

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL APPEAL NO. 255 OF 2016

Ananda Yashwant Murkute }
R/at - Sonai Niwas, Post Kasarsai, }
Taluka- Mulshi, District- Pune. }
In Yerwada Central Jail at present. }
... Appellant
(Org. Accused)

Versus

The State of Maharashtra }
(Through P. I. Hinjewadi Police }
Station, Pune) }
...Respondent

Mr. Vikas B. Shivarkar a/w Mr. Praful Soni, for the Appellant.

Mr. K. V. Saste, Addl.P.P., for the Respondent – State.

*CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.*

DATE : 13th MARCH 2024.

J U D G M E N T

PER MANJUSHA DESHPANDE, J.:-

1. The appellant herein has been convicted by the Judgment and Order dated 20th February 2016 passed by the Additional Sessions

Judge, Pune, in Sessions Case No. 97 of 2014. The appellant/accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code (I.P.C.), 1860, and is sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to further undergo rigorous imprisonment for a period of six months. Being aggrieved by the said judgment and order of conviction, the present Appeal is preferred by the appellant under Section 374 of the Code of Criminal Procedure (Cr.P.C.), 1973.

2. The brief facts leading to the present proceeding can be summarized as under:

According to the prosecution, the informant- Surekha Murkute was residing in a joint family of her husband. Her real sister Sarika was married to her brother-in-law. The said brother-in-law was idle and was not doing any work. He was addicted to liquor. He used to demand money from his parents for consuming liquor. On refusal, he used to pick up quarrel with his family members. On the fateful day, i.e. on 29th October 2013, the accused/appellant demanded money from his parents for visiting 'Balaji'. When they refused, he quarreled

with them. Since he was abusing his parents, they left the house and went to the field. The informant- Surekha, her sister Sarika (deceased) as well as their children and the accused were present in the house. At around 11:00 a.m., the accused demanded keys of the sliding gate from Sarika. When she informed that she did not know the whereabouts of the keys, the accused demanded money for liquor. When she expressed her inability to give him money, the accused abused her. The accused then proceeded to the storeroom and came back to the hall, carrying toppling (an equipment which is used for joining tractor with the trolley) in his hand. While the accused was taking the said toppling from the storeroom, he was seen by Nikita, who is his niece. Nikita also inquired, as to where the accused was taking the said toppling, without answering her query, he proceeded towards the house. The accused entered the house and assaulted his wife Sarika. On hearing cries, the informant- Surekha, who was sitting in the adjacent bedroom as well as Nikita from her house rushed towards the hall, and saw the accused giving blows with the toppling on Sarika's head.

On observing the deadly scene before them, they got frightened and Nikita ran outside the house and shouted for help. In the meanwhile, the accused left the house leaving the toppling in the courtyard of the house. In response to the shouts given by Nikita, one Balu Namdev Shitole rushed to the scene of offence and took Sarika to Pawna Hospital, where she was declared dead. On receiving information from the Talegaon Dabhade Police Station, the Investigating Officer (I.O), Mr. Appasaheb Waghmare was informed about the incident. He visited the place where the incident had occurred. He came back to the police station alongwith the informant and the complaint was registered. Consequently, Crime bearing No. 502 of 2013 was registered against the accused. The registration of crime was followed by the inquest panchanama. Postmortem on the deceased was performed by Dr. Madhav Waghmare. The spot panchanama was conducted by the I.O. in the presence of panchas. The samples of blood were collected. The photographer took the photographs of the spot alongwith the articles found on the spot. The clothes of the deceased- Sarika and the accused were seized. The

seized clothes, the weapon of offence and samples of blood were sent to the Chemical Analyzer for examination. A request was made to the learned Chief Judicial Magistrate for recording the statements of witnesses, under 164 (5) of the Cr.P.C. On completion of the investigation, charge-sheet came to be filed.

3. The prosecution examined ten witnesses to prove its case. The statement of the accused was recorded under Section 313 of the Cr.P.C.. He has taken a plea of innocence. The accused has also examined the witness Mr. Pradeep Ramchandra Khatmode, A.P.I., who was attached to the MIDC Police Chowky which comes under the jurisdiction of Hinjewadi Police Station. So far as the death of the deceased Sarika is concerned, it is not disputed that, it was a homicidal death. PW- 7- Dr. Madhav Waghmare has conducted the postmortem of the deceased. He in his deposition unequivocally stated that, the injuries mentioned in column No. 17 and corresponding internal injuries in column Nos. 18 to 19, are sufficient to cause death in the ordinary course. The nature of injuries have been mentioned in column Nos. 17, 18 and 19. He has further confirmed that the said

injuries are possible by means of iron toppling (Article – C). In PW-7's cross-examination, it is mentioned that he found ten external and internal injuries on the body of the deceased Sarika, which are possible by means of Article – C, and he has refuted the adverse suggestions put to him in the cross-examination. He has also denied that the said injuries are possible, if the person falls from the height of 14 to 15 ft. on stones or on hard and blunt object. According to him, such an injury is possible only with sharp weapon. The postmortem is proved by PW- 7 and deposition of the said witness is consistent with the postmortem report. Therefore, the prosecution proved that Sarika's death was homicidal.

4. The next point for consideration is whether the prosecution has proved that, the accused has committed the murder of his wife Sarika by giving blows of toppling on her head. The prosecution has examined the eye witnesses and doctors in support of medical evidence. When there is an eye witness i.e. direct evidence, the prosecution is required only to prove that the eye witness is trustworthy and truthful.

5. The first eye witness examined by the prosecution is PW-3- Surekha Murkute. She is the one of the two eye witnesses, who has seen the incident. According to PW- 3, on the date of incident, the deceased- Sarika was not feeling well. She was sitting on a sofa in the hall. The accused was sleeping on another sofa in the hall. PW- 3 was sitting on the bed in her bedroom, which was adjacent to the hall. She heard accused demanding keys of the sliding gate to the deceased – Sarika, who informed the accused that the keys were missing. The accused was insisting for the keys. Thereafter, he started demanding money from Sarika for consuming liquor. When Sarika expressed her inability to give him money, he abused Sarika. The accused thereafter went out of the house and returned at about 12:45 hours. He persisted with the demand of money for consuming liquor. When the deceased – Sarika refused, the accused brought the iron toppling of the tractor from the storeroom, which was out of the house within the premises at some distance. Nikita (PW-4), who is niece of the accused, i.e. the daughter of his sister Kantabai Awande, who was residing

within the premises of the house, asked the accused as to where he was going with the iron toppling. He did not give any response. Thereafter, the accused gave blows of iron toppling on the head of the deceased- Sarika, hearing the cries of Sarika, PW- 3 came in the hall. In her presence, the accused gave 4 to 5 blows of toppling on the head of the deceased- Sarika. The deceased -Sarika sustained grievous injuries. PW- 3 further deposes that, at that time Nikita also came into the hall and observing the said incident, ran out of the house, crying for help. The accused left the house and while leaving the house, he threw the toppling in the courtyard. In the meanwhile, Nikita had summoned Balu Shitole, who took deceased – Sarika to the hospital in the four wheeler, which was brought by Prabhakar Kapate. The doctor examined Sarika and declared her dead.

6. PW- 3 went to the police station at about 2 to 3 p.m. and filed the complaint. So far as the incident is concerned, she has given details of occurrence of the incident, in minute details. There are no inconsistencies in her testimony. In PW- 3's cross-examination, there is nothing adverse to the story of prosecution which could be elicited

from the cross-examination of PW-3. There are no inconsistencies in her statement about actual occurrence of events. PW- 3 has not been cross-examined about the actual assault made by the accused with the toppling on Sarika's head. The only inconsistency, according to the defence, was regarding the time mentioned by PW- 3 in the complaint. In her examination-in-chief, PW- 3 has deposed that, in her report, she has stated the time of incident as 11:00 a.m. but it is 12:45 hours. PW- 3 has further stated that she has corrected the same in her supplementary statement. Therefore, the said discrepancies, which the defence is relying on, are not discrepancies at all. PW- 3 has not been questioned about the same in her cross-examination, therefore, PW- 3, who an the eye witness, has proved that the accused assaulted Sarika with iron toppling, which resulted in Sarika's death. The testimony of PW- 3 is categorical, clear and unambiguous, which unerringly points to the guilt of the accused alone.

7. PW- 4, Nikita is the other eye witness of the said incident. She has also narrated the incident which had taken place on 29th October 2013 elaborately. She states that, in the morning, the accused

was quarreling with her maternal grandfather on account of money. PW- 4 was doing stitching work in her room. At that time, the accused went out of the house and at about 12 noon, he came back. The accused inquired with her about the sickle. She told him that she was not aware as to where it was kept. Thereafter, PW- 4 saw the accused taking iron toppling from the storeroom adjacent to their room. She further mentions that, the accused was in a habit of taking iron implements from the storeroom and selling those for satisfying his habit of consuming liquor. Therefore, when the accused took the iron toppling, she inquired as to where he was taking it. He did not reply and proceeded towards his room. PW- 4, thereafter heard the shouts from the room of the accused, pursuant to which, she ran towards the room and saw the accused was giving blows of iron toppling on Sarika's head, who was sitting on the sofa; she screamed, but accused continued to give the blows. Thereafter, she came out running and called the neighbours. When she summoned the neighbours, she saw that, the accused leaving the house. Thereafter, her maternal grandfather i.e., father of the accused arrived and they tied the head of

the deceased – Sarika with clothes and she was taken to the hospital at Talegaon. PW- 4 has stated that on 13th November 2013, she was called to the Hinjewadi Police Station and her statement was recorded. She has identified the iron toppling to be the same with which the offence is committed. PW-4 has further stated that, her statement was recorded by the Magistrate.

8. The deposition of PW- 4 is also consistent with the statement of PW- 3- Surekha. There are no inconsistencies so far as the statement of PW- 4 is concerned, i.e. regarding the actual occurrence of incident. She has categorically stated that she has seen the accused giving blows of iron toppling to the deceased. She has seen the accused taking the toppling from the room adjacent to her room and entering the house. She has also identified the toppling during recording of her evidence. In the cross-examination of PW-4, she has stated that, she and Surekha (PW-3) were present at the time of incident. All other suggestions put to PW- 4 have been denied by her. The deposition of PW-4 therefore inspires confidence and there is nothing to suggest that she has not seen the actual incident and is

falsely implicating the accused.

9. The other evidence which connects the accused to the offence is the seizure of his clothes. PW- 5 is the panch witness, who has been examined to prove the seizure of clothes. The clothes of the accused were seized on 31st October 2013, and during the said seizure, PW- 5 was present. He has identified the accused and he has deposed that, the clothes on the person of the accused i.e. one white shirt having half sleeves with spots of blood, was seized alongwith one pant of ash colour. In the cross-examination of PW-5, he has mentioned that a spots of blood were found on the front and the back side of the shirt. The evidence of PW- 5 remains unshaken and nothing is elicited from him to doubt the veracity of this witness. The prosecution has thus proved the seizure of clothes of the accused with blood stains.

10. The prosecution has examined PW- 7, a doctor to prove the cause of death of the deceased. The doctor, i.e. PW- 7- Mr. Madhav Waghmare was working as a Medical Officer in Primary Health Centre, Talegaon Dabhade. He has conducted the postmortem

of the deceased – Sarika. PW- 7 has stated in his deposition that, on examination of the body of deceased, he noticed six injuries on her body. He noticed fracture of skull involving frontal, left temporal parietal and occipital bone. There were internal injuries on left frontal temporal scalp region, left temporal scalp region, occipital scalp region and parietal scalp region. PW- 7 has given his opinion that, the injuries as mentioned above, individually and collectively, were sufficient to cause death of the deceased in ordinary course of nature. That death was possible by means of iron toppling. The testimony of PW- 7 inspires confidence and supports the prosecution case. The opinion of PW-7 gets reinforced by the deposition of PW- 8- Dr. Sanjay Jadhav, who has examined the deceased immediately after she was taken to the hospital after the incident. PW- 8 states that he found multiple injuries on the head of the deceased. The prosecution therefore, proves that the death is caused by the blows of toppling given by the accused. There is no inconsistency in the medical evidence brought on record by the prosecution. Thus, the ocular evidence is duly corroborated by the medical evidence.

11. The prosecution has examined PW- 10 - Appasaheb Waghmale, who was working as a Police Inspector at Hinjewadi Police Station. PW- 10 in his deposition has narrated about the investigation done by him in the present case. He has prepared the FIR on the basis of information given by PW- 3- Surekha. Thereafter, he has proceeded to the spot of incident alongwith the panchas and prepared the spot panchanama. He has stated that the samples of blood found on the surface of the room, sofa and toppling of tractor, were seized in the presence of panchas. Before such seizure, a Finger Print Expert examined the toppling and found impressions of fingers on it. The photographer was summoned, who took the photos of fingerprints and also the spot of incident. PW- 10 has sent the seized articles for examination to the Chemical Analyzer. He also deposed about the supplementary statement of PW- 3 - Surekha, having been recorded for making corrections in the time of incident. PW- 10 further mentions about recording of statement of witnesses before the Magistrate under Section 164 of the Cr.P.C.

12. In the cross-examination, suggestions were given to PW-

10 that the injuries sustained by the deceased were not possible by means of toppling, as it was not having sharp edges. Suggestion was also given, that the blood of the deceased collected during the postmortem was poured on the toppling and shirt of the accused in order to falsely implicate him. The said suggestions have been categorically denied by PW- 10. There are certain other questions which were tried to be suggested to PW- 10, in order to weaken the case of prosecution, however, nothing material could be elicited from the said witnesses. There are no infirmities or loopholes in the investigation of the offence. The Investigating Officer has deposed about the investigation made by him. No fault could be found in the investigation.

13. The defence has examined one witness namely Pradeep Ramchandra Khatmode, who has mentioned in his deposition that, he had prepared the inquest panchanama. While conducting inquest panchanama, he saw cutting injuries on the forehead, middle of the head, backside of the head and shoulder of the left hand of the deceased. Apart from this witness, the defence has not examined any

other witness. Nothing adverse to the case of prosecution is stated by this witness in his deposition.

14. The accused in his statement under Section 313 of the Cr.P.C. has denied all the questions put to him by the prosecution and his stand is that of total denial. According to the accused, PW-3-Surekha has falsely deposed, that he has come back at 12:45 hours and that the police have filed a false charge-sheet against him and he has been wrongly implicated in a false case.

15. The defence has tried to create a doubt about the veracity of the evidence of PW-4 – Nikita on the ground that the statement of PW- 4 was recorded on 13th November 2013, i.e. after fifteen days of the occurrence of the incident, which according to them is an unusual delay, and that the said witness has been put under pressure and undue influence to depose against the accused. The defence has urged that PW- 4 should be considered as a got up witness. The defence has also raised doubts about the injuries sustained by the accused. According to the defence, the said injuries were not sustained because of the blows of toppling. It was submitted that the blood group on the toppling,

which was sent for chemical analysis is reported to be inconclusive, therefore, it does not support the case of the prosecution.

16. The learned Judge has taken into consideration the evidence produced by the prosecution and the defence. The learned Judge has come to the conclusion that it is the accused, who had committed the offence, and accordingly convicted him for the offence punishable under Section 302 of the IPC.

17. We have heard learned counsel for the appellant as well as learned Addl.P.P. for the Respondent – State.

18. We have gone through the record and proceedings and the evidence on record. The present case is that of direct evidence. The prosecution has examined two eye witnesses i.e. PW- 3 and PW- 4, who were present at the time of the incident in the house. Both the eye witnesses have categorically mentioned that, after refusal to handover money to the accused by the deceased- Sarika for consumption of liquor, the accused was irked, pursuant to which he

went to the storeroom and got the iron toppling. While coming back inside the house, the accused was seen by PW-4 – Nikita, who inquired with him as to what he was doing with the toppling. The accused did not answer and went inside the house. Thereafter, there were cries from the house and on hearing the cries, both PW- 3 and PW- 4 rushed to the spot of incident and both of them have stated that they have seen the accused giving blows on the head of the deceased – Sarika with the iron toppling. Thereafter, PW-4 Nikita ran out of the house to get help from the neighbours. In the meanwhile, the accused left the house and while leaving the house, the accused threw the toppling in the courtyard of the house.

19. There is no inconsistency between the actual incident in the deposition of both the witnesses, i.e. PW-3 and PW-4, who are the eye witnesses to the incident. There is no infirmity in the deposition of these prime witnesses and their statements are consistent and inspire confidence. Nothing adverse could be brought on record in their cross-examination. The toppling was seized by the prosecution. The ocular evidence corroborates and is consistent with the medical evidence.

20. The evidence of both the eye witnesses, i.e. PW-3 and PW-4 itself is sufficient to throw light over the guilt of the accused. There are no material contradictions and omissions brought on record by the defence, so as to create a doubt with respect to accused's complicity.

21. The defence has also tried to capitalize on the delay of fifteen days in recording the statement of PW-4- Nikita, and have tried to create a doubt about her presence itself on the day and place of occurrence of the incident. Though there is a delay in recording the statement of PW- 4 – Nikita, the fact remains that the recitals of the FIR itself indicates that PW-4 was very much present in the house when the incident had occurred. FIR was first in point of time, therefore, delay in recording of the statement of PW- 4 – Nikita would not be fatal to the case of prosecution. The story of the prosecution is consistent with the story of PW- 4 - Nikita, therefore, the evidence of the said witness cannot be doubted and the delay in recording the same is not sufficient to discredit the prosecution case. The evidence of these two eye witnesses, i.e. PW- 3 and PW- 4 is direct and substantive

evidence connecting the accused with the crime in question, and there is nothing to disbelieve their testimony. The report submitted by the Finger Print Bureau (F.P.B.), C.I.D., Pune, also supports the case of the prosecution. The said report clearly mentions that one chance finger print developed on the toppling was found identical with the right middle finger print on the F.I. slip of the accused received for comparison. Therefore, the case of prosecution is strengthened by the said report. The presence of chance finger print of the accused on the toppling, further points and supports the guilt of the accused.

22. The medical evidence of Dr. Sanjay Jadhav (PW- 8), who attended the deceased – Sarika in the emergency ward on 29th October 2013, also supports the case of the prosecution. Even the evidence of Dr. Madhav Waghmare (PW- 7), who performed the postmortem and has given the reason for death of the deceased, is also consistent and there is no infirmity or inconsistency in the deposition of the said witness. Therefore, medical evidence produced by the prosecution also supports the case of prosecution.

23. Thus, it is proved by the prosecution that the accused would quarrel often and was also habituated to consumption of liquor, that he used to pick up quarrel, if his demand of money for consuming liquor was not acceded to by his family members. Even on the fateful day i.e. on 29th October 2013, when the accused's demand for money was not met, he started abusing his family members. His parents left the house and thereafter he started demanding money from his deceased wife (Sarika). On her refusal, the accused abused her, went in search of an instrument, during which he inquired with PW- 4- Nikita about sickle, when she replied that she was not aware about it, the accused brought the toppling from the storeroom, which shows his intention. Even after arrival of PW-3 and PW-4, he did not stop; he continued to give blows on the head of the deceased- Sarika. The accused was not bothered about the consequences. After the incident the accused threw the toppling in the courtyard and left the house. Thus, we find that the prosecution has successfully proved the guilt of the accused through the eye witnesses PW-3 and PW-4 and other corroborating evidence. There are no inconsistencies or infirmities in

the evidence of the prosecution, which create any doubt about the guilt or involvement of the accused. The prosecution has unerringly proved the guilt of the accused. This being a case of direct evidence, and the evidence of the eye witnesses being reliable, credible and trustworthy, the prosecution has successfully proved its case.

24. Having considered the arguments of both the parties as well as the evidence on record, we do not find that, the appellant/accused has made out any case for interference in the impugned judgment and order of conviction. Hence, we pass the following order:

:ORDER:

The Appeal is dismissed. The Judgment and Order of conviction dated 20th February 2016, passed by the learned Additional Sessions Judge, Pune, is hereby confirmed.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.