

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**NAGPUR BENCH, NAGPUR****CRIMINAL APPEAL NO.227 OF 2015**

Purushottam Madhao Asutkar,
 Aged 45 years, Occ. Labour,
 R/o. Babapur, P.S.Shirpur,
 Distt. Yavatmal.
 (Presently lodged in Central
 Jail, Amravati).

..... APPELLANT

// **VERSUS** //

State of Maharashtra,
 Through P.S.O. Shirpur,
 District Yavatmal.

..... RESPONDENT

Mr.M.G.Rathi, Adv. (appointed) for the Appellant.

Mr.T.A.Mirza, A.P.P. for the Respondent/State.

CORAM : B. R. GAVAI &
V. M. DESHPANDE, JJ.

DATE : 10.6.2016.

ORAL JUDGMENT (Per B.G.Gavai, J) :

1. Being aggrieved by the Judgment and Order passed by the learned Sessions Judge, Pandharkawada, dated 27th September, 2006 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer further rigorous imprisonment for six months, the appellant has approached this Court.

2. The prosecution story, as could be gathered from the material placed on record, is thus :

The accused was married to deceased Sumitra about 12 to 14 years prior to the incident. They were blessed with one daughter and one son. After the marriage, the accused and the deceased resided happily for about 8 to 10 years. However, prior to

2-3 years before the date of incident, the accused started ill-treating and beating the deceased without any reason. 15 days prior to the date of incident, the accused was sent to the house of maternal uncle at village Nawargaon along with his wife and children with an intention that he improves his behaviour. There also, after about 4-5 days, he beat his wife Sumitra. She left village Nawargaon and went to her parent's house at village Gondgaon. Accused came to village Babapur. On 26.11.2004, his mother Vacchalabai w/o. Madhao Asutkar (PW-2) went to get deceased Sumitra back. On the next day, the deceased along with her children was brought to village Babapur by Vacchalabai Asutkar. On that day, they resided at the house of Santosh, elder brother of deceased. On the next day, the accused, his wife and children went to reside in their house.

3. On 1st December, 2004, at about 10 a.m., deceased Sumitra was fetching water. When she returned back to keep the brass pot in the house, the accused bolted the door from inside and beat her by an iron crow bar. The son of accused namely Mayur rushed to the mother of accused and told her that his father was beating his mother mercilessly. Therefore Vacchalabai Asutkar (PW-2), mother of the accused, the sister and the daughter of the accused

and his son reached to the spot of incident. The accused opened the door. Deceased Sumitra was lying in a pool of blood. The accused was about to commit suicide. His mother scolded him. He told them that he killed his wife and ran away. The first informant namely Vasudeo Govinda Asutkar (PW-1), Police Patil of the village, came to know about the incident. He reached the spot. He thereafter immediately lodged report in Police Station, Shirpur. On the basis of his oral report, Crime No.51 of 2004 came to be registered. After investigation was carried out, charge sheet came to be filed for the offence punishable under 302 of the Indian Penal Code in the Court of Judicial Magistrate, First Class. Since the case was exclusively triable by the Court of Sessions, it came to be committed to the learned Sessions Judge. The charges came to be framed below Exh.5. The accused pleaded not guilty and claimed to be tried.

4. The learned trial Judge, at the conclusion of the trial, passed the order of conviction and sentence as aforesaid. Being aggrieved thereby, the present appeal.

5. The learned Counsel for the appellant submits that, in the present case, there are no eye witnesses. He submits that the case

is based on circumstantial evidence. It is submitted that prosecution has neither proved the incriminating circumstances beyond reasonable doubt nor has it proved the chain of circumstances, which is so interwoven to each other that it leads to no other conclusion than the guilt of the accused. The learned Counsel further submits that the appellant has also taken defence of insanity. He submits that the evidence of Dr. Sunil Mahadeorao Sargar (DW-1) would establish the same. The learned Counsel submits that the learned trial Judge has failed to consider the evidence of this witness.

6. Mr.T.A.Mirza, learned A.P.P., on the contrary, submits that the learned trial Judge has given sound and cogent reasons in support of the finding of conviction and as such, no interference is warranted.

7. With the assistance of the learned A.P.P. and the learned Counsel for the appellant, we have scrutinized the evidence on record. The evidence of Vacchalabai Asutkar (PW-2), mother of the appellant, is most vital piece of evidence. She has given entire version regarding the accused ill-treating the deceased by beating her; she being sent to Navargaon; the accused continuing with the

beating her there also and thereafter, deceased Sumitra going to Babapur i.e. village of her parents. She has further stated that, after the deceased went to Gothgaon, the accused came there alone and therefore, she inquired about whereabouts of their son. Accused informed her that he is with his wife. Thereafter, Witness Vacchalabai went to Gothgaon to see the grandson. The deceased also went to Babapur along with children from her parent's house. The accused and his family resided with her and her son Santosh for 2 to 4 days. After 2-4 days, the accused said to the deceased that they should reside separately in his house. Sumitra said that witness Vacchalabai Asutkar (PW-2) should reside with them and as such, she stayed for one night with the accused and his family members in his separate residence. Vacchalabai Asutkar (PW-2) has further stated in her evidence that, on the day of incident, she had untied cow and she-goat of the accused and went to her house. The deceased was fetching water. When she returned to her house to keep brass vessel, the accused closed the door of his house. His son was playing and the daughter was to go to School. The accused closed the door by chain and killed the deceased. She states that her grandson rushed to her and told her that his father was beating the deceased. Thereafter, she rushed to the house of the accused along

with her daughter Chhaya and daughter of accused namely Neema. The deceased was lying on the ground. The accused was trying to commit suicide by hanging. This witness Vacchalabai Asutkar (PW-2) scolded the accused. The accused immediately threw the rope and ran away. Thereafter, she informed the incident to Police Patil. The Police Patil lodged the report. Though this witness has been thoroughly cross-examined, her evidence has remained unshattered. From the evidence of mother of the accused itself, it would be clear that it is the present appellant who has caused death of his wife.

8. Chhaya Madhao Asutkar (PW-3) is daughter of Vacchalabai Asutkar (PW-2). Her evidence is also on the similar lines.

9. Vasudeo Asutkar (PW-1) is Police Patil of village Babapur. He states that after he came to know about the incident, he went to the house of the accused, where he found the dead body of Sumitra lying. Thereafter, he lodged report in the Police Station. It could thus be seen that the testimonies of Vacchalabai Asutkar (PW-2) and Chhaya Asutkar (PW-3) are corroborated by the First Information Report lodged by Vasudeo Asutkar (PW-1).

10. It could further be seen that, the crow bar, which was seized from the spot, the clothes of the accused seized vide Seizure panchanama Exh.21 and the clothes of the deceased were all stained with blood. As per Scientific evidence i.e. Chemical Analyser's report, the blood group of deceased was 'B' whereas that of accused was 'O'. The C.A.'s report shows that the clothes of the accused and that of the deceased whereas the crow bar, were having stains of blood group "B". As such, the scientific evidence also fortify the ocular testimonies of Vacchalabai Asutkar (PW-2) and Chhaya Asutkar (PW-3).

11. Insofar as the contention of the appellant in respect of his insanity and the evidence of Dr. Sunil Sargar (DW-1) are concerned, we find that the said evidence would rather nullify the claim of the appellant that he had committed the crime when he was in insane position. His evidence would clearly show that the Psychiatrist had examined the patient and had opined that the improvement was satisfactory.

12. In that view of the matter, we find that no interference is warranted in the present Criminal Appeal and hence, the Criminal

Appeal is liable to be dismissed. It is accordingly dismissed. No order as to costs.

JUDGE

JUDGE

jaiswal