

(2014) 04 BOM CK 0093
In the Bombay High Court
Case No : Criminal Appeal No. 179 of 2012

Narendra Dhudaku Ishi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2014) 3 BomCR(Cri) 474

Hon'ble Judges : V.M. Deshpande, J;K.U. Chandiwal, J

Bench : Division Bench

Advocate : Satej Jadhav, Advocate for the Appellant; P.N. Mule, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The present Criminal Appeal is directed against the Judgment and Order of conviction passed by the learned Sessions Judge, Dhule dated 29th November, 2011, in Sessions Case No. 37 of 2010 where-by the learned Sessions Judge was pleased to convict the appellant (original accused) for the offence punishable U/Section 302 of the Indian Penal Code, 1860. (In short, the I.P. Code). The learned Sessions Judge sentenced him to suffer imprisonment for life and to pay fine of Rs. 2000/- [Rs. Two Thousand only] and in default, to undergo rigorous imprisonment for three months.

2. The detail narration of facts of the prosecution, as it could be gathered from First Information Report Exh. No. 39 lodged by Sanjay Madhukar Gaikwad [P.W. No. 10] is as under:-

(i) First informant-Sanjay [P.W. No. 10] is working as a Manager of one "Mayur Lodge" situated at Santoshi Mata Square, Dhule, since last fourteen years. The said lodge is owned by one Dilip Baburao Kande. Said Mayur Lodge is situated on 2nd and 3rd floor of the building. The said lodge consists of twelve rooms. On the first floor of the said building, hospital of Dr. Prashant Deore is situated. On the

ground floor, one Prem Medical Store is situated.

(ii) On 27th November, 2009, Jitendra @ Gotu Purushottam Sonawane [P.W. No. 12] was discharging his duty as a Manager of Mayur Lodge. His duty was from 10 O'clock in the morning till 5 O'clock in the evening. At 5.30 in the evening, first informant-Sanjay took the charge from Jitendra. He obtained information about the guests, occupying the rooms. He got information that, in all five rooms are occupied by the guests. Room No. 10 situated on the second floor was occupied by Narendra Ishi [Appellant] alongwith Manisha Narendra Ishi [deceased]. From the "Passenger Register" duly maintained at Mayur Lodge, it was found by first informant-Sanjay that, couple arrived at lodge at 5.25 in the evening.

(iii) At 6 O'clock when first informant-Sanjay was sitting on the counter, he heard shout of woman from Room No. 10, therefore, he went there however, on the reply from male occupying Room No. 10 that nothing has happened, first informant-Sanjay returned to his seat. After ten minutes, first informant-Sanjay found that said male occupying Room No. 10 was alone leaving the lodge hurriedly. First informant-Sanjay made enquiry with him, upon that, reply was given to him that lady is following. Thereafter, said male hurriedly down stairs. That time the door of Room No. 10 was half open. First informant peeped into the room and noticed that, female was lying in the pull of blood. When First informant-Sanjay looked from the window, he found that, said male was running towards Ganpati temple, therefore, he immediately rushed to chase him. In that process, he asked Hiralal Madhukar Patil [P.W. No. 6] owner of medical shop to follow him. First informant-Sanjay continued his chase. The appellant thereafter boarded in one rickshaw however, Sanjay Gaikwad reached there and he gave back on the hood of the said rickshaw, therefore, rickshaw puller stopped the said rickshaw. That time, the appellant jumped from the rickshaw and tried to ran away, however, he was apprehended by first informant-Sanjay. In the meantime, Hiralal [P.W. No. 6] came there and both of them took the appellant at Mayur Lodge. There he disclosed his name as "Narendra Ishi". That time, first informant-Sanjay was ascertaining his name from the register maintained by the Lodge, that time, the appellant tried to tear the register.

(iv) First informant-Sanjay immediately intimated the incident to the owner of the Lodge and earlier Manager-Jitendra. After some time, police came there. Custody of the appellant was handed over to the police. Alongwith the Police, first informant-Sanjay again went to Room No. 10. That time, it was found that, a lady was lying in a pull of blood, in dead condition and besides the body, an instrument used for breaking the ice [tocha -] was found there.

(v) On the basis of report lodged by Sanjay Madhukar Gaikwad, First Information Report bearing C.R. No. 238/2009 for the offences punishable U/Section 302 of I.P. Code was registered against the appellant.

(vi) The initial investigation was done by PW No. 19 -Tulshiram K. Nimbalkar. He prepared spot panchnama [Exh. No. 50]. He seized bed-sheet, tocha and other

articles. The dead body of Manisha was sent for post mortem. He arrested the appellant/accused under arrest panchnama Exh. No. 54. Clothes of the accused were also seized. The remaining investigation was conducted by PW No. 17 - Gajmal Jayram Patil. After completion of the investigation, Charge-Sheet was filed before the Court of law.

(vii) The learned Chief Judicial Magistrate, Dhule on 26th February, 2010 committed the case to the Court of Sessions. The learned Sessions Judge vide Exh. No. 3 in Sessions Case No. 37 of 2010 framed the Charge against the appellant for the offences punishable U/Section 302 of I.P. Code for having committed the murder of his wife-Manisha and also for an offence punishable U/Section 201 of I.P. Code. The appellant denied the charge and claims for his trial.

(viii) In order to prove the charge against the appellant, the prosecution has examined in all 19 witnesses and relied upon the documents, which were duly proved during the trial. After appreciation of the prosecution evidence, the learned Sessions Judge found that the prosecution has proved its case beyond reasonable doubts to bring home the guilt of the appellant for the offence punishable U/Section 302 of I.P. Code however, acquitted him for the offence punishable U/Section 201 of I.P. Code.

3. We have heard Mr. Satej Jadhav, learned counsel for the appellant and Mr. P.N. Mule, learned A.P.P for the State of Maharashtra.

4. According to the learned counsel appearing for the appellant, the court below has failed to appreciate the evidence properly. According to the learned counsel, the prosecution evidence does not inspire confidence. According to the learned counsel for the appellant, there is no eye witness in the present case and the prosecution has failed to prove the circumstantial evidence clinchingly and, thereby, the appellant is entitled for the benefit of doubt.

5. Per contra, the learned A.P.P. for the State has submitted that the learned court below has rightly appreciated the evidence as appearing in the prosecution case and has rightly found that the appellant/accused is guilty of committing the murder of his wife-Manisha. He submitted that Criminal Appeal preferred on behalf of the appellant be dismissed.

6. With the assistance of both the learned counsel, we have minutely perused the entire record and the evidence.

7. Following are the points for determination:-

[1] Whether the death of Manisha is homicidal one?

[2] Whether the Appellant-Narendara is responsible for homicidal death of his wife-Manisha?

Evaluation of evidence:-

8. Before embarking upon the enquiry in respect of the prosecution evidence, it

will be useful to narrate the admitted facts as emerged during the trial, especially from the statement of accused/appellant recorded U/Section 313 of the Code of Criminal Procedure, 1973" (In short, the Code.)

Admitted Facts:-

[i] The marriage between appellant-Narendra and deceased Manisha took place in the year 1998. The couple is blessed with two sons namely, Jayesh and Yogesh. Presently they are residing with Manoj Aatmaram Bhadane [P.W. No. 8]-brother of deceased Manisha.

[ii] The deceased was required to file proceedings against the appellant for maintenance. The competent court has awarded maintenance in favour of the deceased. In the said proceedings, the appellant was directed to pay Rs. 1700/- per month, by way of maintenance. The appellant filed proceeding for divorce in the competent court at Dhule and one Ashok Rajaram Mahajan was also joined as one of the respondent in the said divorce proceeding. On 27th November, 2009 the divorce case was fixed in the court at Dhule

9. From the aforesaid evidence, it is crystal clear that, the couple was not pulling well and some where in the back of the mind of the appellant, he must be nursing grudge against Manisha since, he was required to cuff-out Rs. 1700/- per month. From record it appears, the appellant is having saloon. There is nothing on record to show, and/or even to suggest that the appellant and the deceased were not on talking terms. In fact on the date of incidence, their marriage was subsisting. The Appellant has filed proceedings for divorce, which clearly suggest that the deceased must be ready to cohabit with the appellant.

10. In the backdrop of the above, now let's examine the prosecution case to record the answers to the points framed herein-above.

11. Sau. Maya Raghunath Chaudhary [P.W. No. 7] was called at Mayur Lodge on 27th November, 2009 by the police to act as a panch. Another panch was Subhash Babaji Karn. They were taken to Room No. 10 of Mayur Lodge. There they saw dead body of one lady, lying on the bed. The dead lady had injuries over her head and chest. She noticed about 72 injuries on her person. The inquest panchnama was drawn by the police. It is at Exh. No. 23. The said document also recites about having 72 injuries on the person of said lady. Sau. Maya Chaudhary [P.W. No. 7] also noticed the punch (tocha), handkerchief lying on the spot. Said punch (tocha) is Article "A". Said Art. "A" is duly identified by Sau. Maya [P.W. No. 7] during the trial.

12. The dead body was removed to the hospital for post mortem. PW No. 1 Dr. Ajit Gajanan Pathak alongwith Dr. Gadkari performed post mortem examination on the dead body of Manisha on 28th November, 2009. On external examination, the Doctor found following injuries:-

1) Stab injury present over right side of chest anteriorly situated in upper medial quadrant of right breast, situated 04 cm. lateral to midline and 12 cm. below

(inferiorly) right clavicle of size 0.4 cm. X 0.3 cm. X cavity deep oval in shape, blood oozing from the injury.

2) Stab injury present over anterior aspect of chest on right side over upper medial quadrant of right breast, situated 03 cm. lateral to midline oval in shape of size 0.5 cm. X 0.4 cm. X cavity deep, blood oozing from injury.

3) Stab injury present over anterior aspect of chest, over upper medial quadrant of right breast, situated 1.5 cm. below injury No. 1 of size 0.4 cm. X 0.4 cm. X cavity deep. Blood oozing.

4) Stab injury present over right side of anterior chest, over upper medial quadrant of right breast, situated 04 cm. lateral to midline, oval in shape, of size 0.4 cm. X 0.3 cm. X cavity deep, blood oozing from it.

5) Stab injury present over right side of anterior chest, over lower medial quadrant of right breast, situated 02 cm. lateral to midline, oval in shape, of size 0.4 cm. X 0.3 cm. X cavity deep, blood oozing from it.

6) Stab injury present over right side of anterior chest, over lower medial quadrant of right breast, situated 02 cm. above injury No. 5, oval in shape of size 0.5 cm. X 0.3 cm. X cavity deep, blood oozing.

7) Stab injury present over left side of anterior chest over upper medial quadrant of left breast, situated 03 cm. lateral to midline, oval in shape, of size 0.4 cm. X 0.3 cm. X 0.5 cm. (muscle deep), tailing present medially.

8) Stab injury present over left side of anterior chest, over upper medial quadrant of left breast, situated 0.2 cm. above injury No. 7, oval of size 0.4 cm. X 0.3 cm. X 0.5 cm. (muscle deep).

9) Stab injury present over anterior aspect of left chest, over upper medial quadrant of left breast, situated 1.5 cm. lateral to midline, oval, of size 0.4 cm. X 0.3 cm. X 0.6 cm. (muscle deep).

10) Stab injury present over anterior aspect of left side of chest, situated 03 cm. lateral to midline and 03 cm. below medial end of left clavicle, situated obliquely, of size 0.4 cm. X 0.3 cm. X cavity deep, blood oozing through injury.

11) Stab injury present over anterior aspect of left side of chest, situated 01 cm. lateral and parallel to injury No. 10, oval of size 0.4 cm. X 0.3 cm. X cavity deep, blood oozing.

12) Stab injury present over anterior aspect of right side of chest, situated 01 cm. lateral to midline 03 cm. below medial end of right clavicle, oval in shape, of size 0.4 cm. X 0.3 cm. X cavity deep, blood oozing.

13) Stab injury present over right side of anterior chest situated parallel to injury No. 12 and separated by distance of 0.5 cm. from it, oval in shape, of size 0.4 cm. x 0.3 cm. X cavity deep, blood oozing from it, directed obliquely downwards.

- 14) Stab injury present over lower part of left areola, circular in shape, of size 0.5 cm. X 0.5 cm. X 0.6 cm. deep.
- 15) Stab injury present over medial aspect of left areola, circular of size 0.5 cm. X 0.5 cm. X 0.6 cm. Deep.
- 16) Stab injury present over chest over area overlying medial aspect of left clavicle of size 0.4 cm. X 0.3 cm. X 0.6 cm. deep.
- 17) Stab injury present over chest over area overlying medial aspect of left clavicle, situated 02 cm. lateral to injury No. 16, oval in shape, of size 0.4 cm. X 0.3 cm. X 0.5 cm.
- 18) Stab injury present over chest over area overlying lateral end of right end of clavicle of size 0.4 cm. X 0.3 cm. X 0.5 cm. deep.
- 19) Five stab injuries present over left side of chest just lateral to lower end of sternum, situated in the area of size 03 cm. X 2.5 cm. separated by a distance of 01 cm. from each other, of size 0.4 cm. X 0.3 cm. X 0.8 cm. each.
- 20) Two stab injuries present over right side of anterior chest, over inframammary area, 3 cm. lateral to midline and separated by distance of 02 cm. from each other of size 0.4 cm. X 0.3 cm. X 0.6 cm. each.
- 21) Two stab injuries present over right side of epigastric region of abdomen, situated 02 cm. lateral to midline and separated by distance of 0.5 cm. from each other of size 0.4 cm. X 0.3 cm. X 0.5 cm. deep each.
- 22) Stab injury present over epigastric region of abdomen on left side 0.3 cm. lateral to midline of size 0.4 cm. X 0.3 cm. X 0.5 cm. Deep.
- 23) Two stab injuries present over medial quadrant of left breast, situated 02 cm. away from each other of size 0.4 cm. X 0.3 cm. X 0.6 cm. each.
- 24) Two stab injuries present over lower medial quadrant of left breast, situated 01 cm. away from each other of size 0.4 cm. X 0.3 cm. X 0.5 cm. each.
- 25) Stab injury over lower medial quadrant of right breast, situated 07 cm. lateral to midline of size 0.4 cm. X 0.3 cm. X 0.5 cm. oval in shape.
- 26) Stab injury present over lower medial quadrant of right breast, situated 09 cm. lateral to midline of size 0.4 cm. X 0.3 cm. X 0.6 cm. oval in shape.
- 27) Four stab injuries present over right side of chest below lateral end of right clavicle, in 2nd intercostal space of size 0.4 cm. X 0.3 cm. X 0.6 cm. each.
- 28) Seven stab injuries present over right shoulder deep supraclavicular region of size 0.4 cm. X 0.3 cm. X 0.6 cm. each.
- 29) Two stab injuries present over left shoulder tip, separated by distance of 01 cm. from each other of size 0.4 cm. X 0.3 cm. X 0.6 cm. each.

- 30) Three incised wounds present over submandibular region of size 0.4 cm. X 0.2 cm. X 0.4 cm. injuries are horizontally situated and parallel.
- 31) Ten incised wounds present over front aspect of left side of neck, over area of size 06 cm. X 05 cm., each injury measuring in size 01 cm. X 0.1 cm. X 0.1 cm.
- 32) Seven incised wounds present over front aspect of right side of neck over area of size 08 cm. X 05 cm. each, injury measuring in size 01 cm. X 0.1 cm. X 0.1 cm. each.
- 33) Four stab injuries present over suprasternal region of anterior aspect of neck, of size 0.4 cm. X 0.3 cm. X 0.5 cm. deep each.
- 34) Twelve incised wounds present over lateral aspect of right side of neck, in the areas of size 07 cm. X 06 cm., each injury measuring in size 01 cm. X 0.1 cm. X 0.1 cm. each.
- 35) Stab injury present over upper third of lateral aspect of right arm, circular in shape, of size 0.2 cm. X 0.2 cm. X 0.3 cm.
- 36) Stab injury present over occipital region, of size 0.4 cm. X 0.3 cm. X bone deep blood oozing from injury underlined area contused.
- 37) Stab injury present over occipital region, situated 02 cm. away from injury No. 36 of size 0.3 cm. X 0.2. cm. X bone deep, underlying area contused.
- 38) Stab injury present over occipital region, situated 02 cm. above injury No. 37 of size 0.3 cm. X 0.2 cm. X bone deep underlying area contused.
- 39) Stab injury present over occipital region of scalp, situated 03 cm. below injury No. 38 of size 0.4 cm. X 0.3 cm. X bone deep, underlying area contused.
- 40) Eighteen incised wounds present over back of neck over area of size 07 cm. X 06 cm. each injury measuring in size 01 cm. X 0.2 cm. X 0.2 cm.
- 41) Eleven stab injuries present over right side of back in upper scapular region, situated in area of size 07 cm. X 07 cm. extending towards right shoulder tip, of size 0.4 cm. X 0.3 cm. X 0.5 cm. deep.
- 42) Seven stab injuries present over left side of back extending towards midline, in the area of size 06 cm. X 05 cm. each injury measuring in size 0.4 cm. X 0.3 cm. X 0.5 cm. deep.
- 43) Stab injury present over right occipital parietal region of scalp of size 0.4 cm. X 0.3 cm. X bone deep, underlying bone fractured.
- 44) Contused abrasion present over lateral aspect of upper third of right leg, measuring in size 03 cm. X 02 cm., reddish in colour.

13. The Doctor conducting the post mortem found four incised wounds present over dorsum of Rt. Wrist, as mentioned at item no. 44 and these injuries are

suggestive of defence injuries.

14. On internal examination, Doctor found following internal injuries:

1) Under scalp haematoma present over occipital region consistent with external injuries.

2) Three circular fractures present in occipital bone consistent with injuries Nos. 36, 37, 38 mentioned in column No. 17. Brain: Diffused subarachnoid haemorrhage present over left cerebral hemisphere. Brain was oedematous and pale.

3) Haematoma present in right and left side of chest in intercostal muscles corresponding with external injuries present over chest region. Haematoma present over posterior aspect of chest. Haematoma present in muscles of neck and in subcutaneous tissues of neck on both sides. Haematoma present around larynx and posterior aspect of trachea.

4) Pleura: Torned, corresponding with external injuries. Pleural cavity: 200 ml. of blood and blood clots present.

5) Right lung: 1) One stab wound present over apex of upper lobe, consistent with injury No. 1, depth of injury in lung is 01 cm. 2) One stab wound present over lower part of upper lobe consistent with injury No. 13 of column No. 17, depth is 0.8 cm. 3) Two stab wounds present over anterior surface of lower lobe consistent with injury No. 5 and 6 of Col. No. 17. Depth of injury 1.5 cm. each.

6) Left lung: 1) Stab injury present over apical surface of upper lobe, consistent with injury No. 10 of column No. 17, depth of injury in lung is 0.5 cm. 2) One stab injury present over lower part of upper lobe, consistent with injury No. 11 of column No. 17. Depth of injury in lung is 0.2 cm. 3) Five stab wounds present over anterior surface of lower lobe of left lung corresponding with injury No. 19 of column No. 17, depth of injuries in lung is 0.2 cm. each.

7) Heart: 1) One stab injury present over anterior surface of right atrium corresponding with injury No. 12 of column No. 17. Depth of injury in heart is 1.2 cm.

8) Abdomen: 0.5 liter of blood and blood clots were present in peritoneum cavity.

9) Liver: Three stab injuries present over anterior superior surface of liver consistent with injuries Nos. 21 and 22 of column No. 17. Depth of injuries is 0.1 cm. each.

15. Doctor found that internal injuries mentioned in column Nos. 19 to 21 of the post mortem report are corresponding with the injuries mentioned in column No. 17 of the post mortem report. Doctor also opined that all these injuries were ante mortem injuries and those were fresh. The post mortem report is at Exh. No. 12. It is pertinent to note that, Dr. Ajit Pathak [P.W. No. 1] was not examined at all by the learned cross-examiner.

16. Article "A" tocha i.e. weapon used for commission of offence was shown to Dr. Ajit Pathak and he in clear words deposed before the court that the injuries mentioned in the post mortem report may be caused by such weapon and those injuries are sufficient to cause the death in ordinary course of the nature.

17. In the light of above details, it is predominantly established that Manisha suffered homicidal death. Accordingly, point No. 1 is answered.

18. Now, moot question is, whether the appellant can be held responsible for the homicidal death of Manisha.

19. As observed above, admittedly on 27th November, 2009 the case filed on behalf of the appellant for divorce was fixed at Dhule Court. Therefore, the presence of the appellant and Manish at Dhule was most natural. In fact, attending the Court on the said date, is admitted by the appellant in his statement recorded U/Section 313 of the Code.

20. Exh. No. 47 is an entry found in the "Passenger Register" of Hotel Mayur. Said entry is at page No. 229. It is dated 27th November, 2009. As per the said entry, the appellant alongwith Manisha "check-in" the said Lodge at 5.25 p.m. The register is duly maintained by the management of Mayur Lodge, in the ordinary course of business.

21. Jitendera Sonawane [P.W. No. 12] was working as a Manager of Mayur Lodge since last 19-20 years. On 27th November, 2009 his working hours was 8.00 a.m. to 5.00 p.m. He was to be relieved by another Manager namely Sanjay Gaikwad [P.W. No. 10] at 5.00 p.m. However, since his reliever did not reach at 5.00 p.m., Jitender [P.W. No. 12] continued to act as a Manager at 5.25 p.m. As per the testimony of Jitender [P.W. No. 12] one couple visited the lodge and requested for a room. His evidence would further reveals that the said customer made entry in his own handwriting and wrote his name as Narendra Ishi [appellant] and Manisha Narendra Ishi [deceased]. Thus, his evidence is duly corroborated by the entry Exh. No. 47 found in the "Passenger Register". Evidence of this prosecution witness makes it clear that Room No. 10 was allotted to this couple. The said room was cleaned by one sweeper Mehboob Shaikh Musa [P.W. No. 5]. The relieving Manager Sanjay Gaikwad resumed his duty at 5.30 p.m.

22. The evidence of Jitender [P.W. No. 12] is corroborated by Mehboob Sk. Musa [P.W. No. 5] that Jitender was the Manger and he [Mehboob Musa] cleaned the room. Sanjay Gaikwad [P.W. No. 10] also corroborate the fact that he took the charge from Jitender [P.W. No. 12] at 5.30 p.m. and that time, on enquiry, he found that, Room No. 10 is booked in the name of the appellant and his wife Manisha. Thus, the prosecution has duly proved the factum of presence of the appellant with deceased from 5.25 p.m. on 27th November, 2009 at Mayur Lodge, Dhule.

23. Mehboob Sk. Musa [P.W. No. 5] was sent by the appellant to bring two dabeli

(type of snack) and gave Rs. 20/- to him. This prosecution witness purchased two dabeli from the shop situated in the basement of said Lodge. He handed over two dabeli to the appellant. His evidence would reveal that, the appellant asked him to keep the change of Rs. 8/- with him. Probably that must have been given by way of tip to him. It is important to note that Mehboob Musa [P.W. No. 5] has identified the appellant in the court as the same person, to whom he had given dabeli.

24. Purchase of dabeli by Mehboob Musa [P.W. No. 5] is corroborated by Ravi Gopaldas Agrawal [P.W. No. 2], who runs dabeli shop in the basement of Mayur Lodge. His shop remains open from 10.00 a.m. to 10.00 p.m. P.W. No. 2 Ravi Agarwal claims that, Mehboob Musa purchased two dabeli at 5.45 p.m. and he paid Rs. 20/- to him. Two dabeli costs Rs. 12/- and, therefore, he returned Rs. 8/- to Mehboob Musa [P.W. No. 5]. In the cross-examination of Ravi Agarwal, defence tried to suggest that he could not say how many customers visited to his shop and how much amount they paid to him. We cannot forget one fact that dabeli shop run by this witness-Ravi Agarwal is situated in the basement, where Mayur Lodge is situated. Mehboob Musa [P.W. No. 5] is working with Mayur Lodge. That clearly established that this prosecution witness must be knowing Mehboob Musa [P.W. No. 5] since long because as per the evidence of Mehboob Musa [P.W. No. 5] he is working in Mayur Lodge since last 22 years, therefore, close acquaintance between Ravi-owner of dabeli shop and Mehboob Musa [P.W. No. 5] is most natural. Therefore, remembering Mehboob Musa [P.W. No. 5] purchasing two dabeli at 5.45 p.m. on 27/11/2009 by itself is not and cannot be suspicious circumstance, in the prosecution case, as claimed by the learned counsel appearing for the appellant before this Court.

25. Evidence of Sanjay Gaikwad [P.W. No. 10] shows that after taking the charge from Jitender [P.W. No. 12], he was present on the counter. His evidence would reveal that, both the counter and Room No. 10 are situated on 3rd floor. At about 6.00 p.m. he heard shout from Room No. 10. The voice was of woman. He immediately rushed towards Room No. 10 and gave call from the outside but since there was no response from the inside to his call, he knocked the door. Upon which, it was told from the inside that, Upon that, he came back to his counter. Nothing unnatural could be attributed to this reaction of Sanjay [P.W. No. 10]. According to the learned counsel for the appellant, this witness ought to have persisted to keep the door opened and his inaction is nothing but negligence on his part and in fact, it suggests that the version of the prosecution case is untruthful one. According to the learned counsel appearing for the appellant, the appellant was not present at the relevant time, at the lodge and, therefore, simple reaction of Manager Sanjay Gaikwad is not pursuing. Further his action at reaching at Room No. 10 and returned back to the counter, in fact, extended strength to the version of the appellant in his statement recorded U/ Section 313 of the Code that he is falsely implicated in the incident.

26. After hearing commotion, from Room No. 10 Sanjay [P.W. No. 10]

immediately went near the room. His action of giving call from outside the door of the room and when there was no response from inside giving knock on the door, is in conformity with the etiquette of unwritten rules of hospitality. One cannot forget that couple was inside the room, therefore, etiquette demands that intruder shall not enter into the room, without permission. In that view of the matter, action on the part of Sanjay [P.W. No. 10] returning to his counter, after getting the reply from inside that they are talking, is natural. It was beyond his visualization, as a normal person that, ghastly incident must have occurred inside the four walls of the room.

27. Evidence of Sanjay Gaikwad [P.W. No. 10] clearly shows that, when he found the appellant leaving the room and lodge alone hurriedly, he asked him to stop however, in vain. Therefore, that hurried action on the part of the appellant gave suspicion in his mind, which prompted him to visit the room, the couple was occupying. That time, he found Manisha, in a pull of blood. Therefore, he got frightened. He saw the appellant was running towards Ganpati temple. As a responsible citizen, this witness chased the appellant and that time, he also intimated to Hiralal Patil [P.W. No. 6] to follow him. Hiralal [P.W. No. 6] runs medical shop by name Prem Medical and General stores. Said medical shop is situated in a building where-in Mayur Lodge is situated. At 6.00 p.m. his presence in the shop is most natural one. Running away of the appellant from the building and his chase by Sanjay [P.W. No. 10] is corroborated by Hiralal [P.W. No. 6]. There is nothing to discredit the version of Hiralal [P.W. No. 6]. As per the request made by Sanjay [P.W. No. 10], Hiralal [P.W. No. 6] followed him. At some distance, Sanjay [P.W. No. 10] intercepted the appellant in one rickshaw and overpowered him. He was brought to Mayur Lodge. Thereafter, the incident was informed to the Police. Hiralal [P.W. No. 6] has identified the appellant in the court as same person, who was caught by P.W. No. 10 Sanjay.

28. All these prosecution witnesses are independent witnesses. Nothing is placed on record to show that any one of them were keeping and/or nursing grudge against the appellant. There is no reason for any of them to falsely implicate the appellant.

29. Further the muddemal articles seized, which includes Article "A"-tocha, Article "B"-bedsheet, Article "C"-Sari, Article "D"-blouse, Article "E"-sandow baniyan and Article "F" - handkerchief seized from the appellant, at the time of his arrest. Article "F" handkerchief alongwith the bedsheet containing blood of deceased were sent to the Chemical Analyzer, as per the requisition Exh. No. 17. C.A. Report is available on record Exh. No. 62 which shows that, the blood sent in a plastic bottle labelled as "Manisha Narendra Ishi" was found to be having Blood Group "A". The Regional Forensic Laboratory, Nashik vide its report dated 20th January, 2010 [which is at Exh. No. 61] points out that the Art. "A" - tocha, Art. "E" -sandow baniyan of appellant and Art. "F" - handkerchief are having blood stains. Those blood stains are having human origins and group of the said blood is "A". Thus, scientific evidence also corroborate the prosecution case. The

weapon used in the commission of offence was found at the spot. It was seized from the spot. The appellant was arrested immediately. His clothes were seized, upon his arrest. All these evidence lends credence to the prosecution case and ruled out any fabrication.

30. The aforesaid survey of the prosecution case leads us to record the finding that the learned Sessions Judge, Dhule has rightly recorded the findings that the appellant (original accused) is guilty of committing an offence punishable U/ Section 302 of the I.P. Code for having committed the murder of his wife- Manisha. Criminal Appeal must fail and accordingly Criminal Appeal is dismissed. The Judgment and Order of conviction passed by the learned Sessions Judge, Dhule dated 29th November, 2011, in Sessions Case No. 37 of 2010 is hereby confirmed.