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

CRIMINAL APPEAL NO. 658 OF 2022

Dilip Suresh Thatshingar,

Age : 32 years,

R/o : Motha Matangwada,

Near Taxi Stand, Bhadrakali

Nashik City

(Presently in Nashik Central Road,

Prison, Nashik)

..Appellant

Versus

The State of Maharashtra

Through Public Prosecutor,

High Court, Bombay.

..Respondent

Mr. Najmi Murtaza with Ms. Manisha Devkar (appointed Advocates through Legal Aid) for the Appellant.

Ms. Gauri Rao, A.P.P., for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 28th SEPTEMBER 2026

JUDGMENT [PER : SARANG V. KOTWAL, J] :-

1. The Appellant has challenged the Judgment and Order dated 28th April 2022 passed by the learned Additional Sessions Judge and Special Judge, POCSO, Nashik, in Sessions Case POCSO No. 43 of

2019. The Appellant was acquitted for the charges for commission of offences punishable under Sections 344, 366-A, 376(1) of IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO). However, the Appellant was convicted for commission of the offence punishable under Section 302 of IPC and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default to suffer simple imprisonment for 6 months. He was granted set off under Section 428 of CrPC for the period already undergone in prison. The Appellant has challenged his conviction and sentence under Section 302 of IPC.

2. Mr. Najmi was appointed to argue the Appeal on behalf of the Appellant. However, on the last occasion since he was not present, we had appointed Ms. Devkar to represent the Appellant. Subsequently, Mr. Najmi appeared before us and submitted that due to inadvertence he could not remain present. Considering his submission, in the interest of justice, we permitted Mr. Najmi as well as Ms. Devkar both to make submissions on behalf of the Appellant. We have also heard Ms. Gauri Rao, learned A.P.P., for the Respondent-State.

3. The Prosecution case in brief is as follows :

The deceased was aged about 16 years and 5 months on

the date of the incident. The incident took place on 2nd November 2018. The date of birth of the deceased was 24-5-2002. A few days prior to the incident, she had left her parental house and had started residing with the Appellant. It is the Prosecution case that the Appellant was doubting her character and used to beat her. Sometimes, he used to confine her in his room. On 2nd November 2018, in the evening, he tied her hands and legs and assaulted her with a heavy wooden stick. PW 10 Shivaji Khairnar, who was having his handcart nearby, rushed to the Appellant's room and saw the incident. The Appellant threatened him, therefore, he went away. According to the Prosecution, the Appellant himself took the deceased to the Civil Hospital, but she was declared dead. Initially ADR No. 92 of 2018 was registered at Bhadrakali Police Station. Subsequently, the victim's brother expressed his grievance against the Appellant and made specific allegations that the Appellant had assaulted the deceased. The initial part of the investigation had already commenced. The inquest panchanama and spot panchanama were conducted. The FIR was lodged at 8.51 p.m. on 3rd November 2018 vide C.R. No. I-585 of 2018 at Bhadrakali Police Station. The Appellant was arrested. The investigation continued. The postmortem examination was conducted between 8.00 a.m. to 9.00 a.m. on 3rd November 2018. She had suffered as many as 31 injuries all over her

body. The statements of various witnesses were recorded. The Statement of the eye witness Shivaji Khairnar was recorded under Section 164 of CrPC. During Spot panchanama conducted at around 1.00 p.m. on 3rd November 2018, a piece of wire and pieces of clothes were recovered. The clothes of the deceased and clothes of the accused were also recovered. The seized articles were sent for chemical analysis. At the conclusion of the investigation, the chargesheet was filed and the case was committed to the Court of Session.

4. During trial, the Prosecution examined 13 witnesses, including the eye witness Shivaji Khairnar, the first informant who was the brother of the deceased, the Panchas, the Medical Officer and the Investigating Officer.

5. The defence of the Appellant was of denial and he also took a specific defence that there was enmity between him and PW 10 Shivaji Khairnar. The Appellant's mother had lodged an FIR against PW 10 Shivaji Khairnar, who had a grudge against the Appellant and, therefore, he falsely implicated the Appellant. According to him, when he was going from his lane, he saw the victim lying on the ground. When the Appellant asked her about it, she pointed to her brother. The Appellant picked up an iron rod and started chasing him, but her

brother sat in a Rickshaw and went away. According to the Appellant, he took the victim to the hospital in a Rickshaw. He further stated that PW 10 Shivaji and the other witnesses were relatives of each other.

6. The learned Judge considered the evidence on record and the defence taken by the Appellant. He observed that there was no evidence of commission of the offences punishable under POCSO Act and other Sections of Indian Penal Code, except Section 302 of IPC. The learned Judge observed that the CA Report did not show presence of semen on the swab, etc., and he concluded that there was no evidence to conclude that the deceased was subjected to sexual assault. However, the learned Judge relied on the evidence of PW 10 in particular, and on the evidence of PW-1 the victim's brother to base his conclusion that the Appellant had committed the offence punishable under Section 302 of IPC.

7. PW 1 Ganesh Rao was the first informant. He was the brother of the deceased. He deposed that the victim was his younger sister. She was about 17 years of age at the time of the incident. They were residing in Tapovan area and the Appellant was residing in Bhadrakali area. The Appellant used to come to Tapovan for smoking narcotic drugs. He had told the victim that he would marry her. The

Appellant had taken the victim to Matangwadi. PW 1, his mother and younger brother had gone to Matangwadi to bring back the victim but the Appellant had threatened them with a sickle. Therefore, they had come back. After about 15 days, he saw the victim. PW 1 asked her to return home. The victim told him that the Appellant was suspecting her character. She had tried to come back to her parental house, but the Appellant had locked her in his room. The victim informed PW 1 that if she spoke with the neighbours, the Appellant used to assault her. She further told PW 1 that she would come afterwards. He further deposed that on 2nd November 2011 at about 10.00 to 10.30 p.m., he received a call from an unknown number. He was informed that his sister was severely assaulted and that she was admitted to Civil Hospital, Nashik. PW 1 went to the Civil Hospital with his friend Sagar Shinde. He saw his sister on a stretcher. There were injuries all over her body. She had suffered a head injury. Her hands and legs were tied. She was already dead and her body was taken for postmortem examination. He deposed that he went with the Police and showed the place where she was assaulted. The Police recovered some blood-stained clothes from the spot. They also seized a blood-stained heavy wooden stick. Apart from that, they recovered and seized a red coloured electric wire. He lodged the FIR on 3rd November 2018. He identified the FIR. The defence

objected the said statement for being taken on record as the FIR. However, the learned Judge overruled that objection and the FIR was taken on record at Exhibit 13. PW 1 identified the clothes of the deceased which were produced in the Court. He also identified the wire. He was called to the prison to attend the test identification parade.

In the cross-examination, he deposed that he was residing with his parents and younger brothers. Bhadrakali area was a central place in Nashik. There were theaters and video hall around Matangwadi. His sister was fond of watching movies. In the year 2016, there was a marriage proposal for her, but no steps were taken. She was residing at Bhadrakali about 3 to 4 months prior to the incident. He denied the suggestion that the Appellant used to fight against injustice and, therefore, PW 1's sister preferred to stay with the Appellant. PW 1 accepted the suggestion that since the Appellant was of violent nature, they had advised the victim not to stay with him, but she did not listen to them. He accepted that his mother had advised him to lodge the FIR at around 11.00 p.m in the night. PI Suryawanshi came there and he took the Appellant in custody around 12.30 a.m. in the midnight. He accepted that since his sister had told him about the house of the Appellant, he knew that it was the Appellant's house. He denied the

suggestion that they had assaulted the victim, thereby causing her death.

8. The FIR was lodged at 8.51 p.m. on 3rd November 2018. It substantially corroborates the deposition of PW 1. However, the spot panchanama was prepared between 1.15 p.m. to 2.30 p.m. on 3rd November 2018. The spot panchanama is produced on record through the evidence of PW 2 Sharad Ingle. He was a pancha for the spot panchanama. It is produced on record at Exhibit 16. The spot panchanama in the beginning itself mentions that PW 1 had shown the place of incident i.e. the room of the Appellant and PW 1 had described his grievance. There was a specific reference that the Appellant had committed the murder of the deceased by assaulting her with a heavy wooden stick and wire after tying her limbs. Ideally, at that time itself, the Police ought to have registered the FIR, but the investigation had already commenced as investigation into ADR No. 92 of 2018. The spot panchanama mentions the said fact. It was conducted under Section 174 of CrPC. PW 2 was examined as a pancha for spot panchanama. He identified the panchanama and deposed that the Police had recovered and seized a heavy wooden stick, pieces of clothes, wire and the bed sheet. All these articles were stained with blood.

9. PW 10 Shivaji Khairnar is the most important witness. In this case, he was examined as an eye witness. He deposed that he knew the Appellant as the Appellant was his neighbour. He identified the Appellant on VC. At the time of incident, PW 10 was in his house. At about 7.00 p.m., he heard screams. According to him, the victim was shouting loudly. He rushed towards the Appellant's house to help her. PW 10 specifically deposed that the Appellant was assaulting his wife (victim) with a heavy wooden stick. The Appellant chased PW 10 with the same stick. PW 10 got scared. According to him, the Appellant had created terror in the area. PW 10 ran away. After some time, an ambulance came there. His statement was recorded in the Court. It is produced on record at Exhibit 16. It was recorded under Section 164 of CrPC.

In the cross-examination, he stated that there were many customers visiting him between 6.00 p.m. to 9.00 p.m. His wife used to sell Egg Bhurji. In the cross-examination, certain omissions were brought out by the defence in his statement recorded under Section 164 of CrPC. According to him, he had stated in his statement recorded under Section 164 of CrPC that he had heard the voice of the Appellant's wife. This particular fact was not mentioned in his

statement. If his statement under Section 164 of CrPC is perused, it is mentioned by him that he heard shouts of a woman from the house of the Appellant. Therefore, this omission does not affect his substantive evidence. According to him, he had stated before the Police that he had heard shouts of the Appellant's wife. This particular omission from his police statement is proved through the evidence of the Investigating Officer PW 13. However, there is no omission in the police statement as to the fact that he had gone to the house of the Appellant. He had not specifically stated in his statement under Section 164 of CrPC that the Appellant was assaulting his wife, but the statement under Section 164 records that when he went to the house of the Appellant, the Appellant was having a heavy wooden stick and his wife's hands and legs were tied. When PW 10 went to help her, the Appellant was in a fit of rage and, therefore, PW 10 got scared. The Appellant's wife lay unconscious. The Appellant's family members came there and took her to the hospital. Therefore, this particular statement substantially corroborates the main description given by him in his deposition.

In the cross-examination, he stated that the Appellant and his sister took the victim in a rickshaw. In the evening, he was working at his handcart and, therefore, he did not inform the incident to the

Police. The Police had come near his house. His handcart was about 200 ft. away from his house. He denied the suggestion that the Appellant was shouting that the victim was assaulted by her parents and brothers. He denied the suggestion that, the Appellant was chasing the victim's parents and brothers with a heavy wooden stick.

10. PW 3 Laxman Wagh and PW 4 Ganesh Jadhav were the panchas for recovery and seizure of clothes of the deceased, but they turned hostile and did not support the prosecution case. PW 5 (Kailas Sathe) and 6 (Arun Kale) were panchas for seizure of clothes of the accused, but they also turned hostile and did not support the prosecution case. The test identification parade memo was admitted by the defence. In the test identification parade, PW 1 had identified the Appellant. In any case, holding of the test identification parade was not necessary because PW 1 knew the Appellant.

11. PW 8 Madhuri Tikale was a pancha for inquest panchanama. It is produced on record at Exhibit 45.

12. PW 9 Dr. Kamble is another important witness. He had conducted the postmortem examination and had also examined the Appellant. PW 9 deposed about the injuries suffered by the deceased. She had 31 injuries all over the body. The injuries were in the nature of

contusions, contused abrasions, multiple reddish abrasions and a black eye. The opinion as to the cause of death was mentioned as “Cerebral damage due to blunt trauma to head, which is sufficient to cause death in ordinary cause of nature. All the injuries were ante-mortem in nature, fresh and caused by blunt trauma”. There was fracture of the skull bone. The Police had referred the wooden stick recovered at the spot for his opinion. The opinion is produced on record at Exhibit 50. As per that opinion, the injuries were possible by that particular weapon. On 7th November 2018, he examined the Appellant and according to his examination, the Appellant was capable of physical intercourse. His evidence shows that the deceased was brutally assaulted.

13. PW 7 Rajaram Jadhav was working with Nashik Municipal Corporation. He produced the birth register of the victim. A certified copy is produced on record at Exhibit 29. According to the extract, her date of birth was 24-5-2002. There is hardly any dispute about this birth certificate. The learned Judge has recorded that she was the only daughter of her parents. She had three brothers. The names of the parents were correct. Therefore, it was concluded that it was her birth certificate.

14. In any case, in the facts of this case, her age hardly matters

because the conviction is under Section 302 of IPC. The Appellant is acquitted from the charges under POCSO, and there is no challenge to that acquittal.

15. PW 11 ASI Ramrao Kadale deposed that he was on duty at Civil Hospital, Nashik. On 2nd November 2018, the Appellant had brought his wife to the Civil Hospital. The Doctor examined her and declared her dead. He informed Bhadrakali Police Station accordingly. His information is produced on record at Exhibit 69. The information specifically mentions that the victim, aged 17 years, was assaulted by her husband/Appellant, causing injuries near her eye. She was brought by her husband/Appellant at about 8.15 p.m. The Doctor examined her and declared her dead. This information, being the first in point of time, specifically named the present Appellant and attributed a specific role to him. Therefore, right from the beginning, the investigation always proceeded on the footing that the Appellant had assaulted the deceased and had caused her death.

16. PW 12 API Vaishali Shinde had conducted the investigation in ADR No. 92 of 2018. She had conducted the spot panchanama and seized the articles from there. She identified those articles produced in the Court. She identified the written information referred to

hereinabove at Exhibit 69. This was the information received by her. It had the signature of the Station House Officer.

17. PW 13 API Manoj Shinde had conducted the investigation after the FIR was registered. He had arrested the Appellant. He had seized the Appellant's clothes. He had also seized the clothes of the deceased. He caused the statements of the witnesses to be recorded under Section 164 of CrPC.

In the cross-examination, he proved the omissions from the police statement of PW 10 as referred hereinabove.

18. Apart from this oral evidence, the prosecution produced the CA report on record. It shows that there was blood of A group on the wooden log, the scarf seized from the spot, the cloth pieces seized from the spot and the full pant of the Appellant. The other articles i.e. the clothes of the deceased and the Appellant and the bed sheet, showed the presence of blood but blood grouping was inconclusive. The semen smear slides and the swabs of victim's private parts did not reveal anything incriminating which is one of the reasons why the Appellant was acquitted from the other charges.

19. Mr. Najmi and Ms. Devkar made the following

submissions :

The complainant PW 1 is unreliable. There are material contradictions and omissions from his evidence. He was not an eye witness. His FIR is lodged much belatedly almost after 24 hours from the time of the incident. The incident had taken place in a crowded locality and yet the only one witness was examined as an eye witness. The evidence of the said eye witness PW 10 is not reliable. There are material omissions and contradictions from his police statement, statement recorded under Section 164 of CrPC, and his deposition. There was no motive established by the prosecution. On the other hand, the defence of the Appellant was probable. The parents and the brothers, including PW 1, had a motive to assault the deceased because she was residing with the Appellant against their wishes. They perceived it as harm to their reputation. The conduct of PW 1 was unnatural. The story deposed by him that the victim had met him at some place is not true. The prosecution has suppressed the real FIR.

20. On the other hand, learned A.P.P. relied heavily on the evidence of PW 10 Shivaji Khairnar. She submitted that he was an independent witness. He was also a natural witness, as he was the neighbour of the deceased and the Appellant. He had rushed to the spot

on hearing the shouts. The omissions from his previous statements were immaterial in the background of the main narration given by him in his examination-in-chief. The spot panchanama and seizure of articles are incriminating. The spot panchanama was conducted at about 1.00 p.m. The articles were sent for CA report, they showed the presence of the blood of the deceased. Though the Appellant had taken her to the hospital, before that he had brutally assaulted her. Therefore, by taking her to the hospital does not exonerate him from the crime that he had committed.

21. We have considered these submissions. As mentioned earlier, PW 10 Shivaji Khairnar is the most important witness in this case. We do not find any infirmity in his deposition. He was a natural witness. He was residing nearby. He was in his house. He had a business of selling Egg Bhurji. He heard the shouts and rushed to the house of the Appellant. He has deposed that he had seen the Appellant assaulting the deceased with the heavy wooden stick. In his statement recorded under Section 164 of CrPC, he had stated that the hands and legs of the deceased were tied with wire and the Appellant was carrying a wooden stick. The Appellant rushed at him, and therefore, he ran from there out of fear. We do not find his conduct unnatural. He has described the

incident. The blood-stained clothes and pieces of cloth, as well as the heavy wooden stick were found in the room itself. They were seized. They are sent for chemical analysis. They showed the presence of blood of A group, which was also found on the clothes of the deceased. Thus, the evidence of PW 10 is corroborated by the circumstantial evidence.

22. The medical evidence corroborates the evidence of PW 10. The Doctor had opined that these injuries were possible by the weapon found at the spot. There were as many as 31 injuries on the dead body. The deceased was brutally assaulted with a heavy wooden stick all over the body. The Appellant has not offered any plausible explanation. There is no dispute that the deceased was residing with the Appellant. According to the Appellant, she was assaulted by her parents and brothers. According to him, that the incident had taken place in a lane however, there is no supporting evidence or even indication showing that any such incident had taken place in that particular lane. The defence has brought out on record that it was a crowded locality, and therefore, there should have been some witnesses supporting the defence if the defence was true. The Appellant has not given any explanation regarding the incident. According to him, PW 10 was deposing against him because there was a previous enmity between PW

10 and his mother. According to him, his mother had lodged F.I.R. against PW 10, but no such FIR is produced on record. Therefore, there is absolutely no material supporting his specific defence taken in his statement under Section 313 of CrPC.

23. Though the FIR is lodged belatedly; as discussed earlier, there is an immediate information given by the Police Officer on duty at the Civil Hospital, Nashik, to the Station House Officer of the Police. That information is produced on record at the first instance itself, and the Appellant is named as the assailant who had committed brutal assault on the victim.

24. The spot panchanama refers to the story of the Appellant having assaulted the deceased. Therefore, delay in lodging the FIR makes no difference to the prosecution case in the light of the evidence led in this case. At the first instance itself, the Appellant's name was specifically mentioned in the information.

25. PW 1 had described the reason as to why the deceased was assaulted. According to him, the Appellant was suspecting her character and was treating her with cruelty and brutality. In any case, since this is a case where the evidence of the eye witness is acceptable, the consideration of motive pales in comparison.

26. As a result of the above discussion, we are of the opinion that the prosecution has proved its case beyond reasonable doubt. We find no fault with the reasoning of the learned Judge in acquitting the Appellant from the other charges. There is no appeal against acquittal preferred by the Prosecution against those findings. Hence, the following Order :-

ORDER

- (1) The Appeal is dismissed.
- (2) Since both the learned Counsel argued the matter, the Legal Services Authority of this Court shall pay their fees in accordance with rules.

(RANJITSINHA RAJA BHONSALE, J.)

(SARANG V. KOTWAL, J.)