession and drug trafficking and it is the equal duty of the Courts to enforce with a very strong hand the provisions of law. Under these circumstances, it would be very essential that in those of the cases where panchas are found to retract from their statements and if they are bold enough to give false evidence on oath, show cause notice be served forthwith on them to show cause as to why they should not be prosecuted for perjury. In the present case, PWs 2 and 4 have been bold enough to come forward and give false evidence on oath. If they have been influenced or if they have done so in order to oblige the defence, they will have to face the consequences of the same. We, therefore, direct that the Trial Courts shall in all such cases hereinafter where the material so warrants take appropriate action according to law including a prosecution for perjury against persons indulging in conduct of this type. There can be little doubt that wherever this happens it is at the instance of the accused, and the action shall therefore include the accused and such other persons who may come to the notice of the Court for having indulged in or abetted such a corrupt practice."*

126. We are, therefore, directing the learned Additional Sessions Judge, Jalna to issue notice to these four hostile witnesses under Section 340 of the Code of Criminal Procedure and follow the due procedure of law in dealing with their glaring acts of turning hostile thereby, committing perjury.

127. We direct the learned Registrar (Judicial) of this Court, to circulate this judgment to all the learned Principal District Judges to

apprise all learned Judges about the law laid down in ***Sanjeev Nanda (supra)*** and ***Ramji Duda Makwana (supra)*** while dealing with hostile witnesses.

**(B. U. DEBADWAR, J.)** **(RAVINDRA V. GHUGE, J.)**

(Kalyan Sangvikar, PA)