

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.357 OF 2010

Ananda Dattu Chavan.	]	
Age : 45 years, Occu : Agriculturist,	]	
R/o. Talsande, Tal. Hatkanangale,	]	
District : Kolhapur,	]	
(At present lodged in Kalamba Central	]	
Prison, Kolhapur).	]	... Appellant

Versus

The State of Maharashtra,	]	
At the instance of Peth-Vadgaon Police Station]	]	
Station, District – Kolhapur, C.R.No.7 of 2007.]	]	... Respondent

Mr. Ujwal R. Agandsurve for Appellant.
Mr. Y. M. Nakhwa, APP for State.

**CORAM :- A. A. SAYED &
SARANG V. KOTWAL, JJ.**

RESERVED ON :- 14 SEPTEMBER, 2017

PRONOUNCED ON :- 27 SEPTEMBER, 2017

JUDGMENT (PER : SARANG V. KOTWAL, J.) :-

1. The present Appeal is preferred by the Appellant challenging the Judgment and Order passed by the learned Sessions Judge, Kolhapur, in Sessions Case No.65 of 2007 whereby the Appellant was convicted for an offence punishable under Section 302 of the IPC and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer

further R.I. for six months. The Appellant / accused was given benefit of set off under Section 428 of the Cr.P.C.

2. The prosecution case pertains to the murder of the Appellant's second wife Surekha. According to the prosecution case, the Appellant was married with one Bharati earlier and had a son named Bhaiyya and a daughter named Neelam. In the year 1994, he got married to Surekha and from the said wedlock, they had two daughters named Poonam and Pratiksha and one son named Kunal. According to the prosecution case, the Appellant was having ancestral land and Surekha was insisting that his share should go to their son Kunal alone and no share should be given to Bhaiyya who was the son from the first marriage with Bharati. On this count, there used to be quarrels between the Appellant and his second wife Surekha. According to the prosecution case, on 21/01/2007, as a result of one such quarrel, the Appellant assaulted Surekha with a blow pipe and a sickle on the head and other parts of the body. The prosecution case is that, the villagers got to know about the incident. They went to his house. The accused was standing at the door of his house. He told the Police Patil that since his wife Surekha used to harass him a lot, he had killed her. Thereafter, the Police Patil and others entered his house and saw that Surekha was lying in a pool of blood and various articles were lying around her. Bloodstained sickle and clothes were lying in the drawing room. Thereafter the Police Patil informed the Peth-Vadgaon Police Station. The police arrived at the spot, spot panchanama was conducted and the dead body was sent to the

hospital for post-mortem. The offence vide C.R.No.7 of 2007 was registered at Peth-Vadgaon Police Station. Since the accused was present, he was arrested. Statements of various witnesses were recorded. The investigation was carried out and after it was completed, the charge-sheet was filed in the Court of JMFC, Peth-Vadgaon, District – Kolhapur. Thereafter, the case was committed to the Court of Sessions for trial.

3. During trial, the prosecution examined 15 witnesses. PW 1 Krishna Rangrao Jadhav and PW 2 Vishnupant Daji Chavan were examined as panchas for the spot panchanama but they did not support the prosecution case. PW 3 Ananda Nivrutti Chavan, PW 4 Chandrakant Anna Bidkar, PW 5 Sanjay Maruti Chavan, PW 6 Babaso Pandurang Chavan and PW 7 Ganpatrao Anandrao Chavan were examined on the point of extra-judicial confession made to them by the Appellant but they did not support the prosecution case.

4. PW 10 Dr. Balkrishna Shiva Latvadekar had conducted post-mortem examination on the dead body of the deceased and had found 11 injuries on the head, out of which, two injuries were incised wounds. There was one more injury in the nature of contusion on the neck and the cause of death, as opined by the doctor was haemorrhagic shock due to cerebral haemorrhage due to fracture of skull and also due to asphyxia due to throttling. According to this witness, the injuries were possible by a hard and blunt object and the incised wounds were possible by a sharp object.

5. PW 11 Aslam Shabuddin Momin and PW 12 Nagnath Baburao Chavan were the panchas for arrest panchanama when the Appellant was arrested and they were examined to prove that he had suffered an incised wound on the left wrist. However, these witnesses have not supported the prosecution case.

6. PW 13 PHC Shahaji Lahu Khot had carried the articles to the CA at Pune. PW 14 PC Ajij Khutubuddin Mullani was another carrier of muddemal articles to the CA's office. PW 15 API Vitthal Digambar Dabade was the Investigating Officer who was attached to Peth-Vadgaon Police Station and who had conducted the investigation.

7. Apart from these witnesses, the prosecution case mainly rests on the evidence of PW 8 Meena Nagnath Mane and PW 9 Houserao Yashwant Patil. PW 8 Meena was sister of the deceased and she has given the history of quarrels between the Appellant and the deceased. She has deposed about the reason for this quarrel which is already mentioned. It was the wish of the deceased that the ancestral property should go to her son Kunal and not to her stepson Bhaiyya, to which the Appellant was not agreeable. There is not much cross-examination of this witness on this aspect and through this witness, the prosecution has successfully proved the motive for commission of the murder.

8. The most important witness for the prosecution in this case is PW 9 Houserao Patil. He was the Police Patil of village Talasande. According to him on 22/01/2007, he was attending one function regarding a water scheme in the village. The function got over at about 10.00 a.m. When he was returning back to his village, he came to know that the Appellant had killed his wife. Therefore, he, along with others, went to the house of the Appellant. He saw that the Appellant was standing at the door of his house. This witness then asked the Appellant as to what had happened, whereupon, the Appellant told him that his wife used to harass him and used to quarrel with him and therefore he had killed her. After this, this witness and others entered the house and saw that the Appellant's wife was lying in a pool of blood. He made a telephone call to police. Police came there and recorded his statement which was treated as the FIR. The main question which was raised before the trial Court by the accused was that whether such confession before the Police Patil was admissible in view of Section 25 of the Indian Evidence Act. However, the learned trial Judge has rightly rejected the arguments on behalf of the accused by relying on the Full Bench Judgment of this Court in the case of **Rajeshwar Hiranman Mohurle Vs. State of Maharashtra**¹. Section 25 of the Evidence Act reads thus :-

“25. Confession to police officer not to be proved. –
No confession made to a police officer, shall be proved as against a person accused of any offence.”

Therefore, the question before the Full bench was whether the Police

¹ 2009 CRI. L. J. 3816

Patil can be termed as the 'Police Officer' envisaged under Section 25 of the Evidence Act. This Court, in the case of **Rajeshwar** (*supra*), considered earlier conflicting views on the point and came to the conclusion that the Police Patil is a person responsible primarily for village surveillance, prevention of crime and providing assistance to the police in discharge of their duties. His duties and functions are subject to orders of District Magistrate. Powers of Police Patil to investigate and control over apprehended persons are limited in their nature and scope and are not as wide, specific as of the Police Officer under Cr.P.C. It was specifically held that a Police Patil cannot be said to be a Police Officer in law for all intent and purpose. Thus, the issue is no more *res-integra* and therefore, the confession made by the Appellant in the present case to PW 9 Houserao Patil who was the Police Patil of the village, is clearly admissible.

9. The evidence of PW 9 Housereao Patil inspires confidence. He had immediately reached the spot. The Appellant was standing in his house. The dead body was lying inside the house and at that time, the Appellant confessed about his crime to this witness. His confession was corroborated by the circumstance of the dead body lying inside his house. The motive, as mentioned by the Appellant himself, was corroborated by the PW 8 as mentioned earlier. The CA report shows that the articles found at the spot showed presence of blood group 'AB'. However that by itself, does not further the prosecution case because all those articles were lying near the spot where the deceased was lying dead in a pool of blood.

10. The Appellant has not explained any of these circumstances and in particular, he has not explained as to how the deceased was lying inside his house when he was standing at the door. Thus, the Appellant has not discharged the burden of proof under Section 106 of the Evidence Act which required him to explain the circumstances in connection with death of his wife while he was in his house and those circumstances were in his exclusive knowledge.

11. We are of the opinion that the extra-judicial confession made by the Appellant to PW 6 is sufficiently corroborated by his presence at the spot under suspicious circumstances. The reason for his quarrel with the deceased and motive behind the murder is proved through PW 8 and through his own confession before PW 9. He has not explained any of the incriminating circumstances which were within his exclusive knowledge.

12. With the result, we are of the opinion that there is no merit in the Appeal. Hence, we pass the following order :

ORDER

The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(A. A. SAYED, J.)