

Exh. No.

MHTH270029782023 	Presented on : 15.04.2020 Registered on : 21.04.2023 Decided on : 28.10.2025 Duration : 5 Y. 6Ms. 13 Ds.
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FORM NO. XXXII

Part 'A'

(Title Page of Judgment)

[Para 44(i) of Chapter VI of Criminal Manual]

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BELAPUR.

Presented before :- Parag A. Sane, Addl. Sessions Judge, Belapur.

	SESSIONS CASE NO.	307/2023
	Old Thane Sessions Case No.	316/2021
	FIR/Crime No.21/2020	
	Police Station : Rabale MIDC	
Complainant/ Prosecution	The State of Maharashtra, through Rabale MIDC Police Station	
Represented by -	Ld. A.P.P. Shri. Yogendra Patil.	
Accused	1] Sou. Laxmi Rupesh Waghe Age- 28 years, Occupation : Scrap collecting R/at- Donagarwar, Wagharipada, Yadavnagar, Airoli, Navi Mumbai and at Jaibhawani Chawl, Room No.2456, Chinchpada, Airoli, Navi Mumbai.	

	2] Jisat @ Jisan Samim Siddiqui Age- 28 years, Occupation- Rickshaw Plier, R/at- Samata Samiti Chawl, Sector 1, Airoli, Navi Mumbai. Native place- at and post Hindupur, Tal.Dhamapur Dist. Bijnor, Uttar Pradesh State
Represented by	Ld. Advocate Mr. Sandanshiv for accused No.1 Ld. Advocate Smt. Swati Chitnis for accused No.2

Part 'B'**[Para 44(ii) of Chapter VI of Criminal Manual]**

Date of Offence:	21.01.2020
Date of FIR :	21.01.2020
Date of Charge-sheet:	06.01.2021
Date of framing of Charges:	10.07.2023
Date of commencement of Evidence:	29.01.2024
Date of which judgment is reserved :	
Date of the Judgment:	28.10.2025
Date of Sentencing the order, if any	As per final order.

Accused Details

	Name of accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428
1.	Jisat @ Jisan	22.01.2020	In jail	u/s. 302 r/w. 34 of Indian	convicted	As per	22.01.2020

	Samim Siddiqui			Penal Code.		final order	till today.
2.	Laxmi Rupesh Waghe	22.01.2020	In jail	u/s. 302 r/w/s. 34 of Indian Penal Code.	convicted	“--”	22.01.2020 till today.

Part "C"

[Para 44(ii) of Chapter VI of Criminal Manual]

List of prosecution/Defence/Court witnesses.

A Prosecution :

Rank	Name	Nature of Evidence.
P.W.1	Nitin Madhudkar Gite, Exh.11	Police witness
P.W.2	Dr. Milind Bansislal Patil Exh.20	Medical Officer.
P.W. 3	Sonali Rupesh Waghe, Exh.23	Witness
P.W. 4	Jasmin Rupesh Waghe, Exh.24	Witness
P.W. 5	Lata Kisan Waghe, Exh.27	Witness
P.W. 6	Shakuntala Suresh Waghe, Exh.29	Witness
P.W.7	Subshash Vitthal Jogdandkar Exh.30	Witness
P.W.8	Ramesh Babasaheb Dande Exh.33	Panch witness
P.W.9	Dr. Dattatray Vitthal Bhore Exh.41	Medical Officer
P.W.10	Nirmla Bhanudas Aikde Exh.49	Panch witness
P.W.11	Siddharth Sahadu Gaikwad Exh.53	Panch witness
P.W.12	Barakat Ali Shaha Exh.70	Panch witness
P.W.13	Maytaf Jalaluddin Shaha Exh.72	Panch witness
P.W.14	Jakir Husain Shah Exh.75	Panch witness
P.W.15	Shahenshan Badshah Shaha Exh.77	Panch witness
P.W.16	Rangnath Asaram Ekshinge Exh.79	Police witness
P.W.17	Sandip Arun Patil Exh.84	Police witness
P.W.18	Dr. Trupti Milind Bhanushali Exh.86	Medical Officer

P.W.19 Anil Prataprao Patil Exh.89

Investigating Officer

P.W.20 Manisha Bhagwat Kashid Exh.110

Police witness

B. Defence witnesses, if any :

Rank Name

Nature of Evidence.

C. Court Witnesses, if any :

Rank Name

Nature of Evidence.

NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS.

A. Prosecution :

Sr. No.	Exhibit	Description
1.	Exh.12 PW 1	Endorsement of doctor (FIR) Dying Declaration.
2.	Exh.13 PW 1	Printed F.I.R.
3.	Exh.21 PW 2	Certificate/Injury Certificate of Rupesh
4.	Exh.28 PW 5	Statement u/s.164 of CrPC
5.	Exh.34 PW 8	Arrest Form
6.	Exh.35 PW 8	Arrest Panchnama of Jisan
7.	Ex.36 & 37 PW8	Labels on seizure articles
8	Exh.44 PW9	Letter with dead body for post mortem
9	Ex.45 PW 9	Post Mortem Report
10	Exh.46 PW9	Provisional cause of death certificate
11	Exh.50 PW10	Panchnama of seizure of cloths of accu.no.2 and Arrest Panchnama of Laxmi

12	Exh.51 PW10	Arrest panchanama of accused no.2 Laxmi
13	Exh.54 PW10	Seizure panchanama of articles A,B,C,D, H,I and Spot Panchnama
14	Exh.55 PW10	Envelop of seized sickle (Article A)
15	Exh.56 PW10	Label of seized sticks (article B)
16	Exh.57 PW10	Label of seized paver block (article C)
17	Exh.58 PW10	Label of seized piece of brick (article D)
18	Exh.59 & 60	Labels of seized articles H and I
19	Exh.61 and 62	Labels of seized blood
20	Exh.83 PW 16	Letter to Forensic Lab, Kalina
21	Ex.85 & 86 PW17	Order & Receipt of giving dead body to relatives
22	Exh.89 PW18	Letter for medical examination of accu.2
23	Exh.91 PW19	Letter dated 22.01.2020
24	Exh.90 PW19	Inquest Panchanama
25	Exh92 PW19	Receipt
26	Exh.93 PW19	Mudemal receipt
27	Exh.94 PW19	Muddemal receipt of seized clothes of accu.1
28	Exh.95 PW 19	Seizure panchanama of seized clothes of deceased
29	Exh.96 PW19	Muddemal receipt of clothes of deceased
30	Exh.97 PW19	Entries in Station diary
31	Exh.98 PW19	Letter dated 29.01.2020 to CA
32	Exh.99 PW19	Letter dated 01.01.2020 for 164 statement
33	Exh.99 PW19	Letter dated 04.02.2020 for CDR, HDR
34	Exh. 100 PW19	Letter dated 07.02.2020 to MSEB
35	Exh.101 PW19	Letter to Kalwa Hospital
36	Exh.111 PW20	Muddemal receipt
37	Exh. 102	Entry Register

38	Exh. 119,120,121,122,123,124	C.A.Report
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B. Defence :

Sr. No.	Exhibit	Description
1	NIL	

C. Court Exhibits :

Sr. No.	Exhibit	Description
1.	Exh.7	Charge.
2.	125 & 126	Statement of accused persons u/s 313 of Cr.P.C.

D. Material Objects:

Sr. No.	Material Object number	Description
1	A	Sickle
2	B	Wooden Stick
3	A/PW-8	Geans Pant
4	E,F,G	Clothes of accused Laxmi
5	C	Paver block
6	D	Piece of brick
7	H	Piece of Madka
8	I	Piece of bangles.

J U D G M E N T

(Delivered on 28th of October, 2025)

Offence punishable u/sec 302 r/w 34 of Indian Penal Code

Case of the prosecution in brief is as under:

1. Crime is registered on the basis of the report filed by Rupesh Suresh Waghe on 22/01/2020 when he was admitted in Government Hospital at Kalwa at about 3.55 a.m. According to him, he was a labourer. He got married to one Laxmi. He was having one daughter, Sonali, who is 10 years old. He was not having good relations with Laxmi and hence, he was residing separately from her. Laxmi and his daughter resided with the mother of Laxmi at Chinchpada. He used to meet his daughter by visiting the said place. Laxmi was having illicit relations with Jisan Siddiqui who is in scrap business and on that count, there was the quarrel between him and Laxmi.
2. On 21/01/2020 at about 11.00 p.m. when he went to meet his daughter at his mother-in-law's house at Chinchpada, his wife Laxmi, daughter Sonali, mother-in-law and Jisan Siddiqui were present. He got annoyed on seeing Jisan Siddiqui and hence, he shouted at Laxmi and Jisan and started assaulting them by hand. At that time, both of them also started to assault him. Laxmi assaulted him by sickle on his head on different parts. Jisan assaulted him by wooden stick which was lying outside the house. Thereafter, he started running away but Laxmi and Jisan pelted a brick and a cement block on him. Hence, he sustained bleeding injury. He also sustained injuries on several parts of the body, his

left leg was broken, he fell down and thereafter, he was taken by police to the hospital.

3. His statement is recorded in the hospital and initially, crime came to be registered u/sec 307 r/w 34 of IPC.
4. During the course, he was taken to J.J. Hospital from Chhatrapati Shivaji Maharaj Hospital at Kalwa and he died when he was taken to J.J. Hospital Mumbai. Thus, the crime u/sec 302 of IPC was added.
5. Thus, his report which was filed in Kalwa hospital in the presence of doctor is the dying declaration. Moreover, during the investigation, it was transpired that as per the directions of senior police inspector Sandeep Arun Patil, who ask beat marshal duty who took Rupesh in an autorickshaw, at that time, Rupesh gave oral information to him regarding the incident. Thus, there are two dying declarations, one is oral and the other given to the senior police inspector Nitin Gite in presence of medical officer in Kalwa government hospital on 22/01/2020.
6. During the course of investigation, initially, after some time of the incident, spot panchanama came to be prepared. Spot was shown by accused Laxmi. Certain muddemal property was seized from the spot of the incident.
7. Statements of the witnesses came to be recorded. Both the accused were arrested. Their clothes were seized. Inquest

panchanama was prepared. Post-mortem of Rupesh was conducted. Investigation officer obtained the report. Clothes of deceased were seized. Sickle and other material was seized and sent for chemical analysis. Chemical analysis report is produced on record. Both the accused were medically examined.

8. During the course of investigation, it is transpired that both the accused have committed the offence and committed murder of deceased and hence, the investigation officer submitted chargesheet. Offence is exclusively triable by the court of sessions. Hence, the learned JMFC committed case u/sec 209 of IPC.
9. On hearing both the sides, charge is framed at exh. 7. Particulars of the charge are read over to both the accused in vernacular to which they pleaded not guilty.
10. The prosecution has examined the witnesses. Statement of the accused u/sec 313 of CrPC is recorded. It is their defence that they have not committed any offence.
11. In defence, the accused has not led any evidence.
12. Considering the case of the prosecution, evidence led by the prosecution, theme of cross-examination, answers given by the accused while recording their statement u/sec 313 of CrPC and after hearing the arguments canvassed by both the sides, following points arise for my determination to which I have

recorded my findings before them for the reasons discussed therebelow.

S.No.	POINTS	FINDINGS
1.	Whether the prosecution proves that above named accused persons on 21/01/2020 at night at about 23.00 hrs at Bhavani Chawl, room no. 2456, Chinchpada near Bawdi, Airoli, Navi Mumbai in furtherance of their common intention committed murder of Rupesh Waghe i.e. husband of accused no.1 Laxmi, by assaulting him by means of fist blows, sickle, stick, cement block on his head, hands and legs, and thereby committed an offence p/u/s 302 r/w/s 34 of the Indian Penal Code?	Proved
2.	What order?	.. As per final order.

REASONS

As to points no. 1 :

Arguments:

13. Ld. APP, Mr. Yogendra Patil, while canvassing his arguments, submitted that both the accused in furtherance of their common intention assaulted the deceased and committed murder. He submitted that the evidence of prosecution witness is cogent and reliable. He submitted that there is nothing to disbelieve the

dying declaration of Rupesh Waghe. He submitted that dying declaration is well corroborated by the rest of the evidence. The charge levelled against the accused is proved beyond the reasonable doubt and hence, he submitted that the accused be convicted.

14. Ld. counsel Mr. Chandanshiv for the accused Laxmi Waghe, while canvassing his argument submitted that according to the prosecution witness, PW7 is a star witness. However, his evidence is not believable. He further submitted that there is no cogent and consistent evidence. Hence, he submitted that charge is not proved beyond reasonable doubt and hence, the accused be acquitted.

15) Ld. Counsel Smt. Chitnis for accused Jisan Siddiqui argued that the dying declaration is not reliable. Dying declaration is not in question and answer form. She also submitted that the deceased Rupesh was not knowing Marathi and hence, the dying declaration is doubtful. She also submitted that the doctor who has endorsed the dying declaration is not believable. It is submitted that star witness PW7 has not identified the accused. She submitted that there is no cogent evidence in order to say that the present accused has committed the offence. She submitted that the evidence of medical officer and CA report do not suggest that the present accused has committed the offence. Hence, she submitted that the accused be acquitted.

16) The learned APP and the learned counsel Smt. Chitnis for

defence cited case law which is discussed at the relevant place.

17) Here, it is for the prosecution to establish that the death of Rupesh is a homicidal death. In this regard, the prosecution has examined PW2 Dr. Milind Patil at Exh.20 who was working as a Casualty Medical Officer in Chhatrapati Shivaji Maharaj Memorial Hospital, Kalwa and on 22.01.2020 at midnight at about 12.20 hours Rupesh Suresh Waghe was admitted in his hospital. He gave treatment to him. Suresh was having multiple injuries on his head and other parts of all over body. He has further stated that, there were in all 20 injures on his person. He has issued certificate. He has further stated that, the injuries are possible by sickle and sticks. Prosecution has further examined PW9 Dr. Dattatray Bhore at Exh.41 who was working as an Assistant Professor Forensic Medicine and Toxicology Department at Grant Medical College, Byculla, Mumbai and on 22.01.2020. He conducted post mortem of Rupesh Waghe. Rupesh was found with 21 external injuries as well as some of internal injuries. All injuries are ante-mortem injuries. He has stated that the injuries are possible by sharp object and by rough and hard object. He stated that, resulting to those injuries, Rupesh died. Thus, considering this evidence there is a reason to believe that the death of Rupesh is a homicidal death.

18) Now, travelling further, it is the case of prosecution that the accused Laxmi and accused Jisan Siddhiqui were having the illicit relations. On the day of incident when Rupesh visited his mother-in-law's house where Laxmi was residing with her mother at that

time he noticed that, accused Jisan Siddiqui was also present in that house. Thereafter he started quarrel with them and at that time, accused Laxmi assaulted Rupesh by sickle on his head. Accused Jisan assaulted Rupesh by wooden stick. When Rupesh started to run away both of them pelted stones and paver block on Rupesh, resulting that, he fell down and he sustained several injuries. It is the case of prosecution that, when the police came to know about the fact that there was a quarrel and one person was lying, immediately from the police station, direction was given to one police staff to visit the spot and immediately senior police inspector visited the spot. They found injured who was lying there in pool of blood, he was taken to hospital at Kalwa, whereby the deceased was treated and then he was taken to JJ Hospital Mumbai, however, on reaching there Rupesh died. Initially, Rupesh gave oral dying declaration to beat marshal Sandeep Arun Patil and then, in the hospital to Senior Police Inspector Nitin Madhukar Gite whereby, the deceased particularly stated regarding illicit relations of his wife Laxmi and Jisan Siddiqui and both of them assaulted him whereby he sustained injuries and this resulted into his death. Thus, according to the prosecution that, the accused in furtherance of their common intention committed murder of Rupesh. It is the case of prosecution that, when Rupesh was taken from the spot of incident by the police staff in auto rickshaw he gave dying declaration. Thereafter, when Rupesh was admitted at government hospital at Kalwa, Rupesh filed report and when the report was given he was in conscious state of mind and that report

is a dying declaration. So, it is contended that, in such contingencies the accused persons have committed the murder of the deceased.

19) Now, in the above contingencies it is necessary to see the entire evidence.

It is not a disputed fact that the deceased Rupesh and the accused Laxmi were husband and wife. It is also not a disputed that, Rupesh and Laxmi both were residing separately.

20) The prosecution has examined **PW1 Nitin Madhukar Gite at Exh.11** who is working as a senior police inspector. As per this witness, on 21.01.2020, he was at Rabale MIDC Police station and he was informed by police officer Kiran Patil who was in PS office that one person has been assaulted at Chinchpada, and he is serious. He immediately rushed there. He further stated that the said person was seriously injured. He was forwarded to Government hospital at Kalwa. He visited there in casualty ward where Dr. Milind Patil was present. He made inquiry regarding Rupesh Waghe. He was informed that initial treatment was going on. Then he met Rupesh Waghe who stated his name and address then he made inquiry with doctor that whether the patient is having orientation. Doctor stated that, Rupesh could speak and he was in position to give statement. Doctor made endorsement to that extent. It is at exh. 12 (the patient is in state to give statement. 1.30 a.m 22/01/2020 and it is concluded at 2.00 a.m. on 22/01/2020 and there is an endorsement to that extent.)

21) He further stated that, Rupesh in his statement stated that,

his wife Laxmi and Jisan were having illicit relations hence, there was a quarrel between him and his wife Laxmi. On that count, both of them are residing separately. On 21.01.2020, at about 11.00 p.m, Rupesh visited his mother-in-law's house, in order to meet his daughter and on visiting there he found his wife and Jisan Siddiqui, hence, he got annoyed and quarrel took place. At that time Laxmi and Jisan started to assault him. Laxmi assaulted him by sickle on his head and Jisan assaulted him by sticks. Thereafter, Jisan and Laxmi pelted stones and cement block on him hence, he fell down and he was injured. Police took him to the hospital. As per this witness his writer Sambhaji Patil noted down the statement of Rupesh. There is thumb impression of Rupesh as he was injured and he also signed it and there is endorsement of doctor. The said document is at Exh.12. According to him, that statement came to be recorded on 22.01.2020 at midnight at about 02.00 am. Thus, on the strength of that statement crime came to be registered.

22) The witness is duly cross-examined, whereby he admitted that, he has not made inquiry with Kiran Patil from whom he received information. He reached spot of incident in half hour. He did not make any inquiry at the spot. Injured was taken from spot of incident to hospital by bit-marshall police. Nobody was present from the house of the injured. He stated that, he took 15 minutes to reach from Chinchpada to Kalwa. He admitted that, he was not having knowledge of the situation with the injured in hospital so he did not call Executive Magistrate, even though he

was having 45 minutes. He stated that, the said patient was taken to J.J.Hospital, Mumbai.

23) The witness is duly cross-examined on the aspect of the language which was known to Rupesh. He admitted that, Rupesh is from Adivasi, Katkari community. He is not aware whether he used to speak Katkari language. He stated that, when he recorded statement of injured he was accompanied with his writer, Dr. Milind Patil and also bit-marshall police. He did not make any inquiry whether any relative of Rupesh was present or not. He further denied that, Rupesh died at the place of incident. He has denied the rest of the suggestions given to him. He stated that the doctor made the endorsement on the statement.

24) The prosecution has examined **PW2 Dr. Milind Bansilal Patil at Exh.20**. According to him, when he was working in Government hospital at Kalwa, police constable Patil of Rabale MIDC police station brought Rupesh Waghe on 22.01.2020 at about 12.20 hours who was having multiple injuries over his head and other parts of all over body. He and the other doctor treated him.

25) It is further coming in his evidence that, police officer of the said police station visited there in order to record statement of Rupesh and asked him whether Rupesh was in condition to give statement. He has stated that on examination of patient, he found that he was in position to give statement. Accordingly, police took the statement. There is his endorsement on it i.e. at Exh.12. He has issued injury certificate and there were in all 20 injuries on his

person on different parts of his body. He has categorically stated those injuries. He has stated that, all injuries are possible by sharp, hard and blunt object and by rough and hard object. All injuries were fresh. He has issued the certificate which is at Exh.21. Injuries are possible by weapon sickle and wooden stick which was shown to me. Those are at Article A and B.

26) Thus, it is coming from the evidence of this witness that, he has treated Rupesh at the relevant time and according to him, Rupesh was in mental state of mind to give statement and accordingly PW1 Nitin Gite recorded statement of Rupesh whereby according to the prosecution Rupesh has narrated all history regarding the incident.

27) The witness is duly cross-examined, whereby he admitted that, it is not mentioned in Exh.12, i.e. report given by Rupesh that he was present from start to end. However, he stated that he was present. So in such contingencies, it is to be noted that in exh. 12, there is an endorsement before recording statement and endorsement after statement was completed. It is further important to note that from his entire cross-examination, there is no suggestion that he was not present in the premises where the statement of Rupesh was recorded. He has further stated that, he is not aware whether statement was recorded in questions and answers form or whether the victim has stated the description and then police has noted it. He admitted that he does not remember in which language victim was speaking. He stated that, due to multiple injuries there was loss of blood and there are the chances of unconsciousness. He has denied that the history is given by police, no statement was recorded in his presence. He has denied the rest of the suggestions. He admitted that he is unable to

tell whether family members of victim are present at the relevant time.

28). From the evidence of this witness it is submitted on the side of accused that the evidence of this witness destroys the case of prosecution. It is submitted that, according to this witness, Rupesh has given statement to PW1 but this witness is admitting that, he does not remember in which language victim was speaking. So it is submitted that, in such contingencies, it is highly difficult to believe the fact that deceased Rupesh has given any statement to PW1 in presence of present witness. It is also pointed out that, the witness has admitted that, he is not aware whether statement was recorded in questions and answers form or whether the statement was given by victim and as stated the description and that was taken and then police noted it. So it is submitted that, in such contingencies the so called dying declaration is doubtful. It is submitted that then how it is possible that he can not remember the language in which statement was given by Rupesh, he is not aware about the manner in which the statement was given and it was noted down. So it is submitted that, the dying declaration is not believable. In such contingencies, in view of the submissions, it is to be noted that whether the dying declaration should be recorded in question and answer form as submitted by the learned counsel. It is to be noted that the **Honourable High Court in Liakat Ali v/s State (1988) 1 Crimes 647** has particularly observed that the dying declaration is not required to be recorded in question and answer form. A dying declaration recorded in an informal manner and as a narrative is fully admissible and is a relevant piece of evidence. It is important to note

that Rupesh was admitted in this hospital at 12.20 a.m. on 22/01/2020 and his statement came to be recorded at 1.30 a.m. and it was concluded at 2.00 a.m. This aspect plays a significant role that initially, Rupesh was taken by beat marshal Sandeep Arun Patil and later, PW1 Nitin Gite reached there and during the course PW2 and his team started to treat Rupesh. So in such contingencies, it was their priority to give immediate medical aid to the injured and thereafter, when Mr. Gite went there, he made enquiry regarding Rupesh and thereafter, he recorded his statement. So in such contingencies, hypertechnical approach cannot be taken. Moreover, the entire evidence has to be considered because it is the settled law that the accused does not have the opportunity to cross examine the deceased on the point of his statement. Another important aspect which is argued is that PW1 did not call the executive magistrate but it is important to note that in this case, the timing which is coming on record is that Rupesh was brought to Kalwa hospital at 12.30 hours where he was admitted. His treatment was started. His statement continued upto 2.00 a.m. The post-mortem report at exh. 45 shows that the Rupesh was brought on 22/01/2020 at about 5.01 a.m. at J.J. hospital Mumbai and his time of death is 5.45 a.m. So this particularly shows that immediately after giving treatment at Kalwa hospital, he was taken for further medical help to J.J. Hospital. So, this particular aspect shows that the situation was so fast that in such contingencies, Pw1 Gite might not be in the position to call Executive Magistrate. The distance between Kalwa hospital to J. J. Hospital is also to be kept in mind.

29). Prosecution has examined **PW 3 Sonali Waghe at Exh. 23,**

who is the daughter of the deceased and the accused Laxmi. She stated that, she does not know accuse Jisan. She stated that, before incident she along with her mother and two sisters were residing at Airoli. There was a quarrel between her father and mother. Her father used to consume liquor and he used to assault her mother and then he is to visit at Rabale. She is not aware who has assaulted her father. Thus, this witness has not supported the prosecution. The prosecution has cross examined the said witness, however, nothing is coming on record in order to support the prosecution case. In her cross-examination, on the side of defence, she has admitted that, they are residing on hilly area and it is a crowded place. She admitted that, 40 minutes are required to get down from the hilly area. No vehicle can travel upside. She admitted that, when she visited the hospital, her father was not in position to speak. She admitted that, she was accompanied with her father in ambulance when they were proceeding to JJ Hospital. She admitted that, her father used to speak Katkari language and as he was illiterate, he could not speak Marathi language.

30). From the evidence of this witness it is submitted that, the witness is the daughter of the deceased, moreover, she has particularly stated that her father was not in position to speak Marathi. So it is submitted that, when PW2 medical Officer Dr. Milind Patil has stated in his cross-examination that he does not remember the manner in which language Rupesh was giving statement is the fact that, Rupesh was not knowing Marathi. It is submitted that, there is no endorsement on Exh.12 that the statement was given by Rupesh in other than Marathi but it was written in

Marathi. It is submitted that, as per the prosecution accused Jisan was present at the time of incident and he participated in crime. However, the daughter of the deceased and of accused Laxmi admitted that, she does not know accused Jisan. So it is submitted that, accused Jisan was not present at the relevant time.

31) Prosecution has examined **PW4 Jasmin Rupesh Waghe at Exh.24** who is the daughter of deceased and of the accused Laxmi. She has denied that both the accused assaulted her father Rupesh. The witness is duly cross-examined by the prosecution whereby nothing is coming on record fruitful to the prosecution case.

32). Prosecution has examined **PW5 Lata Kisan Waghe at Exh.27**, she is stating that, accused Laxmi is her daughter. She got married to Rupesh and earlier there were two marriages of Laxmi. Both of them were residing on the hilly area. Rupesh was not residing with Laxmi. She stated that, Laxmi was residing in a slum. She denied that there were illicit relations between Laxmi and Jisan and that Rupesh did not like it. She denied that, on that count Laxmi and Jisan killed Rupesh. She stated that, she did not know Jisan. This witness has not supported the prosecution. Accordingly, the Id. APP cross examined this witness whereby she admitted that, as Laxmi has begotten daughter Rupesh used to assault Laxmi. Rupesh was residing separately. She admitted that, in order to meet household expenses Laxmi started work of collecting scrap material. She denied that, accordingly she was having illicit relations with Jisan. She denied that both the accused assaulted deceased. From her cross-examination nothing is coming fruitful in order to support the prosecution case.

33) **PW6, Shakuntala Waghe is examined at Exh.29.**

According to this witness deceased Rupesh is her son. Laxmi is his wife. She further stated that, matrimonial ties between Laxmi and Rupesh were good, however, the quarrel used to take place between them. She stated that, she did not know Jisan Siddiqui, but she had heard about him. He is having business of scrap. There were relations between Laxmi and Jisan. She stated that, Laxmi and Jisan assaulted Rupesh. Laxmi is having two children from her earlier husband and one daughter from Rupesh. Her son died and she came to know about it from police. She identified accused Laxmi but she stated that she cannot identify accused Jisan. In the cross-examination she admitted that, her son used to consume liquor. She admitted that, Laxmi has filed several complaints against Rupesh to police. She admitted that, she came to know from police who has assaulted her son.

34). It is submitted on the side of accused that, this witness is the mother of the deceased Rupesh and she is not knowing the accused Jisan. It is submitted that, from the entire evidence of this witness that, she is not aware or having the personal knowledge who has assaulted Rupesh. So it is submitted that, regarding that assault, her evidence is a heresay evidence. It is seen from her evidence that, there were the quarrels between Laxmi and her son. Laxmi has filed several cases against her son. So this particularly discloses the relationship between Rupesh and his wife Laxmi.

35). Here in view of the above cross-examination of the witnesses, the learned counsel Smt. Chitnis while canvassing her argument

submitted that PW3 who is the daughter of the deceased admitted in her cross-examination that her father was knowing Katkari language and as he was illiterate, he was not knowing Marathi language. In this regard, it is important to note that from her evidence, she has particularly stated that she is taking education in standard 9. Furthermore, as discussed above, the evidence of Shakuntala Waghe who is the mother of the deceased. It is important to note that there is no suggestion given to the witness that in the house, they used to speak only Katkari language and the deceased was not knowing Marathi. Further, it is important to note that PW6, Shakuntala Waghe who is 50 years old is the mother of the deceased and it is particularly noted that they reside at Rabale since last 2 to 3 generations and Rupesh was doing business of fishery. So this aspect particularly shows that Rupesh was staying there with his mother since last number of years. The only admission given by the daughter who is equally the daughter of the accused Laxmi, the possibility of tutoring her cannot be ruled out. Further, it is important to note that mother of Laxmi and mother of Rupesh and PW3 and PW4 out of which one is biological daughter of Rupesh and the other is step-daughter of Rupesh; all are examined in Marathi coupled with this, the learned counsel of the accused also cross examined them in Marathi. So one cannot say that on the above set of facts that Rupesh was exception that he was not knowing Marathi. Here it is fruitful to cite case law of **Honourable Apex Court in Dayal Singh v/s State of Maharashtra 2007 CrLJ 3265** that “in a case, where the victim was a Sikh woman and she gave dying declaration in Marathi, the evidence showed that her parents were

residing at a place in Maharashtra which is a Marathi speaking area and the victim studied upto 10th in a Marathi medium school. The dying declaration was made to head- constable and the doctor of the hospital where she was admitted. It is observed that authenticity of dying declaration cannot be doubted”. Here similar are the facts that Rupesh is residing at Rabale in his 5th generation where Marathi language is spoken and he was in business of fishery. His mother, his daughters and his mother-in-law all know Marathi. So one cannot say on the stray admission of the daughter that Rupesh was not knowing Marathi and I found no force in that statement.

36). It is submitted on the side of the prosecution that, **PW7 Subhash Jogdandkar is an important witness in this case.**

According to the prosecution he is eye witness to the incident he has examined as **PW7 at Exh.30**. The witness has stated that he knows Lata Kisan Waghe who is having one daughter named Laxmi.

Rupesh was husband of Laxmi. There were frequent quarrels between them. Rupesh and Laxmi both were residing on the hill. Due to the quarrel Rupesh started to reside separately. He further stated that, Laxmi was residing with her children. He has stated that, he knows Jisan but he was not knowing him since early. On the day of incident, he came to know his name.

37). Incident occurred on 21.01.2020, at about 11.00 pm. He heard the noise when he was in his house that there was a quarrel between Laxmi and her husband Rupesh so he came outside. But he did not intervene. Husband and wife both were assaulting each other by stone. At that time, scrap merchant accused came there hence, Rupesh got annoyed. Rupesh rushed to catch him. At that time

Laxmi assaulted Rupesh by sickle. Then Laxmi went away. Police has recorded his statement. Rupesh was taken to hospital. He has stated that, he can identify Laxmi and scrap merchant. He can identify the sickle. In his further examination-in-chief, when the accused was present on VC, he has stated that, he does not know him. The accused on VC stated his name as Jisan Siddiqui when asked for the clarity. The witness has identified accused Laxmi who was present.

38). Witness is duly cross-examined, he admitted that, that he visited court for 3-4 times. He cannot read and write. The police have written it. He stated that the police told to speak in court, accordingly he has stated. He admitted that, he is in business of weaving bags. Hence, he used to visit Mumbai side and Shilphata. He used to return to his home at 12.00 clock at night. On the side of accused Laxmi, in his cross-examination, he admitted that his information is here-say, he received information from police, he personally does not know any information. For the purpose of his business, he used to travel from Monday to Saturday. He admitted that, he has not personally seen the accused at the spot of incident.

39). Considering the evidence of this witness Id. Counsel Smt. Chitnis for the accused Jisan Siddiqui submitted that, in his examination-in-chief the witness has not identified the accused. It is submitted that he has only stated the word Bhangarwala but when the prosecution showed the accused Jisan to the witness, he has particularly stated that, he could not identify him. Accordingly, she submitted that in such contingencies, when according to the prosecution the present witness is the eye witness to the incident, he

has not identified the accused Jisan Siddiqui. Accordingly, it is submitted that, in such contingencies, it creates the doubt whether in fact accused Jisan Siddiqui assaulted the deceased. It is submitted that, in such contingencies, the evidence of this witness is harmful to the prosecution.

40) It is submitted by the Id. Counsel Mr. Chandanshiv for accused Laxmi Waghe that, this witness has given the admission that, his information is hearsay and he did not know anything. He used to travel for his business from Monday to Saturday and he has not personally seen the accused at the spot of incident. So he submitted that, this admission given by this witness is fatal to the prosecution. Accordingly, it is submitted that, the evidence of this witness could not be believed.

41) In this regard, first off all it is to be noted that, the suggestion which is given to this witness is that, he has not seen the accused at the spot of incident that itself discloses that, he was present at the spot of incident. So far as the admission given by this witness the Id. APP while canvassing his argument submitted that, whatever admission given by this witness are the stray admissions. There are no specific questions put to the witness. He submitted that, moreover there is no specific denial from his cross examination regarding the facts which he has stated in his examination-in-chief. Here, it is to be noted that, in the examination-in-chief, the witness has particularly stated the several aspects regarding the incident and the situation at the spot of the incident. Considering the entire evidence of this witness it has to be noted that, the evidence of this witness cannot be discarded only on the contentions on the stray

admissions as the entire evidence has to be taken into consideration.

42). Here it is to be noted that the present witness, in his examination-in-chief has particularly stated in his evidence that there was one scrap merchant and hence, Rupesh got annoyed and the quarrel took place. It is important to note that on the day of the incident, he came to know the name Jisan and initially, he was not knowing him. So this aspect particularly shows that he had the occasion to see Bhangarwala for small span of time and that too at 11.00 p.m. When the witness has not identified the accused Jisan, the prosecution has not opted to cross-examine this witness as he reciles from his previous statement. In the above contingencies, while appreciating the evidence, it is to be noted that initially, the crime is registered for the offence punishable u/sec 307 of IPC on the strength of the report given by Rupesh when he was admitted in the hospital at Kalwa. Thus, in the aforesaid situation, the crucial test for determination is whether the dying declaration given by deceased Rupesh is believable or not. Because, in his oral dying declaration to PW17 Sandip Arun Patil – a constable on bit marsall duty and the dying declaration before PW1 Gite in the presence of medical officer – Dr. Milind Patil (PW2), he has particularly stated that the accused Laxmi and accused Jisan assaulted him and that resulted in to his injuries later caused his death. So in such contingencies, the entire case is based on the strength of dying declarations. So all the evidence has to be considered and then to find out the answers for the dying declaration whether they are believable and whether there is supporting evidence to it.

43) Prosecution has examined **PW8 Ramesh Babasaheb Dande**, a panch witness at Exh.33. It is coming from his evidence that, accused Jisan came to be arrested on 22.01.2019 and from him one shirt and jeans pant are seized and seizure panchanama came to be prepared. It is at Exh.34. He stated that, he has identified the clothes of the accused and it also bears his signature on the label which is at Exh.36 and 37.

44) In the cross-examination, the Id. Counsel for the accused tried to put him questions regarding his income but I find no substance in the said contentions. He admitted that, he is unable to tell size and brand of the clothes. He stated that, the accused handed over the clothes by removing from his person and he does not remember whether accused was having any other clothes. The witness has denied that previously he has also worked as panch witness, in order to blame him as a habitual panch witness.

45). Considering the evidence of this witness, it is important to note that there is nothing to disbelieve that, accused Jisan came to be arrested and that too his clothes were seized in the presence of this witness. As per the prosecution the clothes which are seized from the accused Jisan were forwarded for chemical analysis at Kalina Mumbai by a letter under reference, 1045/2020 on 29.01.2020 and the seizure particularly shows that Exh. B-1, B-2 is the full jeans pant and full shirt which were seized from the accused Jisan Siddiqui. The Id. Counsel for the accused pointed out that, CA report is produced at Exh. 119 and 120, 121, 123, 124 and she pointed out that, as per CA report at Exh.119 Exh.B-1 and Exh.B-2 these two clothes seized from accused Jisan Siddiqui were forwarded for the

chemical analysis and the report dated 02.12.2020, particularly shows that, in the description of articles at serial no. 9 and 10 there is full jeans pant and full shirt and there is observation “no blood is detected on Exh.(8), (9), (10) and (13)” and so it is submitted on the side of the accused that as per the seizure panchanama of the clothes of accused Jisan Siddiqui which is at Exh.35, it is particularly stated that, blue jeans pant which is seized from the accused Jisan Siddiqui at the relevant time, it is stated that, there are marks of red colour on it. Accordingly, it is submitted that, from the report of the analysis there is nothing coming on record that the pant which is seized from the accused did not bear any blood stains. Hence, it is submitted that, in such contingencies the CA report is not supporting the prosecution case. It is submitted on the side of accused that, this aspect particularly creates the doubt regarding the prosecution case as PW7 who is the alleged eye witness Subhash Jogdandkar has not identified accused Jisan Siddiqui coupled with the fact that, PW2 Doctor Milind Patil has particularly stated in the cross-examination that he does not remember in which language the victim was speaking. It is also submitted that, the mother of the deceased, her evidence is heresay and it is further pointed out that, PW3 Sonali Waghe and PW4 Jasmin Waghe who are the daughters of accused Laxmi and deceased Rupesh particularly stated that, they do not know accused Jisan Siddiqui. Accordingly, it is submitted that in such contingencies, there is no cogent evidence against the accused Jisan Siddiqui. It is submitted that, the rest of the evidence is not corroborating to the alleged dying declaration of the deceased Rupesh Waghe which is at Exh.12. It is to be noted that PW3 and

PW4 who are the daughters of the deceased are also the daughters of accused Laxmi. Accordingly, in the natural course of conduct, there is a possibility that they may not support the prosecution's case. The learned counsel for Jisan Siddiqui has rightly pointed out that as per the CA report, no blood stains were found on the clothes seized from the accused Jisan. Here it is to be noted that as per exh. 35 which is the arrest panchnama of the accused Jisan, it is to be noted that in the said panchnama also, it is seen that his clothes were seized and that too on his pant and full shirt, it is alleged that there are red coloured stains. It is further to be noted that in such contingencies, it is nowhere stated that those red-coloured stains are blood stains. Moreover, as per the dying declaration which is at exh. 12, Rupesh particularly stated that Jisan assaulted by wooden stick and thereafter, Jisan also pelted brick and cement block on him. Hence, there was bleeding and his left leg broke. So there is a possibility that there may not be the situation that there would be the blood stains on the clothes of Jisan Siddiqui. Thus, for these reasons, entire evidence of the prosecution can not be washed away.

46). **PW9 Dr. Dattatray Vitthal Bhore at Exh.41**, who is medical practitioner, working as Assistant Professor in Forensic Medicine and Toxicology Department at Grant Medical College, Byculla, Mumbai. He carried out the autopsy of the deceased Rupesh on 22.01.2020. He has particularly stated in his evidence that, dead body of Rupesh was brought by PSI Kiran Patil and that letter is at Exh.44. He conducted post-mortem on 22.01.2020, between 03.30 p.m to 04.30 p.m and he found total 21 injuries on his person.

Those are as follows:

- 1] Surgically stitch, lacerated wound of size 3 c.m. x 0.5 cm over medial aspect of lower 1/3rd of right thigh, reddish in colour.
- 2] Surgically stitch, lacerated wound over forehead, size 4 c.m. x 1 c.m. oblique noted, reddish in colour.
- 3] Surgically stitch, lacerated wound, vertically present over lateral end of right eye of size 3 c.m. x 1 c.m. with three black stitches insitu, reddish in colour.
- 4] Surgically stitch, lacerated wound noted over left temporal region of size 2 cm x 0.5 cm. with two black stitches insitu, reddish in colour.
- 5] Surgically stitch, lacerated wound over 5 cm from left ear lobe of size 2 cm x 1 cm with black stitch insitu, reddish in colour.
- 6] Surgically stitch, lacerated wound of size 8 cm x 1 cm noted over left Parieto occipital region with 8 black stitches insitu, reddish in colour.
- 7] Surgically stitch, lacerated wound of size 1 cm x 0.1 cm over left leg medially upper 1/3rd with one black stitch insitu, reddish in colour.
- 8] Surgically stitch, lacerated wound of size 1 cm x 0.1 cm over left leg medially 4 cm from injury no. 7 with one black stitch insitu, reddish in colour.
- 9] Surgically stitch, lacerated wound of size 1 cm x 0.2 cm over left leg medially 3 cm from injury No. 1 with one black stitch insitu, reddish in colour.

- 10] Surgically stitch, lacerated wound noted over lower limb of size 2 cm x 0.2 cm muscle deep with one black stitch intesu, reddish in colour.
- 11] Surgically stitch, lacerated wound noted over right parito occipital region on size 8 cm x 1 cm with 4 black stitches intesu, reddish in colour.
- 12] Abrasion noted over root of the nose of size 1 cm x 1 cm reddish colour.
- 13] Abrasion contusion size 3 x 2 cm noted over right cheek, reddish in colour
- 14] Abraded contusion noted over right shoulder of size 3 cm x 2 cm reddish in colour posterial aspect
- 15] Abraded contusion noted over left shoulder posterally of size 2 cm x 2 cm reddish in colour.
- 16] Abraded contusion noted over left elbow of 2 cm x 2 cm, reddish in colour
- 17] Contusion of size 6 cm x 6 cm noted over left dorsum of foot reddish in colour.
- 18] Contusion of size 5 cm x 6 cm over left leg, over ankle joint, reddish in colour.
- 19] Fracture of left tebia and fibula noted in its distal 1/3rd of leg.
- 20] Stitch incised wound of size 3 cm x 2 cm muscle deep noted over right wrist dorsal aspect with underline contusion of size 4 cm x 4 cm reddish in colour.
- 21] Incised wound of size 1 cm x 1 cm horizontal muscle

deep noted over proximal thalnx of little, middle and index finger of right hand.

3] Internal injuries which are mentioned in column 19, it was defused under scalp, contusion over left fronto tempoparito, occipital region, periostial deep, reddish brown in colour.

4] There was also injury which is mentioned in column 19(III). Patchy subrachnoid hemorrhage noted over both cerebrum cerebral contusions noted over left tempoparietal region of size 2 cm x 3 cm. reddish brown in colour.

47). He further stated that, all injuries were ante-mortem and probable cause of death is due to head injury with multiple injuries over body. Death was unnatural all injuries are caused by hard and blunt object, sharp weapon and rough and hard object. He has particularly given the description such as injury no.1 to 11, 17, 18 and 19 which are mentioned in column no.17 are caused by hard and blunt object. Injury no. 20 and 21 are caused by sharp object. Injury at serial no. 12, 13, 14, 15 and 16 are caused by rough and hard object. All injuries were fresh and within 24 hours. He further stated that, all injuries no. 01 to 21 are collectively sufficient to cause death in ordinary course of nature including injury mentioned in column 19. He has signed. According to his contention, in his presence, Dr. Kartika has written post-mortem report and she has also signed it, which is at Exh.45. He has further stated that death of that person

was caused within 24 hours before post-mortem. Injuries are possible by weapon sickle, wooden stick, brick, and paver block. He has identified the articles and he has stated that, all injuries are possible by these weapons. He has also issued provisional cause of death certificate which is at Exh.46.

48). In his cross-examination, he was put several questions whereby there was a question regarding difference in force of male and female. He stated that, if the female is having more muscle she may be strong. Considering the entire cross-examination on the side of both the accused, I am of view that, there is nothing coming on record in order to disbelieve his contention as such what he has stated in his examination-in-chief. The one question which was put to him is that, regarding the incised wound injury, the possibility of multiple blood vessels are cut to which he replied that it depends on the assault on which part of body it was committed. He admitted that, there was no fracture to the skull. He also admitted that, injuries may be possible by other same type of weapons. Moreover, there were no sharp injuries. Here, considering the entire cross-examination the only thing which is reflected is that, the deceased sustained injuries by the weapon on record 'sickle', other articles whereby he sustained 21 injuries would prove to be fatal resulted into death of Rupesh.

49). Prosecution has examined **PW 10 Nirmala Edke, a panch witness at Exh.49.** This witness has stated that, accused Laxmi Waghe came to be arrested and for that purpose she was called on 02.01.2021. Accordingly, when the clothes of Laxmi Waghe were seized at that time there were blood stains on her clothes. The

clothes were white top having small design, a green-coloured pyjama having some design and both of them were having blood stains. Two bangles were also seized from her. That panchanama bears her signature and that of the accused Laxmi Waghe. Arrest panchanama is at Exh.51. She has identified the muddemal property which is seized and at Article E, F, G and labels on it which are at Exh. 52 and 53.

50). The witness is duly cross-examined whereby she admitted that she is a social worker and hence, she is having good terms with the police. Previously, she has worked as panch witness. She admitted that she has not seen any fresh injury on Laxmi Waghe. She admitted that, there were blood stains on pant and top. She denied that, there were no such blood stains but it was a red colour design. She denied that, police used to hire her for panchanama.

51). Considering the evidence of this witness it is important to note that, from the evidence of this witness there is nothing to disbelieve that the clothes of Laxmi Waghe came to be seized at the relevant time. The arrest pachanama and seizure panchanama of Laxmi Waghe is at Exh. 50 whereby it is particularly stated that, the clothes of Laxmi waghe came to be seized. Exh. 98 is a letter to chemical analysis whereby it is particularly seen that Exh. C (Exh.C-1, Exh.C-2 are the clothes of Laxmi Waghe and Exh.C-3 are the glass bangles of Laxmi waghe. Here, in this regard, it is coming from evidence of PW 19 that, these clothes of Laxmi Waghe were forwarded to chemical Analysis on 29.01.2020 by outward number under reference 1045/2020. In this regard, CA report is on record which is at Exh. 119. Articles at serial No.11 is Kurta i.e. Exh. C-1

serial No12, Pyjama Exh. C-2, Glass bangles (2) Exh.C-3. These articles are seized from accused Laxmi and the analysis report particularly states that, Exh. 11 i.e. kurta is having moderate number of blood stains ranging from above 0.1 cm to 5 cm in diameter at places. Exh.12 has considerable number of blood stains ranging from about 1 cm to 3 cm in diameter, mostly, on front side lower portion of both legs. However, no blood is detected in exhibit 13 i.e. two glass bangles. In this regard, it is important to note that, the present accused Laxmi who was arrested soon after the incident and from her when her clothes were seized they were found to have blood stains over it and when those clothes were forwarded for the chemical analysis it particularly states that, there are blood stains on it. It is pointed out by Ld. APP that the said chemical analysis report particularly states that on article 11 and 12 i.e. Kurta and Pyjama of Laxmi Waghe there is human blood on it and the blood grouping is "B". It is also pointed out that, chemical analysis report at Exh. 124 which is related to blood samples of accused Laxmi Waghe, it is particularly stated that, her blood group is "A". Again in background, it is submitted by Ld. APP that, as per Exh. 98 the clothes of deceased Rupesh which were seized and forwarded for the chemical analysis, those clothes are at Exh. G1, one blue-coloured cotton full shirt and Exh. G-2 is track suit full pant and both the clothes are having blood stains. Exh. G-3 is one chocolate-coloured underpant. In this regard, it is pointed out that, as per the CA report at Exh. 119 at serial no. 14, 15 and 16 are the clothes of the deceased and the opinion given by analysis regarding Exh.14, 15 and 16 is that, there is human blood and grouping is "B". Accordingly, he

submitted that, the clothes of the deceased bear blood group B and the clothes of Laxmi Waghe where there are blood stains spread on her clothes which is of the group "B". Hence, it shows the nexus that the accused Laxmi Waghe assaulted deceased by sickle and resulted that, blood of deceased spread on her clothes. It is important to note that when this incriminating material was brought on the record, on giving the opportunity to the accused in view of sec. 313 (5) of CrPC and when the statement of accused u/s 313 of CrPC came to be recorded she has not given any explanation regarding the said incriminating material. Moreover, nothing has been elicited from the cross-examination of the entire witnesses in order to discard and disbelieve the evidence.

52). The above material plays significant role regarding the nexus of the accused Laxmi Waghe as regards to the crime.

53). Prosecution has examined **PW 11 Siddharth Mahadu Gaikwad at Exh.53.** This witness has particularly stated in his evidence that, on 22.01.2020, at 12.00 at night, he was called at Rabale police station so he went to Chinchpada, Airoli. Accused Laxmi Waghe has shown the spot of incident and it was in open place at Chinchpada, Jaibhavani Chawl and it was in the front of the house of mother of Laxmi Waghe. They found one person who was injured and was lying there, his name was Rupesh. He was alive. There were blood stains on his person. He was having injuries on his head and to his hands and legs. With the help of police he was taken to hospital. From the spot, they seized sickle, stone, brick, paver block and pieces of matka and pieces of glass bangles. All materials was having blood stains. Police seized those articles and they also

took the light bill of the said hosue. The said panchanama is at Exh. 54. Police also prepared hand sketch. At that time, he identified the accused Laxmi Waghe. He also identified sickle article A, and label on it at Exh. 55. He identified stick which is at Article B and label on it at Exh. 56, paver block which is at Article C and label on it at Exh.57, piece of brick article D and label on it at Exh. 58 and piece of matka at Artcile H and label on it at Exh. 59, pieces of bangles article I and label on it at Exh.60. He further stated that, from the spot of incident police took blood samples taken in bottle. He identified Laxmi Waghe.

54). The witness in his cross-examination on the side of Laxmi Waghe, admitted that, he has worked as panch witness in another 2-3 cases. He stated that, at the spot of incident they were 4-5 persons. He admitted that, at the spot of incident he saw Laxmi Waghe. She was standing at the spot of incident and another accused was also standing there. The witness further stated that the deceased person was conscious but was in restless, in pain and discomfort. He further stated that accordingly panchanama came to be prepared.

55). When this witness is cross-examined on the side of the accused, Jisan Siddiqui he admitted that, in Exh.55 in the panchanama. It is no where mentioned that accused Jisan Siddiqui was present at the relevant time. Accordingly, Id. Counsel for the accused submitted that, in examination-in-chief, this witness has nowhere stated regarding presence of accused Jisan Siddiqui and furthermore that, in such contingencies merely in the cross-examination, the other side put certain questions regarding accused Jisan Siddiqui and it is not helpful to the prosecution as it does not

play any material aspect to that extent. The spot panchnama is at Exh.54 and it is pointed out that from the evidence of this witness, he has nowhere stated that the accused Jisan Siddiqui was also present at the spot of incident when the panchnama was prepared.

56). Here, in view of the spot panchnama, there is nothing to disbelieve that the spot panchnama is prepared at the relevant time and that too weapon sickle, blood sample, wooden stick, piece of brick, a matka, pieces of bangles are seized from the spot of incident. Exh.98 particularly shows that the articles which were seized from the spot of incident i.e. Exh.A (A-1 to A-8) were forwarded for the chemical analysis. The chemical analysis report which is at Exh. 119 where the articles serial no.1 to 8 are the articles which are seized from the spot of incident. The analysis report is that except serial no.8 i.e. pieces of bangles, rest of the articles are having blood stains over it. It is also seen that there is human blood on those articles. Thus, considering these material aspects there is nexus and cogent and consistent evidence whereby it demonstrates the articles which are seized from the spot of incident are the articles which were found from the spot of incident and it relates to the present crime.

57). **PW12 – Barkat Ali Shah – at exh. 70** – according to the prosecution, he is the person who is a panch witness in whose presence, clothes of the deceased were seized. However, this witness has not supported the prosecution. Same is the situation with **PW13 Maitaf Jalaluddin Shah at exh. 72**. Both the witnesses are cross examined by the prosecution but nothing fruitful came from it to support the prosecution's case. However, I am of the view that the

seizure of the clothes of the deceased is proved by the prosecution from rest of the evidence.

58). The prosecution has examined **PW14 – Jakir Hussain Shah – exh. 75 and PW15 Shehenshah Badshah Shah – exh. 77.** These two witnesses are the panch witnesses regarding the inquest panchnama of deceased Rupesh. Both of these witnesses have not supported the prosecution. The prosecution has cross examined these two witnesses but nothing came in their cross-examination in order to support the prosecution's case.

59). **Rangnath Asaram Ekshinge – police Head Constable – PW16 – at exh. 82.** This witness, in his evidence has stated that he took DNA kit to Kalina Laboratory. He took the material along with the letter. The material was in sealed condition. That letter is at exh. 63. The witness is cross examined. He admitted that in the said letter, there is no reference of his name. He has admitted that he does not know the contents in it. Here it is to be noted that even though the witness has admitted that his name is not mentioned in exh. 83/exh. 103, there is an endorsement of forensic laboratory that it is received by them. Moreover, by virtue of evidence of PW 19, Anil Pratap Patil – police officer, there is a reason to believe that letter at exh. 103 is forwarded to Kalina Laboratory for the purpose of examination. Thus, the evidence of this witness cannot be discarded.

60). The prosecution has examined **PW17 – Sandeep Arun Patil – police naik at exh. 84.** As per the prosecution's case, this witness is also a star witness. It is coming from the evidence of this witness

that on 21/01/2020, he was having beat marshal duty and it was a night duty. At about 11.15 p.m., he received a call from Kiran Patil, a police officer who told that one lady appeared in police station and she told that she has assaulted her husband Rupesh by sickle and the name of the said lady was Laxmi Waghe. Immediately, Kiran Patil asked him to verify the fact. Hence, he immediately went to Bhavani Chawl, Chinchpada, Rabale MIDC. Kiran Patil also told that she was coming there along with that lady. He visited the spot where he found that in the said lane, one person was lying in blood pool. He was having injuries on his head, leg. He was alive. With the help of social worker named Sandeep Aware, they made a rickshaw available. During that period Kiran Patil, police staff and that lady reached the spot of the incident. That lady told that injured Rupesh is her husband. She showed the spot of the incident. As per directions of Kiran Patil, they took the injured to the hospital with the help of his colleagues. He, his colleague P. N. Mhatre, Sandeep Aware, rickshaw driver – Ganesh put the injured in auto rickshaw. He also was present in the auto rickshaw while his colleagues were following them on bike.

61). When he was proceeding with the injured in autorickshaw, the injured told him that his wife Laxmi and her boyfriend Jisan Siddiqui assaulted him. Laxmi assaulted by sickle while Jisan assaulted by wooden plank, stone and brick. Initially, he was taken to Indrawati Hospital where they were told to take the injured to Government Hospital. Then they took him to Airoli Government Hospital. At that time, he, rickshaw driver Ganesh, his colleague Mhatre took the

injured to the hospital where the doctor told that there would be no treatment to the injured and asked them to take the injured either to NMMC hospital at Vashi or Government Hospital, Kalwa. Then they made arrangement of ambulance and took the injured to Chhatrapati Shivaji Maharaj Hospital, Kalwa where the treatment started. Then police inspector Gite came there and enquired with the injured who narrated the incident to Mr. Gite. He further stated that for further treatment, the injured was taken to J. J. Hospital in ambulance. But when they reached there, after some time the doctor told that he was dead. Then Kiran Patil came there and panchnama was prepared. Body was kept in mortuary. Clothes of the deceased were seized which were having blood stains. The postmortem was done and then the body was given to the mother of the deceased. He has identified the accused Laxmi Waghe. He has identified the clothes of the deceased which are at article 'L', 'M' and 'N'.

62). The witness is duly cross examined whereby he admitted that when they received a phone call and the information received in it was not written in diary. He has not mentioned that mobile number. He knows the area of Chinchpada where there are shops on both the sides. There is a market which is open upto 11.00 – 11.30 p.m. He admitted that after school, no vehicle can proceed. Further portion of the lane is narrow and it is a crowded place. The width of that lane in that area may be of 3 feet to 4 feet. He admitted that when he reached there, they did not take help of neighbours. The witness stated that it is so because, he did not find it necessary. He admitted that the injured was lying in pool of blood. School was at a distance

of 200-250 meters. He admitted that except the injured, nobody was present. He admitted that the injured was not in position to speak. He stated that he along with other two persons lifted the injured, put him in chadar and kept him in autorickshaw and he held him. He admitted that till the injured was put in rickshaw, he was not aware, which language the injured was speaking. He stated that he is not aware whether there were blood stains on their clothes or not. Indrawati hospital is in sector 3. He admitted that in sector 3, there is one NMMC hospital. They did not enter in Indrawati Hospital. They visited Jijamata Hospital. However, there was no police section. The injured never stated while travelling in rickshaw to save him. He stated that they reached the spot of the incident at about 11.45 p.m. He does not remember how much time, they took to travel in rickshaw. Indrawati hospital was at a distance of 2 to 3 minutes from Corporation Hospital. Chhatrapati Shivaji Maharaj hospital is at a distance of 5 kms. Mhatre was not accompanying him when he gave information. He was giving update to Kiran Patil. They were in Chhatrapati Shivaji Maharaj hospital for around 2 and half hours, when clothes of the deceased were given to him. Panch witnesses were not there. He denied that when the injured was kept in rickshaw, he was unconscious and was in coma. He denied that there were no blood stains on his clothes as he did not accompany the deceased. He denied that the deceased was not knowing Marathi language. He has denied the rest of the suggestions.

63). Considering the evidence of this witness, the learned counsel Smt. Chitnis argued that the evidence of this witness is not reliable

because the following factors play a significant role that he admitted that when they found the injured, he was not in position to speak. Second thing is that when according to this witness, the injured was lying in blood pool and when the present witness and other two persons lifted the injured, put him in chadar and that too, the present witness by holding him, travelled in autorickshaw, how could it be possible that there would not be any blood stains on the clothes of this witness. She submitted that this is highly impossible as the injured was lying in the blood pool. It is important to note that the evidence of this witness is considered in light of above discussion, the question comes into mind that when he himself is stating that the injured was in position to speak. He does not remember whether there were blood stains on his clothes. In this regard, it is important to note that initially, Rupesh was assaulted and after some time, this witness visited the spot of the incident. It is coming from the record that nobody was present at the relevant time, when this witness visited there. So, there is a possibility that Rupesh who sustained injuries on his person might be under trauma. It is also seen that the present witness along with other police personnel and rickshaw driver Ganesh put Rupesh in autorickshaw. So in such contingencies, one cannot say that Rupesh was all the while not in position to speak. It is important to note that it is so because when Rupesh was taken to Kalwa hospital, he was treated for more than 2 hours and thereafter, he was shifted to J.J. Hospital. Moreover, as discussed above, evidence of PW2 Dr. Milind Patil that Rupesh was in fit state of mind to give statement. Nothing has been brought from his cross-examination to show or demonstrate that Rupesh was not in

position to speak, or his mental and physical situation was that he was not able to speak. So in such contingencies, only at the point of time when this witness met Rupesh at the spot of the incident and at that time, Rupesh was not in position to speak and that this does not mean that all the while he was in same position. Further, it is important to note that this witness with the help of assistance from other persons took Rupesh to Kalwa hospital where he was given treatment. So the possibility is there that after giving initial treatment, Rupesh might have been able to speak more. It is also important to note that considering the span of time, when Rupesh was taken to hospital by this witness, it is brought in cross-examination that Rupesh was put in 'chadar'. So if that is the situation, there may not be blood stains on the clothes of this witness. So the admission given by this witness that he does not remember whether there are blood stains on his clothes does not make any material difference or in the other words, it would not be fatal to the prosecution.

64). **PW18 – Dr. Trupti Bhanushali – exh. 86** is a medical officer working in NMMC hospital. As per her contention, on 22/01/2020, she was working in NMMC hospital and at that time, Rabale MIDC police brought two persons named Jisan Siddiqui and a lady Laxmi Waghe.

65). On examining Jisan, she found two injuries on his person, one is abrasion on left elbow and on right knee. That injury was simple in nature. It was within 12 hours. She has issued certificate which is

at exh. 87.

66). She examined Laxmi Waghe and she was having one injury on her right palm. Nature of injury was simple and it was within 12 hours. That certificate is at exh. 88.

67). She stated that the injury to Laxmi Waghe is possible while handling weapon like sickle etc. and the injury to Jisan is possible in scuffle. The witness is duly cross examined for the accused Laxmi where she admitted that the certificate is issued immediately and in the cross-examination for the accused Jisan, she admitted that abrasion can occur by any mode like rubbing or any other act. It may also occur by clothes.

68). It is submitted on the side of the accused that the injury to Jisan might have occurred by the possibility like rubbing or by clothes which cannot be ruled out by this witness. It is submitted that it is nowhere coming that the scuffle took place between Jisan and deceased Rupesh. Here the learned counsel for Laxmi, Mr. Chandanshiv, submitted that the evidence of this witness is not believable. However, it is to be noted that the witness has particularly opined that while handling weapon by Laxmi, the injury is possible on her palm. So in such contingency, considering the above evidence, I am of the view that there is nothing to disbelieve regarding the scuffle between Laxmi and the deceased Rupesh at the relevant time. Thus, the injury to Laxmi on her palm is well corroborated to the rest of the evidence.

69). Moreover, it is to be noted this incriminating evidence was brought to the notice to the accused Jisan Siddiqui in question no. 60 in 313 statement to which he has just answered that it is false. So in such contingency, it is also required to be mentioned that both the accused were given opportunity for the compliance u/sec 313 (5) of CrPC. However, there is no explanation given by both the accused regarding injuries found on their person. It is further to be noted that in the dying declaration at exh. 12, deceased Rupesh has particularly stated the manner in which both the accused assaulted him and initially, he has stated that when he saw Jisan, he got annoyed and rushed on him. So this particular set of facts and the injury on Jisan and Laxmi is having sound corroboration. Moreover, the injuries sustained to them are within the time limit of the incident. Thus, the injuries on both the accused is having nexus to the crime, their presence, their participation, handling muddemal property I.e the weapon by which the assault was committed. It is pointed out that in the arrest panchnama, no injuries have been detected but it is required to be mentioned that the above injuries are 'abrasions' and there is no suggestion to any of the witnesses regarding the visibility of the injuries. Moreover, it is to be noted that the doctor who examined Laxmi and Jisan had no personal grudge against them. Neither it is the defence of the accused that they have sustained these injuries after the time of the incident. So all these factors play a crucial role in order to connect the facts on the record which corroborates the dying declaration of Rupesh at exh. 12.

70. **PW19 – Anil Prataprao Patil – is the police inspector – exh.**

89. The witness has stated that in the year 2020, he was working as a police inspector at Rabale police station where this crime was registered. Sr. PI Gite recorded dying declaration. Accordingly, FIR came to be registered. Initial investigation was done by Kiran Patil like inquest panchnama, spot panchnama, arrested accused Jisan. Manisha Kashid arrested Laxmi Waghe. PSI Kiran Patil seized clothes of deceased and as Rupesh died, Section 302 of IPC was added. On 22/01/2020, investigation came to him. He has gone through the investigation done by Kiran Patil. He further stated that the photographs at the spot of the incident and of the deceased is at article 'O'. He has recorded statements of witnesses. On 29/01/2020, he sent muddemal for chemical analysis by a letter at exh. 98. He wrote a letter for getting CDR and SDR. He got information whether there was electricity at that time and it was informed that electricity was available. That letter is at exh. 101. He obtained medical certificate of the deceased. Muster roll of the beat marshal PW17 Sandeep Patil is at exh. 103. DNA samples were forwarded vide exh. 104. He has recorded statement of Lata Waghe as she narrated as well as statement of PW4 Jasmine and according to his contentions, the portion marked in their statement are stated by these two witnesses. However, it is important to note that as discussed above, nothing is brought in cross-examination by prosecution to support their case. The witness has further stated that during the course of investigation, it is transpired that the accused has committed the offence and hence, he submitted the chargesheet. The witness is cross examined for accused Laxmi Waghe wherein he was questioned regarding the photographer and the receipt whether

he has given or not. He admitted that CDR and location of mobile is not produced on record. From this cross-examination, there is nothing coming on record that he has carried out the investigation.

71) This witness, in his cross-examination on the side of the accused Jisan, admitted that in his investigation, he visited spot of the incident which was in front of house no. 2456. He is unable to tell whether the statements of adjacent house residents is recorded or not. There is a main gate to Chinchpada and in that lane, there are shops on both the sides of road and there is a market. The place where the incident took place is a busy area. He is not aware whether there is a CCTV or not. He has not made enquiry with the persons in the shop. The witness stated that he did not make inquiry because it was 11.00 to 11.15 p.m. He admitted that in the report of Rahul Warwante, there is a reference of videography but that CD is not produced. He denied that the reason for not producing that CD is that the accused was not seen in it. The witness is particularly put the question that when the accused was arrested at that time, if there were injuries on his person, then there should be a reference of it in arrest panchnama. He admitted that regarding the arrest of the accused, Jisan Siddiqui, it is not mentioned that he had sustained injury. In this regard, the learned counsel for the accused submitted that when according to PW18 Dr Trupti that on examination of Jisan Siddiqui, she found abrasion on his left elbow and on right knee. So these injuries were visible. However, this witness has admitted that in the arrest panchnama, these injuries are not mentioned. So it is submitted that it is doubtful whether in fact, the accused had

sustained injuries at the time of alleged incident or there is a doubt that whether he was having injury till he was arrested. So it is submitted that his alleged injury can be possible after arrest and before examining by Dr. Trupti. The aspect regarding the injuries on Jisan Siddiqui as discussed above, I am of the view that the above factors will not destroy the entire case of the prosecution in order to give benefit to the accused.

72). He admitted that injured Rupesh was taken to Jijamata hospital. He admitted that no papers from Jijamata hospital, papers regarding ambulance are produced on record.

He admitted that he has recorded statement of Dr. Milind Patil on 26/03/2020 but the alleged incident took place on 22/03/2020.

73). The witness is cross examined regarding dying declaration whereby he answered that he is not aware whether it is recorded before Executive Magistrate. He denied that daughters of injured were present in the hospital. Here, it is important to note that PW3 Sonali, in her cross-examination admitted that when she visited the hospital, she found that there was no movement of her father and he was not in position to speak. She also admitted that she accompanied her father in ambulance when he was taken to J.J. Hospital. However, this witness has denied that Sonali was present in the hospital. The witness admitted that the injured was not knowing Marathi. However, it is to be noted that this person has not recorded dying declaration of the deceased. So this admission does not play any material one. Moreover, it is to be noted that one of the

investigation officers Kiran Patil is dead and hence, prosecution could not examine Kiran Patil. He denied that a false dying declaration is recorded. In view of the evidence, it is submitted that the evidence of this witness is contradicting to the evidence of Sonali. It is important to note that we have already discussed above, the evidence of Sonali who is the daughter of accused Laxmi and of the deceased Rupesh. Even it is considered that she was present in the hospital, considering her age at the date of the incident, it is highly impossible to gather on her part regarding each and every circumstance that happened in the hospital when her father was on the death bed. When she was examined, she was 15 years old. The incident occurred in the year 2020 when she was just 10-years-old girl.

74). The witness has denied that there is no material witness showing illicit relations between accused Jisan and Laxmi. He was questioned that the witnesses have not narrated the portion marked in their statement which he has denied.

75). In his further cross-examination, he admitted that he has not produced telephonic conversation between Sandeep Patil and Kiran Patil. He denied that injured was unconscious since beginning. He has denied that for that reason, Kiran Patil has not produced any document of Jijamata hospital. He has denied the rest of the suggestions.

76). **PW20 – Manisha Bhagwat Kashid – at exh. 110** stated in her evidence that at the relevant time, she was working as API at

Rabale MIDC police station. On 22/01/2020, she was working as PSO. She arrested accused Laxmi Waghe and that panchnama is at exh. 50. Her clothes were also seized and that panchnama is at exh. 51. She identified the said clothes which were seized. In the cross-examination, the question is put that the year is mentioned 2019 to which the witness has answered that the year is wrongly mentioned. Rest of the suggestions are denied by this witness. Considering the evidence of this witness, there is nothing to disbelieve that she arrested Laxmi Waghe and seized her clothes.

77). Taking the stock of the entire evidence, it is to be noted that there is a reason to believe that PW1 Gite has recorded the dying declaration of the deceased Rupesh where Rupesh has particularly stated regarding the illicit relations of his wife accused Laxmi and the accused Jisan. Rupesh, in his dying declaration, stated that on the day of the incident, when he visited the house of his mother-in-law at 11.00 p.m. in order to meet his daughter, he found Jisan Siddiqui who was present with Laxmi. So he got annoyed. He shouted towards them and he ran on them. At that time, when he started to assault them, Laxmi and Jisan assaulted him. Laxmi assaulted by sickle on his head while Jisan assaulted by stick and when he tried to run away, both of them pelted brick and cement block on his person. He had bleeding and his left leg got broken. From the evidence of PW2 – doctor and PW9 – medical officer who conducted post-mortem, it is particularly found that there were number of injuries on the deceased. It is important to note that there were lacerated wound on forehead and

injury on temporal region. There are in all 21 injuries mentioned on the deceased as regards to the column no. 17 of post-mortem report at exh. 45 coupled with internal injury under scalp of the deceased. The doctor has particularly gave finding that the death is due to head injury with multiple injuries over body. So it is unnatural death. It is required to be mentioned here that alongwith post-mortem notes, there is copy of casualty department which particularly states that there were multiple injuries on Rupesh. It is also mentioned that his pulse rate is 88, BP is 100/60. It also mentions the injuries and the treatment suggested. It also mentions the history of assault by the wife of the injured and her friend. This aspect also plays a crucial role regarding the fact that the deceased was alive when he was taking treatment in Chhatrapati Shivaji Maharaj Hospital, Kalwa. Here it is to be noted that the evidence of PW17, Sandeep Arun Patil is also discussed above. Considering the entire evidence regarding the dying declaration, I am of the view that there is nothing to disbelieve the dying declaration. It is also seen that PW2 – doctor has made endorsement on dying declaration at the relevant time. Here his evidence cannot be discarded. **The Honourable Apex Court in Atbir v/s Government of NTC, Delhi AIR 2010 SC 347,** has observed that “where the deceased made dying declaration to police officer in the presence of the doctor and the doctor certified that deponent was in fit mental state at relevant time and the doctor also endorsed the same by putting his signature near deponent’s signature, it was held that the dying declaration being credit worthy was legally permissible and admissible in evidence’. **The Honourable Apex Court in Harbanslal v/s State of Haryana 1994**

SCC (Criminal) 130 observed that the doctor appended that the victim was fully conscious and medically alert and remained so till the recording of statement was complete. Such dying declaration is worthy of credence. **The Honourable Apex Court in Surinder Kumar v/s State (Delhi Administration) AIR 1987 SC 692** observed that the declaration may be oral or written. In this regard, it is to be noted that as discussed above, evidence of PW 17 Sandeep Arun Patil before whom there is an oral dying declaration and there is nothing to disbelieve evidence of this witness. The learned APP cited case law in **State of Jharkhand v/s Shailendra Kumar Rai Criminal Appeal no. 1441 of 2022 decided on 31/10/2022** wherein the Honourable Apex Court has observed that there is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of Magistrate. Although, a dying declaration ought to ideally recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. Learned counsel Smt. Chitnis cited case law of Honourable Apex Court in **Irfan alias Naka v/s State of Uttar Pradesh Criminal Appeal no. 825-826 of 2022** wherein the Honourable Apex Court has observed that there were dying declarations of different persons. Dying declarations were videographed. There was the question wherein the dying declaration was not clear. It is observed that it is the duty of the court to decide the question regarding the dying declaration in the facts and the surrounding circumstances of the case and be fully convinced after truthfulness of the same. The Honourable Apex Court has also led down certain parameters in the said case law while appreciating the

evidence on the point of dying declaration.

78). Taking the stock of the facts and the circumstances from the above evidence, immediately after the incident, PW1 Gite took immediate efforts to provide medical aid to deceased Rupesh by taking him to several hospitals. Lastly, he succeeded to provide medical aid to Rupesh at Chhatrapati Shivaji Hospital, Kalwa. The evidence of the treating doctor PW2 – Mr. Milind Patil coupled with his casualty medical papers shows the condition of the victim and furthermore, his endorsement on the dying declaration at exh. 12 that when the dying declaration of Rupesh was recorded, he was fit to give statement. All these factors and the evidence to that extent which is discussed above, I come to the conclusion that there is nothing to disbelieve the dying declaration of Rupesh. The dying declaration is natural and voluntary. There is nothing coming on record that it has been tutored. All the evidence is convincing that Rupesh gave information to PW1 Gite in hospital whereby crime u/sec 307 of IPC came to be recorded and thereafter, while taking treatment, Rupesh died. This fact is clearly established and it is well corroborated by the prosecution evidence. The dying declaration is itself convincing and there is nothing to disbelieve the said dying declaration.

79). By virtue of dying declaration, it establishes that Laxmi and her husband Rupesh were not in good terms with each other due to Laxmi's illicit relations with accused Jisan. The incident occurred on the same aspect whereby both the accused assaulted the deceased Rupesh by sickle, wooden stick, paver block and brick that resulted into 21 injuries on his person and the medical evidence shows that all

those injuries are fatal and that resulted into his death. There is a common intention, common participation and active role of both the accused in furtherance of their common intention to commit assault on deceased Rupesh. Thus, motive is established. Common intention of both the accused in committing the offence is established. Death of Rupesh is a culpable homicide. The entire evidence proves beyond reasonable doubt that both the accused intentionally and by assaulting the deceased with sickle and stick and furthermore, when the deceased tried to escape they pelted brick and paver block on him and this resulted into his left leg broken and it shows the intention and the knowledge of both the accused in furtherance of their common intention cause such bodily injury to Rupesh which has caused his death. Now, under these circumstances, considering the entire evidence, it is to be noted that the act of both the accused does not fall within the exceptions of section 300 of murder. Thus, the act of the accused in view of the above discussion is nothing but a murder of the deceased resulting that the ingredients of section 300 are proved and thus, the accused has committed the offence punishable u/sec 302 of IPC beyond reasonable doubt. Hence, I hold both the accused guilty for commission of offence punishable u/sec 302 r/w section 34 of IPC. Hence, they are liable to be convicted for the same. Hence, I answer point no. 1 as proved. In view of the above discussions and findings, I hereby take a pause to hear the accused on quantum of sentence.

28/10/2025
CBD Belapur

Sd/-xxx
(P. A. Sane)
District And Additional
Sessions Judge, Belapur, Navi Mumbai

80) I have heard both the accused and their respective learned counsels. It is submitted by the accused Jisat @ Jisan that he is a young boy, this is his first offence while the accused Laxmi submitted that she is a lady and she is having two children. Accordingly, it is submitted that lenient view be taken while imposing punishment.

81) The learned APP Shri. Yogendra Patil submitted that maximum sentence be passed. Present case does not fall in the category of 'rarest of rare case'. He submitted that the accused be sentenced according to law.

82) Considering the submissions, I find that there is a sufficient evidence to show that both the accused persons in furtherance of their common intention committed murder of Rupesh on the count of their illicit relations. However, the case does not fall within the category of rarest of rare case. In such circumstances, only punishment remains regarding section 302 of IPC is life imprisonment. In view of this, no punishment below life imprisonment can be imposed. Thus, the following punishment would meet the ends of justice. With this, following order is passed.

Order

- 1) The accused **Laxmi Rupesh Waghe and Jisat @ Jisan Samim Siddiqui** are hereby convicted for the offence punishable u/sec **302 r/w 34** of IPC in view of the provisions of section **235 (2)** of CrPC and each of them are sentenced to suffer **Rigorous Imprisonment For Life and to pay fine of Rs. 500/- (Five Hundred) each**; in

default, to suffer Rigorous Imprisonment for a period of one month.

- 2) Both the accused are in jail since **22/01/2020 till today**. As such, in the given set of facts and the circumstances, each of the accused is entitled to get benefit of set off subject to provisions of section 433 and 433 A of CrPC regarding such period.
- 3) Seized muddemal – sickle, stick, paver block, piece of brick, clothes etc. being worthless be destroyed after the appeal period is over.
- 4) Copy of this judgment be given to the accused free of cost.
- 5) (The judgment is dictated and pronounced in the open court).

28/10/2025
CBD Belapur

Sd/-xxx
(P. A. Sane)
District And Additional
Sessions Judge, Belapur,
Navi Mumbai