

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

CRIMINAL APPEAL NO.129 OF 2013

Vithal Vishwanath Shinde,
Age 58 years, Occu. Agril.,
R/o Mulaj, Taluka Umerga,
District Osmanabad

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr S.P. Brahme, Advocate (appointed) for appellant
Mrs V.A. Shinde, A.P.P. for respondent - State

**CORAM : P.V. HARDAS AND
N.W. SAMBRE, JJ.**

DATE : 18th June 2015

ORAL JUDGMENT

1. The appellant, who stands convicted for offence punishable under Section 302 of Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.5,000/-, in default of which to undergo simple imprisonment for three months, by the Additional Sessions Judge, Omerga, by judgment dated 29th January 2013 in Sessions Case No.6/2012, by this appeal questions the correctness of his conviction and sentence.

2. Facts as are necessary for the decision of this appeal may be stated thus :

P.W.9 - A.P.I. Deelip Jadhav who was attached to the Omerga Police Station was entrusted with the investigation of Crime No.54/2011, which was registered on the basis of the report of P.W.1

Balu at Exh.19. P.W.9 – A.P.I. Jadhav, on being entrusted with the investigation of the said crime recorded the supplementary statement of P.W.1 Balu. On 23rd March 2011 he arrested the accused, as the accused had absconded. The arrest panchnama is at Exh.36. Clothes on the person of the accused were seized under seizure memo at Exh.29 in presence of P.W.7 Devidas. Sketch of the scene of the incident was obtained and the seized property was referred to the Chemical Analyser under requisition at Exh.37. The 7/12 extract of the scene of the incident, i.e. agricultural field of the accused is at Exh.38. An inquest panchnama at Exh.28 had been drawn and the dead body had been referred referred for post mortem examination. The scene of the incident panchanama was drawn in presence of P.W.2 Balaji at Exh.21. Further to the completion of investigation, a charge-sheet against the appellant was filed.

3. Post mortem on the dead body of deceased Meenabai was performed by P.W.3 Dr.Jadhav, who noticed the following external injuries:

“Fracture temporal with bone loss of size 6 x 5 x 3 cm.
(ante mortem injury)”

On internal examination, he noticed the brain matter coming out of the temporal bone. He, therefore, opined that cause of death was cerebrovascular shock due to head injury. The post mortem report is at Exh.23. According to P.W.3 Dr. Jadhav, the external injury

and the internal injury were possible to be caused if a stone was hit on the head by both the hands.

4. On committal of the case to Court of Sessions, trial Court at Exh.6 framed charge against the appellant for offence punishable under Section 302 of the Indian Penal Code. The appellant denied his guilt and claimed to be tried.

5. Prosecution in support of its case examined nine witnesses. The defence of the appellant was of denial. The trial Judge, upon appreciation of the evidence convicted and sentenced the appellant as aforestated. The appellant had preferred an appeal through jail questioning his conviction and sentence.

6. We have heard Shri Brahme, learned Counsel appointed on behalf of the appellant who has very ably argued the appeal and we have also heard learned Assistant Public Prosecutor on behalf of the State.

7. The entire prosecution case revolves around the evidence of P.W.4 Dattatraya, brother of the appellant. The evidence of P.W.1 Balu, son of deceased Meenabai and appellant unfolds that the relations between the appellant and his wife deceased Meenabai were strained. The appellant used to abuse and assault his wife suspecting her character. According to P.W.1 Balu, prior to the incident, he had kept his mother at the house of her relatives. P.W.1 Balu, in cross-

examination has also admitted that his mother used to reside with the appellant and assist him in cultivating agricultural land. She used to carry tiffin for the appellant in the field and used to come back at home at about 5.00 pm. According to P.W.1 Balu he had inquired from P.W.4 Dattatraya about the incident and Dattatraya had disclosed him that he had taken the deceased Meenabai to the hospital. However, the disclosure made by P.W.4 Dattatraya to P.W.1 Balu is inadmissible evidence being hearsay, as P.W.4 Dattatraya had not disclosed anything about the incident to P.W.1 Balu.

8. Prosecution has also examined P.W.5 Sudhakar, an Up-Sarpanch, who deposes that P.W.1 Balu had informed him about the strained relations between the appellant and his mother deceased Meenabai and, therefore, had called other villagers and brought about a settlement to their dispute. P.W.5 Sudhakar also deposed that appellant had undertaken to behave properly in future and not to harass his wife Meenabai. Prosecution has also examined P.W.6 Satish, brother of deceased Meenabai who also deposes about Meenabai being ill-treated and harassed by the appellant who was suspecting her character. In cross-examination it is elicited that about 15 days prior to the incident, deceased Meenabai had informed him about the appellant harassing and assaulting her, suspecting her character. It also appears that the appellant had instructed an Advocate to issue notice to deceased Meenabai and her brother alleging theft of Rs.2 lakhs. Prosecution has examined P.W.8 Madan, an Advocate who, on the instructions of the appellant had issued the

notice. P.W.8 Madan has also proved the office copy of the notice.

9. Thus, from the evidence on record, the prosecution has established beyond reasonable doubt that the relations between the appellant and his deceased wife Meenabai were strained. The appellant for no reason was suspecting the character of his wife, whom the witnesses, who in cross-examination have described as a religious person and a good natured person. In our opinion, therefore, the prosecution has established the circumstance that since the relations were strained, the appellant had the motive to do away his wife.

10. Prosecution has examined P.W.4 Dattatraya, brother of the appellant and an adjoining land owner. P.W.4 Dattatraya deposes that on the day of incident, he had heard that the appellant and deceased Meenabai were quarreling. According to him, he was working in his field and after some time he noticed the appellant going away from his field and bringing an auto-rickshaw to the well. P.W.4 Dattatraya further deposes that thereafter the auto-rickshaw went away. Dattatraya followed them and made inquiry and ultimately learnt that Meenabai had died. He has deposed thereafter that P.W.1 Balu had lodged the report. He had admitted in cross-examination that after the partition all the brothers were residing separately. He had admitted that the appellant was cultivating his own field. He has also admitted that deceased Meenabai used to bring tiffin for the appellant and assist him in the agricultural field. He has denied the suggestion

that there were stones near the well though the existence of the stone is admitted in cross-examination by P.W.2 Balaji. In the cross-examination of the prosecution witnesses it is suggested that the deceased who was assisting the appellant in watering the onion crop had slipped from the canal and she had fallen on the stone.

11. In the cross-examination of P.W.3 Dr. Jadhav though suggestion was put to him regarding the injury being caused accidentally which has been repelled by Dr. Jadhav. According to him, such injury was not possible on account of accidental fall.

12. The prosecution thus has proved that the appellant and the deceased were together in the agricultural field. Just prior to the deceased receiving the injury, there was quarrel between them. The prosecution evidence further discloses that no other person than the appellant could have committed the crime. It is inconceivable that any stranger or intruder would come to the agricultural field just for committing murder of deceased Meenabai. The appellant has also not been able to establish the reason as to why any intruder or stranger would commit the crime. The appellant has taken defence of denial.

13. Mr Brahme, learned Counsel appointed for the appellant has urged before us that the prosecution has not been able to establish motive for the appellant to commit the crime. Learned Assistant Public Prosecutor has countered the aforesaid submission by urging before us the existence of strong evidence of motive.

14. We have dealt with the evidence of P.W.1 Balu, P.W.4 Dattatraya, P.W.5 Sudhakar and P.W.6 Satish. The evidence of these witnesses establishes beyond doubt about the strained relations between the appellant and deceased Meenabai. In fact, P.W.6 Satish has admitted in the cross-examination that fifteen days prior to the incident, the appellant was harassing and assaulting his wife, suspecting her character. In such circumstances, in our opinion, the motive as a circumstance has been established by the prosecution beyond reasonable doubt.

15. Learned Counsel for the appellant has further urged before us that the prosecution has not been able to establish and prove the offence against the appellant beyond reasonable doubt and the circumstantial evidence adduced by the prosecution is insufficient and no conviction can be based on the said evidence. Learned Counsel for the appellant has placed reliance on the judgment of the Supreme Court in **Kanhaiya Lal Vs.State of Rajasthan**, reported in **2014 AIR SCW 1828**. In the said case, the Supreme Court found that the circumstantial evidence was insufficient for proving the offence beyond reasonable doubt as motive as a circumstance was not established. The Supreme Court further found that the evidence led by the prosecution established the cordial relationship between the accused and the deceased. Supreme Court, therefore, found that conviction solely on the basis of the circumstance of last seen was unjustified. Learned Counsel for the appellant has placed reliance on

the judgment of Supreme Court in **Rishi Pal v. State of Uttarakhand**, reported in **AIR 2013 SC 3641**. The Supreme Court found that the evidence of the accused being last seen with the deceased and finding of his soiled clothes would create suspicion but in the absence of any suggestion as to how and where he was done to death, the very circumstance of last seen was not sufficient. The ratio of the said judgments of the Supreme Court, in our opinion, is not applicable to the facts of the present case. In the present case, the place where the offence is committed is certain, i.e. the well of the appellant. The appellant and Meenabai were found to be quarreling with each other just before the incident. The presence of the appellant is undisputably established by the prosecution. The circumstance of motive also strengthens the prosecution case. The stone which was the weapon used by the appellant was also found at the scene of the incident stained with the blood.

16. The aforesaid circumstance, in our opinion, excludes every hypothesis of the innocence of the accused and unerringly point to the guilt of the accused. The circumstances so proved formed a complete chain. In other words, the circumstances are capable of only one inference and that is the accused and the accused alone had committed the crime.

17. In the light of the aforesaid findings, in our opinion, the appeal being sans merit stands dismissed.

18. We would, however, like to place on record our appreciation for the efforts taken by Shri S.P. Brahme, learned Counsel appointed for the appellant in arguing the appeal before us. We, accordingly, quantify the fees payable to the learned Counsel appointed for the appellant at Rs.5,000/-.

(N.W. SAMBRE, J.)

(P.V. HARDAS, J.)

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