

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 380 OF 2012

Dangal S/o Taniram Visave,
Age 65 yeas, Occu. Nil,
R/o Gandhipura, Erandol,
Tq. Erandol, Dist. Jalgaon.

... **APPELLANT**

VERSUS

State of Maharashtra,
Through Police Station Erandol,
Tq. Erandol, Dist. Jalgaon.

... **RESPONDENT**

...
Mr. Sachin S. Deshmukh, Advocate for the Appellant.
Mr. B. L. Dhas, APP for the Respondent / State.

...

CORAM : **A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**
DATE : 09th September, 2015.

ORAL JUDGMENT: (Per A. B. Chaudhari, J.)

1 Being aggrieved by the judgment and order dated 9th
May, 2012, in Sessions Case No.176 of 2010, by which the learned
trial Judge convicted the Appellant – Accused for the offence
punishable under Section 302 of the Indian Penal Code sentencing
rigorous imprisonment for life, the present appeal is preferred by the

Appellant.

2 In support of the appeal, the learned counsel for the Appellant (appointed) has vehemently submitted that there is sole testimony of PW-4 Surekha, aged about 27 years, who is the daughter of deceased. He submitted that she being the interested witness, was bound to depose in favour of her deceased mother and having anger at the father – Appellant, her testimony should not have been believed by the learned trial Judge. He has submitted that the next piece of evidence Chemical Analysers report is inconclusive in the sense that the same speaks only about human blood on the clothes of the Accused and nothing more. He, therefore, submitted that the defence that some unknown person must have killed his wife, was probalized. He, therefore, submitted that in the alternative, no offence of murder can be said to have been proved, but lower offence under Section 304 part II can be said to have been proved and therefore, interference atleast to that extent by modifying the impugned judgment is required to be made.

3 Per contra, the learned APP has supported the impugned judgment and order and submitted that the Appellant brutally killed

his wife. The Appellant was doing no work, but was troubling his wife for demand of money for satisfying his vice of drinking liquor, he committed the murder of his wife and the evidence of PW-4 Surekha is enough. She cannot be called interested witness because she is the daughter of the Appellant. Hence, he prays for dismissal of the appeal.

Consideration:

4 We have perused the impugned judgment and order and the reasons recorded by the learned trial Judge. We have carefully perused the evidence of PW-4 Surekha, who is sole witness to the incident. It is true, as contended by the learned counsel for the Appellant, that she has not seen the actual act of assault by the Appellant on his wife. Nevertheless, PW-4 Surekha resides opposite to the house of deceased and Appellant and she saw the Appellant coming out with blood stained clothes from his house and thereafter, she immediately saw her mother lying in a pool of blood when she entered the house of Appellant. It was latched from outside. She has stated in paragraph No.1 of her evidence as under:

“01] Accused is my father. He stays opposite

my house. He is addicted to liquor. On 21/08/2010 I was at my house. At about 10:30 a.m., my father was passing from the road. His clothes were stained with blood. I asked him what happened and he started running. I told him why he was running. He started running fastest. I thought that there was some problem and so I went to my mother. Her house was latched from outside. I gave shouts to my mother. I opened the door and went inside the house. I found that my mother was lying in a pool of blood and she was covered. I got frightened and started shouting. Neighbours brought a rickshaw and thereafter I took my mother in rickshaw to the hospital at Erandol. Thereafter, she was shifted to Jalgaon. In the evening my mother expired.My father was wearing sky blue colour shirt and white colour Trousers. I can identify the clothes. The clothes now shown to me are the same. They are already marked Articles E F G H. The accused present in the Court is my father.”

5 In the cross-examination, it is brought by the defence that her both brothers had gone for work and therefore, they were not at home. Hence, there was no scope for examining the brothers. We have carefully perused the cross-examination of PW-4 Surekha and find not a single circumstance to destroy her testimony. On the contrary, her evidence is clear and trustworthy. We find no reason to

disbelieve her evidence. Insofar as the aspect of interestedness of the witness is concerned, we find that she is daughter of the Appellant and, therefore, equally she is interested in the Appellant. Even then the caution to read the evidence of interested witness has been applied by us and upon reading her evidence, we find that her evidence is consistent, showing no infirmity. Even assuming that she is an interested witness, we find that her testimony is trustworthy and therefore, we reject the contention that her evidence should have been rejected. Consequently, we concur the finding recorded by the trial Judge to believe her evidence that the Appellant and his wife, the deceased, were only in the house at the relevant time and she saw her father running with blood-stained clothes and immediately found her mother lying in the pool of blood, that too after opening the door which was latched from outside. All these circumferences have not been explained by the Appellant at all nor has he taken any clear defence. That apart, the scientific evidence that is adduced by the prosecution also goes against the Appellant. We quote paragraph No.26 of the trial Court judgment, which reads thus:

“26] The C.A reports are filed at Exhs. 40, 41, 42 and

“43. The C.A. Reports suggest that the clothes of the

accused, the guilt, which was found on the dead body of the deceased, blood stained earth on the spot, the iron rod pestle, recovered at the instance of the accused, and the clothes of the deceased has human blood stain and Blouse was soaked with blood.”

6 Insofar as the alternate submission regarding modification of the finding about the offence is concerned, we quote paragraph No.15 of the judgment of the trial Judge, which describes the injuries on the person of the deceased, which reads as under:

“15] Dr. Govind Patil (PW 6) stated to have conducted autopsy over the dead body of deceased Kamalbai on 22/08/2010. he stated to have noticed following antemortem injuries over the dead body.

- 1] C.L.W. over left frontal region of forehead above eyebrow, bone deep, about 5x2x1 cm.,
- 2] Left cheek maxilla C.L.W. 3x1x5 cm.
- 3] Left maxillary bone fracture
- 4] External ear bleed on left side with stitches
- 5] Left mastoid bone fracture

These injuries were ante mortem.”

7 We find that the Appellant with pestle, which is very hard object has practically crushed her head at more than one places.

8 Thus, the Appellant behaved cruelly with his wife while assaulting her and therefore, we have no doubt that the offence that is proved is the only one of murder and not of culpable homicide amounting to murder. That being so, we find no merit in the appeal. Hence, we pass the following order:

ORDER

“Criminal Appeal No.380 of 2012, is dismissed.”

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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