

(1985) 03 BOM CK 0007

In the Bombay High Court

Case No : Confirmation Case No. 1 and Criminal Appeal No. 174 of 1984

State of Maharashtra

APPELLANT

Vs

Vithal Pandurang Bhagat

RESPONDENT

Date of Decision : 08-03-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 354(3), 367
Penal Code, 1860 (IPC) — Section 302

Citation : (1985) CriLJ 664

Hon'ble Judges : S.N. Khatri, J; M.M. Qazi, J

Bench : Division Bench

Judgement

Qazi, J.—This judgment will dispose of Confirmation Case No. 1 of 1984 and Criminal Appeal No. 174 of 1984.

2. Appellant Vithal Pandurang Bhagat is convicted by the Additional Sessions Judge, Amravati for offence under S. 302 of the I.P.C. for having committed the murders of Nanibai, Shantabai and Bhimabai on 25th November, 1983 at about 3-30 p.m. in the field Survey No. 154/1 of mouza Nimbhora-Delwadi, district Amravati. This spot is about 3 miles away from village Tiwasa.

3. According to the prosecution, deceased Nanibai was the wife of the appellant, the marriage having taken place in Gandharv form on or about the 24th February, 1983. Nanibai was the daughter of Mahadeo Abaji Nakhale (P.W. 12). He was the resident of village Tiwasa, district Amravati. Deceased Shantabai was the wife of Mahadeo (P.W. 12). The appellant was also residing at village Tiwasa at the time of the incident. After his marriage with Nanibai, he had shifted to the house of his father-in-law, where he stayed for about two months. There used to be frequent quarrels between them and hence Mahadeo asked them to leave his house. They accordingly left his house and went to reside in the house of one Nilubai, where they stayed for about two months and then they went to reside in the hutment area. The prosecution has placed on record the copy of the Sanha entry dt. 3-11-1983 (Ex. 50) which shows that Mahadeo had reported to the

police that the appellant often drinks wine and gives abuses and threatens to beat him. The Sanha entry further recites that Mahadeo is being constantly troubled by the appellant.

4. It appears that the married life of the appellant and deceased Nanibai was not happy and there used to be frequent quarrels between them. Nanibai was the third wife of the appellant, so also the appellant was the third husband of Nanibai. The marital ties came to an end on 15-11-1983 and a divorce deed (Ex. 31) was executed by them. The divorce deed recites that since the relations between the appellant and deceased Nanibai were strained they decided to put an end to the marital ties. This document further recites that there are no dues of money, clothes, ornaments, etc., against each other. The deed of divorce is attested by several witnesses including Mahadeo. In spite of the dissolution of marriage, the appellant did not reconcile with the situation and wanted to have a control on Nanibai.

5. The prosecution has placed on record Police Station Diary entry dt. 16-11-1983 (Ex. 46). Nanibai had lodged a report with the police station Tiwasa that on 16-11-1983 while she was working in the field of Sudam (P.W. 8) the appellant came there and threatened to kill her by showing spear. The report recites that the appellant would have killed her but for the intervention of Sudam Gandhe, who took the appellant to village Tiwasa. In this report, Nanibai has expressed her apprehension that one day the appellant may kill her. Sudam (P.W. 8) has deposed to this incident and according to him, this incident took place in his field at about 5-00 p.m. on 16-11-1983. According to him, the appellant was insisting that in spite of the divorce Nanibai should cohabit and continue to have sexual relationship with him.

6. All the three victims in this case, viz, Nanibai, her mother Shantabai and Bhimabai, used to work in the field as labourers and they were generally working in the field of Janabai Gandhe (P.W. 6). Nanibai had a daughter from her first husband of Nandgaon-peth. After the divorce Nanibai started living with her father, while the appellant continued to live in the hutment area.

7. On the day of the incident, viz., 25-11-1983, all the three victims along with Janabai Gandhe (P.W. 6) and Janabai Mahure (P.W. 7) went to the field of Janabai Gandhe on Delwadi road and they reached there at about 12-00 noon and started plucking the cotton. The prosecution case is that at about 4-00 p.m. the appellant also came there from the side of the nallah on the southern side of the field armed with the iron rod (Art. 44) or a heavy stick resembling it. The appellant struck a blow with it on the head of Bhimabai as a result of which she fell down on the ground. Then he dealt another blow on Shantabai's head and she also fell down. Thereafter the appellant went near Nanibai and also dealt a blow on her head, as a result of which she also fell down. Then the appellant is alleged to have taken out some sharp weapon resembling a chisel, from his waist and started striking Nanibai, Shantabai and Bhimabai mercilessly with it. All the three ladies died on the spot itself each sustaining a dozen or more injuries. The

incident was witnessed by Janabai Gandhe and Janabai Mahure.

8. Janabai Gandhe was frightened and, therefore, ran away to her another field near village Tiwasa. On the way, she narrated the incident to her son Sudam (P.W. 8) who was then grazing the cattle in his field near village Tiwasa. Sudam on his part rushed to the house of Chindhu (P.W. 1) since one of the victims viz, Bhimabai, was his wife, and narrated the incident to him. Chindhu rushed to the field of Sudam Gandhe (place of the incident) along with his son Niranjan. After having reached the scene of incident, they found that Bhimabai, Shantabai and Nanibai were lying dead with multiple injuries on their person and clothes drenched with blood. Chindhu again came back to his house and then went to police station Tiwasa and lodged the report (Ex. 8) with the police at 6-30 p.m. It is on the basis of this report that the offence was registered and investigation commenced. It is not in dispute that the report is lodged almost immediately and without any loss of time. The report fully implicates the appellant and gives material details about the incident.

9. The matter was investigated by P.S.I. Prabhakar Rahane (P.W. 25). He recorded the first information report (Ex. 8) and registered the offence under S. 302 of the I.P.C. He arrested the appellant on the same day at 7.00 p.m. since he himself came at the police station at 6-45 p.m. Since the P.S.I. noticed that the clothes of the appellant were stained with blood and there were injuries on his stomach, he sent him for medical examination to the Primary Health Centre, Tiwasa, where he was examined by Dr. Gaikwad who ultimately referred him to the Irvin Hospital, Amravati, for treatment. The appellant remained in the Irvin Hospital till 7-12-1983 and thereafter he was in magisterial custody up to 30-12-1983. According to the prosecution, these injuries were self-inflicted by the appellant.

10. The P.S.I. on the same night of the incident reached the spot at about 9-00 p.m. The spot as we have pointed out above is the field of Sudam Gandhe on Tiwasa Delwadi road. He found the dead bodies of Bhimabai, Shantabai and Nanibai lying there. He deputed police constables Kadu, Deshmukh and Mahadeo to guard the dead bodies and recorded statements of Sudam Gandhe, Janabai Gandhe, Janabai Mahure and others. On the next day i.e. 26-11-1983, he prepared the inquest panchanama (Ex. 10) and spot panchanama (Ex. 11) and effected the seizure of certain articles. He sent the dead bodies for post-mortem examination and recorded the statements of some more witnesses. On 27-11-1983, he recorded the statements of Chindhu, Mahadeo and others and also seized the divorce deed (Ex. 31) which was produced by Mahadeo, under the seizure memo Ex. 16. On 31-12-1983, while the appellant was in police custody, the P.S.I. recorded the memorandum of the appellant (Ex. 12) in presence of panchas, wherein the appellant agreed to produce the iron bar (Art. 44) and Kikra (Chisel). The appellant took the P.S.I. and the panchas to the field of Ambadas Ramaji Gandhe, where there was a heap of hybrid Kadaba. The appellant took out a sheaf of Kadaba from that heap and produced the iron rod

(Art. 44) therefrom. It was stained with blood. The same was seized under the panchanama Ex. 13. However, the Kikra was not found at the place where the appellant took the police party. On 4-1-1983, the P.S.I. sent the appellant for collection of sample blood to the Irvin Hospital, Amravati. On 9-1-1984, he sent the property to the Chemical Analyser, Nagpur, along with Art. 44. Ex. 64 is the report of the Chemical Analyser. On 15-1-1984, he prepared the charge-sheet and filed the same in the court of the Judicial Magistrate, First Class, Chandur Railway, on 22-2-1984.

11. The prosecution has examined number of witnesses in support of its case. The case essentially rests on the testimony of two eye-witnesses, viz, Janabai Yandhe (P.W. 6) and Janabai Mahure (P.W. 7), whose evidence is also corroborated by several other circumstances. The medical evidence consists of Dr. Balkrishna Shirbhate (P.W. 14), who did the autopsy on the dead bodies of Nanibai, Bhimabai and Shantabai. During the course of hearing the prosecution filed an application for recording additional evidence of Dr. Shirbhate under S. 367 of the Cri.P.C., since it thought that there was some ambiguity in his evidence recorded by the Additional Sessions Judge. The request was opposed by the defence. However, looking to the seriousness of the matter, we were satisfied that it was necessary to recall the Doctor for certain clarification of his evidence. According to the doctor, all the injuries including those on the head of the victims were incised wounds, whereas according to the ocular testimony blows were given to the victims initially by a stick-like object. Now blows with a hard and blunt object would also cause on scalp injuries, resembling incised wounds. It is common knowledge that one is likely to miss the irregular margins of such wound unless they are carefully examined with a hand lens. As the doctor's testimony was silent on this aspect, his further examination was considered necessary in the interest of justice. We have recorded his evidence at Ex. 32-A and the appellant's further statement at Ex. 3-A.

12. The defence of the appellant is one of total denial. In his statement under S. 313 of the Cr.P.C. he has even denied that there was Gandharv Marriage between him and Nanibai. The gist of his defence may be stated with advantage in his own words. In reply to Question No. 96 of the lower Court he says :-

"After I came to Tiwasa, Nani started loving me. Before that, there was love affair between her and Sudam Gandhe. On an occasion or two Sudam Gandhe saw Nani visiting my house in Pardhipura. Sudam Gandhe threatened to kill me and Nani. Former two husbands of Nani had divorced her because of her love affair with Sudam Gandhe. Once I actually saw Sudam Gandhe and Nani in a compromising position in Sudam Gandhe's field near the village. I told them that I would report the matter to the police. Sudam Gandhe and Nani threatened to kill me. Nani lodged a false report against me. On 25-11-1983, I was returning from village Kaundinyapur. I was passing through the field of Sudam Gandhe. Sudam Gandhe stabbed me with the knife on my abdomen. I went to the police station, Tiwasa, and lodged an oral report with the police. Sudam was already

there. Police did not record report and on the contrary arrested me. Nani was not my wife. My wife is Rukhamabai and she is still alive."

The appellant could not give any reason why the prosecution witnesses (including eye-witnesses) were deposing against him.

13. On appreciation of the evidence led before him, the learned Additional Sessions Judge has come to the conclusion that the evidence of the two eye-witnesses is absolutely worthy of reliance. As regards the apparent discrepancy in Dr. Shirbhate's evidence that the injuries on the head were also incised wounds, the learned Judge has rightly observed that injuries on tense surfaces like scalp etc., usually looked like incised wounds, even when they were caused by hard and blunt substance. The lower Court held that there was adequate motive for the appellant to commit the gruesome murder of three women. He has accepted the evidence of blacksmith Maruti Shinde P.W. 15 that on the eve of the incident, the appellant had got a chisel sharpened by him. The learned Judge, however, found the evidence on the question of discovery of rod (Art. 44) not acceptable. In the result he has convicted the appellant for murder of the three women and sentenced him to death, subject to confirmation by this Court.

14. In these confirmation proceedings, we have been taken through the entire record of the case. The fact that Nanibai, Shantabai and Bhimabai met with homicidal death on the afternoon of 25th November 1983, has not been disputed by Shri Sirpurkar, the learned Counsel for defence, and in our opinion rightly. Apart from the evidence of several witnesses who went to the scene of offence immediately after the incident, we have the evidence of Namdeo Talan P.W. 2, panch to the panchanama of inquest, and of Dr. Shirbhate P.W. 14 who conducted autopsy over the dead bodies. The injuries found by the Doctor on the dead bodies are described in detail in paras 24, 25 & 26 infra. All this unchallenged evidence proves that these unfortunate women met with homicidal death on the afternoon of 25th November 1983.

15. Next the crucial question is whether the appellant has been connected with the crime beyond reasonable doubt. Janabai Gandhe (P.W. 6) is one of the eye-witnesses to the incident in question. She is a resident of village Tiwasa. Her husband owns six fields. One of the fields where the incident has occurred is on Tiwasa Delwadi road, and another field is near Tiwasa village. She knew all the three victims. According to her Bhimabai was working in her field since about 8 to 9 years before the incident and that Shantabai and Nanibai were working in her field since about 2 to 3 months before the incident. She also knows the appellant, who is a resident of the same village. On the date of the incident, there were cotton and Tur crops in her field. According to her, on the day of incident she herself along with deceased Bhimabai, Shantabai and Nanibai and Janabai Mahure (P.W. 7) started for her field on Delwadi road in the morning. They reached the field at about 12 noon. The three victims and Janabai started plucking the cotton. They were plucking the cotton in a piece of cloth tied to their neck and hung on their back. They were plucking the cotton row-wise. She was

near the 9th line of the cotton plants on southern side of the field. She also was plucking the cotton. According to her, at about 4-00 p.m. she saw the appellant coming from the side of the nallah on the southern side of the field with a stick in his hand, which was about two cubits in length. She saw the appellant giving a blow with the stick on the head of Bhimabai, Shantabai and Nanibai one after the other, as a result of which they fell down on the ground. Then the appellant took out some sharp weapon from his waist and thrust the same on the head of Nanibai twice and when he raised that weapon to strike Nanibai on the third occasion, she was frightened and ran away to her another field near village Tiwasa, where her son Sudam was grazing the cattle. She narrated the incident to Sudam. According to her, Sudam rushed towards the village and she herself remained in the field. She was shown the iron rod (Art. 44) and she deposed that the stick which she saw in the hand of the appellant was like the said iron rod. The statement of this witness was recorded on the same day. She has been cross-examined, but there is nothing in the cross-examination to doubt her testimony. It appears from her examination that she saw the incident from fairly a close distance. She has deposed that Bhimabai was at a distance of about 15 paces from her. She has denied the suggestion that while she was plucking the cotton she could not see the man who was coming from the side of the Dhura. According to her, Tur plants were of waist height. She has also denied the suggestion that she could not see the heads of the victims after they had fallen down. She has also denied the suggestion that she was not at all plucking the cotton and that she was near the northern Dhura of the field. A suggestion was given to her that she left the field at about 3.00 p.m. on that day and, therefore, she could not witness any incident. The suggestion is denied by her. There is not a single contradiction or omission in her evidence. The defence only gave few suggestions including the one that she is deposing at the instance of the police, but the same have been denied by the witness.

16. The next eye-witness is P.W. 7 Janabai Mahure. She has deposed that she knew all the victims. According to her on the date of the incident, she along with Janabai Gandhe and three victims went to the field of Sudam Gandhe on Delwadi road. They reached the field at about 12-00 noon and started plucking the cotton from the southern Dhura. It appears from her evidence that they were quite close to each other. According to her, the cotton plants were of knee height and the Tur plants were of thigh height. They were collecting the cotton in the piece of cloth hung on the back and tied to the neck. At about 4-00 p.m. she saw the appellant coming from the nallah on the southern side with a stick. He dealt a blow with it on Bhimabai's head, then on Shantabai's head and then on Nanibai's head, as a result of which all the three victims dropped down on the ground. Then, according to this witness, the appellant took out the weapon from his waist and was striking Nanibai with the said weapon. Soon thereafter all the three ladies were found dead. It appears after some time she started going to home and on the way she met Chindhu and his son Niranjan. Chindhu enquired from her as to what had happened. Since she was frightened, she simply told

Chindhu to go and see for himself. The statement of this witness was recorded on the same day. While in the witness-box she was shown the iron rod (Art. 44). She deposed that she would not be able to say whether the said iron rod was the same weapon by which the appellant struck Bhimabai, Shantabai and Nanibai. There is nothing in her cross-examination, which renders her testimony doubtful. There is no contradiction or omission. There are few suggestions which are denied. She has, however, admitted that she never saw the appellant before the incident. She has admitted that Tur plants in the field were waist height. She asserted that she could see the entire figure of the appellant. According to her, Nanibai was at a distance of 10 to 15 paces from her. A suggestion was put to her that the assailant had covered his face with the piece of cloth or towel, but the suggestion was denied by her. It was suggested to her that she was implicating the appellant at the instance of the police, but the suggestion has been denied by her. It was also suggested to her that she could not see the victims after they fell down but the same has been denied.

17. As we have observed above, these are the only two eye-witnesses on whom the prosecution case essentially rests. We have given our anxious consideration to their evidence and have also taken into consideration the criticism levelled against their evidence by the defence, but we see no reason whatsoever to doubt their testimony. The learned Counsel appearing on behalf of the appellant attacked the evidence of these two witnesses essentially on the ground that their testimony is in conflict with the medical evidence. We will deal with this aspect a little later when we come to the medical evidence. There is not a single contradiction or omission brought in their evidence nor these witnesses have any axe to grind against the appellant. They are natural witnesses and they had every reason to be present in the field at the time of the incident. One of these witnesses Janabai Gandhe (P.W. 6) is the owner of that field and the other witness, viz, Janabai Mahure (P.W. 7) had gone there for plucking the cotton along with three victims. There appears to be no reason as to why these witnesses should implicate the appellant in a heinous crime of murder of three innocent women.

18. The evidence of Janabai Gandhe has been further corroborated by the evidence of her son Sudam (P.W. 8), who was informed of the incident by her immediately and who on his part rushed to inform Chindhu (P.W. 1), who then lodged the report. As we have already shown above, the first information report was lodged almost immediately after the incident. Looking to the distance between the scene of incident and the police station, which is about 3 miles, it cannot be said that there was any loss of time in lodging the report. As we have pointed out Janabai Gandhe immediately informed about the incident to Sudam and Sudam rushed to Chindhu, whose wife Bhimabai was one of the victims. Chindhu naturally rushed to the scene of incident first, by covering a distance of about 3 miles and when he saw that his wife and two other ladies were already dead, he came back to the village and lodged the report at Tiwasa Police Station. The report fully implicates the appellant and gives all the relevant details. Thus

there is ample corroboration to the evidence of Janabai Gandhe (P.W. 6).

19. As is vouched by Janabai Gandhe (P.W. 6), Janabai Mahure (P.W. 7) was working in her field on the fateful day as a labourer right from noon. The evidence of Janabai Mahure (P.W. 7) is corroborated by Chindhu, who has deposed that while he was going to the scene of incident after having been informed by Sudam, he met Janabai Mahure near the field of Sudam. Her presence is further established by the evidence of Sudam, who has deposed that when he was going to the field where the incident occurred he met Chindhu, Nirnanjan, Janabai Mahure, Manohar Gandhe and Dilip Gandhe on the way and they informed him that all the three ladies had already died. Thus, we have no doubt that the two eye-witnesses were very much present at the time of the incident and had actually seen the incident.

20. One of the criticisms that has been levelled against the evidence of Janabai Mahure is that she admitted that she was seeing the appellant for the first time at the time of the incident. Relying on this admission, it was argued that it was necessary for the prosecution to have held the identification parade. There is no substance in this submission. The incident has taken place in broad day light and this witness remained in the field throughout the incident and had adequate opportunity to see the assailant perpetrating the attack on the victims from a close range. Needless to say that the attack even if conducted with speed, must have taken good time. There was absolutely no scope for mistaken identity and the identification parade, even if held, would have been a redundant formality. There is no merit in the submission of the learned Counsel.

21. Another criticism which was levelled was that the evidence of the two eye-witnesses is of a stereotype and, therefore, the same cannot be accepted. We are not impressed by this submission. The witnesses have only deposed to certain broad facts which they have seen and they stood the test of cross-examination very well. In our view, they have not at all exaggerated the incident. They have only deposed to facts which they actually saw. They have deposed that they saw the appellant taking out a sharp edged weapon from his waist and striking Nanibai. If they wanted to exaggerate the incident, they would have said that they also saw the appellant inflicting several injuries on all the victims with sharp edged weapon on different parts of their bodies. They have only deposed to the first blow that was dealt by the appellant on the head of each of the victims and then, according to them, he took out sharp edged weapon from his waist and started striking Nanibai. Admittedly there are multiple injuries suffered by each of the victims on various parts of the body, including the head, but the witnesses have deposed in a straightforward manner only to things which they have actually noticed.

22. Another criticism levelled against the prosecution was that it has not offered any explanation of injuries on the person of the appellant. The prosecution has examined Dr. Gaikwad (P.W. 17). He examined the appellant on 25-11-1983 at 7-30 p.m. and found the following injuries :-

"(i) Incised wound on abdomen 1" above umbilicus, transverse in direction, fresh bleeding, size 1/3" X 1/4" X 1/6". (ii) Incised wound on abdomen 1/2" to lateral side of right side, oblique in direction, from anterior superior iliac crest, towards the mid point epigastrium, size 1/3" X 1/4" X 1/5", fresh bleeding.

(iii) Incised wound on abdomen on right side, right lateral to umbilicus, 2" away from mid centre towards the mid point of last rib, transverse in direction, size 1/3" X 1/4" X 1/5" fresh bleeding.

(iv) Incised wound on abdomen, below umbilicus, 1" away from mid point from umbilicus towards the public oblique in direction from right to left, size 1/4" X 1/5" fresh bleeding."

The doctor has further deposed that all the above injuries could be caused by sharp object and the duration of the injuries was 1 to 2 hours. According to him, all the four injuries were minor injuries, and they could be self-inflicted, since the parts of the body on which the injuries were found were easily accessible by right hand. It is significant to note that even according to the appellant, these injuries were inflicted not during the course of the incident but by Sudam P.W. 8, while the former was passing through the latter's field. The appellant nowhere links these injuries with the incident in which the three women met their death. Still less does he attribute the authorship of these injuries to any of the deceased women. That is why no question to this end was put to either of the two eye-witnesses in cross-examination. It has come in evidence of P.S.I. Rahane (P.W. 25) that the appellant reached the police station at 6-45 p.m. on the date of the incident and that he had injuries on his abdomen at that time. Dr. Gaikwad has already deposed that the injuries on the person of the appellant could be self-inflicted. In the circumstances it is futile to surmise that the appellant could or did suffer any injury in the incident which occurred on an altogether different spot, where he assaulted the three ladies. It is further interesting to note that no suggestion whatever is made to Sudam (P.W. 8) that he was the author of the injuries on the person of the appellant.

23. In this connection, Shri Ahmed, learned Public Prosecutor has relied on a decision Jagdish Vs. State of Rajasthan, In this, decision, the Supreme Court was dealing with the case in which the accused was acquitted by the Sessions Judge and the High Court set aside the acquittal and convicted the accused of the offence under S. 302 of the I.P.C. The Sessions Judge had acquitted the accused since he was of the opinion that as some of the accused persons had also injuries, it was a case of mutual assault and therefore there was no intention to cause the murder. In this context, the Supreme Court observed as follows :

It is true that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the Court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution, two conditions must be satisfied :

1. that the injuries on the person of the accused must be very serious and severe and not superficial;
2. that it must be shown that these injuries must have been caused at the time of the occurrence in question."

Dr. Gaikwad (P.W. 17), who examined the appellant, has deposed that all the injuries suffered by the appellant were minor and that they could be self-inflicted. In view of the specific defence of the appellant that Sudam Yandhe had assaulted him, there could be no doubt that he has not suffered the injuries in the course of the occurrence when the three ladies died. Thus, there is no doubt that in the present case, none of these two conditions laid down by the Supreme Court are satisfied and hence there can be no question of any obligation on the prosecution to explain the injuries suffered by the appellant.

24. We now turn to the main criticism of the defence that the ocular testimony is in conflict with the medical evidence and, therefore, it would not be safe to sustain the conviction on the basis of the ocular testimony. We may point out here that Shri Sirpurkar, the learned Counsel appearing on behalf of the appellant, has fairly conceded the legal position that notwithstanding the conflict between the ocular testimony of eye-witnesses and medical evidence, it would be open to the Court to accept the eye witness account, if it is otherwise unshakable. In view of this, we do not consider it to refer to authorities in support of the proposition. The prosecution has examined Dr. Shirbhatte (P.W. 14) who did the autopsy on the dead bodies of Nanibai, Shantabai and Bhimabai, whose post-mortem reports are Exs. 33, 34 and 35 respectively. He has found the following ante-mortem external injuries on Nanibai's dead body :

"(i) Incised wound on left side of fore-head, starting from the inner side of the left eyebrow and going upwards up to hair line near midline, oblique in direction, margins clear cut, measuring 3" X 1" X bone deep, fracture of the frontal bone just underneath the injury.

(ii) Incised wound over left parietal region, 2 1/2" above the upper portion of the left ear, 2" X 1/4" X 1/6" longitudinal in direction, margins clear cut.

(iii) Incised wound over left stern mastoid muscle, just below the angle of jaw on left anterior lateral aspect 1" X 1/2" X 1" elliptical in shape, margins clear cut, fracture of body of third cervical vertebra visualised through the injury.

(iv) Contusion over left shoulder front 3" X 1", oblique in direction reddish in colour and diffused in nature (ecchymosis present), with punctured type of injury at its centre, 1/2" X 1/2" X 3/4", with irregular margins containing blood clots.

(v) Incised wound with clear cut margins over the left lower costal margins, 1" in front of anterior axillary line 1" X 1/2" X 1/6", vertically situated.

(vi) Incised wound on left thigh front at the junction of middle one-third with lower one-third, oblique in direction, 1 1/2" X 1/2" X 1/6", margins clear cut.

- (vii) Incised wound on right knee front oblique in direction, 1" X 1/5" X 1/8", margins clear cut.
- (viii) Incised wound over right lower costal, margins, on right anterior axillary line, oblique in direction, margins clear cut, 1" X 1/4" X 1/6".
- (ix) Incised wound over right molar region, 2" X 1" bone deep, oblique, indirection, with clear cut margins spindle shaped, mid-gaping 1" through which the fractured mallard bone (maxillary bone) is visualised.
- (x) Incised wound over right eyebrow outer part transverse in direction 1" X 1/2" X bone deep, spindle shaped, margins clear cut.
- (xi) Incised wound 1/2" behind to the lateral end of injury No. (x), 1" X 1/4" X 1/6" spindle shaped, with clear cut margins.
- (xii) Incised wound extending from 1" behind the left ear towards upper portion of occipital area of scalp, 2" X 1/2" X bone deep margins clear cut, spindle shaped.
- (xiii) Incised wound 1 1/2" X 1/2" X 1/6" over the upper portion of right ear exposing the cartilage and going backwards towards the lower portion of right parietal, slippery in nature, margins clear cut.
- (xiv) Incised wound below the right midclavical, 1" X 1/2" X 1/6", margins clear cut, transverse in direction.
- (xv) Incised wound 1/2" above injury No. (xiv), 1" 1/4" X 1/6", transverse in direction, margins clear cut.
- (xvi) Incised wound over right side of neck, 1" below the angle of right jaw, 1" X 1/2" X muscle deep, transverse in direction with clear cut margins.
- (xvii) Incised wound over right side of lumber region, upper portion, 1" X 1/2" X 1/6" oblique, in direction with clear cut margins.
- (xviii) Abrasion 1/3" X 1/2" over left shoulder top."

He has deposed that the incised wounds might have been caused by sharp edged object while the contusions might have been caused by hard and blunt object. According to him, punctured wound might have been caused due to projected and pointed object while the abrasion might have been caused by rubbing, dashing or scratching with a rough and hard object or surface. All the above injuries were ante-mortem. He found the following internal injuries on the dead body of Nanibai :

"Skull - Depressed crack fracture of the frontal bone about the same of external injury No. (i). Plenty of haematoma over the meninges, just below the fracture. Fair size of haematoma over the left occipital area corresponded to external injury No. (ii) and injury No. (xii). "Fair size of haematoma covering the right parietal also corresponded to external injury No. (xiii)."

He further found under the heading "Liver" -

"Liver - Lacerated wound 2" X 1" X 1" over the mid lower lobe anteriorly and lacerated wound 3" X 1/2" X (v.o.) entire depth over posterior surface, extending from mid portion towards inferior border of the liver. Corresponded with external injury No. (v)".

According to him, all the external injuries with corresponding internal injuries were sufficient in the ordinary course of nature to cause death. He has further deposed that external injuries Nos. (i), (iii), (v) and (xii) were individually sufficient in the ordinary course of nature to cause death. In his opinion, the cause of death of Nanibai was shock resulting from cervical fracture and trauma to liver with severe haemorrhage due to multiple injuries.

25. Dr. Shirbhate found the following external injuries on the dead body of Shantabai :-

"(i) Incised wound over left knee, back outer side, semi-circular, 1/2" x 1/4" x 1/6", margins clear cut.

(ii) Incised wound over left ring finger at the proximal inter-phalange joint inner side, 1/2" x 1/4" x 1/6", transverse in direction with clear cut margins.

(iii) Incised wound with clear cut margins over left parietal region of scalp, 2 1/2" above the upper portion of left ear, 4" x 1" X bone deep with depressed fracture, 2 1/2" in length, overlying muscles are also cut, obliquely longitudinal.

(iv) Incised wound with clear cut margins over the right side chest, elliptical in size transverse in direction pattering at both ends, 1" X 1/2" into muscle deep, 2" lateral from right nipple.

(v) Incised wound with clear cut margins oblique in direction 1" x 1/2" x muscle deep, half inch below injury No. (iv) over right side of chest at the level of right mid clavicular line.

(vi) Incised wound with clear cut margins, 1" x 1/2" into muscles deep, over the right mid rectos abdomensmuscle in the epigastric region, 1" above and right lateral to umbilicus oblique in direction.

(vii) Six incised wounds over back of the left side chest with clear cut margins -

(A) 1" x 1/4" x 1/4" between the mid line and inner border of scapula at it's centre vertical in direction.

(B) Incised wound over lower part of back of chest on left side at mid line, 1" x 1/4" x 1/6" vertical in direction.

(C) Incised wound 1" lateral to mid line on left side just 1 " below injury. No. (B), 1" x 1/4" x 1/3", vertical in direction. Remaining three incised wounds are below the inferior angle of left scapula one below the other having 1" gap in between each injury.

(D) 1" x 1/4" x 1/4" transverse in direction.

(E) 1" x 1/4" x 1/6" longitudinal in direction.

(F) 1" x 1/4" x 1/4" transverse in direction.

(viii) Incised wound below left collar bone inner one-third region oblique in direction 1" x 1/2" x 1/4" with clear cut margins.

(ix) Incised wound over the left sixth intercostal space in mid clavicular line oblique in direction elliptical in shape, 1" x 1/2" x 1/4".

According to him, all the above injuries might have been caused by sharp edged object and they all are ante-mortem injuries. He found the following internal injuries on the dead body of Shantabai :-

"Head :- Diffused clotted blood in and around the injury No. (iii) of column No. 17.

(ii) Skull :- Depressed fracture of left parietal area irregular in shape about 2 1/2" in length corresponded to external injury No. (iii) of column No. 17.

(iii) Brain :- Average in size, engorged vascular bed of the coverings. Fair size of haematoma present over the left parietal area corresponded to external injury No. (iii). Plenty of extra-dural and intramural haemorrhages seen more over left side of the brain.

According to him, all the external injuries with corresponding internal injuries were sufficient in the ordinary course of nature to cause death. He has further deposed that external injuries Nos. (iii) and (vii) with corresponding internal injuries were individually sufficient in the ordinary course of nature to cause death. According to him, the probable cause of death of Shantabai was shock resulting from severe haemorrhage and trauma over vital organs (left lung and brain).

26. Dr. Shirbhate found the following external injuries on the dead body of Bhimabai :-

"(i) Stab wound 3/4" X 1/2" X 1" margins clear cut, spindle shaped, from medial to lateral direction over the left side of the chest, just below the left nipple, slightly lateral to mid-clavicular line.

(ii) Stab wound obliquely situated, 1 1/2" X 1/2" X cavity deep, over the left lateral chest at it's mid portion along the left mid-axillaries line, margins clear cut and spindle shaped.

(iii) Incised wound, obliquely situated over the left mid front of neck, extending from cricoids cartilage, tailing towards the left lateral, with clear cut margins, 1 1/2" X 1/2" X 1/2" and the major vessels of the left side neck are under-cut position with plenty of clotted blood packed in and around the injury.

(iv) Incised wound 4" X 1/2" X bony deep, over the right parietal of the scalp, 3" above the upper portion of the right ear, from front to back direction through which the bone is seen clearly having half inch mid gaping in the centre of the injury and tailing towards posteriorly with clear cut margins. Some of the hair roots also a cut in bunches.

(v) Three incised wounds over the chest with clear cut margins, just below the inner end of right clavical, close to each other, with very little gap in between the injuries, obliquely situated (a) 1" X 1/4" X 1/4", (b) 3/4" X 1/4" X 1/4" and (c) 1" X 1/4" X 1/6".

(vi) Three incised wounds, with clear cut margins, one upon other with one-third inch gap in between the injuries over the right side of the chest at it's medic-lateral portion, lower half (a) 1" X 1/2" X muscle deep, (b) 1" X 1/2" X 1/3", and (c) 1" X 3/4" X 1/4". The above three injuries are spindle shaped and having tails towards the later-posterior portion.

(vii) Incised wound, 1" X 1/2" X 1/2", obliquely situated just upper three-fourth of medial border of left scapula, spindle shaped with clear cut margins.

(viii) Incised wound, 1" X 1/4" X 1/4", 1 1/2" below injury No. (vii), obliquely situated over the back left side spindle shaped with clear cut margins.

(ix) Incised wound horizontal in direction over the left mid back 2" below the lower angle of left scapula, 1" X 1/2" X 1/3" with clear cut margins.

(x) Incised wound horizontally situated, 1" X 1/2" X 1/6" half inch below injury No. (ix), with clear cut margins.

(xi) Incised wound horizontally situated over the left mid back, 1" X 1/2" X 1/6" just one fourth inch below injury No. (x) margins clear cut.

(xii) Incised wound obliquely situated over the right side of back, 1" X 1/4" X 1/6", one inch right lateral to the mid back line with clear cut margins, mid back region."

According to him, all the above injuries might have been caused by sharp edged object and they were all ante-mortem. He found the following internal injuries on the dead body of Bhimabai :-

"Head :- (a) Haematoma formation of 6" X 6" around the corresponding external injury No. (iv) over the right side of the scalp.

(b) Brain :- Average in size, petechial haemorrhages over the right side of the coverings, pale in appearance and on section. No basal trauma. Fair quantity of sub-dural haematoma seen in right side of the Brain.

(c) Thorax :- Sixth rib on left side fractured at its mid-curvature portion.

(d) Pleura - Pleura is punctured at the same site.

(e) Right Lung :- Pale in appearance and on section.

Left Lung :- Lower lobe is punctured, 1/2" X 1/4" X 1/4" and plenty of semi-clotted blood seen in thoracic cavity particularly left side corresponding to external injury No. (ii) over left side of chest."

In his opinion all the external injuries with corresponding internal injuries were sufficient in the ordinary course of nature to cause death External injuries Nos. (i), (ii), (iii) and (iv) with corresponding internal injuries were individually sufficient in the ordinary course of nature to cause death. According to him, the probable cause of death of Bhimabai was instantaneous shock resulting from severe haemorrhage due to multiple injuries and trauma to vital organs, i.e. left lung and intracranial. He has further deposed that external injury No. (iv) being the contusion and external injury No. (xviii) being the abrasion found on the dead body of Nanibai could be caused by the iron bar (Art. 44) before the Court. He has further deposed that the impact of the blow with the iron rod on the head could be the fracture of the skull. All the incised wounds, according to him, found on the dead bodies of Nanibai, Shantabai and Bhimabai could be caused by sharp edged weapon, like big chisel.

27. A, query (Ex. 62) was made to Dr. Shirbhate as to whether iron rod (Art. 44) could cause the injuries found on the persons of Nanibai, Shantabai and Bhimabai. He answered the query vide Ex. 36 and opined that external injuries Nos. (iv) and (xviii) on the person of Nanibai could be caused by the iron rod (Art. 44). While giving his opinion, he has also mentioned that no blood stains were seen by him on the iron rod.

28. In the additional evidence recorded in this Court Dr. Shirbhate has further conceded that the iron rod (Art. 44) could cause the fracture of the skull of two victims, viz, Nanibai and Shantabai. According to him, the haematoma can normally be the result only of a blow by hard and blunt object. He has also admitted that in the present case, it would not have been possible for him to say about the head injuries with certainty that they were incised wounds without using the magnifying glass. He, however, asserted that he had used this instrument in the present case. Therefore, he was questioned as to how he remembered that in this particular case he used a magnifying glass in order to ascertain the true nature of the injuries on the head of the victims without there being any note anywhere. According to him, he must have used the magnifying glass in the present case also since he uses the same in each and every case while performing the post-mortems. He has further asserted that while giving opinion that no blood stains were noticed by him on Art. 44 he had used the magnifying glass.

29. While the doctor was in the witness-box, the learned Public Prosecutor requested us to observe his demeanour since he was taking time in giving answers and further he was avoiding giving straight answers. Though we did not think it necessary to make a formal record of his demeanour then, we did take

the mental note. We are constrained to observe that Dr. Shirbhate was not deposing in a straightforward manner and was taking undue time to answer simple prosecution questions, while he was conspicuously quick, confident and perfectly at ease while replying defence questions. We are of the view that his evidence does not overrule the possibility that at least one of the head injuries suffered by each of the victims could be the result of blow by hard and blunt object, like the stick or iron rod (Art. 44). It is true that he has described all the head injuries as incised wounds and asserted that the margins of the wounds were clean-cut, which would normally be the result of a blow by a sharp edged weapon. He has admitted in his evidence that the injury on head even if caused by hard object would give an appearance of incised wound and it is only when seen by a magnifying glass that it could be found out as to whether it was an incised wound or not. There is no dispute that he has not maintained the record that he used the magnifying glass while carrying the post mortems of the three victims. There is also no dispute that he had not mentioned anywhere either in the post mortem reports or in the answer to the query (Ex. 36) that he used the magnifying glass. The learned Public Prosecutor argued that it is almost impossible that the doctor would remember as to whether he used the magnifying glass or not in the absence of any record to that effect. Shri Ahmed further argued that had he really used the magnifying glass he would have mentioned this fact at least when he was answering the query under Ex. 36 when Art. 44 was sent to him for his opinion. In our view, there is much substance in this submission. It may be mentioned here that the iron rod (Art. 44) has been discovered by the appellant and as is clear from the evidence of P.S.I. Rahane as well as panch Namdeo, there were blood stains on the iron rod at the time of its seizure, and these two witnesses have not been cross-examined on the point that there was no blood on the iron rod. The Chemical Analyser has also found that it was stained with human blood and yet the doctor wants us to believe that he did not detect any blood on the rod, although he examined it with a magnifying glass. We cannot make ourselves bold to accept the tall claim of the doctor that he had used a lens even while examining the rod.

30. In order to appreciate as to how Dr. Shirbhate was trying to introduce the magnifying glass deliberately in order to lend credibility to his opinion and the report already submitted by him earlier, it would be better to reproduce the question and also answer -

"Q :- How do you remember that in this particular case you used a magnifying glass in order to ascertain the true nature of the injuries on the heads of the victims without there being any note anywhere ?

A. :- There is no question of any note. I say that I must have used the magnifying glass in the present case also since we use the magnifying glass in each and every case while carrying post mortem."

It is clear from this answer that this assertion is not based on actual recollection of the fact in question. On the other hand, he merely relies on his practice to use

a lens while conducting autopsies. His aforesaid claim does not inspire confidence. It is difficult for us to accept that he really used the magnifying glass in the present case either at the time of giving his opinion (Ex. 36) or while performing the post mortem reports (Exs. 33, 34 and 35).

31. It has come in his evidence that Nanibai as well as Shantabai have suffered a depressed fracture and in this context Dr. Shirbhate had to admit in para 16 of his deposition that the impact of the blow of the iron rod on the head could cause the fracture of the skull. This admission on his part, in our view, supports the prosecution case that the blow must have been given to the victims by a hard and blunt object. While describing the internal injury of Bhimabai, he has deposed that there was haematoma formation of 6" X 6" around the corresponding external injury No. (iv) over the right side of the scalp. Dr. Shirbhate has stated that the haematoma would be more consistent with the blow by hard and blunt object. This would again show that even Bhimabai must have been assaulted by a hard and blunt object like the iron rod (Art. 44) or the stick. The oral evidence on this point is quite clear that the appellant gave one blow to each of the victims by a stick and thereafter he used the sharp edged weapon. The medical evidence cannot be said to be in conflict with the eye-witness on account of assault. We have already rejected the doctor's claim that he had used a magnifying glass for examination of the injuries on the three women. Resultantly no importance deserves to be attached on the stray admission given by Dr. Shirbhate in his cross-examination that the injuries on the head were caused by a sharp edged weapon alone and not by a blunt and hard object. Even if we are called upon to decide this case on the basis that the medical evidence contradicts the prosecution case that the appellant initially dealt one blow each to the unfortunate women on the head, with a blunt object, we will have no hesitation whatsoever in acting upon the evidence of Janabai (P.W. 6) and Janabai Mahure (P.W. 7) and rejecting that of the doctor.

32. It has come in the report of the Chemical Analyser that the shirt of the appellant (Art. 27) was stained with blood group of "AB" which is the blood group of Nanibai. It is also clear from the report of the Chemical Analyser that the Baniyan (Art. 28) and the underpant (Art. 30) of the appellant were also found stained with human blood of Group "O" which is the blood group of Bhimabai. There is no explanation given by the appellant for the presence of human blood of Groups "AB" and "O" on his clothes. In our view, this circumstance also lends further corroboration in order to connect the appellant with the crime.

33. The trial court has discarded the evidence on discovery of iron rod (Art. 44) by the appellant. It was urged on behalf of the prosecution that the trial court has rejected this evidence without any cogent reason. Shri Ahmed has taken us through the evidence of P.S.I. Rahane and panch Namdeo and submitted that there is no reason whatsoever to discard the discovery. The main consideration that has weighed with the trial court is the delay of about 36 days. The trial court

has discussed this aspect in paras 54 to 57 of its judgment. Shri Ahmed submitted that the appellant was arrested on 25-11-1983 itself and immediately thereafter he was admitted as an indoor patient in the Irvin Hospital, Amravati, from where he was discharged on 7-12-1983 and thereafter the appellant was in magisterial custody up to 30-12-1983. It was on 30-12-1983 that the police moved for police custody and the Magistrate was pleased to grant it, and the discovery was effected by the appellant on 31-12-1983. In our view, in the peculiar facts and circumstances of this case, it would not be correct to discard the discovery merely on the ground of delay.

33-A. The other reasons the learned trial Judge has given for discarding the discovery hardly deserves any consideration, viz., that in the memorandum the appellant did not mention the name of the field where he had concealed the iron rod. In our view the fact that the signature of the appellant on the memorandum is not obtained is of no consequence at all. We have carefully examined the evidence of P.S.I. Rahane and panch Namdeo together and found that it is consistent in all particulars. Even the defence was not in a position to demonstrate as to how the evidence of P.S.I. Rahane and panch Namdeo is contradictory to each other on the point of discovery. The fact that the police were fair enough not to foist false recording to Kikra on the appellant (which they could have easily manoeuvred to do, if they were so disposed) lends assurance to the genuineness of recovery of iron rod at his instance.

34. The iron rod (Art. 44) was found to be stained with human blood. We have also seen this iron rod and in our view this could be easily mistaken by the two ladies for a stick. P.W. 6 Janabai Gandhe is very much right in saying that the stick in the hand of the appellant was like the iron rod (Art. 44). We are satisfied that this iron rod was used by the appellant in assaulting the three victims, besides other sharp weapon, on the day of incident. Before parting with this particular point, we may add that even if the evidence on discovery of the iron rod (Art. 44) is totally ignored, as is done by the lower court, that would not affect our final decision on the connection of the appellant with the crime.

35. Shri Shirpurkar adversely commented on the omission of the prosecution to examine one Manohar Gandhe and Dilip Gandhe, who, as Janabai Mahure's evidence shows, appeared on the scene of offence after the incident was over. Now, in the first place these are not eye-witnesses to the incident proper. It is also not suggested that their evidence was necessary to unfold the prosecution story as such. In the circumstances, it was not obligatory on the prosecution to examine them, if it felt that the evidence actually adduced by it was adequate. No adverse inference can be drawn against the prosecution for omitting to examine them.

36. The next circumstance for our consideration is that Muruti Bhagwat Shinde (P.W. 15) who is a blacksmith of Tiwasa sharpened a Chisel for the appellant on the previous day of the incident. The witness deposes to this fact and states that the appellant paid him Rs. 2.50 as his wages. The learned Judge has discussed

the evidence of this witness in para 53 of his judgment. We agree with his finding that the witness is telling the truth. Nothing has been brought in his cross-examination to doubt his veracity. Shri Sirpurkar has criticised his evidence on the sole ground that his statement came to be recorded by the police on 27th November 1983. The investigation in the case started late on the night of 25th and considering the various other far more material aspects on which the Investigating Officer had to collect evidence, it cannot be said that there was any unreasonable delay in recording the statement of the prosecution witness. We see no reason why Maruti (P.W. 15) should falsely implicate the appellant on a serious charge of triple murder. The lower Court was right in accepting the evidence of this witness as trustworthy. We, however, hasten to add that we are not attaching much importance to this piece of evidence in connecting the appellant with the crime.

37. We pause here now to consider the evidence on motive. The learned Additional Sessions Judge has dealt with this aspect in paras 47 to 51 of his judgment. The prosecution relies on the evidence of Nanibai's father Mahadeo (P.W. 12), Sudam (P.W. 8), Chindhu (P.W. 1) and Sonabai Dabale (P.W. 10) to prove that there used to be frequent quarrels between the appellant and the deceased Nanibai and that he had threatened to kill the three women. Of these witnesses we are not inclined to attach weight to the evidence of Chindhu and Sonabai, inasmuch as they have admitted in their cross-examination that the quarrels between the appellant and his wife did not take place in their presence. We, however, find no reason to disbelieve the evidence of Mahadeo and Sudam. Mahadeo's evidence which has remained unshaken in his cross-examination clearly shows that the appellant used to have frequent quarrels with Nanibai, and assault her. As a result, the witness had asked both of them to leave his house. The couple resided in one Nerubai's house for a couple of months and thereafter shifted to the hutment area. Mahadeo adds that around Dassera, the appellant left Nanibai at his (Mahadeo's) place for good and went to reside with his brother alone.

38. There is further evidence of Mahadeo to the effect that day before Diwali the appellant came to his house in drunken state and threatened to kill Bhimabai, Shantabai and Nanibai. It is pertinent to note that Mahadeo lodged a complaint about this incident at the Police Station. Head Constable Bhimrao (P.W. 3) has duly proved this report (Ex. 51), which is dt. 3rd November 1983. Next there is evidence of Sudam Gandhe (P.W. 8) to the effect that while Nanibai was working in his field on 16th November 1983, the appellant came there and tried to assault her with a spear. Sudam affirms that the appellant was insisting that Nanibai should cohabit with him, although a Divorce Deed had been executed between the two only on previous day. Sudam Gandhe managed to pacify the appellant and averted any untoward turn to the incident. We note that the deceased Nanibai had reported this incident to the police on the same evening. Head Constable Devidas has proved the Station Diary Entry (Ex. 46), which spells out all material details of the incident deposed to by Sudam Gandhe. Again

no material whatever has been brought on the record even remotely to suggest that Sudam Gandhe has any axe to grind against the appellant. The learned Additional Sessions Judge has rightly believed the evidence of this witness.

39. The evidence clearly establishes that after their marriage in February 1983, the appellant continued to ill-treat the deceased Nanibai. As a result they decided to part their ways for good and a Divorce Deed came to be executed on 15th November 1983. In spite of this, the appellant did not reconcile himself to leaving Nanibai alone and desired that she should continue to have illicit sexual relations with him even after the divorce. It has also been satisfactorily proved that he had threatened to kill not only Nanibai but also Shantabai, simply because she happened to be the mother of Nanibai. A suggestion was put by the defence in the cross-examination of Mahadeo that Bhimabai practised witchcraft to attract young boys to Nanibai and that the appellant was the victim of such practice. This suggestion reveals why the appellant bore grudge against Bhimabai who for all practical purposes had nothing to do with the affairs between the appellant and his wife. We do not desire to dilate further on the evidence on motive. Suffice it to say that we generally agree with the conclusions reached by the learned Additional Sessions Judge in this regard.

40. This concludes the survey of practically all the evidence on the record. To sum up, we are satisfied that Janabai Gandhe (P.W. 6) and Janabai Mahure (P.W. 7) are witnesses of absolute truth and that they have not at all indulged in any exaggeration in deposing to the facts of the incident. The medical evidence when properly read, is not in conflict with the eye-witness account of these two ladies. Even if it were so, we have no hesitation in ignoring the said inconsistency and accepting the evidence of the two eye-witnesses in toto that initially the appellant did deal one blow each on the head of the three victims with a stick like hard and blunt object. We are satisfied that the evidence of the eye-witnesses receives ample corroboration from other circumstances which we have already adverted to above in detail. A strong motive for commission of the crime is also duly established. The injuries on the person of the appellant were in all probability self-inflicted. In any case, we are satisfied that they were not caused to him during the course of the incident in which he mercilessly killed the three women. The intention of the appellant in causing more than a dozen of injuries to each of the three victims cannot be, but to kill. Resultantly, we confirm the finding of the lower Court, convicting the appellant under S. 302 I.P.C. for the triple murder of Nanibai, Shantabai and Bhimabai.

41. At this stage we suspend this judgment to hear the appellant and the learned Counsel of the two sides on the question of sentence.

42. We have since recorded the statement of the appellant on the question of sentence, and asked him to give all facts as to why the death sentence awarded to him by the Sessions Court ought not to be confirmed by this Court. In fairness to him, we reproduce his reply verbatim below :

"I am a poor man. Till this day I am not facing any prosecution for any offence. I have a wife and had two daughters who expired. I have old mother and a younger brother and there is nobody else. There is nobody to look after them and I am the sole earner for them. Till this day there has been no quarrel between me and any of the villagers. I earned my livelihood by peaceful means. I have been in jail for 1 1/2 years. My conduct in the jail has been satisfactor. I may be spared with the punishment. I have not done any wrong nor hereafter I will do any."

43. The appellant did not wish to lead any evidence. He has however filed a written statement, substantially reiterating the facts as reproduced above. Shri Ahmad for the State presses for the extreme penalty of death. As against this, Shri Sirpurkar in addition to the facts adverted to by the appellant in his statement has drawn our attention to some additional aspects of the case, which we shall presently refer to. He has also relied on the Supreme Court decisions *Rajendra Prasad Vs. State of Uttar Pradesh*, *Bachan Singh Vs. State of Punjab*, *Machhi Singh and Others Vs. State of Punjab*, *Machhi Singh v. State of Punjab*.

44. Shri Sirpurkar has made extensive references in his submissions to the three decisions of the Supreme Court. We are fully conscious of the current penological thinking on the question of death sentence, as reflected in the amended provisions of S. 354(3) Cr.P.C. requiring the Court to record "special reasons" for imposing death sentence, and also in the various illuminating decisions of the Supreme Court. We note that some observations of the majority judgment in *Rajendra Prasad's* case have been dissented from in *Bachan Singh's* case which was decided by five Judges of the Supreme Court. We feel, and we say so with respect, that the latest position in law has been succinctly explained in *Machhi Singh's* case by Thakkar J., who was speaking for the Court in that case. After taking into consideration all the relevant facts and circumstances on (a) the manner of commission of murder, (b) motive for its commission, (c) anti-social or social abhorrent nature of the crime, (d) magnitude of the crime and (e) personality of the victim/s of the murder, the Court ought to decide the proper sentence to be awarded in the case before it, in the light of propositions laid down in para 33 of the Supreme Court judgment. We can do no better than reproduce these propositions verbatim.

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime";

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be and altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided and only provided, the option to

impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

45. In the final resolution of the question, the Supreme Court directs, the Court should address to itself the following two crucial questions :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence and

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

46. This then will be our approach to the question of sentence in the present case.

47. On the credit side of the balance-sheet in favour of the appellant, Shri Shirpurkar submits that the appellant was smarting under the insult of his divorce which had taken place on 15th November, 1983. The appellant had left his own village and settled down at Tiwasa in the hope that he would lead peaceful married life with the deceased Nanibai. This dream foundered on the rock of divorce within 8 or 9 months of their marriage. Shri Shirpurkar points out that rightly or wrongly the appellant thought that Nanibai was having illicit sexual relationship with Sudam, not only prior to 15th November, 1983 on which date the appellant and Nanibai severed their marital tie, but also thereafter. According to the learned Counsel, the incident of 16th November, 1983 in which the appellant tried to kill Nanibai in the field of Sudam with spear has to be viewed against this back drop. In addition Shri Shirpurkar also relies on the facts stated by the appellant in his statement.

48. As against this, Shri Ahmad drew our attention to the facts and circumstances which, according to him, go to show that the crime committed by the appellant was ghastly, mean and reprehensible in the extreme. It cannot be denied that the motive for triple murder evinces total depravity and meanness of mind of the perpetrator. The appellant desired Nanibai to continue to have illicit sexual relations with him even after the divorce. He proceeded to extinguish her life's flame; simply because she was not ready to submit herself to his unending lust. Shantabai was the second victim of his assault for the only ostensible reason that she happened to be Nanibai's mother. And what was the fault of Bhimabai ? The appellant thought that she was interested in Nanibai. A suggestion was made during the cross-examination of Mahadeo P.W. 12 that Bhimabai practised witchcraft in order to attract young boys to Nanibai and that

the appellant was victim of this practice. Mahadeo no doubt denied the suggestion but the suggestion does show the groove in which the mind of the appellant worked.

49. The appellant committed a triple murder of innocent women in a flash, for no apparent fault of theirs. The murders were committed without any proximate or remote provocation. It is difficult to appreciate why the appellant should have felt himself humiliated by the divorce, inasmuch as there is nothing on the record to show that the divorce was imposed on him. In fact he had abandoned the wife quite sometime before her death at her father's house. There is thus no substance in his learned Counsel's plea that the appellant was in a hurt mood on the eve of the perpetration of the crime.

50. There cannot be two opinions that all the three murders were perpetrated without the least semblance of mercy and in contemptuous disregard for human life. Nanibai was the recipient of the largest number of injuries at the hands of the appellant 18 wounds. The other two women also received about a dozen of wounds each. The murder was obviously carefully preplanned and executed systematically, in that the appellant initially immobilised the three helpless and undefended women by striking one blow each on their head and thereafter dealing with them with the sharp weapon one by one to the finish.

51. Although the appellant is now vociferous in his lament that Nanibai had illicit relations with Sudam not a single question was put to this witness while he was in the witness-box. We are afraid we shall be wrong in taking into consideration this particular circumstance as a mitigating one. It is true that the appellant is a man of 27 years and has many years ahead of him in life. We also see that he is the bread-earner of his family. However, on taking into consideration all the factors in the balance-sheet, pro and con we are satisfied that even after according full weightage to the mitigating circumstances, the aggravating circumstance crushingly outweigh the former, to the extent that one feels that the present is a case where justice cries hoarse for the death sentence. Life imprisonment will be totally inadequate.

52. Shri Shirpurkar drew out attention to a decision of the Supreme Court *Dudh Nath Pandey Vs. State of Uttar Pradesh*, and submitted that in the present case the death sentence will not be proper, inasmuch as the two eye witnesses have not revealed all the facts of the case. He contends that while Janabai Gandhe on her own showing fled away from the scene of offence immediately after. Nanibai received two blows from the appellant by the sharp edged weapon, Janabai P.W. 7 who remained present all through the traumatic incident did not see the appellant actually dealing blows on the three helpless women with the sharp edged weapon, after they had fallen down in the standing crop of cotton and Tur. Now simply because Janabai Mahure has not deposed to the facts which she was obstructed from seeing by the standing crops, it cannot be said that she is wilfully withholding any facts from the Court, much less material facts. As the proved facts stand, apart from the appellant there could not be any other

assailant. Resultantly there is no doubt whatever that he is the sole author of all the injuries found on the three women. In Dudhanath Panday's case, the eye witness had screened some material facts from the Court, which reflected on the magnitude of the culpability of the accused. That case is clearly distinguishable on facts and does not take the present appellant's case any further. Here there are no facts suppressed from the Court, which could affect the magnitude of the crime. We leave the point here.

53. In sum, we are clear that this Court will be failing in its duty, unless the appellant is visited with the death penalty. Needless to say we are taking this view with utmost reluctance and only out of a sense of doing our plain duty, although an unpleasant one. Before parting with this case we place on record our appreciation for the valuable assistance given to the Court by the learned Public Prosecutor Shri Ahmad as well as Shri Shirpurkar, the learned defence Counsel who did not leave any stone unturned, while presenting the case of his client at its best.

54. In the result we confirm the conviction of the appellant u/s 302 I.P.C. for the triple murder of Nanibai, Shantabai and Bhimabai, as well as the death sentence imposed upon him by the lower Court. The direction of the lower Court that the appellant shall be hanged by the neck till dead is hereby confirmed. His appeal stands dismissed.

55. Appeal dismissed.