

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.697 OF 2014

Shridhar s/o Sonyabapu Misal
Age 49 years, Occu. Nil,
R/o Tuljabhavani Nagar, Pipeline Road,
Ahmednagar, District Ahmednagar
(At present is in Jail) ...APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad) ...RESPONDENT

.....
Shri S.B. Jadhav, Advocate for petitioner
Shri S.B. Yawalkar, A.G.P. for State
.....

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 6th February, 2019

Date of pronouncing judgment : 18th February, 2019

JUDGMENT (PER R.G. AVACHAT, J.)

1. Challenge in this Appeal is to the judgment and order dated 19.7.2014, passed by 3rd Additional Sessions Judge, Ahmednagar in Sessions Case No.127/2007. By the impugned judgment and order, the appellant has been convicted of the offence of murder and sentenced to suffer life imprisonment. He has also been directed to pay fine of Rs.1000/-. In default of

payment of fine, he is to undergo rigorous imprisonment for six months.

2. The facts giving rise to the present appeal are as follows :

3. Sonyabapu (deceased) along with his wife P.W.1 Rukmini, two sons and wife of one of the sons, would reside together at Savedi, Ahmednagar. The deceased was septuagenarian. The appellant was one of his sons. The appellant was unemployed. Rukmini (P.W.1) would do petty work. She would serve as a domestic help for cooking at the house of one Oswal, residing in the nearby of Savedi, Ahmednagar.

On 25.2.2007 at 10.15 Hrs., Rukmini left house for work. Amit, brother of the appellant and Amit's wife also left the house. The appellant and his father (deceased) were the only persons present at home. The appellant was addicted to liquor. He would frequently quarrel with his parents, if he was not paid for alcohol. By 12.00 noon on 25.2.2007, the appellant demanded money from his father (deceased). The deceased could not meet his demand. The appellant, therefore, got enraged. He picked up iron pestle and smashed the head of the deceased. On hearing cries of the deceased, neighbours gathered. P.W.2 Sonabai Laware informed Rukmini on phone. Rukmini rushed to home and then she lodged the F.I.R. against

her own son.

4. It appears that, the deceased died on the spot. Crime for the offence punishable under Section 302 of the Indian Penal Code was registered at Topkhana Police station, Ahmednagar. P.W.6 Hemant Somwanshi did the investigation. He paid visit to the crime scene, drew the scene of offence panchanama, seized the pestle, took charge of the clothes of the deceased. Post mortem was conducted. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the appellant was proceeded against. He remained behind the bars throughout trial.

5. Learned counsel appointed through Legal Aid represented the appellant before the trial Court.

6. The charge (Exh.3) was framed. The appellant pleaded not guilty. To sustain the charge, 6 witnesses were examined on behalf of the prosecution besides production of some documents. Based on eye witnesses' account, the appellant came to be convicted. The appellant is thus before this Court in appeal.

7. Heard Shri S.B. Jadhav, learned counsel appointed by the Court to represent the appellant in this appeal. Shri S.B. Jadhav, learned counsel would submit that, the appellant was

mentally not keeping well. He was unfit to defend himself. The learned Advocate took us through the evidence on record to ultimately submit for allowing the appeal.

8. Shri S.B. Yawalkar, learned Additional Public Prosecutor would, on the other hand, submit that, it is an open and shut case. The appellant killed his father for booze. The appellant did not have remorse. The appellant, in no uncertain terms, confessed to have killed his father. According to learned Additional Public Prosecutor, no interference with the impugned judgment and order is warranted.

9. The deceased, his wife, their two sons and wife of one of the sons would reside together, is undisputed. The deceased was septuagenarian. The appellant is one of the sons of the deceased. He was unemployed. The deceased and the appellant used to be at home. Other members of the family would go for work to earn their living. The appellant was a boozier. The mother of the appellant filed the First Information Report (Exh.18) and gave evidence against her own son. It is in her evidence that, the appellant was alcoholic. He would quarrel with his parents if his demand for money to buy liquor was not met. It is further in her evidence that the appellant used to assault them in case he was not paid to buy liquor. It is further in her evidence that, on the fateful day, she was away at the house of Shri Oswal,

her employer. It is further in her evidence that, P.W.2 Sonabai informed her on phone. She, therefore, rushed to home to find pool of blood at the entrance of her home. It is further in her evidence that, her neighbour P.W.2 Sonabai Laware and P.W.3 Lankabai Pare informed her that the appellant smashed his father's head with a pestle (iron batta).

10. True, P.W.1 Rukmini had not witnessed the incident. She was, however, categorical to state that, the appellant was alcoholic and used to assault his father and her when his demand for money was not met. P.W.2 and P.W.3 were categorical to state that, both of them were in the nearby. On hearing cries "Aai Ga...", both of them rushed to the house of the appellant to find the appellant smashing his father's head with a Batta. It is further in their evidence that Dhiraj and Ashok Dalvi rushed the deceased to the hospital. The appellant fled.

11. The scene of offence panchanama (Exh.32) reinforces the prosecution case. The same indicates that there was pool of blood at the house of the appellant. The pester was smeared with blood. C.A. Report (Exh.19) indicates that, the deceased had his blood group 'B' positive. The pestle was smeared with the blood of the blood group 'B' positive.

12. As already stated above, it is an open and shut case.

The appellant was found to be defenceless. Moreover, when the incriminating evidence was put to the appellant in the form of questions, in his statement under Section 313 of the Criminal Procedure Code, the appellant categorically admitted to have murdered his father. According to him, he was under influence of alcohol and the act was the result thereof. In law, commission of an offence under the influence of alcohol does not fall under any of the general exceptions or proviso to penal sections. As such, the evidence on record undoubtedly establish the appellant to have murdered his father. The trial Court has rightly convicted him. No interference with the impugned judgment and order is, therefore, warranted.

13. It appears from the record and proceedings that, for some time pending trial, the appellant was mentally not keeping well. In jail, he had been extended treatment twice at Mental Hospital, Yerwada. Once he was declared unfit to defend himself. These are all the facts long after the appellant murdered his father. It, therefore, cannot be said that the appellant committed the murder of his father during attacks of insanity. It is, however, to be seen that the appellant is extended all necessary medical treatment. We would, therefore, direct the jail authorities to do the needful in the matter.

14. For the reasons given hereinabove, the appeal fails.

ORDER

- (i) Criminal Appeal No.697/2014 stands dismissed.
- (ii) The Jail Superintendent is directed to ensure that the appellant is provided all possible medical treatment for his mental illness, whenever required.
- (iii) The Superintendent of Jail would ensure that when time for appellant's release, on completion of his sentence would come, he would be medically examined and discharged from the prison only if he is found to be capable of taking care of himself. If it was found that his release from jail would not be in the interest of the appellant himself and the society as well, the Jail Superintendent would ensure to keep the appellant in Mental Hospital.
- (iv) Fees of Mr. S.B. Jadhav, learned counsel, who was appointed to represent the appellant in this appeal, is quantified at Rs.8000/- (Rupees eight thousand only).

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/