

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONFIRMATION CASE NO. 4 OF 2019
(Reference made by R.N. Majgaonkar, Additional Sessions Judge, Palghar)
IN
SESSIONS CASE NO. 3 OF 2016

The State of Maharashtra
(Through Boisar Police Station C.R. No.
I-240-2015)

Appellant
.. (Original Complainant)

Versus

Guddu Krish Yadav.
Aged 28 Years
Residing at Kolavade, Chawl of Sanjay.
[Currently lodged at Yerwada Central Prison,
Pune]

Respondent
.. (Original Accused)

-
- Ms. M.M. Deshmukh, APP for the State / Appellant
 - Dr. Yug Mohit Chaudhry a/w Ms. Payoshi Roy for the Respondent
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**CORAM : SMT SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

Reserved on : MARCH 30, 2022

Pronounced on : MAY 06, 2022

JUDGMENT [PER MILIND N. JADHAV, J.] :

1. Confirmation Case No. 4 of 2019 arises out of the Reference made by the learned Additional Sessions Judge, Palghar for confirmation of the death sentence awarded to Guddu Krish Yadav, respondent (“**accused**”) by Judgment & Order dated 09.05.2019 passed in Sessions Case No. 3 of 2016 for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, “**IPC**”). The operative part of the judgment reads as under:-

"1. The accused Guddu Krish Yadav is hereby convicted Under section 235(2) of Cr.P.C. for the offence punishable Under Section 302 of Indian Penal Code for murder of Rajkumar Baliram Rohidas and sentenced to death and be hanged by the neck till he is dead, subject to confirmation by the Hon'ble High Court, Bombay.

2. The accused is hereby convicted Under section 235(2) of Cr.P.C. for the offence punishable Under section 302 of Indian Penal Code for murder of Geetadevi Rajkumar Rohidas and sentenced to death and be hanged by the neck till he is dead, subject to confirmation by the Hon'ble High Court, Bombay.
3. The muddemal articles, the samples of acid and sample of burnt cloths pieces articles A, B & C, the shawl and saree articles D & E be destroyed after the period of one year from the date of order of Hon'ble High Court, Bombay in confirmation proceeding and in case of appeal if any by the parties as per order in appeal.
4. Both the sentences shall run concurrently.
5. Both the sentences awarded to the accused shall remain suspended till the confirmation by the Hon'ble High Court, Bombay.
6. Death sentences against accused shall not be executed unless it is confirmed by the Hon'ble Bombay High Court.
7. In view of provision of Section 28(2) of Cr.P.C. entire proceeding of this case along with muddemal property be sent to the Hon'ble High Court, Bombay for confirmation of the sentences against accused at the earliest.
8. The District Legal Services Authority, Thane is hereby recommended to determine and pay the compensation to the victims who are dependents of Rajkumar and Geetadevi i.e. their sons Rajan Rajkumar Rohidas, Dipesh Rajkumar Rohidas and Shashi Rajkumar Rohidas. The amount of compensation shall be as the D.L.S.A. Thane deems fit.
9. The jail authority is hereby directed to take the note of this order.
10. The accused is hereby informed that he is entitled to prefer an appeal against this judgment and order within the statutory period of appeal i.e. within 30 days.
11. Issuance of certified copy of judgment is expedited.
12. Copy of judgment be provided free of costs to the accused."

2. A Crime bearing Crime No. I-240/2015 came to be registered under Section 302 IPC with the Boisar Police Station on 06.11.2015 at 2:30 a.m.

3. According to the prosecution, the case is based on ocular evidence, circumstantial evidence, medical evidence, forensic evidence and above all on multiple dying declarations of both the deceased. After considering the evidence of the prosecution witnesses and hearing the prosecution and defence on merits of the case as well as on the point of

sentence, the learned Additional Sessions Judge, Palghar by the impugned judgment dated 09.05.2019 arrived at the conclusion that the present case of acid attack leading to the double murder of Rajkumar and Geetadevi is a unique case beyond imagination and a crime of such a nature which is undeserving of any sympathy or mercy. The Trial court concluded that the present case fell in the category of the rarest of rare case and the accused deserved to be awarded death penalty for committing the double murder. The Trial court held the accused to be guilty of the offence of committing murder of Rajkumar and Geetadevi and convicted the accused under Section 235(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") for the offence punishable under Section 302 IPC and sentenced him to death and he be hanged by the neck till he is dead, subject to confirmation by this Court.

4. The accused faced trial for the offence punishable under Section 302 IPC for committing the murder of Rajkumar Ravidas @ Rohidas and his wife Geetadevi by pouring acid on them with the intention and knowledge to cause their death in the intervening night of 5/6.11.2015.

5. Shri. Jaysing Shivram Nale, Investigating Officer (IO) conducted investigation into the crime. He drew the Spot Panchanama, Inquest Panchanama and sent their bodies for postmortem. The IO received information that the accused had gone to Bihar after committing the crime which is his native place. After obtaining permission from the Court the IO proceeded to Bihar on 02.12.2015 alongwith a police team to apprehend the accused. The accused was taken into custody with the help of local police of Chero Opi Police Station in Bihar and arrested from village Ukhada and brought to Palghar.

6. After investigation the chargesheet was filed. Since the offence committed by the accused was exclusively triable by the Sessions Court, the learned Magistrate committed the case to the Sessions Court, Palghar.

7. The learned Additional Sessions Judge, Palghar framed the charge against the accused under Section 302 IPC. The charge was read over and explained to the accused. The accused pleaded not guilty and claimed to be tried. The defence of the accused was of total denial and false implication in the alleged offence.

8. To substantiate its case, the prosecution examined 12 witnesses and tendered documentary evidence in the form of the dying declarations, inquest panchanama, spot panchanama, letters of intimation, chemical analyzer's report, etc. The prosecution examined 12 witnesses in all as under:-

S. No.	Name	Description of Witness
PW 1	Priti Devanand Karankale	Nurse present in hospital where deceased were admitted after incident.
PW 2	Prakash Shivram Raut	Pancha witness - Inquest Panchanama.
PW 3	Pradeep Ramesevak Singh	Pancha witness - Spot Panchanama.
PW 4	Ramkumar @ Rampyare Deepchand Koiri	Co-worker alongwith deceased and prime witness.
PW 5	Kedarnath Babunandan Jaiswal	Co-worker alongwith deceased and prime witness.
PW 6	Dr. Manoj Balkrishna Shinde	Medical Doctor who conducted the post mortem.
PW 7	Dr. Atul Ramesh Pimple	Medical Doctor who treated both deceased on their admission to the hospital until they died.
PW 8	Deepak Hari Jogdand	Police Officer who recorded the dying declaration of Rajkumar and on that basis registered the complaint (FIR) and handed over charge to I.O. PW-12.
PW 9	Ramesh Lahu Thakre	Pancha witness who carried the seized muddemal articles to the Forensic Lab, Kalina, Mumbai.
PW 10	Ravindra Kashinath Raut	Pancha witness who was called by the Police to identify the seized clothes.
PW 11	Meena Sanjay Ambhire	Social worker in whose presence dying declaration of Geetadevi was recorded in the hospital.

PW 12	Jaysing Shiram Nale	Investigating Officer (I.O.).
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9. The Trial court framed the following points for determination and recorded the findings thereon for the reasons stated in the impugned judgment as under:-

SR. NOS.	POINTS	FINDINGS
1.	Whether prosecution proves that on 6th November 2015 Rajkumar Baliram Rohidas died on a homicidal death?	Yes
2.	Whether prosecution proves that on 7th November 2015 Geetadevi Rajkumar Rohidas died of a homicidal death?	Yes
3.	Whether the prosecution proves that on 6th November 2015 at about 00.30 hours in the room situate above the office in Paradyes Acid and Chemicals Trading Company at Boisar M.I.D.C., accused committed murder by pouring sulphuric acid on the person of Rajkumar Rohidas with intention to cause death with requisite knowledge?	Yes
4	Whether the prosecution proves that on the same date and on the same time and place accused committed murder of Geetadevi Rajkumar Rohidas by pouring sulphuric acid on her person with intention to cause death with requisite knowledge?	Yes
5	What order?	Accused is convicted

10. As stated the reference has been made to this court by the learned Additional Sessions Judge, Palghar for confirmation of the death sentence awarded to the accused under the provisions of Section 366(1) of the Cr.P.C.

11. Before we proceed to consider the submissions made by the respective Advocates, it will be apposite to refer to the facts of the case and the incident which are as under:

11.1. Rajkumar ('**deceased**') and Guddu ('**accused**') were employed

as workers in Paradyes Acid and Chemicals Trading Company (the '**company**') situated at Plot No. N/74 in M.I.D.C. Boisar, Kolvade Naka, Taluka Palghar. The owner of the company is Shashikant Kushwaha. The deceased i.e. Rajkumar and his wife Geetadevi resided and slept in the premises of the company in a room admeasuring 12 feet x 9 feet (the '**said room**') situated on the top of the office of the company alongwith their three sons namely Rajan, Dipesh and Shashi. Two other employees namely Ramkumar @ Rampyare Deepchand Koiri (PW-4) and Kedarnath Jaiswal (PW-5) also resided in the premises of the company and used to sleep in the office at night which was situated below the said room. The access to the said room was by an iron ladder resting on the ground.

11.2. On the date of the incident i.e. 05.11.2015, Rajkumar after completing his daily work routine in the company premises ate his dinner and went to sleep at about 9.30 p.m. along with wife Geetadevi and one son in the said room. Ramkumar (PW-4) and Kedarnath (PW-5) alongwith the two other sons of Rajkumar went to sleep in the office below the said room.

11.3. According to the prosecution at about 12.30 a.m. in the intervening night between 05.11.2015 and 06.11.2015, the accused doused Rajkumar and Geetadevi with acid while they were asleep and ran away. Both Rajkumar and Geetadevi upon being doused by acid raised a commotion and climbed down the iron ladder screaming "**bachaieye, bachaieye, Guddu Yadav ne hamara upar acid dal diya, bachao bachao**". Ramkumar (PW-4) and Kedarnath (PW-5) were woken up on hearing the screams; but were unable to come out of the office as the office door was bolted from the outside. Hence Ramkumar made a phone call to his employer Shashikant Kushwaha and informed him that he heard Rajkumar and Geetadevi's screams that Guddu had poured sulphuric acid on them but was unable to do anything as the office door was bolted from the outside. At that time Rajkumar and Geetadevi climbed down from the iron ladder and opened the

latch of the office door which was bolted. Ramkumar (PW-4) and Kedarnath (PW-5) saw that Rajkumar and Geetadevi had sustained burn injuries on their entire bodies to the extent that there were no clothes on their person. Hence they poured water on their bodies and put clothes on their person. In the meanwhile, wife of Shashikant Kushwaha, brother Omprakash Kushwaha and son Rahul Kushwaha arrived in the company premises and instructed Ramkumar (PW-4) and Kedarnath (PW-5) to take Rajkumar and Geetadevi to TIMA Hospital situated at Saravali, Boisar for treatment. They were then taken to the hospital in the company's Bolero pick-up jeep which was driven by Omprakash.

11.4. It is the prosecution's case that Rajkumar died four hours after admission whereas Geetadevi died on the next day in the hospital.

11.5. According to the prosecution, conviction of the Appellant (i) the oral dying declaration of Rajkumar and Geetadevi when they both climbed down from the said room screaming as heard by Ramkumar (PW-4) and Kedarnath (PW-5); and the written dying declaration of the deceased; viz the dying declaration of Rajkumar recorded in the hospital by Deepak Jogdand A.P.I. (PW-8) in the presence of Dr. Atul Pimple (PW-7); and the dying declaration of Geetadevi recorded in question and answer form by lady police Naik Shubhangi Naukudkar in the presence of social worker Meena Sanjay Ambhire (PW-11).

11.6. It is seen that the entire case revolves around the evidentiary value of the purported dying declaration dated 06.11.2015 of Rajkumar recorded at 2:30 a.m. (Exhibit '33') by PW-8. The Trial court has heavily relied upon it alongwith the dying declaration of Geetadevi and the oral testimony of PW-4, PW-5 and PW-8. According to the prosecution, PW-4 and PW-5 are prime eye witnesses to the crime.

12. We shall now deal with and analyse the evidence given by each of the prosecution's witnesses as the Trial Court judgment is based entirely

on the testimony of the witnesses so as to indict and convict the accused.

12.1. Priti Devanand Karankale, PW-1 was the on duty nurse in TIMA Hospital when Rajkumar and Geetadevi were admitted after the incident. She has deposed that on 07.11.2015 one patient was admitted to the hospital of acid attack and thereafter the said patient died; that the police were called and they summoned her and another staff member Dipesh. She has further deposed that the lady had burn injuries over her whole body. On reading her deposition, it appears that her evidence is in reference to Geetadevi only. However in her cross examination she has stated that one male patient was also brought in the hospital and was under the observation of Dr. Sachin Ramteke and he was unconscious; that both the palms and fingers of the said patient 'were burnt' and bandage was applied on the hands. PW-1 was the first person to have encountered and seen both the deceased in the hospital on admission. Hence the evidence of this witness is relevant for the following evidence:

- (i) that Geetadevi had burn injuries over her whole body; and on admission she died;
- (ii) the male patient (Rajkumar) was unconscious; both his palms and fingers were completely burnt.

12.2. Prakash Shivram Raut, PW-2, a pancha witness summoned by the Police to TIMA Hospital was shown the dead body of Rajkumar; his signature was obtained on the inquest panchanama prepared by the police. This witness has deposed that the dead body was burnt.

12.3. Pradeep Ramsevak Singh, PW-3, another pancha witness was called by the Police to identify the scene of crime in the company's premises. He has deposed that after entering the said room by climbing the iron ladder, he saw that the mosquito net and clothes were burnt because of acid; the police collected the burnt clothes and mosquito net.

12.4. Ramkumar @ Rampyare Deepchand Koiri, PW-4 is the prime

eye witness on behalf of the prosecution in the present case. It is the prosecution's case that the entire circumstantial evidence is proven on the basis of PW-4 and PW-5's deposition and hence it would be of utmost importance to consider the evidence of these two witnesses scrupulously. It is the prosecution's case that PW-4 and PW-5 are eye-witnesses and hence their testimony is believable.

12.4.1. PW-4 in his evidence has deposed as under:-

- (i) that he was working as a driver in the company since the last 8 to 10 years and used to transport acid;
- (ii) that he used to reside and sleep in the company's office and Rajkumar used to reside and sleep in the said room situated above the office alongwith his wife and three sons;
- (iii) that in 2015 the accused had stolen Rajkumar's mobile phone due to which there was an altercation between the two and Rajkumar had threatened the accused that he would intimate the theft of his mobile phone to their employer;
- (iv) that on the next day after the altercation, after having dinner Rajkumar, Geetadevi and one son went to sleep in the said room while he, Kedarnath (PW-5) and two sons of Rajkumar want to sleep in the office; that at about 12:30 a.m., they were woken up with the screams of Geetadevi;
- (v) that they attempted to come out of the office to check what had happened but could not as the office room was bolted from the outside; hence he made a phone call to his employer (Shashikant Khushwaha) and informed him that they heard Rajkumar and Geetadevi screaming that the accused had poured sulfuric acid on them;
- (vi) that immediately thereafter Rajkumar and Geetadevi climbed down the iron ladder and opened the latch of the office door; they saw that Rajkumar and Geetadevi were completely burnt

and had no clothes on them; he then poured water on them and put clothes on their bodies to cover them;

- (vii) in the meantime, wife of their employer, his brother Omprakash Kushwaha and son Rahul Kushwaha arrived at the scene of crime and Rajkumar and Geetadevi were put in a tempo and taken to TIMA Hospital for treatment;
- (viii) that about 4 hours after admission Rajkumar died whereas Geetadevi died on the next day.

12.4.2. In his cross examination PW-4 has stated as follows:-

- (i) that the accused had joined the company and was working in the company for the past one year;
- (ii) that 10 to 15 days prior to the incident the accused was removed from work; he thereafter did not come into the company premises in his presence; that when the incident occurred there were 5 to 6 persons working in the company;
- (iii) that both Rajkumar and Geetadevi resided in the said room wherein they used to prepare food and also sleep alongwith their children;
- (iv) that Rajkumar had three children and when the incident occurred one child i.e. the youngest child was sleeping with Rajkumar in the said room;
- (v) that there was no door to the said room;
- (vi) that after 5 to 10 minutes of hearing the screams, Rajkumar and Geetadevi climbed down the iron ladder from the said room and unbolted the office door;
- (vii) that he was not in a position to tell the exact time at which the police came to the scene of crime; that Rajkumar and Geetadevi were taken to the hospital at about 1:00 a.m.;
- (viii) that when both were taken to the hospital they were not

unconscious but their whole body was burnt;

- (ix) that when they were taken to the hospital in the tempo they were in a burnt condition, however there were no blood stains on their hands;
- (x) that at the hospital the police enquired with him about what had transpired and he informed all details to the police and while doing so the police were writing down the said details;
- (xi) that it did not happen that the accused ran away from the spot of incident in his presence and;
- (xii) that the residence of the owner of the company was at a distance of 6 k.m. from the company premises.

12.5. Kedarnath Babunandan Jaiswal PW-5, the second prime witness on whose testimony the prosecution has heavily relied upon, in his evidence has deposed as under:-

- (i) that at the time of the incident, he was sleeping in the office alongwith PW-4 and Rajkumar was sleeping in the said room above the office with his wife;
- (ii) that at about 12.30 a.m. in the night, he and PW-4 heard the screams that Guddu had thrown acid, however, since the office door was bolted from the outside, they could not come out of the office, therefore they made a phone call to their employer and informed him about what they heard;
- (iii) that after Rajkumar opened the latch to the office door, they came out and saw that the entire body of Rajkumar had been burnt due to acid and there were no clothes; that they also saw Geetadevi at the same time and she was also burnt;
- (iv) that their employer arrived and then they put Rajkumar and Geetadevi in the tempo and took them to TIMA Hospital;

- (v) that after admitting Rajkumar and Geetadevi in the hospital both he and PW-4 returned back to the company premises as their employer was present in the hospital; and
- (vii) that Rajkumar died on the same day whereas Geetadevi died on the next day.

12.5.1. In his cross-examination, PW 5 has stated as follows:-

- (i) that Sulphuric Acid, Hydrochloric Acid and Nitric Acid were brought in the company but no acid was manufactured in the company, it was only brought and resold by the company;
- (ii) that at the time of the incident, 3 to 4 persons were working in the company and were also residing in the company premises;
- (iii) that there is a compound wall around the company premises upto a height of 8 feet; that gate-pass was issued while going out of the company premises; that attendance of the persons residing in the company was marked by their employer in the register;
- (iv) that they took the injured Rajkumar and Geetadevi to the hospital in the Bolero pick up jeep; that he and Ramkumar both lifted them and kept them in the jeep; that they wrapped them in clothes and took them to the hospital; that at the time of keeping them in the Bolero jeep there were no clothes on the person of both of them; they wrapped them in chadar and bed sheet while taking them to the hospital;
- (v) that the burnt clothes were lying in the said room where they were sleeping; that when Rajkumar screamed only he had come downstairs and Geetadevi was upstairs in the said room;
- (vi) that they reached the hospital at about 1.30 a.m.; that prior to

leaving for the hospital, PW-4 made a phone call to their employer at about 1.00 a.m. and within 5 minutes their employer arrived at the company premises;

- (vii) when their employer came to the company, he did not make inquiry with the injured; that PW-4 informed Rajkumar that their employer had come;
- (viii) that after admission in the hospital till their death, he visited the hospital alongwith PW-4;
- (ix) that the police reached the hospital at the same time when they reached there; that he or PW-4 had not made any phone call to the police;
- (x) that after reaching the hospital the police made inquiry with them and reduced it into writing what was inquired with them; that the Police had made inquiry with them even thereafter i.e. on one occasion at the police station and once in the company premises;
- (xi) that after admitting Rajkumar and Geetadevi in the hospital, he returned to the company after half an hour alongwith PW-4;
- (xii) that their employer did not return with them;
- (xiii) that his statement was not read over to him by the police after recording the same and that he does not know Marathi language;
- (xiv) that the dispute regarding theft of the mobile phone did not take place in his presence; that he did not know when and where the dispute regarding theft of the mobile phone took place; that after 2 to 4 days of the said incident, he came to know about the dispute regarding theft of the mobile phone;

- (xv) that before 4 to 5 days of the incident, the accused Guddu was removed from work by their employer;
- (xvi) that on the night of the incident, he had not gone out of the company for giving delivery of goods and since 6.00 p.m. he was present in the company premises on the date of the incident alongwith PW-4;
- (xvii) that they had dinner in the company premises at about 11.00 p.m. to 11.30 p.m.;
- (xviii) that he cannot assign any reason as to why it is mentioned in his statement that he and PW-4 went to sleep at about 10.30 p.m. and he had not stated to the police that he was sleeping and PW-4 was watching the T.V.; that PW-4 made a phone call to their employer before the office door latch was opened by Rajkumar;
- (xix) that they did not know what incident had taken place; that Rajkumar had 3 children; that after opening the door, he and PW-4 went upstairs to the said room and at that time Rajkumar was standing near their office room; that they saw Rajkumar and Geetadevi to have sustained burn injuries on their whole body and at that time there were no clothes on their person as their clothes were burnt;
- (xx) that on the next date i.e. on 06.11.2015 their employer and Omprakash Kushwaha had taken him and PW-4 to the police station; that it was not true that when he was taken to the Court, the police told him what to depose before the Court while recording his statement;
- (xxi) that he did not see whether there were any stains on his clothes when he lifted the injured while keeping them in the vehicle

and whilst getting down at the hospital; that there was no acid on his clothes; that the Police did not inquire with him as to which clothes were worn by him at the time of removing the injured to the hospital; that the police had inquired with him about the pick up jeep and he told the police that they brought the injured to the hospital in the pick up vehicle driven by Omprakash Kushwaha;

- (xxii) that he did not know that 4-5 days before the incident, there was a quarrel between Rajkumar and Omprakash (brother of the employer) on account of the amount of 'bhishi' (savings); and that he did not know whether Rajkumar demanded the amount of savings from Omprakash who refused to give and was threatened by Omprakash.

12.6. Dr. Manoj Balkrishna Shinde PW-6, the Medical Officer in Rural Hospital, Boisar, conducted the postmortem on the deceased and in his evidence has deposed as under:-

- (i) that on 06.11.2015 the dead body of Rajkumar was brought by the Police at about 3.25 p.m. and on the same day he started the postmortem at 4.36 p.m. and completed the same at about 5.30 p.m.;
- (ii) that the dead body was in a burnt condition, the skin showed deep burn marks all over the body, deep burn injuries were noticed all over the body with blackish discolouration of the skin to the extent of 96% burns involving scalp, face, neck anterior aspect of chest and abdomen, posterior aspect of chest and back, upper and lower extremities; that the injuries were ante-mortem in nature and scalp showed burn injury, skull vault was intact, brain showed signs of congestion, thorax

showed burn marks over chest wall with rib and cartilages intact, larynx, trachea and bronchi were oedematous with signs of congestion with black mucous and right and left lung both were oedematous and congested with black mucous;

- (iii) that the abdomen walls showed burn injuries with subcutaneous and soft tissue congested; the peritoneum showed congestion; the abdominal cavity was intact, the mouth was open with black mucous in oral cavity, the oesophagus showed sign of congestion, the stomach and its contents were intact with rice and black semi solid; the small intestine and large intestine showed signs of congestion; the liver, pancreas and both kidneys were intact; the spleen showed splenomegaly; the bladder was intact and empty; that the skin was preserved for chemical analysis to know the type of acid;
- (iv) that as per his examination the probable cause of death was asphyxia with hypovolumic shock due to 96% deep chemical burns (acid); that accordingly he prepared the post-mortem report and issued the death certificate;
- (v) that on 07.11.2015 the dead body of Geetadevi was received along with police panchanama at around 2.30 p.m. for postmortem; the postmortem commenced at 4.23 p.m. and was completed by 5.15 p.m.;
- (vi) that the dead body was in burnt condition; the skin showed deep burn marks all over the body and on external examination of the naked body, 75% deep burn injuries involving the scalp, neck anterior aspect of chest and upper abdomen, upper posterior aspect of back, both buttocks, both upper extremities and multiple discrete burn marks were observed over both

lower limbs;

- (vii) that on internal examination, he found that there were deep burn marks over the scalp and the skull, the brain showed sign of congestion, the thorax-walls, ribs and cartilages showed deep burn marks, the larynx, trachea, bronchi and both lungs were oedematous and congested with black mucous; the pericardium, heart and large vessels were intact; the abdominal walls showed burn injuries with soft tissues and showed signs of congestion; the mouth was open with black mucous in oral cavity; the oesophagus showed signs of congestion; the stomach was intact with black colour semi solid; the small and large intestines showed signs of congestion;
- (viii) that on his examination, the probable cause of death was ascribed to hypovolumic shock due to 75% deep chemical burns by acid and accordingly he issued the death certificate; that as per the Chemical Analyser's report, sulphuric acid was detected in the skin samples sent for chemical analysis;

12.6.1. In his cross-examination, PW 6 has stated as follows:

- (i) that fingers of both the hands of Rajkumar were in burnt condition; there were deep burns on the fingers of both hands; the time between death and post-mortem was less than 12 hours; death of Rajkumar was caused within two hours of his last meal;
- (ii) that in Geetadevi's case there were deep burns on the fingers of both her hands on the interior aspect;
- (iii) that in the case of Rajkumar and Geetadevi the skin of their fingers on the interior aspect was entirely burnt; there were no

bandages on the fingers of Rajkumar; but there were bandages on the fingers of Geetadevi;

- (iv) that if the burns are more than 50% there is heavy loss of fluid and in such cases the person becomes unconscious immediately; there is also heavy pain in the body and therefore painkillers are used; however it was not true that after administration of the painkiller the patient becomes drowsy.

12.6.2. PW 6 has submitted the post mortem report of Rajkumar which is exhibited in evidence as Exhibit '24'. Certain observations made therein pertaining to the injuries sustained are relevant to arrive at a precise conclusion. The observations noted in column Nos. 17 to 21 of the postmortem report being relevant are reproduced hereunder:

“Observations in the postmortem report of Rajkumar.

17.	Surface wounds and injuries Their nature, position, dimensions (measured) and directions to be	...	deep burn injuries generalised all over body and blackish discolor of skin about 96% burns involving scalp, face.
	accurately stated their probable age and causes to be noted.	...	neck, anterior aspect of chest and ciberd, posterious aspect of chest and back, upper and lower extrimites
18.	Other injuries discovered by external examination of palpation as fractures	...	no other injuries on external examination or palpable fracture
(a)	Can you say definitely that the injuries shown against serial Nos. 17 and 18 are antemortem injuries?	...	Yes

19.	Head-	...	
(i)	Injuries under the scalp their nature	...	Burn injuries over scalp
(ii)	Skull - Valult and base-describe fractures, their sites, dimensions, directions etc.	...	Intact
(iii)	Brain - appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (Weight M.3 gram F. 2.75 grams)	...	signs of congestion
20.	Thorax-		
(a)	Walls, ribs, cartilages	...	Burn mark over chest wall lib and cartilage
(b)	Pleura	...	Intact
(c)	Larynx, Trachea and Bronchi	...	Oedematous signs of angestion black mucous
(d)	Right Lung	...	Both lungs oedematous and ungested Black
(e)	Left lung	...	mucous on section
21.	Abdomen -		
	Walls	...	Burn injuries subautanous 50 ft tissue congested
	Peritoneum	...	Intact peritoneum congested
	Cavity	...	
	Bucal Cavity, teeth, tongue and pharynx Desophagus	...	Mouth open black mucous oral cavity signs of congestion

	Stomach and its content	...	Intact rice and black semisolid”

12.6.3. Similarly in the postmortem report of Geetadevi the following observations are found relevant as noted in clause Nos. 17 and 19 to 21 and are reproduced hereunder :

“Observations in the postmortem report of Geetadevi.

17.	Surface wounds and injuries Their nature, position, dimensions (measured) and directions to be accurately stated their probable age and causes to be noted.	...	75% deep burn injuries involving face scalp, neck, anterior aspect of chest upper abdomen, upper posterior aspect of back, both buttocks, both upper extrimites, multiple discreat burn marks both lower limbs
19.	Head-	...	
(i)	Injuries under the scalp their nature	...	Deep burn mark over scalp
(ii)	Skull - Valult and base-describe fractures, their sites, dimensions, directions etc.	...	Intact
(iii)	Brain - appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (Weight M.3 gram F. 2.75 grams)	...	Signs of congestion
20.	Thorax-		
(a)	Walls, ribs, cartilages	...	deep burn marks, oedematous congested
(b)	Pleura	...	

(c)	Larynx, Trachea and Bronchi	...	Oedematous and signs of congested black mucous
(d)	Right Lung	...	Both lungs oedematous and congested
(e)	Left lung	...	black mucous on section
21.	Abdomen -		Burn injuries soft tissue oedematous and congested
	Walls	...	
	Peritoneum	...	Signs and congestion
	Cavity	...	
	Bucal Cavity, teeth, tongue and pharynx	...	Mouth open black mucous oral cavity
	Desophagus	...	signs of congestion
	Small intestine and its contents Large intestine and its contents	...	signs of congestion”

12.7. Dr. Atul Ramesh Pimple PW-7, Medical Officer attached to TIMA Hospital was on duty on the date of the incident and treated Rajkumar and Geetadevi on admission to the hospital. The evidence of PW-7 is all important and crucial. In his evidence PW-7 has deposed as under:-

- (i) that deceased Rajkumar and Geetadevi were admitted in the hospital as patients of acid attack;
- (ii) that since it was a medico legal case, he issued two letters of intimation (Exhibits '28' and '29') to the Police Officer, MIDC Police Station, Boisar at 3:05 a.m. stating that Rajkumar had sustained 95% burns and Geetadevi had sustained 98%

burns;

- (iii) that on receipt of the letters, Police Inspector Jogdand - (PW-8) visited the hospital for recording the statements; that on examination he found that Rajkumar was conscious and therefore put his endorsement that Rajkumar was conscious during recording his statement; that Rajkumar's statement was recorded after 1.30 a.m. and after recording the statement, his thumb impression was put on the statement and was countersigned in his presence and thereafter he put his signature and stamp of the hospital on the statement;
- (iv) that after recording his statement, Rajkumar died and therefore he informed the same to the Police Station by addressing a letter at 3.25 a.m.

12.7.1. In his cross-examination, PW-7 has stated as follows:-

- (i) that he attended to both the patients when they were brought to the hospital at about 1.30 a.m.; that he attended to Rajkumar first; however at about 1.40 a.m. he attended to Geetadevi when brought it, but she was brought in dead; that she had burn injuries all over her body; her hands and palms had deep burn injuries and her skin was burnt;
- (ii) that it is true that in a burn case, due to loss of fluid the patient suffers from heavy pains;
- (iii) that the staff of the hospital carried the letters (Exhibits '28' and '29') by hand which were addressed to the police station;
- (iv) that he did not put the timing of his endorsement on the statement given by Rajkumar;
- (v) that he put his endorsement after completion of Rajkumar's

statement; however the time was not mentioned in the endorsement as to when the recording of the statement started and when it was completed;

- (vi) that at that time nurse Ms. Priti Karankale, PW-1 was present in the ward; that there were clothes on the persons of both the patients, however they were in burnt condition, that he had no talk with the patients; the messenger was sent to the police station at about 1.40 a.m.; the acknowledgment was not brought as after the letter was delivered to the police station within 20 minutes the police came to the hospital;
- (vii) that the patient was talking in third language; PW-8 was questioning the patient in third language and the patient was accordingly answering in Hindi language; that the police were present in the hospital for about two hours; that the handwriting on Exhibit '30' (letter of intimation of death of Rajkumar) is of his staff member;
- (viii) that it was not true that the number 2 has been changed to number 3 to manipulate the time of death from 2:25 a.m. to 3:25 a.m. as seen and stated in Exhibit '30';
- (ix) that along with pain killer antacid, antibiotic was also given to the patient, except that he did nothing with the patient;
- (x) that it was true that it was necessary to hand over all relevant case papers to the police in this case which had recorded the entire treatment given to the patient, his medical status, etc. but he has not handed over the case papers to the police;
- (xi) that it was true that if the case papers were placed before the court, it would have revealed the details as to whether the patient was conscious or not; whether the pulse rate and blood

pressure of the patient was normal; however if the blood pressure exceeded 220 or 250 or fell below 40 or if the pulse rate plunged down there is a possibility of the patient becoming unconscious;

- (xii) that in case of more than 90% burn injury, there is heavy fluid loss and it is possible that the patient would become unconscious;
- (xiii) that the number 3 appearing in the age of the patient is different than in the time of death in Exhibit '30'; that it is necessary to mention the time of arrival of the patient in the intimation letter to the police in medico legal cases and on Exhibits '28' and '29' the time when both patients were brought in the hospital is not mentioned;
- (xiv) that no date and time was mentioned near the signature and stamp at the bottom of the statement; that there is no endorsement regarding the signature and seal at the bottom of statement;
- (xv) that he does not remember whether bandage was applied on the injuries;
- (xvi) that it was not true that intimation letters at Exhibits '28' and '29' were sent by him to the police station after 3.00 a.m.;
- (xvii) that it is true in medico legal cases that if the patient is in a condition to talk then it is necessary to mention the history in the MLC register and in the case papers;
- (xviii) that police did not ask for the any injury certificate describing the treatment and injuries of Rajkumar and MLC register was not maintained by the hospital;

- (xix) that when the patient was brought to the hospital PW-1 was the nurse present; that both were admitted in the same ward and there were no other patients at that time in the ward;
- (xx) that another patient was brought in dead, hence no treatment was given, that it did not happen in his presence that police obtained the thumb impression of Geetadevi; that the Police had requested him to examine whether Geetadevi was conscious or unconscious and at that time he told police that she was already dead;
- (xxi) that the dead body of Geetadevi was removed from the hospital on 6th November 2015.

12.8. PW-8 - Deepak Hari Jogdand, Assistant Police Inspector, Boisar Police Station recorded the dying declaration of Rajkumar and handed over charge of investigation to PW-12 – Investigating Officer (IO). PW-8 in his evidence has deposed as under:-

- (i) that he was attached to Boisar Police station as Assistant Police Inspector from 2015 to May 2017; on 5.11.2015, he was on night patrolling duty and he received a phone call from the police station intimating that two persons have been burnt in an acid company and admitted to TIMA hospital and he should go there; accordingly he proceeded to the hospital and met Dr. Pimple, PW-7 who was on duty; he told the doctor that he had to record the statement of the burnt person; at that time the doctor asked him to wait for five minutes as check up of the patient was going on; thereafter, when he went inside, the doctor told him that the patient was in a fit condition to give his statement; accordingly the doctor put his signature and endorsement that the patient was conscious and in a fit

condition to give his statement and thereafter he asked the name and address of the patient and recorded his statement;

- (ii) that Rajkumar gave his statement that a day prior to the incident i.e. on 4th he had seen Guddu stealing his mobile phone instrument, hence, he informed about the theft to his employer; thereafter the employer had spoken to Guddu because of which Guddu was annoyed and when he and his wife were sleeping Guddu came there with a can filled with Sulphuric acid manufactured in the company and doused them with Sulphuric Acid; that he saw Guddu pouring the acid; that thereafter he climbed down the stairs screaming; unlatched the door of the office where his children were sleeping alongwith PW-4 and PW-5; then they were both removed to TIMA hospital in the vehicle; that the statement was read over to him in hindi language and thereafter he put his thumb impression and obtained the signature of the concerned doctor and the statement bears his signature;
- (iii) thereafter he went to the police station and registered the F.I.R. for the offence punishable under Section 326-(A) IPC and as per the direction of his superior the investigation of the case was handed over to P.S.I. Jaysing Shriram Nale, PW-12.

12.8.1. In this cross-examination, PW-8 has stated as follows:-

- (i) that he could not remember the name of the police officer from whom he received the phone call while on patrolling duty near Boisar Railway Station area; that the P.S.O. of the police station made a phone call to him at about 12.30 a.m. in the night and informed him that acid was poured on two persons and they are taken to TIMA hospital and he should go there immediately

and record their statement;

- (ii) that he knew where TIMA hospital was situated and he proceeded to TIMA hospital, however after receiving the phone call he first went to the Police station, collected some papers and took along with him the scribe police Naik Mr. Lagad;
- (iii) that no entry was made in the station diary when he proceeded to the hospital alongwith the scribe Mr. Lagad from the police station; that he could not tell the time when he reached the police station; that before reaching the hospital he was not knowing the names of the injured; that within 10 to 15 minutes he reached the hospital; when he obtained the signature of the doctor on the statement he did not ask the doctor the ward number and cot number; that there were two cots in the ward when he visited the hospital; the P.S.O. had not told him which out of the two patient's statement was to be recorded; he himself took the statement of the male patient; he did not record the statement of the female patient; that there were no instructions to him not to record the statement of the female patient;
- (iv) that he did not ask the doctor about the woman patient and whether she was in a state to give her statement; that he saw the woman patient as she was by the side of the cot of the man patient; that he did not inquire with her; at the time of recording Rajkumar's statement he was in naked condition and ointment was applied all over his body; the patient was not in bandaged condition; that the fingers of the patient's hands were not burnt; that at about 1.00 a.m. at night he started recording the statement and continued it for about 45 minutes; that no

saline was administered to the patient when he reached the hospital;

- (v) that the patient was shouting as well as talking at the same time; that before beginning recording of the statement he introduced himself to the patient; that he had obtained the signature of the doctor on blank paper before beginning recording of the statement; that the doctor put his signature in his presence; he did not remember as to whether the doctor put the timing at the time of signing on the blank paper; that he did not tell police Naik Mr. Lagad to mention the time at which the recording of the statement started and was completed; that he asked questions to the patient while recording the statement and the patient answered those questions; that there was no difficulty in recording the statement in question and answer form; that the patient was talking properly, hence the statement was not recorded in question and answer form; that the doctor did not tell him to record the statement hurriedly because the patient would die at any time;
- (vi) that he could not tell whether the police staff used to go to the house of the Special Executive Magistrate to call him when the need arose; that prior to joining Boisar Police station he served for four years as P.S.I.; during that period he took help of the Special Executive Magistrate for recording statement; that he had intimated to his senior officer when he received the information about the incident however since it was late in the night, he did not feel it necessary to call any Special Executive Officer for recording the statement of Rajkumar; that he could not tell at what time Rajkumar had died;
- (vii) that when he reached the police station he did not inquire as to

how the said information was received in the first instance at the police station; that he could not identify the endorsement and handwriting on Exhibits '28' and '29' pertaining to the mention of the station diary entry No. 4 and time;

- (viii) that he did not remember whether any other patient except Rajkumar and Geetadevi were there in the ward; that sisters were present in the room apart from Dr. Pimple, PW-7;
- (ix) that it is true that if thumb impression of any person is obtained, then it is necessary to mention whether it is of the right hand or left hand; similarly it is necessary to mention whether the impression is of the thumb or of the toe; that it is also necessary to mention the name of the person whose thumb impression is obtained; that it is necessary to obtain the signature of the attesting person who attests the thumb impression;
- (x) that in respect of thumb impression on Exhibit '33' there is no mention as to whether the thumb impression was of the thumb or toe or the name of the person putting the impression and there is no endorsement in whose presence the thumb impression was obtained;
- (xi) that it is not mentioned in Exhibit '33' that the patient was in a fit condition to record the statement;
- (xii) that he has not put the endorsement on the statement that it was recorded in the presence of the doctor;
- (xiii) that there is no mention in the statement that Rajkumar saw the accused while stealing the mobile handset;
- (xiv) that the statement was read over to the patient in marathi

language and subsequently he was made to understand it in hindi language; that there is no endorsement on Exhibit '33' that the statement was in the handwriting of police Naik Mr. Lagad; that he could not tell the time at which he reached the police station after recording the statement; that the complaint was registered at about 2.30 a.m. at night; that he does not remember whether entry was made in the station diary after reaching the police station;

(xv) that he could not tell whether the person who brought the injured to the hospital were present at the hospital; that he could not tell whether any relatives of the injured were present at the hospital though six to seven persons were present at the hospital;

(xvi) that he did not tell the doctor to record the statement of the injured.

12.9. PW-9 - Ramesh Lahu Thakre is a pancha witness attached to Boisar Police Station; he was on general duty at Boisar Police Station on the date of the incident. He carried the articles and has stated that the said articles were not seized or sealed in his presence, hence, his evidence is not relevant.

12.10. PW-10 - Ravindra Kashinath Raut another pancha witness was called by the Boisar Police to the Police Station on 07.11.2015; he has deposed that some clothes were shown to him which were packed by the Police and labelled and his signatures were obtained on the label and the panchanama. In his cross-examination, PW-10 has stated that the Police had told him that the clothes were of the deceased; that he did not know from where the clothes were got; that the clothes seen by him were burnt to some extent; the clothes were a shawl and saree which were sealed as Article 'D'

and Article 'E' and the label on these Articles were marked as Exhibits '37' and Exh. '39'. This evidence is of significance because it states that the clothes were burnt to some extent.

12.11. PW-11 - Meena Sanjay Ambhire, a social worker working with the Mahila Dakshata Committee was called by the police to TIMA Hospital on 06.11.2015. It is the prosecution case that when PW-11 reached the hospital, lady police Naik Shubhangi Navkudkar took her to Geetadevi and after taking permission from the doctor present on duty recorded the statement of Geetadevi in her presence. PW-11 has deposed that Geetadevi gave statement that the incident was related to the theft of the mobile phone and stated that accused - Guddu poured acid on her and her husband; this statement of Geetadevi was thereafter reduced to writing and countersigned by the Doctor and PW-11 and thumb impression of Geetadevi was obtained on the statement.

12.11.1. In her cross-examination, PW-11 has stated as follows:-

- (i) that she is residing at Boisar; the distance between her house and the police station is about 2 to 3 kilometers; the police called her to the hospital on 06.11.2015; at about 10.00 a. m. she reached TIMA hospital; there she met lady police Naik Shubhangi Navkudkar; the patient was in the general ward; she did not remember whether other patients were there apart from Geetadevi; though other cots were there she did not remember the number of cots; she did not remember the cot number of Geetadevi;
- (ii) that saline was administered to Geetadevi and she was screaming to some extent, she did not speak with the patient; she did not know Dr. Pawade who was present there; she did not remember whether the start time and completion time of

recording of the statement was mentioned in the statement; she did not remember whether bandage was applied on the face and hands of the patient; there were no injuries on the hands and palms of the patient; the statement recorded was not in her handwriting; the right hand thumb impression of the patient was obtained; she could not tell that the name of person who recorded Geetadevi's statement into writing was stated in the statement; she did not find any relative of the victim present at the time of recording her statement; she was at the hospital for about 2 hours and it might have taken about two hours for recording the statement; signature of attesting witness was not obtained to attest the thumb impression of the patient; she did not go to the police station in respect of this case; that on 06.11.2015 Police Officer Nale (PW-13) had called her; the patient recorded her statement that the accused had come to steal the mobile phone and acid was poured by him.

12.12. PW-12 - Jaisingh Shivram Nale, the Investigating Officer was attached to Boisar Police Station as Police Sub-Inspector from 2009 to 2017. In his evidence he has stated as follows:-

- (i) that on 06.11.2015, at about 2.00 a.m. Deepak Jogdand (PW-8) made a phone call to him informing that he had registered Crime No. 240/2015 for the offence punishable under Section 326-(A) IPC and handed over the investigation to him; he verified the report and along with the police team proceeded to TIMA hospital at Boisar;
- (ii) that at the hospital, medical treatment was given to Rajkumar and Geetadevi;
- (iii) he started search for the accused along with the police team;

they searched for the accused at village Kolavade and also in the area of Shivajinagar and Railway station area;

- (iv) that at about 3.15 a.m. a memo was received in the police station intimating the death of Rajkumar; at that time A.S.I. Gaikwad took the entry in the station diary and added Section 302 IPC and sent a letter to the Magistrate intimating about addition of Section 302 IPC;
- (v) that Shashikant Laxman Kushwaha employer of Rajkumar and owner of the company identified the dead body of Rajkumar in the ICU on cot no. 1 and it was in supine position; the dead body had become blackish and some skin on the dead body was peeled due to acid;
- (vi) that he prepared the inquest panchanama and obtained the signature of the pancha witnesses and directed head constable Lanke to send the body to the Rural Hospital, Tarapur for post-mortem;
- (vii) he sent a report to the Executive Magistrate requesting him to record the dying declaration of Geetadevi; however since condition of Geetadevi was serious, he called Meena Ambhire (PW-11) to witness the recording of her statement;
- (viii) that Dr. Pawade informed that the patient was in a condition to give her statement; accordingly lady police Naik Shubhangi Navkudkar recorded the statement of Geetadevi in question and answer form in the presence of PW-11, which was endorsed by the doctor; the thumb impression of Geetadevi was obtained on her statement;
- (ix) he then proceeded to the scene of crime in the company premises at MIDC Boisar and on examination of the scene

found that the said room admeasuring 12 feet x 20 feet was having no door; small burnt pieces of bed (bichana) were found nearby and there was one white colour plastic bucket with red colour liquid in it; he collected the pieces of burnt bed in a jar and the liquid from the bucket in a bottle as sample; he noted that there was an iron ladder to go upstairs to the room, there were drums of Sulphuric acid / acid lying in the company premises; accordingly samples of acid were collected in the presence of pancha witnesses;

- (x) that on the south-west side of the office there was a tank of 30,000 liters capacity of Sulphuric acid, it was labelled as “98% Sulphuric Acid”; the tank was having valve, rubber pipe and cock; that sample was drawn in a bottle from the said tank, sealed and labelled; photographs of the scene of crime were taken and map was drawn by the circle officer, Tarapur;
- (xi) thereafter he deposited the muddemal articles with the muddemal clerk along with receipt;
- (xii) that on 7th November 2015 injured Geetadevi died at about 5.30 a.m. in the morning; that Shashikant Kushwaha identified the dead body of Geetadevi on cot no. 2 in the ICU; the skin had turned blackish and some skin was peeled due to acid; inquest panchanama was done and police constable Mhaske was directed to send the dead body to Rural Hospital, Tarapur for post-mortem;
- (xiii) that PW-5 produced the seized clothes of deceased Rajkumar and Geetadevi duly sealed and labelled with signatures of the panchas and his signature; the seized clothes were one shawl of yellow-green colour and one saree; the seized clothes were

deposited with the muddemal clerk along with muddemal receipt; the muddemal articles were sent to the Forensic Laboratory alongwith police Naik Thakre;

- (xiv) thereafter he recorded the statements of PW-4 and PW-5;
- (xv) he issued letter to the company and obtained the attendance muster roll of deceased Rajkumar and accused – Guddu;
- (xvi) that he came to know from a secret informer that the accused had fled to Bihar; hence call details were obtained from the Superintendent of Police, Palghar;
- (xvii) thereafter he obtained permission from the Superintendent of Police to proceed to Bihar to apprehend the accused; on 2nd December 2015 he along with a police team went to Bihar accompanied by the informant; he went to Chero Opi Police station and with the help of the police took the accused in custody from village Ukhada and after completing the legal procedure returned on 10th December 2015;
- (xviii) that the accused and deceased Rajkumar were working in Paradyes company and there was a dispute between them about the theft of Rajkumar's mobile phone; that the accused had stolen the mobile phone and Rajkumar had complained about the theft to the owner of the company (Shashikant Kushwaha), which annoyed the accused and out of that grudge the accused took Sulphuric acid in a bottle and went to the room where the deceased and his family were sleeping and doused them with acid and shouted that “**mera naam sheth ko batata hai kya, ab lo mobile**”, causing grievous injury to the deceased leading to their death.

12.12.1. PW-12 in his cross-examination has given the following answers which need a detail scrutiny as they are pertinent for deciding the present case:-

- (i) that on 6th November 2015 police Naik Phadtare was the police station officer on duty; that he received a phone call from the police station at about 2.00 a.m. at midnight on 6th November 2015 to reach there and he came to the police station within 15 to 20 minutes;
- (ii) that there was no complaint filed by deceased Rajkumar or Shashikant Kushwaha for theft of the mobile phone by the accused and the mobile phone was never seized during investigation from the accused;
- (iii) that intimation was first received from TIMA Hospital and only thereafter the police station received information about the crime; that station diary entry was made about receipt of intimation from TIMA Hospital in respect of injury to Rajkumar and Geetadevi; but he did not remember at what time the entry was made in the station diary regarding receipt of the letters from TIMA Hospital; that he has not produced the station diary in evidence along with the charge sheet; that Exhibits '28' and '29' state the time of receiving the letters by the police at 3.05 a.m. and endorsement of station diary entry No. 4; that the letter at Exhibit '30' was received at 9.00 a.m. on 06.11.2015 and is entered at entry No. 13; that he was unable to comment about the change in time of death of Rajkumar from 2.25 a.m. to 3.25 a.m.;
- (iv) that he did not collect the documents regarding medical treatment of both the deceased from the hospital; that the

documents were important and could have disclosed the medical treatment given to both the deceased, their medical condition at the time of admission, etc; that there was no difficulty in securing the documents from the hospital but he could not assign any reason for not collecting the medical documents from the hospital pertaining to both deceased;

- (v) that he visited the scene of crime at about 2.00 p.m. on 06.11.2015;
- (vi) that in the spot panchanama he forgot to mention the compound wall; that the office had one room on ground floor and another on the mezzanine floor; that an iron ladder was used to access the said room and that no clothes in burnt condition were found on the incident spot; the area of the office and the said room was not stated in the spot panchanama; that he did not find any clothes in burnt condition on the ground floor near the office; and that he did not find acid on other articles including utensils in the said room;
- (vii) that at the time of the incident deceased were having three children but he did not make any inquiry with or about the three children as they were young; that he recorded the statement of the grandfather of the children to show that the children were young; the name of the grandfather was Balram Bhutai Ravidas and his statement was recorded on 9th November 2015 but he did not state in the statement that the children were young;
- (viii) that he did not find any acid or stains of acid on the clothes of PW-4 and PW-5 or of the three children; that there were no acid stains on the ladder and up to the gate of the company;

that he did not check or see the vehicle by which the injured were taken to TIMA hospital;

- (ix) that he obtained the attendance register of the employees of the company for the month of November wherein the accused was shown absent on 03.11.2015 and from 05.11.2015 to 09.11.2015; apart from recording the statement of PW-4 and PW-5 he did not record the statements of other workers who were present in the company by the name of Ravi Raut, Prakash Raut and Yuga Tare;
- (x) that during spot panchanama he did not find any water traces on the floor near the office where Rajkumar and Geetadevi had climbed down and PW-4 and PW-5 had put water on them;
- (xi) that in the station diary of 06.11.2015, against entry No. 4 there is no mention of the letters received from the hospital vide Exhibits '28' & '29' intimating admission of two patients i.e. Rajkumar and Geetadevi in TIMA hospital; however P.S.I. Phadtare on duty had forgotten to make the entry in the station diary about the two letters; that he was unable to explain if entry at Serial No.13 in the station diary indicating the time of death was changed from 2.25 a.m. to 3.25 a.m. and that there was no entry in the station diary at Serial No. 3 instructing PW-8 and constable Lanke (scribe) to proceed to TIMA hospital for investigation;
- (xii) that against entry no. 4 there is no mention that PW-8 visited TIMA hospital and recorded the statement of Rajkumar and on that basis crime was registered by him.; that there is no mention in the station diary that statement of Rajkumar was recorded in TIMA hospital;

- (xiii) that on 06.11.2015 he visited the hospital between 9.00 and 9.30 a.m. to record the statement of Geetadevi and the statement was recorded by police Naik Shubhangi Naukudkar between 9.30 and 9.40 a.m.; however in this respect also there is no entry in the station diary; that there is no mention / entry in the station diary about instructing police Naik Naukudkar to visit the hospital and record the statement of Geetadevi and return to the police station; that the time of leaving and returning to the police station of these personnel to carry out investigation is not recorded in the station diary; he admitted that there is no entry in the station diary that on 06.11.2015, he along with the investigation team went outside the police station for investigation of the same crime; that the station diary ought to bear the names of the members of the investigation team, which were not mentioned;
- (xiv) that it was true that from 1.00 a.m. of 6.11.2015 up to 1.00 a.m. of 7.11.2015 there was no mention in the station diary that he carried out investigation of the same crime during the said period;
- (xv) that he did not record statement of PW-8, Deepak Jogdand and did not inquire as to why the name of the deceased was not mentioned near his thumb impression on his statement; that he did not inquire as to who reported the incident to the Police Station at 1.05 a.m. on 06.11.2015; that there was no mention in the station diary that on 6.11.2011 he visited village Kolavade, Shivajinagar and railway station area in search of the accused;
- (xvi) that it was true that Rajkumar died prior to the issuance of letter at Exhibit '39' by him to the Executive Magistrate, the letter was issued at 8.30 a.m. on 06.11.2015 and the letter

wrongly mentions that both Rajkumar and Geetadevi were under-treatment and in serious condition;

(xvii) that during investigation it was revealed that PW-4 and PW-5 did not witness the actual quarrel between Rajkumar and accused regarding theft of the mobile phone nor there were other disputes between Rajkumar and accused and he did not get any evidence regarding theft of mobile phone from Shashikant Kushwaha, the company owner / employer and he did not investigate about the same;

(xviii) that after receiving the crime information, he did not call the Special Executive Officer or Magistrate to record the statement of the deceased; that he did not call PW-11 to the hospital or authorise her or lady constable Navkudkar to record Geetadevi's statement; that he did not give any letter to the doctor seeking his opinion as to whether Geetadevi was in a fit condition to give her statement; though it was true that it did not reveal in the investigation that PW-8 – Deepak Jogdand had given the letter to the doctor to inform the condition of the patient as to whether the patient was in a fit condition to record her statement and that doctors of TIMA hospital did not give any letter to the police station requesting to record the statements of Rajkumar and Geetadevi;

(xix) that there was no endorsement on the statement recorded by Geetadevi that while recording her statement he was present;

(xx) that he could not tell that the pancha witness (PW-1-Priti Karankale) of the inquest panchanama was the nurse of the hospital, that he did not record any supplementary statement of the owner of the company after receiving the attendance roll of

the workers;

- (xxi) that he did not prepare the spot panchanama of the office room where PW-4, PW-5 and the other two children of the deceased were sleeping.

13. As seen, perusal of the above evidence of the key prosecution witnesses shows that the conviction of the accused depends entirely on the reliability of the dying declarations of Rajkumar and Geetadevi. The learned Trial court has after consideration concluded that the dying declaration of Rajkumar cannot be doubted, that the dying declaration of Geetadevi cannot be disbelieved and the oral dying declaration heard by PW-4 and PW-5 corroborates to the written dying declaration. Thus, on this hypothesis the Trial court concludes that the murders of Rajkumar and Geetadevi were preplanned murders by the accused with intention and knowledge to cause their death.

14. Dr. Yug Mohit Chaudhry, learned counsel alongwith Ms. Payoshi Roy, Advocate appearing on behalf of the Respondent - accused has painstakingly taken us through the gamut of the proceedings and the Exhibits marked in evidence by the Trial court. He has submitted that the prosecution's case is principally based on:-

- (i) the two dying declarations of Rajkumar and Geetadevi (the deceased);
- (ii) the oral dying declaration of the deceased when they are heard shouting "bachaieye, bachaieye, Guddu Yadav ne hamara upar acid dal diya, bachao bachao; and
- (iii) the evidence of PW-4 and PW-5 being purportedly considered as eye witnesses to the incident by the Trial court.

14.1. Dr. Chaudhry has drawn our attention to the dying declaration

(Exhibit '33') of Rajkumar and has contended that the same is a fabricated statement and intrinsically unreliable on account of the following reasons:-

- (i) the prosecution's case is that PW 8 recorded Rajkumar's dying declaration naming the accused as his assailant at TIMA Hospital and registered the FIR on the basis of the same at 2:30 a.m. on 06.11.2015, however the said dying declaration does not mention the time when its recording had started and completed; therefore the statement becomes highly suspicious; that the time of 2.30 a.m. is mentioned alongwith the crime number in Exhibit '33', however five contemporaneous documents exhibited in evidence by the prosecution record the time of Rajkumar's death at 2.25 a.m. viz, (i) memo sent by TIMA Hospital, (ii) letter to the Magistrate, (iii) station diary entries, (iv) Inquest Panchanama, and (v) spot panchanama; these documents falsify the prosecution's case that Rajkumar's dying declaration (Ex '33') was recorded at 2:30 a.m.;
- (ii) the prosecution's case is that the treating doctor PW-7 informed the police station of Rajkumar's death vide memo Exhibit '30', the time of death on this document is tampered and altered by hand from 2:25 a.m. to 3:25 a.m.; however the letter dated 06.11.2015 sent to the Magistrate informing the court of Rajkumar's death for addition of the offence under Section 302 IPC clearly records the time of death of Rajkumar at 2:25 a.m.;
- (iii) the fact the Rajkumar died at 2:25 a.m. is corroborated by the evidence of PW-12 - IO when he states that on 06.11.2015 at 3:15 a.m. a memo was received at the police station informing about Rajkumar's death, hence it is only if Rajkumar had died at 2:25 a.m, that the IO could have received the information of

his death at 3:15 a.m., but if Rajkumar had died at 3:25 a.m., then the intimation could never have been received at 3:15 a.m., this fact clearly proves fabrication and tampering of the time of Rajkumar's death on the documents exhibited by the prosecution;

- (iv) the entries regarding Rajkumar's time of death found in the Station Diary at entry No. 13 (Exhibit '49'), the Inquest Panchanama (Exhibit '12') and the Spot Panchanama (Exhibit '15') consistently mention the time of death as 2:25 a.m. but the same have been altered to show and read as 3:25 a.m. which can be seen and deciphered by the naked eye;
- (v) that the time of Rajkumar's death stated in all documents is 2:25 a.m. and therefore it would have been impossible for the dying declaration to have been recorded at 2:30 a.m.; the fact that the time of Rajkumar's death has been altered from 2:25 a.m. to 3:25 a.m. across various documents clearly show that the prosecution has deliberately attempted to suppress the actual time of death and fabricated the same and the dying declaration to suit the prosecution's case;
- (vi) the IO has stated that information regarding Rajkumar's death was received and entered into the station diary at 3:15 a.m.; however the station diary for 06.11.2015 which is exhibited as evidence (Exhibit '49') does not reflect any entry being entered or noted at 3:15 a.m. which proves suppression of the original station diary and the actual time of Rajkumar's death;
- (vii) PW-5 (Kedarnath) and PW-7 (treating doctor) have stated that the two victims / deceased were brought to the hospital at 1:30 a.m.; thereafter PW-7 has stated that after their admission he

personally sent two letters (Exhibits '28' and '29') at 1:40 p.m. intimating the police station that two acid attack victims were admitted and only pursuant to receiving these letters the police came to the hospital after about 20 minutes, however the evidence given by PW-8 (Deepak Jogdand, A.P.I.) is to the contrary. According to PW-8 the police had already arrived at the hospital at 1:00 a.m., hence in that case there would have been no need and necessity for PW-7 (treating doctor) to send the letters of intimation i.e. Exhibits '28' and '29' to the police station;

(viii) the IO has admitted in his evidence that Exhibits '28' and '29' was the first information received by the police station regarding commission of the offence and the assault on the two victims; Exhibits '28' and '29' itself mention that these letters were received at the police station at 3:05 a.m. and entered at serial No. 4 in the station diary. The IO has confirmed in his evidence that Exhibits '28' and '29' were received at the police station at 3:05 a.m. Hence if the first information was received by the police station only at 3:05 a.m., it was impossible for the dying declaration of Rajkumar to have been recorded at 2:30 a.m. It is therefore clear that the police station received information regarding the offence and admission of the patients only at 3:05 a.m. which is after the death of Rajkumar;

(ix) the IO has admitted that Exhibits '28' and '29' were received at 3:05 a.m. at the police station and entered in the station diary at entry No. 4, however the same is not reflected in the station diary which is exhibited as Exhibit '49' and taken in evidence. It is therefore clear that the original station diary has been deliberately suppressed and Exhibit '49' has been fabricated to

support the prosecution's case;

- (x) the post mortem report shows that there was semi-solid food in Rajkumar's stomach and the autopsy surgeon has opined that the deceased had died within two hours of his last meal. As per the dying declaration the deceased had eaten his dinner and gone to sleep at about 9:30 p.m. However if the offence took place at about 12:30 a.m. as stated by PW-4 and PW-5 then Rajkumar would have died immediately after the offence. Hence it could not be possible for Rajkumar to have been alive at 2:30 a.m. for recording his detailed dying declaration after suffering 96% burn injuries;
- (xi) PW-5 (Kedarnath) has admitted in his statement recorded under Section 164 that he had stated before the Court that Rajkumar had died within half an hour of his admission in the hospital. This statement further corroborates the fact that Rajkumar had died immediately on admission;
- (xii) that in the present case, the prosecution has deliberately suppressed the MLC and the deceased's medical papers and hospital records; despite being asked, PW-12 - IO has failed to give any explanation for not having collected or produced the medical papers, that admittedly, the medical papers of the deceased having contemporaneous record would have been the best evidence to show the exact time of his admission to the hospital, the time of death and most importantly the time of recording of his dying declaration and medical condition at that time; and therefore the reluctance and negligence on the part of the prosecution to produce the medical papers is highly suspicious and gives rise to an adverse inference under Section 114(g) of the Indian Evidence Act, 1961;

- (xiii) PW-1, Priti Karankale the nurse present at the time of admission of the deceased has stated in her evidence that the deceased were unconscious at the time of their admission. PW-1 is therefore the best eye witness and the first person to have seen both the patients on admission and well placed to know their condition. Her evidence is therefore critical; hence if PW-1 has stated that Rajkumar was unconscious at the time of admission and died by 2:25 a.m., he could not have recorded the purported detailed dying declaration relied upon by the prosecution;
- (xiv) PW-6 - the autopsy surgeon has stated Rajkumar died due to 96% deep chemical burns. The autopsy surgeon has further opined that in cases of burn injuries over 50%, the injured suffers from heavy fluid loss which leads to immediate unconsciousness. PW-7, the treating doctor has also stated that if the burn injuries are more than 90%, there is heavy fluid loss which may lead the patient to become unconscious. This evidence corroborates PW-1's statement that Rajkumar was indeed unconscious on his admission and therefore the question of recording his dying declaration immediately on his admission could never arise;
- (xv) the dying declaration did not carry endorsement of PW-7 - the treating doctor that the deceased was in a fit state of mind to give the dying declaration;
- (xvi) the first Investigating Officer - (PW-8) Mr. Jogdand who has recorded the dying declaration has admitted that he had taken PW-7's signature and endorsement on a blank sheet of paper, thus PW-7's endorsement does not in any way establish that Rajkumar was conscious and in a fit state of mind to give his

dying declaration. PW-8 has stated that while recording the dying declaration, the deceased was talking and shouting at the same time; this clearly showed that the deceased was not in a stable condition to record an extensively detailed dying declaration; further according to the prosecution Rajkumar died within a few minutes after recording of the dying declaration, hence in these circumstances it was crucial for the prosecution to establish that the deceased was indeed in a fit state of mind to record the detailed dying declaration;

- (xvii) the dying declaration is also contradicted in material particulars, in as much as according to the dying declaration all three children of the deceased were sleeping in the office below the said room with PW-4 and PW-5, whereas PW-4 in his evidence has stated that one child was sleeping with the deceased in the said room;
- (xviii) the dying declaration states that the deceased were assaulted and doused with acid that was manufactured in the company but PW-5's evidence categorically records that the company did not manufacture any acid; that as per Rajkumar's dying declaration the incident of the mobile theft took place on 04.11.2015, however PW-4 has stated that the incident took place much earlier and the accused was removed from employment 10-15 days prior to the date of the incident; whereas PW-5 has stated that the accused was removed 4 days prior to the date of incident; this inconsistency in evidence is glaring;
- (xix) that the dying declaration states that the accused was holding a can of acid, however no can has been recovered from the scene of crime; and as per prosecution a bucket containing red liquid

was found at the spot, but this particular piece of evidence i.e. the bucket was not seized and produced by the prosecution; that if the bucket was used by the accused to pour acid on the deceased, it would have been seized by the IO and examined for finger prints of the accused;

(xx) that the written dying declaration is recorded in extreme detail and reads like a statement recorded under Section 161 of the Cr.P.C. The declaration gives the following details as given by the deceased Rajkumar:

- (a) The full name, father's name, and entire address of the deceased including details of his village and district in the State of Bihar;
- (b) the full name including middle name of PW-4;
- (c) the fact that both deceased were brought to the hospital in the company jeep;
- (d) the fact that the deceased were admitted to TIMA Hospital;
- (e) the fact that Sulphuric acid was thrown on both the deceased;
- (f) and above all it summarises the contents of the dying declaration in the end;

(xxi) that it defies common sense and logic that Rajkumar who had admittedly suffered 96% deep chemical burns and died shortly after giving the dying declaration from asphyxia and hypovolemic shock could have given such a lengthy and detailed dying declaration including his middle name and that of PW-4;

- (xxii) that it is unbelievable that while informing the police about his assailants, Rajkumar who died of asphyxia and would have been gasping for breath would spell out vivid details such as his original address in Bihar, that he was brought to the hospital in the company jeep and summarise the contents of his statement at the end;
- (xxiii) that it is the admitted case of the prosecution that the deceased suffered 96% burns all over his body including his face, eyes and neck and that the post mortem report showed that the deceased's larynx, trachea and bronchi were congested with black mucous; that there was black mucous even in the mouth; the dying declaration itself records that acid fell on the deceased's face and eyes; hence in the background of such overwhelming evidence when the deceased's entire face, mouth and neck were completely burnt, it would be impossible for the deceased to have recorded the purported detailed dying declaration;
- (xxiv) that it is unbelievable that the deceased would have known the fact of having been admitted to TIMA Hospital, Boisar or that the accused had thrown 'sulphuric acid' on him. PW-5 admits that the company where the deceased worked, sold sulphuric acid, hydrochloric acid and nitric acid and that the deceased were doused with acid while they were sleeping in the middle of the night; it is therefore unbelievable that the deceased knew that it was 'sulphuric acid' specifically that was poured by the accused;
- (xxv) that the form, manner and content of the dying declaration is synonymous with a complaint being recorded under Section 154 of the Cr.P.C; that the template and structure of the dying

declaration, the details mentioned therein, the use of words such as "samaksh" i.e. (in person) the fact that the contents of the statement being summarised at the end, all indicate that this is a statement doctored by the police and cannot be the last words of a dying man;

(xxvi) that curiously the dying declaration mentions the age of the deceased, but it does not mention the ages of the deceased's children; the IO has admitted in his evidence that the age of the deceased's children was not brought on record; nor their whereabouts or well being investigated; this clearly shows that the dying declaration was prepared either by PW-8 or PW-12 of their own accord;

(xxvii) PW-1 has stated that all of the deceased's fingers were burnt from the inside; the autopsy surgeon PW-6 has also stated that there were deep burns on the inside of all the fingers of the deceased, therefore the deceased's full thumb impression as it appears could not have been taken on the dying declaration at 2:30 a.m.;

(xxvii) that the deceased's thumb impression could not have been taken is further corroborated by the fact that the dying declaration does not mention whether it was his left hand or right hand thumb impression; the evidence given by PW-8 admits that while recording a dying declaration it is essential to mention the particulars of the hand and thumb which is used to take the thumb impression.

14.2. Dr. Chaudhry has next submitted that the written dying declaration of Geetadevi as recorded by PW-11 on the next day is intrinsically unreliable because the treating doctor has given evidence that she was

brought in dead at the time of admission to the hospital on the previous night.

14.3. In so far the oral dying declaration as heard by PW-4 and PW-5 is concerned, Dr. Chaudhary has submitted that the same cannot be considered due to material inconsistencies in the evidence that is recorded on the following grounds:-

- (i) PW-4 has stated that he heard the deceased shouting that Guddu Yadav had thrown sulphuric acid on them whereas PW-5 has stated that he heard the deceased (without specifying any name) shouting that Guddu had thrown acid;
- (ii) both PW-4 and PW-5 have admitted that since the office door was bolted from the outside, they did not witness the incident or see the accused;
- (iii) the station diary entry No. 3 at 1:05 states that the police station received a phone call from Paradyes Chemical Company that one 'Guddu Singh' had thrown acid on two persons who were being taken to TIMA Hospital for treatment; thus the station diary entry No.3 at 1:05 a.m. could then have been made only on the basis of information given by PW-4 and PW-5, as according to the IO, the name of the accused was never informed by the deceased till they reached the hospital and recorded their statement;
- (iv) the deceased Rajkumar suffered 96% and Geetadevi suffered 75% burns all over their body including burns on their face, eyes and neck; this has been confirmed by the two postmortem reports which state that their larynx, trachea and bronchi were congested with black mucous along with presence of black mucous in mouth; the alleged dying declaration of Rajkumar himself states that acid fell on his face and eyes, thus the entire

face, mouth and neck was burnt; in such a situation it would be virtually impossible for Rajkumar or Geetadevi to have screamed in the manner that PW-4 and PW-5 could have accurately heard their oral dying declaration;

- (v) the oral dying declaration is entirely without any corroboration, the prosecution has not produced any evidence to establish the presence of the accused at the scene of crime; if that would have been the case, the accused's fingerprints would have been present all over the scene of crime, including on the bucket having acid, the ladder leading up to the said room and the latch on the office door; however the police in their wisdom have not collected any fingerprints while investigating the crime; hence the veracity of the oral dying declaration is highly questionable.

14.4. Dr. Chaudhry has next argued that the prosecution has not placed on record such material which can be admissible in evidence and made the following submissions:-

- (i) The treating doctor PW-7 has stated that on admission of the two patients / deceased, he personally sent two letters (Exhibits '28' and '29') to the police station that two acid attack victims had been admitted; PW-12 - IO has admitted that Exhibits '28' and '29' is the first instance when the police station received information of the commission of the offence and the acid assault on the two victims; Exhibits '28' and '29' when read, itself mention the endorsement that these letters were received at the police station at 3:05 a.m. and entered at serial No. 4 in the station diary and the IO has confirmed that these letters were received at the police station at 3:05 a.m. In this background, even though the IO has admitted that Exhibits '28' and '29' were received at 3:05 a.m. and entered in the station

diary at entry No. 4, the said entry No. 4 is not reflected in the station diary which is exhibited in evidence as Exhibit '49'; and on being questioned in cross-examination the IO is unable to give any satisfactory explanation for the same and has stated that the P.S.I. may have forgotten to enter the same in the station diary; this explanation on the face of record is patently false and unreliable as the two letters themselves carry the endorsement that they were entered at serial No. 4 in the station diary; hence this leads to the inevitable conclusion that the original station diary has been destroyed / suppressed and a fabricated station diary is produced in evidence by fudging the entries, time of death, time of receipt of letters from the hospital etc.;

- (ii) that PW-12 - IO has stated that on 06.11.2015, at 3:15 a.m., a memo was received at the police station with information regarding the deceased's death and this information was entered in the station diary by A.S.I. Gaikwad; however at 3:15 a.m. there is no such entry made in the station diary; the only entry regarding Rajkumar's death is at serial No. 13 at 9:00 a.m. on 06.11.2015;
- (iii) PW-8 has stated that on receiving information that Rajkumar and Geetadevi were admitted in the hospital, he first went to the police station, collected the writing material and alongwith the scribe-Police Naik Mr. Lagad went to the hospital. However, there is no mention of this fact in the station diary, though when confronted with this fact in cross-examination, the IO is unable to give any satisfactory answer for this omission;

- (iv) the IO has admitted that there are no entries in the station diary regarding police Naik Shubhangi Naukudkar having left the police station to investigate and record the dying declaration of Geetadevi; nor are there any station diary entries regarding search investigation carried out by the IO himself;
- (v) the IO has admitted that it is absolutely necessary to mention in the station diary the fact if any police personnel has left or returned to the police station on account of any investigation but admittedly he was unable to explain the missing station diary entries in the present case;
- (vi) that as per entry No. 3 made at 1:05 a.m. in the station diary exhibited in evidence, the police station received a phone call from Paradyes Chemical Company informing them that accused - 'Guddu Singh' had poured acid on the deceased and they were being taken to TIMA Hospital, but contrary to this PW-12 - IO has in evidence admitted that the first intimation to the police station of the commission of offence was received vide letters (Exhibits '28' and '29') sent by PW-7 (the treating doctor) at 3:05 a.m.; this major contradiction itself falsifies the fact that the first intimation of the offence was through the phone call received by the police station; further despite being questioned the IO is unable to state as to who / which officer in the police station received the phone call at 1:05 a.m.; however in contrast to this entry while recording other entries pertaining to other offences, the station diary clearly mentions the name of the caller and the phone number from which the intimation is received while noting the same in the station diary.

14.5. Dr. Chaudhry has submitted that it needs to be borne in mind

that a dying declaration is an exception to the hearsay rule and cannot be the subject matter of the test of cross-examination. As such the dying declaration can therefore only be admitted in evidence if there is absolutely no doubt whatsoever about its genuineness. He submitted that in view of his aforesaid submissions there arises a major discrepancy and inherent contradiction over the time of death of Geetadevi, the evidence given by PW-4 and PW-5 with respect to the oral dying declaration of having heard the deceased and therefore the dying declarations in the present case cannot be admitted in evidence.

14.6. Dr. Chaudhry, in support of the proposition that for a dying declaration to be relied upon there must be objective evidence to show that the deceased was in a fit mental state and in the absence of same no reliance can be placed on the same has referred to and relied upon the following decisions of the Supreme Court:

- (i) *Laxmi Vs. Om Prakash*¹;
- (ii) *K. Ramchandra Reddy and Anr. Vs. Public Prosecutor*²;
- (iii) *The State of Orissa Vs. Parasuram Naik*³;
- (iv) *Kantilal Vs. State of Rajasthan*⁴;
- (v) *Waikhom Yaima Singh Vs. State of Manipur*⁵.

14.7. He has referred to and relied upon the decision of the Supreme Court in the case of *Jayamma Vs. State of Karnataka*⁶ wherein the Supreme Court has held that in case where the deceased has suffered 98% burns, the

1 (2001) 6 SCC 118
2 (1976) 3 SCC 618
3 (1997) 11 SCC 15
4 (2009) 12 SCC 498
5 (2011) 13 SCC 125
6 (2021) 6 SCC 213

Court must adopt a cautious approach as there are serious doubts whether the victim could be in a fit state of mind to make a dying declaration.

14.8. He has referred to and relied upon the decision of the Supreme Court in the case of *Balbir Vs. Vazir and Ors*⁷. wherein the Supreme Court while examining a similar detailed dying declaration held that it is entirely unnatural for a person on his deathbed with excruciating pain to state minute details in his dying declaration and that in such a case no reliance may be placed on the same.

14.9. He has therefore referred to and relied upon the decision of the Supreme Court in the case of *Bhajju Vs. State of MP*⁸ to argue that the admissibility of a dying declaration is founded on the principle of necessity and court as a rule of prudence must look for corroboration and should a dying declaration suffer from any infirmity the same cannot form the basis of conviction. He has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. He submitted that in the present case the two written dying declarations and the oral dying declaration suffer from material infirmities and without corroboration no conviction can be based on such a oral dying declaration.

14.10. Dr. Chaudhry, has on the basis of the aforestated submissions therefore stated that the dying declarations and the evidence given by PW-4 and PW-5 read alongwith the evidence given by the PW-7, PW-1 and PW-12 completely belie the prosecution's case and the evidence given by PW-4, PW-5 and PW-8 is wholly unreliable and cannot be relied upon to indict the accused. Hence he has prayed for quashing of the impugned judgment.

15. Ms. M.M. Deshmukh, learned APP appearing on behalf the

7 (2014) 12 SCC 670

8 (2012) 4 SCC 327

Appellant – State in support of the judgment dated 09.05.2019 made submissions as follows:-

- (i) that PW-4 and PW-5 are the eye witnesses to the actual incident;
- (ii) that there was acrimony between Rajkumar and the accused due to the theft of Rajkumar's mobile phone by the accused;
- (iii) that PW-4 and PW-5 who are the first persons who heard the oral dying declaration of the deceased;
- (iv) the fact that the office door was bolted from the outside clearly showed the intention of the accused to commit the crime;
- (v) that the dying declaration of Rajkumar has been proved in evidence since it bears the endorsement of PW-7 - Dr. Atul Pimple;
- (vi) that the dying declaration of Geetadevi is also proved as it has been recorded by police Naik Shubhangi Navkudkar in the presence of PW-11 who has deposed to the same;
- (vii) the dying declaration of Geetadevi was not recorded by the Special Executive Magistrate despite being informed by the letter of the IO as Geetadevi's condition was serious; therefore PW-11, Member of the Mahila Dakshta Committee was summoned to witness the recording of the dying declaration of Geetadevi;
- (viii) that after the incident the accused ran away to Bihar which clearly showed the conduct of the accused;

- (ix) that the prosecution case is entirely based upon the dying declarations of Rajkumar and Geetadevi and the evidence of PW-4 and PW-5 being eye witnesses to the incident.

15.1. Ms. Deshmukh has referred to the Exhibits placed on record in evidence to emphasize that the dying declarations are duly proved and hence offence under Section 302 IPC has been proved against the accused.

15.2. Ms. Deshmukh, in support of her submissions and the prosecution's case has referred to and relied upon the decision of *Shama Vs. State of Haryana and Ors.*⁹ to submit that the law does not prescribe any particular format for recording the dying declaration; that the law also does not prescribe any specific authority to record the dying declaration; that some times a perfect and neatly structured dying declaration at times brings about an adverse impression and creates suspicion in the mind of the court if it is drawn with mathematical precision and formulated structurally with precise words. She submitted that once the dying declaration is recorded immediately after the incident and bears the endorsement of the treating doctor alongwith the endorsement by the deponent as required, then the same is admissible under the provisions of 32(1) of the Indian Evidence Act, 1872. She submitted that in the absence of any kind of infirmity and / or suspicious circumstances surrounding the execution of the dying declaration, once it is proved in evidence in accordance with law, it has to be relied upon for convicting the accused even in the absence of corroborative evidence. She has finally submitted that in the present case there are two dying declarations recorded of Rajkumar and Geetadevi which stand corroborated by the oral dying declaration of both of them as evidenced by PW-4 and PW-5 and hence the impugned judgment and order is sustainable.

16. We have heard Ms. Deshmukh, learned APP and Dr. Yug

9 (2017) ALL MR (CRI) 448 (SC)

Mohit Chaudhry, learned counsel appearing for the accused at length, perused the material on record with their assistance, considered the case laws relied upon by them and the submissions advanced across the bar.

17. According to the prosecution present offence took place as the accused was provoked because of the incident of theft of Rajkumar's mobile phone and the threat given by Rajkumar to the accused that his name would be divulged to the employer / owner of the company. This is the charge which leads to the motive for the accused to commit the offence. It is pertinent to note that the prosecution has not examined the employer Shashikant Khushwaha, his brother Omprakash Khushwaha, his wife Smt. Shashikant Khushwaha and his son Rahul Khushwaha who were all present at the scene of crime. Mr. Omprakash, Rahul and Smt. Shashikant Khushwaha were the first persons to have arrived at the scene of crime on being informed on phone by PW-4. They were the first persons to have seen Rajkumar and Geetadevi's state apart from PW-4 and PW-5 and recording their evidence was extremely vital not only from the point of view of what they saw but also to throw light upon the prelude to the incident pertaining to the theft of the mobile phone and the altercation between the deceased and the accused.

18. Hence for the following reasons the alleged motive espoused by the prosecution does not stand established:

- (i) It is the prosecution's case that the accused assaulted the deceased on account of a grudge as deceased Rajkumar had informed their employer Shashikant Khushwaha about the accused having stolen his mobile phone and therefore the accused was removed from service. However, the prosecution has failed to prove any aspect of the theft of the mobile or that there was any grudge or that the accused was removed from

work on account of the said incident;

- (ii) PW-12 - IO has admitted that on investigation no mobile phone was recovered from the accused and he found no evidence of theft of any mobile phone by the accused, therefore this evidence by the IO completely falsifies the 'motive' theory espoused by the prosecution;
- (iii) the prosecution did not examine the employer Shashikant Khushwaha even though he was available and had actively participated in the investigation. Mr. Khushwaha was best placed to depose about the quarrel between the deceased and the accused and any grudge borne by the accused or confirm the date on which the accused was removed from employment, the incident which had triggered the commission of the alleged offence according to the prosecution;
- (iv) the evidence of PW-4 and PW-5 about the 'motive' theory clearly admits that both had neither personally witnessed the theft nor the quarrel between the deceased and the accused; thus their testimony regarding motive is entirely hearsay and therefore unreliable.

19. Before we proceed to evaluate the admissibility of the dying declarations, at this juncture we find it necessary to assert that after thoroughly considering the evidence of PW-4 and PW-5, it cannot be concluded that the said prosecution witnesses are eye witnesses to the incident. We have scrutinized the evidence of these two witnesses. It is clear from their evidence that both these witnesses have denied seeing the presence of the accused at the scene of crime; both these witnesses have stated that until the office door latch was opened by Rajkumar, save and except hearing the

shouting of Rajkumar and / or Geetadevi they did not see the accused at the scene of crime; further the theory of motive propagated by the prosecution has also been clearly denied by these two witnesses when they state that they did not have any knowledge or were not privy to the dispute regarding the theft of Rajkumar's mobile phone by the accused before the incident. We also find that the evidence given by both these witnesses with respect to the date of removal of the accused from the company is at variance; PW-4 has stated that the accused was removed from work 10 to 15 days before the incident whereas PW-5 has stated that the accused was removed from work 4 to 5 days before the incident. However the prosecution case about the theft of Rajkumar's mobile phone is that the theft had taken place on the previous day before the date of the incident. PW-12 - IO has collected evidence in the form of muster roll of the company which however showed that the accused did not attend work on 03.11.2015 and 05.11.2015 to 09.11.2015. There is another glaring omission and contradiction in the evidence given by PW-4 and PW-5 while describing the incident as then saw after the office door latch was opened by Rajkumar. PW-4 has stated that he saw Rajkumar and Geetadevi in a completely burnt condition whereas PW-5 has stated that after the office door was open by Rajkumar, he was standing near the office and both PW-4 and PW-5 went upstairs to the said room to check on Geetadevi. Further PW-4 in his evidence has stated that Rajkumar and Geetadevi were taken in a tempo to the hospital, which statement has been reiterated more than once, whereas PW-5 has stated that Rajkumar and Geetadevi were taken to the hospital in the Bolero pickup jeep of the company which was driven by Omprakash Kushwaha. In view of the aforesaid glaring inconsistencies no case whatsoever has been made out on the basis of any circumstantial evidence and / or the chain of circumstances have been proved by the prosecution through PW-4 and PW-5 as eye witnesses. We may therefore state that in the present case what we have before us is a case founded on circumstantial evidence with no eye witnesses to the incident. Both PW-4

and PW-5 have admitted that they have not seen the accused at the scene of crime; hence on a proper and careful evaluation of the chain of circumstances narrated by the prosecution on the basis of the evidence of the aforesaid witnesses, we are afraid to state that the said circumstances do not lead to the unequivocal inference of the guilt of the accused. The circumstantial evidence referred to and relied upon by the prosecution is clearly inconsistent with the sole hypothesis of the guilt of the accused.

20. Next we come to the dying declarations, which are principally relied upon by the prosecution to indict the accused. Before we advert to the actual admissibility and credibility of the dying declarations, it will be apposite to consider the case law on the evidentiary value of a dying declaration and the sentence of conviction solely based thereupon. For this, we may usefully refer to and rely upon the contents of paragraph Nos. 14 to 17 in the case of *Jayamma Vs. State of Karnataka (supra)* cited by Dr. Chaudhry which has referred to a few decisions of the Supreme Court which according to us are closer to the facts of the present case. Paragraph Nos. 14 to 17 of the said judgment read thus:-

“14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P-5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

14.1. In *P.V. Radhakrishna. v. State of Karnataka*¹², this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard-and-fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

14.2. In *Chacko v. State of Kerala*¹³, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it

would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded “*patient conscious, talking*” in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

14.3. In *Sham Shankar Kankaria v. State of Maharashtra*¹⁴, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in *Paniben v. State of Gujarat*¹⁵ wherein this Court summed up several previous judgments governing dying declaration, the Court in *Sham Shankar Kankaria*¹⁴ (Supra) reiterated: (*Sham Shankar Kankaria*, SCC pp. 172-73, para 11)

“11. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104]);

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav* [(1985) 1 SCC 552 and *Ramawati Devi v. State of Bihar* [(1983) 1 SCC 211]);

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618]);

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264]);

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh v. State of M.P.* [1981 Supp SCC 25]);

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath v. State of U.P.* [(1981) 2 SCC 654]);

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455]);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha v. State of Bihar* [1980 Supp SCC 769]);

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram v. State of M.P.* [1988 Supp SCC 152]);

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P. v. Madan Mohan* [(1989) 3 SCC 390]);

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani v. State of Maharashtra* [(1982) 1 SCC 700])”

15. It goes without saying that when the dying declaration has been recorded in accordance with law, and it gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a “dying declaration” is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of brewing death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction.

16. We may also take note of the decision of this Court in the case of *Surinder Kumar* (Supra). In the said case, the victim was admitted in hospital with burn injuries and her dying declaration was recorded by an Executive Magistrate. This Court, first doubted whether the victim could put a thumb impression on the purported dying declaration when she had suffered 95-97% burn injuries. Thereafter, it was noted that “*at the time of recording the statement of the deceased.....no endorsement of the doctor was made about her position to make such statement*”, and only after the recording

of the statement did the doctor state that the patient was conscious while answering the questions, and was “*fit to give statement*”. This Court lastly noticed that before the alleged dying declaration was recorded, the victim in the course of her treatment had been administered Fortwin and Pethidine injections, and therefore she could not have possessed normal alertness. It was hence held that although there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, the Court must nonetheless be satisfied that the dying declaration is true and voluntary, and only then could it be the sole basis for conviction without corroboration.

17. Consistent with the cited principles, this Court refused to uphold the conviction in the case of *Sampat Babso Kale and Another v. State of Maharashtra*. The dying declaration in that case was made by a victim who had suffered 98% burn injuries, and the statement was recorded after the victim was injected with painkillers. This Court adopted a cautious approach, and opined that there were serious doubts as to whether the victim was in a fit state of mind to make the statement. Given the extent of burn injuries, it was observed that the victim must have been in great agony, and once a sedative had been injected, the possibility of her being in a state of delusion could not be completely ruled out. Further, it was specifically noted that: (SCC p. 744, para 41)

“14. *the endorsement made by the doctor that the victim was in a fit state of mind to make the statement has been made not before the statement but after the statement was recorded. Normally it should be the other way around.*”
(emphasis supplied]

20.1. As seen above, it is pertinent to consider whether the percentage of burns suffered by the victim is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. In the present case considering the facts and circumstances surrounding recording of the alleged dying declaration of Rajkumar, it is highly improbable that Rajkumar could have given the dying declaration as the evidence scrutinized by us on the face of record is highly unreliable and does not inspire any belief or confidence. Secondly, we may have to determine whether a person with 96% deep burn injuries suffered due to acid would be in a position to record his dying declaration effortlessly and in great detail as has been done in the present case. The dying declaration of Rajkumar referred to and relied upon by the prosecution is therefore highly suspicious and suffers from infirmity and thus cannot form the basis of conviction. We

may also state that we are not satisfied whether Rajkumar was conscious and in a fit mental condition to make the dying declaration after looking into the medical evidence alluded to hereinabove in the present case.

21. We have perused the dying declaration of Rajkumar (Exhibit '33'). The same is also reproduced verbatim in paragraph No. 10.6 hereinabove for the sake of convenience. A person with 96% burn injuries due to deep chemical burns (acid) in the first place would not be in any position to talk and / or give a detailed dying declaration as in the present case. Though there is a serious ambiguity in respect of the time of recording of the dying declaration what is important to assess is whether Rajkumar was alive and conscious to give the dying declaration in the hospital. The medical evidence on record given by PW-6, the autopsy surgeon shows that Rajkumar had died within two hours of having his last meal. It has come in evidence that Rajkumar ate his dinner at 9.30 p.m. and went to sleep. The postmortem report clearly states that undigested rice was found in the stomach of Rajkumar. Hence it can be easily concluded that Rajkumar's death had occurred between 11.30 p.m. to 12 a.m. and therefore by no stretch of imagination it could be possible for Rajkumar to have remained alive up to 2.30 a.m. for recording his detailed dying declaration. One of the glaring omission in the case of prosecution is the non availability of the medical treatment papers of Rajkumar and the hospital record of his treatment. There is no cogent explanation coming from the IO, in fact the IO has admitted that the medical papers would have revealed all details pertaining to the medical treatment administered to Rajkumar, his status at the time of admission to the hospital, the time of recording of his dying declaration and the time of his death. Further the medical evidence given by PW-6, the autopsy surgeon and PW-7, the treating doctor has stated that in the case of burn injuries over 50%, the injured suffers from heavy fluid loss which may lead to unconsciousness needs to be ascribed due weightage. In the present

case admittedly Rajkumar sustained 96% and Geetadevi sustained 75% deep chemical burns. The hospital nurse – Ms. Priti Karankale, PW-1, in her evidence stated that Rajkumar was unconscious at the time of admission. She was the first person to have seen Rajkumar and attended to him. Her evidence is corroborated by the above evidence given by PW-6 and PW-7, is uncontroverted and therefore deserves to be accepted. It is therefore clear that Rajkumar on his admission in the hospital was unconscious and could not have recorded the detailed dying declaration. In so far as the dying declaration of Geetadevi is concerned, we are shocked to find that the evidence given by PW-7 – treating doctor has been completely ignored by the Trial court in its entirety. The most glaring omission that we find in the prosecution's case is that PW-7 has deposed that Geetadevi when admitted to the hospital was brought in dead with burn injuries all over her body, hands and palms. Therefore in the face of such evidence available on record, it is impossible to have recorded Geetadevi's dying declaration on the next day by police Naik Shubhangi Navkudkar without any authority from the IO and in the presence of PW-11. It is pertinent to note that police Naik Shubhangi Navkudkar has not been examined by the prosecution.

22. From the evidence available on record, we find that according to the evidence given by PW-4 and PW-5, police personnel were present in the hospital when they reached the hospital alongwith Rajkumar and Geetadevi and they gave the entire information to the police which was recorded into writing; however no FIR was recorded on the basis of the statements given by PW-4 and PW-5. We may state that PW-4 and PW-5's statements should have been recorded as FIR as it was the first information of the crime received by the police. However the fact that no FIR was recorded on the basis of the information given by PW-4 and PW-5 and the police having waited for the dying declaration to be recorded before recording the FIR clearly shows that the identity of the assailant was

unknown.

23. It is the prosecution's case that the accused with his own bare hands had flung a can of acid on the deceased, which splattered all over the deceased and his wife who were sleeping, however the evidence given and photographs of the spot panchanama clearly depict that there was a pink coloured mosquito net which was intact and tied at the spot of crime; it is therefore unbelievable that the accused could have first lifted the mosquito net and then doused the victims with acid; this unburnt mosquito net at the scene of crime casts a cloud of suspicion on the prosecution's case. Moreover, if the accused had indeed flung acid on the victims from a bucket, the accused would have had some injuries on his own hands, but that is not the case and there is no investigation on that aspect.

24. We may now refer to the contradictions in the case of the prosecution. It is the case of the prosecution that after the incident the accused was absconding and was eventually arrested in Bihar on 05.12.2015; however, the accused was a native resident of Bihar and was working in Mumbai as a migrant labourer. PW-4 in his evidence has stated that the incident of theft of mobile phone took place much earlier and the accused was removed from his job about 10-15 days prior to the date of the incident; however PW-5 has stated that the accused was removed 4-5 days prior to the incident. Both prime witnesses who are considered to be eye witnesses have deposed incorrectly about the date of removal of the accused; however after removal it is only natural for the accused to go to his native place in Bihar; it cannot be inferred that the accused was absconding or that there was anything suspicious about the accused being in Bihar; the prosecution has failed to produce the accused's CDR or any other incriminating material to show that he had left for Bihar after the offence; that the attendance registers produced by the prosecution have not been proved by the author of the document.

25. That apart we may also highlight the fact that there is admittedly suppression of material evidence on the part of the prosecution in the present case. We say this with all authority at our command. As it is well established in law that the best evidence available to prove any fact must be adduced. Suppression of material evidence not only violates the best evidence rule but also raises an adverse inference under the provisions of Section 114(g) of the Indian Evidence Act, 1961, the benefit of which must go to the accused. In the present case what is needed to be asserted is the fact that whether Rajkumar was alive and in a fit condition to give the detailed dying declaration which is sought to be relied upon by the prosecution. The factual evidence discussed hereinabove if closely looked at will clearly convey one and only one message, that Rajkumar could never have been in a position to record the detailed dying declaration. It is stated that in such a case the only contemporaneous record / evidence that would be the best evidence to prove the prosecution's case would be the medical treatment papers which would have ascertained the time of admission, the medical condition and status of the patient on admission, the treatment given to the patient, the time of recording the dying declaration and the time of his death. In the present case the medical papers have not been produced or referred to or relied upon by the prosecution. What is significant is that the IO in his cross-examination clearly admits that the medical papers are a vital piece of evidence in the present case but in the same breath has failed to give any cogent answer for not collecting the medical papers from the hospital and producing the same in evidence.

26. Another glaring omission in the prosecution's investigation and case is about the non-examination of the children who were sleeping in the said room and the office at the time of the incident. As seen, the deceased had three sons. It has come in the evidence of PW-4 that the youngest son was sleeping with the deceased in the said room above the office whereas the

other two sons were sleeping with PW-4 and PW-5 in the office below the said room. Considering the alleged acid attack the three children would definitely be important witnesses to the incident and would have been the best persons to give evidence as to what transpired on that fateful night. The silence of the prosecution on this aspect, having not examined or recorded the statement of any of the three children and when asked in cross-examination, the IO being unable to give any valid explanation for not examining the child witnesses goes to show that the investigation lacks force and bonafides.

27. There is no dispute that the deceased Rajkumar and Geetadevi have been burnt with acid leading to their death. However the moot question is whether the prosecution has brought forth and proven material and believable evidence to indict the nexus of the accused to the act of causing the death of Rajkumar and Geetadevi. On marshaling of the entire evidence of the prosecution witnesses, we are afraid to state that we have not been able to unearth the precise answers to the following questions which emanate from the evidence which is placed on record:-

QUESTIONS REMAINING UNANSWERED:

- (i) At what time the Police Authorities come to know for the first time about the happening of the incident? Was it at 1.00 a.m. or 1.30 a.m. or 2.35 a.m.?
- (ii) What is the precise time of death of Rajkumar according to the prosecution?
- (iii) Admittedly when PW-4 and PW-5 disclosed the entire incident as they saw to the Police in the hospital and it was reduced to writing, why did the Police not take action on the said statements as it was a cognizable offence and register the report / complaint / F.I.R.?

- (iv) Why is the Magistrate not examined by the prosecution who has recorded the statement under Section 164 of the Cr. P.C.?
- (v) According to the post-mortem report, Rajkumar's death occurred two hours after having meals since undigested rice was found in his stomach, which means that the death had occurred at night between 11.30 p.m. to 12.00 a.m.
- (vi) Why was there no investigation about the child sleeping with the deceased Rajkumar and Geetadevi in the said room when the incident occurred? Similarly there is no investigation of the two children sleeping with PW-4 and PW-5 in the office by the prosecution.
- (vii) What is the answer / explanation to the tampering of evidence with respect to the changing and altering the time of death of Rajkumar from 2.25 a.m. to 3.25 a.m. which is clear to the naked eye in 4 specific Exhibits viz.:

Sr. No.	Exhibit Nos.	Page No in paper book	Description
(i)	Exh. 15	Page 28	Spot Panchanama
(ii)	Exh. 12	Page 25	Inquest Panchanama of Rajkumar
(iii)	Exh. 30	Page 66	Letter of Intimation of death of Police
(iv)	Exh. 49	Page 101	Station House Diary

- (viii) What is the explanation in respect of the letter written to the Magistrate which shows the time of death as 2.25 a.m. whereas in the other documentary evidence, the said time is altered to 3.25 a.m.?
- (ix) Where is the evidence to show investigation and seizure of the

traces of acid / burnt clothes or articles in the room and at the scene of crime which is evident from the photographs taken during spot panchnama?

(x) Why was the employer "Shashikant Kushwaha" not examined by the prosecution to prove the 'motive' for committing the crime? If the employer was examined, the alleged motive of the theft of the mobile phone and sacking of the accused could have been proven:-

(a) since the accused was fired from employment on the purported allegation of theft of Rajkumar's mobile phone;

(b) to prove the date of removal of the accused from work / employment;

(c) to confirm that the owner recommended the deceased to be taken to TIMA hospital after the incident;

(d) to question the presence of the wife of the employer, brother "Omprakash" and nephew "Rahul" of the owner of the company at the scene of crime.

(xi) Why do the specific incidents and investigation carried out do not find a mention in the station house diary exhibited in evidence at Exhibit '49'?

(xii) When the evidence on record is clear that the fingers and hands of the deceased were completely burnt from the inside, then how could the deceased give their full thumb impression on the dying declarations?

(xiii) Considering the evidence of PW-7 - treating doctor that wife

Geetadevi was already dead when brought to the hospital, what is the veracity of the dying declaration given by Geetadevi?

- (xiv) Why was the lady police Naik Naukudkar not examined to corroborate the dying declaration given by Geetadevi as the IO has given specific evidence that he had never instructed Navkudkar to visit the hospital and record Geetadevi's dying declaration?
- (xv) How is that PW 8 - Deepak Hari Jogdand recorded the dying declaration of deceased Rajkumar at 1.00 a.m. when he was admitted to the hospital only after 1.30 a.m.?

28. The answers to the above questions are found wanting when seen through the prism of the evidence placed on record by the prosecution. No evidence has been produced by the prosecution to justify the precise time of death of Rajkumar. Perusal of Exhibit - 12, (Inquest Panchanama of Rajkumar), Exhibit -15 (Spot Panchanama) of the incident site, Exhibit -30 (letter of intimation of death of Rajkumar to the police) and Exhibit-49 (Station House Diary) clearly reveal to the naked eye that the time of death of Rajkumar has been altered by hand from 2.25 a.m. to 3.25 a.m. Another glaring fact which deserves to be mentioned is the evidence of PW 7- Dr. Atul Pimpale, the treating doctor who has clearly stated that Geetadevi was already dead when she was brought to the hospital.

29. Taking into consideration the totality of the circumstances in the present case it cannot be said to be a fair trial, especially when capital punishment is sought to be inflicted upon the accused.

30. In the case of *Ashish Batham Vs. State of Madhya Pradesh*¹⁰ in paragraph 8 of the judgment, the Supreme Court has said that till the charges

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are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indictment of the accused does not arise. Paragraph No. 8 of the said judgment reads thus ;

"8. Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is not effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between conjectures and sure conclusions to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record".

30.1. The aforesaid ratio is squarely applicable to the case in hand, after having appreciated the entire evidence on record, the material discrepancies, lacunae and blatant illegalities as alluded to herein above, we would definitely indicate that the prosecution has utterly failed in connecting the dots and bringing home the guilt of the accused. Merely because the crime is heinous and brutal, it would not be just to get carried away sans any legal proof required to substantiate the charge of murder on the accused. The standard of proof applied by the learned Trial Court is not in consonance with the evidence placed on record. There can, at the most, be a case of strong suspicion and no more suspicion however grave cannot take the place of proof. The evidence to indict and convict the accused is neither clear, cogent nor credible. There is absolutely no question of awarding death sentence to the accused, rather, it is the case wherein the accused must be given the benefit of doubt, nay, it would be a travesty of justice.

31. We state that the trial was conducted in the most casual manner and whether the trial was just and fair in a capital punishment case is a question remaining unanswered. The quality and credibility of the evidence adduced is not even upto the mark as observed by us. The evidence led by the prosecution is fraught with major inconsistencies. As seen, the contradiction in the evidence given by PW-4 and PW-5 is apparent on the face of record. The medical evidence given by PW-6 clearly states that Rajkumar had sustained 96% deep chemical burns and had deep burnt injuries all over the body. It further states that fingers of both his hands were burnt. Similarly in the case of Geetadevi, the medical evidence states that she sustained 75% deep chemical burn injuries and had deep burns on fingers of both her hands and the skin of her fingers was entirely burnt. The medical evidence is required to be accepted and if it is so, it cannot be comprehended that Rajkumar and Geetadevi were in a conscious state of mind to record their dying declarations. That apart the evidence given by PW-7 i.e. the treating doctor is relevant. PW-7 has stated that Geetadevi was brought to the hospital at 01.40 a.m. with burn injuries all over her body, hands, palms and skin which had deep burns. He has further stated that though police personnel present informed him to examine Geetadevi, he had categorically told them that she was already dead, hence no treatment was given to Geetadevi. He has further stated that the dead body of Geetadevi was removed from the hospital on 06.11.2015. In the backdrop of this evidence which is corroborated by the evidence of PW-1, the nurse who was the first person to have treated Rajkumar and Geetadevi on their admission to the hospital, it can be safely concluded that both Rajkumar and Geetadevi would not have been conscious to record their respective dying declarations. We have dealt with the major discrepancies namely non-recording of the various events and incidents pertaining to the case at hand in the station diary which are glaring and cannot be ignored. Further the evidence given by PW-8 who has recorded the statement of Rajkumar is also relevant as PW-8 has stated

that the thumb impression was not identified, the signature of the attesting witness was not taken, the endorsement that the patient was in a fit condition to record his statement (dying declaration) was not made, the starting time of recording of the statement and ending time after completion of recording was not stated, the scribe who recorded the statement i.e. police Naik Mr. Lagad was not examined and PW-8 did not tell the doctor on duty to record the statement of Rajkumar, are major and glaring omissions which cannot be lost sight of.

32. In view of the above discussion and findings, we have come to the unequivocal conclusion that the prosecution in the present case has not only suppressed vital evidence but has deliberately fabricated the dying declaration of the deceased Rajkumar which forms the basis of the prosecution's case. Once we come to the conclusion that the very foundation of the prosecution's case is false and fabricated, the case of the prosecution cannot be believed and deserves to be rejected. The prosecution and/or the investigating machinery has a responsibility to investigate in a fair and neutral manner without having regard to the ultimate result. What we find in the facts of the present case is that there is active suppression and fabrication of material facts which cannot be ignored or overlooked. For all the above reasons, we hold that the learned Additional Sessions Judge, Palghar is not at all justified in convicting the accused of the offence of murder and therefore the reference made by the learned Additional Sessions Judge, Palghar stands rejected. As a consequence, the conviction and sentence passed against the accused is set aside and the accused stands acquitted of the charge framed against him. The Appellant is directed to set the accused at liberty forthwith unless he is required to remain in custody in any other case.

33. In view of the above, the reference made by the learned Additional Sessions Judge, Palghar seeking confirmation is rejected and the Appellant is acquitted.

[MILIND N. JADHAV, J.] [SMT. SADHANA S. JADHAV, J.]