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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 16 OF 2014

Sarjerao Nivrutti Khande	]
Aged about 60 years,	]
Resident of Choudharwadi,	]
Taluka Phaltan, Dist. Satara.	]..Appellant [Ori. Accused]

Vs.

The State of Maharashtra	]
(Through Police Inspector,	]
Phaltan Police Station, Satara)	]
(C.R. No. 143 of 2012)	]..Respondent

....

Ms. Nasreen S. Ayubi Advocate appointed for the Appellant
 Mrs. A.S. Pai A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
 DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATED : JULY 01, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original
 accused against the judgment and order dated 13.8.2013

passed by the learned Additional Sessions Judge, Satara in Sessions Case No. 16 of 2013. By the said judgment and order, the learned Judge convicted the appellant under Section 302 of IPC and sentenced him to life imprisonment and fine of Rs. 1000/- i/d R.I. for three months.

2 The prosecution case, briefly stated, is as under:

(i) Deceased Balubai was the sister of P.W. 1 Ashok who is the complainant in the present case. Balubai was given in marriage to the appellant. The appellant was working as coolie in Bombay Port Trust (BPT) at Mumbai. His wife i.e. deceased Balubai was residing at village Choudharwadi. She used to look after agricultural land at Choudharwadi. The said land was admeasuring 2.5 acres. The appellant wanted to sell the land, however, his wife Balubai was not agreeable to sell the land. The appellant used to frequently visit Choudharwadi. Appellant and Balubai had two sons and one daughter. Both the sons were residing at Mumbai and daughter Prajakta alias Narangi was married much prior to the incident and she was residing in her matrimonial home at village Budh.

(ii) The incident occurred on 29.9.2012 at about 4.00 p.m. The appellant assaulted his wife Balubai with a hoe on her face and stomach and caused her death. P.W. 7 Subhash was also residing in Choudharwadi. He is a relative of the appellant. He informed P.W. 1 Ashok that dispute had taken place between the appellant and the deceased and he should go to their house at the earliest. Ashok then went to the house of his sister. He asked the appellant what had happened?. Thereupon the appellant told him that on account of sale transaction of land, he had killed his wife Balubai by assaulting her on her face and stomach with a hoe. Ashok noticed injuries on the face and stomach of Balubai. The injuries were bleeding injuries. He noticed that Balubai had already expired. The appellant told him that he had committed the act at 4.00 p.m. Then Ashok went to the police station and lodged F.I.R. Thereafter, investigation commenced. In due course, the case was committed to the Court of Sessions.

3 Charge came to be framed against the appellant under Section 302 of IPC. The appellant pleaded not guilty to

the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. In his defence, the appellant had taken plea of alibi. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant had assaulted his wife Balubai with a hoe and caused her death.

5 The conviction is mainly based on the evidence of P.W. 1 Ashok and P.W. 7 Subhash. To both these witnesses, the appellant made extra judicial confession. Ashok has stated that the deceased Balubai was his sister i.e. he is brother in law of the appellant. He has stated that the appellant was working

in BPT at Mumbai. The appellant was frequently visiting Choudharwadi where his sister (deceased Balubai) was residing and she was looking after agricultural work in their land. The appellant and deceased Balubai had two sons and one daughter. Both the sons were residing in Mumbai and daughter Prajakta alias Narangi was married much prior to the incident. Ashok has stated that on 29.9.2012 at about 5.00 p.m. he received a phone call from his cousin Subhash that a dispute was going on between the appellant and his wife and he should go to their house at the earliest. Accordingly, Ashok went to the house of his sister Balubai. Ashok asked the appellant what had happened ?. The appellant told him that on account of sale transaction of land, he had killed his wife Balubai by assaulting her on her face and stomach with a hoe. Ashok noticed injuries on the face and stomach of Balubai. The injuries were bleeding injuries. He noticed that Balubai had already expired. The appellant told him that he had committed the act at 4.00 p.m. Then Ashok went to the police station and lodged F.I.R.

6 The second witness to whom extra judicial confession was made by the appellant is P.W. 7 Subhash. Subhash was

residing at village Choudharwadi. Subhash has stated that the appellant was his relative. Subhash has further stated that he received a phone call from one Ananda Ghanvat that a quarrel was going on between the appellant and his wife. Ananda told Subhash to go to the house of the appellant. Subhash then went to the house of the appellant. He saw that the appellant was present in the house. The appellant told him that he had killed his wife. Subhash asked him where was the dead body. Then the appellant stated that the dead body was lying beside both the rooms to the east side of the house. Subhash saw the dead body of Balubai. Then Subhash made a phone call to P.W. 1 Ashok and asked Ashok to come there. Accordingly, Ashok came there.

7 It is the prosecution case that the appellant assaulted his wife Balubai with a hoe and caused her death. This has also been stated by the appellant to P.W. 1 Ashok in the extra judicial confession made by the appellant to Ashok. This extra judicial confession stands corroborated by the medical evidence. P.W. 8 Dr. Bhosale conducted the post-mortem on the dead body of Balubai. On external examination, he found

the following injuries :

- "(i) C.L.W. 10 cm. x 6 cm. Bone deep. With fracture underlined bone on right temporal area 4 cm. above right ear.;
- (ii) C.L.W. 6 cm. x 5 cm. Bone deep on left temporal area 10 cm. above left ear;
- (iii) C.L.W. 8 cm. x 2 cm. 5 cm. upto peritoneum transverse, middle of which is 8 cm. above umbilicus with haemoperitoneum (1½ litre of blood);
- (iv) C.L.W. vertical 5 cm x 5 cm x bone deep, right parietal area;
- (v) C.L.W. transverse on forehead starting from middle of right eyebrow to middle of left eyebrow with fracture to frontal bone 7 cm x 2 cm;
- (vi) 16 cm x 2 cm x bone deep transverse C.L.W. starting 4 cm. Below right eye brow extending transversely and obliquely ending to lateral end of left eye brow."

According to Dr. Bhosale, the injuries were ante mortem injuries and the cause of her death was hypoxia

hemorrhage shock. Dr. Bhosale opined that the above injuries are possible by assault by hoe. Thus, not only are the injuries consistent with the assault with hoe but Dr. Bhosale has also opined that the injuries sustained by deceased Balubai were possible by assault with hoe.

8 The weapon of assault i.e. hoe was recovered at the instance of the appellant. Panch witness P.W. 6 Tanaji has deposed about this aspect. Tanaji has stated that he was called to the police station to act as a Panch. The appellant was present in the police station. The appellant gave a statement that he will produce the hoe which was kept near his house. Thereafter, the appellant led police and panchas to Choudharwadi. As per the direction given by the appellant, they went to the house of the appellant. Then all of them got down from the van. Behind the house of the appellant, there was a piece of land on which maize crop was cultivated. The appellant took out the hoe which he had kept 10 feet inside the said crop. The hoe had a wooden handle. The said hoe was seized under panchnama. The Memorandum and Panchnama are at Exhs. 39 and 40 respectively. The hoe had blood stains.

The hoe was sent to the C.A. C.A. Report Exh. 57 shows that the hoe was stained with blood of `B' group. The clothes of the deceased which were seized under panchnama, were also sent to C.A. Her sari, petticoat and blouse were found stained with blood of `B' group from which, it can safely be inferred that the blood group of the deceased was `B'. Finding of blood of `B' group on the hoe which was recovered at the instance of the appellant further corroborates the extra-judicial confession made by the appellant to P.W. 1 Ashok that the appellant had assaulted his wife Balubai with a hoe, due to which, she died.

9 When the appellant was arrested the `banyan' on his person came to be seized. There were blood stains on the banyan. Panch witness P.W. 3 Bandu has stated about the seizure of banyan which was on the person of the appellant. The said panchnama is at Exh. 33. This banyan was sent to the C.A. As per the C.A. Report Exh.57, the banyan was stained with blood of `B' group. As stated earlier, the clothes of the deceased which were seized under panchnama, were also sent to C.A. Her sari, petticoat and blouse were found stained with blood of `B' group, from which, it can safely be inferred that

the blood group of the deceased was 'B'. Finding of blood of 'B' group on the banyan which was on the person of the appellant at the time of his arrest, is another corroborating factor to the extra judicial confession made by the appellant to P.W. 1 Ashok that he assaulted his wife Balubai and caused her death.

10 The appellant had raised a defence that at the relevant time, he was working in Mumbai in BPT and he was not present in the village at the relevant time, hence, he could not have committed the murder of his wife Balubai. In relation to this defence, we would like to advert to the evidence of P.W. 10 Namdeo who was working as Office Superintendent in BPT. He has stated that from 25.9.2012 the appellant was not working. He has stated that the appellant had filed an application wherein the appellant stated that he was unable to attend the office due to sickness of his wife from 25.9.2012. Exh. 50 shows that the appellant had stated that his wife is ill, hence, from 25.9.2012 he would not be able to attend the office as it was necessary for him to remain at home in order to look after his ailing wife. Thus, the evidence of P.W. 10

Namdeo clearly falsifies the defence raised by the appellant.

11 On going through the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant beyond reasonable doubt and hence, the appeal is dismissed.

12 We quantify legal fees to be paid to Advocate Ms. Nasreen S. Ayubi by the High Court Legal Services Committee at Rs. 5000/-.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]