



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.776 OF 2022

Sominath s/o Dagdu Shende
Age: 47 years, Occu. Agri.,
R/o: Dongargan, Tq. Ashti, District Beed Appellant

Versus

The State of Maharashtra
Through : The Police Station Officer,
Police Station Ashti, Tq. Ashti, District Beed Respondent

Appearance :-

Mr. N. S. Ghanekar, Advocate for the Appellant [Appointed]

Mrs. S. N. Deshmukh, APP for the Respondent - State

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved On : 23/01/2025
Pronounced On : 06/02/2025**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. By the present Appeal preferred under Section 374[2] of the Criminal Procedure Code, 1973 [hereinafter referred to as 'Cr.P.C.'], the Appellant has challenged his conviction and sentence recorded by the learned Additional Sessions Judge, Beed, in Sessions Case No.67/2014 vide Judgment and Order dated 06/07/2017, which reads as under :

"[I] Accused Sominath Dagdu Shende is convicted for the offence punishable under section 302 of the Indian Penal Code and is sentenced to suffer Imprisonment for life and to pay a fine of Rs.2,000/- (Rs. Two thousand), in default, to suffer Rigorous Imprisonment for three months, vide Section 235 (2) of the Code of Criminal Procedure, 1973.

[II] Accused Sominath Dagdu Shende is convicted for the offence punishable under section 309 of the Indian Penal Code. However, no separate sentence is passed against the accused.

[III]
 [IV]
 [V] “

2. The Prosecution’s case, as revealed from the Police Report, is as under :-

[I] The Appellant and his wife – Jaishree [hereinafter referred to as ‘the Deceased’] were the agricultural labourers. The witness - Atul Vasant Raut had engaged the services of Appellant and Deceased for cultivating his land on 11/01/2014. In between 11.00 and 11.30 a.m., he heard cries from his field and therefore, he went in that direction. He noticed the Appellant beating his wife with stone. The witness raised the alarm. The other witnesses reached the spot and on seeing them, the Appellant ran and tried to hang himself by a Neem tree. The witnesses rescued him. The Deceased and Appellant were taken to the Hospital at Mirajgaon where the Deceased was declared dead by the Doctor. For the injury on the Appellant, he was referred to the Hospital at Ahmednagar. The incident was reported to the parents of Deceased. The maternal relatives of the Deceased came to Mirajgaon. The brother of Deceased lodged the report with the Ashti Police Station, District Beed that, the Appellant was suspecting the character of Deceased and therefore, he caused her death. On his report, the F.I.R. bearing Crime No.08/2014 came to be registered against the Appellant for the offence punishable under Sections 302 and 309 of the Indian Penal Code, 1860 [hereinafter referred to as ‘I.P.C.’].

[II] The Police performed the Inquest and referred the body for Postmortem. The Spot Panchnama was done. The clothes of Deceased came to be seized. The statements of witnesses were recorded. The Appellant came to be arrested. The clothes of Appellant came to be seized. The articles seized during the course of investigation were referred to the Chemical Analyzer. The

Postmortem Report and the other documents came to be collected and on completion of investigation, the Appellant came to be Charge-sheeted.

[III] On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 309 of I.P.C. The Appellant denied the Charge and claimed to be tried. To prove the Charge, Prosecution examined in all nine [9] witnesses and brought on record the relevant documents. After the Prosecution closed their evidence, the statement of Appellant came to be recorded by the learned Trial Court under Section 313[1][b] of Cr.P.C. The Appellant stated that, he was falsely implicated. On hearing both the sides and appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

3. It is submitted by the learned Advocate for the Appellant that, the marriage between the Appellant and Deceased was seventeen [17] years old. Though the brother of Deceased deposed of harassment to the Deceased by the Appellant and lodging of previous report to the Police in that regard, no such report is brought on record by the Prosecution. The medical evidence shows that, the injury in the nature of fracture over occipital region was possible due to fall. There was no fracture on the frontal part of head. The evidence of eyewitness shows that, he reached on the spot after the Deceased fell down. With this evidence on record, the conviction recorded by the learned Trial Court be set aside and the Appellant be acquitted.

4. It is submitted by the learned A.P.P. that, the Appellant used to harass the Deceased, as he was suspecting her character. The case is based on the testimony of eyewitnesses. The medical evidence corroborates the testimony of eyewitnesses. It cannot be said that, there was no intention on the part of Appellant. The learned Trial Court has properly appreciated the evidence on record and rightly passed the impugned Judgment and Order and no interference is required. Hence, the Appeal be dismissed.

5. Heard both the sides. Scrutinized the evidence available on record. The Prosecution's evidence can be categorized as :-

- [i] The eyewitnesses ;
- [ii] The Informant ;
- [iii] The panch witnesses ;
- [iv] The medical evidence ;
- [v] The police witnesses ;
- [vi] The documentary evidence ;

6. The Prosecution's case largely rests upon the testimony of PW – 2 [Atul Vasant Raut]. He was the resident of Waki, Taluka Ashti, District Beed. He was the owner of agricultural land. PW – 3 [Raosaheb Baburao Aswar] was looking after the said land. His evidence shows that, he engaged the services of the Appellant and his wife [Deceased] from 11/01/2014 to cultivate his land. The Appellant and Deceased were given the house adjoining to the road across the field. There was standing crop in the agricultural field.

On 22/01/2014, he came to his field in between 11.00 a.m. and 11.30 a.m. When he was moving through the orchard, he heard the cries and ran towards that direction. He saw the Appellant beating the Deceased on her head with stone. He ran towards the Appellant by raising shouts. On hearing his shouts, PW – 3 [Raosaheb Baburao Aswar] and other witnesses reached there. The Appellant ran towards the *bandh* in the field. The Deceased was lying in an injured condition with blood oozing from the injuries. In the meanwhile, the Appellant tried to hang himself by the Neem tree near the road. He and the said witnesses ran towards the Appellant and rescued him. One of the person brought a four wheeler, in which, the Appellant and Deceased were taken to the Hospital at Mirajgaon. The Doctor after examining the Deceased declared her dead. As there was injury to the neck of Appellant, he was referred to the Hospital at Ahmednagar and was admitted in District Government Hospital at Ahmednagar. His statement was recorded by the Police. His shirt [Article – A] was seized under the Panchnama. He identified the Appellant at the time of his testimony.

7. In the cross-examination, it has come that, prior to ten [10] days of the incident, the Appellant was employed by him. The cross-examination fortifies his testimony that, he came to know about the incident after he heard the shouts / cries when he was

100 feet away. It has come on record that, the stone, which was used to hit the Deceased, was of the size which could fit in the hand. It has come that, he informed the Brother of Deceased about the incident on phone. The cross-examination could not create any dent in his testimony.

8. The evidence of PW – 3 [Raosaheb Baburao Aswar] shows that, PW – 2 [Atul Vasant Raut] was his nephew and his agricultural land was adjoining to his land. He was looking after the land of PW – 2 [Atul Vasant Raut]. The Appellant and Deceased were employed for the field work by PW – 2 [Atul Vasant Raut] and they were residing in his field. On 22/01/2014 around 11.30 a.m. when he was in the field along with PW – 2 [Atul Vasant Raut], and PW – 2 [Atul Vasant Raut] was going towards the orchard, he heard the shout of a woman and thereafter, the shout of PW – 2 [Atul Vasant Raut]. He along with the other witnesses ran towards the said direction. They reached the spot and saw the Deceased lying in an injured condition and the Appellant was running. He further deposed that, the Appellant tried to hang himself by the Neem tree and therefore, they all ran towards that direction and rescued the Appellant. In the four wheeler, the Deceased and Appellant were taken to the Hospital. The Doctor declared the Deceased as dead. His statement was recorded by the Police and he identified the Appellant as the said person, who was running.

9. Though PW – 3 [Raosaheb Baburao Aswar] was cross-examined, nothing has come so as to discard his evidence. It has come that, the Appellant was the relative of PW – 2 [Atul Vasant Raut]. He denied the suggestion that, the other person by the surname Aswar killed the Deceased. He further denied that, the Appellant was mentally ill and the Deceased was good looking, therefore, the people were behind her with an ill eye. The evidence of this witness corroborates the testimony of PW – 2 [Atul Vasant Raut].

10. The evidence of PW – 1 [Ganesh Eknath Pharande] shows that, he was the brother of Deceased. He was the resident of different village i.e. Rui Nalkol, Taluka Ashti, District Beed. His evidence shows that, the Deceased and Appellant were married in the year 1997. They had two [2] sons and one [1] daughter. Though he deposed that, the Appellant used to beat the Deceased, as he was doubting her character and the Deceased had lodged a report with the Ambhora Police Station in that regard, no such report was brought on record. The Appellant assured them that, he will treat the Deceased properly and took the Deceased with him when he visited her matrimonial house in 2013. Regarding the incident, admittedly, he is not the eyewitness. He learnt about the incident from PW – 2 [Atul Vasant Raut] on 22/01/2014 on the phone around 1.00 p.m. and also came to know that, the Appellant attempted to

commit suicide by hanging himself. His further evidence shows that, he visited the Hospital at Mirajgaon where he saw the dead body of his sister. He lodged the report with Kada Police Station at 8.00 p.m., which was at Exhibit – 35. His statement under Section 164 of Cr.P.C. was recorded by the concerned Magistrate.

11. The cross-examination could not create any dent in his testimony. His testimony regarding lodging of report gets corroboration from the evidence of PW – 8 [Sunil Prabhakar Rao Kulkarni], who was the Police Officer at Ashti, out-post Kada and who recorded the statement and registered the Crime No.08/2014. The evidence of this witness goes to show that, he set the criminal law in motion after learning about the incident from PW – 2 [Atul Vasant Raut].

12. The evidence of PW – 6 [Dr. Sulbha Ankush Janjire] shows that, she was the Medical Officer at the Primary Health Center [P.H.C.], Mirajgaon where the Deceased was brought on 22/01/2014 at about 4.00 p.m. along with the Inquest. She examined the body and performed the Postmortem. She found that, both the eyes were closed, pinpoint pupil right and left, bleeding through nostrils and mouth and also upper limbs were semi flexed and lower limb were extended. She found the following external injuries on the body :-

"1] Punctured depressed fracture over occipital region of 2 x 2 c.m. size.

2] CLW of approximately 2 x 0.5 c.m. over left side of forehead above eyebrow.

3] CLW of approximately 1 x 0.5 c.m. over left angle of mandible.

Above injuries were ante-mortem."

12.1 She found the internal injuries in the nature of hematoma in epidural and subdural space. She collected the samples for Chemical Analyzer. The cause of death was found to be *'due to acute neurogenic as well as acute hemorrhagic shock due to hemorrhage in brain matter, due to fracture of skull bone'*. He prepared the Postmortem Report at Exhibit – 63. It has come in his evidence that, Injury Nos.1 to 3 mentioned in Column No.17 of the Postmortem Report can be possible in the assault by hard and blunt object. The internal injury was the result of external Injury Nos.1 to 3. The external injuries were sufficient to cause death in ordinary course of nature. The said injuries were possible by use of Stone - Article 7.

13. In cross-examination, it has come that, Injury No.1 mentioned in Column No.17 of the Postmortem Report was possible if the person forcibly falls down on the stone. From the evidence of this witness, it is established that, the Deceased died due to the injuries suffered by her and the final cause of death is established.

14. The evidence of PW – 7 [Suresh Sakharam Babar] shows that, he was a Policeman and was attached to the Karjat Police Station

on 22/01/2014. On receiving the information about the admission of the injured and Appellant at P.H.C., Mirajgaon, he made necessary entries and went to the said P.H.C. He prepared the Inquest at Exhibit – 30 in presence of the panchas. He referred the body for Postmortem and after the Postmortem, the dead body was handed over to the relatives. He seized the clothes of Deceased vide Panchnama at Exhibit – 31. Though he was cross-examined, nothing has come to create any doubt about his testimony.

15. The evidence of PW – 4 [Babasaheb Mahadeo Sasane] shows that, he was the resident of the same village where the incident took place. He acted as the Panch for the Spot Panchnama at Exhibit – 44. The spot was shown by PW – 2 [Atul Vasant Raut]. The pink coloured chappal, broken bangles, one tiffin bag were lying on the spot. There was blood stained Stone. At some distance, there was rope tied over the tree. The Police collected the said Articles and prepared the Panchnama. His testimony is corroborated by the evidence of PW – 8 [Sunil Prabhakar Rao Kulkarni], who investigated the Crime. In his evidence, he deposed of visiting the spot and preparing the Spot Panchnama at Exhibit – 44 in the presence of panchas and seizure of the blood mixed soil, simple soil, pink colour lady's slipper, pieces of red bangles, blood stained chappal of the Appellant, rope having knot and the stone. The spot of incident

was shown by PW – 2 [Atul Vasant Raut]. In this evidence, the spot of incident is proved.

16. There is evidence of PW – 5 [Jagannath Bhanudas Pharande], who acted as the Panch for seizure of the clothes of Appellant. His evidence shows that, on 27/01/2014, he was called to the Civil Hospital, Ahmednagar where the clothes of Appellant comprising one shirt and one pant stained with blood were seized. He identified the Articles – 8 and 9 as the same clothes. His cross-examination shows that, he was the uncle of Deceased and had gone to see the Appellant in the Hospital. Nothing has come to discard his testimony.

17. There is evidence of PW – 8 [Sunil Prabhakar Rao Kulkarni] and PW – 9 [Abdul Salim Abdul Gani Shaikh], who conducted the investigation and submitted the Charge-sheet. The evidence of PW – 9 [Abdul Salim Abdul Gani Shaikh] shows that, the Muddemal Articles were referred to the Chemical Analyzer and CA Reports at Exhibits – 85 and 86 were received.

18. From the above evidence, it is clear that, the Appellant and his wife were known to PW – 2 [Atul Vasant Raut] and PW – 3 [Raosaheb Baburao Aswar]. Therefore, there is no question of establishing the identity of the Appellant. It is clear from the evidence of PW – 2 [Atul Vasant Raut] that, he was the eyewitness

to the act of assault by the Appellant to the Deceased with stone in his field. Since the spot of incident was his field and he was the resident of the same village in the vicinity of which the spot of incident was located, his presence at the time of incident is natural. The evidence of PW – 3 [Raosaheb Baburao Aswar] corroborates his testimony to the extent that, he saw the Deceased lying in an injured condition and the Appellant running from the spot. Their evidence is further corroborated by the medical evidence. The medical evidence clearly shows that, the said injuries were possible due to assault by hard and blunt object. The evidence of PW – 2 [Atul Vasant Raut] clearly established that, the Appellant assaulted the Deceased on her head. It is clear from the medical evidence that, the injuries on the head proved fatal. The evidence of PW – 2 [Atul Vasant Raut] – eyewitness shows that, the size of stone was such that it could get fit in the palm. Therefore, it is clear that, it was not the stone of big size. The spot of incident, being the agricultural field, it would have been easily possible for the Appellant to use the agricultural implements or big stone to assault, had he intended to kill his wife. Assaulting with the small stone, which would fit in the palm, shows that, the Appellant had no intention to kill his wife. There is no iota of evidence as to what triggered the incident.

18.1. In light of the above referred evidence, the knowledge that, the assault by the stone on the head of his wife, which is the vital part of the body was likely to cause death or to cause such bodily injury as was likely to cause death, can be attributed to the Appellant. Further the conduct of Appellant in attempting to commit suicide shows his mental condition.

19. Useful reference can be made to the observations of the Hon'ble Supreme Court of India in **Anbazhagan Vs. The State represented by the Inspector of Police ; MANU/SC/0782/2023**, wherein, the words 'intent' and 'knowledge' are considered. Further, the provisions of Sections 299 and 300 of I.P.C came to be exhaustively dealt with. Few important principles in that regard are laid down in Paragraph No.60 of the said Judgment. Applying the said principles to the case on hand and in view of the above discussion, the act of the Appellant would fall in Second [II] Part of Section 304 of I.P.C, which attracts maximum sentence of imprisonment for a term which may extend to ten years, or with fine, or with both.

20. As regards the Charge for the offence punishable under Section 309 of I.P.C., the evidence of PW – 2 [Atul Vasant Raut] and PW – 3 [Raosaheb Baburao Aswar] clearly established the said Charge, as they went to rescue the Appellant, who was about to

hang himself to the tree. The rope having knot also came to be seized from the tree situated near the spot of incident.

21. On re-appreciation of the evidence on record and in light of the above discussion, the conviction and sentence awarded by the learned Trial Court for the offence punishable under Section 302 of I.P.C. requires interference. No interference is warranted for the conviction for the offence punishable under Section 309 of I.P.C. No separate sentence is awarded for the same. We appreciate the able assistance provided by the learned Advocate Mr. N. S. Ghanekar to the Court in deciding this Appeal. Hence, we proceed to pass the following order :

ORDER

- [I] Criminal Appeal is partly allowed.
- [II] The conviction and sentence of the Appellant recorded by the learned Additional Sessions Judge, Beed vide Judgment and Order dated 06/07/2017 in Sessions Case No.67/2014 for the offence punishable under Section 302 of I.P.C, is hereby quashed and set aside. Instead, the Appellant is convicted for the offence punishable under Section 304 Part-II of I.P.C and sentenced to undergo imprisonment for the period he has undergone i.e. nine [9] years and nine [9] months.
- [III] The conviction and sentence of the Appellant for the offence punishable under Section 309 of I.P.C. is maintained.
- [IV] As the Appellant has served the sentences, he be released forthwith, if not required in any other offence.

[V] Record and Proceedings be sent back to the learned Trial Court.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer