

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

CRIMINAL APPEAL NO. 1120 OF 2012

Baburao Baswant Putge,
Age 33 years,
Resident of 3/6, Sainath Colony,
Ramdaswadi, Kalyan (west),
District Thane
Presently lodged in Nashik Road
Central Prison, Nashik.

...Appellant.

Vs.

The State of Maharashtra
)Through Mahatma Phule Chowk
Police Station, Kalyan.

...Respondent.

Mr. Shyamsunder Solanke i/by Pradeep Patil for the Appellant.
Smt. S.V.Sonawane, APP. For the State.

**CORAM : S.S.SHINDE AND
A.S.GADKARI, JJ.
DATE : 17th October, 2018**

JUDGMENT (**Shri. A. S. Gadkari, J.**)

1. The appellant is convicted under Section 302 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine to further suffer rigorous imprisonment for three months, by the learned District Judge-1 and Additional Sessions Judge, Kalyan in Sessions Case No.251 of 2007 by its Judgment and Order dated 2.5.2009. The said Judgment and Order is impugned herein.
2. Heard the learned counsel for appellant and the learned APP. Perused the entire record.
3. The prosecution case in brief is that, the deceased Smt. Yallama Baswant Putge was the mother of the appellant. That, the appellant was fed up with the harassment at the hands of his mother and therefore, on 23.8.2007 at about 9.00 a.m. in the balcony(varanda) of their residential premises the appellant with the aid of a water electric water motor pump, assaulted his mother on her head and face thereby causing her death. The first information report is lodged by Smt. Rukmini Sargar (P.W.1) who after hearing the shouts of the deceased Smt. Yallama immediately rushed to her house and noticed the appellant sitting in the kitchen and his mother deceased

Smt. Yallama was lying in said balcony (Varanda) of her house. Smt. Rukmini (PW No.1) asked the appellant as to what had happened, to which he replied that, as Smt. Yallama was harassing him, he assaulted her. The appellant was arrested by the police on 23.8.2007. After completion of investigation, police submitted charge sheet in the Court of competent jurisdiction. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the said case to the Court of Sessions as contemplated under Section 209 of the Code of Criminal Procedure.

3. After committal, the Trial Court framed Charge below Exhibit 4 which was read over and explained to the appellant in vernacular language known to him. The appellant denied the Charge and claimed to be tried. The prosecution in support of its case examined in all seven witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the said case was pleased to convict and sentenced the appellant as stated herein above by the impugned Judgment and Order dated 2.5.2009.

4. The learned counsel for the appellant submitted that, on the date of incident the appellant was in the process of removing the electric water motor

pump from the loft situated in the balcony(varanda) and during the said process, the electric water motor pump fell on the head of his mother, Smt. Yallama, due to which she suffered injuries and ultimately succumbed to it. He further submitted that, the appellant did not have any intention to commit murder of the deceased and his act would fall within the purview of Section 80 of the Indian Penal Code. He further submitted that there are no witnesses to the incident who have seen actual assault. He therefore, prayed that the appellant may be acquitted from the offence punishable under Section 302 of the Indian Penal Code by setting aside the impugned Judgment and Order.

5. Per contra, the learned APP. Vehemently opposed the appeal and submitted that, there is sufficient material available on record to sustain the conviction and sentence of the appellant. She further submitted that the Trial Court has passed a well reasoned Judgment which needs no interference by this Court in its appellate jurisdiction. She therefore, prayed that, the present appeal may be dismissed.

6. The evidence on record indicates that P.W.1 who is the immediate neighbor after hearing the shouts of the deceased calling upon the people to save her,

immediately went to the scene of offence i.e. in the house of the appellant and noticed that Smt. Yallama was lying in the balcony(varanda) of her house and electric water motor pump was lying by her side. She thereafter along with other neighbor thereafter went inside the house and found that, the appellant was sitting in the kitchen. When P.W.1 asked the appellant as to how it happened the appellant replied that, as the deceased harassing him he assaulted her. P.W.1 noticed various injuries on the rear side of head of the deceased and the said injuries were bleeding. Smt. Yallama was thereafter shifted to Century Hospital, Kalyan and subsequently to KEM Hospital at Mumbai for treatment. Shri. Kunal Mahale (P.W.5) is a neighbor who was residing in the opposite room of the deceased and his bathroom was facing balcony(varanda) of the deceased. He has stated that, at about 9.00 a.m. when he was taking bath he heard shouts from the left side of the said colony and therefore, he came outside the bathroom and saw from the window towards the room of the appellant that, the appellant was assaulting his mother with electric water motor pump of green colour. He therefore, immediately informed the said fact to Mahatma Phule Police Station, Kalyan. In his cross examination, admission which is detrimental to the interest of

the appellant has been extracted and as he has stated that, the backside open portion of the house of the accused appellant is visible from his window of flat/room.

7. The Investigating Officer Shri Sunil Gosavi (PW No.6) while preparing the spot panchanama found one electric water motor pump lying at the scene of offence and was having blood stains on it at several places. The Medical officer namely Dr. Sunil Kadam (P.W.7) has performed autopsy on the dead body of Smt. Yallama. While performing the autopsy he noticed 23 injuries mainly on the head and face of the deceased. He has proved the post mortem report of the deceased. The report indicates that, there were more than 10 split lacerated wounds, irregular in shape suffered by the deceased on her face and head. He had stated that, the injuries mentioned in Column No.17 of the post mortem notes at Exhibit-19 at Sr. No.5,6,7,8-a, b, 9, 10,11, 12, 13, 14b, 15, 19 and 23 and corresponding internal injuries collectively are sufficient in the ordinary course of nature to cause death. He has further stated that, the injuries from Sr. No.1 to 22 are possible due to multiple blows with Electric Motor (Article-A) shown to him.

8. Thus, it is clear from the evidence that the death of Smt. Yallama Putge

was a homicidal death and has occurred due to the assault by the appellant to her. As noted earlier, the prosecution has put forth the motive of the appellant, which ultimately lead him to commit murder of his mother on 23.8.2007 at about 9.00 a.m. There is an extra judicial confession given by the appellant to Smt. Rukmini K. Sargar (P.W.1). There is an eye witness to the present crime namely Kunal P. Mahale (P.W.5). A minute scrutiny of the evidence of the said two witnesses would indicate that her testimony is fully trust worthy and reliable.

Apart from the said witnesses the conduct of the appellant also needs to be taken into consideration. If the contention of the learned counsel for the appellant is to be accepted that deceased suffered injuries on her head due to fall of the electric water motor pump then in normal circumstances the appellant being the son of the deceased would have immediately called the neighbors to take her to the hospital. However, the version of the neighbor Smt. Rukmini (PW No.1) that, when she rushed to the spot, she saw the appellant was sitting in the kitchen. According to us the said conduct of the appellant is contrary and is not in conformity with Section 8 of the Indian Evidence Act. As noted earlier the deceased Smt. Yallama

has suffered about 23 injuries out of which more than 10 injuries are split lacerated wounds resulting into her death and therefore, also the contention of the learned counsel for the appellant that, the said incident took place due to fall of electric motor pump cannot be accepted. There is another reason for not accepting the contention of the appellant that, death was caused due to fall of the electric motor water pump. The entire material available on record, no where even remotely suggests as a matter of fact that, the said motor was fixed on the wall of the said balcony(varanda). There is no corroborative piece of evidence in that behalf and therefore, the contention of the appellant needs to be discarded.

9. A cumulative effect of the aforesaid discussion would undoubtedly lead to the conclusion that, the appellant alone is the perpetrator of the present crime.

In view of the above, we find no merits in the appeal and the appeal is accordingly dismissed.

(A.S.GADKARI, J.)

(S.S. SHINDE, J.)