

(2012) 02 BOM CK 0211

Bombay High Court

Case No: Criminal Appeal No. 848 of 2005

Nilesh Ramesh Joshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Feb. 24, 2012

Acts Referred:

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

Citation: (2012) BomCR(Cri) 538

Hon'ble Judges: Shrihari P. Davare, J; A.P. Lavande, J

Bench: Division Bench

Advocate: Rohini Dandekar, for the Appellant; M.M. Deshmukh, APP for the Respondent-State, for the Respondent

Final Decision: Dismissed

Judgement

Shrihari P. Davare, J.

Heard the learned respective Counsel for the parties.

2. The challenge in this appeal is to the conviction and sentence imposed upon the appellant-original accused (hereinafter the appellant is referred to as the accused), by way of judgment and order dated 20-01-2005 rendered by the learned Sessions Judge, Pune, in Sessions Case No. 433 of 2003, thereby convicting him for the offence punishable u/s 302 of Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs. 1,000/- , in default to suffer rigorous imprisonment for 3 months.

3. Briefly stated, the case of the prosecution is as follows : -

P.W.8 Police Inspector Dattatraya Krishna Indalkar, was attached to Bibwewadi Police Chowky of Sahakar Nagar Police Station as API in February 2003 and he was on night patrolling duty on mobile van at the relevant time i.e. at 1.20 a.m., on

28-02-2003, when he received a message from the Control Room that mother of Rahul Joshi namely Uma Joshi, was attacked. Hence, he gave the said information to superiors and rushed towards the said place i.e. Shradha Apartment and met Rahul Joshi there, who pointed out that in a room, there was the deadbody of his mother. He accordingly inspected the said room and recorded complaint of Rahul Joshi as per his narrations, wherein he stated that on the earlier date i.e. 27-02-2003, there was a discussion about family matters, wherein it was decided that he and his mother should shift to Kharadi and the accused herein namely Nilesh, would shift to rented premises at Somvar Peth. During the course of the said discussion, the accused asked the victim mother about the provision of his food etc., and thereupon, she asked the accused to make his own arrangements. It is also surfaced in the complaint that after meals, the accused went to terrace and complainant went to his room and victim mother proceeded to her bedroom to sleep. At about 12.45 a.m., the accused woke up Rahul and asked him to see as to what had happened to their mother. Hence, Rahul went near the room in which his mother was sleeping and found that she was lying in a pool of blood. The accused also informed that her clothes were stained with blood when he lifted his mother. The accused also pointed out the knife and sickle lying in the basin, which were covered with the blood. Hence, P.W.1 Rahul Ramesh Joshi contacted Dr. Gangal, who asked him to inform the police personnel. Thereupon, he gave information to police on telephone and said message was relayed to P.W.8 Dattatraya Indalkar and in response, he arrived at the house of the complainant. Accordingly, he forwarded the said complaint along with his report for registration of an offence and it was registered at the said Police Station under C.R.No.48 of 2003 u/s 302 of Indian Penal Code. Thereafter, P.W.8 PI Dattatraya Indalkar prepared the Inquest Panchanama of the deadbody (Exh.18) and then the deadbody was sent to Sasoon Hospital, for postmortem examination.

4. It is also the case of the prosecution that P.W.4 Dr. Ramkrishna Govindrao Bhusale, who was attached to B.J.Medical College as Professor in Forensic Medicine Department, performed the postmortem on the deadbody of Uma Joshi on 28-02-2003. On external examination, he noted various injuries which are described in Column No. 17 of the postmortem notes and he noted internal injuries which are mentioned in Column No. 19 of the postmortem report. According to Dr. Bhusale, death of the victim was caused on account of hemorrhagic shock with head injury due to multiple chop wounds on the head and with multiple incised cut wounds on different parts of the body. He also stated that injuries stated in Column Nos.17 and 19 were cumulatively sufficient in the ordinary course of nature to cause death and the postmortem report is produced at Exh.26. He also stated that the aforesaid injuries could be caused by knife (Article 5) which was shown to him.

5. The prosecution case also recites that P.W.9 Bajirao Bhikaji Jagtap was attached to Sahakar Nagar Police Station as Police Inspector since 01-03-2003 and after registration of the offence, investigation was handed over to him from P.W.8

Dattatraya Indalkar. Accordingly, he visited the place of incident and prepared the panchanama of scene of offence in presence of P.W.5 Balaji Premchand Oswal and the said Panchanama is produced at Exh.28. It is alleged that there was a pool of blood in the bedroom in which he found piece of broken handle of sickle as well as there were pillows stained with blood on the cot and sickle and knife were in the basin, and one turkish napkin stained with blood was also found there and same were seized under the said Panchanama. Moreover, sample of blood was taken for grouping purpose. Thereafter, police personnel returned to the police station with the accused, who was arrested in the presence of P.W.7 Narayan Kisan Ovhal, under the arrest panchanama. The clothes on his person stained with blood were also attached under the Panchanama Exh.32 under Article Nos.10 to 12. P.W.9 PI Bajirao Jagtap sent the accused for medical examination since there were injuries on his middle finger, wrist of the left hand and left knee. The blood sample of the accused and nail clipping and scalp hair were also collected for examination purpose. P.W.9 Bajirao Jagtap also received medical certificate which is at Exh.30. Thereafter, he also recorded the statements of several witnesses. Police Constable Deshmukh also produced clothes of the deceased i.e. pink coloured petticoat (Article 13) and yellowish gown (Article 14), which were seized under the Panchanama (Exh.20).

6. On 01-03-2003, P.W.9 Bajirao Jagtap also recorded statements of other witnesses. On 04-03-2003, P.W.9 Jagtap sent the seized articles to Chemical Analyzer's Office for examination purpose along with forwarding letter (Exh.21). He received postmortem report on 16-04-2003 as well as recorded statements of witnesses during the investigation. Pursuant to the forwarding letter dated 17-10-2003, reports of the Chemical Analyzer were also received from the CA Office which are at Exh.23 and 24. Accordingly, after completion of investigation, he filed the chargesheet against the accused before the learned J.M.F.C. Court, Room No. 4, Pune. However, since the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions by an order dated 10-11-2003. Thereafter, learned Sessions Judge, Pune, framed the charge against the accused for the offence punishable u/s 302 of Indian Penal Code on 07-04-2004 (Exh. 7). However, accused pleaded not guilty to the charge and claimed to be tried.

7. To substantiate the said charge levelled against the accused, the prosecution examined as many as nine witnesses, as mentioned below :

P.W.1 Rahul Ramesh Joshi, 1st informant who lodged FIR (Exh.14) and brother of the accused.

P.W.2 Shirish Mohan Velhal, neighbour of the accused and the first informant.

P.W.3 Vijay Jagdeorao Yadav, another neighbour of the accused and the first informant.

P.W.4 Dr. Ramkrishna Govindrao Bhusale, who performed the postmortem on the deadbody of victim and produced postmortem notes at Exh.26.

P.W.5 Balasaheb Premchand Oswal, Panch to the spot panchanama (Exh.28)

P.W.6 Dr. Bhagwan B.Andhare, who examined the accused and produced OPD papers at Exh.30 and also collected his blood sample for examination purpose.

P.W.7 Narayan Kisan Ovhal, Panch to the panchnama of the seizure of cloths of the accused (Exh.32)

P.W.8 Dattatraya Krishna Indalkar, P.I. Investigating Officer 1.

P.W.9 Bajirao Bhikaji Jagtap, P.I., Investigating Officer 2.

8. The defence of the accused is of total denial. According to him, after demise of his father Ramesh Joshi, Rahul Industries was recorded in the name of his mother and Rahul and they had executed deed in that behalf. At that time, his name was not included as a partner since he was young. About two weeks prior to the incident, his brother Rahul was persuading his mother that the partnership deed was to be cancelled since he desired to record partnership firm in the name of a stranger. However, his mother told Rahul that the partnership deed should be recorded in their names and then, they should decide what is to be done. However, his brother was not empowered to do so. On 27th His brother brought a deed for cancellation of partnership. However, his mother did not agree with the said proposal. Hence, there was hot exchanges of words between them. Thereafter, his brother Rahul left the house and proceeded towards Rahul Industries and he was very angry. He returned to the house at about 9.00 p.m. At that time, the accused tried out to reason with him, but he told that the partnership could be in the name of his mother and Rahul. The accused also informed the Rahul that he was not interested in the business since he was getting a job and leaving Pune for Mumbai on the very next date. However, his brother did not listen to him and he was not satisfied and was angry. Thereafter, the accused left the house at about 10.15 p.m. for cyber cafe and got a computer at 10.45 p.m. and he was there till 12.45 a.m. and thereafter, returned to home. However, he found that the main door of the house was open. Hence, he entered in the house and went to the bed room of his mother, but there was darkness therein. Accordingly, when he entered into the bedroom, he slipped and fell down. Therefore, he could not understand as to what had happened and hence, he took the support from the wall for getting up and switched on the light. Thereupon, he saw that his mother was lying in a pool of blood on her back, but he could not apprehend the said happening. Hence, he went near his mother and made an effort to wake her up. Then, he took her head into his lap. He also called Rahul many times, but he could not get any response. Hence, he ran to his room and woke him up and asked him to come to bedroom of their mother and ran back to the mother's bedroom and sat near his mother. Rahul also came there and after some time, Shirish Velhal also arrived there and asked as to what had happened. The accused also told Rahul to contact doctor and accused contacted maternal uncle who lived in Dhankadvi. The doctor asked Rahul to inform the police personnel on

number 100. Accordingly, Rahul contacted on the said number, but he could not state the fact since he had become panicky. Hence, Rahul gave phone to the accused and the accused informed the police officer about the incident and asked them to come to their house. Thereafter, P.W.2 Shirish Velhal and P.W.3 Vijay Yadav also arrived there and P.W.2 Shirish went to police station to call the police personnel. However, Rahul Joshi P.W.1, suffered an attack of giddiness and became unconscious.

9. Thereafter, police personnel came to their flat at about 1.35 a.m. and PI Jagtap came there at about 1.45 a.m. and took Rahul to the bedroom of his mother and accused was asked to wait outside. Thereafter, they came out from the bedroom at about 2.00 to 2.15 a.m. and PI Jagtap informed the accused that he had to complete the formalities and asked the accused to accompany with him to the police station. Accordingly, the accused went to the police station at about 2.15 a.m. He also stated that he did not know as to what had happened thereafter. But on the next date, he was arrested and he was not informed the reasons for his arrest. However, the accused neither examined himself on oath, nor examined any defence witness in support of his aforesaid defence.

10. After assessing and analyzing the evidence, oral as well as documentary and after considering the rival submissions advanced by learned counsel for the parties, learned Trial Court convicted the accused for the offence punishable u/s 302 of Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 1,000/- , in default to suffer rigorous imprisonment for three months by the impugned judgment and order dated 20-01-2005. Being aggrieved and dissatisfied by the said judgment of conviction, the accused has assailed the same in the present appeal and prayed for quashment thereof.

11. In order to deal with the submissions advanced by learned counsel for the parties, it is necessary to advert to the material evidence adduced/produced by the prosecution. In the said context, the prosecution case is resting upon five circumstances : (1) homicidal death of deceased Uma Joshi (2) F.I.R. lodged by P.W.1 Rahul Joshi i.e. First Informant (3) blood on the clothes of the accused (4) motive and (5) the accused was last seen together with the victim.

12. As regards the homicidal death of the victim namely Uma Ramesh Joshi, the material evidence adduced/produced by the prosecution is the testimony of P.W.4 Dr.Ramkrishna Govindrao Bhusale; postmortem notes produced by him; and the inquest panchanama (Exh. 18). Coming to the deposition of P.W.4 Dr. Ramkrishna Govindrao Bhusale, who has deposed that he performed postmortem on the dead body of Smt.Usha Umesh Joshi on 28-02-2003 and noted the external injuries on the said dead body in Column No. 17 of the postmortem report, which are mentioned below :

(i) Incised cut wound over midline of pubic region 10 x 2.5 cm extending from lower part of abdomen to 2 cm, above the anterior wall of vagina. Margins clean cut, reddish. Subcutaneous fat exposed around wound site.

(ii) Reddish diffused contusion over right thigh, anteriorly and medial surfaces all over. On cut sections, hemorrhages seen in the thigh muscles.

(iii) Reddish coloured contusion over left thigh anteriorly all over surface, on cut section - hemorrhages seen in the thigh muscles.

(iv) Chop wound over left wrist dorsal aspect obliquely horizontal over middle, ring and index finger, edges clean cut, reddish colour.

(v) Multiple chop wounds on following site left side of head

(a) Through middle part of left ear 3 x 0.25 cm horizontal

(b) Behind left ear horizontal one below another

- 4 x 0.5 cm

- 5 x 0.25 cm

- 3 x 0.25 cm

- 7 x 0.25 cm

edges clean cut, reddish colour.

(c) Neck at middle thyroid one below another, horizontal, reddish colour.

- 10 x 1.5 cm

- 3 x 1 cm

- 4 x 1 cm

(d) Left side of face in front of left ear

1 x 0.5 cm reddish colour

(e) Back of neck (nape)

- 8 x 0.2 cm

- 3 x 0.2 cm

- 2 x 0.2 cm reddish colour, edges clean cut.

13. P.W.4 Dr. Ramkrishna Bhusale also stated that he noted internal injuries which are described in Column No. 19 of the postmortem notes. He also stated that postmortem notes bear his signature and the same is produced at Exh.26. In his opinion, death is caused on account of hemorrhagic shock with head injury due to

multiple chop wounds on the head, neck with multiple incised cut wounds on different parts of the body. He further stated that injuries in column No. 17 cumulatively and injuries in column No. 19 are sufficient in ordinary course of nature to cause death. According to him, chop wounds can be caused by sickle having blade curved at the top such as Koyta (Article 4) and the incised injuries can be caused by knife (Article 5).

14. In the cross-examination, he stated that the weapons shown to him were not sent to him earlier for his opinion. He also admitted that the aforesaid injuries can be caused if a person falls on the ground during the scuffle. He also stated that sharp weapon can be used for causing injuries Nos.2 and 3 mentioned in Column No. 17 and injury No. 4 in column No. 17 is the defence injury and can be caused during the scuffle and the said injury No. 4 is simple injury caused by dangerous weapon. He also admitted that the depth of injury are not described as regards the injury Nos.5(a) to (e). However, the witness volunteered that depth is mentioned only in case of stab injuries. He also stated that injuries described in column No. 17 can be caused by sickle (Article 5), though the length at some places is of 10 cm. He stated that the aforesaid injuries were antemortem because of the reddish colour of the injuries and in postmortem injury, there is no blood circulation. He also stated that individually injuries described at Sr.No.5 of Column No. 17 are not grievous injuries, except 5(a) because it amounts to disfigurement. He denied the suggestion that injuries mentioned in 5(a) to (e) are postmortem injuries. He also denied that the chop wound described in Column No. 17 cannot be caused by sickle (Article 4). According to him, incident must have taken place more than 3 to 6 hours after the last meal. He admitted that he has not mentioned age of injury. He however, volunteered that the age can be given from the colour of the injury and the colour is mentioned. But, there is no cross-examination in respect of the said volunteered statements.

15. It is apparent from the Roznama 08-09-2004 of Sessions Case No. 434 of 2003 that the defence admitted certain documents i.e. Inquest panchanama (Exh.18); Advance certificate (Exh.19); panchanama of cloths of deceased (Exh.20); office copy of the letter addressed to the Chemical Analyzer dated 04-03-2003 (Exh.21); C.A. Certificates dated 07-10-2003, 29-08-2003 and 24-11-2003 (Exh.22 to 24) respectively. Accordingly, it is clear that the inquest panchanama dated 28-02-2003 was admitted by the defence which was marked as Exh.18 and the contents of the said inquest panchanama are in consonance with the postmortem notes.

16. Turning to the another circumstance of lodging of the F.I.R. (Exh.14) by P.W.1 Rahul Ramesh Joshi i.e. First informant, who has stated in his deposition that at the time of occurrence of the incident, he was residing in Flat No. 14, 4th floor, Shradha Apartment, Bibvewadi, Pune, with his mother and brother Nilesch, the accused herein and he was residing there for about 3 to 3 1/2 years in a rented flat. His father name is Ramesh Narayan Joshi, who expired in the year 1992 and at that

time, he had just passed 10th standard. His father had engineering workshop and he continued with the said business. The accused was taking education and he was sent to Bombay at the house of his uncle for continuation of education. He made his version by stating that his father was sick for about three years and for about four to five months before death, he was in coma on account of hemorrhage of his brain and after his father fell sick, his uncle Bhalchandra Narayan Joshi took Nilesh i.e. Accused with him for education at Mumbai. After the death of his father in the year 1991, the accused returned to Pune and started residing with them and he continued the education at Pune.

17. In the year 1992, they were residing in a rented house situated at 310, Somwar Peth, Pune. Since there was increase in the business, P.W.1 Rahul Joshi shifted the workshop at Kharadi on Ahmednagar Road in November, 2002. He also stated that the accused Nilesh was not doing any work during the said period. He further stated that their mother used to tell him that he should do some work and there used to be quarrels between the mother and the accused on account of his unemployment. He also stated that as the workshop of Kharadi was far away from Bibvewadi, they decided to shift to Vadgaon Sheri and his mother took a decision and told the accused that he should live in our old house at 310, Somvar Peth and he should earn his own livelihood. he should earn his own livelihood. Accordingly, they were to shift the house at Vedgaon Sheri. However, there used to be dispute between his mother and the accused on the proposal of our shifting to Vadgaon Sheri because the accused used to ask about his arrangement of food etc. He further stated that in the meanwhile, he searched suitable accommodation at Vadgaon Sheri and the proposal of shifting there was finalized about 7-8 days prior to the occurrence of the incident i.e. 27-02-2003. He also stated that during the said period, the accused started consuming liquor and he used to come to the house in the state of intoxication and used to quarrel with them.

18. As regards the occurrence of the incident, he stated that on 27-02-2003, he left the house for work at about 9.00 to 9.15 a.m., and the accused and his mother were at the house. He returned to the house at about 8.30 to 9.00 p.m., when the accused and his mother were at the house. While taking the food, there was a discussion about the plan of shifting and during the discussion, it was proposed that P.W.1 Rahul Joshi and his mother should shift the place at Vadgaon Sheri, which is near to the factory and the accused should shift to the old tenement at Somvar Peth. However, during the said discussion, the accused made protest since there would be nobody to cook food for him and to look after his needs. Hence, the accused asked his mother about the same. She stated that she asked him to do work on several occasions, but he failed to do so and hence, now he should fend for himself. After finishing the meals, they came to their rooms for sleeping at about 11.00 p.m. P.W.1 Rahul slept in his room, whereas his mother slept in her bedroom near the kitchen and the accused went to terrace for sleeping as usual. He also stated that his mother used to close the door of the flat before going to sleep. He further stated

that he woke up at about 12.45 a.m., and saw that the accused was fully covered with blood and he informed him that he should see what had happened to his mother. Hence, he ran towards the bedroom of his mother and saw that his mother was lying in a pool of blood. The accused also informed him that sickle and knife were kept in the sink of the bathroom and PW1 Rahul went there and saw that sickle and knife were lying in the sink and the tap was kept open and the water was flowing from the tap of the basin. He saw some blood on sickle and knife, which belonged to them. The knife was being used daily in kitchen, while sickle was used for breaking coconut whenever required. Hence, PW1 Rahul contacted family Doctor Ramesh Gangal on telephone and informed him the aforesaid position. Thereupon, the doctor advised him not to touch her mother and to wait till arrival of the police and asked him to report the matter to the police. Accordingly, PW1 Rahul contacted the police station on Telephone No. 100 and informed the police about the aforesaid incident and they waited for arrival of doctor and police.

19. He further stated that during the said period, the accused told him that he committed a folly and thereupon, PW1 Rahul lost his consciousness and after regaining him, doctor and police personnel had come to the flat and doctor examined his mother and declared her dead. Police personnel made inquiries and recorded his complaint. He informed the police personnel that the accused committed the murder of his mother and the said complaint was treated as FIR (Exh.14). Police personnel also prepared spot panchanama and seized sickle and knife, pillow with cover, white turkish napkin, handle of sickle etc., from the scene of offence. Thereafter, deadbody of his mother was sent to Sasoon Hospital, Pune and after receipt thereof, he performed the last rites. He also identified the accused Nilesh in the Court.

20. The said witness was cross-examined at length, wherein he stated that he did not mention in the FIR that the accused had told me that he has committed mistake since he was scared. He also stated that he did not mention the fact that he was scared. He asserted that he mentioned in his complaint that he lodged the report on the basis of suspicion because he was scared. As regards the location of the flat, he stated that it was in the apartment/building and there are 14 flats in that building, but no watchman is employed for guarding the apartment.

21. As regards the activities of the accused, he stated that he does not now whether the Global Education Trust had conferred a degree of Marketing Finance on the accused. He also stated that he did not know whether the accused was to go abroad in connection with the said degree and he also did not know whether he had given interview and was selected by Canadian Shipping Company and was to go to Canada. He volunteered that the accused was not earning anything since six months prior to the occurrence of the incident and there is no cross-examination in respect of the said volunteered statement.

22. He also stated that there used to be quarrels regarding habit of Nilesh to come late in the night between Nilesh and his mother. He further stated that there is no cyber cafe near their house. Moreover, the place wherein the accused used to sleep was not visible from his room, so also on hearing sound from the house, his neighbours P.W.2 and P.W.3 came to their house and he volunteered that bedroom of P.W.2 Velhal is adjacent to the bedroom of his mother and the house of P.W.2 Velhal is in the other building, which is by the side of their building and distance between these two buildings is about 10 ft.

23. He also stated in the cross-examination that his father had not prepared a Will of his property prior to his death. Moreover, whenever the accused required money, his mother used to give money to him. Infact, four days back, his mother pawned her ornaments for giving money to the accused, since he had received bank notice regarding default in payment of loan. She used to give money to the accused from the amount given by P.W.1 Rahul to her.

24. He further stated that he never used to close the door of the bedroom while going to sleep. His mother also did not close bedroom door when she went to sleep. He admitted that his mother was also a partner of Rahul Industries. He also admitted that he did not mention in his statement that there used to be quarrels because Nilesh was consuming liquor. He also admitted that he did not mention in the FIR that his mother told Nilesh that he should at least help P.W.1 Rahul in the factory, and that the knife was being used in the kitchen and the sickle was used for breaking coconut. He however, denied the suggestion that prior to the night of incident, his mother told him that instead of her, he should take Nilesh as a Partner or should pay him one or two lakhs, but he did not agree to the said suggestion and was annoyed. He also denied that he was annoyed because his mother had pledged ornaments for making repayment of bank loan of the accused. He also denied the suggestion that the weapons were not covered with the blood. Accordingly, suggestions were given to him that he is giving false evidence, but the same was denied by him.

25. P.W.2 Shirish Mohan Velhal and P.W.3 Vijay Jagdeorao Yadav are the neighbors of the complainant and the accused. P.W.2 Velhal in his evidence stated that on 27-02-2003 at about 12.45 a.m., when he was sleeping, his wife woke him up, who heard shouts from the neighbouring flat and therefore, he went to the flat of P.W.1 Rahul Joshi and found that P.W.1 Rahul and accused were standing in the passage between the door of the flat and the lift. He asked them what had happened. The accused told him that something had happened to their mother and he should see what had happened. He therefore, entered into the flat and found that the mother of accused was lying in a pool of blood in the room on the right hand side.

P.W.3 Vijay Yadav, another neighbour, also arrived there and both of them went to Bibvewadi Police Chowky to bring the police personnel, since they did not arrive in spite of intimation. Accordingly, after arrival of the police personnel, they made

inquiries with the accused about blood stains on his clothes, since portion of his T Shirt was wet while attempting to wash stains. But he could not get the answer given by the accused. He also identified the accused before the Court.

26. In the cross-examination, he stated that he did not mention in the police complaint that T shirt of the accused was wet as he made efforts to wash the blood stains. He denied the suggestion that he gave false evidence because he was acquainted with brother of accused.

27. Coming to the testimony of P.W.3 Vijay J. Yadav, who is also one of the neighbours of P.W.1 Rahul Joshi, he stated that when he was asleep on 27-02-2003 at night, somebody rang the door bell of his flat and on opening the door, he saw accused Nilesh and bearded person at the entrance of his flat. Thereupon, the accused told him to go inside the house and see what had happened. When he went inside, he saw Joshikaku lying in a pool of blood. P.W.1 Rahul was lying in the flat in a chair and in an unconscious condition. He therefore, asked Nilesh as to what had happened, but he did not give reply. Another neighbour P.W.2 was also present and he was on telephone. Thereafter, P.W.3 and P.W.2 called the police personnel to the said spot. Thereafter, police personnel made inquiries in the flat of P.W.1 Joshi and hence, he returned back to his house. His statement was recorded by the police on 30-04-2003 since he was not living in the flat for about two months. He identified the accused in the Court.

28. In the cross-examination, he stated that he does not remember whether he specifically mentioned in his statement before the police that P.W.1 Rahul was lying in a chair in an unconscious condition and the discrepancy is regarding lying in a chair. He denied the suggestion that he is giving false evidence at the instance of police and P.W.1 Rahul.

29. The testimony of P.W.5 Balasaheb Premchand Oswal, pertains to the spot panchanama (Exh.28) which was drawn on 28-02-2003 in his presence at the place of occurrence of the incident and the articles found there including knife, sickle, broken handle of sickle, pillow covers, blood stained napkin, were seized thereunder. Moreover, police personnel collected samples of blood within the pieces of cotton clothes, one hair stained with blood, were also taken into custody.

30. Moreover, the deposition of P.W.7 Narayan Kisan Ovhal, panch witness, discloses that the blood stained cloths of the accused were seized under the panchanama (Exh.32) on 28-02-2003.

31. The testimony of P.W.9 Bajirao Bhikaji Jagtap, recites that all the aforesaid seized articles were sent to Chemical Analyzer, Pune, for examination purpose along with forwarding letter (Exh.22) on 04-03-2003. C.A. Report thereof, were received subsequently which are produced at Exh.23 and 24 respectively. C. A. Report (Exh.23) discloses the blood group of the accused is of "O" group and the C.A. Report (Exh. 24) discloses that the aforesaid seized articles had human blood of

group "O".

32. On the background of the aforesaid evidence, the learned counsel for the appellant canvassed that the accused was not at all interested in the business of Engineering workshop of P.W.1 Rahul Joshi and even he was not a partner in the said business. Infact, P.W.1 Rahul and his mother, were the partners of the said partnership firm and the accused herein was not concerned with the same. Therefore, there is no question of committing murder of the victim by the accused out of business rivalry. It is also submitted by the learned counsel for the appellant that the educational qualification of the accused was not brought on record by the prosecution and therefore, the defence putforth by the appellant in the statement recorded u/s 313 of Code of Criminal Procedure that he was getting a job and was leaving Pune for Mumbai on the very next day, is required to be accepted. It is further submitted that infact P.W.1 Rahul was persuading his mother i.e. Victim, that their partnership deed be cancelled since he desired to have the new partnership firm in the name of a stranger, which was opposed by the mother i.e. Victim and there was hot exchanges of words between them on the said count, which raises suspicion against him only and the accused is nowhere connected with the alleged crime.

33. It is also argued on behalf of the accused that the unconsciousness of P.W.1 Rahul was not immediate after the occurrence of the incident and he did not lose his consciousness immediately when he saw the mother lying in a pool of blood, but lost consciousness after the lapse of reasonable period, which also raises suspicion against P.W.1 Rahul Joshi. It is further submitted that infact the mother of the accused had pawned jewellery for the accused to repay the bank loan of the accused and hence, the question arises as to why the accused would commit murder of his mother. It is further submitted that the accused was capable of maintaining himself since the death of his father till the occurrence of the incident in the year 2003 and therefore, there is no substance in the proposition putforth by the prosecution that the accused was unemployed in the year 2003. Infact, it is submitted that the accused did not ask the share from 1993 till 2003, which itself reflects that he was capable of earning money. According to the learned counsel for the appellant, the prosecution has not carried out any investigation in respect of the visit of the accused to cyber cafe, where the accused had gone on the date of the incident at about 10.15 p.m., on the day of incident i.e. on 27-02-2003 and he was there in the cyber cafe till 12.45 a.m. and after returning from cyber cafe found the main door of the house opened and therefore, went near the bedroom of his mother and found her in a pool of blood and the lapse of on the part of investigating agency is to the prosecution case. It is also canvassed by the learned counsel for the appellant that the conduct of P.W.1 Rahul is strange and it is surprising that he did not hear any noise/sound, although the incident of murder of his mother occurred in the adjacent room where he had slept during the relevant night. As mentioned hereinabove, even he did not lose consciousness immediately after the occurrence

of the incident, which speaks volumes for itself. It is further submitted that infact P.W.1 Rahul Joshi was to be benefited by the death of his mother i.e. Victim herein, since he intended to cancel the partnership between him and the victim and desired to have the partnership firm in the name of stranger and the victim was obstacle therein since she opposed the said proposal. Moreover, there were only two partners in the said partnership firm i.e. P.W.1 Rahul Joshi and the victim and after the death of the victim, he alone became the owner of the said business, whereas, the accused herein, had no stake therein and there was absolutely no reason for the accused to commit the murder of his mother. Moreover, it is further canvassed that there is no direct evidence to connect the accused with the alleged crime and the circumstantial evidence adduced/produced by the prosecution is short of establishing the nexus between the accused and the crime and the present appeal deserves to be allowed by quashing and setting aside the conviction and sentence imposed upon the accused and accordingly, the accused deserves to be acquitted for the offence for which he is charged and convicted by the trial Court.

34. The learned APP countered the said submissions and opposed the said appeal vehemently and submitted that although, the accused putforth plea of alibi through his defence contending that on the relevant day, he left the house at 10.15 p.m. for cyber cafe and he was there at the cyber cafe and he got the computer at 10.45 p.m. and he was there at the cyber cafe till 12.45 a.m. and returned home thereafter, but the accused has not examined the owner of the said cyber cafe as a defence witness to prove and establish the said defence of alibi. It is also submitted that there is nothing on record to prove and establish the said plea of alibi canvassed by the accused, except the statement of the accused recorded u/s 313 of Code of Criminal Procedure. Moreover, it is also submitted that every incriminating circumstance was put to the accused through his statement recorded u/s 313 of Code of Criminal Procedure and therefore, no prejudice has been caused to him.

35. It is further canvassed that pertinently, the accused was present at the place of incident and the accused has not given any explanation therefor and therefore, question arises how the accused was present at the place of incident. Moreover, there were sprinkles of blood on the clothes of the accused, which can occur only during the assault committed by the accused on the victim and the defence advanced by the accused in his defence through statement u/s 313 of Code of Criminal Procedure, would lead to soaking of his cloths with the blood, but so is not the position in the instant case and hence, the said theory of defence is not acceptable. Moreover, it is also submitted by the learned APP that P.W.4 Dr. Bhusale has stated that there were fresh injuries on the victim. Pertinently, the accused had also sustained injuries on the hand and the accused has not given any convincing explanation therefor and the said circumstance amounts to incriminating circumstance against the accused. Moreover, it is also argued by the learned APP that P.W.2 Shirish Velhal and P.W.3 Vijay Yadav are the neighbors, who are natural witnesses, who had gathered at the place of incident after the occurrence thereof,

and their testimony also connects the accused with the crime. It is further submitted that it is significant to note that nothing was robbed from the house of the victim and therefore, murder of the victim was not committed by any stranger while committing robbery. Moreover, It is also submitted that as per C.A. Report (Exh.23), blood group of the accused is of "O" group and accordingly to C.A. Report (Exh.24), all the seized articles wore human blood group of "O" group, which connect the accused with the crime.

36. It is submitted that according to the testimony of P.W.4 Dr. Ramkrishna Bhusale; postmortem report (Exh.26) and the inquest panchanama, the death of the victim is homicidal and the external injuries mentioned in Column No. 17 and internal injuries in Column No. 19 are sufficient in the ordinary course of nature to cause death, as stated by P.W. 4 Dr. Bhusale. Accordingly, the learned APP supported the impugned judgment and submitted that there is no glaring mistake therein and hence, urged that the present appeal bears no substance and therefor, it be dismissed.

37. We have carefully perused oral, documentary, medical as well as forensic laboratory evidence and heard the submissions advanced by the learned counsel for the parties anxiously. Undisputedly, the death of the victim i.e. Uma Joshi, is homicidal and the testimony of P.W.4 Dr. Ramkrishna Bhusale, who performed the postmortem on the deadbody of the victim, clarifies that she sustained external injuries as mentioned in Column No. 17 of the postmortem notes, as well as she sustained internal injuries, as specified in Column No. 19 of the postmortem notes (Exh.26), as referred hereinabove and the cause of death is given as hemorrhagic shock with head injury due to multiple chop wounds on the head and with multiple incise cut wounds on different parts of the body. According to him, injuries mentioned in column No. 17 are cumulatively and injuries mentioned in column No. 19 of the PM notes are sufficient in the ordinary course of nature, to cause death. He also stated that chop wounds can be caused by sickle having blade curved at the top such as Koyta (Article 4) and the incised injuries can be caused by knife (Article 5). True it is that P.W.4 Dr. Bhusale stated in the cross-examination that the said injuries can be caused if a person falls on the ground during the scuffle, but it is not the defence of the accused in that respect. It is also correct that P.W.4 Dr. Bhusale had stated in the cross-examination that injury No. 4 in column No. 17 is the defence injury and can be caused during the scuffle, but again it is not the defence of the accused.

38. Moreover, the evidence of P.W.4 Dr. Bhusale is corroborated by the postmortem notes (Exh.26) and therefore, the testimony of Dr. Bhusale and contents of postmortem notes (Exh.26) cumulatively establish that the victim met with homicidal death. So also, the contents of the inquest panchanama (Exh.18) which was admitted by the defence as per Roznama dated 08-09-2004, are also in consonance with the said testimony of P.W.4 Dr. Bhusale and the Postmortem notes and

supports the said proposition that the victim met with homicidal death.

39. Besides, the accused has taken defence of alibi in his statement recorded u/s 313 of Code of Criminal Procedure, wherein he had stated that on the relevant day, he left the house at 10.15 p.m., for cyber cafe and got the computer at 10.45 p.m. at the said cyber cafe and he was on the computer till 12.45 a.m. and thereafter, he returned home and during the said period, the murder of the victim was committed in the absence of the accused. But, there is nothing on record to accept the theory advanced by him through his statement u/s 313 of Code of Criminal Procedure. Infact, the accused could have examined the owner of the cyber cafe as a defence witness to substantiate the said defence. But the said witness has not been examined by the accused for the reasons best known to him. Accordingly, the defence raised by the accused of alibi has no basis and foundation and therefore, the same is not acceptable.

40. Moreover, it is material to note that the testimony of P.W.1 Rahul Joshi and the contents of the F.I.R. (Exh.14) clarify that the accused and victim were last seen together before the occurrence of the incident. However, pertinently, there is admission by the accused before P.W.1 Rahul Joshi that he had committed folly and the said admission of the accused before P.W.1 Rahul Joshi has not been demolished in the cross- examination. Therefore, the said incriminating circumstance connects the accused with the crime.

41. Besides, the prosecution evidence suggests that the accused tried to clean the blood stains on his T-Shirt since the same was wet and the sickle and knife were found on the spot in the basin. Moreover, the spot panchanama discloses that the articles i.e. pillow cover, blood stained white turkish napkin, handle of the sickle, iron sickle and knife, blood stained cloths, blood stained hair etc., were seized under the spot panchanama and the said articles were sent to the C.A. Office for examination purpose along with forwarding letter (Exh.21) on 04-03-2003. Moreover, P.W.6 Dr. Bhagwan Andhare, who examined the accused, also found injuries on his person which were caused within 12 hours from the time of examination i.e. on 28-02-2003. There is no explanation by the accused as to how he sustained injuries. Even no suggestion is put to the said P.W.6 Dr. Andhare that the accused sustained said injuries due to fall, to substantiate the defence taken by the accused during the course of cross-examination of P.W.4 Dr. Bhusale.

42. It is also material to note that according to the theory advanced by the accused, his clothes would have been blood soaked, but same is not the position, but his clothes had sprinkles of blood, which could happen only in case of spurting out the blood due to assault by sickle/knife. Therefore, also the defence of the accused is not acceptable.

43. In the circumstances, it is amply clear that the accused has committed brutal and heinous murder of his mother i.e. victim and the prosecution has succeeded in

proving and establishing the charge levelled against the accused beyond reasonable doubt. Hence, after re- appreciating the evidence, we are of the considered view that there is no glaring mistake in the impugned judgment, and therefore, we are not inclined to accept the submissions advanced by the learned counsel for the appellant/accused, and hence, present appeal deserves to be dismissed.

44. In the result, present appeal stands dismissed and the conviction and sentence imposed upon the appellant/accused by way of judgment and order dated 20-01-2005 stands confirmed. The present appeal is disposed of accordingly.

45. Ms. Rohini Dandekar, Advocate was appointed for the accused, and hence her fees, which is quantified at Rs. 2,500/- be paid to her through Legal Services Committee.