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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 619 OF 2013

Vishwanath Kashinath Dalvi
Age : 43 years, Occ.: Milk Business
R/o : Landge Aali, Old Wadhekar Bldg.
Saswad, Taluka Purandar District Pune
[Presently in Yerawada Jail, Pune]

...Appellant
Orig. Accused

versus

The State of Maharashtra
Through P.I. Saswad Police Station,
Pune.

... Respondent

Mr. Satyavrat Joshi with Mr. Nitesh Mohite for the Appellant.
Mr. H.J. Dedhia, APP for the State.

CORAM : B.P.DHARMADHIKARI &
MRS. SWAPNA S. JOSHI, JJ.

DATE : 18th July, 2019

ORAL JUDGMENT (Per Swapna S. Joshi) :

1 This appeal has been preferred against the judgment and order dated 8th May 2013 delivered by the Additional Sessions Judge, Pune in Sessions Case No.84 of 2012 whereby the learned Additional Sessions Judge has convicted the accused under section 302 of IPC and has sentenced to suffer life imprisonment and to pay fine of Rs.1,000/- in default to pay fine R.I. for six months.

2 The prosecution case in nutshell can be summarised as under :-

 The complainant Mahadeo Kashinath Dalvi (PW1) was residing at village Saswad in Raut Ali locality along with his family. The accused Vishwanath is his real brother. He was also residing in the same village in Landge Ali with his family consisting of his wife Anita (deceased), son Tejas (PW3) aged about 13 years old and daughter Chaitali (PW2) aged about 16 years old. Deceased Anita was doing labour work in one grocery shop of one Shendge at village Saswad. The accused Vishwanath used to sell milk objects. The accused used to suspect fidelity of his wife and on account of that he used to quarrel with her. Brother of the accused i.e. PW1 Mahadeo, his wife Surekha and his sister Sulochana used to pacify the accused and they used to settle the dispute between the accused and his wife Anita.

3 On 30th September 2011 Anita was not feeling well. Therefore, after taking dinner she went to sleep along with her children in the hall of the house. The accused returned home at late night. Chaitali served dinner to the accused. Anita asked the accused whether he had brought the amount of Rs.1,000/- from Shendge i.e. owner of grocery shop. Exchange of hot words took place between

the accused and his wife Anita. Chaitali advised them to go to sleep. Accordingly, they all went to sleep. During the intervening night of 30th September 2011 and 1st October 2011, at about 2.00 am Chaitali and Tejas heard the cry of their mother. Hence, they woke up from the sleep. They noticed the accused assaulting their mother by means of a grinding stone. They both started shouting and came out of the house. Tejas immediately proceeded to the house of PW1 – Mahadeo and informed him about the said incident. PW1 rushed to the place of incident. He noticed Anita lying in the pool of blood on the bed, in dead condition. PW1 came to know from Chaitali that the accused was sitting in inner room, by bolting the door from inside. In the meantime, Police arrived at the place of incident as they received message from the persons who assembled at the place of incident. Police broke open the door of the room where the accused was present. The accused was lying in the said room in unconscious condition. Police shifted the accused to the Chintamani Hospital at Saswad. PW1 lodged his complaint (Exh.18). API Tawaskar visited the place of incident and recorded spot panchanama (Exh.23). He also recorded inquest panchanama (Exh.33). He then shifted the dead body of Anita to Rural Hospital, Saswad for postmortem. Prior to that he took charge of grinding stone and one N.Gil poison bottle from the place of incident under panchanama. He also took charge of

the clothes of deceased Anita. Police recorded the statement of the witnesses. After conducting due investigation, charge sheet was filed in the Court of learned J.M.F.C., Saswad. The case was committed to the Court of Sessions. The learned Additional Sessions Judge on recording evidence and hearing both the sides convicted the accused as aforesaid.

4 The prosecution examined in all 9 witnesses. The defence of accused was of total denial.

5 We have heard the learned Advocate for accused and learned APP for the State. With their assistance, we have gone through the record and proceeding. The learned Advocate Mr. Satyavrat Joshi vociferously argued that the learned trial Judge has not considered the evidence led by the prosecution witnesses in its right perceptive and has erroneously convicted the accused. It was canvassed that if at all the Court comes to the conclusion that the accused has committed the offence, in that case the accused may be convicted under section 304 (Part-II) IPC. As against this, the learned APP contended that the learned trial Judge has rightly considered the evidence before it. He submitted that evidence of eye-witnesses PW2 and PW3 corroborates on all material aspects. The medical evidence is also in consonance with the ocular testimony. The complaint was

lodged promptly by PW1. The learned APP urged that since prosecution has proved its case the accused was convicted under section 302 of IPC. Appreciating the rival contentions of both the sides, it would be advantageous to go through the evidence led by the relevant prosecution witnesses. Evidence shows that the accused used to suspect the fidelity of his wife – Anita and on account of that there used to be quarrels between them many a times, PW1, his wife Surekha and his sister Sulochana had resolved the dispute between accused and his wife.

6 The evidence of PW1 – Mahadeo shows that on 1st October 2011 at about 2.00 am his nephew – Tejas i.e. son of Vishwanath came to his house and informed him that quarrel was going on between his parents. Therefore, he immediately rushed to the house of the accused. His niece Chaitali informed him that the accused gave a blow of stone crusher to her mother. PW1 entered inside the house of the accused and noticed that Anita was lying in the pool of blood. Stone crusher was also lying at that place. On making enquiry about the accused, Chaitali informed him that her father was sitting in a room by bolting door from inside. PW1 then informed about the same to the Police. Police came to that place. Police broke open the door of the room where the accused was

present. The accused was lying in unconscious condition. Complaint of PW1 was recorded by Police at Exh.18. During his cross-examination PW1 denied that he received the information about the alleged quarrel in between the accused and his wife at about 2.30 am. The portion was marked as 'A' for identification. The contradiction was only in respect of the timings. The said discrepancy does not go to the root of the prosecution case. The fact remains that during the said night PW1 received information about the quarrel between the accused and his wife and he immediately rushed to the place of incident. So also he lodged complaint during the same night. FIR Exh.18 shows that offence was reported at 3.15 am. It was also suggested to PW1 that he had tutored PW2 and PW3. He however denied the said suggestion. The testimony of PW3 is not shaken in his cross-examination. His testimony is in consonance with Exh.18 which was lodged immediately. PW3 is found to be a reliable witness.

7 Deposition of PW2 – Chaitali reveals that her father used to suspect fidelity of her mother and on account of that there used to be quarrels between her parents. Sometimes the accused used to beat her mother. Her uncle Mahadeo (PW1) and her aunts (Sulochana) and Surekha used to advise her father not to quarrel with Anita. According to PW2 on 30th September 2011 as usual her parents left

for their work. Her mother returned home as she was not keeping well. She was sleeping in main hall of the house after having dinner. At about 11.30 pm father of PW2 returned home. PW2 served food to her father. Thereafter her mother asked her father whether he had brought Rs.1,000/- from the shop owner Mr. Shendge. There were hot exchange of words between her parents. PW2 requested them not to quarrel and go to sleep. Thereafter they all went to sleep in the hall. At about 1.30 am she heard shouts. Therefore PW2 and her brother PW3 woke up from the sleep. PW2 noticed her father holding a grinding stone. Her father gave a blow by grinding stone on the neck and chest of her mother. She tried to intervene and request her father not to beat her mother. However, the accused pushed her. He kept the said grinding stone at that place and went in the kitchen and closed the door of the said kitchen. Her mother shouted. Her father while entering into the kitchen said that he does not want to live and he would die. PW2 deposed that she as well as her brother Tejas started crying and shouting and neighbours gathered at that place.

8 An improvement was pointed out in the cross-examination of PW2 that her father gave a blow of grinding stone on the chest of her mother. PW2 could not explain as to why the said fact was not mentioned in her statement. The said improvement does

not go the root of the case as PW2 has specifically stated that on hearing the shouts of her mother, she woke up from the sleep and she saw her father holding the grinding stone in his hands and he gave blow of the said stone on the neck and chest of her mother. Although the word chest may be an improvement in the version of PW2 however, her presence at the place of incident was natural one and the fact remains that she had seen her father assaulting her mother on her neck.

9 Cross-examination of PW2 shows that some electric bulb was on at the time of incident. In this view, there was no question of darkness in the hall. Therefore, it was quite possible that PW2 must have witnessed the incident. The case was put up to PW2 that her mother was trying to give blow of grinding stone on her sleeping father, however, he saved himself and therefore, the tile was broken and ditch was created. PW2 denied the said suggestion. It was also suggested that again her mother was trying to give a blow of stone to her father but her father pushed her, therefore, her mother fell down along with the grinding stone and sustained injuries. PW2 denied the said suggestion given to her. The testimony of PW2 is not shaken in her exhaustive cross-examination. Her presence at the place of incident is most natural. PW2 had witnessed the quarrel between her

parents when her father returned home at 11.30 pm so also she herself suggested her parents not to quarrel and go to sleep. Similarly, after the incident she also saw her father going inside inner room and closing door from inside. Testimony of PW2 shows that as the accused used to suspect fidelity of his wife, there used to be quarrel between the husband and wife. During the night of incident there were quarrels between them. It appears that due to this the accused lost his control and therefore assaulted his wife who was sleeping beside him by means of grinding stone which was in their house.

10 The deposition of PW3 is also on the same lines. According to him, during the night of incident, he along with his mother and elder sister Chaitali went to sleep. At about 11.00 pm his father returned home. His mother was not keeping well therefore, she was sleeping. His mother asked her father whether he has brought Rs.1,000/-. On that count there was quarrel between her parents. Chaitali suggested them to go to sleep. Accordingly, they all went to sleep. While they were sleeping he heard noise. Therefore, he woke up. He saw his father assaulting his mother by means of grinding stone. His father gave a blow of the said stone on the throat and chest of his mother. His sister started shouting. Father then went

inside the kitchen. He proceeded to the house of his uncle Mahadeo. He returned to the house with his uncle Mahadeo (PW1). Police came to that place. His father was lying unconscious in the kitchen.

11 Cross-examination of PW3 explicits that his mother was short tempered. His relatives advised his mother not to quarrel with his father. However his father quarreled with his mother. In the cross-examination, contradiction is pointed out to the fact that hot exchange of words had taken place between his mother and father and they made allegations and counter allegations against each other. PW3 denied that he had stated the said fact to the Police. It suggests that PW3 has not stated anything about quarrel between his parents. Improvements were also pointed out in his evidence that even after his sister requested, altercations were going on between his parents and on the advise of his sister his parents went to sleep. PW3 denied that he had stated portion mark 'B' before the Police. Thus, testimony of PW3 shows that there are improvements and discrepancies in his testimony about the fact that he had seen the quarrel of his parents and the accused assaulting his mother by grinding stone. The contradiction was pointed out in the version of PW3 that his father gave a blow of grinding stone on the head of his mother. Said portion is marked as 'B' for identification. However, the

fact remains that PW3 woke up and started shouting. So also the version of PW3 that his father returned back at about 11.00 pm and his mother asked him whether he had brought Rs.1,000/-, therefore, there was a quarrel between his father and mother, remains unshaken. So also he had seen his father going inside the kitchen and when Police came the door of the kitchen was broken and his father was found in unconscious condition. The testimony of PW3 corroborates with the evidence of PW2 on material aspects.

12 PW6 who is neighbour of the accused deposed that on hearing the noise of children from the house of accused he woke up and came in the common Verandah of his house. So also their neighbours also came in Verandah. The children of the accused told that the accused killed their mother. He saw deceased Anita lying on the ground and one crusher lying beside her. PW6 admitted during his cross-examination that he did not see accused during the said night.

13 As far as the medical evidence is concerned, PW7 examined the accused. According to him, the accused was admitted in the hospital at 9.30 pm on 1st October 2011, as per the history patient was found in his house in intoxicated condition. PW7 however clarified that there were no symptoms found on the person

of the accused to suggest that he consumed any poisonous substance.

14 As regards the injury on the dead body of the deceased, PW5 – Dr. Indranil Patil deposed that on 1st October 2011, he conducted autopsy on the dead body of Anita. He found following injuries on her dead body :

- “(1) Swelling over right cheek.
- (2) Contusion over right cheek bone, admeasuring 4x4 cm.
- (3) Laceration over center of neck, admeasuring 3x2 cm.
- (4) Laceration over neck near the center on right side, 2x0.5 cm.
- (5) Contusion on right side upper chest region, 8x6 cm.
- (6) CLW over right side chin, admeasuring 1.5x0.5 cm.
- (7) Laceration on left side near center of neck, 1x0.5 cm.”

15 He further noticed the internal injuries :

- “(1) Haematoma over ribs on right side 200 CC approximately.
- (2) Right side ribs Nos.3, 4, 5, 6, are fractured.
- (3) There was blood in Thorax approximately 1000 cc.
- (4) Right lung was ruptured and was found in pieces of total 5.”

16 PW5 – Dr.Patil opined that probable cause of death was hemorrhagic shock due to blunt thoracic injury. He issued postmortem report (Exh.25). According to PW5 the injuries were sufficient to cause death in ordinary course of nature and were

possible by grinding stone. Cross-examination of PW5 shows that PW5 admitted that most of the injuries were on the right side of the body and the injuries mentioned in column no.17 of postmortem report are possible by single blow of grinding stone. He further clarified that injuries mentioned in column no.20 are corresponding injuries to injury no.5 mentioned in column no.17 of postmortem report. The said version of the medical officer PW5 indicates that the main blow was on the chest of the deceased which fractured ribs due to which there was internal bleeding. The main blow was a single blow which was fatal.

Significantly, PW5 denied during his cross-examination that the internal injuries in paragraph 20 of postmortem report are not possible, if a person is pushed down forcibly on the ground along with the grinding stone. The medical evidence on record is sufficient to prove the case of the prosecution beyond all reasonable doubt.

17 As far as the investigation is concerned, it is formal in nature. The accused was arrested on 5th October 2011. The overall assessment of the evidence on record shows that on 30th September 2011 there was a quarrel between the accused and his wife on the count that Anita asked the accused whether he had brought the amount of Rs.1,000/- from shop owner Shendge. PW2 pacified to her

parents and requested them to sleep. It appears that always there used to be quarrels between husband and wife as the accused used to suspect the character of his wife. On 30th September 2011 there were quarrels between the husband and wife. No doubt the accused and Anita went to sleep. However, it appears that again there were quarrels between them. The testimony of PW1, PW2 and PW3 is consistent and corroborates with each other and supports the case of prosecution. The evidence adduced by the prosecution is cogent and convincing. The medical evidence corroborates with the ocular testimony.

18 From the evidence on record in the instant case, it appears that the relationship between the accused and deceased Anita was strained, as the accused used to suspect her character. There used to be quarrels between them on that count. On the fateful night of 30th September 2011 and 1st October 2011, there was quarrel as deceased Anita asked accused whether he has brought amount of Rs.1,000/- from shop owner Shendge. Although the accused and his wife remained silent on the request of their daughter, it appears that altercations continued even after PW2 and PW3 slept and the accused was fed up with those quarrels, he lost his control and got enraged. In the fit of rage he assaulted the deceased by means of

grinding stone which was easily available in the house to put an end to her life. The accused also tried to commit suicide by consuming poison as he decided not to survive. No doubt the factum of consuming poison has not been proved by the prosecution. However, accused was seen by PW2 and PW3 confined in one room and when the police broke open the door of the room, he was seen lying unconscious. The accused thus committed murder of his wife in the fit of rage. In view thereof, the case is covered under Exception 1 of section 300 of IPC.

19 It appears that the accused whilst deprived of the power of self-control by grave and sudden provocation, caused her death, although he did not intend to kill her. Similarly, the accused fed up with his wife, tried to put an end to his life by consuming poison. In that view of the matter, it is held that the prosecution has established that the accused committed culpable homicide which does not amount to murder. The learned trial Judge should have considered the evidence led by the prosecution in its proper perspective.

20 Accordingly, we proceed to pass the following order:-

ORDER

- a) We alter the conviction of accused under Section 304 (Part-I) of the Indian Penal Code and sentence him to under go rigorous imprisonment for 10 years and to pay a fine of Rs.2000/-. In default of payment of fine, he shall under go further rigorous imprisonment for six months.
- b) Accused is entitled to benefit of set off under Section 428 of the Code of Criminal Procedure as directed by the Trial Court.
- c) Muddemal property be dealt with as directed by the Trial Court after appeal period is over.

(MRS. SWAPNA S. JOSHI, J.)

(B.P.DHARMADHIKARI, J.)