



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL CONFIRMATION CASE NO. 02 OF 2012

WITH

CRIMINAL APPEAL NO. 376 OF 2012.

CRIMINAL CONFIRMATION CASE NO. 02 OF 2012

The State of Maharashtra,
through Police Station Officer,
P.S. Jaripatka, Nagpur.

....**PETITIONER.**

// VERSUS //

Prakash Vinayakrao Shingnapure,
R/o Jagrut Nagar, Near Buddha
Vihar, Nagpur.

....**RESPONDENT.**

Mr. S.S. Doifode, Additional Public Prosecutor for petitioner State.
Mr. Ashwin Wasnik, Advocate for the respondent.

CRIMINAL APPEAL NO. 376 OF 2012

Prakash s/o Vinayakrao Shingnapure,
Aged about 38 years, Occ. Private,
R/o Jagrut Nagar, Near Buddha
Vihar, Nagpur (In Jail).

....**APPELLANT.**

// VERSUS //

The State of Maharashtra,
through Police Station Officer,
P.S. Jaripatka, Nagpur.

....**RESPONDENT.**

Mr. Ashwin Wasnik, Advocate for the appellant.

Mr. S.S. Doifode, Additional Public Prosecutor for respondent State.

CORAM : A.P. LAVANDE & A.B. CHAUDHARI, JJ.

DATE OF RESERVING FOR JUDGMENT : JANUARY 9, 2013.

DATE OF PRONOUNCEMENT OF JUDGMENT: JANUARY 31, 2013.

JUDGMENT (PER A.P. LAVANDE, J.)

1] Confirmation Case No. 2/12 and Criminal Appeal No. 376/12 are being disposed of by common judgment since they arise out of judgment and order dated 30.5.2012 passed by Ad-hoc Additional Sessions Judge-1, Nagpur in Sessions Trial No. 461/11 by which the appellant in Criminal Appeal No. 376/12 (hereinafter referred to as "the accused") has been convicted for the offence punishable under Sections 302 & 309 of Indian Penal Code and sentenced to death and to pay a fine of Rs.3,00,000/- (Three Lakhs) and in default to suffer R.I. for five years for the offence punishable under Section 302 of Indian Penal Code and to suffer R.I. for one year and to pay a fine of Rs.500/-, in default to suffer S.I. for one

month for the offence punishable under Section 309 of Indian Penal Code. Out of the fine amount if recovered, amount of Rs.2,50,000/- was ordered to be forwarded to the District Legal Aid Committee and Rs.50,000/- to State of Maharashtra.

2] Briefly, the case of the prosecution is as under :-

The accused was residing at Jagruti Nagar along with his wife Pranita, daughter Shreya, his parents and two brothers PW.7 Anup and PW.8 Ajay and their family members. The accused had a minor daughter by name Shreya, aged 13 years. On 7.4.2011 all the family members took dinner and went to bed in their respective rooms. At about 3.30 a.m. on 8.4.2011 the family members heard shouts of Shreya "Save me, Save me". All the family members woke up and were frightened. They went towards the room of the accused. All of them gave call to accused and there was no response from inside. As such, brother of accused PW.7 Anup brought iron crowbar and broke open the door of the room of the accused. All of them noticed that Pranita, the wife of the accused and Shreya were

murdered and accused was having multiple injuries on his person. PW.7 Anup had a talk with the accused and he gave pant of the accused to him since the accused was in underwear. In the said pant Anup noticed one chit which he read and kept it under the bed. Anup immediately reported the matter to police on phone and Ajay carried accused for first aid to Mayo Hospital with the aid of neighbour. Police Constable Shivilal Chhotelal Gour recorded the statement of Ajay at Mayo Hospital and informed the incident to Jaripatka Police Station. PW.19 PSI Dhurve rushed to the spot, prepared spot panchnama and found two knives, one iron crowbar, blood stained clothes and one chit. The same were seized under spot panchnama (Exh. 36). Thereafter the statement of Anup was recorded by PSI, Jaripatka (Exh.113) pursuant to which the FIR (Exh. 114 – printed FIR) was registered under Sections 302 & 309 of Indian Penal Code. The dead bodies were forwarded to Mayo Hospital for post-mortem. The statement of the accused was recorded by the Investigating Officer. Natural writings from register of grocery shop of accused were seized. At the time of conducting spot panchnama photographs

were also taken. The accused was in hospital till 17.06.2011. On the same day he was arrested. His specimen handwritings and signatures were obtained in the presence of panchas and his blood sample was seized. The muddemal articles were sent for chemical analysis and the documents seized were sent for opinion of handwriting expert. The statements of several witnesses were recorded. The Investigating Officer also requested Executive Magistrate PW.18 Vinod Meshram to record statement of the accused since there were serious injuries on his person. The statement of the accused was recorded by PW.18 on 20.4.2011. After completion of the investigation, charge-sheet was filed against the accused in the Court of J.M.F.C., Nagpur for the offences punishable under Sections 302 & 309 of Indian Penal Code. Since the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, Nagpur.

3] The accused pleaded not guilty and claimed to be tried. His defence is of total denial. In Sessions Case No. 461/11 the

prosecution examined 20 witnesses and produced several documents to prove the charges against the accused. The statement of the accused under Section 313 of the Criminal Procedure Code was recorded. The accused did not lead any evidence.

4] The learned trial Judge upon appreciation of the evidence led by the prosecution held that both the offences were proved beyond reasonable doubt against the accused. The learned trial Judge for the purpose of holding that both the offences were made out against the accused relied upon the following circumstances :-

- I. Death of both the deceased was homicidal,
- II. Presence of serious injuries on the person of the accused and non-explanation of the same by the accused,
- III. The accused was alone present in the room which was locked from inside along with the deceased,
- IV. Motive,
- V. The accused claimed insurance amount from Life Insurance Corporation by giving false information that his wife had died

due to heart attack,

VI. The suicide note (Exh. 37) disclosed that the accused had committed murder of his wife and daughter and had attempted to commit suicide on account of financial crisis.

VII. The confessional statements made to PW.18 Vinod Meshram, Executive Magistrate and PW.19 Ashok Dhurve, P.S.I.

VIII. Spot panchnama (Exh. 36), Inquest panchnama (Exhs. 9 & 10) and Chemical Analyser's Report (Exh. 166).

5] The learned trial Court awarded death sentence to the accused for the offence punishable under Section 302 of Indian Penal Code on the ground that the aggravating circumstances clearly outweighed the mitigating circumstances.

6] Mr. S.S. Doifode, learned Additional Public Prosecutor submitted that the prosecution has been able to establish beyond reasonable doubt that the accused committed murder of his wife Pranita and daughter Shreya by brutally assaulting them with knives

and the prosecution has also been able to prove that the accused also committed offence of attempt to commit suicide. Mr. Doifode further submitted that the murder was preplanned as is evident from suicide note which the accused wrote prior to the assault. He further submitted that the evidence of PW.7 Anup and PW.8 Ajay clearly proves that the accused was found in the company of both the deceased in the room which was locked from inside and the accused having not given any probable explanation for several injuries on the person of both the deceased as well as on himself, the prosecution has been able to establish beyond reasonable doubt the offence punishable under Sections 302 & 309 of Indian Penal Code. He further submitted that the motive suggested in his statements as well as in suicide note that the accused was having financial crisis has not been established by the accused but on the contrary the conduct of the accused in claiming and getting amount of Rs.3,00,000/- from LIC on account of death of his wife Pranita and that too by claiming that she died a natural death clearly proves that the accused wanted to commit her murder for financial gains. He further submitted that the

evidence of PW.7 & PW.8 clearly establishes that the accused was not in financial crisis as suggested in the suicide note. It was further submitted that the prosecution has been able to establish presence of two blood stained knives and suicide note in the room in which the accused was sleeping with his wife and daughter. It was further submitted that the evidence of handwriting expert lends corroboration to the prosecution case that the suicide note was written by the accused himself and not planted as suggested by the accused. In so far as the statement made by accused to PW.19 Ashok Dhurve which was recorded by him is concerned, it cannot be treated as a dying declaration but has to be treated as statement under Section 164 of Criminal Procedure Code. It was further argued that in the statement under Section 313 Criminal Procedure Code, the accused has not come with any explanation regarding the presence of injuries on the two deceased which resulted in the death and also the injuries caused to himself and as such, the prosecution has been able to establish both the offences against the accused. Lastly, Mr. Doifode submitted that the learned trial Judge was perfectly justified in

convicting the accused for both the offences for which the accused has been convicted and imposing death sentence on him for the offence punishable under Section 302 of Indian Penal Code. In support of his submissions, the learned Additional Public Prosecutor relied upon the following decisions :-

- I. AIR 2011 SC 3690 (Ajitsingh H. Gujral .vs. State of Maharashtra),
- II. 1996(8) SCC 110 (Umashankar Panda .vs. State of U.P.),
- III. 2012(3) Scale 182 (Rajendra Wasnik .s. State of Maharashtra),
- IV. AIR 2007 SC 607 (Bablu @ Mubarak Hussain .vs. State of Rajasthan),
- V. AIR 1996 SC 787 (Ravji .vs. State of Rajasthan),
- VI. 2011 (4) Scale 809 (Md. Mannan .vs. State of Bihar).
- VII. 2004 (3) Crimes 19 (SC) (State of U.P. .vs. Veer Singh & others),
- VIII. 2003 (1) Crimes 90 (SC) (Shrawan Bhadaji Bhirad & others .vs. State of Maharashtra),
- IX. 2012 All MR (Cri) 4135 (SC) (Manish Mubar .vs. State of Haryana),
- X. 2012 (1) SCC (Cri) 1035 (Shanmughan .vs. State of Kerala),
- XI. 2004 (3) Crimes 19 (SC) (Doraiswamy .vs. State of U.P.),
- XII. 2012 All MR (Cri) 3483 (Prabhakar Hirkane .vs. State of

Maharashtra).

7] Per contra, Mr. A. Wasnik, learned Counsel for the appellant/ accused, submitted that the circumstantial evidence led by the prosecution is not sufficient to prove beyond reasonable doubt the offences for which he has been convicted and sentenced. The learned Counsel further submitted that the suicide note has been planted inasmuch as the same was found under the cot at the time of spot panchnama. The learned Counsel further submitted that no reliance can be placed on the testimony of PW.7 Anup and PW.8 Ajay, inasmuch as their evidence does not inspire confidence. The learned Counsel further submitted that there is absolutely no evidence led by the prosecution that it was the accused who stabbed deceased Pranita and Shreya and in an attempt to commit suicide caused injuries to himself. According to the learned Counsel, the injuries to the deceased and to the accused were caused by one Bihari boy who entered the room during the night through the window of the room. The learned Counsel further submitted that the

evidence led by the prosecution does not conclusively prove the offence of murder and attempt to commit suicide by the accused beyond reasonable doubt and, therefore, the judgment and order of conviction passed by the learned trial Court deserves to be quashed and set aside. In the alternative, the learned Counsel submitted that the death sentence imposed on the accused for the offence punishable under Section 302 of Indian Penal Code for causing murder of Pranita and Shreya deserves to be set aside inasmuch as mitigating circumstances clearly outweigh the aggravating circumstances against the accused. The learned Counsel further submitted that the accused does not have any criminal record and the prosecution has not proved any motive for commission of the offence alleged against him and considering the age of the accused, the sentence of death imposed on the accused is totally disproportionate and as such, deserves to be quashed and set aside. In support of his submissions, the learned Counsel relied upon the judgment of Apex Court in the case of **Sushil Kumar .vs. State of Punjab reported in (2010) 1 SCC (Cri) 348.**

8] We have carefully considered the rival submissions, perused the record and the judgments relied upon.

9] Admittedly, there is no direct evidence against the applicant and the evidence is of circumstantial nature. The prosecution, in order to prove the offences against the accused, has relied upon the following circumstances :-

- I. Death of both the deceased was homicidal,
- II. Presence of serious injuries on the person of the accused and non-explanation of the same by the accused,
- III. The accused was alone present in the room which was locked from inside along with the deceased,
- IV. Motive,
- V. The accused claimed insurance amount from Life Insurance Corporation by giving false information that his wife had died due to heart attack,
- VI. The suicide note (Exh. 37) disclosed that the accused had committed murder of his wife and daughter and had attempted

to commit suicide on account of financial crisis.

VII.The confessional statements made to PW.18 Vinod Meshram,
Executive Magistrate and PW.19 Ashok Dhurve, P.S.I.

VIII.Spot panchnama (Exh. 36), Inquest panchnama (Exhs. 9 &
10) and Chemical Analyser's Report (Exh. 166).

10] In so far as the first circumstance is concerned, i.e. the death of Pranita and Shreya was homicidal, there is no serious dispute. In order to prove the homicidal death of Pranita, prosecution has examined PW.9 Narendra Kumar, who was Resident Doctor in I.G.G.M.C. Hostel, at Nagpur. He deposed that he conducted post-mortem on the dead body of Pranita Shingnapure on 8.4.2011. He found various cut marks on the clothes of the deceased as well as various injuries on her person. He mentioned the cut marks present on the clothes of deceased. He further deposed that he found the following ante-mortem injuries on the body of the deceased :-

(1) Incised wound present on front of neck in midline, 3 cm. below chin, 9 cm. above supra-sternal notch obliquely place of size 4.5 cm.

x 0.5 cm. muscle deep.

(2) Stab wound present over front of neck on right side, 2.5 cm. from midline, 4 cm. above medial end of right clavicle obliquely placed of size 2 cm. x 1 cm. muscle deep with tailing present on lower end for 1.5 cm. both angles acute and margins sharp.

(3) Incise wound present over front of neck on right side, 2 cm. below injury 2, obliquely placed of size 1.5 cm. x 1 cm. subcutaneous tissue deep.

(4) Stab wound present in left supraclavicular region 5 cm. from midline, 7 cm. from tip of shoulder, obliquely placed of size 2.5 cm. x 1 cm. cavity deep, both angles acute and margins sharp, directed downwards, backwards and medially.

(5) Stab wound present in left supraclavicular region, 0.2 cm. below injury 4 obliquely placed of size 2.5 cm. x 1 cm. cavity deep both angles acute and margins sharp, directed downwards, backwards and medially.

(6) Incised wound present over right infraclavicular region, 4 cm. from midline, 2 cm. below and lateral to medial end of clavicle obliquely

placed of size 1.5 cm. x 0.5 cm. muscle deep.

(7) Stab wound present over left breast areola, 1 cm. below nipple, horizontally placed of size 4 cm. x 1 cm. cavity deep both angles acute and margins sharp, directed backwards and medially, underlying rib cut and separated.

(8) Stab wound present over left breast, 2 cm. lateral to nipple, vertically placed of size 2 cm. x 1 cm. muscle deep, upper angle blunt, lower angle acute, levelling present on lateral margin.

(9) Incised wound present over left side of chest, 4 cm. lateral and below to injury 8, vertically placed of size 1 cm. x 0.5 cm. subcutaneous tissue deep.

(10) Stab wound present over left side of chest, 6 cm. below and lateral to nipple, 1 cm. below injury 9 obliquely placed of size 2.5 cm. x 1.5 cm. cavity deep, both angles acute and margins sharp, directed backwards and medially, underlying rib cut.

(11) Stab wound present over left side of chest, 2.5 cms. from midline, 6 cm and medial to left nipple, horizontally placed of size 2.5 cm. x 1 cm. cavity deep, both angles acute and margins sharp,

directing backwards and medially.

(12) Stab wound present over right breast areola, situated 0.5 cm. below right nipple, obliquely placed of size 3 cm. x 1.3 cm. cavity deep, both angles acute and margins sharp, directed backwards and medially underlying 6th inter-costal muscle cut.

(13) Stab wound present over lower part of chest on right side situated 5 cm. from midline, 11 cm. below right nipple, horizontally placed of size 3.5 cm. x 1 cm. cavity deep, both angles acute, margins sharp, directed backwards and upwards, underlying 7th costal cartilage and muscles in 7th inter coastal space cut.

(14) Stab wound present over lower part of chest on right side in anterior axillary line, situated 2.5 cm. lateral to injury (13), obliquely placed of size 3.5 cm. x 1.3 cm. cavity deep, both angles acute and margins sharp, directed backwards and medially, underlying 8th rib and muscles in 8th inter-costal space cut.

(15) Stab wound present over left epigastric region, 1.5 cm. from midline, 3 cm below injury [11], obliquely placed of size 2.5 cm. x 1 cm. cavity deep, both angles acute and margins sharp, directed

backwards and medially.

(16) Stabbed wound present over epigastric region in midline situated 0.2 cm. below injury [15], obliquely of size 4 cm. x 1.5 cm. cavity deep, both angles acute and margins sharp, directed backwards.

(17) Stab wound present over left epigastric region situated 2 cm. below injury [16], obliquely placed of size 3 cm. x 1 cm. cavity deep, both angles acute and margins sharp, directed backward.

(18) Stab wound present over right hypochondriac region, situated 2.5 cm. below injury [14] obliquely of size 3.5 cm. x 1.3 cm. muscle deep, levelling present on upper margin, both angles acute and margin sharp.

(19) Stab wound present over umbilical region in midline situated 5 cm. above umbilicus obliquely placed of size 3.5 cm. x 1.5 cm. cavity deep, coils of intestine along with mesentry protruding out through the wound, both angles acute and margins sharp.

(20) Stab wound present over right hypochondriac region situated 4 cm. below injury [13], 3 cm. from midline obliquely placed of size 2 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(21) Stab wound present over right hypochondriac region situated 1 cm. below and lateral to injury [20] obliquely placed of size 2.5 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(22) Stab wound present over right lumbar region situated 2 cm. below injury [21], 5.5. cm. above and lateral to umblicus of size 1 cm. x 0.5 cm. muscle deep, both angles acute and margins sharp.

(23) Stab wound present over right lumbar region situated 2 cm. below injury [18], horizontally place of size 1.5 cm. x 0.5 cm. muscle deep both angles acute and margins sharp.

(24) Stab wound present over right lumbar region situated 0.5 cm below injury [23], horizontally placed of size 1.5 cm x 0.5 cm, muscle deep, both angles acute and margins sharp.

(25) Stab wound present over right lumbar region situated 15 cm. from midline, 8 cm below injury [10] of size 2 cm. x 0.5 cm. muscle deep both angles acute and margin sharp.

(26) Stab wound present over left anterior superior iliac spine obliquely placed of size 3 cm. x 2 cm. muscle deep, both angles acute and margin sharp.

(27) Through and through stab wound present over left thigh with entry wound present on lateral aspect of upper 1/3rd part of thigh situated 10 cm. below left anterior superior spine of size 3 cm. x 1.5 cm. muscle deep, directing upwards and medially leading to a exit wound present on antero-lateral aspect of upper 1/3rd part of thigh situated 6 cm. below injury [26] of size 1 cm. x 0.5 both angles acute and margin sharp.

(28) Stab wound present over postero-lateral aspect of left thigh situated 1.5 cm. below and lateral to entry wound of injury [27] horizontally placed of size 3 cm. x 1.5 cm. muscle deep, both angles acute and margins sharp.

(29) Stab wound present over postero-lateral aspect of left thigh situated 0.5 cm. below and lateral to injury [28], obliquely placed of size 3.5 cm. x 1.5 cm. muscle deep with tailing present over lower angle for 1.5 cm. both angles acute and margins sharp.

(30) Stab wound present over postero-lateral aspect of left thigh situated 2.5 cm. below injury [29], horizontally placed of size 3.5 cm. x 1.2 cm. muscle deep both angles acute and margin sharp.

(31) Stab wound present over lateral aspect of middle 1/3rd of left thigh situated 22 cm. below left anterior superior iliac spine of size 3.5 cm. x 1.5 cm. muscle deep, both angles acute and margin sharp.

(32) Stab wound present over posterior aspect of lower 1/3rd left thigh 6 cm. below injury [31], obliquely placed of size 2.5 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(33) Stab wound present over posterior aspect of lower 1/3rd of left thigh situated 3.5 cm. below injury [32] obliquely placed of size 2.5 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(34) Stab wound present over posterior aspect of lower 1/3rd of left thigh situated 7.5 cm. below injury [31] of size 2.5 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(35) Stab wound present over anterior aspect of lower 1/3rd of left thigh situated 6 cm. below and medially to injury [31], horizontally placed of size 1.8 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(36) Incised wound present over anterior aspect of middle 1/3rd of left leg situated 9 cm. below tibial tuberosity obliquely placed of size 3

cm. x 1 cm. subcutaneous tissue deep.

(37) Stab wound present over antero-lateral aspect of middle 1/3rd of right forearm situated 12.5 cm. above radial styloid process, obliquely placed of size 3 cm. x 2 cm. muscle deep, both angles acute and margin sharp.

(38) Stab wound present over anterior aspect of right forearms situated 2.5 cm. medial to injury [37], obliquely placed of size 3 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(39) Abrasion present over front of right forearm situated 1 cm. above injury [38] obliquely placed of size 2.5 cm. x 0.2 cm. dark red.

(40) Through and through stab wound present over left arm with entry wound present over posterior aspect of middle 1/3rd of arm situated 18 cm below tip of left shoulder, vertically, placed of size 2 cm. x 1 cm. muscle deep directing forwards, upwards and medially leading to exit wound present over medial aspect of middle 1/3rd of arm of size 0.5 cm. x 0.5 cm. both angles acute and margin sharp.

(41) Stab wound present over postero-lateral aspect of middle 1/3rd of left arm situated 12 cm. above left elbow joint, obliquely placed of size

2 cm. x 1 cm. muscle deep both angles acute and margin sharp.

(42) Stab wound present over postero-lateral aspect of lower 1/3rd of left arm situated 1 cm. below injury [41], horizontally placed of size 4 cm. x 1 cm. muscle deep with tailing present over lateral angled for 1 cm. both angles acute and margin sharp.

(43) Stab wound present over postero-lateral aspect of lower 1/3rd of left arm situated 1 cm. below injury [42], obliquely of size 2.5 cm x 1 cm, muscle deep, both angles acute and margin sharp.

(44) Stab wound present over medial aspect of middle 1/3rd of left arm situated 3 cm. below exit wound of injury [40], obliquely placed of size 0.2 cm. x 0.2 cm. muscle deep, both angles acute and margin sharp.

(45) Stab wound present over medial aspect of middle 1/3rd of left arm situated 2 cm. below injury [44], of size 0.5 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(46) Stab wound present over right medial aspect of middle 1/3rd of left arm situated 4 cm. below injury [45], obliquely placed of size 0.5 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(47) Stab wound present over anterior aspect of lower 1/3rd of left arm

situated 1.5 cm. below and lateral to injury [46], obliquely placed of size 1.5 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(48) Stab wound present over medial aspect of lower 1/3rd of left arm situated 3 cm. below injury [47], vertically placed of size 2 cm. x 0.5 cm. muscle deep, both angles acute and margin sharp.

(49) Stab wound present over left cubital fossa, vertically placed of size 2 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(50) Stab wound present over postero-lateral aspect of upper 1/3rd of left forearms situated 5 cm. below injury [43], obliquely placed of size 2 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(51) Stab wound present over postero-lateral aspect of upper 1/3rd of left forearms situated 1 cm. below injury [50], obliquely placed of size 2.5 cm. x 1 cm. muscle deep with tailing present over lower angles for 3 cm. both angle acute and margin sharp.

(52) Incised wound present over posterior aspect of middle 1/3rd of left forearms, obliquely placed of size 2 cm. x 0.2 cm. subcutaneous tissue deep.

(53) Linear abrasion present over lower 1/3rd part of left forearms on posterior aspect, horizontally placed of size 4 cm. x 0.3 cm. dark red.

(54) Linear abrasion present over posterior aspect of lower 1/3rd of left forearms situated 2 cm. below injury [53] of size 4 cm. x 0.2 cm. dark red.

(55) Incised wound present over anterior aspect of upper 1/3rd of left forearms situated 6 cm. below left cubital fossa, horizontally placed of size 1 cm. x 1 cm. subcutaneous tissue deep.

(56) Stab wound present over anterior aspect of lower 1/3rd of left forearms situated 4 cm. above wrist joint, vertically; placed of size 2 cm x 1 cm, muscle deep, both angles acute and margin sharp.

(57) Stab wound present over anterior aspect of lower 1/3rd of left forearms situated 2 cm above injury [56], horizontally placed of size 3 cm. x 1 cm. muscle deep, both angles acute and margin sharp.

(58) Stab wound present over back in right lumbar region situated 7 cm. above right iliac crest of size 2.2 cm. x 1 cm. cavity deep, directing forward and medially, both angles acute and margin sharp.

(59) Stab wound present over back in right infrascapular region

situated 5 cm. above injury [58], obliquely placed of size 2 cm. x 0.5 cm. cavity deep, directing forward and medially, both angles acute and margin sharp.

(60) Stab wound present over back in left lumbar region situated 5.5 cm. above left anterior superior iliac spine, obliquely placed of size 2.5 cm x 1.5 cm. cavity deep, Omentum protruding out though the wound, both angles acute and margin sharp.

(61) Contused abrasion present over back in midline of middle 1/3rd region of size 1.5 cm. x 0.5 cm. dark red.

(62) Contused abrasion present over left side of back in posterior axillary line situated 16 cm. lateral to midline of size 1.5 cm. x 1 cm. dark red.

He further deposed that he also prepared diagram showing the respective injuries. He further deposed that the corresponding internal injuries related to external injuries were mentioned in column nos. 20 & 21. He opined that cause of death was 'haemorrhage and shock due to homicidal stab wounds to vital organs'. The injuries individually as well as collectively were sufficient to cause death in

ordinary course of nature. Dr. Shrigiriwar, Associate Professor and Dr. S.S. Shinge, Resident Doctor were along with him at the time of post-mortem. He identified his signature and those of Dr. Shrigiriwar and Dr. S.S. Shinge on the post-mortem report Exh. 120 and confirmed its contents as correct. He further deposed that he had also received requisition from Police Station Jaripatka seeking opinion on the point of injuries on deceased Pranita and Shreya and the injuries on Prakash. He had given opinion about deceased Shreya and accused Prakash. He examined the weapons which were duly sealed. He opined that cut marks present over clothes and injury nos. 1, 3, 6, 9, 36, 52 & 55 mentioned in column 17 could have been caused by weapon no.1, which he identified. Similarly, cut marks present over clothes and injury nos. 1 to 38, 40 to 52, 55 to 60 mentioned in column no.17 and corresponding internal damage mentioned in column nos. 20 & 21 could have been caused with weapon No. 2. He identified both the knives Articles B & C. He identified his own signature and that of Dr. Wankhede on the opinion Exh. 122. He further deposed that in suicide cases the person

committing suicide uses front of the neck, wrist, front of the chest and abdomen and groin whereas homicidal wounds may be in any part of the body including those which are not accessible to suicide victim. Defence wounds are absent in suicidal matters. Self-inflicted injuries are uniform in depth and direction and they are usually uniform. He further deposed that injuries on Pranita were homicidal. In the cross-examination, he deposed that when a person is assaulted by knife, whether such person would shout depends upon position of the victim and if the victim is sleeping, it is not necessary that he/she would shout if the hand is kept on the mouth. He further deposed that injuries on the person of Pranita were on account of both knives. Thus, the evidence of PW.19 Dr. Narendra clearly proves that the death of Pranita was homicidal.

11] In order to prove that the death of Shreya was homicidal, the prosecution examined PW.12 Dr. Suraj Wankhede, who conducted post-mortem on the dead body of Shreya on 8.4.2011. He found 45 injuries on her person which are as follows :-

(1) Contused abrasion of size 05 x 01 cm present over right chick situated 1 cm lateral to right ala of nose, red colour.

(2) Stab wound of size 0.5 x 0.5 cm x Tracheal lumen deep present over anterior aspect of right side of neck situated 2.5 cm lateral to midline, margins clean angles acute, red colour.

(3) Stab wound of size 2.5 x 01 cm x Tracheal lumen deep horizontally placed over anterior aspect of right side of neck situated 01 cm lateral to midline and 3 cm below injury No.2 margins clean, angles acute red colour.

(4) Stab wound of size 2.5 x 01 cm x cavity deep obliquely placed over anterior aspect of neck situated in midline 0.5 cm above jugular notch margins clean, angles acute upper border intermingled with left angle of injury No.3.

(5) Stab wound of size 3.5 x 01 cm x Thoracic cavity deep present over upper part of left side of chest situated 05 cm below lateral end of clavical and 8 cm lateral to midline margins clean, angles acute, red colour.

(6) Stab wound of size 3 x 1 cm x Thoracic cavity deep present over

left side of upper part of chest horizontally placed 4 cm medial to injury No.5 and 4 cm. Lateral to midline, margins clean, angles acute red colour.

(7) Stab wound 3 x 1.5 cm x muscle deep present over left side of chest 2 cm below situated injury No.6 and 6 cm lateral to midline, obliquely placed, margins clean angles acute, red colour.

(8) Stab wound of size 2.5 cm x 1 cm x muscle deep present over anterior lateral aspect of upper 1/3rd of left arm situated 7.5 cm below tip of left shoulder margins clean, angles acute, red coloured.

(9) Stab wound of size 3 x 1.2 cm x muscle deep present over left lower chest situated 5.5 cm below injury No.7 and 4 cm situated lateral to midline, margins clean, angles acute red coloured.

(10) Stab wound of size 2 x 1 cm x muscle deep present below injury No.9 and situated 5 cm lateral to midline margins clean, angles acute red coloured.

(11) Stab wound of size 2 x 0.7 cm x cavity deep situated 03 cm below injury No.10 and 6 cm lateral to midline margins clean, angles acute red coloured.

(12) Stab wound of size 0.5 x 0.5 cm situated 3.3 cm below injury No.11 and 6 cm lateral to midline muscle deep, margins clean angles acute red coloured.

(13) Stab wound of size 2.3 cm x 1 cm x cavity deep present over upper border of umbilicus tailing present over upper angle for 1.5 cm.

(14) Stab wound of size 1.5 cm x 0.5 cm x muscle deep present over abdomen situated 4.5 cm below injury No.13 and 0.5 cm lateral to midline margins clean, angles acute and red coloured.

(15) Stab wound of size of 1.5 cm x 0.5 cm x sub cute present over right side of abdomen situated 2.5 cm below and lateral to umbilicus and 2 cm to midline, margins clean angles acute, red coloured.

(16) Stab wound of size 3 cm x 1 cm x cavity deep obliquely placed over right side of abdomen 01 cm lateral to midline and 3.5 cm above and lateral to injury No.13 margins clean, angles acute, red coloured.

(17) Stab wound of size 3 cm x 1 cm x cavity deep situated 0.5 cm above injury No.16, obliquely placed 0.5 cm lateral to midline margins clean, angle acute, red coloured.

(18) Stab wound of size 3 cm x 1 cm x cavity deep present over

epigoltric area in midline 4.5 cm above injury No.13, margin clean, angle acute, red coloured.

(19) Contused abrasion of size 2.5 cm x 0.2 cm present over right side of abdomen in lumbar area, red coloured.

(20) Contused abrasion of size 0.4 cm x 0.4 cm present over right side of abdomen situated 3 cm medial to injury No.19 red coloured.

(21) Contused abrasion of size 0.4 cm x 0.5 cm present over right side of abdomen situated 2 cm from midline 03 cm medial to injury No.20 red coloured.

(22) Contused abrasion of size 0.4 cm x 0.5 cm present over right side of abdomen situated 1 cm from midline and 02 cm above the umbilicus red coloured.

(23) Contused abrasion of size 0.4 cm x 0.5 cm present over right side of abdomen situated 4 cm from umbilicus red coloured.

(24) Incise wound present over posterior aspect of left corist of size 3 cm x 1 cm vertically placed margin clean, angle acute, red coloured.

(25) Incise wound of size 2 cm x 0.5 cm obliquely placed over present over posterior-lateral aspect of left elbow, red coloured.

(26) Incise would of size 0.5 cm x 0.5 cm present over obliquely placed over present over posterior aspect of upper 1/3rd of left forearm situated 8 cm below olecrenon process, red coloured.

(27) Incise wound of size 0.1 cm x 0.5 cm present over dorsal aspect of left hand at the base of ring finger and middle finger.

(28) Stab wound of size 2.5 cm x 5 cm x muscle deep over anterior aspect of lower 1/3rd of left forearm vertically placed situated 2.5 cm above wrist, margin clean, angle acute red coloured.

(29) Contused abrasion of size 0.7 cm x 0.7 cm present in mid-axillary area situated below 16 cm from midline red coloured.

(30) Contused abrasion of size 1.5 cm x 1 cm present in mid-axillary area situated 1.5 cm below injury No.29.

(31) Contused abrasion of size 0.5 cm x 0.5 cm present in cubital fossa, red in coloured.

(32) Contused abrasion of size 0.5 cm x 0.5 cm present lower part of chest situated 5 cm from the midline, red in colour.

(33) Stab wound of size 3 cm x 1 cm x cavity deep present over right lumber region situated 9 cm lateral to midline at the level of 12

vertebra horizontally placed margins clean angles acute red coloured.

(34) Contused abrasion of size 0.7 cm 0.7 cm x 0.7 cm situated 11 cm above injury No.33 red coloured.

(35) Stab wound of size 4 cm. X 1 cm. x muscle deep present over posterior aspect of middle 1/3 rd of right thigh situated 11 cm. below gluteal fold margins clean angles acute, red colour.

(36) Contused abrasion of size 2 cm. x 0.5 cm. situated 8 cm. above and medial to injury No.35.

(37) Incised wound of size 01 cm. x 0.5 cm. present over posterior aspect of upper 1/3 rd of thigh margins clean angles acute red colour.

(38) Abrasion of size 0.2 cm. x 0.2 cm. present over left angle of mandible.

(39) Linear abrasion of size 4 cm. situated 0.5 cm. below injury No. 38.

(40) Linear abrasion present over anterior lateral aspect of neck situated 4 cm. above medial end of left clavicle red in colour.

(41) Contused abrasion of size 1.5 cm. x 1.5 cm. present over left supra clavicular region red colour.

(42) Incised wound of size 01 x 0.5 cm. present over anterior medial aspect of middle 1/3 rd of right thigh margin clean angles acute red colour.

(43) Incised wound of size 01 x 0.5 cm. present over anterior aspect of right knee, margins clean, angle acute red colour.

(44) Stab wound of size 3 cm. x 1 cm. x muscle deep present over posterior lateral aspect of upper 1/3 rd of right forearm situated 6 cm. below olecrenon, margins clean angles acute, red colour.

(45) Incised wound of size 0.5 cm. x 0.2 cm. present over posterior aspect of right forearm obliquely placed, margin clean angles acute, red coloured.

He also found corresponding internal injuries. He opined that injury nos. 2 to 7 and 9 to 17 mentioned in column no. 17 along with the corresponding internal injuries mentioned in column nos. 20 & 21 were sufficient to cause death in the ordinary course of nature. All these injuries individually as well as collectively were sufficient to cause death. He identified his signature on post-mortem report (Exh. 129) and confirmed its contents as correct. He further deposed that

the injuries mentioned in Exh. 129, particularly cut marks on clothes and injury nos. 24 to 27 and 37, 42, 43 & 45 mentioned in column 17 could have been possible with weapon no.1 which was shown to him. He further deposed that the cut marks present over clothes and injury nos. 2 to 18, 24 to 28, 33, 35, 37 and 42 to 45 mentioned in column no.17 and corresponding internal damage mentioned in column nos. 20 & 21 were possible with weapon no.2. The evidence of this witness has not been shaken in cross-examination and as such, the prosecution has been able to establish that the death of Shreya was homicidal.

12] The next circumstance relied upon by the prosecution is presence of injuries on the person of the accused and non-explanation of the same by the accused.

In order to prove the presence of injuries on the person of the accused, the prosecution examined PW.12 Dr. Suraj Wankhede, who prepared injury certificate of the accused on the basis of Bed Head Ticket. The injuries were as follows :-

- (1) Penetrating wound size 3 x 1 x 4 cm. over left side of chest.
- (2) Penetrating wound size 3 x 1 x 5 cm. over right side of chest.
- (3) Penetrating wound size 4 x 2 x 5 cm. over right side of chest.
- (4) Penetrating wound size 3 x 1 x 4 cm. over right side of chest.
- (5) Penetrating wound size 3 x 2 x 4 cm. over right side of chest.
- (6) Penetrating wound size 2 x 1 x 2 cm. over left side of chest.
- (7) Penetrating wound size 3 x 2 x 5 cm. over left side of chest.
- (8) Penetrating wound size 3 x 4 x 6 cm. over left side of chest.
- (9) Penetrating wound size 4 x 2 x 6 cm. over left side of chest.
- (10) Penetrating wound size 3 x 2 x 5 cm. over left upper abdomen.
- (11) Penetrating wound size 3 x 2 x 6 cm. over left upper abdomen.
- (12) Penetrating wound size 5 x 3 x 7 cm. over upper abdomen in
midline.
- (13) Penetrating wound size 3 x 2 x 4 cm. over left hypochondrium.
- (14) Penetrating wound size 2 x 1 x 3 cm. over left hypochondrium.
- (15) Penetrating wound size 3 x 2 x 5 cm. over left upper abdomen
with expose bowel loops.
- (16) Penetrating wound size 5 x 2 x 6 cm. over abdomen in midline

with expose perforated bowel loops.

(17) Penetrating wound size 3 x 2 x 4 cm. over abdomen in midline with expose omentum.

(18) Penetrating wound size 4 x 2 x 5 cm. over abdomen in midline with expose bowel loops.

(19) Penetrating wound size 3 x 1 x 1 cm. over lower abdomen in midline.

(20) Penetrating wound size 2 x 1 x 2 cm. over right thigh.

He further deposed that the injury nos. 1 to 19 were grievous in nature whereas injury no. 20 was simple in nature and the same could be caused by sharp, pointed and cutting object. All injuries were fresh on admission. Multiple anterior chest wall stab wound was present, two of them breaching anterior pleura on left side with minimal haemothorax. Pneumothorax was present on both sides. All these injuries were on anterior, i.e. front body of accused. He identified his signature on the injury certificate (Exh. 130) and confirmed its contents as correct. He further deposed that injuries on the person of the accused could have been caused with weapon No.2

which was shown to him. He further deposed that self-inflicted injuries or suicidal injuries are usually found on the anterior portion of the body and easily accessible and mostly on chest and abdomen. Homicidal injuries could be found anywhere over body, could be single or multiple, irregular and of different sizes. Defence injuries are generally present in homicidal or assault cases and are found on hands or parts by which victim takes defence. Generally self-inflicted injuries are uniform in depth and direction, i.e. parallel to each other. He further deposed that on the basis of the injuries mentioned in Exh. 130 it appeared that all the injuries were suicidal in nature. In cross-examination of this witness, nothing tangible has been brought on record and as such, the prosecution has been able to establish that twenty injuries were found on the person of the accused and the injuries could be suicidal in nature.

13] The evidence of PW.12 Dr. Suraj Wankhede stands corroborated by PW.15 Dr. Amrish Shamkuwar, who deposed that on 8.4.2011 he was in the surgery unit of IGGMC at Nagpur along with

Dr. Tirpude. One patient by name Prakash Shingnapure was admitted in surgery unit on the same day. On examination of Prakash, he found multiple self-inflicted sharp cutting deep penetrating wounds on the anterior aspect of body with the evidence of bowel coming out of body. He further deposed that the injuries found on the body of Prakash were described in the discharge card issued by him and Dr. Tirpurde. The injuries mentioned in Exh. 130 and injuries mentioned by them in the discharge card were the same. There were total 20 injuries. Accused was discharged on 17.6.2011. He identified the discharge card and confirmed its contents as correct. He also identified signature of Dr. Prasad Sor. The discharge card was marked at Exh. 144. He further deposed that on 12.4.2011 he received requisition from PSI Dhurve as to whether Prakash was in a position to make any statement. He opined that the patient was fit to give statement. He identified the requisition (Exh. 145). PSI Dhurve recorded statement of Prakash in his presence and he made endorsement on the said statement that Prakash was fit to give statement. He identified his signature, that of PSI Dhurve and of

Prakash on the said statement. He further deposed as to what was stated by Prakash in the statement recorded by PSI Dhurve. We do not deem it necessary to refer to the same inasmuch as while dealing with the confession alleged to have been made by the accused, we shall deal with the same. He further deposed that on 12.4.2011 the Executive Magistrate also had given requisition for recording statement of Prakash and he made endorsement on the requisition (Exh. 147) that the patient was fit to give statement. He further deposed that the Magistrate recorded the statement of Prakash in his presence. He identified the accused as the person who had given statement. In cross-examination, he admitted that the accused was in semi-conscious condition when he was brought to the hospital. He was attending the accused since 8.4.2011 till he was discharged from the hospital and police officers were deployed in the hospital since 8.4.2011 till he was discharged. He further deposed that he could not say what was the condition of Prakash on 12.4.2011, i.e. whether it was critical or not. Prakash was fit to give statement on 12.4.2011. He denied that Prakash did not give any statement on 12.4.2011 or

that he had not made any endorsement on Exh. 147. Perusal of the evidence of PW.15 Dr. Amrish Shamkuwar and the statement of the accused recorded under Section 313 of Criminal Procedure Code discloses that the accused has not explained the presence of twenty injuries on his person which were mentioned in the discharge-card Exh. 144. It is pertinent to note that in answer to question 65 regarding the presence of twenty injuries on his person, he stated that he did not know. Thus, the prosecution has been able to establish that there were self-inflicted injuries on the person of the accused and no plausible explanation was offered by the accused for the same.

14] The next circumstance relied upon by the prosecution is that the accused was alone present in the room, which was locked from inside along with the deceased on the intervening night of 7.4.2011 and 8.4.2011. In order to prove this circumstance, the prosecution examined two brothers of the accused. PW.7 Anup, who is his elder brother, deposed that they were in all four brothers, i.e. Prakash (the accused), Manoj, himself and Ajay. He along with Ajay

and accused Prakash and their family and their parents were residing in their house at Jagruti Nagar and Manoj was residing at Akola. He was serving in the police department. Accused was running a grocery shop in the house itself and Ajay was serving in Big Bazar. His father had retired from services of Railway. All the three brothers were having separate rooms in the house but the kitchen was common. The accused was married to Pranita and they were having one daughter Shreya, aged about 11 to 12 years. The relations between all the family members were good. On 7.4.2011 he came to house after completing his duty at about 8.30 a.m. in the morning and left at about 10.30 a.m. He again came back and left the house to bring his wife from the school at about 3 p.m. and he returned back at about 6.30 to 7 p.m. after dropping his wife at his in-laws' house. Thereafter, he left the house at about 8 p.m., reported his presence at headquarter and came back to his in-laws' house and after having dinner at about 10.15 p.m. along with his wife came to the house. He noticed that Shreya was sleeping on the cot in the hall and all family members had completed dinner. All the family members were

watching T.V. serial at that time. He had a talk with Shreya and he asked her as to why she had gone to bed early to which she replied that she was not feeling well. All the family members went to their respective rooms in between 10.45 p.m. to 11 p.m. His parents used to sleep in hall. The accused Prakash along with his wife Pranita and daughter Shreya went in their room and all other family members went to bed. At about 3 to 3.15 a.m. he heard shouts. He and his wife were frightened. When he came out, he saw his mother and other members shouting and noise was coming from the room of Prakash. All of them went to the room of the accused but the door of his room was closed from inside. They tried to open the door but did not succeed. Thereafter he broke open the door of the room of Prakash with the help of rod from the house. The accused, his wife Pranita and daughter Shreya were lying in injured condition and blood was scattered throughout the room. He was shocked but he observed some movement in Prakash. He tried to talk to Prakash but his voice was not clear but he was murmuring as 'pant'. He, therefore, gave the pant to Prakash to wear since accused Prakash was in

underwear. He found one letter in the pant of Prakash. He did not read over entire contents as his mental condition was not good but he kept the letter on the spot itself. He informed the police. His brother Ajay accompanied by Sunil Bagde took Prakash to Mayo Hospital. Police came to their house at about 5 to 5.15 a.m. and he showed the spot to police. He had seen dead bodies of Pranita and Shreya in the room. The police took custody of the letter found on the spot. He lodged report Exh. 113 at the police station. He also identified printed FIR Exh. 114. When the chit/letter Exh. 37 was shown to the witness and he was asked whether it was the same, the witness replied that he could not tell whether the letter was same or not. Upon the iron bar being shown to him, he stated that the iron bar was of similar type. He could not give any reason as to why such incident had occurred. In cross-examination, he stated that there is a compound wall on the back side of their house but anybody could enter the house after crossing compound wall. He further stated that there were thefts in the colony and in their house also. The accused was running a shop in front of the house in one room and the financial

position of their family was good. Pranita had stopped going to beauty parlour course about five days prior to the incident and upon being asked as to why she had stopped, Pranita did not give any reply. He further stated that there were two windows to the room of Prakash. He further deposed that he had not seen any knife in the room of Prakash but he was told by the police that two knives were found in the room of Prakash. He further deposed that one Bihari boy was teasing Pranita on her way to beauty parlour but he had not confirmed the same. He admitted that it could be on account of teasing by said Bihari boy, Pranita had stopped going to beauty parlour classes. He could not say whether there was one sided love affair of Bihari boy. He could not tell with certainty whether said Bihari boy had murdered Pranita, Shreya and injured his brother accused Prakash. He could not state whether said Bihari boy after murdering them left in Scorpio from their house. He denied that he had not broken the door of the room of Prakash. He denied that in order to save the reputation of their family, he was not telling the truth before the Court.

15] The prosecution also examined PW.8 Ajay, the brother of the accused who stated that he along with PW.7 Anup, the accused and their family members and their parents were residing at Jagruti Nagar and he was getting salary of Rs.7000/- and accused was looking after household expenses of the entire house and he used to initially contribute Rs.3000/- which was increased to Rs.4000/-. On 7.4.2011 he along with his wife came to the house at about 11.30 p.m. and all the family members went in their respective rooms. At about 3.30 a.m. he heard noise of knocking of his door by his mother. He came out of his room and heard shouts coming from the room of the accused. All of them were frightened. They tried to open the door but there was no response. Thereafter, the door was broken by means of an iron rod. Prakash, Pranita and Shreya were lying in the room in injured condition. All of them were shocked after seeing the incident. Pranita and Shreya were not giving any response but there was some movement in Prakash. The accused had a talk about a chit with PW.7 Anup. He thereafter took the accused in Scorpio jeep of neighbour to Mayo Hospital. His statement was recorded on

8.4.2011. He could not say whether the iron rod which was shown to him was the same which was used for breaking the door. He further stated that there was no dispute in the family. During cross-examination he stated that he and PW.7 Anup were only two members who had entered the room of Prakash at about 3.30 a.m. and they were in the room for about 10 to 15 minutes. He denied the suggestion that within 15 minutes they had carried Prakash to Mayo Hospital. Police did not seize his blood stained clothes nor he had handed over the same to police. He had not seen two knives in the room of accused when he entered there. There was one big window to the room of Prakash and one could easily enter the room of Prakash through the said window. He could not say whether Bihari boy entered the room of Prakash and after committing murder of Pranita and Shreya, fled from window. He denied the suggestion that he was not present in the night of 7.4.2011 in the house or that he did not carry accused to Mayo Hospital. There is absolutely no reason pointed out to reject the evidence of PW.7 and PW.8 which inspires confidence. Thus, the prosecution has been able to establish that the

accused was alone present in the room with deceased Pranita and Shreya in the room locked from inside.

16] We shall now deal with circumstance nos. (iv), (v) and (vi). Perusal of the judgment discloses that the learned trial Court has held that financial crisis was one of the reasons for the accused to commit murder of his wife and daughter and also that the accused claimed an amount of Rs.3,00,000/- from Life Insurance Corporation on account of death of his wife Pranita by falsely claiming that Pranita died on account of heart attack. The suicide note Exh. 37 which has been also proved by the prosecution to be in the handwriting of the accused clearly proves that he committed double murder on account of financial crisis. The prosecution examined PW.17 Rambhau Aglawe, father of Pranita to prove that after the death somewhere in June, 2011 the accused claimed the insurance amount of Rs. 3,00,000/- on account of death of his wife Pranita claiming that her death occurred on account of heart attack. His evidence also corroborates the version of PW.7 Anup that dead body of Pranita and

Shreya were lying in the room occupied by the accused and that door of the room was broken open. His evidence further discloses that on his application LIC gave him entire record of the claim made by the accused on account of death of his wife Pranita claiming that she had died due to heart attack. He informed the said fact to Police Station Jaripatka in writing on 28.3.2012. No doubt, the documents produced by him disclosed that the accused claimed an amount of Rs. 3,00,000/- from LIC on the ground that she had died on account of heart attack and the said amount was paid to the accused by LIC on 25.7.2011 and the same was withdrawn between 30.7.2011 till 28.11.2011. The learned trial Court has used the circumstance against the accused. This circumstance also corroborates the suicide-note (Exh.37). No doubt, PW.7 Anup and PW.8 Ajay, the brothers of the accused have stated that the accused was not in financial crisis but in our view, it was for the accused to decide as to whether he was in financial crisis or not and on this aspect, the statements made by PW.7 Anup & PW.8 Ajay cannot be taken as conclusive. We, therefore, have no hesitation to hold that the

accused committed double murder on account of financial crisis. Moreover, it is pertinent to note that the prosecution has not led any other evidence to prove any other motive on the part of the accused to commit double murder.

17] The prosecution has relied upon suicide note (Exh. 37) found in the room of the accused which discloses that he had committed murder of his wife and daughter and had attempted suicide on account of financial crisis. The suicide note was seized in terms of spot panchnama (Exh. 36) which has been duly proved by PW.1 Vijay Meshram, who was panch to the spot panchnama. The evidence of PW.7 Anup also proves that the suicide note was collected by him from the pant of the accused while he handed over the pant to the accused and he had kept the same on the spot. Moreover, the fact that the suicide note was written by the accused has been proved by the prosecution through the evidence of PW.6 Albert Joseph, who was panch in respect of panchnama conducted for obtaining specimen handwriting of the accused and that of PW.13

Vinodkumar Meshram, the handwriting expert. The evidence of PW. 13 Vinod Meshram clearly proves that he compared specimen writings at Exhs. S1 to S9 which have been marked as Exhs. 86 to 94 in the Court record and the admitted documents written by the accused as Exhs. N1 to N6 which have been marked as Exhs. 76 to 80 in the Court record and he opined that they were written by the same person. He has identified his opinion given in writing (Exh. 139). He has also placed on record detailed reasons for his opinion (Exh. 139) which was taken on record and marked as Exh. 141. In the cross-examination, nothing tangible has been brought on record to discredit his testimony. Therefore, we have no hesitation to hold that the suicide note was written by the accused himself. A bare perusal of the said suicide note discloses that the accused committed murder of his wife and daughter and also attempted to commit his suicide on account of financial crisis. Thus, the prosecution has proved the circumstances at serial nos. (iv), (v) and (vi).

18] The next circumstance relied upon by the prosecution is

the confessional statements made by the accused to PW.18 Vinod Meshram, the Executive Magistrate and to PW.19 PSI Ashok Dhurve. In order to prove the confessional statement (Exh. 156) made to the Executive Magistrate, the prosecution examined PW.18 Vinod Meshram. The statement of the accused was recorded on 20.4.2011 as a dying declaration since the accused had severe injuries on his person and in the event of his death, the prosecution wanted to rely upon the same. However, the accused survived and as such, the same cannot be used as dying declaration. Mr. Doifode, the learned Additional Public Prosecutor is right in placing reliance upon the judgment of the Apex Court in the case of **Veer Singh (supra)** in which the Apex Court has held that if a statement made to a Magistrate by an accused is recorded as dying declaration and if the accused survives, the same can be used under Section 164 of the Criminal Procedure Code. Similar is the ratio laid down by the Apex Court in the case of **Shrawan Bhadaji Bhirad & others .vs. State of Maharashtra (supra)**. The evidence of PW.18 Vinod Meshram which is corroborated by the statement (Exh. 156) clearly proves that

the accused committed murder of his wife and daughter and attempted to commit suicide on account of financial crisis. Therefore, in our view, the prosecution has been able to establish this circumstance against the accused. However, in so far as the statement (Exh. 146) made to PW.19 PSI Ashok Dhurve is concerned, in our view, the trial Court ought not to have relied upon the same in support of the prosecution case. The statement made by the accused to the Investigating Officer was clearly hit under the provisions of Section 25 of the Evidence Act and Sections 161 & 162 of the Evidence Act. Therefore, no reliance could have been placed upon the confessional statement alleged to have been made by the accused to PW.19 Ashok Dhurve.

19] The next circumstance relied upon by the prosecution is spot panchnama (Exh. 36) which has been duly proved by PW.1 Vijay Meshram. His evidence clearly proves that in the room of the accused, his wife and daughter were lying in dead condition on 8.4.2011 at about 5.30 a.m. and one chit was lying beneath the bed

and the same were seized by the police. His testimony has not been shaken in cross-examination and his evidence appears to be quite natural which is corroborated by spot panchnama (Exh. 36). Moreover, the inquest panchnamas (Exhs. 9 & 10) conducted on the dead body of Pranita and Shreya also lend corroboration to the version of PW.7 Anup and PW.8 Ajay as also the medical evidence led by the prosecution. Therefore, in our considered view, the prosecution has been able to establish and prove the spot panchnama and inquest panchnamas which clearly lend corroboration to the prosecution case.

C.A. report (Exh. 166) also lends corroboration to the prosecution case. The blood group of Pranita was 'AB' and that of Shreya was 'A'. C.A. report (Exh. 166) discloses that blood of 'A' group was detected on bed-sheet, knife, slip of Shreya, underwear of Shreya and half pant of Shreya. Similarly, it also disclosed that blood of 'AB' group was detected on bed-sheet, gown, petticoat, knicker and brassiere of Pranita. Therefore, the C.A. report (Exh. 166) also lends full corroboration to the prosecution case.

20] Admittedly, the case rests on the circumstantial evidence.

In the case of **Sharad Birdhichand Sarda .vs. State of**

Maharashtra reported in AIR 1984 SC 1622, the Supreme Court

has laid down the five tests which have to be satisfied before

conviction can be recorded on the basis of circumstantial evidence.

They are as follows :-

(1) the circumstances from which the conclusion of guilt is to be

drawn should be fully established. The circumstances

concerned 'must or should' and not 'may be' established.

(2) The facts so established should be consistent only with the

hypothesis of the guilt of the accused, that is to say, they

should not be explainable on any other hypothesis except that

the accused is guilty,

(3) the circumstances should be of a conclusive nature and

tendency,

(4) they should exclude every possible hypothesis except the one

to be proved, and

(5) there must be a chain of evidence so complete as not to leave

any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The question which arises for consideration is whether the circumstantial evidence led by the prosecution is sufficient to prove the offences for which the accused has been convicted. We have already held that the circumstances mentioned above in paragraph 4 hereinabove, except the alleged confessional statements made by the accused to PW.19 have been proved against the accused. In our considered view, all the circumstances which have been proved taken cumulatively clearly establish that it was the accused and the accused alone who was responsible for the murder of his wife and daughter. It is pertinent to note that although a faint defence has been taken by the accused that one Bihari boy who had one sided love affair with his wife Pranita had entered the room during the intervening night of 7.4.2011 and 8.4.2011, no foundation has been laid to probabalize the said defence. It is pertinent to note that till

PW.7 was examined the accused did not come out with this defence to any of the persons including the Investigating Officer. Moreover, it is to be noted that in his statement recorded under Section 313 Criminal Procedure Code, the accused except for denying the prosecution case has not stated that the murder of his wife and daughter and assault on him were committed by a Bihari boy. The burden of proving as to how Pranita and Shreya suffered serious injuries resulting in their instantaneous death was on the accused which has not been discharged by him. Therefore, in our view, the prosecution has been able to establish beyond reasonable doubt that the accused who found himself in financial crisis thought it fit to get rid of his wife and daughter and also attempted to commit suicide.

21] The next question which arises for consideration is whether the death sentence awarded to the accused for the offence of murder under Section 302 of Indian Penal Code is justified. The learned trial Court has awarded death sentence to the accused on the ground that aggravating circumstances outweighed mitigating

circumstances. According to the learned trial Court, the following are the aggravating circumstances which justify imposition of death penalty on the accused :-

- i. The murder was preplanned and executed with extreme brutality since the deceased had 62 and 45 wounds on their bodies,
- ii. Both the accused were innocent, helpless and were sleeping at the time of commission of the offence,
- iii. Withdrawal of LIC amount of Rs.3,00,000/- in terms of the policy of his wife Pranita ,
- iv. The act of murder displayed total depravity of mind and extreme perversity making the crime uncommon,
- v. There was no chance of accused reforming himself in future.

22] The law regarding imposition of death penalty is by now well-settled. The Apex Court in the case of **Bachan Singh .vs. State of Punjab reported in AIR 1980 SC 898** has laid down guidelines in so far as imposition of death penalty is concerned. They are as

follows :-

- (a) The extreme penalty of death may be inflicted in gravest cases of extreme culpability;
- (b) While imposing death sentence the circumstances of the offender are also required to be taken into consideration along with the circumstances of the crime;
- (c) Death sentence be imposed only when life imprisonment appears to be a altogether inadequate punishment having regard to the relevant circumstances of the case; and
- (d) Extreme penalty can be imposed after striking the balance between aggravating and mitigating circumstances found in the case.

The Apex Court has further held that the aggravating circumstances include commission of murder after planning and with extreme brutality or exceptional depravity. The Apex Court further held that the following mitigating circumstances have to be considered while imposing death sentence :-

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

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

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

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

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

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

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

In the later judgment, the Apex Court in the case of **Macchi Singh and others .vs. State of Punjab, AIR 1983 SC 957**, upheld the above guidelines and further held that death sentence could be imposed only in the rarest of rare cases when the collective conscience of community is so shocked that it would expect the holders of judicial power to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty as a sentencing option. The Apex Court held that the following circumstances can be considered as “rarest of rare” for imposing capital punishment by entertaining such sentiment of the community :-

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness. e.g. Murder by hired assassin for money or reward; or cold blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a

position of trust; or murder is committed in the course for betrayal of the motherland,

- (3) When murder of a member of Scheduled Caste or minority community etc., is committed not for personal reason but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'Dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
- (4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or large number of persons of a particular caste, community, or locality, are committed.
- (5) When the victim of murder is (a) an innocent child or a helpless woman or old or infirm person, or a person vis-a vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.”

The Apex Court further held that while considering as to whether death sentence should be imposed or not, full weightage must be

accorded to mitigating circumstances and just balance has to be struck between aggravating and mitigating circumstances.

23] In the case of **Sushil Kumar .vs. State of Punjab** **reported in (2010) 1 SCC (Cri) 348** (supra) relied upon by the learned Counsel for the accused, the appellant had committed murder of his wife, minor son and daughter. High Court of Punjab & Haryana awarded death sentence to the accused for triple murder. The Apex Court commuted the death sentence to life imprisonment after considering the following mitigating circumstances :-

“(i) appellant had been unemployed for last 7 to 8 months

(ii) he used to borrow money from others to meet his daily needs.

(iii) he himself had consumed 'sulphas tablets' to commit suicide, even though not medically established.

(iv) he, therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain and agony alone,

(v) he was fed up with his life and was seen in a perplexed

condition by PW-4.

(vi) in any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it”.

24] In the present case, no doubt the murder committed by the accused of his wife and daughter was brutal since he inflicted 62 and 45 stab wounds on his wife and daughter respectively resulting in their instantaneous death. However, the fact remains that the accused attempted to commit suicide as is evident from the presence of 20 injuries on his person. Moreover, the accused was in hospital from 8.4.2011 till 17.6.2011. The prosecution evidence itself suggests that the reason for the accused to commit murder of his dear ones and to attempt suicide was on account of the financial crisis. The facts in the present case, though not exactly identical with the facts in the case of Sushil Kumar (*supra*), the fact remains that they are almost similar. It is also pertinent to note that the accused has no criminal record and nothing is brought on record by the

prosecution to establish that the accused is going to be threat to the society or that there are no chances of his reformation. Therefore, in our considered opinion, after striking a balance of aggravating and mitigating circumstances, we are of the considered opinion that this is not a case where accused deserves death penalty.

25] In our opinion, this case cannot be termed as “rarest of rare” and, therefore, imposition of death penalty on the accused for committing murder is not justified.

26] Although we have held that this is not “rarest of rare case”, yet the fact remains that the murder committed by the accused is brutal and diabolic. The accused without any fault on the part of his wife and daughter inflicted 62 and 45 wounds respectively with deadly weapons, i.e. knives. Therefore, in our considered opinion, this is a case in which though the death sentence deserves to be set aside, the interest of justice would be served by directing the accused to undergo minimum sentence of imprisonment of 30 years. This

course is permissible in view of ratio laid down by the Apex Court in the case of **Swamy Shraddananda alias Murali Manohar Mishra .vs. State of Karnataka reported in AIR 2007 S.C. 2531.** In the said case, after setting aside the death sentence, the Supreme Court directed that the appellant would undergo “life sentence”. Reliance was placed on earlier judgments of the Apex Court in the case of **Subhash Chander .vs. Krishan Lal and others (2001) 4 SCC 458, Ram Anup Singh and others .vs. State of Bihar (2002) 6 SCC 686, Prakash Dhawal Khairnar (Patil) .vs. State of Maharashtra (2002) 2 SCC 35, Shri Bhagwan .vs. State of Rajasthan (2001) 6 SCC 296 and Mohd. Munna, etc. .vs. Union of India & others, etc. (2005) 7 SCC 417.**

27] In the case of Subhash Chander (supra), the accused killed the whole family of one Bhagwan Ram. The Apex Court while setting aside the death sentence imposed by Sessions Court which was confirmed by the High Court, held that the accused would undergo imprisonment for rest of his life and he would not be entitled

to any commutation or any premature release under Criminal Procedure Code, Prisoners Act, Jail Manual or any other statute. In the case of Ram Anup Singh (supra), the Apex Court set aside the death sentence awarded to appellant nos. 2 & 3 and sentenced them to undergo imprisonment for life subject to the condition that they shall not be released before completing an actual term of 20 years including the period already undergone by them. In the case of Prakash Khairnar (supra), the Apex Court aside aside the death sentence and sentenced him to undergo imprisonment for life subject to condition that he would serve at least 20 years of imprisonment including the period already undergone. In the case of Shri Bhagwan, the accused who was convicted for murder of 5 persons and for committing dacoity along with other accused was sentenced to imprisonment for life by setting aside death sentence subject to the condition that he would serve at least 20 years' imprisonment including the period already undergone. Thus, the Apex Court has consistently held that in a case where death sentence is commuted to life on the ground that mitigating circumstances outweigh aggravating

circumstances but the murder is brutal and diabolic, the Court sentencing the accused can very well direct that the accused shall undergo imprisonment for life subject to the condition that he would undergo minimum period of imprisonment as mentioned in the order. As stated above, in our view, the interest of justice would be served if the accused is directed to undergo imprisonment for life subject to the condition that he would not be released unless he undergoes actual period of imprisonment for a minimum period of 30 years. We do not deem it necessary to refer to in detail all the authorities relied upon by Mr. Doifode, learned Additional Public Prosecutor, but we have taken into consideration the ratio of the said judgments while recording findings in the present case.

28] The accused has been sentenced by the trial Court to death and also to pay fine of Rs. Three Lakhs and in default, to undergo R.I. for five years. Out of the said amount, an amount of Rs. 2,50,000/- has been ordered to be forwarded to District Legal Aid Committee and Rs.50,000/- to State of Maharashtra. The learned

trial Judge has accepted the prosecution case that the accused committed double murder and attempted to commit suicide on account of financial crisis. If that be so, we fail to understand as to how the learned trial Judge could have imposed exemplary fine of Rs. 3,00,000/- on the accused and further directed that an amount of Rs. 2,50,000/- be forwarded to District Legal Aid Committee and Rs. 50,000/- to State of Maharashtra. We, therefore, set aside the imposition of fine of Rs.3,00,000/- imposed on the accused for the offence punishable under Section 302 of Indian Penal Code and reduce the fine amount to Rs.5,000/- (Rupees Five thousand only).

29] Before we conclude, we would like to deal with one aspect of the matter which the Sessions Court has dealt with. In the operative part of the order at (6), the learned trial Judge has directed Commissioner of Police, Nagpur to conduct probe in terms of direction given in paragraphs 66, 67 and 71 within two months and initiate action against wrong doers as per provisions of law. The trial Court has observed that the accused with the connivance of family

members has claimed the insurance amount from the LIC in respect of his wife Pranita by falsely claiming that Pranita died on account of heart attack. The learned trial Judge has held that since the accused himself has committed murder of Pranita, there was no question of claiming insurance amount and, therefore, *prima facie* offences are made out against the accused and his family members. We fail to understand as to how the learned trial Judge could have directed probe and that too by Commissioner of Police, Nagpur while dealing with a Sessions Case. If the accused had falsely made claim and got the amount from LIC in respect of insurance policy of his wife, it was for the LIC to take appropriate action in the matter. In our view, the said direction is patently unsustainable and as such, the same is quashed. Moreover, in the course of argument, Mr. Doifode, the learned Additional Public Prosecutor submitted that in terms of direction only enquiry has been conducted but no further action has been taken. Be that as it may, since we have found that the said direction is without jurisdiction, no further action need to be taken by the Commissioner of Police of Nagpur. Needless to mention that if

LIC is aggrieved by the claim made by the accused, LIC is free to take appropriate action against the accused if it is so advised.

30] In the result, we pass the following

ORDER

- I. Reference made by learned Additional Sessions Judge is rejected and the appeal is partly allowed to the extent of sentence only,
- II. The conviction of the accused Prakash Vinayakrao Shingnapure for the offence punishable under Section 309 of the Indian Penal Code and the sentence imposed on him by the trial Court is maintained,
- III. The conviction of the accused Prakash Vinayakrao Shingnapure for the offence punishable under Section 302 of the Indian Penal Code is maintained. However, the death sentence imposed on him is set aside and the same is commuted to life imprisonment subject to rider that the accused shall not be released unless he has undergone 30 years of

imprisonment including the period already undergone by him.

The accused shall also be liable to pay fine amount of Rs.

5,000/- (Rupees Five thousand only) and in default, to suffer

R.I. for one year.

IV. The substantive sentences are ordered to run concurrently,

V. The order passed by the learned trial Judge in so far as

disposal of property is concerned is maintained.

JUDGE

JUDGE

J.