

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

CRIMINAL APPEAL NO. 544 OF 2019

Santosh Mahadev Atkar,
Age: 35 years, Resident of
Vitthal Hospital Servant Quarter,
Room No. 17, Pandharpur,
Tal. Pandharpur, District Solapur
(In Jail)

...Appellant
Original Accused

Versus

The State of Maharashtra
(Through City Police Station,
Pandharpur)

...Respondent
Original Complainant

Mr. Sarang Aradhya for the Appellant

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

TUESDAY, 2nd FEBRUARY 2021

ORAL JUDGMENT :

1 Heard learned counsel for the parties.

2 The appellant has impugned the judgment and order dated 1st
July 2016 passed by the learned Additional Sessions Judge, Pandharpur in

Sessions Case No. 13/2014, convicting and sentencing the appellant as under :

- for the offence punishable under 304, Part II of the Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default of payment of fine, to suffer simple imprisonment for 6 months;
- for the offence punishable under Section 201 of the Indian Penal Code, to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.3,000/-, in default of payment of fine, to suffer simple imprisonment for 3 months.

Both the aforesaid sentences were directed to run concurrently.

3 A few facts as are necessary to decide the case are as under :

The appellant is the husband, who was married to Manisha (deceased) on 15th December 2005. From the said wedlock, the appellant and Manisha were blessed with a daughter-Rohini. The appellant and Manisha were residing in the Servants' Quarters of Vitthal Hospital at Pandharpur along with the appellant's mother, who was serving in the said Hospital. According to the prosecution, the appellant was suspecting Manisha's character, as a result of which, there used to be frequent quarrels

between them. The incident is stated to have taken place on 19th December 2013 at about 6:00 a.m. It is the prosecution case that Manisha was leaving the house on the said date and time, without preparing tea, on account of which, there was exchange of words between the appellant and deceased-Manisha. As the appellant was suspecting Manisha's character and as she refused to make tea for the appellant, the appellant is alleged to have given a blow on Manisha's head from behind, with a hammer. The said incident is alleged to have been witnessed by Rohini (appellant and Manisha's daughter), who, at the relevant time, was aged 6 years. It is the prosecution case that soon after Manisha was assaulted, the appellant gave her a bath, wiped the blood-stains from the spot and thereafter took Manisha to Vitthal Hospital. As Manisha's condition was critical, the doctor who treated Manisha asked the appellant to shift Manisha to the Civil Hospital, Solapur. Pursuant thereto, Manisha was shifted to the Civil Hospital, Solapur. Throughout, Manisha's condition was critical and she was unable to speak and eventually on 25th December 2013, Manisha succumbed to her injury.

In the meantime, i.e. on 19th December 2013, Manisha's uncle-Macchindra Waghmare (PW 4), on learning that Manisha was admitted to the hospital, immediately rushed to the hospital i.e. Vitthal Hospital, where

the appellant informed Macchindra that he had assaulted Manisha. Pursuant thereto, Macchindra Waghmare (PW 4) lodged a complaint with the Pandharpur Police Station. On registration of the FIR, investigation commenced, statements of witnesses were recorded, panchanamas were drawn and after investigation, charge-sheet was filed as against the appellant for the offence punishable under Section 302 and 201 of the Indian Penal Code, in the Court of the learned Magistrate at Pandharpur.

The said offence being Sessions triable, the case was committed to the Court of Sessions at Pandharpur. Charge was framed against the appellant for the aforesaid offence, to which, the appellant pleaded not guilty and claimed to be tried. The prosecution, in support of its case, examined 12 witnesses. Thereafter, Section 313 statement of the appellant was recorded. The learned Judge, after hearing the parties, was pleased to convict the appellant for the offence as stated in para 2 hereinabove.

4 Learned counsel for the appellant assailed the judgment on several counts. He submitted that the prosecution case essentially rests on extra-judicial confession made by the appellant to PW 4-Macchindra Waghmare; PW 6-Nandabai Waghmare and PW 7-Dr. Bajrang Dhotre. He

submitted that the said evidence is a weak piece of evidence and that the appellant cannot be convicted only on the basis of the extra judicial confession made to the said witnesses. He further submitted that as far as the child witness i.e. PW 5-Rohini is concerned, the trial Court has discarded her evidence, for the reasons set-out in the judgment. He submits that the incident was a result of grave and sudden provocation offered by deceased-Manisha, when she refused to make tea for the appellant, and as such, the sentence of the appellant be reduced to the period already undergone by the appellant.

5 Learned A.P.P supported the judgment and order of conviction and sentence and prayed for dismissal of the appeal. He submitted that the reasons given by the learned Judge for discarding the evidence of the child witness i.e. PW 5-Rohini, are flimsy and cannot be sustained. He submitted that the evidence of PW 5-Rohini inspires confidence and that she has not buckled in her cross-examination. He submits that Rohini's evidence ought to be considered, more particularly, when she was a natural witness, who was present at the spot and had seen the appellant assaulting her mother-Manisha (deceased). He further submitted that there is recovery of a blood stained hammer at the instance of the accused, apart from the extra judicial confessions made by the appellant to PW 4-Macchindra, PW 6-Nandabai

and PW 7-Dr. Bajrang Dhotre. He further submitted that the appellant after assaulting the deceased on a flimsy ground of refusing to make tea for him, bathed the deceased, cleaned the blood from the spot and as such wasted valuable time in taking Manisha to the hospital, resulting in her death.

6 Perused the papers. Having heard learned counsel for the appellant and the learned A.P.P at length and after considering the submissions canvassed by them and after perusing the evidence on record, I am of the opinion that no interference is warranted in the impugned judgment and order, for the reasons set-out hereunder;

As noted above, the prosecution allegation as against the appellant is that the appellant would suspect the character of his wife-Manisha. The said fact is borne out from the evidence of PW 4-Macchindra (Manisha's uncle, who is the first informant in the said case) as well as the evidence of PW 6-Nandabai (Manisha's mother). Both the said witnesses have categorically in their evidence stated about the ill-treatment meted out by the appellant to Manisha i.e. of suspecting her character and of physical assault. The incident in question is alleged to have taken place on 19th December 2013 at about 6:00 a.m. at the Servants' Quarter, where the appellant was staying with Manisha and their daughter Rohini. The

said Servants' Quarter belonged to the appellant's mother, who was working in the hospital. It is not in dispute that at the relevant time, the appellant's mother was not present in the house. As noted above, there is also an extra-judicial confession made by the appellant to PW 4-Macchindra, PW 6-Nandabai and PW 7-Dr. Dhotre (Medical Officer at Vitthal Hospital, Pandharpur).

7 Coming to the evidence on record with respect to ill-treatment meted out by the applicant to Manisha and the extra-judicial confession made by the applicant, the relevant witnesses in this regard are PW 4-Macchindra and PW 6-Nandabai. As far as PW 4-Macchindra's evidence is concerned, he has stated that deceased-Manisha was his niece; that she was married to the appellant on 15th December 2005; that they were living in a Servants' Quarter of Vitthal Hospital for about 3 years prior to the incident; that Rohini (appellant and Manisha's daughter) was also residing with them; that the appellant was suspecting Manisha's character and would quarrel with her on account of the same and that on 19th December 2013, the appellant assaulted Manisha on her head, resulting in serious injuries, pursuant to which, the appellant admitted Manisha to Vitthal Hospital. PW 4-Macchindra has further stated that Manisha was shifted from Vitthal Hospital to Civil Hospital, as she was seriously injured. He

has stated that Manisha was unconscious and had sustained injuries on her head. He has further stated that when he questioned the appellant as to what had happened, the appellant disclosed to him that at 6:00 a.m, he had asked Manisha to prepare tea and that when she refused to prepare tea, he assaulted her with a hammer on her head, pursuant to which, he brought her to the Civil Hospital. PW 4-Macchindra, on the basis of the said disclosure made by the appellant, lodged a complaint/FIR, as against the appellant with the Pandharpur Police Station. The said FIR is at Exhibit-23. Although several suggestions were made to the said witness, nothing is elicited in his cross-examination to disbelieve the said witness. A suggestion was also made to the said witness that the deceased fell, as a result of which, she sustained an injury on her head, which suggestion was denied by the witness. It was also brought on record that the appellant had filed a complaint against the said witness and Manisha's parents in 2010, as a result of which, they were falsely implicating him in the said case, which suggestion was also denied by the said witness.

8 The evidence of PW 6-Nandabai (Manisha's mother) is similar to the evidence of PW 4-Macchindra with respect to the ill-treatment meted out by the appellant to her daughter-Manisha i.e. the appellant used to suspect Manisha's character; would quarrel with her and also assault her.

PW 6-Nandabai has stated that when she, along with others, visited the Civil Hospital, Solapur, they learnt that Manisha was serious; that she was not opening her eyes nor could she talk. She has stated that when she asked the appellant what had happened, the appellant disclosed that in the morning at 6:00 a.m, as Manisha had not given him tea and as he suspected her character, he hit her on her head, resulting in Manisha sustaining an injury. Again, nothing material is brought in the cross-examination, so as to disbelieve or discredit this witness. The suggestions made to the said witness i.e. PW 6-Nandabai have been categorically denied by her i.e. that Manisha was injured in an accident; that no such disclosure was made by the appellant to her; and that they had lodged a false complaint against him because of an earlier complaint lodged by the appellant against them in 2010. Thus, from the evidence on record, it is evident that the appellant would suspect Manisha's character and that the appellant had made an extra-judicial confession to PW 4-Macchindra and PW 6-Nandabai that he had assaulted Manisha.

9 It is pertinent to note that the evidence of both the aforesaid witnesses i.e. PW 4-Macchindra and PW 6-Nandabai is, duly corroborated by an independent witness i.e. PW 7- Dr. Bajrang Dhotre. PW 7- Dr. Dhotre was working as a Medical Officer at Vitthal Hospital, Pandharpur at

the relevant time. He has stated that on 19th December 2013 at about 7:00 a.m., Manisha was admitted in the hospital; that when he examined her, he found that she was in a serious condition, as she had suffered heavy bleeding. He had stated that the said patient was brought by Santosh Atkar (appellant). He has further stated that the appellant informed him i.e. gave history that he had hit Manisha at 6:30 a.m. in the morning with a hammer at the residential quarters of Vitthal Hospital. PW 7-Dr. Dhotre has stated that the said history given by the appellant was reduced into writing by him in the appellant's words. PW 7-Dr. Dhotre has identified his handwriting on the case papers which are exhibited at Exhibit-28. Exhibit 28 i.e. case papers of Manisha read as under :

“Patient brought by Mr. Santosh Mahadeo Aatkar c alleged history an assault, he hited by hammer (हातोडा), today morning at about 6:30 A.M.; at Vitthal Hospital residence quarters.”

PW 7- Dr. Dhotre found the following injuries on Manisha :

i) C.L.W. measuring 4 Cms. X 3.5 Cms., oozing of blood was present. It was present at left parietal region, 5 Cms. away from the midline, and was placed anterio posteriorely. On clinical examination it was depressed fracture of skull.

ii) C.L.W. measuring 3 X 1 Cm. was vertical in direction, was muscle deep and blood mark was present. It was

situated at medial aspect of left forearm in its lower 1/3rd part.

iii) C.L.W. measuring 2 X 0.5 Cm. was vertical in direction, and blood mark was present, and was at medial to injury No.2 and it was parallel to it.

iv) C.L.W. measuring 1 X 0.5 Cm. was horizontal in direction, and blood mark was present and was at dorsum of left little finger on its terminal part of 1st digit.

v) Haematoma measuring 5 X 3 Cms. was tender and was at dorsum of right hand.

vi) Abrasion 2 X 1 Cm. was red in colour and was at right patellar region. It is simple in nature.

All injuries are within 6 hours old. Injury Nos. 1, 2, 3, 4 was caused by hard and blunt and hard and rough object. Injury Nos. 5 and 6 are caused by hard and rough object.”

PW 7-Dr. Dhotre advised CT-Scan of the patient-Manisha and asked her to be shifted to a higher center for further treatment, pursuant to which, Manisha was taken to the Civil Hospital at Solapur. Thus, the extra-judicial confession made by the appellant to PW 4-Macchindra and PW 6-Nandabai is duly corroborated by PW 7-Dr. Dhotre and is supported by Exhibit 28 i.e. the case papers. It appears that after Manisha was shifted to the Civil Hospital at Solapur, efforts were made by the police to record her statement, however, she was not found in a condition to record her

statement. On 25th December 2013, Manisha succumbed to her injuries. The cause of death was stated to be head injury. Column 19 of the post-mortem report reveals the following internal injuries :

“(i) Underscalp haematoma present over left side fronto parieto tempora occipital region size 13 cm x 7 cm;

(ii) Comminuted depressed fracture of left parietal bone of size 4 cm x 3.5 cm;

(iii) - Extradural haematoma present over left parietal region about 50 gms,

- Subdural haematoma present all over brain about 100 gms;

-Subarachnoid haemorrhage present all over brain surface as thick blood film,

- Meninges torn,

- Brain congested & oedematous.”

10 Thus, it appears that the appellant assaulted Manisha on her head with a hammer from behind, resulting in a grievous injury on the head and other injuries on her person. The situs of injury is consistent with the evidence on record.

11 As far as PW 5-Rohini is concerned, the learned Judge has discarded her evidence as it was recorded belatedly i.e. after 11-12 days of the incident. It is pertinent to note that the incident had taken place on 19th December 2013 and that Manisha succumbed to her injuries on 25th December 2013. PW 5-Rohini was aged 6 years at the relevant time and it appears that on 30th December 2013, Rohini's statement was recorded i.e. after 5 days of her mother's demise. Rohini's 164 statement was also recorded in the said case on 15th January 2014. A perusal of the evidence of PW 5-Rohini shows that she was present in the house at the relevant time and had witnessed the quarrel between her father (appellant) and mother (Manisha). She has stated that because of the quarrel, she woke up and saw her father assaulting her mother with a hammer on her head and that there was blood on the floor. She has stated that her father, after cleaning the floor, bathed her mother and thereafter took her to the hospital. She has also identified the hammer (Article A), which was seized at the instance of the appellant from the house. A perusal of the cross-examination shows that Rohini has not buckled in her cross-examination despite a gruelling cross and has stuck to what she has stated in her examination-in-chief. She has denied the suggestions given in the cross-examination i.e. of not witnessing the incident. The evidence of this witness i.e. Rohini, aged 6

years, inspires confidence and cannot be disbelieved. There is nothing in the cross-examination of this witness to disbelieve her presence in the house at the relevant time. Delay, *per se*, of a few days in recording her statement, in the facts, cannot be said to be fatal. It will have to be borne in mind, first the trauma of a young child, aged 6 years on seeing her mother being assaulted by her father; the trauma of seeing not only the assault but of seeing her mother lying there for an hour, during which, her father (appellant) gave her mother a bath, to clean the blood and also cleaned the spot. Manisha succumbed to her injuries on 25th December 2013 and Rohini's statement was recorded on 30th December 2013 and 164 statement on 15th January 2014. The trauma of a child losing a loved one in such a brutal way, will have to be borne in mind. Having regard to the facts, in these circumstances, delay in recording her statement cannot be said to be fatal. Rohini's presence cannot be doubted. Her evidence inspires confidence. She is a natural witness, who woke up on hearing the quarrel between her parents and witnessed the assault on her mother by her father, and saw her father cleaning the spot, soon thereafter.

12 The spot panchanama reveals that the room in which the incident took place was one room with an open kitchen and a bathroom. Thus, evidence on record shows that the incident took place in the room,

and as such Rohini could have clearly witnessed the same. The Panch to the spot panchanama i.e. PW 2-Krishna Kale has given the description of the room and what was seen. He has stated that when he entered the room, he found that blood stains had been wiped off with cloth; that on entering the bathroom, he saw blood stained blouse, petticoat, chaddar and gunny bag lying there. The said witness corroborates PW 5-Rohini, with respect to the spot of incident being cleaned.

13 Coupled with the aforesaid evidence, there is evidence of recovery of a blood-stained hammer at the instance of the appellant from behind the cooler in his house. The evidence of PW 3-Krushna Kale, panch to the memorandum of panchanama as well as PW 12-Suresh Thorat, API, support the recovery of the said blood-stained hammer at the instance of the appellant. It appears from the evidence of PW 8-Vilas Salunke (photographer), who had taken photographs of the spot that there was no blood seen at the spot on the floor. The said photographs were taken soon after the incident. The said witness was examined to show that the appellant had wiped the blood from the spot, soon after the incident, so as to destroy evidence.

14 Learned counsel for the appellant relied on the judgment of the Apex Court in the case of ***Madanlal vs. State of Punjab***¹. He submitted that in the said case, the accused was convicted for the offence under Section 304 Part (II) of the Indian Penal Code and was sentenced to suffer imprisonment of 4 years. He submitted that as the accused's act was a result of grave and sudden provocation, his sentence was reduced to the period undergone. According to the learned counsel for the appellant, since the appellant in the present case, acted under grave and sudden provocation, the appellant's sentence also be reduced to the period undergone by him.

15 A perusal of the said judgment relied upon by the learned counsel is clearly distinguishable and has no bearing on the facts in the present case. The case before the Apex Court was that the appellant therein, had caused serious injury to the deceased with a handle of a pump; the motive of the crime was that the accused therein was hungry for 3 days and when he asked for food from the deceased Sewadar of the 'Dera' where free food was being supplied, the deceased refused and consequently, the appellant, in a fit of anger, attacked the deceased on being deprived of the

1 1992 Supp (2) SCC 233

power of self control. Admittedly, in that case, the appellant and the deceased were not known to each other and the motive was hunger for 3 days. In the present case, the appellant was suspecting his wife's character and would assault her on account of the same. On the day of the incident on being refused tea, the appellant assaulted Manisha with a hammer. The deceased-Manisha, by refusing to make tea for the appellant, by no stretch of imagination, can be said to have offered grave and sudden provocation for the appellant to assault her, much less, such a brutal assault.

16 It would not be out of place to observe that a wife is not a chattel or an object. Marriage ideally is a partnership based on equality. More often than not, it is far from that. Cases such as these, are not uncommon. Such cases, reflect the imbalance of gender – skewed patriarchy, the socio-cultural milieu one has grown up in, which often seeps into a marital relationship. There is imbalance of gender roles, where wife as a homemaker is expected to do all the household chores. Emotional labour in a marriage is also expected to be done by the wife. Coupled with these imbalances in the equation, is the imbalance of expectation and subjugation. Social conditions of women also make them handover themselves to their spouses. Thus, men, in such cases, consider themselves as primary partners and their wives, 'chattel'. To quote from a study, 'The

Man Who Mistook His Wife For Chattel’ by Margo Wilson and Martin Daly:

“by ‘proprietary’, we mean first that men lay claim to particular women as songbirds lay claim to territories, as lions lay claim to a kill, or as people of both sexes lay claim to valuables. Having located an individually recognizable and potentially defensible resource packet, the proprietary creature proceeds to advertise and exercise the intention of defending it from rivals. Proprietariness has the further implication, possibly peculiar to the human case, of a sense of right or entitlement”.

This medieval notion of the wife being the property of the husband to do as he wishes, unfortunately, still persists in the majority mindset. Nothing but notions of patriarchy. Thus, the submission of the learned counsel for the appellant that the deceased by refusing to make tea for the appellant offered grave and sudden provocation, is ludicrous, clearly untenable and unsustainable and as such deserves to be rejected. In the facts, the appellant not only assaulted his wife, but also after assaulting her, wasted precious and crucial time i.e. around one hour, in covering his act by destroying evidence, by wiping the blood from the spot and bathing Manisha before taking her to the hospital. If the appellant had rushed Manisha to the hospital, soon after the incident, possibly her life could have been saved and Rohini would not have lost her mother.

17 Considering the overwhelming evidence on record pointing to the complicity, no infirmity can be found in the impugned judgment and order convicting and sentencing the appellant for the offences mentioned in para 2 hereinabove. The facts on record also do not warrant any reduction in the sentence awarded to the appellant. Accordingly, the appeal is dismissed.

REVATI MOHITE DERE, J.