



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.352 OF 2023**

**WITH**

**INTERIM APPLICATION NO.803 OF 2025**

Vijay @ Dhananjay Srikant Shinde

Age : 46 Yrs. Occ : Labour

R/at Joshi-Galli, Old Sarati Road

Akluj, Malshiras, Solapur

...Appellant.

**Versus**

State of Maharashtra

Through Akluj Police Station

Vide their CR. No. 141/2016

At present at Yervada Central Jail

...Respondent.

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*Mr. Tejas Mane a/w Sachin Pawar i/b Mr. Ravindra Jadhav for the Petitioner.  
Ms. Mahalaxmi Ganpathy, APP for the Respondent-State.*

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**Coram : Sharmila U. Deshmukh &  
Neeraj P. Dhote, JJ.**

**Reserved on : August 29, 2026.  
Pronounced on : September 11, 2026**

**JUDGMENT : (PER NEERAJ P. DHOTE J.)**

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and Order dated 13.11.2017 passed by the learned Additional Sessions Judge, Malshiras in Sessions Case No. 27 of 2016, convicting and sentencing the Appellant as follows:

"1. Accused Vijay @ Dhananjay Srikant Shinde is convicted under

*Section 235(2) of Code of Criminal Procedure for the offence punishable under Section 302 of Indian Penal Code and he is sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- (in words five thousand only), in default of payment of fine amount, he shall suffer simple imprisonment for one year.*

2. *Accused Vijay @ Dhananjay Srikant Shinde is convicted under Section 235(2) of Code of Criminal Procedure for the offence punishable under Section 506 of Indian Penal Code and he is sentenced to suffer rigorous imprisonment for two months and to pay fine of Rs.1000/- (in words one thousand only), in default of payment of fine amount, he shall suffer simple imprisonment for 15 days.*

3. .... " "

4. .... " "

5. .... " "

6. .... " "

7. .... " "

2. The prosecution's case as revealed from the police report is as under:

(a) The informant is the wife of deceased Rajendra Dattatray Chavan (hereinafter referred to as 'the deceased'). The sister of deceased by name Shobha was married to the Appellant. The Appellant used to ill-treat his wife, i.e. the sister of deceased. Every time the deceased used to give understanding to the Appellant in that regard. About one (1) month prior to the date of incident, the Appellant dropped his wife to the house of deceased along with the children. The Appellant used to come to the house of deceased and harass his wife. On 03.04.2016, the Appellant and his mother had come to the house of deceased to take his

wife, i.e. the sister of deceased along with him. The deceased did not allow them to take his sister with them. On 04.04.2016, the Appellant left the house of deceased along with his two children. However, he returned in the evening along with his two children. Quarrel took place between the Appellant and his wife. In the evening, the Appellant left with his two children.

(b) In the night of 07.04.2016, the deceased came home around 11:30 pm. Thereafter, the deceased and the informant went to sleep in the courtyard. The informant heard the voice "आई गं". The informant woke up from the sleep and saw the Appellant assaulting her husband in the head with the stone and thereafter the Appellant fled. The informant raised alarm. The in-laws of the informant and the neighbors got up and came to the spot of incident. Some of the villagers removed the deceased to the hospital for treatment. The doctor declared the deceased as brought dead. In the morning of 08.04.2016, the informant went to the Akulj Police Station and lodged the report against the Appellant that, he murdered her husband. Crime bearing No. 141 of 2016 came to be registered for the offence punishable under Section 302 and 506 of the Indian Penal Code, 1860 (for short, 'IPC').

(c) The investigation was conducted. The inquest was done and the dead body was sent for post-mortem. The spot panchanama was done. The statements of witnesses were recorded. The Appellant came to be

arrested. The seized articles including the clothes of the Appellant were sent to the chemical laboratory. The post-mortem report and the reports of the Chemical Analyzer (for short, 'CA') were collected. On completion of the investigation, the Appellant came to be charge-sheeted.

(d) As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, the committal order was passed by the learned Magistrate. The learned trial Court framed the Charge against the Appellant for the offence punishable under Section 302 and 506 of IPC below Exhibit-2, to which the Appellant pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined the following witnesses:

PW1-Sonali Rajendra Chavhan - Informant and wife of deceased.

PW2-Parubai Dattu Chavhan - Mother of deceased.

PW3-Shobha Vijay Shinde - Wife of the Appellant.

PW4-Jalindar Shankar Waghmbare - Panch for the inquest and the spot.

PW5-Dr. Manisha Madhukar Kadam - Medical Officer who performed the post-mortem.

PW6-Mahesh Hanmant Vidhate - Police Officer attached to the Akluj Police Station who conducted the investigation.

**3.** The relevant documents such as the report/FIR, panchanamas, the PM report, the CA reports etc. are brought on record by the prosecution

in the evidence of the aforesaid witnesses. After the prosecution filed the evidence closure purusis, the statement of the Appellant came to be recorded by the learned trial Court under Section 313 of Cr.P.C. The Appellant stated that, due to the previous quarrel he was falsely implicated. After hearing both the sides and appreciating the evidence available on record, the learned trial Court passed the impugned Judgment and Order.

**4.** Heard learned counsel for the Appellant and the learned APP for the State. Scrutinized the evidence on record.

(a) It is submitted by learned counsel for the Appellant that the prosecution's case is based on the circumstantial evidence. The chain of circumstances is incomplete. The sole witness identifying the Appellant as the assaulter is an interested witness and her testimony suffers from material improvements and omissions. As the chain of circumstances is not established and if two views are possible on the basis of the evidence on record, the one favorable to the accused must be adopted. There is no evidence in respect of discovery of any article at the instance of the Appellant. The evidence on record is not sufficient to maintain the conviction recorded by the learned trial Court and the same be set aside. In support of his submissions, he relied on the judgments in **(1) Hanumant vs. The State of Madhya Pradesh, [AIR 1952 SC 343]**, **(2) Sharad Birdhi Chand Sarda vs. State of Maharashtra, [AIR 1984 SC**

**1622], (3) Ramreddy Rajeshkhanna Reddy and Another vs. State of Andhra Pradesh, [AIR 2006 SC 1656].**

(b) It is submitted by learned APP that, the wife of the deceased had witnessed the incident and she is examined by the prosecution. Her testimony cannot be discarded on the ground that she is the interested witness. The crime was registered on the report of the said witness. The case is based on the evidence of the eye witness and the other evidence led by the prosecution corroborate the evidence of eye witness. The CA reports show the human blood on the seized articles. The stone used in the crime was seized from the spot of incident. The cause of death was due to head injury. The prosecution proved the charge and the learned trial Court has rightly appreciated the evidence on record and convicted and sentenced the Appellant. No interference is called for in the impugned Judgment. In support of her submissions, she relied on the judgments in **(1) Ravi vs. State represented by Inspector of Police [(2008) 15 SCC 115], (2) State through the Inspector of Police vs. Laly alias Manikandan and Another, [2022 SCC OnLine SC 1424].**

**5.** When the Charge is for the offence punishable under Section 302 of the IPC, it becomes necessary for the prosecution to establish that the death was homicidal. The evidence of PW4-Jalindar Shankar Waghmbare shows that, on 08.04.2016, he was called by the police for the inquest in the Shivamrut Colony. The dead body was shown by the

wife of deceased. There was injury on the head of the body. The inquest at Exhibit-49 was prepared by the police and he signed on the same. Except the suggestion that, the inquest was not prepared in his presence, nothing has come in the cross-examination so as to discard the evidence of this witness in respect of inquest. The evidence of PW6 - Mahesh Hanmant Vidhate shows that, he was posted as the Assistant Police Inspector at the Akuj police station on 08.04.2016. On that date, he was directed to visit the place of occurrence. The informant was present on the spot of occurrence. He prepared the inquest at Exhibit-49 which was signed by himself and the panchas. His evidence shows that, the dead body was referred for the post-mortem. He denied the suggestion that false inquest was prepared. The inquest below Exhibit-49 corroborate the evidence of the aforesaid witnesses.

**6.** The evidence of PW5-Dr. Manisha Madhukar Kadam shows that, on 08.04.2016, she was attached to the Sub-District Hospital, Akuj as the Medical Officer. On that date, the dead body was referred for the post-mortem. The dead body was of Rajendra Dattatraya Chavhan. She performed the post-mortem. She found the following injuries on the body:

1. *Abrasion of 6 x 4 c.m. over frontal region about left eyebrow,*
2. *C.L.W. of 2 x 1 x 0.5 c.m. over lateral end of left eyebrow,*

3. *Under the scalp haematoma 15 x 20 c.m. over left temple fronto partial region,*
4. *Circular haematoma of 3 x 3 c.m. over right frontal region,*
5. *Crack fracture of left frontal bone noted,*
6. *Massive intra cranial haemorage.*

Her evidence further shows that, the cause of death was head injury. The PM report below Exhibit-55 is brought on record in the evidence of this medical officer. The evidence further show that, the advance death certificate below Exhibit-56 was issued by her. In response to the letter from the police station, she gave opinion that, the death was possible by use of the stone weighing 13.540 kg if hit on the head. She denied that the findings in the post-mortem report were incorrect. She denied the suggestion that the death was due to heart and kidney failure. Nothing material has come in the cross-examination to discard the testimony of the medical officer.

**7.** Nothing has come in the cross-examination of the aforesaid witnesses examined by the prosecution, even remotely, that the death which not homicidal. The evidence of PW4- Jalindar Shankar Waghmbar shows that, the article-D (stone) was seized by the police from the spot of incident which was the house of deceased. From the cross-examination of the witnesses it is clear that the homicidal death of the informant's husband is not seriously disputed by the defence.

Considering the above discussed evidence on record, without hesitation it can be held that, the prosecution proved that the death of informant's husband was homicidal.

**8.** The evidence on record goes to show that, there is no dispute on the following aspects:

(a) Deceased was the husband of PW1- Sonali Rajendra Chavhan, the informant.

(b) Deceased was the brother-in-law of the Appellant.

**9.** The prosecution's case primarily rests on the testimony of PW1- Sonali Rajendra Chavhan. Her evidence shows that, she was residing with the deceased, her two children, mother-in-law and father-in-law in Shivamrut Colony at Vizori. In the night of 07.04.2016 at 11:30, the deceased came home from work and after collecting water from the Gram Panchayat tap went to sleep in the courtyard. She also went to bed alongside him. She heard the noise "आई ग" and saw that, the Appellant was present in the courtyard on the side of deceased's head. She saw deceased was *writhing* and blood was oozing from his nose and mouth. She saw the Appellant going from the backside of her house. She raised alarm. Her mother-in-law (PW2-Parubai Dattu Chavhan), neighbours rushed on the spot of incident. The four-wheeler was called and deceased was taken to hospital. Doctor examined him and declared dead. The dead body was brought home. She went to the Akuj Police

Station and lodged the report below Exhibit-37. She further deposed of conducting the spot panchanama by the police and seizure of the articles from the spot of incident. The police took the dead body for postmortem and thereafter the dead body was handed over to her for last rites. She deposed of recording her supplementary statement and statement before the learned Magistrate. She identified the clothes and the stones which were seized during the course of investigation.

**10.** PW1- Sonali Rajendra Chavhan was cross-examined. The topography of the place of incident is brought on record. It shows that towards the east of her house there is open space around 2 to 2<sup>1/2</sup> acres, towards south there is a poultry farm, there was Bhatghar canal behind her house, one road which goes towards the canal, her house was a hut having one door at the front side, there was makeshift bathroom towards the south, at some distance there was the hut where her in-laws were residing, there was drainage line towards east of her hut, and there were two rooms belonging to Shivamrut Milk towards the north of her hut.

**11.** In the cross-examination, it is brought on record that, her evidence that she heard the noise and she saw the accused was standing beside head of deceased and the deceased was *writhing*, was an improvement from her previous statement. The prosecution has not examined the police officer who recorded the report of this witness and

therefore the defence was deprived of proving the said omission. The said improvement/omission was vital and goes to the root of the prosecution's case. There is no evidence on record to show that, there was source of light at the spot of incident so as to clearly notice the assaulter by PW1- Sonali Rajendra Chavhan. The cross-examination of PW6-Mahesh Hanmant Vidhate, the Investigating Officer, shows that, the spot panchanama below Exhibit-50 was silent in respect of the electric supply at the time of the incident. Undisputedly, the incident is of midnight. The spot of incident was the courtyard and from the above evidence of PW1-Sonali Rajendra Chavhan, it is clear that the spot of incident was the open place accessible to all. The same gets fortified from the sketch of the spot enclosed to the spot panchanama.

**12.** The evaluation of the evidence of PW1- Sonali Rajendra Chavhan creates reasonable doubt as to whether she actually saw the Appellant on the spot of incident. Considering the improvement/omission in her evidence in respect of presence of the Appellant on the spot of incident at the time of the incident, her evidence in respect of presence of Appellant on the spot, is required to be seen with doubt. The evidence of PW1- Sonali Rajendra Chavhan do not give the required assurance that, it was the Appellant who was the assaulter and non other. Her evidence cannot form the basis to establish the involvement of the Appellant in the crime.

**13.** The evidence of PW-6 Mahesh Hanmant Vidhate, the Investigating Officer, shows that, he did not obtain the fingerprint from the stone seized during the spot panchanama. His evidence shows that, the seized muddemal including the clothes of the Appellant were sent for examination to the Chemical Laboratory. The CA report in respect of the articles is at Exhibit-73, which shows that, human blood was found on the articles and the ABO grouping of the blood on the clothes of the Appellant was inconclusive. The CA report at Exhibit-74 shows that, the blood group of the deceased could not be determined as the result was inconclusive. The CA report at Exhibit-75 goes to show that, the blood group of the Appellant was "B". Thus, the blood stain on the clothes of the Appellant would be of no assistance to the prosecution to prove the charge.

**14.** The prosecution has attributed the motive to the Appellant in commission of the crime that, the wife of the Appellant, who was the sister of the deceased, was protected by the deceased and the deceased used to give understanding to the Appellant and therefore the Appellant committed the murder. Though, the prosecution examined the wife of Appellant as PW3- Shobha Vijay Shinde, her evidence shows that, she did not support the case of prosecution in any manner. Though cross-examined, nothing came on record so as to further the case of prosecution or to establish the motive. The evidence

of mother of deceased, PW2-Parubai Dattu Chavhan, is of no assistance to the prosecution, being hearsay in nature. Even the evidence of PW1-Sonali Rajendra Chavhan in respect of ill-treatment by the Appellant to his wife is hearsay as her evidence nowhere shows that, she herself witnessed the ill-treatment to PW3-Shobha by the Appellant. With this evidence on record, the prosecution failed to establish that the Appellant had the motive to commit the crime.

**15.** There cannot be any dispute in respect of the settled legal position on the aspect of circumstantial evidence that, it should form the complete chain so as to exclude every possible hypothesis except the one to be proved. In *Ravi vs. State (supra)*, the witness No. 1 categorically stated that, there was light in the nearby church and the street light near primary school were burning at the time of occurrence and he could see the occurrence in the light and the evidence was found to be cogent and credible by the trial Court. In *Laly alias Manikandan (supra)*, the evidence of the eyewitness was found to be credible and reliable and observed that it would be safe to record the conviction on the sole testimony of the eyewitness. The said judgments relied upon by the learned APP, in our considered view, are of no assistance in the case at hand in the light of the re-appreciation of the evidence on record. The prosecution failed to prove the charge with cogent and concrete evidence. According to the Appellant, he was falsely implicated due to

the previous quarrel. In the light of the above discussion, the conviction recorded by the learned trial Court requires interference and the Appellant is entitled for acquittal. Hence the order.

### **ORDER**

- a)** The Appeal is allowed.
- b)** The conviction and sentence recorded by the learned Additional Sessions Judge, Malshiras in Sessions Case No. 27/2016 by Judgment and Order dated 13.11.2017 is hereby quashed and set aside.
- c)** The Appellant is acquitted for the offence punishable under Section 302 and 506 of the Indian Penal Code, 1860.
- d)** The Appellant is behind bars. He be released forthwith, if not required in any other offence.
- e)** The fine amount, if paid by the Appellant, be refunded.

**16.** In view of disposal of Appeal, pending Application, if any, stands disposed of accordingly.

**[Neeraj P. Dhote, J.]**

**[Sharmila U. Deshmukh, J.]**