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In the court of Sessions Judge, Pune. At Pune.
[Presided over by Dr. Smt. S.S.Phansalkar-Joshi, Sessions Judge,5,Pune.]

Sessions Case No. 508/07.

State of Maharashtra,
through Nigdi police station.

..Complainant.

Vs.

1] Aditi Baldev Sharma,
Aged 24 yrs., occu. Education,
R/o 24-C, 185, Sainik colony,
Jammu-Kashmir.

2] Pravin Premswarup Khandelwal,
Age 24 yrs., occu. Service,
R/o 18, Malhotra Nagar road No. 1,
BKI area, Jaypur [Rajasthan].

.. Accused.

Appearance : Smt. Nilima Vartak, APP for State.
Shri. Vijayrao Mohite, advocate for accused.

Offence under Sections 302 r/w 120-B of IPC.

- J U D G M E N T -

(Decided on June 12, 2008.)

1] This case presents a tragic scenario as the budding and flourishing love relationship between accused No. 1 Aditi and deceased

Udit Bharati, which was on the threshold of marriage and sailing smoothly with consent and approval of the parents on both sides, got swerved to the wrong side and sank into tragedy when accused No. 1 - Aditi came in to contact with accused No. 2 Pravin, got enamoured by him, fell in love with him and left the deceased to settle with Pravin and ultimately, as per prosecution case, eliminated deceased from this world, in conspiracy with Pravin, for which both of them are indicted and charge sheeted by the police for the offence punishable u/s 120-B, 302 r/w 120-B and in alternative section 302 r/w 34 of IPC.

2] Factual score of the case, most of which lies beyond realm of dispute, can be depicted as follows :

Deceased Udit and Aditi, both hail from Jammu and belong to well-to-do families. They completed their graduation in Engineering college at Jammu. In the first year of course itself, they became acquainted with each other. Their acquaintance flowered into friendship and then blossomed into love relationship. They started exchanging gift articles, greeting cards etc. and were on visiting terms with each others' house. Both of them decided to get married. When their parents came to know about it, they put their stamp of approval and consent on this marriage proposal. It was agreed that the marriage will be performed after they complete the MBA course. Both of them accordingly came to Pune in June 2006 and took admission in the IIMM college at Wakad, Pune, for MBA course. Both of them were staying in the Hostel of the college. Pravin who hails from Jaipur [Rajasthan] was also studying in the same college. Aditi came in the contact with Pravin, as both were the members of Crises Management Team formed by the college for helping the students in need and emergency. Aditi then fell in love with

Pravin , resultantly her relationship with deceased Udit was broken. This fact was informed by Udit to his parents, about 10-14 days, before Diwali. His parents accordingly advised him to forget everything and concentrate on studies.

3] Meanwhile in first week of December 2006, accused No. 2 Pravin got job opportunity in the Bank of America at Gurgaon, branch in Harayana and therefore, even before the examination of First Semester was over, he left the college and the Hostel. Along with him, accused No. 1 Aditi also left . Both of them started residing at the place of his job in Gurgaon. As per their case, they got married secretly in Delhi and it was decided that they will inform their parents and get married publicly.

4] In this factual backdrop, the incident giving rise to this case took place on 22/4/07. On that day, both Aditi and Pravin came to Pune at about 5.00 p.m. and checked in White House Lodge at Chinchwad. Aditi obtained Udit's cell number from his mother by making her phone call in the name of Amit. She then contacted Udit on his mobile and requested him to meet her at McDonald's hotel in Chinchwad. At that time, Udit was working on one project with his classmate P.W. 2 Megha Kela, in her flat at Thergaon, when Udit received her phone call, he asked his mother why she has given his cell number to Aditi and then told Megha that he was going to McDonald's Hotel to meet Aditi at about 9.00 p.m. As per prosecution case, there Aditi gave him some 'Prasad' in the form of Khadi-sakhar and Sakhar-phutane, containing Arsenic poison, which was consumed by Udit. Thereafter at about 11.30 p.m., Udit returned to Megha's flat , sat with her for some time and at about 12.00 O'clock in the night he left her flat saying that he was going to his own flat in Prasun Dham Society. In the parking space, he

received his mother's call enquiring about his meeting with Aditi .Udit told her he will tell about it in the morning as he was having toilet pressure. In his flat his friends P.W. 2- Vinay, P.W. 8- Naresh, P.W. 4- Siddharth and P.W. 24-Sandip were working on the project. They told Udit that his mother's phone call was received enquiring about him. Udit sat with them for 5 minutes, then changed his clothes and went to bath-room, saying that he was having vomiting sensation. Afterwards Udit took a sip of Whisky and said that he cannot drink any more.

5] By that time, their classmate P.W.-5- Jagbir also came to the flat. As Udit continued to have vomiting episodes, he was given electoral powder mixed with water. But it was of no use. As he continued to suffer from vomiting and loose motion, they took him to Aditya Birla Hospital, which was in front of their society and admitted him there at about 2.30 a.m. Dr. Janardan Jadhav who was on duty started the medical treatment. As the vomiting was persistent, inquiries were being made repeatedly with Udit as to what he has consumed. Udit told them that except for meal in the afternoon, Vada-pav in evening and some alcohol in the night, he has not consumed anything. As the symptoms from which he was suffering and his clinical condition were not going hand in hand, further investigation in the form of x-rays was undertaken .

6] At about 10.40 a.m., when again the inquiry was made with Udit by Dr. Rahul Deshpande and Dr. Dadke, who were on duty and attending him, Udit disclosed that he has consumed some 'Prasad'. Accordingly the entry to that effect was made in the case papers. As condition of Udit continued to deteriorate he was admitted in I.C.U. His x-ray showed radio-opaque substance and hence it was suspected that this was a case of heavy

metal poisoning. Accordingly at about 2.00 p.m., Dr. Diddi, the in-charge of ICU, informed about this case as MLC to the police and station diary entry was made at Hinjwadi police station .

7] Udit's parents were also informed about his condition on phone at about 11.30 a.m. They started coming to Pune by Zelum Express. As on the way they were informed that Udit was shifted to ICU and his condition was critical, on the next day in the morning they got down from the Train at Delhi and came to Pune by flight at about 5.00 p.m. By that time Udit has lost consciousness and they had no opportunity to talk with him.

8] In the course of these events, some more developments took place. On 23/4/07, at about 1.00 p.m., while Udit's classmates and friends like Jagbir, Siddharth and others were in the Hospital attending him, the cell phone of Udit was with his friend Jagbir and on that cell, one call was received from a lady, who made inquiry about Udit. It was informed to her that Udit was at some distance and she may call after wards. As on the previous evening Udit has gone to meet Aditi and these friends were knowing about the said visit, they become suspicious that the said phone call must be from Aditi. Hence they made inquiry with the mobile company office and came to know that the said phone call was received from Reliance PCO, near White House Lodge. Abhijit and Jagbir then went to the said PCO, made inquiry and came to know that one lady has made the said phone call and she has come from White House Lodge. Therefore, they went to the White House Lodge and saw the Register of the Lodge in which they found the entry of the name of Rohit Sharma and Aditi Sharma. They informed Siddharth and Vinay about it. Therefore, Siddharth, Vinay and Shikhi Khanna also came to the White House Lodge. Aditi was not there. Hence they felt that as it

was lunch time, Aditi might have gone to McDonald's Hotel. Therefore, they started going towards McDonald's Hotel. On the way near Chinchwad station, they saw Aditi and Pravin entering in to Sugar-cane Juice Center. They went there and told Aditi that Udit was admitted in Hospital in serious condition. They asked her whether on the previous night she has given any 'Prasad' to him. She told them that she had given some 'Prasad' to Udit and she has also eaten that 'Prasad' and felt somewhat uneasy. They told her to give the said Prasad, if it was still with her. She said no. She has no. She has already thrown it in the parking space of McDonald's hotel. They brought her to the Hospital and in the lobby inquiry was made with her about the Packet of 'Prasad'. At that time, she opened her purse and in that purse Siddharth saw packet of 'Prasad' and it was taken out from the purse and given to Dr. Rahul Deshpande who kept it in the drawer near Udit's bed. Aditi then left the Hospital and again returned in the evening for sometime. On the same night, she left Pune for Delhi via Mumbai, along with Pravin.

9] Udit was declared dead in the Hospital while taking treatment on 24/4/07 at about 10.30 p.m. On receipt of this information by police, A.D. No. 58/07 was registered. Dead body of Udit was sent for postmortem to YCM Hospital, after conducting inquest panchanama. The samples of viscera and stomach wash were collected during the course of postmortem and sent to Sassoon Hospital for histo-pathological examination. On 25/4/07 the statements of Udit's parents were only recorded, in which suspicion was expressed that Udit had died on account of 'Prasad' given by Aditi, which 'Prasad' was containing Arsenic. In their statement they also expressed suspicion against Pravin, as Udit has told them on phone sometimes back, that Pravin has threatened him, not to come in his relations with Aditi.

10] The dead body of Udit after postmortem was handed over in the custody of his parents, Ashwinikumar and Ravikarin Bharati. They took dead body to Jammu and after performing funeral rites, on 5/5/07 both of them again came to Pune to lodge the complaint. In view of these statements of Udit's parents, Aditi was also called for from Gurgaon. On 5/5/07 her purse containing the packets and particles of 'Prasad' was seized from her possession under panchanama and it was also sent to C.A. The C.A. Reports of viscera and other medical samples of Udit were received on 18/5/07 revealing the presence of Arsenic poison in fatal quantity. It was opined by Doctors that the cause of Udit's death was consumption of Arsenic. The C.A. Report of purse and the contents thereof also disclosed presence of Arsenic. Therefore, on the complaint of Udit's father, Ashwinikumar Bharati recorded on 18/5/07, C.R. No. 206/07 came to be registered at Nigdi police station against both the accused for the offence u/s 120-B, 302 r/w 120-B and in alternative section 302 r/w 34 of IPC.

11] During the course of investigation, the statements of witnesses were recorded. Both the accused were arrested. Medical case papers of deceased Udit were collected. The record of mobile phone calls received and sent on the cell of Udit, the land-line of his mother and the record of phone calls made from the PCO near White house Lodge, was also collected. The police staff was sent to Jammu and Gurgaon. From Gurgaon the service record of accused No. 2 Pravin was collected, showing that on the relevant dates from 22/4/07 to 25/4/07, he was on paid leave. Record from White house Lodge was collected, showing that both the accused had stayed there for these 2 days. The efforts were made to search, from where either of the accused got the Arsenic. The assistance of

scientific techniques was also availed of to elicit the truth. With the permission of court, both the accused were taken to Forensic Science Laboratory in Mumbai on 23/7/07 and 25/7/07. There the Polygraph Test was conducted on both the accused. As the results of the same were positive, showing involvement of Aditi in the offence, she was further subjected to BEOS Test which also revealed her experiential knowledge of the commission of offence. Therefore, after completion of usual investigation, the charge sheet came to be filed against both the accused in the court of JMFC, Pimpri.

12] As the offence u/s 302 of I.P.C. is exclusively triable by the Sessions Court, the learned Magistrate has committed the case to this court. As accused No. 1 is in Jail, hearing of the case is expedited.

13] I have framed charge against both the accused as per Exh. 6. The charge was read over and explained to them. Both the accused abjured the guilt and claimed trial. Their defence is of total denial and false implication on the basis of suspicion.

14] As regards Aditi, a specific plea is raised to the effect that as she has left Udit, in favour of Pravin, Udit, who was in deeply love with her, could not bear the said shock. He was quite sensitive in nature and therefore, after meeting her, on that fateful night when he came to know that she has already get married with Pravin, he became totally frustrated, dejected and disappointed. In that state of frustration there is likelihood of his committing suicide by consuming the poison, if it is proved that his death is on account of poisoning.

15] So far as Pravin is concerned, according to him, he has no hand or role to play in any of the incident, leading to death of Udit. Merely because he has come to Pune for his official work and has stayed with Aditi in White house Lodge , he has been roped in this case.

16] Therefore, in order to come to the just decision about guilt of the accused, on these facts of the case, following Points arise for my determination and I record my findings thereon for the reasons stated below :

<i>Points.</i>	<i>Findings</i>
1] Whether prosecution proves that Udit has succumbed to homicidal death on account of consumption of Arsenic ?	Yes.
2] Whether prosecution further proves that accused No. 1 Aditi has committed murder of Udit by intentionally or knowingly causing his death with the act of administering Arsenic poison to him in 'Prasad' ?	Yes.
3] Whether prosecution further proves that accused No. 1 Aditi and accused No. 2 Pravin hatched criminal conspiracy to commit an illegal act i.e., the murder of Udit by administering Arsenic poison to him through 'Prasad' and thereby committed an offence punishable u/s 120-B of Indian Penal Code ?	Yes.

Points.	Findings
4] Whether prosecution further proves that in pursuance of the said criminal conspiracy , accused No. 1 and accused No. 2 committed murder of Udit by administering Arsenic poison to him in 'Prasad' and thereby committed an offence punishable u/s 302 r/w 120-B of IPC ?	Yes.
5] In the alternative, whether prosecution proves that accused No. 1 and accused No. 2 either individually or in furtherance of their common intention committed murder of Udit by intentionally or knowingly causing his death by administering 'Prasad' containing Arsenic poison and thereby committed an offence punishable u/s 302 r/w 34 of IPC ?	Does not arise.
6] What order ?	As per final order.

-Reasons-

17] In order to bring home the guilt of the accused, prosecution has examined as many as 33 witnesses. They can be classified in the following categories.

A] **Parents of Udit** on the issue of motive :

P.W. 14 - Rivikiran Ashwinikumar Bharati , mother [Exh. 51] ;

P.W.19 - Ashwinikumar Jagannath Bharti, father [Exh. 62]; his complaint Exh. 63.

B] **Students** – friends – classmates of deceased Udit, -Aditi and -Pravin,

as regards the actual incident to prove the conduct of accused.

- P.W. 2- Vinay Shivram sawant [Exh. 26];
- P.W. 3 – Megha Pradipkumar Kela, [Exh. 27];
- P.W. 4- Siddharth Kishor Thombre [Exh.28];
- P.W. 5 Jagbir Indrajitsing Garcha [Exh. 29];
- P.W. 8- Naresh Satyanarayan Pareek [Exh. 35]; and
- P.W. 24- Sandip Durgadas Rajanee [Exh. 84].

C] College Management authorities :

P.W. 11- Viju Gopinath Pillel [Exh. 42], Director of I.T. IIMM college;

P.W. 21- Som Sundaram Ram Subramaniam [Exh. 67].

D] Panch witnesses :

P.W. 1- Umesh Sahebrao Tanjane [Exh. 24], panch witness to the recovery of muddemal article ladies purse, from possession of accused No. 1 Aditi; seizure panchanama Exh. 25.

P.W. 22- Dnyana Nivrutti Pol [Exh. 80], to the spot panchanama of the platform near McDonald's Hotel [Exh. 81].

E] Medical Officers who attended Udit in Aditya Birla Hospital.

P.W. 16- Dr. Mahendra Sudhakar Dadke, [Exh. 56], Udit's case papers Exh. 57;

P.W. 17- Dr. Stephen Aruldoss [Exh. 58];

P.W.18- Dr. Shekhar dev Diddee [Exh. 59].

F] Expert Medical witnesses :

P.W. 12- Dr. Mrs. Jyoti Kiran Kudirimodi [Exh. 47], from histo-

pathological department, of Sassoon Hospital her histo- pathological report is at Exh. 48.

P.W. 13- Dr. Bal Pandurang Ugade [Exh.49], who has conducted postmortem and postmortem report is Exh. 50.

G] Other expert witnesses :

P.W. 15- Pradip Vijaylal Gujar [Exh.54], Assistant Chemical Analyst , C.A. Report of medical samples of viscera and stomach wash are at Exhs. 17, 18. C.A. Reports of liquor bottle is at Exh.19 and C.A. Report of purse and its contents is Exh. 55.

P.W. 29 – Sunny Joseph [Exh. 107] Asstt. Chemical Analyser from Forensic Science Laboratory, Mumbai , who has conducted Polygraph Test and Brain Electrical Oscillation Signature Profiling [BEOS] Test on accused. The relevant record of those Tests along with report is filed at Exh. 108 to 119.

H] Other corroborating witnesses :

P.W. 6- Sandip Pandurang Bahirwade [Exh. 30],the owner of STD booth near White house Lodge;

P.W. 20- Vijay Eknath Shinde [Exh.64] Nodal officer in Airtel Company, who prepared Record of the phone calls received on the cell of Udit Exh 65 and 66.

P.W. 9- Shamal Mandku Mitra [Exh. 36] the manager of White house Lodge. The relevant entry on the Register of the stay of accused Nos. 1 and 2 in the said Lodge prepared by him is at Exh.37.

I] The last category is of **police officers**, who have taken part in

investigation from time to time : They are :

P.W. 10- Ashok Damodar Jagtap [Exh.38], Head constable of Hinjwadi police station, who has made entry in station diary of Udit's death and submitted report [exh.41] for registering A.D. No. 58/07;

P.W. 23- P.H.C. Gulab Gajanan Jagdale [Exxh.82], who has registered C.R. NO. 206/07 on the receipt of FIR and produced relevant extract of the station diary at Exh. 83;

P.W. 25- P.S.I. Anand Dattatraya Walimbe [Exh. 88], from Control room, who has made relevant entry Exh.89 about the admission of Udit in the Hospital;

P.W. 26- A. P.I. Ashok Vitthal Pawar {Exh.90} who has recorded the statement of Udit's father on 4/5/07.

P.W. 27- A. P.I. Sanjiv Ramchandra Patil [Exh. 92], who has been to Jammu and Gurgaon for collecting service record of accused No. 2 Pravin vide Exh.94. His report is at Exh. 95.

P.W. 28- A. S.I. P. Pratap Murlidhar Pawar [Exh. 98]. He has carried out seizure panchanama of the purse of accused No. 1 and conducted some other part of investigation.

P.W. 30- A.S.I. Ashok Babarao Nilkanth [Exh.121], muddemal clerk from Hinjwadi police station who has received the muddemal property and sent the same to chemical analysis.

P.W.31- P.H.C.Bhimrao Bhaguram Bansode [Exh. 125], who has visited the Hospital to record the statement of Udit but found him to be not in a position to give the statement ;

P.W. 32- Investigating Officer P.I. Rajendra Murlidhar Bhamre [Exh. 127], who has arrested both the accused on 16/5/07 vide Exh.129, sent muddemal to Chemical Analysis and mostly completed the remaining part of

investigation up to filing charge sheet in the court, and lastly

P.W. 33- P.I. Bajirao Dadoba Mohite [Exh./ 141], who has taken both the accused to Forensic Science Laboratory at Mumbai for conducting the Psychological Evaluation Test and filed charge sheet in the court.

18] In their defence accused have not examined any witnesses or produced any documents, but they have filed their written statement of defence at Exh. 149 and Exh. 150 respectively, putting up the plea of Udit committing suicide being frustrated due to Aditi's disclosure of her marriage with Pravin, thereby extinguishing all his hopes of re-union with her. This statement of defence is requested to be treated as part and parcel of their statement u/s 313 of Cr.P.C.

Point No. 1 :

This is a case, based purely and simply on circumstantial evidence alone. The principles of law governing the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone are well settled and more or less axiomatic. In the landmark decision of **Sharad Sarda Vs. state of Maharashtra, AIR 1984 Supreme Court 1622**, the Apex Court has epitomised five golden principle which in its words form the Panchsheel of the proof of a case based on circumstantial evidence. They are :

1: The circumstances from which the conclusion of guilt is to be drawn should be fully established.

2 : The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3 : The circumstances should be of a conclusive nature and tendency.

4 : They should exclude every possible hypothesis except the one to be proved, and

5 : There must be a chain of evidence so complete as not to leave any reasonable doubt for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19] In this case the material circumstances on which prosecution prefers to rely can be summarized as follows :

1] Homicidal death of Udit due to consumption of Arsenic Poison.

2] **Motive** : Initial love relationship between Udit and Aditi, which was broken when Aditi fell in love with Pravin. It provided motive for commission of offence.

3] Both accused coming to Pune on 22/4/07 and registering in the fictitious name in White House Lodge.

4] Aditi getting the cell phone number of Udit from his mother by making phone call in the name of fictitious student by name Amit.

5] Ad then calling Udit on his cell phone to meet her at McDonald's Hotel.

6] In the meeting at McDonald's Hotel , Aditi offering 'Prasad' to Udit.

7] After consuming the said 'Prasad' from the time Udit returning to his flat, he started suffering form consistent vomiting, hence being admitted in the Hospital at 2.30 a.m.

- 8] Udit giving history of eating 'Prasad', to Doctors attending him.
- 9] The packets of 'Prasad' found in the purse of Aditi when it was seized under panchanama.
- 10] The same packets of 'Prasad' were found to be containing Arsenic when sent to C.A.
- 11] Results of Psychological Evaluation Test proving that Aditi had given deceptive answers to incriminating questions in Polygraph Test and BEOS Test report reflecting her Experiential Knowledge about the event .
- 12] Conduct of Aditi, before, at the time of and after incidence.
- 13] False explanation offered by Aditi and Pravin for their visit to Pune and about Prasad.
- 14] Pravin accompanying Aditi to Pune for this purpose, staying with her in fictitious name, obtaining Udit's phone number under false name of Amit, These acts showing his participation in the commission of offence, thereby proving their criminal conspiracy to eliminate Udit.

Udit's death by poisoning :

- 20] Now coming to the first circumstance about the death of Udit by consumption of Arsenic poison. In this respect the prosecution is having not only abundant and clinching evidence on record proving the said fact beyond doubt, but fortunately for prosecution, defence is also not seriously disputing it , or one may say, that defence is not in a position to dispute it

in the face of overwhelming evidence on record . Just to narrate the few facts, otherwise proved on record. They are to the effect that , after returning from meeting with Aditi on 22/4/07, since about 12.00 O'Clock in the night,Udit started suffering from vomiting. As till about 2.30 a.m. in the night, his vomiting did not stop,he was admitted in Aditya Birla Hospital, where initially Doctor suspected food poisoning. In the morning at about 10.00 a.m., he was shifted to I.C.U. His X-ray report showed radio opaque substance and hence as deposed by P.W. 16- Dr. Dadke who was attending him in the Hospital, they came to the opinion that it was a case of heavy metal poisoning. Therefore, at 2.00 p.m. on 23/4/07, police were informed and MLC case was registered. Udit's condition thereafter became serious. He was put on ventilatory support and as stated by Dr. Diddy, Udit expired in the Hospital on 24/4/07 at about 10.30 p.m.

21] After the inquest panchanama,his dead body was sent for postmortem to YCM Hospital. P.W. 13- Dr. Ugade conducted postmortem on his dead body on 25/4/07 in between 7.00 a.m. to 7.30 a.m. He found no external or internal injuries on his dead body. However his both lungs, brain, liver, kidney, stomach, spleen and all vital organs were congested and there was yellowish discoloration of lever. He preserved viscera like, the pieces of brain, kidney, liver, spleen, stomach contents for histo-pathological examination and C.A. Accordingly they were sent by Investigating officer to histo-pathological department of Sassoon Hospital and Forensic Science Laboratory ,Pune. He reserved his opinion about cause of death till the receipt of C.A. Report.

22] P.W. 12- Dr. Kudirimodi who is working as Pathologist in Sassoon Hospital,Pune, has carried out histo-pathological examination of

these contents of viscera and noted her findings in report Exh. 48. As per her report, there was no specific pathology meaning thereby that Udit was not suffering from any abnormality in the form of disease. She also noticed the congestion of his liver, lungs, brain, kidney, spleen etc. which according to her is found in case of Arsenic poisoning.

23] P.W. 15- Assistant Chemical Analyst, Forensic Science Laboratory, Pune - Pradip Gujar has carried out the chemical analysis of the viscera and stomach wash samples of Udit. On analysis of the same, he found that it was containing 2.44 milli grams and 11.2 milli grams of Arsenic per hundred grams, respectively. C.A. Report Exh. 18 shows 1.945 milli ltrs Arsenic per 100 grams in stomach aspirate. Accordingly he has given C.A. report Exh. 17. He has opined that considering the presence of quantity of Arsenic in the stomach wash and viscera, it can be said that deceased Udit was administered a fatal dose of Arsenic.

24] P.W.13- Dr. Ugade who has conducted postmortem was shown at the time of his evidence, both histo-pathological examination report Exh. 48 prepared by Dr. Kudirimodi and C.A. reports Exh . 17 and 18 of Chemical Analyst P.W. 15- Gujar and after perusing the same he has opined that the cause of Udit's death was definitely Arsenic poisoning.

25] There is absolutely no cross examination of either PW 13- Dr. Ugade or that of P.W. 12- Dr. Kudirimodi or Chemical Analyst P.W. 15- Gujar on this vital aspect of the Arsenic contents being found in the viscera and stomach wash sample of Udit and the cause of his death being on account of consumption of Arsenic poison . There is also no challenge to the evidence of [P.W.15- Gujar](#) that Arsenic is physiologically not the body

part and in case of acute Arsenic poisoning , its action starts in the body within half to one hour and the patient may die within 12-48 hours . There is also no cross examination of Dr. Kudirimodi on the point that her histopathological examination did not reveal any abnormality in the form of disease. Therefore, the congestion of his vital body parts like brain , liver etc. which was found at the time of postmortem and her examination, can only be inferred to be on account of Arsenic poisoning.

26] Thus, the evidence on record is of utmost clinching nature so as to prove the fact that the cause of Udit's death was none else but the consumption of Arsenic poison. As stated above the defence is also not seriously disputing this fact, in the light of this unmistakable and un-erring evidence on record, leading to no other inference. The plea raised by defence is that as admitted by P.W.13- Dr. Ugade, the death by Arsenic poison can either be homicidal or suicidal. In this case as per the contention of the accused, it was a case of suicidal death. This contention, I will deal with subsequently. For the present, suffice it to say that prosecution has succeeded in proving that cause of Udit's death was Arsenic poisoning.

Motive :

27] Now in order to prove that it was a case of homicidal death, the prosecution is relying on the subsequent circumstances. One of the major circumstances which is again not in the realm of dispute is about the love relation between accused No. 1- Aditi and Udit. It is proved on record through the evidence of Udit's parents and Aditi is also admitting in her written statement u/s 313 of Cr.P.C., that when both were studying together in Engineering college at Jammu, they started knowing each other. They fell in love. They were exchanging gift articles and greetings. They were visiting several places including picnics, movies, clicking photographs. They

had also decided to get married. When their parents came to know about it, they approved their proposal of marriage, as deposed by Udit's parents - P.W. 14- Ravikiran and P.W. 19- Ashiwinikumar, Aditi's parents had also approved their relations and it was decided from all the sides that after they complete their MBA course, their marriage will be performed. As stated by Aditi in her statement u/s 313 of Cr.P.C. [Exh.149], Udit used to introduce her to his relatives, friends and acquaintances, as his 'would be wife'. In this way both of them came to Pune in June 2006 and took admission for MBA course in IIMM college at Wakad, Pune.

28] Further the fact that in this college Aditi and Pravin came to know each other and they fell in love, is also not disputed. Aditi has admitted again in her statement that she and Pravin were members of Crises Management Team formed by the college and while working in the same team, she was attracted to Pravin. Both of them fell in love with each other. Hence she decided to leave Udit and to marry Pravin. When Pravin got employment at Gurgaon and left college in December 2006, she also left the college and hostel and both of them started residing together in Delhi and Pravin working in Gurgaon. She has further stated that, during her stay at Delhi, she and Pravin got secretly married each other in a temple.

29] Thus, in this case, apart from the evidence of Udit's parents, there is also the un-equivocal admission of Aditi in her statement u/s 313 of Cr.P.C., that initially she was in love with Udit, they had decided to get married after completion of MBA course, however when she came to Pune, she fell in love with Pravin and decided to marry him. Therefore, she left Udit and went to reside along with Pravin at Delhi. This fact is also proved on record by prosecution by examining college authorities to show that both of

them had left the college and hostel in first week of December 2006, without appearing for the examination of First Semester. In this way, the broken love relationship between Udit and accused No. 1- Aditi and her subsequent love relation with Pravin are proved facts on record, being otherwise also, undisputed.

30] As per prosecution case, this circumstance forms motive for the accused to commit murder of Udit as once or twice Pravin has threatened Udit not to come in the way of his love relationship with Aditi and Udit has informed this fact to his mother on phone, as deposed by his mother PW 14- Ravikiran. According to prosecution, both accused therefore, wanted to eliminate Udit and hence they came to Pune by hatching conspiracy.

31] As per learned counsel for accused Shri. Mohite, this circumstance of broken love relation between Udit and Aditi and her subsequent love relation with accused No.2- Pravin can hardly be called as motive for accused to commit murder of Udit. At the most, due to their broken relationship, Udit could be called as an aggrieved person as he has been ditched by accused No. 1- Aditi and she has not remained faithful to him. Moreover, his family members were to face dishonour on account of their broken marriage. Therefore, if there was any aggrieved person, it was Udit. None of the accused can be said to have any reason for enmical relations with Udit. Moreover, there was lapse of about 4-5 months between Aditi leaving Udit and the incident. Therefore, it is in-conceivable that after lapse of about 6 months, Aditi or Pravin will come to Pune only for committing murder of Udit. According to him, it cannot be said in any way that either Aditi or Pravin had any reason to commit murder of Udit. There is also nothing on record to show that Udit has come in the way of the love

relation between Aditi and Pravin or at any time Pravin has given such threatening to Udit. Except for the interested words of Udit's mother, there is nothing on record to that effect. Therefore, according to him there was no motive at all which could have allegedly prompted the accused to commit murder of Udit. At least prosecution has not succeeded in proving the said motive or the adequacy of the motive to commit such a ghastly act of commission of murder. Learned counsel for accused has in this respect strongly advanced submission that when the case is based on the circumstantial evidence alone, proof of motive plays a vital role, motive assumes pertinent significance as existence of the motive is an enlightening factor in the process of presumptive reasoning in such a case. To substantiate his submission, he has placed reliance on the authority of **State Vs. Motia AIR 1955 Rajasthan 82.**

32] It has to be observed that so far as the motive is concerned, it is undisputedly a difficult area for prosecution as one cannot normally see in to the mind of another. Motive is the emotion which impels a person to do a particular act. Such impelling cause need not necessarily be proportionately grove to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the above said impelling factor would remain un-discoverable. As observed by the Apex Court in the case of **State of H.P. Vs. Jeetsing, 1999 CRI L.J. 2025,**

no further “ no doubt it is a sound principle to remember that every criminal act was done with a motive, but its corollary is not that criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence, cannot be construed as a fatal weakness

of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

33] Needless to state that, after all motive is a Psychological phenomenon. Hence mere fact that prosecution failed to translate mental disposition of accused into evidence, does not mean that no such mental condition existed in the mind of the accused. As observed by the Apex Court in the case of **Shivaji Bobade Vs. State of Maharashtra AIR 1973 SC 2622** relied upon by learned APP,

"proof of motive satisfies the judicial mind about the likelihood of the authorship, but its absence only demands deeper forensic search and cannot un-do the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and un-amenable to easy proof that courts have to go without clear evidence thereon if, other clinching evidence exists."

34] The point therefore, to be stressed is that, though the absence of proof or motive may put the court some times on its guard to scrutinize the circumstances more carefully, to ensure that suspicion and conjecture do not take place of legal proof; as most heinous offences are committed and the evidence of motive may not be coming, it being a psychological aspect which prosecution finds difficult to probe into, it is settled law that even in the absence of motive, conviction can be sustained.

35] Just to quote, Hon'ble Apex Court again in the case of **State of H.P. Vs. Jeetsing, 1999 CRI L.J. 2025** :

" if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives, not merely from malice and revenge, but to gain a small pecuniary

advantage and to drive off for a time pressing difficulties.”

36] In the instant case therefore, even if it is assumed that prosecution has failed to prove the adequacy of motive of the accused to commit such an act, the inability of the prosecution to do so, cannot be treated as a fatal lacuna. It is need not be stated that the criminal courts come across several cases in which the grave and serious offences are committed out of broken love affair. Which feelings or mental state prompt such accused person to commit the heinous act of a murder or other offence is almost difficult, well nigh impossible to gather and then to prove, for prosecution. It is not uncommon to come across commission of such offence in love triangle. In the instant case there was admittedly broken relationship between Udit and Aditi. Not only that, Aditi has left deceased for Pravin. There may be possibility that Udit was opposing her love relationship with Pravin and hence may be Aditi or Pravin were being threatened of his constant interference in their life. The evidence of Udit's mother, which has remained un-shattered on record, clearly goes to show that accused had given an understanding to deceased to not to come in their way. That may be the reason why Udit was eliminated. Though it may be true that prosecution could not bring all these facts before the court, on probability factor it cannot be disputed that there was motive for Aditi to take such step. The prosecution is not bound and need not prove the adequacy of motive, as held above.

37] Even otherwise also, the proof of motive is merely a corroborating circumstance and not a clinching circumstance. Even in the case of absence of proof of the motive, what law requires is, not to throw out the prosecution case, but to scrutinize the evidence on record, more carefully

and if other circumstances are clinching then the prosecution can take the help of the presence of motive as an additional link to complete the chain of circumstances.

Visit of Aditi and Pravin to Pune :

38] Now coming to the next circumstance that of accused No. 1- Aditi and accused No.2- Pravin coming to Pune on 22/4/07. As per the case of prosecution, they came to Pune in pursuance of their conspiracy of committing the murder of Udit; otherwise, there was no explanation for them to do so. The very fact that they had stayed in White House Lodge which was near the college and hostel, where deceased was residing, spells out that their only object or intention of the visit was to contact Udit and to offer him 'Prasad' containing Arsenic. As per learned APP, otherwise there was no reason for them, first to come to Pune and secondly, to register in White House Lodge and that too in fictitious name of Rohit Sharma.

39] Both the accused are not disputing the fact and otherwise also, they cannot dispute the fact that they had come to Pune on 22/4/07 and left immediately in the night of 23/4/07. This fact is proved on record by prosecution also, with sufficient oral and documentary evidence, from the testimony of P.W.9- Shamlal Mitra, Manager of White House Lodge, who has produced on record relevant extract of the original Register of the Lodge containing the entry No. 2234 dated 22/4/07 according to which, both the accused had arrived in the Hotel at 5.00 p.m. they were allotted room No. 302 and on the next day at 5.30 p.m., they checked out. This entry was made in the name of Rohit Sharma for 2 persons. Shri. Mitra has identified accused No. 1- Aditi and Pravin to be the same two persons. In his cross

examination it is brought on record that previously also on 2 or 4 occasions, both the accused had come and stayed in the said Lodge and registered the room in the name of Rohit Sharma. Hence there is no question of any dispute about identification of the accused. As a matter of fact, in their statements recorded u/s 313 of Cr.P.C. also, both the accused have admitted the fact that they had come to Pune on 22/4/07 and stayed in White House Lodge in the name of Rohit Sharma and Aditi Sharma and left on 23/4/07 at 5.30 p.m. Therefore, this fact is proved on record and otherwise also in not dispute.

40] The question for consideration is what explanation is offered by the accused for their visit to Pune and their stay in the White House Lodge that too, in fictitious name ? As per explanation of the accused, as Pravin had some office work at Pune and his office had given him paid leave from 21/4/07 to 25/7/07, they came to Pune. As per Aditi, while she was staying in Pune, she and Pravin had visited the temple at Shirdi. Now as they had got secretly married at Delhi, they decided to visit Shirdi temple to get the blessings of Lord Saibaba and thereafter to inform their parents about their relationship, so that they officially get married. Therefore, she decided to come along with Pravin .While finalising their plans to visit Shirdi, Aditi also decided to come to Pune along with Pravin to get the refund of the term fee which accused No.2- Pravin has received when he has left the college in December 2006. At that time she was not knowing about it,hence she has not availed it. As per learned counsel for accused , his explanation is most probable and it is also proved through the evidence of college authorities. It is proved on record through the evidence of P.W. 21- Som Sundaram, the Controller of Expenditure in IIMM college, that on the application of Pravin dated 1/12/06 and on his personal representation, as a special case the

refund of second installment of the tuition fees of the amount of Rs. 50,000/- was given to him by cheque dated 10/1/07. However, so far as the accused No. 1- Aditi is concerned, it is deposed by P.W. 11- Viju Pille, Director, of the IIMM college, that though she has also paid the second installment of the tuition fees of college, she has not made any application for refund of those fees and hence she has not received the same.

41] Therefore according to learned counsel for accused , as the amount of Rs. 50,000/- is not a small amount, there is every likelihood of Aditi coming to Pune along with Pravin for collection of that amount, especially when Pravin was otherwise also coming to Pune for his official work and Aditi was to accompany him up to Shirdi for visiting Lord Saibaba. According to him, the very fact that they had selected White House Lodge, which was near to college itself, proves that Aditi's intention to visit Pune was to collect the refund of fees.

42] It is also urged by him that both the accused had offered explanation as to why they registered in the said Lodge in fictitious name of Rohit Sharma. That explanation was to the effect that during their college days at Pune, both of them were residing in hostel and as per the hostel rules, they were not allowed to enter in the Hostel after 10.00 p.m. Said fact is admitted by the other witnesses also. Therefore, once in August or September 2006, when they had gone to market and they were unable to reach the hostel in time, they had decided to stay in the White house Lodge . While entering the said Lodge, Aditi was ahead of him and she has given her name as Aditi Sharma. Therefore, the accused No.2- Pravin thought that it would not give an good impression to state that they were just friends and putting up together in the Lodge. Hence at that time he gave his name as

Rohit Sharma to show that they were in relation. After that day, whenever he had stayed in the Lodge, he stayed in the name of Rohit Sharma as was done on first occasion and therefore, this time also, as per his version, he gave the same name as Hotel staff was also knowing him by the said name.

43] To counter this argument submission of learned APP is that there is no evidence proving that Aditi was, in the first place entitled to get refund of fees and secondly, to show that she has made any application to that effect even after coming to Pune. As a matter of fact, she has left Pune even without making such application for collecting fees. On this issue the submission of the learned counsel for the accused is that, Aditi and Pravin came to Pune on 22/4/07 at about 5.30 p.m., and therefore, at that time, the office hours of the college were over and it is brought on record from the evidence of P.W.2- Vinay that on the next day, it was an Annual Fair-well function and therefore, generally the office of the college was to remain closed. Therefore, according to him, there was no time for Aditi to make such application to get the refund of fees.

44] To appreciate these rival submissions of learned APP and learned defence counsel, certain facts which are brought on record through the evidence of witnesses are to be borne in mind. In the first place, there is absolutely no evidence on record to show that Aditi and Pravin had visited Shirdi on that day and while planning trip for Shirdi, they had decided to come to Pune for collecting the fees. It may be true that Zelum Express first comes to Pune, via Kopergaon and at Kopergaon it stops at 9.30 a.m. As per the defence plea, both the accused got down at Kopergaon, went to Shirdi by Taxi, which is at the distance of 20 minutes only. They took Darshan and immediately came to Pune. However there is nothing on record to

prove this fact, like their train tickets, or the taxi fare or even the purchase of some 'Prasad' at Shirdi, receipt of donation given in the temple; absolutely nothing of that sort is filed on record, other than their statements. Secondly, it must be kept in mind that Zelum Express also reaches Pune around the same time i.e. 4 to 5.00 p.m. Therefore, when they reached to White house Lodge at 5.30 p.m., in the absence any evidence proving that they visited Shirdi, it has to be held that they had come to Pune directly by Zelum Express.

45] About case of Aditi that she wanted to collect her refund of fees, the evidence on record proves that though Pravin has applied for the same, immediately at the time of leaving the college, she has not applied for it at all. Now as admittedly, Pravin was aware of the same and he has also availed the said facility and as admittedly he had received the cheque for the said amount at his address at Delhi, where both of them were residing together, it does not appeal to reason that Aditi was not knowing about this concession of getting the refund of fees. As rightly submitted by learned counsel for the accused the amount of Rs. 50,000/- is not at all a small one and therefore, if Aditi had any intention of availing the said amount she would have applied for the same immediately, when she left the hostel and college along with Pravin or at least when Pravin received the cheque of the said fees in January 2007 itself. However she has not even bothered to send by Post any such application for refund of fees. Even after coming to Pune, there is nothing on record to show that she made inquiry with college authorities to know whether the office was working or closed. Though in her statement she stated that she made such inquiry with Amit, Amit has simply disappeared from the scene. He is not examined nor it is brought on record through the evidence of any other prosecution witnesses that there was any

such student by name Amit. Even assuming that on that day or next day, the college was closed, Aditi could have handed over her application for refund of fees with any of these students who were her classmates and friends. However, nothing is brought on record to that effect. Even if it is assumed that on the next day, she came to know about the condition of Udit and hence she might not have been in a position to do so, the evidence on record proves that the first knowledge about Udit's condition was received by her from his friends at 1.30 p.m. Therefore, till then, she could have easily gone to the college, or contacted any of her classmates or friends and handed over application to them for refund of fees. She has not done that also.

46] Secondly, the evidence of P.W. 21- Som Sundaram, the Controller of Expenditure in IIMM college, goes to show that if the application of refund of tuition fees is made within 30 days from its deposit, then only 50 % of the amount is refunded, otherwise, student is not entitled to get any amount. He has further stated that however Aditi has not given any such application within 30 days of the deposit of the fees. Hence apparently she was not entitled to get any refund of tuition fees. In his cross examination, it is brought on record that refund of fees is granted only as a special case, even if the application is made after 30 days from the deposit of the fees. In the present case, it is proved on record that Pravin has also made such application after 30 days, therefore, it is urged that Aditi also could have got the refund of fees, even if she had filed application after 30 days.

47] However, the evidence of this witness is categorical to the effect that only in special case, such request was considered. As Pravin has got employment, his case was treated as special one, and therefore, though

his application was rejected, only after personal representation by him, he was granted the refund. So far as Aditi was concerned, she has no such special case. She has neither left the college with permission or with pre- intimation, nor she has got any employment elsewhere. As Aditi was very much residing with Pravin it has to be held that she was aware of all these facts and hence it was to the knowledge of Aditi that she was not entitled to get this amount of refund of fees.

48] Therefore, it is clear that this excuse which is put forth by her for coming to Pune and staying at White house Lodge can hardly be accepted. The previous, at the time and post conduct of Aditi, does not support this plea. A lady who has come to Pune only for the purpose of getting refund of fees, will not leave, unless she takes some steps in that direction, or at least, she has taken some steps of sending the application in advance. As Aditi has not done that, her plea cannot be accepted.

49] About their stay at White house Lodge, if they had come to Pune for Pravin's official work, then the White house Lodge being far away from Pune city, it does not appeal to reason that they will select that Lodge. There is also nothing on record to show that Pravin has come to Pune on official visit because his service record Exh. 94 shows that he has come to Pune on paid leave. If it was an official work, there was no reason for him to take the leave. He has also not produced any office letter to show that he has come to Pune for official work. There is nothing on record to show that they were having any return tickets. In case of official work what is expected is their having official reservation at Pune with some Hotel and the tickets of return journey. The evidence on record proves that they return to Delhi via Mumbai. Therefore, all these facts do not corroborate their plea that,

they had come to Pune for Pravin's official work and for Aditi to collect her refund of tuition fees and on their way, they visited Shirdi.

50] Even if it is accepted that previously also they had registered in White house Lodge in fictitious name of Rohit Sharma hence this time also they have done so, therefore, nothing incriminating could be inferred from it if they wanted to remain in-cognitio, then they would not have selected White house Lodge where the staff was knowing them, the fact remains that accused have failed to explain their trip to Pune. At least the explanation offered by them cannot be accepted as a reasonable or truthful one and the fact of their residing in White house Lodge near the college, appears only with an intention to facilitate Aditi's meeting Udit nearby. This is a circumstance which the court cannot ignore or close its eyes and it does form some link in the web of circumstances, on which prosecution places reliance.

51] After everything said and done, even if it is accepted that they had come to Pune for Pravin's work and Aditi accompanied him for visit to Shirdi and refund of fees, the question posed is why she called Udit to meet her. No satisfactory explanation or the reason other than the reason given by prosecution is appearing for it. It does not appeal to reason that, when Aditi has left Udit without informing or explaining the things to him, after the period of 4-5 months, she will call him for meeting to dig those buried things, especially when both of them have moved on with their lives. Moreover, if she wanted to tell him about her marriage with Pravin, she could have done so on phone or even by writing the letter or sending the E-mail. There was no need for her to call him for a meeting in person except for the reason that she wanted to give him 'Prasad' containing Arsenic.

Aditi calling Udit for meeting at McDonald's Hotel :

52] This brings me to the next circumstance of, after reaching at Pune Aditi getting mobile phone number of Udit from his mother and calling Udit to meet her at hotel McDonald's. Aditi has admitted the fact that she has obtained mobile number of Udit from his mother by making phone call through a student by name Amit and then called Udit to meet her. There is also the telephonic call record of the mobile number of Udit, the Land-line number of his parents at Jammu and STD booth number near White house Lodge from where Aditi has made those calls. The said record is produced at Exh. 78, 79, 96, 66, 67, 145, 146 and 147. It is also proved through the evidence of P.W. 20- Vijay Shinde, the Nodal officer in Airtel company. As per the law laid down in ***State Vs. Navjot Sandhu, 2005 Cri.L.J. 3950*** : *“call records relating to cellular phone are admissible and reliable in evidence.”*

53] Otherwise also Aditi is not disputing the fact that she has made such phone calls and called Udit to McDddonald's hotel. The evidence of Udit's friends and classmates P.W.2- Vinay Sawant, P.W.3- Megha Kela, P.W.4- Siddhrth Thombre, P.W. 5- Jabgir Garcha and P.W.8- Naresh Pareekh also goes to prove that on the receipt of these calls from Aditi, Udit went to meet her at McDonald's hotel at about 9.00 p.m. and he returned from the said meeting at about 11.30 p.m. to the flat of P.W.3- Megha and from there to his own flat at about 12.00 O'clock.

Consumption of 'Prasad' by Udit :

54] Thus, the meeting between Aditi and Udit at McDonald's hotel , at

the instance of Aditi on her making phone call, is sufficiently proved on record. It is also admitted by Aditi that in the said meeting, she has offered 'Prasad' to Udit. As per prosecution case, Udit has consumed the said 'Prasad' and on account of consumption of that 'Prasad' which was containing Arsenic, he started suffering from vomiting. As per Aditi's statement under Section 313 of Cr.P.C., Udit refused to take 'Prasad' from her saying that "I don't want to eat anything from your hands, henceforth." Therefore, the issue for consideration is whether Udit has actually consumed 'Prasad' or not?

55] On this issue, the prosecution has placed reliance on the evidence of Udit's classmates P.W.2- Vinay Sawant, P.W.3- Megha Kela, P.W.4- Siddharth Thombre, P.W. 5- Jabgir Garcha and P.W.8- Naresh Pareekh and also the evidence of P.W. 16- Dr. Dadke, P.W.17- Dr.Stephen and P.W.18- Dr. Diddee, and further the documentary evidence i.e. medical case papers of Udit.

56] The evidence of P.W.2- Vinay, P.W.3- Megha, P.W.4- Siddhrth, P.W. 5- Jabgir and P.W.8- Naresh clearly goes to prove that as Udit has started suffering from vomiting, they immediately asked him what he has eaten? Initially, he said that he has eaten only lunch in the afternoon and Vada-pav in the evening and except that, he has not eaten anything. As per their evidence, even to the Doctors at the time of admission and subsequently also, when inquiries were made with Udit as to what he has consumed, as Doctors suspected a case of food poisoning, Udit has repeated the same things, that he has eaten lunch in the afternoon and Vada-pav in evening. However, only in the morning when searching enquiries were made with him, Udit disclosed that he has also eaten 'Prasad' given to him by Aditi. It

is deposed by P.W. 3- Megha that in the morning when she made inquiry with Udit in the Hospital as to what he has eaten, Udit told her that he has eaten Prasad. She accordingly told the said fact to Doctor and Doctor asked her to make enquiry with Udit as to whether after eating 'Prasad' he felt uneasy? Accordingly, she enquired with Udit. However he was unable to remember it. Her evidence is challenged on the ground that in her statement recorded by police on 1/5/07, she has not disclosed the said fact and therefore it is an after-thought evidence.

57] Then, there is evidence of P.W. 4- Siddharth who has returned to the Hospital in the morning at about 9.00 a.m. and as per his evidence, in his presence Doctor made enquiry with Udit as to what he has eaten and he said to the Doctor that in addition to the lunch and Vada-pav , he has eaten the 'Prasad' given by Aditi. His evidence is also challenged on the ground that he does not remember the name of Doctor to whom Udit has told that he has eaten 'Prasad' and further on the ground that as admitted by him Udit was critical when he returned to the Hospital in the morning and at that time he was appearing to be drowsy and irritable.

58] But then there is also the evidence of the most independent witnesses like, P.W. 17- Dr. Stephen and P.W. 18- Dr. Didee who were attending Udit in Aditya Birla Hospital. Their evidence on this point is also supported with the entries made in the medical case papers of Udit from time to time, since his admission till his death.

59] As per evidence of P.W.17- Dr. Stephen, Udit was shifted to I.C.U. at 10.45 a.m. on 23/4/07. First he was examined by Dr. Rahul Deshpande. As per entries made in the case papers by Dr. Deshpande, Udit

has given history before him of consuming 'Prasad' and also some quantity of alcohol on the previous night. This witness, Dr. Stephen who has worked with Dr. Deshpande, has identified the entries to that effect, made in the case papers of Udit, Exh. 57, in the handwriting of Dr. Deshpande. Dr. Deshpande is now in Australia since May 2007, therefore, he is not available to give evidence, but the entries made by him in the case papers, which are maintained in day to day ordinary course of business, can definitely be relied upon, when his handwriting thereon is identified by the witness who has worked with him.

60] Further, evidence of Dr. Stephen goes to show that he also examined Udit at about 11.00 a.m., in I.C.U. At the time of his examination, he has also asked Udit the history as to what he has consumed and Udit has given the similar history before him like, consumption of 'Prasad' and some quantity of alcohol on the previous night. Accordingly, he has recorded the said history in case papers in his own handwriting.

61] Thus, even if in the instant case, the evidence of P.W. 3- Megha, P.W. 4- Siddharth about disclosure by Udit of eating 'Prasad' is excluded from consideration, there is independent evidence of Dr. Stephen who was attending Udit, along with the contemporaneous documentary evidence in the form of medical case papers of Udit, reflecting that Udit has given the history of consuming 'Prasad' on previous night.

62] This piece of evidence is challenged by learned counsel for the accused Shri. Mohite on twofold grounds. In the first place it is submitted that there is nothing on record to show that history was given either to Dr.

Deshpande or to Dr. Stephen by Udit himself. At least the case papers do not reflect that the history was given by the patient himself. To substantiate his submission he has placed reliance on the authority of ***The State of Maharashtra Vs. Asaram Mahadu Dwange, 1978 CLJ 1017*** wherein, in the absence of clear statement in the medico-legal register, showing that information or the history recorded therein was supplied by deceased herself, it was held that,

"the said history cannot be treated as dying declaration and has to be excluded from consideration."

63] However in my opinion this authority cannot be made applicable to the facts of the present case, because in the instant case, because except for Udit, no-one else was knowing that he has eaten Prasad. Therefore, there was no question of anyone else stating either to Dr. Deshpande or to Dr. Stephen that Udit has consumed Prasad. As per the evidence of his classmates, from whatever Udit was saying initially, he has consumed only lunch and Vada-pav. They were admittedly not present at the time of meeting between Udit and Aditi. It is also not their case or even suggestion given to them that they came to know earlier from Udit or anyone else that he has consumed Prasad, whether given by Aditi or anyone else. Moreover assuming that they had given the said history, their knowledge about it was derived from Udit only. Therefore, the fact that he has consumed 'Prasad' was solely and exclusively within the knowledge of Udit alone. Hence there was no question of any other person giving that history before the Doctor. Only Udit could have given that history and no-one else. Therefore, this history of consumption of 'Prasad' as given by Udit, becomes his dying declaration and assumes significance of a clinching nature.

64] The second ground on which this piece of evidence is challenged is that if it is a dying declaration, then it should have been consistent with other declaration or statement made by Udit. Reliance is placed on oft-quoted decision of ***Khushal Rao Vs.State of Bombay, AIR 1958 Supreme Court 22[1]***, wherein certain guidelines are laid down for accepting the evidence relating to dying declaration to be a sole basis for conviction. One of the guidelines as laid down in this authority is that, such statement made by the deceased has to be consistent throughout, if he had several opportunities of making a dying declaration apart from the record of it and other guideline is that such statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

65] In the instant case it is urged that this statement of Udit that he has consumed 'Prasad' is neither made at earliest opportunity, nor is consistent with his other statement. It is further urged that earlier he has given history of consumption of only lunch and Vada-pav. This is a subsequent statement about the history of consumption of alcohol and 'Prasad' and therefore, it is not consistent and not made at the earliest opportunity.

66] However this argument cannot be accepted because in the first place there is any inconsistency as such between the statement of Udit. It is true that earlier he has not given history of consumption of 'Prasad' and he has given the history of consumption of lunch and Vada-pav only, but this is bound to happen because the lunch and Vadapav was the substantial food which he has consumed, whereas 'Prasad' was a small piece, which could have easily escaped from his mind. The moment question is asked, what food is eaten, naturally only the substantive food like lunch, dinner or

snacks come to a mind of a person and not 'Prasad', which is eaten in a very small quantity and one does not treat 'Prasad' which is eaten in a small quantity as a food, to cause the poisoning. Therefore, it is but natural that it might have slipped from his mind to include consumption of 'Prasad' also in the history given earlier. However when searching enquiries were made with him by his classmates and also by the Doctors on this aspect, it might have occurred to him to disclose the said fact also. It is one more additional piece of food which he had eaten. By the said statement, he is not being inconsistent with the earlier history of consumption of lunch and Vada-pav. There is no question of anyone tutoring him to give the said history, because no-one was knowing about it and no one has any reason to do so. Therefore, even if the history of consuming of 'Prasad' is not given at the earliest opportunity, it cannot be said that it is inconsistent with his earlier statement, or it is a tutored version or an after-thought.

67] The next submission made by learned counsel for accused is that in order to accept the evidence of dying declaration, it must be proved to have been made by a person in a mentally and physically fit condition. He has urged that as per the evidence of Doctors also, after admission Udit's condition started deteriorating. The alleged history of consumption of 'Prasad' was given by him after he was admitted in I.C.U. at 10.45 a.m. It is deposed by Dr. Stephen that when he examined Udit at 11.00 a.m., in I.C.U., Udit was little but drowsy. Accordingly he has made entry in his case papers. Therefore, according to learned counsel for accused, it cannot be said that the general physical and mental condition of Udit was fit and oriented to give any dying declaration. As admittedly Aditi has offered 'Prasad' to him in McDonald's hotel, there is possibility that in his drowsiness, Udit might have assumed that he has consumed the said 'Prasad' and therefore, this

alleged history given by him in the form of dying declaration, cannot be relied upon.

68] However this submission also cannot be accepted, because the evidence on record goes to prove that, though Udit was shifted to I.C.U., at about 10.45 a.m., his condition was definitely stable; he was conscious and well oriented. Dr. Stephen who has examined him immediately at 11.00 a.m., has categorically stated that, Udit was conscious and obeying commands, though he was little but drowsy. Even the entries in case papers made at 9.40 a.m., by P.W.16- Dr. Dadke goes to show that he was conscious and oriented. He has specifically deposed that his pulse rate was 120 per minute, respiratory rate was 30 per minute and all his vital parameters were stable. However as his clinical condition and symptoms were not going hand in hand, they decided to shift him in I.C.U. The cross examination of Dr. Dadke also goes to show that till evening the patient was very much conscious and well oriented.

69] The evidence of P.W.11- Viju Pille, Director of college, who has visited Udit in the afternoon at about 4.00 p.m., in I.C.U., also goes to show that Udit was very much conscious and well oriented. As per evidence of Viju Pille, first he met Dr. Deshpande and then he met Udit and asked him what he has consumed. At that time Udit was wearing Oxygen mask. Udit himself removed it. He found Udit to be fully conscious. Udit initially said he has not consumed anything. Then he again asked Udit whether he has consumed any Drugs and immediately Udit said 'why should he' ? This part of evidence of Viju Pille is not challenged. Thus, from his evidence also it is clear that till 4.00 p.m. on that day, Udit's condition was quite stable, conscious, well oriented. Otherwise too the question of Pille, whether he has

consumed any Drugs, he would not have with alertness exclaimed, why he should consume the Drugs !

70] Hence in the instant case, it cannot be accepted that condition of Udit was neither fit nor well oriented when he gave the history of consuming Prasad. Admittedly the said history was given before the Doctors viz. Dr. Deshpande and Dr. Dadke. If they had found him to be dis-oriented, unconscious or not in a fit condition to give history, they would not have mentioned it in the case papers or at least they would have mentioned the said fact in the case papers. Conversely the entries made in the case papers clearly go to show that he was very much conscious; he was obeying commands, there was no neuro deficit, his vital parameters were stable, his blood pressure, pulse rate and everything was normal. Only he was having some drowsiness, but it was not of a such nature as to make him disoriented, so as to disbelieve his statement of consumption of Prasad. Now this being a dying declaration, coming from the mouth of Udit himself, it has to be accepted as a reliable piece of evidence, especially, as it is getting support and corroboration from other source also.

Aditi's admission before friends of Udit consuming 'Prasad' given by her. :

71] The other corroborating circumstance on this aspect is the evidence of these classmates of Udit. As per P.W. 2- Vinay, when they came to know about the disclosure made by Udit before the Doctor of consuming of Prasad, they traced Aditi in consequence of phone call made by her on Udit's cell. They met Aditi and Pravin near Chinchwad station. They told Aditi that Udit was admitted in Hospital in serious condition and asked her whether on the previous night, she has given any 'Prasad' to him ? As per his

evidence, Aditi admitted that she has given some 'Prasad' to Udit and she herself has also eaten that Prasad. Therefore, they told her to give the said 'Prasad' if it was with her, so that they can show it to Doctor to ascertain from what sort of food poisoning Udit was suffering. At that time, Aditi told them that she has already thrown away the packet of 'Prasad' and therefore, she was not having it. As Aditi has told them that her health was also affected due to consuming Prasad, they told her to come to the Hospital so that Doctor can check her. This fact is disclosed by P.W. 2-Vinay in his statement on 1/5/07 itself that is much before the offence was registered and as per his evidence, which is not shaken in cross examination, Aditi has admitted the fact of giving 'Prasad' to Udit on previous night.

72] There is also the evidence of P.W. 3- Megha, who has confronted Aditi when she came in the Hospital, as to whether she has given 'Prasad' to Udit. As per her evidence also, Aditi has told her that, yes, she has given 'Prasad' to Udit and she has also eaten some Prasad. This part of her evidence is also not challenged in cross examination.

73] Then there is evidence of P.W. 4- Siddharth, who has also deposed that when he, Abhishek and Jagbir along with Vinay confronted Aditi at Sugar cane Juice Center and asked her whether she has given 'Prasad' to Udit, she said yes, and asked what has happened? They told her that Udit has become ill and Hospitalized. She told them that after eating 'Prasad', she had also vomited and was not feeling well. They asked her whether she was having that packet of 'Prasad'? She told that she had already thrown it in the parking on previous night. P.W.4- Siddharth is also not cross examined on this material aspect. The evidence of P.W. 5- Jagbir is also on the same point and he has also corroborated the evidence of P.W. 4-

Siddharth and P.W. 2- Vinay. Though he is cross examined on this point, nothing is elicited to disbelieve him.

74] These four witnesses P.W.2- Vinay, P.W.3- Megha, P.W.4- Siddharth and P.W. 5- Jabgir are totally independent witnesses who were on equal terms with Udit and Aditi. They had no reason at all to implicate Aditi in any of the offence. Conversely, they were most courteous and friendly with her. As can be seen, from the evidence of P.W.4 – Siddharth, he had even gone to drop Aditi up to Rickshaw when she left Hospital. Therefore, when they had made the disclosure of this fact immediately in the course of A.D.inquiry also, from their evidence, the sort of extra judicial confession made by Aditi of giving 'Prasad' to Udit on the previous night, is abundantly proved. Hence the plea now taken by Aditi, that she has merely offered 'Prasad' to Udit and Udit refused to take it, being subsequent and of an after thought nature to somehow to escape from clutches of the Law, it is required to be rejected.

75] It is pertinent to note that, not a single suggestion is put up to any of these four witnesses, even after their exhaustive cross examination, that when they confronted Aditi about giving 'Prasad' to Udit, Aditi made immediate disclosure that Udit refused to take 'Prasad' from her saying that he does not want to take anything from her hands henceforth. The very fact that entire cross examination of these witnesses is silent on this aspect and their evidence has remained unchallenged on record, goes to prove that Aditi has not only offered 'Prasad', but Udit has consumed it, which fact was disclosed by Udit also before the Doctor. Hence the fact of Udit consuming Prasad is not only proved from his own statement, but also from the immediate statement of Aditi made before their friends.

Conduct of Aditi :

76] In this respect the conduct of Aditi is also assuming significance . As rightly submitted by learned APP. On the next day, she made phone call on Udit's cell, PW.5- Jagbir with whom Udit's mobile was, received the said call. Aditi did not disclose her identity, but she merely asked him, where was Udit ? He asked her, who she was? She then asked him, who was he? He told her that he was Jagbir. Then she again asked where was Udit ? He told her that Udit was standing at some distance, she may call after some time. As Jagbir felt that phone call was from Aditi, as Udit has met Aditi her on previous day, in order to find out from where that phone call was received, he and Abhijit went to STD booth of Reliance company. There they came to know the address from where the call was made. The said address was of a small shop of P.W.6- Sandip Bahirwade, which was near White house Lodge . They went there and verified by tallying the said number received on Udit's mobile phone and confirmed that call was received from that STD booth. Then they made further inquiry and came to know that phone was made by Aditi and she was staying in White house Lodge . They went there and confirmed it. As Aditi was not in the room, they went to McDonald's hotel, it being a lunch time, to ascertain whether Aditi has gone there to take the food. On the way they found Aditi and Pravin entering in to Sugar cane Juice Center.

77] Aditi has admitted the fact that she had made phone call on Udit's mobile in the morning. As per her case, she has made that call to know Udit's condition, as he was very much upset on the previous night. She has admitted that there was somebody else on the phone, who told her to contact after some time and thereafter she met these students at Sugar cane Juice

Center. Thus, Aditi is not denying to have made the said phone call on Udit's mobile. The explanation offered by her cannot be called as probable or satisfactory. If she was really worried about Udit, she would have made the phone call first thing in the morning, but evidence of call record shows that it was made in afternoon. Moreover she has not disclosed her identity on phone. Nor she again made call after sometime. She was traced only because of the efforts taken by these students to find out the number from which she made the call. For the present, thus it can be sufficient to hold as proved that Aditi has made such phone call on Udit's mobile, without disclosing her identity,

78] Coming to her subsequent conduct, when she was confronted about giving 'Prasad' to Udit. Evidence of P.W. 2- Vinay goes to show that when they asked Aditi whether she was having that packet of Prasad, she told them that she has already thrown it away. However of P.W. 4- Siddharth before whom also, she has told the same thing, when he met her at Sugar cane Juice Center, has deposed that while he was sitting in the lobby of Aditya Birla Hospital, alongwith Aditi, Aditi opened the purse and in that purse, they found the packet of Prasad. He took up that packet of 'Prasad' from her purse and handed it to Dr. Deshpande, who stapled it and kept it in the drawer. As per his cross examination, Aditi herself took out the packet of 'Prasad' from her purse and gave it to them in the Hospital. The evidence of P.W. 5- Jagbir also proves that though Aditi has told them that she has thrown the packet of Prasad, in the Hospital, when he asked Aditi to confirm whether that packet was still lying in the purse, she opened the purse and started searching, at that time he saw one packet in her purse and took it out. They asked her whether it was the same packet from which she has given 'Prasad' to Udit, she said, yes. As per his evidence, in that

packet, there were some particles of Prasad, they gave that packet to Dr. Deshpande who kept it in the drawer.

79] Thus, this conduct of Aditi of initially claiming that she has thrown away the packet of 'Prasad', but subsequently the packet of 'Prasad' being found in her purse, becomes one more incriminating link against her. If Udit has not consumed that 'Prasad' and if there was nothing in that 'Prasad', there was no reason for Aditi to say that she has already thrown it, when actually it was found in her purse. Thus, this conduct of Aditi, betrays the guilty mind. It appears that only because of the persistency of these witnesses they could get packet of 'Prasad' from her purse. It is also pertinent in this respect to take in to consideration the evidence P.W.4-Siddharth. As per his evidence when Aditi started leaving th Hospital, he asked her mobile number. She gave her mobile number, but when they tried on that mobile, it proved to be a wrong number He is not cross examined on this point. The question for consideration is why Aditi should do it? No explanation is coming from the side of Aditi, though she was given an opportunity to file an elaborate written statement of her defence.

80] The submission of learned counsel for accused is to the effect that merely because these are independent witnesses, their evidence cannot be accepted as gospel truth. It is not always easy for the accused to say why these witnesses are stating against him / her. learned counsel for accused in this respect has placed reliance on ***Deoraj Deju Suvarna Vs. State of Maharashtra, 1994 CLJ 3002*** wherein it is observed that :

"norms of appreciation of evidence do not warrant that the evidence of a witness who is in dependent and has no reason to falsely implicate the accused persons, should be mechanically accepted as gospel truth. Even the Testimony of witnesses who

fall in the aforesaid category can only be accepted after it is established that they are truthful witnesses and their evidence is in consonance with probabilities. "

81] He has also placed reliance on the authority of ***Madkami Baja v. The State 1986 Cri. LJ Orissa 433*** on this aspect, wherein it was held that :

" Evidence of a witness to the occurrence in a criminal case is not to be accepted merely because, the defence has not been able to say as to why the accused has been involved or as to why a witness has come forward to depose against him or because the witness is a disinterested persons. Disinterested evidence is not necessarily true and interested evidence is not necessarily false."

82] It may be true that merely because the witnesses are independent, their evidence is not to be accepted as gospel truth on the ground that defence has not been able to say why they are deposing against the accused. However, as held in the above said authority, their evidence can be accepted if it is in consonance with probability. In the instant case, the evidence of these witnesses as gleamed from entire state of circumstances, is definitely in consonance with probability and most importantly, their evidence is not challenged or shattered and it accords well with the factual aspects of the case.

Seizure of the purse from Aditi :

83] The most incriminating circumstance alleged by the prosecution against Aditi is, that of the seizure of her purse in which two packets of 'Prasad' were found and as per the C.A. Report, those packets were found to be containing Arsenic poison. To prove this circumstance, the prosecution has placed reliance on the evidence of P.W. 1- panch Umesh Tanjane, in

whose presence the said purse was seized and the evidence of P.W. 28- API Pratap Pawar, who has seized that purse on 5/5/07, vide panchanama Exh. 25. As per the evidence of both, the panch and API Pawar, two plastic packets, one containing Sakhar futane and other containing small pieces of Khadi sakhar, were found in that purse. They sealed the purse, after keeping it in the paper bag and then keeping it in plastic bag. Accordingly, the panchanama was also prepared. As per evidence of P.W. 28 API Pawar, he has deposited the said purse with muddemal clerk- P.W. 30- Ashok Nilkanth. As per his evidence on 5/5/07 API Pawar produced one sealed packet. Accordingly, he made entry No. 11 in the Register, the relevant extract of which is at Exh. 124. On 19/5/07, he sent the said sealed packet to C.A. There is signature of PW 32- API Bhamre on the Register to that effect. Evidence of API Bhamre also goes to show that he has sent the said purse to C.A. As per the C.A. report Exh. 55, proved through the evidence of P.W. 15- Gujar, the chemical analysis of the purse and the contents of Khadi sakhar and Sakhar futane, it revealed the presence of Arsenic in both, the purse and Khadi sakhar.

84] Learned counsel for accused has however seriously assailed this evidence about the seizure of purse, especially, the sealing part of it. Aditi has admitted the fact that the purse was seized from her, but she has denied that it was sealed in her presence, or at any time. Learned counsel for accused has tried to draw the attention of the court to some vital admissions given by the witnesses in this respect, like P.W. 1- panch Tanjane has admitted in his cross examination that the labels of the signatures of panchas were not affixed to the actual purse, but to its wrapper. The purse was kept in the plastic bag, however the seal was not affixed to the plastic bag. The plastic bag was also not stapled. He has further admitted

that in the panchanama it is not mentioned that the purse was first kept in plastic bag and then it was kept in the paper bag. In the panchanama, it is also not mentioned that the labels were affixed to the paper bag. Therefore, it is urged that his evidence is not at all sufficient to prove that purse was actually sealed at the time of panchanama.

85] According to learned counsel for accused, even the evidence of P.W.28 - API Pawar, who has seized the said purse, goes to show that though he has deposed that he has kept the purse in the plastic bag, closed the plastic bag with labels of signatures of panchas and himself and sealed that plastic bag containing purse with *lakh*, in cross examination he has admitted that both the plastic packets of Khadi sakhar and Sakhar futane, which were in the purse, were open. He did not seal those packets separately. He did not staple the plastic bag in which the purse was kept. He has further admitted that the plastic bag which is before the court, is not having any seal and there are no marks on the plastic bag to show that it was sealed. Even the label of the signatures of panchas is not appearing on this plastic bag. There are also no marks on this plastic bag to show that label was affixed to it. He has not even obtained the receipt from muddemal clerk to show that he had deposited the said purse with him. The copy of seizure panchanama was not given to Aditi. No endorsement to that effect is made on panchanama. He has not even given the detail description of the articles seized, in panchanama, either of the purse or of the packets of 'Prasad'. He has not given any report in writing to his superior officers about seizure of the purse. He has not made any entry in the station diary about the same.

86] He has submitted that, the evidence of P.W. 30 - muddemal clerk

- API Ashok also shows that in the relevant entry No. 11 in the muddemal register, there is no mention that API Pawar has given him the original panchanama. The date on which the purse was produced before him is also not mentioned in the entry. It is also not mentioned that purse was in sealed condition. He has also admitted that he has not issued any receipt to API Pawar about the deposit of purse. Further he has not mentioned when the purse was given to the carrier for delivering the same to C.A., it was in sealed condition.

87] Hence according to learned counsel for accused , all these admissions given by the witnesses are more than sufficient to show that the purse and the packets of 'Prasad' were not sealed at the time of panchanama and there is no conclusive evidence to show that when the purse was seized, there were packets of 'Prasad' in it.

88] Therefore, according to learned counsel for accused , there is serious breach of mandatory provisions laid down in Police Manual para Nos. 147, 150, 152 and 167 of sealing the article immediately after seizure and the said article must be continue to be in sealed condition, till it was received by C.A. According to him,if there is no reliable evidence about sealing of either purse or the packet of 'Prasad' therein, there is possibility of tampering with the contents thereof which is sufficient to disbelieve the said evidence, there need not be actual proof of tampering. So far as the present case is concerned, he has urged that,such possibility cannot be ruled out considering the fact that as per evidence of P.W. 28- API Pawar, the none of the packet was bearing the stamp of any shop, whereas as per C.A. report, it was bearing the stamp of Mata Vaishnodevi temple. He has also drawn attention to the fact that one of the police officers, namely P.W.

27 – Sanjiv Patil has, in the course of investigation gone to Jammu on 5/5/07 and left Jammu on 10/5/07. As the town at base of Vaishnodevi temple is only at the distance of 40 KM from Jammu, there is every likelihood of his visiting Vaishnodevi temple during that period and while returning bringing packet of 'Prasad' from Vaishnodevi in order to distribute those packets to his superior officers. There is possibility that in contents of one of the packets, Arsenic might have been mixed and the same packet being sent to C.A. Both these suggestions were put up to P.W.27- Sanjiv and API Bhamre. No doubt they have denied the same, but this possibility according to him, cannot be ruled out because as per the law proof of actual tampering need no be adduced, mere possibility is also sufficient.

89] To substantiate his submissions, learned counsel for accused has relied on the authorities of : **State Vs. Motiya 1995 CLJ 835** and **Dasu and others vs. State of Maharashtra, Bom. C.R. 18985[2] 168** etc. , wherein the importance of sealing the muddemal articles at the time of seizure is emphasized and the effect of non-sealing is spelt out. The crux of these authorities is that, prosecution should produce evidence that articles sent to the C.A. were the same which were recovered from the accused. Similarly, it is necessary for prosecution to prove that officer recovering the articles should take efforts to seal them and evidence should be produced that the seals were not tampered with till the identification is offered or till the articles are sent to C.A. for analysis. In the absence of such precautions, it would always be open to the accused to say that the police later tampered with those articles in order to implicate him. If the evidence of such sealing is not produced, court cannot place reliance on the discovery of such incriminating articles. It was further observed in these authorities that, it is not necessary for the accused to show that the articles were actually

tampered with. The possibility thereof is sufficient.

90] Though there cannot be any two opinions about these legal propositions, in the instant case, despite all the admissions given by the witnesses, the documents produced on record like, the seizure panchanama of purse Exh. 25, goes to show that the purse was kept in the plastic bag, then said plastic bag was closed and labels of signatures of the panchas and police were affixed on it and it was sealed. Therefore, panchnama is clear to the effect that purse was sealed. Even the letter which was sent to C.A. along with purse, Exh. 133, shows that the purse was sent in the plastic bag in sealed condition to the C.A. along with police constable Tamboli. The C.A. report of the purse Exh. 55 also goes to show that the description of the parcel received was given as "one sealed envelope, seals intact and as per copy sent." Therefore, it cannot be said that when the purse was seized, it was not sealed just then and there and or it did not continue to remain in sealed condition till it was sent to C.A. Therefore, the possibility of tampering, which is suggested in the case, cannot be accepted. Moreover, the facts of this reported authority like ***Dasu and others vs. State of Maharashtra, Bom. C.R. 18985[2] 168*** were different in the sense that, there was no mention either in the panchanama or in the evidence of investigating officers that the clothes and the weapons were properly wrapped and sealed in the presence of panchas. Though in the forwarding letter, issued by the Investigating Officer to C.A., it was mentioned that those articles were wrapped and duly sealed, there was no evidence as to when they were wrapped and sealed and in the light of the same, it was held that, "*non-sealing of the articles immediately after the seizure in presence of panchas, is bound to affect the probative value of the findings of Chemical Analyser.*" As against it in the present case, in the panchanama it is

clearly stated that purse was sealed and as per the letter sent to C.A. also it is mentioned that it was in the sealed condition and the C.A. office has received the muddemal with seals intact. Now it may be true that after handling of C.A. office, the seals or their marks may not be remaining, but that does not mean that it was not sealed at all. Hence the possibility of Investigating Officer tampering with contents cannot be accepted.

91] Learned APP has relied on the authority of ***Franco D'Souza Vs. State of Goa 2000[5] BCR 890*** to submit that, in case of defective investigation, the story of prosecution will have to be examined de hors such omissions and contaminated conduct of the officials, otherwise the mischief which was deliberately done would perpetuate and justice be denied to complainant and this would obviously shake the confidence of people not merely in law enforcing agency, but also in administration of justice.

92] In this authority the reliance was also placed on the observation of Apex Court in the case of ***State of Karnataka V. K. Yarappa Reddy, 1999[8] Supreme Court 496*** to the effect that ,

“criminal justice should not be made the casualty for the wrongs committed by the Investigating Officers in the case. If the court is convinced that the Testimony of a witness to the occurrence is true, the court is free to act on it albeit Investigating Officer's suspicious role in the case. “

93] Reliance was also placed on the observation of the Apex Court in the case of ***Kernel Singh Vs. State of M.P., 1995[5] SCC 518*** that :

“it would not be right in acquitting an accused person solely on account of the defective investigation as to do so, would tantamount to playing in to hands of Investigating Officer, if the investigation is designedly defective. “

The point therefore, to be stressed is that , even if there are certain infirmities or lacuna in the investigation, especially as regards the seizure of purse, simply on the basis of those lacuna, the prosecution case cannot be disbelieved. The court has to see to the other circumstances to ascertain the truth.

94] Learned counsel for accused has challenged this circumstance also on the Test of probability factor also. According to him , it does not stand to reason that Aditi will keep with her the incriminating article of 'Prasad' in the purse for number of days, especially when since beginning she was under a cloud of suspicion. It is urged by him that, the alleged incident has taken place on 22/4/06, whereas the purse is seized from her possession on 5/5/06, i.e. after the lapse of about 15 days. During the said period she has also gone to Delhi and hence she has ample opportunity and time to dispose of the purse. She is not any rustic lady, but an educated girl. When she was aware since the day one that she was under a cloud of suspicion, to assume that she would retain the purse and bring it back, when she was called by police, is as good as insulting her intelligence. Moreover, when in the Hospital on 23/4/07, she was called upon to open the purse and from that purse she has produced some packet of 'Prasad' , it can hardly be accepted that she will bring the same purse again. Therefore, according to learned counsel for accused , on this Test of probability also, the evidence relating to seizure of the purse is required to be disbelieved. He has urged that Aditi has fairly conceded in her statement u/s 313 of Cr.P.C., that purse was obtained from her subsequently, i.e. only after the C.A. report of viscera was received showing the presence of Arsenic. The purse was also sent to C.A. only after the receipt of C.A. report and hence this fact supports the defence plea of tampering with the contents of the purse.

95] In my opinion why Aditi brought the same purse and that too without clearing contents thereof, there is probability that as she has already given the packet of 'Prasad' to Dr. Deshpande, she might not have expected the police to again search or seize her purse, that too, after 10-15 days from the incident. Secondly, there is also probability that she being an intelligent lady, she might have even thought that she would be suspected if she changed the purse or did not bring it with her. Her own acts or her own intelligence, may in such case prove to be her own undoing. One cannot enter in to the mind of accused or even cannot explain under which circumstances the accused has acted in a particular way at a particular time. The fact remains that the purse containing 'Prasad' was seized from her possession and the said 'Prasad' was found to be having Arsenic. It is a matter of record that when it was seized, C.A. report of the viscera or stomach sample were not received. Therefore, it cannot be accepted that at the time of seizure of the purse itself, the police were knowing the contents of C.A. report.

96] In my considered opinion, even for the sake of argument, it is held that this circumstance is not convincingly and reliably proved by the prosecution, it does not affect prosecution case as there are other clinching circumstances on record on the basis of which also, the prosecution has succeeded in proving its case.

Evidence of Polygraph and BEOS Test :

97] One of such link in the circumstantial evidence is the evidence of two Psycho Logical Evaluation Tests conducted on accused No. 1- Aditi. Witness No. 29- Sunny Joseph who is working as Assistant Chemical

Analyser in Forensic Science Laboratory, Mumbai, has conducted the said Tests. In all he has conducted 2 Tests, one Polygraph Test and the other Brain Electrical Oscillation Signature Profiling [BEOS] Test on Aditi and only Polygraph Test on Pravin . It is not disputed and otherwise also, proved through the evidence of P.W. 33- Mohite that, after he received investigation of the case from P.I. Vidhate, on 25/5/07, he obtained permission from the court to conduct various Tests of Psychological Evaluation on both the accused at Forensic Science Laboratory, Mumbai. Accordingly, he has written the letter , Exh. 142 for obtaining suitable dates for conducting said Test. On 23/7/07 he was called upon to remain present along with accused. On that day, a team headed by P.W. 29- Sunny, made inquiry with him and the accused about the facts of the case and next date was fixed as 25/7/07 for conducting the Tests. On both these days, he has taken Aditi from Yerawada Jail to FSL Mumbai. Pravin who was on bail, was also present for the Test. Only Polygraph Test was conducted on Pravin.

98] The evidence of P.W. 29- Sunny also goes to disclose that on 23/7/07 his team consisting of Dipti Puranik and Nawaz Irani interviewed the investigating officer and both the accused. They prepared the notes of their interviews, discussed the case in detail in the light of whatever information they had collected and in pursuance of their discussion they decided to conduct Polygraph and BEOS Test on Aditi and only Polygraph Test on Pravin . For conducting the Test, they had prepared a set of questions. He has described in detail the procedure adopted for conducting these two Tests. It also forms part of his report Exh. 111. As per the said procedure as deposed by him, for conducting Polygraph Test they prepare a set of questions. The subject on whom the Test is to be conducted is made to sit

with a number of sensors attached to his body. These sensors are supposed to record the respiration, electro-dermal activity and blood pressure. The sensors attached to the body continuously monitor these parameters during the Test. They take a base line of all these parameters and questions are asked to the subject one by one. For every question there is a base line. The subject is supposed to answer 'yes' or 'no' to all the questions. After his verbal response, in 'yes' or 'no', his psychological responses are recorded. The questions are divided in to three sets. viz. Irrelevant, controlled and relevant. Relevant questions are related to the case. These questions are prepared on the basis of the interview of I.O., and the facts given in his report and documents enclosed with the referral letter. Responses given by the subject to the relevant questions are compared either with the baseline and/or with the responses of the controlled questions. There is a pre-determined criteria for detecting deception and truthfulness. There is a Working Procedure Manual for Polygraph, for conduction and scoring of Polygraph . It is a universally accepted Manual. Based on this criteria, responses given by the subject are noted down and compared and they are given scores. These scores indicate truthfulness or deception while answering to the relevant questions. The recording and monitoring of all these parameters is done by the computer. Scoring is however done manually with the help of features which are already available in the Polygraph software.”

99] His report disclosed that on the basis of case formulation, Psychological profiling of Aditi , the observation of her mental status examination and psychological assessment, the Polygraph examination was conducted on her, after understanding of the case and Aditi's alleged involvement. As per his evidence a question set was prepared which

question set is produced at Exh.109. The said questions were aimed at checking whether she was deceptive of questions related to her having a hand in Udit's murder, her hiding some important facts related to Udit's murder, her mixing Arsenic in 'Prasad' that was given to Udit and the possibility of her having discussed the plan of murdering Udit with Pravin. He has deposed that "Analysis of Aditi's responses on Polygraph revealed Deception on all the relevant questions : "Kya Udit ki hatya mein aapka hath hai?" [Q.No.3], "Kya Udit ki maut ke bare main koi baat Aditi and Pravin chupa rahe ho?" [Q.No.6], "Udit ko diya hua 'Prasad' main kya aapne Arsenic milaya tha?" [Q.No.9] "Kya aapne Pravin ke saat milke Udit ko marne ka plan kiya tha?" [Q.No.12]. This indicates that Aditi was deceptive when questioned about her involvement in various aspects of the murder of Udit. "

100] Similar Polygraph Test was conducted on Pravin also. However the analysis of the results of his responses on the relevant questions being in-conclusive, it was opined that his role in this case cannot be commented upon, as his responses could not be qualified as deceptive or truthful when analysed. Pravin was not therefore subjected to BEOS Test which was conducted on Aditi on the same day.

101] P.W.29- Sunny has in his report and also in his evidence given the details of how the BEOS Test is conducted. According to it, BEOS is a Test which is an application of the EEG [Electro Eencephalo gram] . It is commonly used in a medical set up for diagnostic purposes. In medical field EEG is done for the purpose of detecting any abnormality in the brain. In this process electrodes are attached to different parts of the brain to detect electrical activation of different parts in the brain. The subject is asked to wear a cap with 32 electrodes . Out of these 32 electrodes two electrodes

are on 2 ear lobes and remaining 30 are on different parts of the brain. These electrodes are arranged in a universally accepted manner touching the scalp to detect electrical activation inside the brain. It is not an invasive procedure. By this method, different aspects of the memory are studied. Such as : conceptual knowledge and experiential knowledge. Conceptual memory is related to semantic processing. Semantic means the use of words, vocabulary knowledge of language etc. This aspect of memory is restricted to the information that we receive from various sources, such as – reading newspaper, watching TV etc. Experiential knowledge is acquired only through participation in an activity or event leading the person to have an experience of that event. According to him, this BEOS system is programmed in such a way that it detects and differentiates between the electrical activation related to conceptual and experiential knowledge. Based on the information of the case collected from I.O. and other documents, they prepare number of probes- meaning - short sentences or phrases. These probes are arranged in a sequential order to depict different scenarios. The probes are of three different categories. Viz. Neutral, which are presented to prepare base line for cognitive process. Second : control probes. Those are related to personal information of that subject. Third : relevant probes. Those are related directly to the case. These probes were recorded in a computer and presented to the subject. The subject is asked to sit with his eyes closed and listen to probes. The subject is asked not to give any answers verbally. After the Test is completed, the system analyses the electrical activation for relevant probes in comparison to the baseline for each individual probe. After analysis the system generates a report that tells us what kind of cognitive processing that took place when each probe was presented. There is no manual analysis involved in this system. As per his evidence the report prepared by the system shows the experiential

knowledge against a probe only when electrical activation suggestive of memory related to processing related to an event is present.

102] In his evidence he has proved on record the list of probes which was presented to Aditi along with her responses. It is at Exhs. 114/1-5. These probes are qualified in to 8 categories relating to different cognitive processes in the the brain when probes are presented. Those cognitive processes are attention, primary processing , encoding, familiarity, experiential knowledge, negative response, activation suppression, and emotional response. He has enclosed a sheet along with his report giving definition of all these processes. It is Exh. 115. In this sheet, Scenario Nos. 3 to 8 are relevant probes."

103] His report discloses that *findings of the BEOS conducted on Aditi showed Experiential Knowledge on a number of target probes presented to her, indicating her involvement in the murder of Udit Bharati. Experiential Knowledge was found to be present on probes depicting her having an affair with Udit taking admission along with him in Pune and her having some inter-personal conflict with Udit and, therefore, both of them not talking much to each other. It is also revealed in BEOS, that Aditi knew that Udit was not really happy about her affair with Pravin and about her getting married to Pravin. Aditi was found to have Experiential Knowledge for having a plan to murder Udit by giving him Arsenic. Experiential Knowledge was also found for her having gone to a temple and collected Prasad, buying Arsenic from a shop, and keeping some 'Prasad' aside for Udit. She was also found to have Experiential Knowledge for her having called Udit up and given him the 'Prasad' that was mixed with Arsenic. Experiential Knowledge for the emotional experience of getting relieved and scared in relation to giving*

Udit the 'Prasad' was also found present on BEOS Test . Thus, these findings clearly indicate Aditi's involvement in the murder of Udit.

104] Therefore, in conclusion he has stated that “Psychological Evaluation including Psychological Profiling, Polygraph Testing and BEOS of the subject Aditi Sharma clearly indicated her involvement in the murder of Udit.

105] The Psychological Evaluation tests of Aditi thus, clearly proves her involvement in Udit's murder as indicated by Deceptive responses on the relevant questions in Polygraph Test and by the presence of Experiential Knowledge on the target probes in BEOS in terms of having a plan to murder him, collecting 'Prasad' and Arsenic, meeting Udit and giving him the Prasad. Analysis of the Aditi's responses on Polygraph indicated Deception on all the relevant questions, thereby corroborating the BEOS findings.”

106] His evidence and opinion is challenged on the ground that he himself has not conducted the said Tests, but his team-mate Dipti Puranik has done so and therefore, his knowledge is hearsay. However his evidence is more than sufficient to show that he himself, Dipti and Nawaz had formed a team for conducting these Tests on the accused. He was reporting officer of the Tests and Dipti and Nawaz were his assistants. The report also is prepared and signed by him. Therefore, it can hardly be accepted that his knowledge about the Tests is hearsay.

107] The second contention raised is that, these Tests are not of a conclusive nature, as neuro science which is a study of brain and nervous system, is comparatively a new field. As admitted by this witness, in India

Polygraph Tests are introduced only about 10 years back, whereas the brain mapping- BEOS Tests are introduced as recently as 5-6 years back. It is submitted that this witness, therefore, cannot be called as an expert or qualified one to conduct these Tests. But then, competency of this witness to conduct the Test is not seriously challenged. His evidence also reveals that he was working as Clinical Psychologist in National Institute of Mental Health and Neuro Sciences at Bangalore and he has experience in the field of Neuro psychology since last 6 years and in forensic technique since last 1½ years. He has himself conducted approximately 15 Polygraph Tests and has been associated with almost 100 Polygraph Tests. He has conducted 16 BEOS Tests and has been associated in conducting of about 12 Neuro Psychology Tests. Therefore his expertise in my opinion, can in no way be challenged and nothing is brought on record in his cross examination to show that the Tests conducted were not proper and requisite procedure was not followed.

108] As regards the contention that the results of these Tests are not conclusive in nature, certain suggestions are put up to him in cross examination to the effect that, there are two Polygraph Tests, one is Computer Polygraph and the other Analog Polygraph; out of them Analog Test gives better results, whereas Computer Polygraph Test provides high degree of false positive results. This suggestion is denied by him. Further suggestion put up to him is that, Polygraph Test is based on arousal of autonomic nervous system which can take place when person speaks lie and also when person is under stress, anxiety, anger, nervousness, fear and embarrassment. He has denied the said suggestion and nothing is brought on record to show that at the time of Test, Aditi was either under stress, anxiety, anger, nervousness, fear and embarrassment.

Her Psychological Profiling and Assessment reveal that no significant abnormalities in her mood or thought were observed except for her distress over alleged involvement in a criminal case. Therefore, it cannot be accepted that arousal of her autonomic nervous system, resulting in to her deceptive answers took place on account of the stress, anxiety , anger nervousness, fear and embarrassment.

109] The attention of the witness was also drawn to the opinion of American Medical Association that, the results of Test depend upon the skill of Polygraphist and the success rate is only 70%. He has not agreed with the same as both the Tests are computerised. In BEOS Test even the analysis is also done by computer and no manual element is involved.

110] An attempt is made to contend that the BEOS Test, which is used in Forensic Science Laboratory, Mumbai is different from the Farwell's Brain Finger Printing Test, and the system used for similar Test in Forensic Science Laboratory Banglore. It is urged that this system is highly sensitive and only an expert can use it. This witness's attention was also drawn to the preposition in the Expert's Assessment of Neuroimaging an Brain- Computer interface to the effect that some more work needs to be performed both, on the methods used to cause brain activation as well as processing methods for resulting data that provide clear interpretations of the results. He has denied the said suggestion. His evidence is categorical to the effect that as the BEOS Test which is conducted without any manual intervention and its results depend only on the automatic activation of the probes, there is no question of any mistake or error being committed. According to him, the Experiential Knowledge is acquired only through participation in an activity or event leading the person to have an experience of that event. BEOS

system is programmed in such a way that it detects and differentiates between the electrical activation related to conceptual and Experiential Knowledge. Therefore, merely because Aditi has read the newspapers or this case was reported in Media and hence she has given some false responses on the basis of her acquired information or knowledge cannot be accepted. Unless and until she has participated in such offence, her responses to Experiential Knowledge could not have been activated.

111] An attempt is also made by learned counsel for accused to contend that the questions have been raised over the methods used by Forensic Science Laboratory Mumbai referring to authenticity of the Forensic techniques used there. Reliance is placed in this respect on one computer print out of the Article published in Mid-day, dated 20/1/08 titled as 'Battle of the labs'. As per the said Article, Dr.B.M. Mohan , Director of Forensics Science Laboratories in Bangalore has alleged that the controversial techniques used in Forensic Science Laboratory, Mumbai has led to innocent people being wrongly incriminated in a case probed by Maharashtra State CID. However the perusal of said Article itself reflects that Dr. Rukmini Krishnamurthy, Director of the State Forensic Science Laboratory, has rubbished Dr. Mohan's claims, stating tht lab's BEOSP technique is the same as the one used since 2003 at Forensic Science Laboratory Gujrat which Lab is accredited by the National Accredited Board Limited and in the past said technique has helped gather corroborative evidence in four sensational cases, like the Ujjain serial killing, the Jharkhand mass murder probed by the CBI and two murder cases with the Gujarat police. In two cases, capital punishments were awarded to the accused based on the BEOSP findings.

112] It is just sufficient to state that these allegations and counter allegations made in this news Article are self-speaking for not giving any importance to this Article for the purpose of discarding the reports of Polygraph and BEOS Tests and evidence of P.W 29- Sunny. As held in the authority of, ***Bhaskar Sitaram Narule Vs. State of Maharashtra, 2008 ALL M R [Cri] 913*** relied upon by learned APP, only on the strength of authoritative books or such reports, the court cannot substitute its opinion, in the place of opinion which is expressed by expert witness on the basis of his own findings, observations and Tests.

113] Learned counsel for accused has then placed reliance on the Guide-lines issued by Human Rights Commission relating to administration of Polygraph Test on accused. It is submitted that as per the said Guidelines except with the consent of the accused recorded before Judicial Magistrate, no such Test should be conducted and secondly, accused should be given an access to lawyer and the physical, emotional and legal implication of such Test should be explained to him by the police and his lawyer. In the present case, it is urged that these Guidelines were not followed. The consent of the accused was not obtained before the Magistrate, nor they were informed that they can keep their lawyer present.

114] However in this respect, the evidence of P.W.29- Sunny shows that he has obtained informed consent and willingness of the accused before administering Tests to them. He has also explained the implications of the Tests to the accused. In his report also said fact is mentioned. Therefore, the absence of their lawyer cannot invalidate the report of these Tests.

115] As regards the admissibility of this evidence, leaned APP has

relied on the authority of **Ramchandra Ram Reddy Vs State of Maharashtra All M.R. Cri L J 2004 Bom.1704**, wherein it is held that,

“as these Tests are not in the nature of Testimonial compulsion, they do not in any way violate Article 20[3] of Constitution and recourse to such Test can be taken if and when the investigating agency seeks to introduce such statement as evidence.”

Thus the use of these Tests both during the course of investigation and trial is held to be admissible.

116] Learned APP has also relied upon the observations of Apex Court in the case of **State Vs. S.J. Choudhary, 1996 DGLS 346** wherein the evidence relating to expert was considered and it was observed that :

" It is obvious that the Indian Evidence Act when enacted originally in 1872 did not specifically mention typewriting in addition to handwriting because typewriters were then practically unknown. However, the expression 'science, or art' in Section 45, in addition to the expressions 'foreign law' and 'handwriting' used in the section as originally enacted, and the expression 'finger impressions' inserted in 1899, is sufficient to indicate that the expression 'science, or art' therein is of wide import. This expression 'science, or art' cannot, therefore, have a narrow meaning in Section 45 and each of the words 'science' and 'art' has to be construed widely to include within its ambit the opinion of an expert in each branch of these subjects, whenever the court has to form an opinion upon a point relating to any aspect of science or art."

It was further observed in this authority that -

"An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention."

It was concluded by holding that -

"There cannot be any doubt that Indian Evidence Act 1872 is, by its very nature, an ongoing Act."

117] Thus in view of section 45 of the Evidence Act, whenever the court is required to form an opinion upon a point of science, then the court can take the help of the opinion of the person specially skilled in the said science and the opinion of said expert is admissible in evidence as relevant fact by virtue of Section 45 of the Act. In the instant case, as P.W. 29- Sunny is an expert in the branch of Forensic Science pertaining to Psychological Evaluation Test, his opinion being of an expert, is admissible in evidence by virtue of section 45 of the Act and his opinion supports prosecution case so far as accused No. 1- Aditi's involvement and authorship of the crime is concerned.

118] Of course this court is aware that the results of these Tests are not to be treated as conclusive in the sense that on the basis of those results only the case is not to be decided. They are just one of the link in the chain of circumstantial evidence, like any other evidence on which prosecution places reliance.

Proved circumstances :

119] Thus to sum up, the circumstances which are proved on record are to the effect that -

There was broken love relation between deceased Udit and accused No. 1- Aditi.

Thereafter Aditi left Udit along with Pravin as she fell in love with him and both of them started residing together at Delhi.

On 22/4/07 both the accused came to Pune. Immediately on reaching Pune, Aditi got Udit's cell number from his mother by calling her in the *name of student by name Amit*.

She called Udit for meeting at McDonald's hotel.

After returning from the said meeting at about 12.00 O'clock in the night. Udit started suffering from vomiting and loose motion.

He was admitted in the Hospital at 2.30 a.m. where he disclosed the history of consuming Prasad.

On the next day, at 1.30 p.m. Aditi made phone call on Udit's cell without disclosing her identity.

Udit's friends traced Aditi.

Before them she admitted that she has given 'Prasad' to Udit.

However she gave a false explanation that she has already thrown away packet of 'Prasad' .

The packet of 'Prasad' was found in her purse later on.

Udit died due to consumption of Arsenic.

In his stomach wash and viscera, fatal dose of Arsenic was found.

In the packet of 'Prasad' , which was seized from the purse of Aditi , Arsenic was detected.

her In the Polygraph and BEOS Test, responses of Aditi to the set of questions put to her were found to be deceptive and proving experiential knowledge, respectively.

120] In the light of these proved facts on record, submission of learned APP is that these facts from a chain of circumstances leading to no other inference, but to the inference that it was Aditi , who has knowingly and intentionally caused murder of Udit, acting in conspiracy with Pravin, by administering him Arsenic in 'Prasad' knowing fully well that Udit will not refuse to take it as normally no-one refuses and he will not remember also of having consumed it. It was a very well thought-out strategy designed

and planned by Aditi.

121] As against it, submission of learned counsel for accused is that these circumstances are not satisfactorily proved beyond reasonable doubt in view of the infirmities pointed out in the evidence and even if they are held to be proved on record, still then, they leave open several possibilities, especially the possibility of Udit committing suicide by consuming Arsenic, being totally disappointed and dejected on account of the disclosure made by Aditi of getting secretly married with Pravin and residing with him. The submission of learned counsel for accused is that in case of murder by administration of poison, four important circumstances have to be established by prosecution as laid down in the authority of **Sharad Sarda**. They are :

1] There is clear motive for an accused to administer poison to the deceased.

2] That the deceased died of poison said to have been administered.

3] That the accused has poison in his possession and

4] That he had an opportunity to administer the poison to deceased.

122] In the present case, he has urged that even if it is proved by prosecution that Udit died on account of poisoning and also further proved that Aditi has an opportunity to administer the poison, in that case also, the prosecution has failed to prove the clear motive for accused to do so and also that accused Nos.1 and 2 had the poison in their possession. According to him, unless all these four ingredients are proved, the case of murder by

administration of poison cannot be said to be proved. The two circumstances proved by prosecution are, not of an unerring tendency leading to the only conclusion of Udit succumbing to homicidal death by consumption of Prasad. They still leave open the possibility of Udit consuming Arsenic himself, due to frustration in his love affair.

123] Now coming first to these four essential ingredients, required to be proved in case of murder by administering poison, learned APP has relied on another land mark decision of Apex Court in the case of **Anant Lagu Vs. State of Bombay, AIR 1960 SC 500**, which was also a case of murder by poisoning. In this authority also it was observed that :

" The prosecution must establish in a case of poisoning : a] that death took place by poisoning; b] that the accused had the poison in his possession; and [c] that the accused had an opportunity to administer the poison to the deceased."

However in this authority it was further held that :

"Though these three propositions must be kept in mind always, the sufficiency of the evidence direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily , either directly or by circumstantial evidence then the benefit of the doubt will have to be given to the accused person. But if the circumstantial evidence in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison [though not detected] and that the poison must have been administered by the accused person, the conviction can be rested on it."

It was further observed in this authority that :

"A case of murder by administration of poison is almost always

one of secrecy. The poisoner seldom takes another into his confidence, and his preparations for the commission of the offence are also secret. The greater his knowledge of poisons, the greater the secrecy, and consequently the greater the difficulty of proving the case against him."

124] In this authority the postmortem examination and Chemical Analysis of viscera failed to disclose any poison, but the ligature marks on the neck were found to be postmortem. Therefore there was no direct evidence to show that accused administered the poison and as no poison in fact has been detected by the Doctor who performed the postmortem examination or by the C.A., a strong case was tried to be made out for acquittal of the accused, which was rejected by Trial court, High Court and Apex Court also, by drawing inference of the guilt of the accused on an examination of a mass of evidence proving the conduct of the accused. In the light of statement made by the accused at a time he was not required to face the charge, it was observed that:

"if some prior conduct is connected intrinsically with conduct of the accused after death, then the motive of the accused would be very clear indeed."

The material observations made in this authority, which are very relevant for the purpose of this case, are to the effect that :

"It is to be observed that the three propositions were laid down not as the invariable criteria of proof by direct evidence in a case of murder by poisoning because evidently if after poisoning the victim, the accused destroyed all traces of the body, the first proposition would be incapable of being proved, except by circumstantial evidence. Similarly, if the accused gave victim something to eat and the victim died immediately on the ingestion of that food with symptoms of poisoning and poison, in fact, was found in the viscera, the requirement of proving that the accused

was possessed of the poison would follow from the circumstance that the accused gave the victim something to eat and need not be separately proved."

125] In this authority, one decided case having identical facts was quoted with approval that and holding that :

"proof and the fact of possession of poison was rendered unnecessary, because the victim had died soon after eating Pedhas given by the accused in that case, and he had not partaken any other food likely to contain poison."

126] In the present case, therefore, from the mere fact that prosecution has not adduced sufficient evidence to prove that accused Aditi was in possession of the poison, her possession of poison can be proved by the circumstances showing that after consuming 'Prasad' given by her, Udit has not eaten anything else and he has started suffering from vomiting within 5-6 hours, as does happen, in the case of Arsenic. This circumstance is sufficiently proved on record. Though the submission is advanced that the prosecution has failed to show from where Aditi has procured or got in possession of the Arsenic; conversely I.O. has admitted that though police staff was sent along with photographs of accused to Delhi, Gurgaon and area of Wakad at Chinchwad, to know whether they had purchased Arsenic, but no evidence could be elicited on this point and hence the possession of Arsenic by Aditi being not proved, especially in view of lacuna in the evidence relating to seizure of purse and packets, in my opinion the other circumstances in the case being so strong, they lead to no other inference, as held in this authority, but to hold as proved that the death of Udit took place on account of consumption of 'Prasad' given by Aditi to him in their meeting at McDonald's hotel. These circumstances are,

127] As per the admitted facts on record, which are proved through the evidence of all the witnesses and not challenged also, Udit has taken only lunch in the afternoon and Vada-pav in the evening, apart from this 'Prasad' given by Aditi and a sip of Whisky in his flat, after returning from meeting her. As regards lunch in the afternoon and Vada-pav in the evening, as he has taken that from a public place, either his hostel or in a mess, hotel etc., there is no possibility of his alone suffering from poisoning on account of consumption of the same. More over lunch was taken in the afternoon, whereas Vada-pav in the evening and he has started suffering from vomiting at about 12.00 O'clock in the night. As per evidence of P.W. 15- Chemical Analyst Gujar, in case of acute Arsenic poisoning, its action starts in the body within half to one hour. His evidence also goes to show that considering the presence of quantity of Arsenic in the stomach wash and viscera, it can be said that Udit was administered a fatal dose of Arsenic. Therefore, there is no question of Udit consuming Arsenic either in Vada-pav or in lunch, as he has not started suffering from these symptoms within half to one hour from consuming the same. He has started suffering from these symptoms only after returning at about 12 O'clock and at that time the only thing which he has consumed was 'Prasad' given by Aditi. So far as the sip of alcohol which he has consumed is concerned, the C.A. report Exh.19 of the alcohol bottle which was also seized by police under panchanama, goes to show that no Arsenic was detected in the same. Therefore, there was no question of his consuming Arsenic in Whisky. Hence, the only food article which he has eaten from evening till he started suffering from the symptoms was that of the 'Prasad' given by Aditi. There is absolutely no iota of evidence that he has eaten any other thing during this crucial period. Therefore, it leads to inescapable conclusion that Arsenic went into stomach of Udit only from 'Prasad' given by Aditi. This fact is conclusively proved by

prosecution and from this sole fact also, excluding all other evidence on record, it can be unerringly held that, Aditi was the author of the crime.

Defence - Plea of Suicide :

128] Submission of learned counsel for accused is that there is one more possibility which is suggested by Aditi in her statement u/s 313 of Cr.P.C. that of Udit committing suicide on account of being frustrated in his love affair. He has urged that when the only witnesses to the incident were deceased and Aditi and there is no other direct evidence, the statement given by Aditi about the incident is required to be given importance. To support his submission, he has relied on the authorities of ***Hate Singh Vs. State of Madhya Bharat, AIR 1953 Supreme Court 468; Amarsing Vs. State, 1956 MB 107; Narsiah and others AIR 1959 313*** and ***Ajay Singh Vs. State of Maharashtra, III [2007] CCR 112***, wherein it is held that,

“statements of accused recorded under section 313 of Cr.P.C. are among most important matters to be considered at the trial. They have to be received in evidence and treated as evidence and be duly considered at the trial. They should be given as much weight as the matters which tell against him. Because though presumption of the innocence lies in his favour even then he is not in a position to prove the truth of the story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false.”

129] In the present case he has urged that the explanation given by Aditi in her detail statement as to what happened at the time of her meeting in McDonald's hotel and what was the reason for her meeting with Udit, is not only reasonable, but it also accords with probabilities of the case. He has urged that Udit was deeply in love with Aditi . Their marriage was also settled and as admitted by Udit's mother, Aditi was also observing

fast of Kadva Choudh for Udit. Naturally, when Aditi left him, Udit must have been quite disturbed mentally and also frustrated. As admitted by his father, Aditi has ditched Udit, as a result of which their marriage was broken and as both the families were known and respectable families in Jammu, it is but natural that on account of breaking that relationship, there was some dishonour brought to the family name. The evidence on record according to him also shows that Udit was a sensitive person. As admitted by P.W.3- Megha in her evidence, she had seen cigarette burns on his arm and she had asked him what was the cause of those burns, which shows that he was a very emotional and sensitive person, though she has denied suggestion that Udit has told her that whenever he was angry with some one, he used to burn himself with cigarette, even in her statement recorded by police, Udit's mother Ravikiran has stated that as Udit's love affair with Aditi was broken he was under stress. Said portion in her statement is denied by her, but it is proved through the evidence of I.O. Learned counsel for accused has also submitted that Udit's mother has admitted the fact that she has immediately called upon Udit, not to meet Aditi, when from Udit's phone, she came to know that Aditi was in Pune and has called Udit to meet her. Moreover the repeated phone calls made by her to Udit clearly reflect that she was worried about Udit's mental condition on his meeting Aditi. The statement of Aditi also goes to show that when she told Udit that she has got secretly married with Pravin and now she intends official marriage, Udit was extremely angry with her and appeared to be very much upset. He told her that, "the whole Jammu knows that you were to marry me, now they will know that you have ditched me. You have spoiled my life and lowered the reputation of my family."

130] As per statement of Aditi, Udit was totally upset and therefore

none of them ate anything, though McDonald hotel was a usual joint for them earlier. They came out. Udit then lighted cigarette, had a couple of puff and saying as above again, he pressed his burning cigarette on his left hand. She pushed aside the cigarette, but he left the place in rage, saying that "you have completely ditched me. Life is no more dear to me and now you will see what I will do to me now." As per her statement, she did not take his words seriously, however after coming back to the Lodge, she told Pravin as to what happened and started crying. Pravin consoled her. On the next day in the afternoon, she rang up Udit to pacify him, as he was very much upset on earlier evening. As per her version she has decided to meet Udit on that day as she felt that as she had already come to Pune, it would be advisable to meet and appraise him of her marriage with Pravin in the temple and the intending official marriage and to say sorry to Udit. However, as she was not having Udit's cell number, she thought that she could get his number from his home at Jammu. But she felt embarrassed to talk with his parents, since she had broken her relationship with Udit, therefore, she requested Amit, a student from the college to phone at Udit's home in Jammu and get his mobile number.

131] According to learned counsel for accused, this version of the incident, as given by Aditi is equally and more probable than the case put up by prosecution. Especially in the light of the fact that in the case papers also there is mention of the cigarette burn marks and also considering that despite Udit's mother telling him not to go to meet Aditi, he went to meet her. It is but natural that after coming to know that Aditi has got married with Pravin, his being totally disappointed, agitated and frustrated, at the same time being angry with Aditi also. All his hopes of Aditi returning to him some day in future, were vanished, when he came to know about her

marriage with Pravin. Thus according to learned counsel for accused the possibility of Udit's committing suicide cannot be ruled out in this case. No investigation is carried out by police to explore this possibility. All the efforts were made to know whether any of the accused has purchased Arsenic. But no effort was made to find out whether Udit has purchased such Arsenic, though there are shops in Dange chowk which is at the distance of half to one K.M. from the flat where Udit was residing.

132] According to him, therefore, when this possibility of Udit's consuming Arsenic after meeting with Aditi, being very much present, the case of prosecution that Udit has homicidal death, cannot be held as conclusively proved. He has urged that burden lying on the accused is quite light. Accused has merely to show that from the evidence available on record, two views are possible and the view shown by the accused is also equally probable. By placing reliance on the authority of **Sharad Sarada** he has submitted that when two possibilities are clearly open, one that of a suicide and the other that of a murder and when both are equally probable, it has to be held that prosecution case stands disproved.. He has strenuously urged that when the case stands on circumstantial evidence, the prosecution has to prove that the act of the accused cannot be explained on any other hypothesis except the guilt of the accused and in all probability the accused alone and non else has committed the said act.

133] In the present case , as per his submission as there is fair possibility of Udit committing suicide which possibility cannot be excluded or eliminated and when two reasonable views are possible about the same incident, there is no reason for not extending the benefit of doubt to the accused. He has also relied on the well established rule of criminal justice

that in case of a serious offence, the standard of proof also must be equally high. The greater the crime, the stronger is the proof required for conviction. In his humble opinion, the prosecution has not succeeded in adducing that higher standard of proof considering the serious nature of the offence inviting capital punishment or life imprisonment, in case the guilt is held to be proved.

134] Now considering the possibility of suicide, in the first place there is absolutely nothing on record to show that Udit was in any way a sensitive or emotional person and on account of Aditi leaving him in favour of accused No. 2 Pravin, he was in a depressed state of mind. Though all the prosecution witnesses are put up suggestions to these effect, they have flatly denied the same. Conversely their evidence shows that Udit was leading quite a normal life of student. As a matter of fact, except for P.W. 3- Megha, who was Aditi's friend also, other students like, Siddharth, Naresh, Jagbir etc., were not even aware about the broken love relationship between Aditi and Udit. It clearly indicates that Udit's condition was not such, of being in a depressed state of mind, from which they could come to know about the broken relationship between Aditi and Udit. Conversely the evidence of Udit's parents go to show that Udit has studied regularly. His attendance in the college was 98.6%. He was a brilliant student and he has secured 75% marks in the First Semester of MBA. If on account of the broken relationship he was dejected or disappointed, then it does not appear probable that he would have secured this high score of marks. The evidence of Director Pille also goes to show that Udit was working with him on Project work.

135] Though a submission is advanced to the effect that Udit's parents

were worried about his mental state on account of broken relationship and his mother in her statement before the police has stated that Udit was worried about Aditi, after she left him, it is but natural that after this long standing love relationship between Udit and Aditi was broken, for some period Udit might have suffered from the agony and therefore, his parents might have been worried about him. But there is nothing on record to show that on account of this broken relationship Udit was in a totally frustrated depressed or dejected state of mind and any suicidal thoughts entered in to his mind.

136] It is pertinent to note that, it is not that Udit went to meet Aditi immediately on her phone call so as to infer that he was eager to meet Aditi and had some hopes of reunion. The mobile phone record Exhs. 65,66 goes to show that Aditi has made first phone call to Udit on 22/4/07 at about 19.19 hours, which was of the duration of 26 seconds. Immediately then she has made another phone call at about 19.21 hours which was again of 219 seconds. Thereafter she has made third phone call at 19.34 hours, which was of 61 seconds. Fifth phone call at 19.35 hours which was again of 61 seconds, sixth phone call at about 19.36 hours, which was of 301 seconds, then seventh phone call at 19.49 hours which was again of 80 seconds and the last phone call at 20.53 which was of 28 seconds. It shows that Aditi has persuaded Udit to meet her by making repeated phone calls from 19.18 hours to 20.53 hours. Therefore, it is clear that though Udit's mother has told him not to meet her and he was also not eager to meet her, nor having the hopes of reunion, he was constrained to meet her due to her persistent phone calls. Some phone calls were of the duration of 219 and 301 seconds also which goes to negative the case of defence that as Udit was having the hopes of reunion despite his mother requested him not

to go , he went to meet her. Conversely this record goes to show that Aditi was so keen to meet Udit that she persuaded him by making repeated phone calls to him, to come there. No other inference but except of her guilty intention can be gathered, from this conduct of Aditi.

137] As regards the submission that there is nothing on record to show that Udit made phone call to his mother and asked her why she gave his cell number to Aditi , the call record produced at Exh. 66 shows that Udit has received phone call from his mother at 19.27 and 19.30 hours and again at 19.52 hours and 20.25 hours, which shows that some talk took place between Udit and his mother. Otherwise Udit's mother would not have come to know that the call received from 'Amit' was made at the instance of Aditi. Hence she called Aditi's mother also requesting her to told Aditi not to go to meet Udit. As per her evidence, Aditi's mother also assured her, but subsequently told her that she could not contact Aditi. If Udit has not made phone call to his mother, then there was no occasion for his mother to come to know that the phone call which was made by Amit was at the instance of Aditi. In view of the broken relationship between them, it was but natural for Udit's mother to request him not to meet Aditi and also to request Aditi's mother to tell Aditi not to meet Udit. From this conduct of Udit's mother it cannot be said that as they were worried about Udit's mental condition, they told him not to go. Naturally when they came to know that Udit has gone to meet Aditi, they are bound to ascertain what happened and that appears to be the reason why they made phone call to Udit at night. At that time, Udit told them that he will discuss about it in the morning as he was having toilet pressure and hence in the morning they again made phone call to him. As at that time Udit's phone was not picked up, they assumed that he might have gone to college as usual. If they were still worried about his condition,

they would have rung up his friend also. Therefore, from the conduct of Udit's parents or even from conduct of Udit also, it cannot be said that he was in a depressed state of mind, his parents were worried about him or despite request from his mother he immediately went to meet Aditi. The evidence on record clearly goes to prove that on account of Aditi's persistent calling to him, he agreed to meet Aditi and went there.

138] It also cannot be accepted as probable that Udit had any hopes of reunion with Aditi. It is pertinent to note that, their love relationship has come to an end quite long back. As stated by Aditi in her statement, after First Semester started, in June 2006, within 2 months, she came in to contact with accused No. 2 Pravin and within a short span of time their love relationship flowered. Both of them were going for outing with each other. As stated by Pravin, they had even stayed in the White house Lodge during the said period for a night. As Udit was studying in the same college, it must be held that he was very much aware about their love relationship. As deposed by his parents, about 15 days prior to Diwali itself, Udit has informed them about his broken relationship. At the time of Diwali when he has visited his parents in Jammu, at that time also there is nothing on record to show that they found him under any mentally disturbed state or having any suicidal tendencies. It is also matter of record that thereafter he has appeared for his examination, passed in flying colours, he was totally occupied in his studies and college and thereafter on April 22, i.e. after the lapse of about 5 months, since Aditi left, this incident has taken place.

139] It is thus apparent that Udit must have known about Aditi and Pravin residing together as both of them left the college and hostel together. Therefore, it was not a case of total mental shock for Udit when Aditi made

disclosure about her secret marriage with Pavin. Udit was very much fully aware about all these developments and he has accepted them in his stride. His parents has have also accepted this broken relationship. Therefore, there was no question of Udit being suddenly thrown in to a shock or depressed state, on account of Aditi's disclosure and being faced with consequences of dishonour to the family. Her disclosure was therefore, neither sudden nor can be called as traumatic revelation for Udit for taking the drastic step of suicide.

140] Subsequent condition of Udit also nowhere discloses that after meeting Aditi he was thrown in totally depressed or frustrated state of mind. Though P.W.3- Megha has stated that when Udit returned after meeting Aditi, he appeared somewhat upset and at that time though she asked him whether he wants to eat anything, he told her that he does not feel like eating anything, Udit's becoming upset can be very much natural. After all Aditi was his ex-beloved. However from that circumstance it cannot be gathered that he was totally in dejected mood, entertaining any suicidal tendencies or having decided to end his life.

141] Much reliance is placed on the cigarette burn marks on the left hand of Udit which are found noted in his case papers by the Doctors. It is urged that as stated by Aditi when she disclosed her marriage with Pravin, Udit got angry, annoyed and disturbed so much that he pressed his burning cigarette on his left hand. She pushed the said cigarette aside, but the fact that he has burnt himself with cigarette shows that he was in totally disturbed state of mind and also in rage. It is submitted that even Megha has admitted that she has seen sometime back, burn marks on his hand and she had asked him cause for the same. A suggestion was also put up to her

that Udit has told her that when she has made inquiry with him, he has told her that when he gets angry with himself, he has burnt himself. She has also stated before police that Udit used to get angry immediately. No doubt, the said portion in her statement and the suggestion to that effect is denied by her. But the submission advanced on the basis of the same is that, Udit's nature was short temper and sensitive and he was in the habit of burning himself with cigarette whenever he was angry.

142] However as rightly submitted by learned APP, this incident of Megha asking Udit about the burns marks, has taken place in October-November 2006. None of the witnesses has stated that after Udit returned from McDonald's hotel, they found any recent burn marks on his hand. Such suggestion is denied by all of them. Even the case papers do not show that the burn marks found on his hand were recent one, or they were in the nature of burn injuries. If it was so, there would have been mention to that effect. The words used in the case papers are "cigarette burn marks" and not "cigarette burn injuries". Postmortem report also does not reveal the burn injuries. Therefore, it cannot be accepted that Udit has in a rage of anger or frustration caused cigarette burns to hand at the time of meeting with Aditi.

143] It is also significant to note that the various Doctors who were attending Udit in Hospital, have nowhere mentioned in the case papers that they found Udit in a mentally disturbed condition. It is a matter of record that Udit was very much conscious and well oriented till 4.00 p.m. on the next day, when P.W. 11- Director Pillee visited him. Even minor observations about Udit are mentioned in the case papers. Therefore, if Udit was in a disturbed state of mind or even at any time, expressed his desire not to take the medical treatment, there would have been definitely mention

to that effect in the case papers. There is not a single whisper to Doctor that he wanted to die and hence any request to Doctor not give to medical treatment. No suggestion is put up either to any of the witnesses like his friends, who were attending him in the Hospital or to the Doctors that Udit has expressed his intention not to take any medical treatment as he no more wants to live and therefore, he has consumed Arsenic to end his life. When Udit was definitely conscious and well oriented till 4.00 p.m. and surrounded by all his friends and the Doctors, it does not appeal to reason that he will keep quiet and will not tell that being disturbed and frustrated in his love life, he has consumed poison and he no more wants to live. No such suggestion is also put up to any of the witnesses. Conversely the evidence on record shows that Udit was willingly undergoing all the medical treatment and has urge to live.

144] As a matter of fact, when all these witnesses were making repeated inquiries with him about the cause of his vomiting, it would have been but natural for him to disclose the said cause i.e. consumption of Arsenic if he has done so. At least for the purpose of getting proper medical treatment, it was expected that he should disclose the same immediately. One need not say that the urge to live is a natural phenomenon. Even a person who tries to commit suicide, cling to the last support, if it is available and given to him. As admittedly, such support, assistance and medical treatment was offered to Udit and given to him, it does not appear probable that he would not avail the same by disclosing the real cause of his suffering. Conversely when Director Pille made repeated inquiry with him in the Hospital in the afternoon of 24/4/06, what he has consumed and whether he has consumed any drugs, and further gave assurance to him that if he has done so, he may feel free to disclose the

same, at that time also, Udit has exclaimed , why he should consume the drugs ! It clearly indicates that Udit has no reason either to consume the drugs or to consume the poison. His love affair with Aditi has broken long back and he was very much aware of Aditi falling in love with Pravin. Therefore, now whether they had secretly married or to be officially married, this revelation did not come to him as a shock.

145] Thus there is absolutely no possibility of Udit committing suicide. In the case of **Sharad Sarda** on which much reliance is placed by learned counsel for accused in this respect, the evidence on record was clinching to show that deceased Manjushri Sarda was very much in a totally dejected , disturbed and frustrated state of mind, as her expectations from the marriage were not fulfilled. She was also found to be a lady of a very sensitive and emotional nature. The various letters to that effect were produced on record showing that there was strong possibility of her committing suicide out of sheer depression and frustration arising from an emotional upsurge and hence it was observed that when there are two reasonable possible views, the possibility of her committing suicide, which was spelt out from the various letters, disclosing her mental state, being not excluded or eliminated, the case of prosecution of her being put to homicidal death, cannot be accepted.

146] As against it, in the present case, there is no such evidence brought on record to show that Udit was impulsive or over sensitive or in a frustrated or depressed state of mind, either since before or after meeting with Aditi. Therefore, possibility of Udit's committing suicide is not at all a probable or reasonable view of the matter.

147] Otherwise also, even if it is accepted that Udit has any reason to commit suicide there is no evidence proving on record even as a probability to show that Udit has any opportunity or time to procure Arsenic, within such a short span after the meeting. As per admitted facts on record, he went to meet Aditi at about 9.00 p.m., and returned to Megh's flat at about 11.30 p.m. There is no evidence proving that after meeting Aditi, Udit went to some other place. Therefore, it is but natural that at 10.00 p.m. or thereafter the shops in the surrounding area must have been closed. Arsenic poison is not a thing which is easily available. Even in the medical shops which may be open, unless the prescription is there, it is not sold. Though it is brought on record that there are some shops in Dange chowk, which is near the flat of Udit, no evidence is brought on record to show that those shops were open, even after 10.00 p.m. It cannot be disputed that if Udit has taken any decision of committing suicide, it must be only after his meeting with Aditi and by that time all the shops, in the normal course of events, being closed, the probability of Udit getting Arsenic at such a short notice and at such an odd hours, is not acceptable.

148] The choice of Arsenic poison also does not go well with the act of suicide just as it suits the act of homicidal. Like cyanide, Arsenic does not cause instant death. It gives sufficient opportunity to the culprit to leave unnoticed. Giving of Arsenic in 'Prasad' which normally no-one refuses and no-one suspect is an ingenious act of intelligent minds like the accused.

149] As a matter of fact, if Udit wanted to end his life, several probabilities were open to him like, even committing suicide on the rail track, or from a high building. At these odd hours he would not have gone in search of Arsenic and after consuming the same returned to his friend

Megha and thereafter to his flat and talked with them normally. Only because he started suffering from vomiting and loose motion, he told his parents on phone that he will talk with them in the morning about his meeting with Aditi. After returning to the flat, he behaved normally, he changed the clothes, then as he was feeling uneasy, he took the sip of Whisky. Therefore, this conduct of Udit is also not in consonance with the possibility of his consuming Arsenic poison to end his life.

150] Thus, looked at it from any angle, the possibility of Udit committing suicide cannot be accepted as probable or reasonable one. Only when the two views about the incident, one alleged by prosecution and the other by accused, are equally probable and reasonable one, the benefit of doubt is required to be extended to the accused, otherwise not. In the present case, the view suggested by the accused of Udit committing suicide cannot be called as reasonable or probable one. Hence though it is true that the benefit of doubt is required to be extended to the accused, such doubt has to be a reasonable doubt and not any and every doubt. As observed by Apex Court in the case of **Sucha Singh Vs. State of Punjab, 2003 Cri L J 3876** :

is Letting out
 "Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let *hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial. If a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many*

guilty persons must be allowed to escape. Proof beyond reasonable doubt is guideline, not a fetish. Vague hunches cannot take place of judicial evaluation.” ----

“Doubts would be called reasonable if they are free, from a zest for abstract speculation. Law cannot afford any favourite other than truth. “A Judge does not preside over a criminal trial merely to see that no innocent man is punished. “

“A Judge also presides to see that a guilty man, does not escape. Both are public duties.”

151] The point to be stressed is that the truth when presented through human perception is bound to suffer some infirmity. That does not mean that merely because there are some infirmities and lacuna in prosecution case, accused should be extended benefit of doubt. The pristine principle of benefit of doubt can be invoked only when there is a reasonable doubt, regarding the guilt of the accused. That doubt is reasonable which conscientious judicial mind, entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which doubt affords benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused.

152] It is normally impossible in any criminal trial to prove all the elements with a scientific precision, as observed by Apex Court in the case of ***State of Haryana Vs. Bhagirath and others, [1999] SCC 96.***

153] In the present case, therefore, when the circumstantial

evidence brought on record by prosecution on all the aspects of the case is of a clinching nature, whereas no reasonable or probable view of Udit committing suicide can be taken from evidence brought on record, it has to be held that the death of Udit was homicidal one and it was on account Arsenic poison administered to him by Aditi in 'Prasad' when he she called him for meeting at McDonald's hotel. Therefore, so far as Aditi is concerned her guilt is required to be held as proved beyond reasonable doubt.

Criminal Conspiracy – guilt of accused No. 2 Pravin.

154] This brings me to the aspect of criminal conspiracy. As per learned APP, as the conspiracy is hatched in secrecy, and as the accused always takes another in to confidence in secrecy and his preparations for the commission of offence are also made in secrecy, the direct evidence of the criminal conspiracy could hardly be available, hence the court has to take help from the circumstantial evidence. In the present case, according to her, there is more than sufficient circumstantial evidence on record proving the said conspiracy. After her relations with Udit were broken, Aditi has left along with Pravin, they had stayed together and got even secretly married and it is proved from prosecution case that Pravin has given understanding and threatening to Udit not to come in the way of his relationship. Therefore, Pravin was very much having the motive to eliminate Udit and the motive always plays a significant role in case of circumstantial evidence. Secondly, she has submitted that the evidence on record also proves that both, Aditi and Pravin had come to Pune together. No evidence is brought on record to show that Pravin had any official work at Pune. They had registered in the Lodge in fictitious name. It can definitely be held that the phone call made to Udit's mother in the name of Amit to get cell number of Udit for Aditi to call

him was made by Pravin, and lastly both of them have left together. If these circumstances are read together, then according to her, the offence of criminal conspiracy can definitely be inferred and proved. It is submitted by her that in the case of offence of criminal conspiracy, each and every criminal act need not be committed by each and every accused. As the law relating to criminal conspiracy punishable u/s 120-B of IPC and section 10 of Evidence Act have introduced the concept of agency in criminal law, *when men enter in to an agreement for an unlawful end, they become Ad-hoc agents for one another and have made partnership in crime*'. To substantiate her legal submissions, learned APP has relied on the authority of the Apex Court in the case of **State Vs. Navjot Sandhu, 2005 CRI L J 3950**, wherein the law relating to the criminal conspiracy as defined under section 120-A and Section 10 of Evidence Act is elaborately discussed, the crux of which is laid down in the case of **Kehar Singh Vs. State, 1988 [3] SCC 609** to the effect that,

“From an analysis of the section, it will be seen that section 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima faice evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima faice evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it.”

155] In the instant case, learned APP has submitted that as there is prima faice evidence affording reasonable ground for the court to hold that both accused Nos. 1 and 2 were members of a conspiracy and both of them have acted in reference of their common intention, the charge of

criminal conspiracy is required to be held as proved against them. Accused No. 2 -Pravin is also therefore, equally liable for the offence of murder of Udit, though he has not played the actual overt act of administering poison to Udit.

156] Per contra, learned counsel for accused Shri. Mohite has submitted that there is absolutely no iota of evidence showing that any conspiracy as such, was hatched between accused Nos. 1 and 2 and in pursuance of the same, Aditi has allegedly administered poison to Udit. From the mere fact that accused Nos. 1 and 2 were in love with each other and they had got secretly married, inference that accused No. 2 has entered into an agreement with Aditi for eliminating Udit, cannot be drawn. The evidence as regards the motive is also not strong. His accompanying Aditi or being with her in such situation, alone is not sufficient. Moreover, there is also no evidence to prove that the phone call made to Udit's mother in the name of Amit was positively and conclusively made by Pravin. Hence according to him, merely on some slender threads of suspicion, the charge of conspiracy cannot be said to be proved, especially when accused No. 2 is given a clean chit even in Polygraph Test and therefore, BEOS Test was not at all conducted on him. No deception was noticed from the answers given by him to P.W. 29- Sunny, therefore, it was not thought necessary to subject him to BEOS Test. Thus, according to learned counsel for accused, prosecution is standing on very slippery grounds, so far as accused No. 2 is concerned.

Legal position :

157] The gist of the offence of criminal conspiracy is an agreement to break the law. It is not an ingredient of the offence that all the parties

should agree to do a single illegal act. The offence may comprise the commission of number of acts. As a matter of fact, the gist of the offence of conspiracy lies, not in committing the act, or effecting the purpose for which the conspiracy is formed. But in the forming of the scheme or agreement between the parties. There must be unity of object or purpose, but there may be plurality of means, sometimes even unknown to one another amongst the conspirators. Hence as per the Law, when in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences. As observed by the Apex Court in the case of ***State Vs. Navjot Sandhu, 2005 CRI L.M. 3950***, the conspiracies are committed in secrecy. It is seldom an open affair. Therefore, usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. As further held by Apex Court in the case of ***Noor Mohammad Yusuf Momin Vs. State of Maharashtra, AIR 1971 Supreme Court 885***, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. As there is always difficulty in tracing the precise contribution of each member of the conspiracy the cumulative effect of the proved circumstance has to be taken in to account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances.

Facts of the case :

158] In the present case, just to reiterate the circumstances proved on record, Aditi left Udit in favour of Pravin and as per evidence of Udit's

mother, Pravin had told Udit not to come in their love relationship. Then on 22/4/07 both , Aditi and Pravin came to Pune. Pravin himself has not stated in his statement, Exh. 147, that he has come to Pune for his office work. As stated above, no documentary or corroborating evidence is produced on record to that effect. No satisfactory explanation is offered for staying in the White house Lodge in the vicinity of the college, if he has office work. No reasonable explanation is offered for registering in fictitious name. When already they were secretly married and staying together openly in Delhi , there was no reason for him to stay in White house Lodge that too, under fictitious name. The phone call made in the name of Amit to Udit's mother to obtain Udit's cell and then both of them leaving together even without achieving the purpose for which they had allegedly come to Pune, that of collecting the refund of fees ----- all these circumstances especially the very conduct , motive on the part of Pravin, is more than sufficient to infer the agreement between the parties to do away Udit, so that they can live their own happy life. On probability factor also, it does not appear to reason that Aditi will do all these things on her own or without participation of Pravin. Therefore, the inference of conspiracy has to be drawn through these proved facts on record when they are taken cumulatively. As regards submission that in the Polygraph Test, no deception was noticed in the answers given by Pravin, the results of the said Test, are merely inconclusive and they do not give clean chit to Pravin. Hence charge u/s 302 r/w 120 ob IPC is also required to be held as proved.

159] To sum up, therefore I have no hesitation in coming to conclusion that prosecution has succeeded in proving beyond reasonable doubt, the guilt of both accused Nos. 1 and 2 for the offence punishable u/s 302 and 120-B of I.P.C.

160] At this stage I stop my dictation in order to hear the accused on the question of sentence.

161] Both the accused are present before me along with their learned counsel Shri. Vijayrao Mohite and learned APP Smt. Nilima Vartak. They are informed about the decision of case. Learned APP submits that she require some time to make submission on the question of sentence and hence the matter is adjourned till tomorrow for hearing the accused on the question of sentence.

162] As accused No. 2 Pravin is on bail, considering the fact that I have already held him guilty , I take him in custody and sent him to Jail to be produced before me tomorrow, for hearing on the question of sentence.

Pune.
Date : 11/6/2008.

[Dr. Smt.S.S. Phansalkar-Joshi.]
Sessions Judge, 5, Pune.

163] On the question of sentence both the accused Nos. 1 and 2 have submitted that they have not committed any crime and therefore, they do not want to make any submission on the quantum of sentence.

164] Learned APP Smt. Vartak has submitted that the object of punishment is not only deterrence but also to set some example, therefore, the exemplary punishment is required to be awarded in the present case, considering that in this case both the accused are young persons, and hence they were supposed to keep an ideal before the society by their own lives but they have used their youth and intelligence for some diabolical purpose of committing murder and that too, of the ex-beloved of Aditi in

whose life she was the only girl. According learned APP the loss suffered by Udit's parents, brothers, friends is irreparable. At the same time the society has also suffered on account of these young persons in the society committing such serious offence, thereby creating a dent in social and moral fabric. Hence it is urged by learned APP that having regard to this growing trend of criminality in youth, the severe punishment be imposed on both the accused.

165] However as rightly submitted by learned counsel for accused Shri. Mohite, in the case of murder only two sorts of punishment are laid down u/s 302 of IPC, one is of a life imprisonment and other is of capital punishment. As contemplated u/s 354[3] of Cr.P.C. , the special reasons are required to be given if the severe punishment death is to be awarded . As per the Law evolved after the year 1955, the general rule is to award life imprisonment and death penalty is an exception. It is to be awarded only in 'rarest of rare' case. In the historic decision of ***Bachan Singh Vs. State, 1980 CRI L J 636***, the Supreme Court has laid down certain guidelines to be applied to the facts of each individual case where the question of imposing of death sentence arises : [1] the extreme penalty of death need not be inflicted except in 'rarest of rare' case of extreme culpability; [ii] before opting for the death penalty the circumstances of the 'offender' also require to be taken in to consideration along with the circumstance of the 'crime', [iii] life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all

the relevant circumstances; and [iv] a balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. In order to apply these guidelines *interalia*, the following questions may be asked and answered [a] Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence and [b] Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

166] The point therefore, to be highlighted is that, only in 'rarest of rare' cases the punishment of death is to be awarded, otherwise the normal rule is to award Life Imprisonment. Learned counsel for accused has also relied upon the authority of the Apex Court reported in ***Balwant Singh Vs. State of Punjab, 1976 Supreme Court 230***, wherein also the same principles were reiterated that, death sentence is to be awarded only in 'rarest of rare' case, where special reasons are made out, otherwise the normal rule is to grant Life Imprisonment.

167] So far as the present case is concerned, it can hardly be said to be falling in the 'rarest of rare' category or in the four corners of guidelines of the Apex Court and therefore, the normal rule which is of Life Imprisonment is to be applied in the present case also. None of the accused is in any way harden criminal. The offence is also not committed for any monetary gain. The young age of the accused cannot be an aggravating factor. The intelligent mode of the commission of offence also cannot be called as an

aggravating factor. The offence for which therefore, accused are convicted cannot be said to be falling under 'rarest of rare' category so as to impose capital punishment of death. Hence the order.

-Order-

The accused No. 1 Aditi Baldeo Sharma and accused No. 2- Pravin Premswarup Khandelwal are hereby convicted as per Section 235(2) of Cr.P.C. for the offence punishable u/s 302, 120-B of I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/-, each. In default of payment of fine, they have to undergo further R.I. for 1 year.

Accused No 1- Aditi is entitled to set off for the period already undergone in jail from 16/5/2007 till today and accused No. 2 Pravin is entitled to set off from 16/5/07 to 12/7/07 and from 11/6/08 till the date.

Muddemal property be destroyed after the appeal period is over. However on the request of learned counsel for accused Shri. Mohite, it is ordered that, muddemal property article No. 3- purse and its contents, as it is be kept in safe custody of Nazir, till decision of appeal.

Certified copy of this Judgment be given today itself, to both the accused, free of cost.

Pune.
Date : 12/6/2008.

[Dr. Smt.S.S. Phansalkar-Joshi.]
Sessions Judge, 5, Pune.

I affirm that the contents of this PDF file judgment are same word for word as per original judgment.

Name of steno : Sou.Madhuri Godse.
Court name : Dr. Smt. [S.S.Phansalkar-Joshi](#),
Sessions Judge, 5, Pune.
Date : 13/6/08.
