**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.166 OF 2009**

Pralhad Tukaram Kharatkar
Age 36 years, Occu : Driver,
R/o. Pavnegaon, Navi Mumbai,
Dist – Thane,
(At present detained at
Thane Central Prison) ..Appellant.

versus

The State of Maharashtra ..Respondent.

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Ms. Sarojini Upadhyay, advocate appointed for the Appellant.
Mrs. A.S. Pai, Addl.P.P. for the Respondent – State.

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**CORAM : SMT. V.K. TAHILRAMANI &**
**A.S. GADKARI, JJ.**

**21st August, 2015.**

**JUDGMENT (PER A.S. GADKARI, J.)** :

The Appellant has challenged the judgment and order dated 2nd January, 2009 passed by the Additional Sessions Judge, Thane in Sessions Case No.303/2006 thereby convicting the Appellant for an offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine to further undergo simple imprisonment for six months.

2. The facts which are necessary to decide the present Appeal can briefly be stated as under :

The Appellant is the husband of the complainant (P.W.1) Rekha

Kharatkar. The Appellant and P.W.1 – Rekha were residing together along with their two sons viz. Pritesh aged 11 years and Yatish aged about 9 years. Pritesh was studying in 6th standard and Yatish was studying in 4th standard in Tilak Education Society, Vashi. The Appellant was a tempo driver. That one Janardan Patil from village Nelje was friend of the Appellant and he used to visit his house. The Appellant had suspicion about illicit relation of Janardan Patil with his wife Rekha (P.W.1). The Appellant used to beat his wife – complainant Rekha and his sons Pritesh and Yatish. That the accused was suspecting the chastity of his wife Rekha and was saying that the younger son Yatish was not his son and was a son begotten to Rekha from Janardan Patil. On that count he used to beat Yatish and Rekha. On 7th June, 2006 at about 8.00 a.m. the Appellant beat complainant Rekha and abused her, whereupon Rekha told him, not to suspect on her chastity and may not beat her and her son. She also told the Appellant to pay back the money taken from Janardan Patil. On her said saying the Appellant again beat her. On the same day i.e. on 7th June, 2006 at about 11.30 a.m. the Appellant had his lunch and then took both his sons for the school. At about 1.30 p.m. he came back home. There were bloodstains on his shirt. On enquiry he informed the complainant that he committed murder of Yatish on a road which goes to the creek from the Nursery at Koparkhairne. After hearing the same, complainant Rekha immediately rushed to the school in search of Yatish and found that he was not in the school. Therefore she went

to the road which goes to the creek from Nursery at Koparkhairne and took search thereon. She found dead body of Yatish having injury on his forehead, ear, head and other parts of the body and those were bleeding. She immediately rushed to the police station and lodged a complaint against the Appellant. The said complaint i.e. F.I.R. is at Exhibit 11.

3. An offence came to be registered against the Appellant bearing C.R. No.I-260 of 2006 under Section 302 of the Indian Penal Code with Turbhe Police Station, Navi Mumbai. PSI Suresh Mallav (P.W.14) recorded the complaint of Rekha. He then along with his superior officer visited the spot and prepared spot panchanama (Exhibit 32) and attached earth smeared with blood and six stones having bloodstains on it, inquest panchanama (Exhibit 57). He then arrested the Appellant by effecting arrest panchanama (Exhibit 34). He then sent the dead body of Yatish for conducting postmortem. Further investigation was carried out by Sr. P.I. Shinde. He recorded the statement of other witnesses. That on 9th June, 2006 the accused gave disclosure statement and in pursuance thereof showed the spot where the school bag of deceased Yatish was thrown by him. The said school bag was recovered under panchanama (Exhibits 41 and 42). Muddemal articles were sent to Chemical Analyser for analysis.. The C.A. reports which are at Exhibits 51 and 52 were received during the course of investigation.

4. P.W.10 – Dr. Bhushan Jain conducted the postmortem on the dead body of Master Yatish and the said report is at Exhibit 39. Dr. Bhushan Jain while performing autopsy of Master Yatish noticed the following external injuries on the body of Master Yatish :

> “1. C.L.W. over left forehead 3 x 2 cm, bone deep reddish.
> 2. C.L.W. over left temporal region 5 cm. Above ear 5 x 2 cm. Cavity deep, brain substance oozes out.
> 3. C.L.W. Over left temporal region 2 x 1 cm. Bone deep reddish, 1 cm above ear.
> 4. Abrasion contusion over left maxillary region 3 x 1.5 cm. Reddish.
> 5. Abrasion over nose all over on right side involving C.L.W. 3 x 1 cm. Muscle deep, reddish.
> 6. C.L.W. Over right temporal region 1 cm. Above ear 2 x 1 cm. Bone deep reddish.
> 7. C.L.W. Over right side of the face near tratues 1 x 1 cm, muscle deep, reddish.
> 8. Abrasion contusion over right side of the neck laterally involving pinna of the ear 7 x 4 cm, reddish.
> 9. C.L.W. Over right upper lip up to cheek 3.5 cm. Muscle deep, reddish.
> 10. Abrasion over right thigh anteriorly 6 x 3 cm. Reddish.”

On internal examination, he noticed the following injuries which are mentioned in column No.19 of the postmortem report :

> “1. On head, haemorrhage under scalp all over.
> Skull :- Multiple depressed communated fractures of left fronto-parieto-tempo-occipital bones extending into bone.

2. Depressed fractures of right temporal bone extending into bone.

3. Brain : Infiltration staining of blood seen at the fractured margins meninges lacerated brain matter – lacerated."

5. Dr. Jain also found stomach contains of about 100 cc. of semi-digested whitish Bhakari (rice) like food material. He opined the cause of death is head injury. He further opined that the injuries in column No.17 of the postmortem report are possible by hard blunt and heavy object.

6. After completion of the investigation, charge-sheet came to be filed against the Appellant in the Court of competent jurisdiction.

7. The Judicial Magistrate First Class, Vashi committed the said case to the Court of Sessions at Thane in pursuance of the provisions of Section 209 of the Criminal Procedure Code. After committal the Trial Court framed charge against the Appellant for an offence punishable under Section 302 of the Indian Penal Code below Exhibit 3. The said charge was read over and explained to the Appellant to which he pleaded not guilty and claimed to be tried. His defence was of total denial. According to the defence of the Appellant, his wife Rekha had illicit relations with Janardan Patil, who had given him a threat to kill along with his son. He contended that Janardan Patil might have killed Yatish. As per the statement of the Appellant recorded under Section

313 of the Criminal Procedure Code, on the date of the incident at about 1.00 to 1.30 p.m., complainant Rekha had called him on phone and told that Janardan has committed murder of Yatish near Nursery near the creek. Therefore, he had gone to the spot and took out the dead body of Yatish and kept it on the road. That before he reached to the police station the complainant went and lodged a complaint against him and thus, he has been falsely implicated in this case. In support of its case the prosecution examined in all 15 witnesses. The prosecution filed a pursis dated 4th October, 2008 below Exhibit 62 thereby placing on record the fact that the prosecution has closed its evidence. The Appellant thereafter in support of his defence examined two witnesses viz. Kisan Ladkar (D.W.1) and Kashinath Chowdhary (D.W.2).

8. The learned Trial Court after recording the evidence of the witnesses and after hearing the parties to the said case has convicted and sentenced the Appellant by its impugned judgment and order dated 2nd January, 2009 as stated herein above.

9. The present case is based on circumstantial evidence and also on the extra-judicial confession given by the Appellant to his wife Rekha (P.W.1). It is settled position of law that in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the

accused. In case of resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

10. The learned counsel for the Appellant submitted that the conduct of P.W.1 in the present case is not natural. That there are material omissions in her testimony. She further contended that in view of the defence taken by the Appellant since beginning, this is a case of false implication. She further contended that the person against whom the motive revolves viz. Janardan Patil has not been examined by the prosecution. She therefore urged before us that the present Appeal may be allowed.

11. Per contra, the learned APP supported the impugned judgment and submitted that the entire chain of circumstances has fully been established by the prosecution and therefore, there is no need to interfere with the conviction of the Appellant. She therefore prayed that the present Appeal may be dismissed by sustaining the conviction

of the Appellant.

12. In the present case, P.W.1 Rekha in her testimony has stated that the Appellant is her husband. They got married in the year 1994 and had two sons viz. Pritesh aged 11 years and Yatish aged 9 years. Pritesh was studying in 6th standard and Yatish was studying in 4th standard in Tilak Education Society at Vashi, Sector No.28, Navi Mumbai. The Appellant was working as a tempo driver. One Janardan Patil was a friend of the Appellant and was residing at village Nelje. That on 7th June, 2006 at about 8 a.m. her son Pritesh had gone for tuition. At that time, the Appellant quarrelled with her and then remained quiet. That the Appellant used to quarrel with her by suspecting on her chastity. At 11.30 a.m. the Appellant took both the sons Pritesh and Yatish with him to leave them in the school. At about 1.30 p.m. the Appellant came back home. Rekha (P.W.1) enquired with him whether he left children in school to which the Appellant replied that he reached one son to school and the another has been killed. P.W.1 found bloodstains on the shirt and collar of the Appellant. She then went running to the school and asked the peon of the school to show her sons. Her elder son Pritesh was in school, but Yatish was not there. She then rushed to the Nursery creek at Koparkhairne, the place which was informed to her by the Appellant as the place of murder of Yatish and found the dead body of her son Yatish at the spot. She noticed many bleeding injuries on his person and there were

stones near the dead body. She then went to the police station and lodged a complaint. P.W.1 has further stated that the Appellant was suspecting on her chastity. The Appellant was suspecting that Yatish was not his son and he was the son from Janardan Patil and therefore, the Appellant committed the murder of Yatish. In the cross-examination of this witness she has admitted that the allegation that the accused was quarreling with her by suspecting that Yatish was son from Janardan Patil is true. She has further admitted that when Yatish was born she was not knowing Janardan Patil. Apart from the aforesaid admissions in the lengthy cross-examination, no material has been elicited at the instance of this witness.

13. P.W.7 – Pritesh Kharatkar is the elder son of P.W.1 and the Appellant. P.W.7 in his testimony has stated that at the time of incident, he was studying in 6th standard and Yatish was studying in 4th standard. That his father was working as a tempo driver. That his father used to abuse and beat his mother everyday. The Appellant used to drink liquor and was beating him and his brother. That Janardan used to come to his house with his father and they used to drink liquor in the house. P.W.7 – Pritesh has further deposed that on 7th June, 2006 at about 11.00 a.m. his father asked him and Yatish to prepare for school and thereafter they started going with his father to the school. They reached at the gate of the school. At that time, his father (Appellant) told him to go ahead and that the Appellant will

bring Yatish afterwards. He thereafter started going to the school and saw to his back that the Appellant was beating Yatish. That at about 1.30 p.m. the peon of the school came to his classroom and told that his mother has come to the school. Therefore, he came on the ground floor with the peon and met his mother. His mother asked him about Yatish and then he told her that father had taken Yatish back and was beating him. In the cross-examination of this witness no material has been extracted which would help the Appellant.

14. P.W.5 Ashok Kamathe is the peon of the school where Pritesh and Yatish were studying who corroborates the version of P.W.7 – Pritesh and has further stated that the student from 4th class was not present on that day. That after the mother met the student from the 6th standard, she started crying and went away. P.W.4 – Ganesh Bhoir is the clerk from the said school i.e. Tilak Education Society, who further corroborates the version of P.W.7 and P.W.5 to the extent that on 7th June, 2006 at about 1.30 p.m. the mother of Pritesh and Yatish came to the school and told him that she wanted to see whether her sons had arrived in the school. He thereafter called the peon and asked him to do the needful.

15. P.W.3 Gopinath Dalvi is a person who at the request of police took out a school bag from the creek. This witness has identified the school bag which is Article 9 on record. The said school bag has also

been identified by P.W.1 Rekha. P.W.11 – Suresh Gaikwad is the panch witness to the recovery of school bag of Yatish at the instance of the Appellant which was taken out by P.W.3 from the creek and also panch to the spot shown by the Appellant. P.W.1 Rekha has also identified the bag and other articles which were in the school bag.

16. P.W.2 Namdeo Madhavi is the father of P.W.1 and this witness has disclosed about the motive in committing the present crime by the Appellant. P.W.6 is Baban Thakur who is the watchman who was posted at the gate of the creek in which the school bag of Yatish was thrown by the Appellant. This witness has failed to identify the Appellant in the identification parade as the person who on 7th June, 2006 at about 1.00 p.m. came out from the municipal gate of the creek.

17. P.W.9 Ramji Yadao is a panch witness to the arrest panchanama and seizure of clothes of the Appellant which were stained with blood. P.W.14 Suresh Mallav is the police officer who recorded the First Information Report and also recorded the inquest panchanama. P.W.15 Hanumant Pawar is the Investigating Officer who submitted the charge sheet in the present crime after completion of the investigation.

18. As stated earlier the Appellant has examined two defence witnesses viz. Kisan Ladkar, a Police Head Constable then attached to

A.P.M.C. Police Station, Vashi and Kashinath Chowdhary, Police Sub-Inspector attached to Turbhe Police Station. These two witnesses have deposed about the N.C. complaint filed by the Appellant against Janardan Patil on 29th March, 2006 and 23rd August, 2006 respectively. It appears to us that these defence witnesses lead the Appellant nowhere and they do not in any manner help the Appellant from creating the doubt in the mind of this Court about the evidence led by the prosecution in support of its case.

19. Thus, after taking into consideration the entire evidence on record, it is clear that the Appellant was last seen in the company of Yatish by P.W.1 Rekha, the mother of Yatish and wife of the Appellant and also by P.W.7 Pritesh, the elder son of the Appellant who saw the Appellant taking Yatish back from the school gate and the Appellant was beating Yatish at that time. There is another strong circumstance against the Appellant in the form of extra-judicial confession given to P.W.1 Rekha, the wife of the Appellant immediately after commission of the crime. The school bag of Yatish which was thrown by the Appellant in the creek was recovered at his instance in presence of panch witness viz. Suresh Gaikwad (P.W.11) and the said bag was taken out by the swimmer viz. Gopinath Dalvi (P.W.3). The said school bag has been identified by P.W.1 including the articles therein. The Chemical Analyser's report demonstrates that the shirt and pant of the Appellant which were seized in the presence of P.W.9 Ramji Yadao were having

bloodstains of human origin and of 'A' group. It is further to be noted here that stone which was found on the spot of incident with bloodstains was also having the blood of human origin of group 'A'. So also the half shirt and half pant of deceased Yatish were found stained with blood of human origin of 'A' group. The Appellant in his statement recorded under Section 313 of the Criminal Procedure Code has not given any explanation about the bloodstains on his clothes and therefore in view of the C.A.'s report a safe inference can be drawn that the bloodstains found on the clothes of the Appellant were of deceased Yatish.

20. The chain of circumstances in the present case in our view is complete and it excludes every hypothesis of the innocence of the Appellant and unquestionably points finger towards the guilt of the Appellant. In view of the above, we are of the opinion that the prosecution has fully established the chain of circumstances which lead to the only hypothesis that the Appellant and the Appellant alone has committed the present crime.

21. In view of the above, we are of the considered view that there are no merits in the present Appeal and the Appeal is accordingly dismissed.

**(A.S. Gadkari, J)** **(Smt. V.K.Tahilramani, J.)**