

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

CRIMINAL APPEAL NO. 53 OF 2020

Satish S/o. Ganpat Gadewar,
Age. 50 years, Occ. Business,
R/o. Bhoi Galli, Nanded,
Tq. and Dist. Nanded.

...Appellant.

Versus

State of Maharashtra.

...Respondent.

Advocate Mr. U.L. Telgaonkar for Appellant (Appointed) for the Appellant.
Mr. M.M. Neralikar, APP for Respondent/State.

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.
DATE : 18.08.2020.**

JUDGMENT (PER : MANGESH S. PATIL, J.) :

This is an Appeal under Section 374 of the Code of Criminal Procedure, questioning conviction and sentence awarded to the appellant on the charge of uxoricide.

2. Shorn of the details, prosecution case is to the effect that the deceased was married to the appellant in the year 1994. He was a small time road side vendor. He was harbouring a grudge against her firstly, because she was

unable to conceive any issue and secondly, he was harbouring an impression that she was a bad omen since his business was not flourishing. He was having a brother but both were separate. They were residing in the same house, but his brother was residing with his family on the ground floor whereas the appellant with his deceased wife were residing on upper floor. It is alleged that though his mother Vatsalabai (PW10) was usually residing with his brother on the ground floor being aged about 80 years, she was staying with him on the upper floor since about two to three days prior to the incident. It is then alleged that in the night of 20.07.2009 a quarrel took place between the couple before everyone went to sleep. The old lady slept on a cot whereas the couple slept on a mattress on the floor. It is then alleged that some time in the night the appellant killed his wife by stabbing her with a knife on the chest.

3. It is then alleged that the appellant then went to the house of informant Vasant (PW 2) who was staying in the same town Nanded, in the wee hours at about 4 a.m. and by awakening him confessed about having killed his wife Savita. Vasant (PW 2) happens to be maternal uncle of Savita. Having heard the news Vasant (PW 2) rushed to the house of his niece and having found her dead, went to the Police Station and lodged the FIR (Exhibit 14). Shaikh

Yousuf (PW 9) who was then Officer in charge of the concerned Police Station received the complaint and registered Crime No. 92/2009, for the offence punishable under Section 302 of the Indian Penal Code. Further investigation was handed over to Sub-Inspector Bhutkar (PW 11). It is then alleged that Bhutkar went to the spot and conducted inquest (Exhibit 26) in presence of panch witnesses Kailash (PW 7). He also conducted a seizure memo in respect of the blood stained bedding and another panchanama seizing a blood stained knife from the spot (Exhibit 38) in presence of panch witnesses Kailash (PW 7). In the meanwhile, it is alleged that the appellant surrendered himself by going to the Police Station and was taken in the custody. The blood stained clothes on his person were seized under a memorandum (Exhibit 20) in presence of panch witnesses Balaji (PW 4). All the muddemmal articles were sent for chemical analysis. The dead body was forwarded for *post mortem* examination. Dr. Dange (PW 1) conducted *post mortem* examination and noticed that the deceased had following injuries :

1. A stab injury on the chest, left side above the breast, just below the clavicle, 13 cms lateral to the left of mid-line, 2cms x 2cms. This injury was penetrating the skin, fascia, intercostal muscles, myocardium and left atrium.
2. A contused lacerated wound on the right little finger,

2 cms x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.

3. An abrasion on the right side of the neck, 2 cms x $\frac{1}{2}$ cm.

4. A stab wound on the left arm 2cms x 1cm x $\frac{1}{2}$ cm and 2cms x 1cm x $\frac{1}{2}$ cm laterally.

4. The investigation was completed in due course and the appellant was charge sheeted. The Magistrate committed the case to the Sessions Court. The learned Sessions Judge framed the Charge (Exhibit 4) for the offences punishable under Sections 302 and 498-A of the Indian Penal Code. Since the appellant pleaded not guilty, the learned Sessions Judge conducted the trial and by the impugned judgment and order convicted him under both the counts and sentenced him to suffer life imprisonment for the offence of murder and rigorous imprisonment for a period of two years for the offence punishable under Section 498-A. In addition he imposed a fine of rupees five hundred on both the counts and also pronounced sentence in default of payment of fine. Hence, this appeal.

5. Learned advocate for the appellant vehemently submits that in fact there was no reason for the learned Sessions Judge and had even no power to

take cognizance of the offence punishable under Section 498-A of the IPC. The crime was never registered under that provision. The Magistrate had not taken cognizance thereof under Section 192 of the Cr.P.C. and in the absence of which even the learned Sessions Judge could not have taken cognizance in view of Section 193 of Cr.P.C. Therefore, the charge on that count could not have been framed and the appellant could not have been convicted therefor. The learned advocate further submits that even otherwise, there was no evidence sufficient to establish the charge of cruelty under that provision.

6. The learned advocate thereafter submits that the learned Sessions Judge got swayed away by the testimony of the mother Vatsalabai (PW 10). There is evidence to show that she was residing with her other son on the ground floor and her presence in the house of the appellant is not natural. He would further point out that even her testimony is not reliable in as much as she had given a vital admission. Apart from her statement there is no other direct evidence.

7. The learned advocate further submits that the evidence of the other prosecution witnesses particularly informant Vasant (PW 2) and the brother of the deceased Gajanan (PW 5) is also not reliable. The prosecution all the

while is seeking to take the benefit of Section 106 of the Indian Evidence Act, since the deceased had died inside the house. But the appellant has given a plausible explanation in his statement recorded under Section 313 of the Cr.P.C. that he was not sleeping inside the house and was in fact had consumed liquor and some intoxicating substance and was sleeping on the terrace. Therefore, the learned Sessions Judge ought not to have expected him to have come out with some plausible explanation.

8. The learned advocate further submits that the investigation has also not been carried out fairly. Even though the Investigation Officer is the same who conducted the inquest and though the knife allegedly used in killing the deceased was lying beside the dead body, it has not been seized then and there. One cannot comprehend as to why the Investigating Officer had to record separate panchanamas, firstly in respect of inquest, secondly in respect of bed and bedding with blood stains and another panchanama for seizure of the knife. All these circumstances create a serious doubt about the manner in which the investigation has been carried out.

9. Lastly, the learned advocate submits that the appellant is being falsely implicated. He had put in long marital life and there was no matrimonial

dispute between the couple. In his statement under Section 313 of the Cr.P.C., the appellant also specifically stated that his wife was a good woman. He wanted to sell his share of property for buying a shop premises and his mother Vatsalabai (PW 10) and his brother have falsely roped him.

10. Learned prosecutor supports the impugned judgment and the reasoning.

11. We have carefully gone through the record and the proceeding and have also minutely considered the submissions of both the sides.

12. *Ex facie*, it is quite clear that the prosecution is heavily relying upon the testimony of Vatsalabai (PW 10), who happens to be the mother of the appellant, to bring home the charge. As is mentioned herein above she is a women aged 80 years. Being the mother of the appellant certainly her testimony carries a lot of weight and is decisive one. No mother at this age would go to the extent of implicating her son in such a serious crime. Bearing in mind these facts if one examines her testimony one can safely say that nothing could be elicited during her cross examination so as to doubt her version as to her narration of the incident she experienced albeit there are few admissions, so to say, which do not carry much weight and can easily be

explained as has been rightly done by the learned Sessions Judge.

13. Before scrutinizing the testimony of Vatsalabai (PW 10), it would be appropriate to observe that we have no manner of doubt that deceased had died a homicidal death. She had sustained a stab injury on the vital part penetrating internal organs as has been explained by the Medical Officer Dr. Dange and as has been minutely considered by the learned Sessions Judge in the impugned judgment. There is also no dispute about the fact that the deceased had died a homicidal death inside her house in the night intervening 20.07.2009 and 21.07.2009. Even the learned advocate for the appellant has not made any submission as regards these two facts and one can safely proceed further with the conclusion subscribing to the observations and the conclusions drawn by the learned Sessions Judge about she having died a homicidal death inside her house in that night.

14. With this let us scrutinize all important testimony of Vatsalabai (PW 10). She has stated that the incident had taken place in the night when she was present in the house of the appellant and the deceased. She stated that the appellant and the deceased were alone present in the house. In the night quarrel took place between the couple. She was on the bed whereas the

couple was sleeping on the floor. He assaulted the deceased but she could only see that he was having a knife in his hand. She, further, stated that it is only when she heard her daughter-in-law's alarm that she got up, the appellant pushed her aside and then she saw that the deceased was lying dead in the bed. Going by her narration, it is quite clear that during that night apart from the couple she was present in their house and it is after her daughter-in-law raised an alarm that she got up and saw her son with a knife. She saw her daughter-in-law dead on the bed and her son appellant pushed her aside. During the course of cross examination, it was elicited that her another son Dhondiba along with his family was residing in the same building on the ground floor whereas this couple was residing on the first floor. Though she admitted that usually she was staying on the ground floor, she specifically denied that even during that night she was sleeping in the ground floor. On the contrary, it has been elicited during her cross examination that she was staying with the couple in their house since two to four days prior to the incident. She also stated that the deceased had helped her to climb up to the first floor. She, further, stated that it is only after two to four days of the occurrence that her son Dhondiba took her down stairs. To a specific question as to who had told her that her daughter-in-law had died, she replied that she was there on the first floor. She specifically denied that she did not know who

had killed her daughter-in-law. True it is that she did admit that in the darkness she could not see nor did she hear anything but as has been rightly concluded by the learned Sessions Judge, this reply can easily be explained as stray one.

15. It is pertinent to note that the learned Sessions Judge also had an opportunity to notice the demeanor of this old lady. He has specifically noted that though she was aged 80 years and had to be helped to climb the witness box she did not need any other assistance or aid either to express herself or to hear and to see. Since the incident had taken place only a few months before her testimony was recorded, she must have vividly remembered the incident.

16. Besides, even if it is assumed for the sake of the arguments that Vatsalabai (PW 10) had woken up only after she had heard the call of deceased and had not seen anything else, her version can at least be believed to the extent that it is she who along with the couple was sleeping in the same house during that night and had seen the appellant and had experienced the appellant pushing her aside after she woke up. Therefore, her evidence apart from being natural is decisive and can safely be relied upon to justify the conclusion drawn by the learned Sessions Judge while accepting her

testimony.

17. A lame explanation has been attempted to be given by the appellant at the flag end of the trial in answer to the questions put to him during his examination under Section 313 of the Cr.P.C. to the effect that though he was present in the house during that night, he was sleeping on the terrace. However, except his statement there is no corroborating material even to remotely draw any inference in his support. Going by the spot panchanama, the brother of the appellant was residing on the ground floor of the same building and this couple was residing on the upper floor two rooms. The upper floor comprises of these two rooms and a portion of terrace of the ground floor. There is no material to show as to if the appellant wants to say that he was sleeping on this portion or the terrace above these two rooms. In any event, except this bald statement, there is no material to support his version that he was not inside the room where the deceased was sleeping.

18. Needless to state that *ex facie* it is a matter of custodial death and by virtue of Section 106 of the Indian Evidence Act, it was expected of the appellant to have come out with some plausible explanation which he has miserably failed to assign.

19. Assuming for the sake of argument that the appellant was sleeping on the terrace, the natural conduct could have been that like Vatsalabai (PW 10) had heard the call, even the appellant would have heard it and should have taken some steps to reach the house of his brother on the ground floor seeking help or would have taken some other steps calling for help. His conspicuous silence in this regard speaks in volume about the blatant falsity in his version that he was sleeping on the terrace and was intoxicated.

20. Though, the learned Sessions Judge has not touched these aspects, we have no manner of doubt that apart from the direct testimony of a prime witness Vatsalabai (PW 10) who happens to be mother of the appellant, these circumstances unerringly point to the inevitable conclusion that in all probabilities the deceased has died a homicidal death inside her residential house where the appellant was present and authorship of crime can easily be attributed to him.

21. The observations and the conclusions of the learned Sessions Judge do not suffer from any illegality in reaching to such a conclusion finding the appellant guilty of committing murder of his wife. He has also considered the other circumstances regarding seizure of the incriminating articles and has

also duly tallied with the scientific conclusion in the form of report of chemical analysis in respect of the weapon, the blood stains on the bedding, the blood group of the deceased matching with the blood stains found on the clothes of the appellant.

22. Again apart from the above state of affairs, there are apparently couple of other circumstances which certainly demonstrate and establish the guilt of the appellant. Soon after the incident he had reached the house of informant Vasant (PW 2) and had confessed about having killed his wife. Vasant (PW 2), in the wee hours at about 4 a.m. had also promptly lodged the FIR and the crime was registered at 5 a.m. One can easily comprehend that the conduct of Vasant in not reaching the Police Station first and instead verifying the fact by going to the house of the deceased that she was really dead, cannot be said to be unnatural. Incidentally, even the appellant himself has apparently surrendered before the police at 6 a.m. The sequence of events clearly corroborates the prosecution version. The learned Sessions Judge has also minutely considered these circumstances and has reached the conclusion which according to us cannot be faulted with.

23. As far as the conviction and sentence for the offence punishable under

Section 498-A is concerned; true it is that the offence was registered only under Section 302 of the IPC. The Magistrate had taken cognizance under Section 192 of the Cr.P.C. only for the offence punishable under Section 302 of the IPC. He had committed the case to the Sessions Court without referring to Section 498-A of the IPC. As can be seen from the endorsement on the charge sheet, even the Sessions Court had not specifically made any endorsement seeking to take cognizance under Section 193 of the Cr.P.C. for the offence punishable under Section 498-A of the IPC. Still, the learned Sessions Judge framed the charge for that offence along with the offence of murder punishable under Section 302 of IPC. It is thus quite clear that without the Magistrate having taken cognizance of the offence under provision of Section 192 of the Cr.P.C., the learned Sessions Judge has framed the charge for that offence and the appellant has been tried and convicted therefor. But then at no point of time, the appellant seems to have raised any objection on this count. He allowed the charge to be framed under Section 498-A of the IPC. He did not raise any objection while framing the charge or even during the course of the trial. And even during the final arguments before the Sessions Judge no objection was raised on this count. It is thus apparent that for the first time in the appeal the appellant is now seeking to question about his conviction for that crime. In our considered view, it is a mere irregularity

which has not caused any prejudice to the appellant and he cannot derive any advantage therefrom.

24. Turning to the evidence, the learned Sessions Judge has minutely scrutinized the evidence of Vasant (PW 2) who happens to be informant and maternal uncle of the deceased and the evidence of Gajanan (PW5) who happens to be brother of the deceased to conclude that the appellant had subjected the deceased to cruelty for variety of reasons. She was unable to beget any issue. He was harbouring an impression that she was a bad omen. Though there is no sufficient corroboration, these witnesses also stated about the deceased having once even attempted to immolate and even in the post mortem examination she seemed to have old burn scars. In our considered view, the learned Sessions Judge has considered the testimonies of these two witnesses in the proper perspective and has reached a justifiable conclusion that the appellant had treated the deceased with cruelty and has rightly been convicted and sentenced even on that count.

25. Having considered the evidence and the arguments, we find no sufficient and cogent reason to interfere with the observations and conclusions of the learned Sessions Judge in finding the appellant guilty of the crime.

There is no substance in the appeal and it is dismissed.

26. Since Mr. Uttam L. Telgaonkar, the learned advocate was appointed to represent the appellant in this appeal, his fees shall be quantified and paid by the High Court Legal Services Sub-Committee, Aurangabad.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)