

## **STATEMENT OF FACTS**

1. On 10.01.2019, at around 7:30 p.m, information was received by Dhantoli Police Station, that the accused no. 1 Rajesh Bhende has caused injuries to two persons by a knife. It was also informed that the incident has occurred near Baban Dhaba. On getting such information, Police personnel reached the spot. Noticing their presence Babanrao Lokhande and Ku. Varsha, who is daughter of Jitu and Manju Borkar, aged about 14 years came near and narrated the entire incident.
2. The Investigating Officer PSI Gopal Sharma noticed that Jitu Borkar and his wife Manju Borkar were lying in the injured condition at about 10 ft. Distance from Baban Dhaba. It is thereafter Mr and Mrs. Borkar were taken to the Government Hospital. On reaching hospital, Manju Borkar was declared “brought dead”. Though, the medical treatment for about 45 minutes was given to Jitu Borkar, he too succumbed to his injuries.
3. Babanrao Lokhande, statement was recorded by the investigating officer on the same day itself. The said report was reduced into writing as per his say and the crime was registered against the appellant for the offence punishable under section 302 read with section 34 of the Indian Penal Code vide crime no. 007/2019.
4. The FIR discloses that Baburao Lokhande was running a dhaba of accused no. 1 Rajesh Bhende on rent. Rajesh is having his house adjacent to the Dhaba and in the said house, Truck driver of Rajesh Bhende i.e. the deceased Jitu Borkar was residing on rent with his deceased wife Manju Borkar, daughter Varsha and his son Vinod. It is stated in the FIR that on the day of the incident, at about 7:30 p.m. accused no.1 Rajesh came to the Dhaba from the side of Congress Nagar and made enquiries about the deceased Jitu Borkar. In the meanwhile, the deceased Jitu also came there on the motorcycle. Thereafter, the deceased Jitu demanded his three months salary from Rajesh Bhende. That time, accused no.1 Rajesh replied that he should immediately vacate the room and thereafter gave a slap to Jitu, and fell down. This led to a provocation between

Jitu and Rajesh, and Jitu said that he will marry Fatima, have physical relations with her.

5. When Jitu stood, that time the son in law of the accused no.1. i.e. accused no. 2, Parag Hirulkar rushed to the spot from his pan shop and then caught hold of the hands of Jitu. Thereafter, immediately, Rajesh Bhende assaulted Jitu with a knife . Jitu raised alarm and cried for help. His wife, the deceased Manju came there. She was followed by Fatema Khan, who was in a live in relationship with Rajesh and when Manju was trying to save Jitu, at that time, Fatema got hold of Manju and that time Rajesh inflicted knife blows on Manju. In the meanwhile the first informant tried to intervene. On that, Rajesh Bhende also tried to make attack on him due to which Babanrao Lokhande also received injuries on his hands. At the time of this incident, Varsha was also standing on the spot. Accused no.1 and accused no.2 chased Babanrao lokhande. That time, one Balu Bobde who was also present there, asked Babanrao to take away Varsha and, therefore, Babanrao also with Varsha ran towards the bridge, from there Babanrao gave intimation to the police on telephone and on arrival of police to the spot, the entire incident was naratted by Babanrao and Varsha to the Police.

6. The bodies were sent for post mortem examination. The accused persons were arrested on 18.01.2019 and they were sent for their medical examination.The clothes of the accused also came to be seized, which were stained with blood.

7. During the course of Police custody, accused no.1 Rajesh Bhende made a disclosure statement where he agreed to show the place where the weapon of the offence is concealed. The weapon was seized at the behest of accused no.1 from the place shown by the accused no.1 A motorcycle was also seized on which the accused persons fled from the spot of the incident.

8. The investigating officer also recorded statement of witnesses. All thirteen articles seized during the course of investigation were sent to the Chemical Analyzer

under the requisition. After completion of the investigation, the investigating officer filed the charge sheet before the competent court of law.

9. After the case being committed to the Court of Sessions, the learned Sessions Judge on 06.02.2019 framed charge against the accused persons for the offence punishable under section 302 read with section 34 of the Indian Penal Code.

## **FIRST INFORMATION REPORT**

### UNDER SECTION 154 CR. P.C.

1. District : Nagpur Police Station : Dhantoli Year: 2019  
FIR No. 007 /2019 Date : 10/01/2019
2. (i) Act : Indian Penal Code Section : 302  
(ii) Act Indian Penal Code Section: 34
3. (a) Occurrence of offence : Day: Thursday  
Date from 10/01/2019 Date to 10/01/2019  
Time Period : 45 minutes Time from : 8:30 p.m. Time to : 9:15 p.m.  
(b) Information received at P.S.: Date : 10/01/2019 Time : 9:25 p.m.  
(c) General Diary Reference : Entry No: 23 Time : 9:30 p.m.
4. Type of Information: Written /Oral: Oral
5. Place of Occurrence:
  - (a) Distance from P.S. : 1 km
  - (b) Address: 127, Rajabagshah Chowk, Dhantoli, Nagpur.
6. Complainant / Informant :
  - (a) Name : Babanrao Lokhande
  - (b) Father's/Husband's Name : Chamanrao Lokhande
  - (c) Date/Year of Birth : 25/06/1976 (42 years)
  - (d) Nationality : Indian
  - (e) Passport No. - Date of Issue : - Place of Issue :-
  - (f) Occupation : Dhaba Owner
  - (g) Address : Baban Dhaba Sardar Patel Chowk, Sonba Nagar, Nagpur.
7. Details of known/suspected/unknown accused with full particulars:  
(Attach separate sheet, if necessary)
  - (1) Rajesh Leman Bhende
  - (2) Parag Vaman Hirulkar
8. Reasons for delay in reporting by the complainant / informant : No delay.
9. Particulars of properties stolen (Attach separate sheet, if necessary) : -

10. Total value of property stolen : -

11. Inquest Report / U.D. case No., if any : -

12. First Information contents (Attach separate sheet, if required ): At 7:30 p.m. Accused Rajesh Bhende came in front of Baban Dhaba from side of Congress Nagar. Accused Rajesh made enquiry about whereabouts of Jitu. In the meantime Jitu came there on his motorcycle. Jitu Borkar stopped his motorcycle and asked Rajesh as to when would he pay the amount of salary for three months. Accused Rajesh directed him to vacate the room immediately. Jitu thereafter told him he will not pay the same and also have physical relations with Fatema, upon hearing this the accused Rajesh slapped him and with the help of Accused No.2, Parag took out a knife and stabbed him and his wife Manju. On the information received by complainant Babanrao investigation has proceeded.

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2. Registered the case and took up the investigation/ Directed - Gopal Jagdish Sharma Rank PSI to take up the Investigation/ Refused investigation/ Transferred to P.S.- Dhantoli District- Nagpur on point of jurisdiction.

F.I.R. read over to the Complainant/Informant, admitted to be correctly recorded and a copy given to the Complainant /Informant, free of cost.

14. SD/-  
Signature of Officer Incharge,  
Gopal Jagdish Sharma  
Rank : PSI  
Police Station Dhantoli, Nagpur.

SD/-  
Signature/ Thumb impression  
of the complainant / informant

15. Date and time of dispatch to the court : 11/01/2019

## **ORAL REPORT**

Name :- Babanrao Chamanrao Lokhande  
Address :- Sonba Nagar, Dhantoli, Nagpur.  
Police Station :- Dhantoli, District: Nagpur

I reside at the aforesaid address and work at my Dhaba in Dhantoli, which I have taken on rent from Rajesh Bhende.

Rajesh Bhende resides besides the Dhaba. In the same house, the driver of Rajesh, Jitu Borkar used to reside on rent. His wife Manju, his daughter Varsha and son Vinod also resided with him.

Today on 10.01.2019, as I was working at my dhaba i.e. BabanDhaba at around 6:30 pm in the evening. Rajesh Bhende came from Congress Nagar towards my dhaba and asked me where Jitu was. After a while, Jitu came from Ramdaspath area on his motorcycle. He got down from his motorcycle and asked Rajesh “when will you pay me my 3 months salary”, to this Rajesh replied, vacate my house right now and immediately slapped him and Jitu fell down, and Jitu was trying to get up. Rajesh’s son in law, Parag Hirulkar came running from his pan shop and held Jitu’s hand. Rajesh took out a knife from his belt and stabbed it twice from the front in Jitu’s stomach. Jitu fell down and shouted for help, upon hearing this Jitu’s wife Manju came running, along-with whom Rajesh’s live in partner, Fatema Khan also came running behind her. Manju tried saving her husband to which Fatema grabbed her hair and pulled her. At the same time, Rajesh stabbed Manju beneath her stomach and she fell down.

As I went and tried to save them Rajesh tried to attack me with the knife, because of which I got hurt on the right side of my stomach. Balu Bobde was also standing there who tried to catch hold of Rajesh. Jitu’s daughter Varsha was also standing there. Then, Parag and Rajesh ran behind me and Balu Bobde shouted and asked me to take Varsha and run. I took away the girl and ran towards the bridge. When Rajesh stabbed Jitu and his wife Manju with knife there were two men eating at the

dhaba and a few people were standing at Parag's pan shop. Because of fear they also went away from there. When I was standing near the bridge, I called Dhantoli police station from my mobile phone and gave them the information about the incident.

In a few minutes the Police reached the spot and then I came there with the girl i.e. Varsha, there I saw Rajesh and his wife in a pool of blood. Then I helped the police to take them to the hospital because of which my clothes got dirty with blood. We took both of them to the government hospital in the police vehicle. There, the doctor informed us that Jitu and Manju both were dead. This is my oral statement that Rajesh and Parag are responsible for the murder of Jitu and Manju Borkar.

Sd/-  
Signature/ Thumb impression  
Officer Incharge  
Gopal Jagdish Sharma (PSI)  
Police Station Dhantoli, Nagpur.

Sd/-  
Signature/ Thumb impression  
Informant/ Complainant

## **POST MORTEM REPORTS**

Memorandum of a Post -Mortem examination held at Government Hospital Nagpur.

On the body of : **Jitu Borkar** District : Nagpur.

### **A. General Particulars**

1. (a) By whom was the corpus brought? Police Station Dhantoli  
(b) Name of the place from which Dhantoli  
sent 3 k.m.  
(c) Distance of place from which sent
2. By whom was the corpus brought? PSI Gopal Jagdish Sharma
3. By whom identified ? Deepak Borkar
4. The date, hour and minute when received? 11.01.2019 at 11:30 a.m.  
(a) The date, hour and minute of conducting Post-Mortem examination. 11.01.2019 at 11:40 a.m.  
(b) The date hour and minute of ending Post-Mortem examination. 11.01.2019 at 01:00 p.m.
5. Substance of accompanying Report from Police Officer Or Magistrate, together with The date of death if known Supposed cause of death or reason for examination. As per Police Inquest Panchnama and requisition report,  
Date of death : 10.01.2019 at 09:00 p.m.  
Cause of death Due to injury to Vital organ.
6. If not examined at Dispensary or Hospital  
Name of place where examined NA  
(a) Distance from Dispensry or Hospital  
(b) Reason, why the body was to not sent to the Dispensary or Hospital

### **B. External Examination**

7. Sex apparent age Male/ 45 years/  
Description of clothes and ornament on the body Blue full pant stained, dark brown red coloured blood and red rakhi.
8. Condition of clothes Dry and stained  
Whether wet with water, stained with blood or so lad with vomit. With dark brown-red coloured blood

- |   |  |
|---|--|
| <p>9. Special marks on the skin such as scars, tattoo etc.<br/>Any information or other marks of identification<br/>State of teeth</p>  | <p>Old contracture scar mark over both hands, chest, right shoulder.<br/>Old scar of burn over thigh &amp; knee joint both sides.<br/>Black mole over right Iliac fossa</p>  |
| <p>In newly born infants the length and (if possible)the weight of the hair, nails and ambalical cord its length whether placenta is attached or not, is present its size and conditions.</p> | <p>NA</p>  |
| <p>10. CONDITION OF BODY<br/>Whether well nourished thin, emocoited, warm or cold.</p>  | <p>Moderately built cold</p>   |
| <p>11. Rigor Mortis well marked, slight or absent , whether present in the whole body or part only .</p>  | <p>Rigor mortis present all over the body</p>  |
| <p>12. Extent and signs of decomposition presence Post-Mortem liquidity of buttocks joins back and thighs on any other part.</p>  | <p>No signs of decomposition, postmortem lividity present over all body except pressure points.</p>  |
| <p>13. Feature, whether swollen , state of eyes position of tongue nature or fluid if any oozing from mouth, nostrils or ear .</p>  | <p>Watery discharge from right nostril. Eyes partially opened. Cornea hazy, pupil dilated, fixed tongue inside mouth.</p>  |
| <p>14. Condition of skin marks of blood etc. In suspected drowning the presence</p>   | <p>NA</p>  |
| <p>15. Injuries to external genitals indication of purging</p>  | <p>No injury, no purging.</p>  |
| <p>16. Position of limbs especially of arms and of fingers in suspected drowning the presence or absence of sand or earth within the nails or on the skin of hands and feet.</p>              | <p>Upper extremities semi flexed. Lower extremities straight.</p>  |
| <p>17. Surface wounds and injuries their nature position dimensions (measured) and directions to be accurately stated their probable age and causes to be noted .</p>                         | <p>Punctured incised wound, elliptical in shape, located at 9th &amp; 10th rib. left side at anterior auxiliary line to mid- auxiliary line, vertically oriented of size 6cm long and 3cm wide of skin surface.</p> <p>Track is about 13cm deep, cut, directed from left to right slightly downward, track perforated abdominal wall</p> |

18. Other injuries discovered by external examination or palpation, such as fractures  
 Fracture at 9th and 10th ribs at auxiliary line.
- a) Can you say definitely the injuries shown against serial nos 17 and 18 are ante mortem injuries.  
 Yes, ante mortem.

**C. Internal Examination**

19. Head  
 (i) Injuries under the scalp, their nature Intact  
 (ii)Skuel-Vaul Intact  
 Base describe fractures theirs dimensions,directions etc.  
 (iii) Brain: The appearance of its recovering Size weight and general condition of the Organ itself and any abnormality founding Its examination to be carefully noted. Intact and Pale
20. Thorax-  
 (a) Wall, ribs cartilages Intact  
 (b) Plevao Intact, pale  
 (c) Larynx Traches and Bronchi Intact, pale  
 (d) Right lung Intact, pale  
 (e) Left lung Intact, pale  
 (f) Pericardium Intact, pale  
 (g) Heart with Wright Empty  
 (h) Large Vessels Empty  
 Additional Remarks NIL
21. **Abdomen :**  
 Walls Perforated abdominal wall  
 Perioneum Perforated peritoneum left side  
 Cavity Dark red colored blood and blood clots present at about 150- 180ml  
 Buccal Cavity Teeth, tongue and pharynx Teeth Intact, tongue inside the mouth  
 Oesophagus Intact, pale  
 Stomach and its contents particle Semi digested fluids and food about 30 ml.  
 present Small intestine and its content Gases and food matter present  
 Large intestine and its contents Gases and food matter present  
 Liver (with weight) and gall bladder 44 Intact, pale  
 Pancreas and Suprarenalf Intact, pale

Spleen with weight	laceration over convex surface of spleen
Kidneys with weight	Intact pale
Bladder	Empty
Organs of generation	No injury
Additional remarks with where possible medical officer's deduction from the state of contents of stomach as to the time of death and last meal.	NIL
State which viscera ( if and ) have been retention and also quote the numbers on the bottle containing the same	Viscera not present, blood sample collected and sealed
23. Spine and Spinal Cord Opinion as of the cause Probable cause of death	Intact not open Cause of death due to hemorrhage due to injury to vital organ.

Memorandum of a Post -Mortem examination held at Government Hospital Nagpur.

On the body of : **Manju Borkar** District : Nagpur.

**A. General Particulars**

- |  |   |
|--|---|
| 1. (a) By whom was the corpus brought?   | Police Station Dhantoli   |
| (b) Name of the place from which sent  | Dhantoli<br>3 k.m.  |
| (c) Distance of place from which sent  |   |
| 2. By whom was the corpus brought?   | PSI Gopal Jagdish Sharma  |
| 3. By whom identified ?  | Deepak Borkar   |
| 4. The date, hour and minute of it receipt.  | 11.01.2019 at 11:30 a.m.  |
| (a) The date, hour and minute of conducting Post-Mortem examination.   | 11.01.2019 at 11:40 a.m.<br>11.01.2019 at 01:00 p.m.  |
| (b) The date hour and minute of ending Post-Mortem examination.  |   |
| 5. Substance of accompanying Report from Police Officer Or Magistrate, together with The date of death if known Supposed cause of death or reason for examination. | As per Police Inquest Panchnama and requisition report,<br>Date of death : 10.01.2019 at 08 : 35 p.m. |
| Cause of death   | Due to injury to Vital organ.   |
| 6. If not examined at Dispensary or Hospital   |   |
| Name of place where examined   | NA  |
| (a) Distance from Dispensary or Hospital   |   |
| (b) Reason, why the body was to not sent to the Dispensary or Hospital   |   |

**B. External Examination**

- |   |   |
|---|---|
| 7. Sex apparent age                             | Female / 40 years   |
| Description of clothes and ornament on the body | Yellow colored with designed of blue colored saree & Yellow colour blouse stained with dark brown red colour blood. Orange colour petticoat, Yellow colour dupatta. |

- Green bangles, 8 in left hand, 3 in right hand. Yellow colour earring (Metallic) in both ears.  
White ring (Metallic) tow of left foot.  
Dry and stained  
With dark brown-red coloured blood
8. Condition of clothes  
Whether wet with water, stained with blood or so lad with vomit.
9. Special marks on the skin asscars, tatsoning etc.  
Any information or other marks of identification  
State of teeth  
In newly born infants the length and (if possible)the weight of the hair, nails and umbilical cord its length whether placenta is attached or not, is present its size and conditions.
10. CONDITION OF BODY  
Whether well nourished thin, warm or cold.
11. Rigor Mortis well marked, slight or absent , whether present in the whole body or part only .
12. Extent and sign of decomposition presence Post-Mortem liquidity of buttocks joins back and thighs on any other part whether bullae present and nature of their contained fluid condition of the cuticle.
13. Feature whether swollen , state of eyes position of tongue nature or fluid if any oozing from mouth, nostrils or ear .
14. Condition of skin marks of blood etc. In suspected drowning the presence or absence
15. Injuries to external genitals indication of purging
16. Position of limbs especially of arms and of fingers in suspected drowning the presence or absence of sand or earth within the nails or on the skin of hands and feet.
17. Surface wounds and injuries their nature position dimensions (measured) and directions to be accurately stated
- Tattoo mark on right forearm  
“Jitu”
- NA
- Moderately built, cold
- Rigor mortis present whole body.
- No signs of decomposition, postmortem lividity present over all body except pressure points.
- Eyes partially open, Cornea hazy Pupil dilated fixed . Mouth, nostril and ear natural.
- NA
- No injury, no purging.
- Upper extremities straight  
Lower extremities straight
- punctured incised wound, elliptical shaped, located 2 cm below Xipisternum at epigastric region 2cm

their probable age and causes to be noted .  
 (N.A. When injuries are numerous and cannot be mentioned within the space available they should be mentioned on a separate paper which should be signed)

lateral to middle line, vertically oriented of size 5cm long and 3cm wide of skin surface.  
 Track is about 10-12 cm deep evenly cut, directed from front to back slightly downward,  
 Track perforated abdominal wall and stomach

18. Other injuries discovered by external examination or palpation, such as fractures  
 a) Can you say definitely the injuries shown against serial Nos 17 and 18 are ante mortem injuries.
- NIL  
 Yes, ante mortem.

**C. Internal Examination**

19. Head  
 (i) Injuries under the scalp, their nature Intact  
 (ii)Skuel-Vaul Intact  
 Base describe fractures their dimensions ,directions etc.  
 (iii) Brain: The appearance of its recovering Size weight and general condition of the Organ itself and any abnormality founding Its examination to be carefully noted. Brain and many meninges Intact
20. Thorax-  
 (a) Wall, ribs cartilages Intact  
 (b) Plevao Intact  
 (c) Larynx Traches and Bronchi Intact, pale  
 (d) Right lung Intact, pale  
 (e) Left lung Intact, pale  
 (f) Pericardium Intact, pale  
 (g) Heart with Wright Empty  
 (h) Large Vessels Empty  
 Additional Remarks NIL
21. **Abdomen :**  
 Walls Perforated abdominal wall of epigastric region.  
 Peritoneum Perforated.  
 Cavity Dark red colored blood and blood clots  
 Buccal Cavity Teeth, tongue and pharynx Teeth Intact, tongue inside the mouth  
 Oesophagus Intact, pale

Stomach and its contents particle present	Semi digested fluids and food particle present about 150ml
Small intestine and its content	Gases and food matter present
Large intestine and its contents	Gases and food matter present
Liver (with weight) and gall bladder 44	Laceration over right superior anterior border
Gall bladder 44	Intact, pale
Pancreas and Suprarenalf	Intact, pale
Spleen with weight	Intact pale
Kidneys with weight	Empty
Bladder	No injury
Organs of generation	
Additional remarks with where possible medical officer's deduction from the state of contents of stomach as to the time of death and last meal.	NA
State which viscera ( if and ) have been retention and also quote the numbers on the bottle containing the same	Viscera not present, blood sample collected and sealed
23. Spine and Spinal Cord Opinion as of the cause Probable cause of death	Intact not open Cause of death due to hemorrhage due to injury to vital organ.

Date :11.01.2019

Sd/-  
(Signature)

Place : Government Hospital , Nagpur

Forwarded to the Police Sub- Inspector, Police Station Dhantoli.

For information with reference to his No.

2. Viscera has been preserved it may please be stated immediately whether examination by the chemical analyze is necessary or to be destroyed.

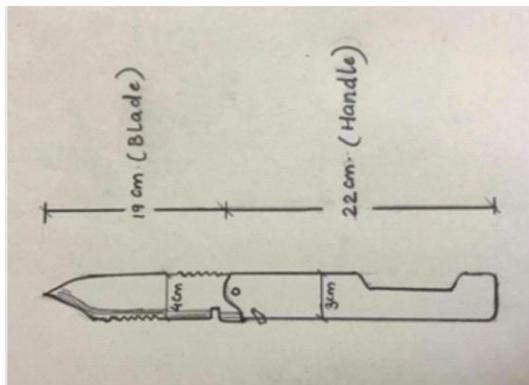
Viscera not present ,blood sample for chemical analysis.

**Civil Surgeon or  
M.M.S. Officer**



## EXAMINATION OF WEAPON

This is certified for examination of object brought by P.C. Navin Bisen B.N. 1228 P.S. Dhantoli Dist. Nagpur on date 21/01/19 at 1:20 PM examined by Dr. Rajat Merkap. M.O. G.H. Nagpur.



1. Name of the weapon 1, Knife.
2. Type of weapon: Metallic hand, sharp with serration, Foldable.
3. Part of Weapon :

	Length	Breadth	Thickness
Blade	19 c.m.	4 c.m.	3m.m
Handle	22 c.m.	3c.m	4.m.m

Dark Brown colored blood stain premt. Over blade and handle, no other visible stain.

Single edge sharp

Tip sharp

1. Injuries possible: Incised, laceration, stab injury, contusion injury.
2. Identification Mark: Serration present both edge, foldable knife.
3. Type of injury possible : 1. Maybe simple & grievous injury

Answer of query: 1. Injuries mentioned on deceased may be possible with above mentioned weapon

2. Yes, death may be possible.

Examination of weapon and answer of query.

Given on dated: 27/01/19 at 2:00pm. Advice from chemical analysis for stain on knife. Weapon sealed and handed to P.C.

Navin Bisen B.N. 1228 P.S. : Dhantoli

Dr. Rajat Merkap  
G.H. Nagpur.

Regional Forensic Science Laboratory,  
STATE OF MAHARASHTRA,  
Dhantoli, Nagpur 440012

To,  
Police Inspector  
Police Station- Dhantoli  
District: Nagpur  
Your letter No. 01

Dated: 20/01/2019

Regarding

Thirteen parcel in connection with C.R. No. 007/2019 of P.S Under Section 302, 34 of IPC stated by you have been dispatched on per P.C. No. was duly received in this office on 25/01/2019.

**DESCRIPTION OF PARCEL**

Twelve sealed parcels and one sealed cloth parcel, seal intact and as per copy sent.

**DESCRIPTION OF ARTICLES IN PARCEL/S**

1. Earth wrapped in paper labelled A1.
2. Earth wrapped in paper labelled A2.
3. Full Pant
4. Full shirt (cut)
5. Dupatta
6. Underwear
7. Earth wrapped in paper labeled B1.
8. Earth wrapped in paper labeled B2.
9. Saree
10. Petticoat (cut)
11. Blouse (cut)
12. Knife wrapped in cloth labeled C1.
13. Full pant wrapped in paper labeled D2.
14. Full shirt wrapped in paper labeled D3.
15. Full shirt wrapped in paper labeled E2.
16. Full pant wrapped in paper labeled E3.
17. Full shirt wrapped in paper labeled G1.
18. Full pant wrapped in paper labeled G2.

} 

Wrapped in paper labelled A4, A5,A6, A7.
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} 

Wrapped in paper labeled B4, B5, B6.
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**RESULT OF ANALYSIS**

- Exhibits(1) & (7) are mixed with blood-
- Exhibit (3),(4),(5),(9),(10) & (11) have innumerable blood stains ranging from about 0.1 to 5 cm in diameter spread at places.-
- Exhibit (6) has moderate number of blood stains ranging from about 0.1 to 5cm in diameter spread at places.-
- Exhibit (12) is stained with blood on blade.-
- Exhibit (14) has few blood stains ranging from about 0.1 to 1 cm in diameter mostly on front portion.-
- Exhibit (17) has few blood stains ranging from about 0.1 to 2 cm in diameter mostly on front portion.-
- No blood is detected on exhibits (2),(8),(13),(15),(16) & (18).-
- Blood detected exhibits (1),(3),(4),(5),(6),(7),(9),(10),(11),(12),(14) & (17) cannot be determined as result are inconclusive.

## **Statements of the Witnesses**

(As per **Section 161** of Cr.PC.)

Session Case No. 007/2019

Prosecution Witness No. 1 (PW1)

My name is :- Babanrao s/o Chamanrao Lokhande, aged about 42 years,

Occupation - Business, Residence :- Dhantoli, District :- Nagpur

1. I know the accused Rajesh Bhende, accused Parag Hirulkar and also Fatema Khan, who is in live-in relationship with Rajesh. Accused Parag is the son-in-law of accused Rajesh. The incident took place in front of my dhaba in my presence.

2. Accused Rajesh came near the Dhaba and made an enquiry about whereabouts of Jitu, I did not respond to his enquiry. After some time, Jitu came there in his bike. Jitu demanded salary of 3 months from Rajesh Bhende. Rajesh Bhende gave one slap to Jitu. Accused Rajesh slapped him as Jitu demanded salary. Accused Rajesh asked Jitu to vacate the rented premises. The impact of the slap was such that Jitu fell down. He thereafter tried to stand up. Accused Rajesh took out knife from his waist. Accused Parag came there from his pan stall. He caught hands of Jitu. Accused Rajesh Bhende made assault over Jitu by a knife. Accused Rajesh made assault on his stomach at two places by knife. Due to assault, Jitu fell down.

3. Wife of Jitu raised shouts and prayed for help from nearby people. Upon not getting any help, she ran to the rescue of her husband. This prompted Fatema to catch hold of Manju, wife of Jitu. Fatema caught hold of Manju from back side. At the same time, Accused Rajesh Bhende made assaults over Manju by knife above her stomach. My foster brother Raju Soni gave kick blow to accused Rajesh Bhende and took away Varsha, daughter of Jitu.. Raju picked up her after giving kick blow to Rajesh Bhende. I ran away from the place with Varsha.

4. Accused Rajesh Bhende followed me while I was running. I crossed the railway track. I gave information to the police station from my mobile phone. Police reached within 10 minutes. When police squad reached on spot, I came there. Varsha was with me at that time.

5. Jitu and Manju were lying on spot. Their condition was serious. Police took them to hospital in police van. Upon reaching hospital, they were declared dead. At the time of incident, accused Rajesh Bhende attacked me with his knife, because of which I received minor injury on my stomach.

6. I filed report in the police station. My report is on record. It bears my signature.

Prosecution Witness No. 2 (PW2)

My name is :- Pandurang Vilas Singh,

My age is about 35 years, Occupation -Owner of Dhabha,

Residence :- Datta Nagar, Nagpur, Tahsil–Nagpur,

District :- Nagpur.

I know the accused. The incident took place at 7:30 pm on 10th. When i was returning from my work, the tyre of my motorcycle got punctured near Dhaba of Rajesh Bhende. I was sitting near the dhaba to get my tyre repaired. Accused Rajesh Bhende reached near Dhaba by motorcycle. He started quarrelling with Jitu. Accused Parag rushed there, he is son -in- law of accused Rajesh. Accused Parag caught hands of Jitu from behind. Accused Rajesh took out knife and made assault on Jitu on his stomach. Wife of Jitu rushed on spot. She was asking for help. At that time, wife of accused Rajesh i.e accused no. 3 came there and caught hold of hair of the wife of Jitu. Accused Rajesh made assault on Manju by means of knife. Daughter of Jitu was also present at the spot when the incident took place. Accused Rajesh and accused Parag followed her. Baburao was at Dhaba of Rajesh. He took the girl and ran away. I also ran away from the spot due to fear. This is my statement which recorded in Dhantoli Police Station.

Prosecution Witness No. 3 (PW 3)

My name is :- Varsha d/o Jitu Borkar,

My age is about 14 years, Occupation - (Student),

Residence :- Dhantoli, Nagpur, District :- Nagpur.

The incident took place on 10.01.2019. My house was adjoining the Dhaba where I resided with my parents and my brother. Rajesh uncle came in front of my house on motorcycle. Rajesh uncle asked my father to leave the room immediately. My father asked him to pay his salary for three months. My father was truck driver of Rajesh and worked for him. Rajesh uncle gave one slap to my father. Therefore my father fell down. He tried to get up. Parag uncle rushed on spot from his Pan shop. He caught both hands of my father. Rajesh uncle took out knife and attacked my father. Rajesh uncle stabbed with knife in the abdomen of my father.

My mother heard shouts of my father. She rushed on the spot to rescue my father. Fatema aunty caught hair of my mother. Rajesh uncle stabbed on my mother's abdomen by means of knife. He made assaults on the stomach of my mother. Rajesh uncle and Parag uncle followed me. Babanrao uncle picked me up and took me towards the bridge nearby. Babanrao uncle made a phone call to police. The police reached my house quickly. We went near the Police vehicle. My parents were lying on ground. My injured parents were taken to the Hospital. Police admitted my parents at Government Hospital Nagpur. This is my statement recorded in Dhantoli Police Station.

### **Defence Witness**

(The statements are created only for the purpose of the moot problem and to train the witnesses, the teams are at liberty to create their own defences in addition to the statements provided below and accordingly lead evidence to that effect)

Sessions case No. 007/2019

Defence Witness No. 1 (DW-1)

My name is:- Fatema w/o Rajesh Bhende ,  
My age is about 26 years, Occupation - (Housewife),  
District:- Nagpur.

I Fatema Khan, was in a live in relationship with Rajesh. I know Jitu and Manju Borkar. My husband and Parag have been wrongly prosecuted and the said false case is at the instance of Babanrao Lokhande who has a grudge against Rajesh And Parag.

That on 10.01.2019 at about 7:30 pm Jitu Borkar provoked Rajesh and told him that he will have physical relation with me but Rajesh tried to persuade him and control the situation. But Jitu refused to mend his ways and continued to hurl abuses and thereafter there was fight between Rajesh and Jitu in which Jitu took out the knife and tried to stab Rajesh but in an attempt to save his life Rajesh could manage to grab the knife and give a blow to Jitu in his self defence. On seeing such provocation, I and Manju rushed to the spot. Jitu tried to get up and upon seeing him attack Rajesh, Parag went near the spot to save life of Rajesh. In the altercations between them, Manju got accidentally hurt. I say that it was Jitu who provoked and attacked Rajesh and Rajesh and Parag are falsely prosecuted.

## **JUDGEMENT**

(Delivered on this 16<sup>th</sup> day of March 2019)

1. Accused No.1 Rajesh Bhende, Accused No.2 Parag Hirulkar, are facing trial for the offence punishable under Secs. 302 r/w 34 of the Indian Penal Code for murder of Jitu Borkar and his wife Manju Borkar.

The factual matrix of the case is as follows:-

2. Babanrao Lokhande lodged the oral report. It was lodged on 10.09.2011. The said report is reduced into writing and registered against the accused persons for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code vide Crime No. 007/2019. The FIR discloses that Baburao Lokhande was running a dhaba of accused no. 1 Rajesh Bhende on rent. Rajesh is having his house adjacent to the Dhaba and in the said house, Truck driver of Rajesh Bhende i.e. the deceased Jitu Borkar was residing on rent along with his deceased wife Manju Borkar, daughter Varsha and his son Vinod. It is stated in the FIR that on the day of the incident, at about 7:30 p.m. accused no.1 Rajesh came to the Dhaba from the side of Congress Nagar and made enquiries about the deceased Jitu Borkar. In the meanwhile, the deceased Jitu also came there on the motorcycle. He parked his motorcycle. Thereafter, the deceased Jitu demanded his three months salary from Rajesh Bhende. That time, accused no.1 Rajesh replied that he should immediately vacate the room and thereafter gave a slap to Jitu, resulting into his fall on the ground. This led to a provocation between Jitu and Rajesh, and Jitu said that he will marry Fatema, have physical relations with her. The defence of the accused persons is that the result of the death is the due to provocation and occurred

in a spur of moment. The defence witness also has raised an additional defence of complainant having grudge against the accused persons and of self defence.

Three witnesses have witnessed the actual assault on both the deceased. They are Babanrao Lokhande, Pandurang Vilas Singh, Varsha. The FIR is immediately lodged. Lodging of FIR promptly rules out false implication of accused person. Evidence of eye witness, Varsha fully corroborates prosecution case. In the incident, she lost her parents. There is no reason for this court to disbelieve her testimony. Her reliable evidence is sufficient to prove involvement of all the two accused in crime. In fact, accused Rajesh followed her. But she was saved as she was taken by complainant Babanrao Lokhande. The eye witnesses have testified about the assault on the deceased and there is no reasons attributed to disbelieve these three eye witnesses. The clothes of Rajesh are also stained with blood, for which no explanation is offered. Accused Rajesh has also in his disclosure statement under Section 27 of Evidence Act, has also confessed regarding the fact of knife used by assault was hid in his home.

The question for consideration is whether Jitu Borkar gave grave and sudden provocation to accused Rajesh. Complainant Babanrao Lokhande heard total conversation between accused Rajesh and Victim Jitu Borkar during incident. His evidence shows that accused Rajesh reached on spot and made enquiry of Jitu Borkar. When Jitu Borkar demanded salary of 3 months, Accused Rajesh gave a slap to him as Jitu Borkar demanded Salary. Thereafter accused Rajesh asked him to vacate the room. During cross examination it is brought on record that accused Rajesh gave abuses to Jitu Borkar, as Jitu asked for physical relations with Fatema. Therefore accused Rajesh

took up knife from Dhaba and made assault over Jitu Borkar. The said allegation of demand for physical relations with Fatema by Jitu has not been corroborated by any of the witnesses. Also the fact of complainant having grudge against accused persons and also of self defence is not corroborated in order to create doubt over the case of the prosecution. These facts are also denied by eye witness Varsha. Nothing is brought on record to show that there were illicit relations between Jitu Borkar and Wife of accused Rajesh. No quarrel took place between accused Rajesh and deceased Jitu Borkar on this issue or any other count. In absence of cogent and reliable material on record it is difficult to hold that incident of assault was occurred due to grave and sudden provocation by deceased Jitu Borkar. I find no hesitation to hold the involvement and complicity of accused Rajesh in murder of Jitu Borkar and his wife Manju Borkar which is clearly evident from material on record. Victim Manju Borkar reached on spot to save her husband. She did not offer any sudden and grave provocation to accused Rajesh. There was no reason for accused Rajesh to make assault over wife of Jitu Borkar. Defence raised on behalf of accused Rajesh is baseless and cannot be accepted.

Now crucial question is whether accused Parag can be held liable for murder. It is urged on behalf of accused Parag that accused Parag had no intention to commit murder of Jitu Borkar or his wife Manju. It is alleged that accused Parag caught hands of Jitu Borkar from back side and helped accused Rajesh to Assault over Jitu Borkar. There was no pre-meeting of minds between accused Rajesh and accused Parag. Therefore, Section 34 of Indian Penal Code will not attract. Accused Parag did not know that his father-in-law and knife in his pocket. Accused Parag is involved in crime only because

he is father-in-law of accused Rajesh. If really eye witness has seen the incident, they must have stated manner in which hands of Jitu Borkar were caught by accused Parag. Manner of holding hands is material. Absence of blood stains on his clothes is suggestive of his absence from spot. Witnesses do not know whether Parag came on spot to participate in crime or to save the victim. Accused Parag did not share common intention. Therefore, he never chased witness Varsha Borkar. Evidence of eye witnesses is contradictory with each other. There was no enmity between accused Parag and the deceased. He has no reason to commit murder of Jitu Borkar or his wife.

In view of the above evidence, I hold that accused Parag played active role in offence of murder of Jitu Borkar and his wife Manju Borkar and shared common intention.

I have heard learned Counsels for the accused. Learned Public Prosecutor argued as the case fits into the test of rarest of rare case. However, the facts and circumstances demonstrate that the present case doesn't fit into the test of the rarest of rare case, therefore I award sentence of imprisonment for life and fine sentence. With this view, I pass the following order.

**ORDER**

1. Accused no.1 Rajesh s/o Leman Bhende and accused no.2 Parag s/o Vaman Hirulkar are found guilty for the offence punishable under section 302 read with section 34 of the Indian Penal Code.
2. All the two accused are convicted for the offence punishable under section 302 read with section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 25,000/- each, in default to suffer Rigorous imprisonment for one year.
3. Seized motorcycle be returned to accused no.2 Parag Hirulkar after period of appeal will be over.
4. Remaining seized property being valueless be destroyed after period of appeal will be over.

Date: 16th March 2019

Sd/-  
(XYZ)  
Sessions Judge  
Nagpur

**Clarifications:-**

1. For the semi- final and finals, the statements as recorded under Section 161 of the Code of Criminal Procedure and also Defence witnesses as provided in the moot problem will be considered as evidence recorded before the Court during trial.
2. Accused no. 1 Rajesh Bhende will be compulsorily examined (under 313 Cr. P. C.), and teams are to hand over the questionnaire to the presiding judges before the commencement of preliminary round.
3. The teams are at a discretion to choose two witnesses from the prosecution side, out of the three provided witnesses in the moot problem and one compulsory witness shall be the investigating officer.

**Disclaimer:-** That, the present moot problem is created on fictitious facts, events. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.