

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

CRIMINAL APPEAL NO. 219 OF 2014

Arun Gulab Bagul
Age : 30 years, Occu. Nil
R/o. At Kharde-Patharde,
Taluka-Shirpur, District Dhule ... Appellant

Versus

The State of Maharashtra
Through Nandurbar Police Station,
Nandurbar, Dist. Nandurbar ... Respondent

.....
Mr. Mukul Kulkarni, Advocate for the Appellant.
Mr. S. J. Salgare, APP for the Respondent-State.

.....

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.**

RESERVED ON : 09.07.2021

PRONOUNCED ON : 05.08.2021

JUDGMENT (PER V. K. JADHAV, J.) :

1. This Appeal is directed against the judgment and order of conviction passed by the District and Sessions Judge, Nandurbar dated 10.1.2014 in Sessions Case No. 28 of 2011, convicting thereby the appellant-accused for the offence punishable under Sections 302 and 324 of IPC and sentencing to suffer imprisonment for life and to pay fine of Rs.1000/- in default to suffer rigorous

imprisonment for one year for the offence punishable under Section 302 of IPC and to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/-, in default to suffer rigorous imprisonment for one month for the offence punishable under Section 324 of IPC.

2. Brief facts of the prosecution case are as follows:

a. Complainant Bhartibai is the legally wedded wife of the appellant-accused. Their marriage was solemnized 5/6 years prior to the incident. The couple is blessed with two children by name Krish aged five years and a daughter by name Pooja. Deceased Pooja was one year old at the time of the incident. The appellant-accused and complainant Bhartibai were residing at village Kharde, Taluka Shirpur along with their children. Some six months after their marriage, the appellant-accused started beating and abusing Bhartibai on petty grounds. He was addicted to liquor and used to suspect about her character. Marriage of the uncle of complainant Bhartibai, namely Dipak, was scheduled on 25.02.2011 at village Borale. The parents of complainant Bhartibai are also residents of village Borale. Thus, the brother of complainant, namely

Chandrashekhar had taken the complainant to village Borale on 09.02.2011. After 3/4 days of it, the appellant-accused had been to village Borale. He was under the influence of liquor. He started arguing as to why his parents-in-law did not invite him for Dipak's marriage. The appellant-accused started insisting complainant Bhartibai to immediately accompany him to village Kharde. Even he extended beating to her and pressed her neck. Further, the appellant-accused threatened the complainant that he would kill her or their children with knife.

b. On 19.02.2011 at about 4.00 p.m., complainant Bhartibai along with her parents was at the threshing ground at their field near village Borale. Complainant Bhartibai was washing a bucket and she had kept her daughter Pooja on a cot. Her father had gone for switching on electric motor while her mother Nirmalabai was doing some agricultural work. At that time, the appellant-accused suddenly arrived there. He was under the influence of liquor. He started abusing the complainant. The appellant-accused started insisting the complainant to immediately accompany him to village Kharde. However, complainant Bhartibai told him that she would not accompany him before her uncle's marriage is solemnized. The

appellant-accused got annoyed. He took out a knife from his pant pocket, went towards the cot and hit his daughter Pooja with the knife on her neck twice. The appellant-accused then started assaulting complainant Bhartibai and inflicted blows on her cheek and left shoulder with the use of that knife. Complainant Bhartibai raised shouts. Her parents came there. The accused started running towards village Borale. However, some villagers caught hold of the appellant-accused and took him in an auto rickshaw to the police station. Complainant Bhartibai and injured Pooja were immediately shifted to the Government Hospital at Nandurbar. Pooja succumbed to the injuries. Thereafter, complaint of Bhartibai was recorded. In the meantime, the appellant-accused was taken to the police station. Villagers had kept him in the backside of the rickshaw and therefore, he sustained burns due to the heated surface of the rickshaw. PSI Nikam drew a panchanama to that effect and then referred him to the Civil Hospital, Nandurbar.

c. On the basis of the complaint lodged by Bhartibai Exhibit 19, crime no. 36 of 2011 for the offence punishable under Sections 302, 307, 498-A, 323, 504, 506 of IPC came to be registered at Nandurbar Police Station. PW11 PI Keshav Naik took over the

investigation of the crime. He drew the inquest panchanama and seizure of the clothes of the deceased. He also went to the place of incident and drew spot panchanama Exhibit 27 and seized the soil with and without blood, a knife and a broken pot from the place of the incident. He then visited the hospital and inquired with complainant Bhartibai. He also noted that the accused had sustained burn injuries and was admitted in the Civil Hospital, Nandurbar for treatment. He seized the cloths of the complainant Bhartibai as per the panchanama Exhibit 46. He also seized the cloths of accused in terms of the panchanama Exhibit 36. He recorded the statement of the witnesses. He sent the *muddemal* articles to the office of C.A. He further collected the documents like marriage invitation card, medico-legal certificate and postmortem report and after completion of the investigation, submitted the charge-sheet against the accused in the Court.

d. Learned District and Sessions Judge, Nandurbar framed charge against the accused for the offence under Sections 302, 307, 498-A and 506-II of IPC. The contents of the charge-sheet were read over to the appellant-accused. The appellant-accused pleaded not guilty to the charge and claimed to be tried. The prosecution

has examined in all 11 witnesses to substantiate the charge levelled against the accused. The appellant-accused has given a statement under Section 313 of Cr.P.C. in response to the examination under Section 313 of Cr.P.C. to explain the intimidating circumstances. The appellant-accused has submitted his statement in writing. It is contended in the said statement that on the day of incident, he had been to the agricultural field of the parents of his wife complainant Bhartibai. Complainant Bhartibai got annoyed by seeing him in the field. The appellant-accused had called upon her to explain as to why she left the matrimonial home along with all the luggage without intimating him. The appellant-accused told her that after her uncle's marriage is performed, they all would return to their house. However, complainant Bhartibai got annoyed and informed him that she would never come to her matrimonial home and instead, she would die and kill her children. The appellant-accused has further explained in his statement that by saying so, complainant Bhartibai rushed towards the hut, brought one knife and gave blows of knife twice on the neck of their daughter Pooja. Complainant Bhartibai further caused self inflicted injuries with the use of knife on her cheek and shoulder. The appellant-accused has also examined himself as defence witness no.1 Exhibit 63.

3. The learned District and Sessions Judge, Nandurbar, by judgment and order dated 10.01.2014 in Sessions Case No. 28 of 2011, convicted the appellant-accused for the offence punishable under Sections 302 and 324 of IPC and sentenced him as under :

1. Accused is hereby sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- (Rs. One Thousand only) in default to suffer rigorous imprisonment for one year, for the offence punishable under section 302 of IPC.
2. Accused is also hereby sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/- (Rs. One Thousand only) in default to suffer rigorous imprisonment for one month, for the offence punishable under section 324 of IPC.
3. Both substantive terms of imprisonment shall run concurrently.
4. Accused shall be entitled for set off as is permissible under section 428 of Code of Criminal Procedure.

4. Learned counsel for the appellant-accused submits that the evidence of PW1 Bhartibai (complainant) does not inspire confidence. She has admitted in her cross-examination that while going to her parents' village, namely Borale, she had brought with her all her belongings including the utensils and other household articles. She had hired an auto rickshaw for carrying the same. It appears from the prosecution story that complainant Bhartibai got annoyed because the appellant-accused had not only followed her to her parents' house without invitation to attend the marriage, but further insisted her to return to her matrimonial home. Learned counsel for the appellant-accused submits that complainant Bhartibai was a short tempered woman. Thus out of anger and in a heat of passion, she had stabbed her own daughter by expressing herself that she would die and also let her children die but she will never return to her matrimonial home again. Learned counsel further submits that there was no reason for the appellant to make an assault on his own daughter and further to assault the complainant. Learned counsel submits that the prosecution story and the defence version goes parallel and in view of the same, a doubt is created as to who has actually assaulted deceased Pooja.

Learned counsel submits that the accused is thus entitled for benefit of doubt.

5. Learned counsel submits that complainant Bhartibai has not narrated the incident to the police. She was unconscious when admitted in the hospital. She regained consciousness in the hospital itself. She has further admitted in her cross-examination that she was not in a position to talk on the day of incident, after the incident was over when she was immediately shifted to the hospital. PW Bhartibai has admitted in her cross-examination that she started talking on the next day morning and her father was with her till the morning. Learned counsel submits that the complaint Exhibit 19 shown to have been lodged on the day of incident itself i.e. on 19.02.2011. If PW Bhartibai started talking on the next day morning, then it is clear that she has not narrated the contents of the complaint Exhibit 19 on 19.02.2011. Learned counsel submits that in the midst of her cross-examination, learned Judge of the trial court observed that PW Bhartibai can talk *Ahirani* language and she cannot talk Marathi properly. Thus, as of sudden, the learned Judge called an interpreter and completed further cross-examination of PW Bhartibai with the help of the interpreter

who is none else but an Advocate. Learned counsel submits that appointment of the interpreter in the midst of cross-examination has caused prejudice to the defence of the accused. Further, no established procedure was followed for appointment of the interpreter. Learned counsel submits that the trial vitiates on this ground alone.

6. Learned counsel submits that the trial court has not considered the evidence of the appellant-accused on oath. He has deposed on oath before the court explaining all the circumstances. The appellant-accused had insisted PW Bhartibai to return to her matrimonial home after the marriage ceremony of her uncle is over. PW Bhartibai therefore got annoyed. She had made a statement of killing herself and her children instead of returning to her matrimonial home. She had thereafter brought a knife from the hut itself and inflicted injuries with the use of knife on the neck of her small daughter Pooja and further caused self inflicted injuries on her cheek and shoulder. Learned counsel submits that considering the size of the knife, it was impossible for the appellant-accused to carry the said knife in his pocket as alleged. PW Bhartibai could not bear the shock of her own behaviour and

despite she had sustained minor injuries on her cheek and shoulder, she came to be admitted in the hospital. There were no blood stains on the cloths of the the accused. Further, the weapon knife was also found lying on the spot itself. The appellant-accused did not try to run away from the spot. He was caught hold by the villagers and kept in the backside of the auto rickshaw in such a manner that he sustained burn injuries on his person due to the hot surface of the auto rickshaw. Learned counsel submits that there is a thin line between the prosecution story and the defence version and in view of the same, the appellant-accused is entitled for the benefit of doubt.

7. Learned counsel or the appellant-accused, in order to substantiate his contention, placed reliance on the following cases :

1. State of Uttarakhand v. Darshan Singh, reported in (2010) 12 SCC 605.
2. Sunil Kundu and Others v. State of Jharkhand, reported in (2013) 4 SCC 422.

8. Learned APP submits that PW Bhartibai had returned to her parents' house along with her belongings and the children. She had no intention to go back to her matrimonial home. She was in the village of her parents and she was very much protected there. If the appellant-accused had come to the field as on the date of the incident and insisted her to return to the matrimonial home, there was no reason for PW Bhartibai to get annoyed to such an extent to kill her own daughter. On the other hand, there was a strong motive for the appellant-accused to abuse and threaten PW Bhartibai for returning to the matrimonial home and it was obvious on his part to get annoyed when PW Bhartibai had flatly refused to return. Learned APP submits that the evidence of PW Bhartibai is reliable, trustworthy, consistent and inspiring confidence. PW Bhartibai had also sustained injuries on her cheek and shoulder. There is no cross-examination of the Medical Officer PW 7 Dr. Jaimala Vasave that PW Bhartibai had self inflicted the injuries. Learned APP submits that the injuries on the person of PW Bhartibai, so also on the person of deceased Pooja are possible by knife as opined by PW 7 Dr. Jaimala Vasave. Learned APP submits that the defence of the appellant-accused is after thought. The trial court has rightly discarded the defence raised by the appellant-

accused. Learned APP submits that so far as recording of further cross-examination with the help of the interpreter is concerned, the trial court had taken the help of the interpreter because PW Bhartibai is knowing *Ahirani* language well compared to Marathi. Even the appellant-accused had not raised any objection for that. The appellant-accused had not argued the said aspect. The appellant-accused is now taking undue advantage of the same. Learned APP submits that the prosecution has proved its case beyond reasonable doubt. The appeal is liable to be dismissed.

9. To substantiate his contention, learned APP has placed reliance on the following cases:

1. Decision of Delhi High Court dated 26.05.2011 in Crl. A. 2/2011 & Crl.M. (Bail) 1/2011 [Ram Babu v. State (Govt. of NCT) of Delhi]
2. Namdeo v. State of Maharashtra, reported in (2007) 14 SCC 150

10. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses, the

statement of the appellant-accused recorded under Section 313 of the Criminal Procedure Code, the evidence of the appellant-accused himself and the impugned judgment. After giving our thoughtful reflection to the matter, we are wholly satisfied that there is no substance in this appeal and it must be dismissed.

11. We have two versions of the same incident which had taken place on 19.02.2011 at about 4.00 p.m. in the agricultural field of the parents of PW 1 Bhartibai.

PW 1 Bhartibai was at the threshing floor of the field along with her children and parents. At that time the appellant-accused came there and started insisting her to return to the matrimonial home. She had refused to go with him. The appellant-accused got annoyed, stabbed their daughter near her neck with the knife. The appellant-accused also gave blows of knife on the cheek and shoulder of PW 1 Bhartibai. Though the appellant-accused tried to run away from the spot, the villagers apprehended him and took him to the police station.

As per the defence version, the appellant-accused had

insisted PW 1 Bhartibai to return to her matrimonial home after the marriage of her uncle is performed. PW 1 Bhartibai therefore got annoyed. She made a statement of killing herself and her children instead of returning to her matrimonial home. She had thereafter brought a knife from the hut itself and inflicted injuries with the use of that knife on the neck of her small daughter Pooja and further self inflicted injuries on her cheek and shoulder.

12. There are arguments and counter arguments as to which story is true and believable. The trial court has accepted the prosecution story and discarded the defence version. Learned counsel for the appellant-accused has tried to convince us as to how the defence story is true. He submits that the trial court has not considered the evidence of the appellant-accused on oath. He submits that it was impossible for the appellant-accused to carry the said knife in his pocket as alleged. PW Bhartibai herself got annoyed because of the insistence of the appellant-accused to return to the matrimonial home. Thus, she stabbed her own daughter and also self inflicted injuries on cheek and shoulder by making a statement of killing herself and her children instead of returning to the matrimonial home. Learned counsel submits that

PW 1 Bhartibai was a short tempered woman and she left her matrimonial house along with her belongings and children as of sudden, without even intimating the appellant-accused. This conduct on her part indicates her hypersensitive nature. Thus, the defence version appears to be truthful.

13. In the backdrop of these statements, it is necessary to consider certain facts. PW 1 Bhartibai got married with the accused six years prior to the incident. They have got one son and one daughter out of their marital wedlock. Their son Krish was five years of age and deceased Pooja was one year old at the time of the incident. After marriage, PW 1 Bhartibai started residing with the appellant-accused at village Kharde. It has come in her evidence that after marriage, the appellant-accused used to beat her under the influence of liquor. She had gone to her parents' house to attend the marriage ceremony of her uncle Dipak at village Borale. She had come to village Borale 10 to 12 days before the said marriage. She has admitted in her cross-examination that while going to village Borale, she had brought with her all her belongings such as utensils and other household articles. She has further deposed that after 4/5 days, her husband appellant-accused came

at village Borale and started insisting her to come back to the matrimonial house. Though she told him that she will come after the marriage ceremony of her uncle, the appellant-accused, who was under the influence of liquor, started insisting her to come with him forthwith. She has deposed that even the appellant-accused had tried to throttle her neck with his hands. The appellant-accused even gave threats to her that he would kill her with knife and thereafter he left the place.

14. PW Bhartibai was in the village of her parents and she was under protection of her parents. She must be knowing that against her will, the appellant-accused could not take her with him forcibly. On the other hand, the appellant-accused was feeling helpless. He got annoyed because PW Bhartibai left the matrimonial house without his permission along with her belongings and the children. The appellant-accused had insisted her to come along with him forthwith and also tried to throttle her neck with the help of his hands. The appellant-accused had given threats to her. After 2/3 days, the appellant-accused went to the threshing floor of the field of the parents of PW Bhartibai. She was present there along with her children and parents. The appellant-

accused again started insisting her to come along with him. She refused to come with him. The appellant-accused thereafter assaulted his own daughter, stabbed near her neck with the knife and also gave blows of knife on the cheek and shoulder of PW Bhartibai. We find the evidence of PW Bhartibai trustworthy, reliable and consistent.

15. There was a motive for the appellant-accused to stab his own daughter and his wife PW Bhartibai. The appellant-accused had repeatedly insisted PW Bhartibai to come along with him and on her refusal, got annoyed. Some 2/4 days prior to the incident, he had made one attempt of physical assault and in the second attempt, he went in the field along with a knife. The assault was predetermined. It appears that the appellant-accused had assaulted his own daughter out of frustration. As against this, PW Bhartibai was in the house of her parents, well protected. She had returned to her parents' house along with her belongings and the children in one hired auto rickshaw from her matrimonial home. It appears that she had been to her parents' house with some determination. It is very unlikely on her part and there was no reason for her to make an assault on her own daughter and to cause self injuries

with the help of a knife. We are therefore not inclined to accept the defence version. The trial court has rightly believed the prosecution story.

16. The evidence of PW Bhartibai is well corroborated by the evidence of her father PW 2 Gulab Tulshiram Koli. The *Muddemal* article knife was seized from the spot itself while drawing spot panchanama Exhibit 27. PW 7 Dr. Jaimala Vasave conducted *postmortem* examination on the dead body of Pooja. She has noted two injuries on the dead body; (i) CLW on right side of neck – deep wound about one inch (punctured wound) and (ii) CLW cervical region – right lateral side ad-measuring 5 cm x 3 cm x 5 cm. PW 7 Dr. Jaimala Vasave has also noted two injuries on the person of PW Bhartibai, i.e. (i) CLW on right cheek ad-measuring 4 cm x 4 cm x 3 cm and (ii) CLW on left shoulder region ad-measuring 5 cm x 6 cm x 5 cm. PW 7 Dr. Jaimala Vasave has also opined that the injuries on the person of the dead body of Pooja so also on the person of PW Bhartibai are possible by the *Muddemal* article knife before the court. The C.A. report Exhibit 54 speaks about human blood on Exhibit 1 knife. Exhibits 6 and 7 i.e. the blouse and sari of PW Bhartibai also found stained with blood and it was human

blood. PW Bhartibai had sustained bleeding injuries on her person due to the assault on her made by the appellant-accused by using knife. Furthermore, her daughter was lying in a pool of blood. In view of the same, it is not surprising if her clothes were found stained with blood. So far as the appellant-accused is concerned, after giving blows on the one year old daughter and after assaulting his wife PW Bhartibai, he ran away from the spot of incident and consequently, no blood stains appeared on his cloths.

17. We find no substance in the submission made on behalf of the appellant-accused that it was not possible for the appellant-accused to carry such a big knife in his pocket from his village to the agricultural field of the parents of PW Bhartibai. Learned counsel for the appellant-accused has vehemently submitted about the role of the interpreter in the midst of the cross-examination of PW Bhartibai. However, the appellant-accused has not raised any objection about appointment of the interpreter and the further cross-examination of PW Bhartibai recorded with the help of the interpreter.

18. So far as the admission given by PW Bhartibai in her cross-examination about her unconsciousness and regaining consciousness on the next day morning, we find no substance in the submission that the contents of the FIR have been dictated by some other person. PW Bhartibai has narrated the incident in detail and therefore, such a stray admission during cross-examination is having no significance. PW Bhartibai has admitted the contents of the FIR Exhibit 19 as narrated by her and it bears her thumb impression.

19. So far as the two cases relied upon by learned counsel for the appellant-accused are concerned, those cases are general cases of appreciation of evidence and hardly concerned with the facts and circumstances of the present case.

20. To sum up, the evidence of PW Bhartibai inspires confidence. Her evidence is well corroborated. It leaves absolutely no iota of doubt in our minds that the appellant murdered his own daughter Pooja on the date, time and place as alleged by the prosecution. The evidence of recovery of knife and the existence of motive provide a very strong corroboration to the evidence of PW

Bhartibai. Hence, we proceed to pass the following order :

ORDER

- I. Criminal Appeal No. 219 of 2014 is hereby dismissed.
- II. Criminal Appeal No. 219 of 2014 is accordingly disposed off.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)

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