

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.768 OF 2010

Shri. Sambhaji Bhimrao Kale,	]
Age 36 years, Occ: Agri,	]
R/o: Kalewasti, Khandali Shivar,	]
Tal: Mohol, Dist: Solapur.	]
[At present in Pune Jail]	]..Appellant (Org. Accused)

Versus

The State of Maharashtra,	]
Through the Mohol Police Station,	]
Dist: Solapur	]..Respondent

**Mr. M. A. Choudhary, Advocate for the Appellant.
Mrs. M. M. Deshmukh, APP for the Respondent - State.**

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 28th JUNE, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Being aggrieved by the judgment and order passed by the learned 3rd Ad-hoc Additional Sessions Judge, Solapur in Sessions Case No.100 of 2008, thereby convicting the Appellant for the offence punishable under Section 302 of the Indian Penal Code ("IPC" for short) and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/- and in default of payment of fine, he shall suffer rigorous imprisonment for one month. The Appellant has also been convicted for the offence punishable under Section 201 of the IPC and

BGP.

sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine, he shall suffer rigorous imprisonment for fifteen days.

2] The prosecution case in brief as could be gathered from the material placed on record is thus :-

The deceased Kanchan was married to the Appellant/Accused in the year 1992 and they were residing in village Khandali. They were also blessed with two sons. Because of differences, she alongwith both sons reached at her parental place at Manegaon. The accused thereafter performed second marriage with one Anita. However, Anita died and after her death accused went to the parental place of Kanchan and by assuring to treat her properly, brought her and both the sons at his place.

3] It is further the prosecution case that the accused after some days developed illicit relations with one Sangita Kale and again started harassing Kanchan.

4] On 20th December 2007 at around 10.30 p.m., when

deceased was in sleep, the accused gave stroke of wooden log two to three times. Due to the said assault, the deceased died on the spot. This was witnessed by both his sons, who were sleeping by her side. The accused also washed blood from the spot by her clothes. The accused thereafter put the dead body of Kanchan in a gunny bag and thrown it into nearby well. The accused thereafter spread false news that he had sent Kanchan with two unknown person, who pretended to him that her sister is ill and lodged missing report to the Police Station on 21st December 2007.

5] However, it appears that during interrogation the accused confessed as to how he has committed crime. On receipt of the information that the deceased was missing, her father PW-3 – Subhash Gawade lodged oral report below Exh.60. On memorandum of the accused under Section 27, the wooden log which was used by him in the crime came to be recovered. On his memorandum, the dead body from the well was also recovered. After conclusion of the investigation, a charge-sheet came to be filed in the Court of learned JMFC, Mohol. Since the case was exclusively triable by the learned Sessions Judge, the case was committed to the learned Sessions Judge. At the conclusion of the trial, the learned Trial Judge passed the order of conviction and sentence

as aforesaid. Being aggrieved thereby, the Appellant has approached this Court.

6] Mr. M. A. Choudhary, learned counsel appearing on behalf of the Appellant submits that, the Appellant has examined himself. He submits that from the evidence of the Appellant, it would reveal that the Appellant assaulted the deceased due to grave and sudden provocation and therefore the conviction needs to be altered to the one under Part I or Part II of the Section 304.

7] It will be relevant to refer to the examination-in-chief of PW-9 – Amol Kale, elder son of the deceased.

“1. Accused is my father. Deceased was my mother. I along with my Parents and brother Rahul were residing together at Khandali. There used to be a quarrel between my mother and father on the ground that there was damage to our tempo in an accident, my mother was restraining the accused from consuming Ganja and ill teasing other woman.

2. On 20.12.2007 At evening time I was studying, my brother reading Poti, my mother was asking accused to bring grocery article and on that ground there was quarrel between. She had forcibly put empty can before the accused asking him to bring edible oil. Thereafter, we took dinner in night. We studied up to 9 p.m. and thereafter went to sleep at 9 p.m. I along with Rahul were sleeping on one cot whereas my mother and accused were sleeping on another cot having no legs but by our side. At about 10.30 p.m. we suddenly heard noise of assault. Hence, we woke up. We saw in the

light my father was holding a wooden log. My mother had sustained injury on her head. She was experiencing pain and was speaking saying Ayiga Ayiga. Thereafter, my father brought a gunny bag. He made it empty and then dropped body of my mother into the said gunny bag. Prior to that my father had assaulted her by 2 to 3 times. And thereby she expired and then her body was put into the gunny bag by accused and my father carried it and dropped into the well as he has narrated by him. After he returned he prepared a water mixing Nirma powder. He then washed out the blood stains by it with the help of Petticoat of my mother. Thereafter, he took said Petticoat and two chaddar for dropping into the well. After he returned he slept with us. On next morning he informed us about dropping my mother with gunny bag into the well along with stones into the gunny bag. In the evening my father informed on telephone to Bhanudas gore of Manegaon that two persons of Upalai took my mother at their place on the pretext that her sister was ill. The accused asked us to narrate same thing at least for 15 days who so ever inquired about mother. After three days dead body of my mother was taken out from the well with the help of police. The accused before the court is my father. I can identify the wooden log. Wooden log now shown to me is the same by which my father assaulted my mother. The gunny bag now shown to me is the same. The clothes now shown to me are of my mother which were on her person at the time of incident.”

In the cross-examination only suggestion given to the witness is that the wooden log now shown to him can be used in agricultural work. The other suggestion is that after assault his father informed them that his mother was ill tongued.

8] Similar is the testimony of the younger son of the deceased namely Rahul Kale (PW-8). No doubt that certain suggestions are given

to this witness that the accused had committed the offence in a heat of anger. However, if the entire conduct of the accused is taken into consideration, we find that no interference is warranted in the Appeal. The accused after brutally assaulting the deceased put the dead body of the deceased in a gunny bag along with stones and dropped it into nearby well. After returning, he prepared water mixing Nirma powder and washed out the blood stains with Petticoat of the deceased. He also spread rumor that he had sent deceased with two unknown person since her aunt was not well.

9] In the light of the evidence of PW-8 – Rahul Kale and PW-9 – Amol Kale, we do not find that interference is warranted in the Appeal. The Appeal is accordingly dismissed.

[SARANG V. KOTWAL, J.]

[B. R. GAVAI, J.]