
(2015) 07 BOM CK 0211
In the Bombay High Court
Case No : Criminal Appeal No. 14 of 2012

Girish	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 302, 306, 309

Citation : (2015) 3 BomCR(Cri) 624

Hon'ble Judges : S.S. Shinde, J; A.I.S. Cheema, J

Bench : Division Bench

Advocate : Joydeep Chatterji, Advocate assisted by Shilpa L. Awchar, for the Appellant; M.M. Nerlikar, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J—This Appeal has been filed by the appellant [original accused], challenging the Judgment and Order dated 06.11.2008 passed by the Ad-hoc District Judge-1 & Additional Sessions Judge, Jalgaon in Sessions Case No. 179/2005, thereby convicting the appellant - original accused for the offence punishable under Sections 302 and 309 of I.P. Code and sentencing him to suffer imprisonment for life and pay a fine of Rs. 5,000/-, in default, R.I. for 3 months, and S.I. of one Year and fine of Rs. 500/- in default S.I. for one month, respectively.

2. Facts giving rise to the prosecution case, in brief, are that, accused Dr. Girish Vasant Kolhe, was residing in Bendale Nagar, Area of Jalgaon, in a house namely "Gujnan", along with his wife, Jayashri, two sons namely Bhushan and Vinit, as well as his parents. The accused Dr. Girish Kolhe is a Medical Practitioner, running Dispensary in Hudco Colony. His wife deceased Jayshri was also Medical Practitioner. Both of them were leading their marital life happily.

3. That, as usual on 20.07.2005, the parents as well as wife Jayshri of the accused were present at home for whole day. His sons Bhushan and Vinit went to

school and returned at about 12.00 noon. Accused Girish also came back to home from Dispensary at about 1.00 p.m. Thereafter, he has taken lunch and on taking rest, again went to his Dispensary at 4.30 p.m. and came back to home at about 9.00 to 9.30 p.m. Thereafter, all family members have taken dinner in the hall of their house seeing television. Then accused Girish has taken home work of his sons and Jayshri was doing morning school preparation of her sons. Then, at about 11.00 p.m., the parents of accused Girish went to their bedroom whereas accused, his wife Jayshri and sons went to sleep in their bed-room.

4. On 21.06.2005, at about 6.00 a.m., mother of the accused Vimalbai awoke from sleep and went towards the bedroom of the accused. That time it was found closed, hence, she gave a call. However, as there was no response, therefore, she gave push to the door and it was opened as was not closed from inside. She was shocked by seeing the scene in side the bed room of accused. She found dead bodies of Jayshri, Bhushan and Vinit lying in the pool of blood upon the bed, whereas accused Girish was lying unconscious on the floor of the bed. Therefore, she raised shouts, hence, her husband i.e. father of the accused Girish, rushed towards her, and he was also frightened, when he saw the above said scene. Both of them started crying, therefore, neighbourers rushed to the spot to see what was the matter. Somebody out of them called Dr. Udaysing Patil, residing near the house of accused. Therefore, he immediately rushed to the spot and examined the accused Girish as well as wife Jayshri and sons found dead.

5. On receipt of information from some persons, Police Inspector Mr. Y.D. Patil came to the spot, saw the scene in the bed room of the accused and made an inquiry with father of accused Girish namely Vasant Kolhe about incident. That time as accused was unconscious, Dr. Udaysing Patil had taken him in Civil Hospital, Jalgaon. Thereafter, Police Inspector, Mr. Y.D. Patil by directing two Police Constables to keep watch on the spot, went to Civil Hospital, Jalgaon. That time accused Girish was admitted in Emergency Ward. He had inquired from the concerned Doctor about his condition and as the concerned Medical Officer declared that, the patient is in a condition to give statement, Police Inspector, Mr. Y.D. Patil has recorded the statement of accused Girish Kolhe.

6. In his statement before the Police Inspector Mr. Patil, the accused has stated that, prior to 4 to 5 years his maternal uncle Liladhar Dagadu Dhake of Shiv Colony, Jalgaon has purchased one magnet bed for Rs. 90,000/- from him. However, as he did not like it, hence accused returned him Rs. 1,16,000/-, along with interest. Still a proceeding was filed before Consumer Forum by his maternal uncle, and therefore, he has received notice on 14.07.2005. Hence, accused Girish and his wife Jayshri were mentally disturbed. Hence, they have decided to commit suicide. However, the accused did not disclose the said fact to his parents because there would be unnecessary tension to them. Thereafter, on 21.07.2005, in between 4.30 to 5.00 a.m., the accused Girish had administered sodium Pentothal with the help of injection to Jayshri, as a result she became

unconscious. Then, he killed his two sons, as well as wife Jayshri with knife and then by consuming tablets of sodium Pentothal, he has inflicted injuries on his hand by knife.

7. Thereafter, Police Inspector Mr. Y.D. Patil came to the spot and made an inquiry about the said matter. That time he has found two chits on the spot. On the basis of inquiry in the matter, offence was registered against the accused punishable under Section 302 and 309 of I.P. Code, vide Crime No. 185/2005. At the same time, offence was also registered against the maternal uncle of the accused Liladhar Dagadu Dhake, under Section 306 of I.P. Code vide Crime No. 186/2005.

8. Initial investigation was made by the Police Inspector Mr. Y.D. Patil. Photographer from L.C.B. office was called on the spot, who has taken photographs of the dead bodies as well as scene of offence and accused in Civil Hospital, Jalgaon. Then P.I. Patil has prepared inquest panchanama of all 3 dead bodies and sent to Civil Hospital, Jalgaon for post mortem. Then, he prepared spot panchanama in the presence of panchas and seized the incriminating articles i.e. two chits, one blood stained knife, injection, with needle syringes, two bottles and blood stained clothes from the spot.

9. A memo was sent by Police Thane Amaldar, Zilla Peth Police Station, Jalgaon to Executive Magistrate to record the dying declaration of accused Girish Kolhe in Civil Hospital, Jalgaon. Accordingly, Naib Tahsildar/Executive Magistrate Vinayak Dhas has recorded the statement of accused Girish Kolhe. On completion of post mortem of the dead bodies, clothes upon their person were seized and seizure panchanama was prepared in the presence of panchas. Viscera were preserved and blood samples were taken. Blood stained clothes upon the person of accused were seized under seizure panchanama in the presence of panchas. Muddemal properties were deposited in Police Station. Thereafter, P.I. Patil recorded statements of some of the witnesses. On discharge of the accused from Hospital, he has arrested him. Then further investigation was handed over to Local Crime Branch, Jalgaon.

10. The accused Girish Kolhe, during police custody, has made disclosure statement that, he is ready to produce to note book in his handwriting, as well as certain chits and notice received from the Consumer Forum. API Pardeshi of LCB to whom further investigation was handed over, had visited the house of accused and in the presence of panchas had seized one register, two chits and notice issued by Consumer Forum. Specimen signatures of the accused were obtained in the presence of panchas. Muddemal property as well as viscera and blood samples were sent to Chemical Analyzer, Aurangabad and Pune. Chits found on the spot, as well as natural handwriting and signatures of the accused were sent to the handwriting expert, for opinion. Statements of necessary witnesses were recorded. On receipt of C.A. reports and opinion of handwriting expert, same were inserted in the case papers. Then, on completion of investigation, charge sheet was filed against the accused before the Judicial Magistrate First Class

[Court No. 1], Jalgaon.

11. The Judicial Magistrate First Class, Jalgaon has committed the case to the Court of Sessions, as offence punishable under Section 302 of I.P. Code is exclusively triable by the Court of Sessions. On appearance of the accused before Court, charge under Section 302 and 309 of I.P. Code was framed and explained to him [Exh.5], to which accused pleaded not guilty and claimed to be tried. His defence was of total denial. The trial Court after full-fledged trial, convicted the appellant for the offence punishable under Sections 302 and 309 of I.P. Code and sentenced him to suffer imprisonment for life and pay a fine of Rs. 5,000/-, in default, R.I. for 3 months, and S.I. for one Year and a fine of Rs. 500/-, in default, S.I. for one month, respectively.

12. Mr. Chatterji, learned Counsel for the appellant assisted by Smt. Shilpa Awachar (appointed) submitted that the prosecution has not proved the presence of the appellant at the time of incident or during the same night prior to alleged incident. It is submitted that merely because death of the wife and two children of the appellant occurred in his house, is no ground to draw presumption that the appellant was responsible for those deaths. It is submitted that the prosecution has to prove the presence of the accused at the relevant place and time, then only onus will shift upon the accused to state the facts within his special knowledge. It is submitted that the appellant in his defence did examine D.W.1 Arun Kolhe and his version in examination-in-chief would clearly rule out the possibility of the appellant being present during the night of alleged incident in his house. It is submitted that the appellant has probalitized the defence. The learned Counsel for the appellant invited our attention to the cross-examination of the D.W.1 Arun Kolhe and submitted that nothing has been brought on record during his cross-examination so as to disbelieve/discard his version stated in the examination-in-chief. It is submitted that the alleged recovery of hand written chits by the appellant at Exhs.43 and 44 are not proved by the prosecution beyond reasonable doubt. The learned Counsel invited our attention to the evidence of hand-writing expert and submitted that, it is abundantly clear from perusal of his version in cross-examination that, he was not specially trained and, therefore, his evidence ought to have been discarded by the trial Court. It is submitted that the prosecution has not brought on record the evidence which would suggest that the appellant had a motive/intention to kill his won wife and children. The learned Counsel also invited our attention to the evidence of other witnesses and submitted that the entire case rests upon circumstantial evidence, and none of the witnesses stated that, the deceased were last seen in the company of the accused soon before their death. The learned Counsel for the appellant, in support of his contention that the prosecution was under legal obligation to prove the presence of the appellant and in absence of such evidence, the trial Court should not have convicted the appellant, placed reliance in the case of Suresh Vithal Parkar Vs. The State of Maharashtra(2015) ALLMR(Cri) 1287 . The learned Counsel appearing for the appellant, therefore, submitted that the appeal may be allowed.

13. On the other hand, learned APP appearing for the State submitted that, the prosecution did prove the motive for commission of the offence. It is submitted that in case of circumstantial evidence, it is not necessary to bring on record evidence to suggest motive. It is submitted that the evidence of P.W.20 Jagannath Laxman Chaudhari unequivocally indicates that the accused started preparing for commission of offence from 18th July, 2005. It is submitted that the prosecution has proved beyond reasonable doubt the motive for commission of offence. The learned APP invited our attention to the opinion of the hand-writing expert and report of the Chemical Analyzer and submitted that the letters/chits written by the appellant were sent to the hand-writing expert and on comparison of hand writing in the said letters vis-?-vis other documents in handwriting of the appellant, it unequivocally indicated that the appellant was the author of the said letters/chits. It is submitted that the appellant did give extra-judicial confession before the Police Officer and also the doctor who examined him in the hospital and those confessional statements deserve acceptance in the evidence. It is submitted that the prosecution witnesses found the accused in his bed room in the house, his wife and children were lying in the pool of blood, clothes of the accused i.e. Pajama and Banian were soaked in blood. Therefore, the evidence brought on record by the prosecution has proved presence of the accused at the relevant time. Apart from witnessing the accused and three dead bodies by the witnesses, incriminating articles were recovered from the spot. It is submitted that the appellant was the custodian of wife and children at the relevant time and therefore, he was obliged to state the facts within his special knowledge as to how death of wife and two children occurred during the said night of alleged incident. It is submitted that the prosecution has proved through medical officer that death of wife and children of the appellant was homicidal. The accused who was well conversant with medical knowledge, systematically killed the wife and two children as it is evident from the injuries inflicted on them and the opinion given by the medical officer. It is submitted that the prosecution has proved all panchanamas through panchas and the Investigating Officer. Therefore, relying upon the findings recorded by the trial Court and written notes of arguments submitted by the learned Public Prosecutor before the trial Court, the learned APP submitted that the appeal may be dismissed.

14. We have given careful consideration to the submissions of the learned Counsel for the appellant and the learned APP for the State. With their able assistance, perused the entire evidence, so as to re-appreciate the same. It is true that in every case, based upon circumstantial evidence, it is always not necessary to prove the motive. Motive is always in the mind of accused. However, in the present case, the prosecution has brought on record the documents which would show that the appellant had a reason to commit the offence during the fateful night. There are three letters dated 20th July, 2005, one addressed to the parents by the appellant and another in the form of suicide note and the third one addressed to his brother. All the three letters are of same

date. Another letter on which date is not mentioned but, on perusal of its contents, it appears that the appellant mentioned about property and its documents and place of documents, where same are kept in the house, and also loan borrowed by him. There are further details in the said letters/chits.

15. It is true that in the cases resting upon circumstantial evidence, motive as a circumstance, is important in the chain of circumstances. However, failure of the prosecution to establish motive would not be fatal in each and every case. In the present case, there is overwhelming evidence which points finger to the guilt of the accused/appellant. However, in the present case, as already observed, the prosecution recovered chits from the house of the accused. The contents of the chit at Exh.43 in vernacular reads, thus:

English translation of the Exh.43 reads, thus:

" Article A.

//Shree//

Exh. No. 43.

Date : 20-07-2005.

Salutation of Chi. Girish, to Respected Mummy and Daddy

We two have taken this decision, for that you, forgive to us. The reason of not disclosing this to you is that, mother would have taken lot of tension.

The real solace to our souls will get when you will forget this sorrow as early as possible

It is our humble request that our all past funeral rites be completed within five days.

Yours. Girish Sd/-."

The contents of the chit at Exh.44 in vernacular reads, thus:

English translation of the Exh.44 reads, thus:

"Article - B. Exhibit No. 44 Date : 20-07-2005.

I, Dr. Girish Vasant Kolhe, writing this chit with full consciousness that to my and my wife's suicidal death Shri. Leeladhar Dagdu Dhake is responsible. Due to the mental and financial tension given by him I and my wife are committing suicide. Son should not be suffered therefore we are taking him with us.

Girish. Sd/-"

16. The prosecution did examine P.W.9 Kailas Hiralal Pawar, whose evidence shows that on 24th July, 2005, he himself and another panch Sahebrao Thosar were called to the house of the accused and in their presence, accused did produce one Register, two chits and one envelope from the almira of his

bedroom. Those articles were seized and sent to the hand-writing expert along with the specimen signature and hand-writing of the accused. Hand-writing of the said chits has been identified by P.W.7 Keshav Hiranman Patil - father-in-law of the accused. Apart from that, prosecution did examine the hand-writing expert. Though the defence has cross-examined the hand-writing expert at length, taking into consideration his evidence in the examination-in-chief, coupled with evidence of P.W.7 Keshav Patil and evidence of panch witnesses about recovery of said chits, prosecution has proved the motive for such commission of offence.

17. The appellant/accused had also written two other letters at Exh.105 and Exh.106. The letter at Exh.105 in vernacular reads, thus:

"Exh.105 S.C. No. 179/05 Proved by Wit No. 19 Sd/- Ad hoc D.J.-1 & A.S.J. 20.07.2005.

English translation of letter at Exh.105 reads, thus:

"Exh. No. 105 S.C. No. 179/2005 roved by Wit. No. 19 Sd/- Ad hoc D.J. - & A.S.J. Date : 20-07-2005.

Salutation of Chi. Girish to Respected Dada

Please pardon me for giving this last trouble. By reading this chit keep it with you properly. After passing away me take mummy and daddy with you. Their love and affection towards you and Devesh is more and if they keep with you, they will forget the grief given by me very soon.

Till today I have paid Rs. One Lac. sixteen thousand by installment for this magnet bed (Gadi) to Leeladhar maternal uncle, therefore henceforth nothing should be paid to him. He has given me lot of mental tension. But I have not disclosed this thing before anybody so that mummy and daddy may not take unnecessary tension therefrom. He used to take advantage of this, and was demanding money and after my denial he has raised this issue. Even after that he has not stopped giving threats. He doesn't make phone, but, he gives me threats by stopping me on my way anywhere.

Therefore, take care of Mummy and Daddy and say to forget all earlier things to sister-in-law too, and, continue to visit both sisters. Pardon me again.

Signature of panchas. Before

Yours brother Sd/-

Date : 24-07-2005

Sd/-

The letter at Exh.106 in vernacular reads, thus:

"Exh.106 S.C. No. 179/05 Proved by Writ. No. 19 Sd/- Ad hoc D.J.-1 & A.S.J.

English translation of letter at Exh.106 reads, thus:

"Exh. No. 106 S.C. No. 179/05 Proved by Writ. No. 19 Sd/- Adv.D.J. -1 & A.S.J.

::Transaction::

1] Land admeasuring 11.5 situated at Savkheda (Gut No.)160/1 has been given for N.A. I (in the name of mother) and Dr. Girish Bhole are Partner (half/half) therein. The sale deed thereof is kept in my Almira.

2] The sale deed of residential house is with the L.I.C. Housing Ltd. For that purpose call Shri. Dashputre (LIC Housing agent) Phone No. 2239046 and with his guidance by paying the amount get the sale deed released.

3] An amount of Rs. 1,30,000/- is to be paid towards loan to Bahinabai Co-operative society.

4] By depositing amount towards (cost of) Maruti vehicle in the office of I.C.I.C.I. Ltd. situated in front of Onkareshwar temple and sell it out.

5] Do not pay the tax amount payable to Municipal Corporation towards the shop of hospital because the rate of shop has been lowered down than the purchased price.

6] Out of the amount of Rs. 30,000/- towards loan of Agresen Co-Operative Credit Society only Rs. 4500/- are remained to be paid, by deducting the said amount from their register remaining amount be paid if they come.

7] Maruti vehicle is activated presently on petrol. For shifting it on gas there is a button on desk where Om is written, shift that button on middle and below the Steering there is a one red colour button to start. For activating on petrol this red button is required to be closed and the button which is on the desk box is required to be shifted on petrol.

Signatures of panchas dated 24-07-2005.

Before me. 1] Sd/- 2] Sd/- Sd/- A.P.I. L.C.B. Jalgaon."

18. Upon perusal of the aforementioned two letters, it is abundantly clear that the accused, in furtherance of his motive/intention, prepared himself and wrote letters to parents and brother to forgive him for preparing such a plan of finishing entire family and himself due to filing of complaint by the cousin maternal uncle in the Consumer Forum against the appellant for recovery of the amount towards supply of bed. It is not necessary for us to elaborate on the said aspect, since the contents of the letters/chits written by the accused make it abundantly clear that because of transaction of magnetic bed between him and maternal uncle, the accused was mentally disturbed. It is evident from perusal of the record that Crime No. 186/2005 for the offence punishable under Section 306 of I.P.C. was registered against maternal uncle of the accused. Copy of the said statement i.e. contents of the FIR is part of original record, which has been exhibited at Exh.17.

19. The appellant/accused so as to prepare himself for commission of crime,

went to the medical shop of P.W.20 Jagannath Chaudhari on 18th July, 2005 and purchased two injections of anesthesia namely Sodium Pentothal. The version of P.W.20 Jagannath Chaudhari in examination-in-chief is that, he is running medical shop at Jalgaon by name Shree Gurudatta Medical Stores. He passed Diploma in Pharmacy. He has opened the said shop since January, 1997. In order to run the said shop, he has taken licence from Drug. Department as well as shop Act license. He knew the accused Girish Kolhe. He knew the accused through his brother in law Dr. Girish Bhole. Accused Girish Kolhe was a medical practitioner. He stated that, accused used to visit his medical shop regularly after one or two days. On 18th July, 2005 in evening time, accused had been to his medical shop at that time, the accused had purchased two injections of anesthesia namely sodium pentathol on the pretext that, these have to be administered to one poor patient of Dr. Nikumbha. Both the injections were one gram each. He paid him rupees hundred for the said injection. Because the accused was a doctor and known to him, therefore, he did not give him bill nor he demanded it. Prior to 2/3 days of the said incident, the accused has purchased one strip of tablet (ten) Gardenal. He also did not issue the bill of the said medicine to the accused. Tablets Gardenal are used for disease epilepsy. He further stated that, on 21st July, 2005, in the morning at 7.00 to 7.30 a.m. he received telephonic message from Dr. Bhole that a suicide has taken place at the house of Dr. Kolhe. Therefore, he went to the house of Dr. Kolhe. There was rush of people at his house. Similarly police also present there. He went inside the house of Dr. Girish Kolhe and saw from a long distance that, his wife and children were lying on the cot in the bed room. Thereafter he learnt from the discussion amongst people gathered there that Dr. Girish Kolhe is admitted to Civil hospital, Jalgaon. Thereafter he went to his house.

20. It is true that this witness was cross-examined by the defence asking him whether he had any proof of selling two Sodium Pentothal injections and he could not produce any document to that effect. But, his version gets corroboration from the evidence of the Medical Officer P.W.5 Dr. Shivdas Suryaji Chavan wherein it is stated that the accused administered injection Sodium Pentothal to deceased Jayshri.

The Chemical Analyzer's report shows detection of Thispentane (sic) in stained vials Exhibit/Articles No. (1), (2) and the stained 5 ml plastic syringe with needle Article No. (3).

21. The prosecution did bring on record overwhelming evidence showing the spot of incident i.e. bedroom in the house of accused. Though P.W.6 Vimal Vasant Kolhe mother of the accused turned hostile, nevertheless, so far as place of noticing dead bodies by her is concerned, it was the bedroom of accused. All the witnesses -adjoining neighbours of the accused namely, P.W.15 Dr. Udaysing Mansing Patil, P.W.11 Pundlik Hiranman Deshmukh and P.W.13 Jayant Chaudhari - photographer have in minute details stated about the spot of incident and also what they had seen in the said bedroom.

P.W.11 Pundlik Deshmukh, who is neighbour of the accused deposed that at about 6.30 a.m. on the day of incident, when noticed rush in-front of the house of the accused, he went there. He went inside and found dead bodies of wife and sons of the accused lying in the pool of blood whereas, accused was found lying on the floor and at that time, blood was coming out of the veins of his wrist.

P.W.15 Dr. Udaysing Mansing Patil, nearby resident of the accused, deposed that on receiving a call he went to the house of the accused and saw dead bodies of wife and two sons of the accused lying in pool of blood and Dr. Kolhe - the accused was found lying in comatic condition and shock. He found knife lying on the bed, vial of injection Sodium Pentothal, syringes and empty sockets of distilled water in the said room.

The photographs taken by P.W.13 Jayant Chaudhari clearly show that at the relevant time, accused was wearing Banian and Paijama. Therefore, the trial Court has drawn an inference that in case the accused would have gone out during the night and returned back to the house on phone call by his father, it is highly improbable that he would be wearing Banian and Paijama only. The evidence of these three witnesses clearly proves that the accused was very much present at his house in the bed room at the relevant time and that, he was in injured condition.

P.W.2 Rakesh Sudhakar Patil, resident of nearby colony, acted as panch. He deposed that father of accused lead them to bed room of accused where they saw three dead bodies of the deceased Jayshri and two children with injuries on their person. The panchas also inspected the room and found two chits, one knife and two empty bottles of injections, syringe having needle with blood stains. One chair, bed sheets, cotton swab having blood stains were also found. Police seized all articles and put independent labels on it.

The prosecution has also brought on record the evidence of Photographer P.W.13 Jayant Chaudhari, which unequivocally indicates presence of the accused on the spot. He was wearing Paijama and Banian and also knicker, which were seized during investigation. The said clothes were soaked with blood. The Chemical Analyzer's report unequivocally indicates human blood was detected on the articles sent for analysis Most of the articles including Paijama, Banian and Knicker were having blood stains of "B" and "AB" group. Blood group of accused was "A" whereas, that of deceased Jayashri was "B". Blood group of deceased children of accused was reported to be inconclusive. The trial Court was right in drawing an inference that the defence of the accused that during that night he was not in the house is falisfied by the fact that at the relevant time he was seen on Paijama and Banian, soaked with blood and also there was injury on his wrist. It is not necessary for us to elaborate the details stated by the witnesses about the actual scene at the place of the incident.

P.W.15 Dr. Udaysing Mansing Patil stated that, he is residing in Premnagar area of Jalgaon since last 20 years. Premnagar area is just adjacent to Bendale Nagar.

He was working as Medical Officer in Civil Hospital, Jalgaon since last 10 years. He is M.B.B.S., D.G.O. He stated that, he know the accused who was before the Court, being doctor. He is residing alone in front of his house in Bendale Nagar area. On 21.07.2005 he was present at home. That day early in morning, 2/3 persons came to his home and asked him to come along-with them. It was a time just to sun-rise. Accordingly, he visited the house of Dr. Kolhe. There was rush of people in front of his house. He went inside the house and saw that, in the bed room of Dr. Kolhe, Dr. Kolhe himself, his wife and two children were lying having no movements. He saw Mrs. Kolhe and two children lying on the bed, whereas Dr. Kolhe was lying on the floor of the said room. In the said room blood was lying upon the bed, floor as well as walls. He stated that, being doctor, he examined them. He found that, Mrs. Kolhe and both the kids were dead. Dr. Kolhe found in comatic condition and shock. He also found one knife was lying on the bed. He found vial of injection, sodium pentothal, disposable syringes and empty sockets of distilled water in the said room. He stated that, thereafter he immediately shifted to Dr. Kolhe in Civil Hospital, Jalgaon. Being Medico-legal case, he informed to police. Casualty Medical Officer gave treatment to Dr. Kolhe hence he came out of the shock.

22. It is true that statement of P.W.15 Dr. Udaysingh was not recorded by the police. However, P.W.11 Pundlik Hiranman Deshmukh in his evidence has stated that said Dr. Udaysingh Chavan was present on the spot. By profession he is doctor, he took accused to the hospital and he was admitted. At the relevant time, accused was having on his person Banian and Pajama having blood stains on it.

23. Whether death of deceased was homicidal or otherwise has been proved by the prosecution beyond reasonable doubt. P.W.5 Dr. Shivdas Chavan stated in his evidence that, on 21.07.2005 he was entrusted with postmortem duty in Civil hospital, Jalgaon. That day Zilla Peth Police station has sent three bodies for autopsy to him. First of all, he has conducted postmortem upon the dead body of Jayashri. Initially he has done external examination of the said body. He found the injuries namely (1) Stab wound left side of chest, medial and below of left nipple dimension 5 c.m. X 2 c.m. and 15 cm deep, gas pierced. All layers of chest wall blood coming from wound on palpation and on probing probe is going through 4th & 5th rib space. (2) Mark of intravenous injection on right dorsal hand on vein, as shown in diagram. All these injuries were ante-mortem. On her internal examination, he found injuries. There was no injury of fracture noted on head. There was no evidence of any fracture of rib. There was stab wound on heart left ventricle of heart anteriorly ruptured dimension was 4 x 4 cm perforating heart, as shown in diagram. There was no blood in large vessel and heart. Rest of the organs were pale colour. Stomach was contained liquid food and gases. According to him, death of Jayashri was caused within 12 hours of postmortem conduction. Cause of death was cardiorespiratory arrest due to hemorrhagic shock due to cut throat injury. Viscera was preserved for confirmation of death. Accordingly he prepared postmortem notes in his

handwriting. He stated that, the injuries as mentioned in column No. 17 corresponding to column No. 20 of postmortem report, can be caused by sharp and pointing knife. Knife Article C was shown to the witness. He stated that, above stated injuries can be caused by the said weapon. Viscera report of Jayashri is placed on record. After going through viscera report Exh.30, his final cause of death is as mentioned in Exhibit-29.

He further stated that, thereafter, he has conducted postmortem upon dead body of Bhushan Girish Kolhe. On his examination, he found the injuries, which has been mentioned in column No. 17 of postmortem report. (1) Transverse cut throat incised injury (anteriorly) dimension 10 cm long x 3 cm wide and 4 cm deep. All following parts cut transversely completely i.e. trachea, thyroid, both lobes esophagus, both internal carotid arteries, both external carotid arteries, both internal jugular vein, both external jugular veins at level of C-3 to C-4 vertebra Incised wound noted between C-3, C-4 vertebra 0.5 cm. deep 0.2 cm wide and 3 cm long. The corresponding injuries mentioned in column No. 17 are detailed in column No. 20 of the postmortem report. Viscera was preserved. Rest organs were pale. The opinion regarding cause of death was cardio-respiratory arrest due to hemorrhagic shock due to cut throat injuries. He stated that, accordingly, he prepared postmortem in his handwriting. Final opinion of cause of death is same as mentioned in Exh.31. Probable weapon used for the above said injury be sharp and cutting weapon. It can be caused by knife Article-C. He further stated that, he has conducted postmortem upon the dead body of Vinit Girish Kolhe in between 2.30 to 3.00 p.m. On external examination of said body, he found injuries namely (1) Incised wound on throat anteriorly-transverse 10 cm long x 3 cm wide and 4 cm deep, skin, facia, trachea, esophagus completely cut. Both internal carotid arteries, both internal jugular veins, both external jugular veins thyroid-completely cut and separated-incised wound about 0.5 cm deep noted in C-3, C-4 vertebra (inter vertebral disc) about 3 cm long. In internal examination of dead body, he found corresponding injuries to column No. 17, which has been mentioned by him in column No. 20 of the postmortem report. Viscera was preserved. According to him, cause of death cardio-respiratory arrest due to hemorrhagic shock due to cut throat injury. Accordingly he prepared the postmortem notes. Final cause of death is as above showing postmortem report. He handed over blood sample of all three persons to the police. C.A. Reports to that effect have been placed on record. He stated that, the injuries caused to the body of Vinit Kolhe can be possible by sharp and cutting weapon like Article "C".

During his cross-examination, nothing useful to the defence was brought on record by the defence counsel.

24. P.W.1 Yadavrao Damu Patil, who was police officer at the relevant time, has deposed in detail before the trial Court that, in the month of July, 2005, he was working as Police Inspector in Police Station Zilla Peth, Jalgaon. He was working as Police Inspector since 31.12.2004 to 11.05.2006. On 21.07.2005 at about

6.30 a.m. when he was present at his home, police head constable Mushtaq informed him on telephone that, he received message from one P.C. Patil of Bendale Nagar that, in plot No. 24 of Bendale Nagar, dead bodies of one lady and two children are lying dead in pool of blood, and there is rush of people. Thereafter, he gave direction to police head constable Mushtaq to send police staff immediately to the spot and he is also coming there. That time, two persons came to his home, informed him that in Bendale Nagar area, in the house of Dr. Girish Kolhe, his wife and two sons are lying dead and Dr. Girish Kolhe was also injured, who was taken to the hospital by Dr. Udaysingh Patil. The spot of incident was at the distance of half furlong from his house, therefore, he along-with one motor cyclist went to the spot. On the spot, father of Girish Kolhe was present namely Vasant Kolhe. That time, Vasant Kolhe stated him that, in the morning, as the door of bed room of his son was not opened, when he gave push to it, he saw that, his daughter-in-law and two grand sons were lying dead in the pool of blood whereas his son was lying in injured condition below the cot, who was alive that time and therefore, was taken to the hospital. He stated that, when he went in the said bed room, he found dead bodies of wife of Dr. Girish Kolhe namely Jayashri and his two sons namely Bhushan and Vinit upon the bed in the pool of blood. The thyroid of both the sons were found cut in the front portion. Therefore, he deputed police staff on the spot, as Girish Kolhe was admitted in hospital, and went to Civil hospital, Jalgaon in order to make inquiry. Girish Kolhe was admitted in emergency ward of Civil hospital. He found one injury upon the wrist of left hand. That time, he inquired to concerned doctor querying him whether Girish Kolhe was in condition to give statement and that time, doctor informed him that, he was in condition to give statement. Thereafter, he recorded the statement of Girish Kolhe as per his say in presence of medical officer. He stated that, Girish Kolhe in his statement stated that, he has purchased one magnet bed for his maternal uncle, however, as he did not like it, he has returned the amount of Rs. 1,16,000/- to him along-with interest, still his maternal uncle has given him a notice of Consumer Forum, which he has received on 14.07.2005. Since that date, he himself and his wife were mentally disturbed and, therefore, he has decided to commit suicide. Accordingly, on 21.07.2005, he gave injection of Sodium Pentothal as a sedative to his wife and thereafter she became unconscious, he cut thyroids of his two sons by knife thereafter and also gave a blow to his wife on left side of her chest and then he himself taken injection Sodium Pentothal as a sedative and thereafter has done self inflicted injury by knife upon his wrist on left side. The said statement was read over to Girish Kolhe and he obtained his signature. That time this witness also signed upon it as before him. Therefore, he obtained endorsement of doctor on it. Like him, Executive Magistrate also recorded statement of Girish Kolhe.

It is further stated that, on the basis of the statement of Dr. Girish Kolhe, an offence was registered against maternal uncle Liladhar Dhake in Zilla Peth Police Station, Jalgaon under Section 306 of I.P. Code vide crime No. 186/2005. Thereafter, he again went to the spot and on the basis of situation on the spot

and statement of Girish Kolhe, he prepared complaint on the spot on behalf of the State. Along-with the complaint he has produced attested copy of the statement of Dr. Girish Kolhe. Thereafter, this witness sent above said complaint along-with his covering letter to Zilla Peth Police Station to register it. Accordingly, offence was registered under sections 302, 309 of the I.P. Code vide crime No. 185/2005. At the time of registering the said offence, the investigation was with him. Thereafter he prepared inquest panchanama of dead bodies of Jayashri, Bhushan and Vinit. In the said inquest panchanama, the injuries upon dead bodies have been mentioned. He stated that, all the three panchanama bear signature of panchas, which were prepared in their presence. Thereafter, he sent all three dead bodies to Civil hospital, Jalgaon for autopsy. Thereafter he had prepared spot panchanama in presence of same panchas. He seized 11 articles from the spot. Thereafter he put the labels bearing signatures of panchas upon it and also signed it and he signed on it. He stated that, thereafter he requested the medical officer to take blood sample of the deceased as well as of accused. Thereafter, he recorded statement of four witnesses. After accused was discharged from the hospital, he arrested him. Further investigation was handed over to local crime branch. When he prepared the spot panchanama and inquest panchanama photographer was present there. He has done Video C.D. & taken some photographs. He produced one C.D. and 19 photographs on record.

It appears that, his further examination-in-chief was recorded as per the order passed below Exhibit-22 dated 17.04.2007. In further examination-in-chief, he stated that, on 22.07.2005, he went to Civil hospital, Jalgaon, as the accused in the present case was admitted there, and he want to seize the clothes on his person. That time, accused was admitted in intensive care unit. Thereafter, he called two panchas. Accordingly one Suryavanshi and Chhagan Bhoi were present. The purpose was disclosed to them. Thereafter he seized clothes upon the person of accused so that one Pajama having blood stains, one sandow banian of white colour also having blood stains and one knicker in presence of panchas. All these clothes were wrapped in one paper and were sealed and then he put the labels bearing signatures of panchas on it. He stated that, thereafter he had deposited the above-said clothes to the police station and obtained muddemal receipt.

25. It is true that P.W.6 Vimal Vasant Kolhe mother of the accused turned hostile and deposed that, accused was not present in the house during the night of incident. However, the concerned Police Officer P.W.21 Rameshsinha Poladsinha Pardeshi, in his evidence stated that portion marked "A" from statement recorded u/s. 161 of Cr.P.C. of the P.W.6 Vimal Kolhe, was stated by her; wherein P.W.6 Vimal Kolhe did state about the presence of the accused when she opened the door of bedroom of the accused. If the Medical evidence is considered in its entirety, it leaves no doubt in mind that the accused, who is a medical practitioner by profession, killed his children and wife in a very systematic manner. Therefore, reasonable inference is drawn by the trial court that it is the only person, who is skilled and knows about human body, can inflict such injury

on the body of wife in between ribs 3rd and 4th. It has also come on record that wife was administered Sodium Pentothal.

26. P.W.18 Vinayak Rabhaji Dhus, at the relevant time working as Naib Tahsildar at Jalgaon, recorded dying declaration of the injured Dr. Girish Kolhe - accused herein, which is at Exh.96. In the said dying declaration, the accused has stated that he gave anesthesia to his wife and inflicted blow with knife on her person. He further stated that he killed his younger son Vinit and elder son Bhushan. Thereafter he himself took injection of anesthesia and became unconscious. P.W.18 Vinayak Rabhaji Dhus through his evidence before the trial Court has proved the dying declaration (Exh.96). Since Dr. Girish Kolhe - accused survived, the statement recorded by the Naib Tahsildar P.W.18 Vinayak Rabhaji Dhus cannot be treated as Dying Declaration.

The Supreme Court in case of Sham @ Kishor Bhaskarrao Matkari Vs. The State of Maharashtra, AIR 2012 SC 301 : (2011) 4 RCR(Criminal) 750 : (2011) 11 SCALE 206 : (2011) 11 SCR 744 : (2011) AIRSCW 5600 , has observed, thus:

"We have already noted the statement of accused himself to the Executive Magistrate at the time when he was admitted in the hospital. Since he was alive, the statement recorded by the Executive Magistrate had been treated as statement under Section 164 of the Code of Criminal Procedure, 1973 and proceeded further. Though the said statement is not a dying declaration, however, the accused knowing all the seriousness confessed about the killing of his brother, his wife and their child and causing injuries to other two children. There is no reason to disbelieve the version of Monika (PW-7) who witnessed the occurrence, neighbours and landlord of Manohar (Pws 1 and 3) as well as the confessional statement of the accused before the Executive Magistrate."

27. Prosecution has also examined P.W.21 Rameshsinha Poladsinha Pardeshi, A.P.I., to whom further investigation of the crime was handed over. In his examination-in-chief, he stated that he recorded statement of Vimalbai Vasant Kolhe and portion marked "A" in her statement was recorded as per her say. He further stated that, while in custody, the accused made disclosure that he is ready to produce two chits, one notebook and one notice received from Consumer Forum, which he had kept in cupboard. He accordingly, called panchas and above articles were seized on the spot and panchanama was prepared. He then handed over the Muddemal to the clerk and obtained receipt. P.W.21 Pardeshi then recorded statements of the witnesses, obtained specimen handwriting as well as signatures of the accused in presence of two panchaas and deposited the same with muddemal clerk of police station and obtained receipt. The Police officer recorded statements of witnesses including brother of accused, medical shop owners, maternal aunt of the accused. He then sent the seized articles to the Chemical Analyzer, Aurangabad and Pune for analysis. After receipt of C.A. report and further necessary investigation, the P.W.21 Pardeshi, A.P.I. filed charge-sheet against the accused. Nothing useful to the defence was brought on record during cross-examination of this witness.

28. P.W.3 Bhaurao Santosh Suryawanshi is a panch witness to seizure of clothes of the accused. However, this witness was declared hostile. P.W.4 Dr. Pankaj Gambhirrao Gujar is the Medical officer, who had examined and treated the accused on his admission and found injury on his left wrist volar aspect. He stated that Dr. Kulkarni, Physician had issued discharge card to the accused. This witness had issued Medico Legal certificate of the accused and it is proved by him. Nothing material was elicited during his cross-examination.

P.W.8 Hemant Bhikan Savkare is a panch witness to seizure of blood stained clothes. He stated that police seized clothes of small children and one lady. Those clothes were torn and damaged. The witness proved the panchanama. His version remained unshaken in cross-examination. P.W.10 Suhas Sadashiv Deulkar is a businessman. He stated that he was called by LCB, Jalgaon. He and Prakash Baviskar were called as panchas. In their presence, accused Girish Kolhe signed upon six written papers, and also accused signed upon six blank papers. Those papers were sealed under panchanama. P.W.8 Hemant Savkare proved the panchanama. His version remained unshaken in cross-examination.

P.W.12 Fakira Soma Randhe is Police Constable. He stated that he carried the viscera and blood samples of deceased to Pune for examination. Both the articles were sealed. He deposited both the articles with C.A., Pune along with forwarding letter and got receipt. He proved the same. P.W.14 Anil Baliram Fegde is the Police Constable, LCB, Jalgaon. He stated that API Pardeshi handed over him three sealed packets to carry those to handwriting expert at Aurangabad. Accordingly, he carried the same and got acknowledgement about the same. P.W.16 Chhagan Janglu Bhoi is a businessman. He acted as the panch to seizure panchanama of clothes of the accused. He was declared hostile and cross-examined.

P.W.17 Shabbir Khan Dagakhan Tadvī is also a Police Constable. He stated that he carried the Muddemal in Crime No. 185/2005 to C.A., Aurangabad along with letter and obtained acknowledgement from the concerned. This witness has proved the Exh.90 the letter to the Chemical Analyser, Aurangabad.

P.W.19 Sanjay Badrinath Kathar is the Assistant State Examiner of documents in State C.I.D. He stated that he is graduate in science and he departmentally trained in the science of documents examination. He has examined thousands of documents and also gave opinion in thousands of cases. This witnesses has deposed in detail about the procedure and the examination of handwriting sent for opinion and gave his opinion that the writer of the articles sent for examination and that of samples sent, is the same.

29. It is true that the appellant did examine his cousin D.W.1 Arun Kashinath Kolhe in his defence that during the night of incident, he was not in house but, he went to the house of uncle i.e. father of D.W. 1 Arun Kolhe, to treat him. As per said version of D.W. 1 Arun Kolhe, accused left his house at about 4 p.m. a day prior to the incident and only came back to the house at 6 a.m. on a call

received from father of the accused about the incident. Upon considering the evidence of D.W.1 in its totality, the same is not believable, no any document was placed on record to show that the uncle of the accused was ill at that time. There is no any record showing a call received from father of the accused. In short, no any document was placed on record even slightly suggesting that the accused was in the house of D.W.1 during the relevant night. It is necessary to mention here that false defence is also one of the circumstance which can be added in the chain of the circumstances. The trial Court has considered the evidence of D.W.1 Arun Kolhe and discarded the defence of the accused. We do not find any reason to interfere in the findings recorded by the trial Court. It appears from the circumstances brought on record by the prosecution that the accused, prior to retiring into bed, preplanned to commit murder of children and wife and he just made a show that after commission of the murder, he also wanted to die or commit suicide. However, the self inflicted injury by the accused is only on wrist and that clearly indicates that he had no intention to commit suicide after commission of crime. He neither sustained any injury on his vital organ nor made an attempt to consume poisonous substance. This fact is clearly revealed from the Chemical Analyzer's report on record.

30. It appears that during the trial, certain suggestions were given to the prosecution witnesses that there is frequency of dacoity during night time in the vicinity of Jalgaon city, so as to probabalize the defence that the appellant did not kill the children and wife but, the incident might be outcome of robbery/dacoity. Upon considering the entire material on record, there is no slightest incriminating material found from the spot which would indicate an attempt of dacoity. The manner in which the accused killed children and wife can only be by a person who is well conversant with the human body and has scientific knowledge. P.W.15 Dr. Udaysing Mansing Patil also saw on the spot vial of injection, sodium pentothal, disposable syringes and empty sockets of distilled water in the said room. Recovery of knife from the place of the incident leaves no manner of doubt that the accused, in furtherance of his intention to finish children and wife, inflicted systematic injuries so as to ensure death of two children and wife. If the attending circumstances are taken into consideration and the manner in which the accused proceeded to commit the said murders, leave no doubt that the accused wanted to kill children and wife and he just made a show by inflicting injury on his wrist that he also wanted to finish his life. However, he had never intended his death.

31. In the light of discussion in foregoing paragraphs 26 and 27, the conviction of the appellant for the offence punishable under Section 309 of I.P.C. cannot sustain.

32. The trial Court has elaborately dealt with the evidence brought on record and recorded the findings thereby convicting and sentencing the appellant/accused for the offence punishable under Section 302 of IPC. Since we are in agreement with the findings recorded by the trial Court to the extent of conviction of the

appellant/accused for the offence punishable under Section 302 of I.P.C., we need not elaborate the evidence in minute details any further.

33. In the result, we pass the following order:

"i) The Criminal Appeal is partly allowed.

ii) The conviction and sentence awarded to the appellant/accused by the trial Court for the offence punishable under Section 302 IPC is maintained.

iii) However, the conviction and sentence awarded to the appellant/accused by the trial Court for the offence punishable under Section 309 of IPC is quashed and set aside.

iv) We appreciate the sincere efforts taken by the learned Counsel (appointed) for the appellant. We quantify her fees at Rs. 3,000/-.

v) Copy of this judgment be given to the appellant free of costs."