

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.75 OF 2016**

Sadashiv Gopal Jadhav, C/6379,
Age, 42 years, Occupation : Convict,
Presently lodged at K.C.P Kalamba, Kolhapur. ... Appellant

V/s.

The State of Maharashtra,
At the instance of Gadhinglaj Police Station,
Dist.- Kolhapur, in respect of
C.R.No.179/2013. ... Respondent

Mr. Kartik Garg, Appointed Advocate for the Appellant.

Mr. Arfan Sait, APP for the Respondent - State.

**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

JUDGMENT RESERVED ON : 16th SEPTEMBER 2021

JUDGMENT PRONOUNCED ON : 8th DECEMBER 2021

JUDGMENT : (Per Sadhana S. Jadhav, J.)

1. The appellant herein seeks to challenge the judgment and order dated 15th June 2015 passed by the learned Additional Sessions Judge, Gadhinglaj in Sessions Case No.34 of 2013 thereby convicting him for the offence punishable under section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rupees Five Thousand), in default, to suffer imprisonment for life.

2. Such of the facts necessary for the decision of this appeal are as follows:

(i) That, the appellant was addicted to alcohol. He was unemployed. After demise of his first wife he got remarried but they were not cohabiting since his wife was diagnosed HIV positive. Hence, he was staying with his old aged parents. His son Shashank was staying with the brother of the accused viz. Mahadeo (PW.1).

(ii) The members of the family were holding the ration card jointly, however, in order to get the benefit of 'Shravan Bal Yojana', the ration cards were separated and hence, the name of the accused was directed to be deleted from the ration card of his parents. This act of his parents had enraged the accused.

(iii) On 10th September 2013, at about 8.00 am, Shashank had been to the house of his grandfather to fetch the offerings for Lord Ganesh. He had knocked the door of the house but to no avail. In order to know the reason for not opening the door, Mahadeo went to the house of his parents, he knocked the door but there was no response. PW.1 Mahadeo was constrained to approach the Police Patil and get help of Police Patil. Then, Shantabai – PW.5 - the mother of the accused opened the door. She drew attention of everybody to the kitchen room.

Mahadeo and others went in the kitchen room and to their utter dismay his father Gopal was lying in a pool of blood near the cot. Upon enquiry, P.W.5 disclosed to Mahadeo that the accused was enraged with his father on account of deletion of his name from the ration card, he picked up a quarrel with his mother. Accused had dragged his father, who was sleeping on the cot and struck his head on the cot. The accused had fled from there. P.W.1 lodged the report at the police station on the basis of which Crime No.179 of 2013 was registered against the accused for the offence punishable under section 302 of the Indian Penal Code.

(iv) At the trial, the prosecution examined 12 witnesses to bring home the guilt of the accused. The prosecution has placed implicit reliance upon P.W.1, P.W.5 and P.W.10.

3. P.W.1 – Mahadeo Jadhav has deposed before the Court in consonance with the FIR which is marked at Exh.9. He has deposed before the Court that the name of the accused was deleted from the ration card to avail the benefit of ‘Shravan Bal Yojana’. On 10th September 2013 at about 8.00 am, the family had installed the Idol of Lord Ganesh. On 2nd day, there was no response to the call given by

Shashank or P.W.1 and therefore, P.W.1 was constrained to call upon the Police Patil Shamrao Kamble, Vijay Mohite, Tanaji Mohite and Sarpanch Malgonda Gadivadar. His mother had opened the door and upon enquiry, she had led the Police Patil to the dining room where the father of accused and P.W.1 was seen lying in a pool of blood under the cot. Upon further enquiry with the mother, they learnt that the accused had picked up a quarrel with his father on account of deletion of his name from the ration card. The accused had dragged his father from the cot due to which he fell on the tiles, sustained injury to his head which turned out to be fatal. The deceased was about 70 years old and therefore, he used to stay indoors, moreover, the vision of his left eye had diminished. It is elicited in the cross-examination that his mother had only led the Police Patil to see what had happened as she was dumbfounded by the scene of death of her husband.

4. P.W.5 – Shantabai Jadhav happens to be the wife of the deceased and mother of the accused and P.W.1. She is an eyewitness to the incident. She has deposed before the Court to the effect that she was residing alongwith her husband and the accused in one house whereas P.W.1 was residing in a separate house. Shashank the son of accused is also residing with P.W.1. She has candidly stated that her son

i.e. the accused was addicted to alcohol. P.W.5 has further clarified that on the day of incident the accused had accompanied her husband to bring the Idol of Lord Ganesh in the house but at night he raised a quarrel and thereafter, he dragged her husband from the cot and struck his head on the tiles. Her husband had died and was lying in a pool of blood there. According to her, the accused had also assaulted her on the hand and therefore, she maintained silence. The accused slept in the same house at night. She had not opened the door when Shashank came but she opened the door when the panchas came there and then the accused fled from the house. When she tried to restrain the accused from fleeing he had again assaulted her on her hand. The reason assigned by her for not opening the door is that the accused was sleeping near the door in the front room of the house. It is elicited in the cross-examination that the deceased had lost the vision of one eye, therefore, he could not see. The deceased remained indoors because of his old age. The wife of P.W.1 used to cook food for them in their residential house and then returned to her house. P.W.5 has admitted that she has a very weak eyesight and therefore, she is using spectacles. That, the accused was working at Ningurde. She has voluntarily stated before the Court that since P.W.1 resides far from her

house she could not inform him about the incident of assault on her husband. She has denied the suggestion that her husband had an accidental fall when he went to answer nature's call in the middle of the night or that his leg had entangled with the firewood which she kept near the hearth. In the presence of the accused she could not raise hue and cry at the time of the incident and the incident had not come to light till the next day.

5. The testimony of P.W.5 could not be shattered by way of cross-examination. Her evidence is in the nature of direct evidence as she happens to be an eyewitness to the incident.

6. P.W.6 – Dr. Desai had performed autopsy on the dead body of the deceased Gopal. He had noticed 7 injuries. The injuries noticed by P.W.6 are as follows :-

- “(1) fracture mandible both sides;
 - (2) CLW 3x1x1 cm in size below the right eye irregular margin;
 - (3) contusion over both zygomatic region about 3x2 cm brownish black colour;
 - (4) CLW of size over at frontal (side of forehead) region about 2x1.1 cm bleeding present;
 - (5) CLW of size 2x1 over left temporal region;
 - (6) Contusion present about 10x10 cm over occipital parietal region;
 - (7) bruise over right shoulder joint.
- Cataract left eye and right eye opacity in right eye.
Fracture with right side 2nd to 7th ribs at midaxillary line.”

7. The cause of death as opined by P.W.6 is head injury with sub-dural hemorrhage. P.W.6 has admitted in the cross-examination that the injury was grievous and death could have been caused. There was no vision to his left eye. P.W.6 has denied the suggestion that the fatal injury caused to the head was possible by a fall from the cot. The fracture to the rib was possible by a wooden log or stone. However, it is admitted that Gopal was suffering from osteoporosis.

8. The prosecution has examined P.W.10 – Tanaji Mohite. It appears that he was a member of the Dispute Resolution Committee at village level at Atyal. He was acquainted with the deceased and the accused. The deceased had complained to him on several occasions about his son i.e. the accused being an alcoholic. He was also told that the accused was quarreling because of deletion of his name from the ration card. That, P.W.10 had even admonished the accused on 4 to 5 occasions. For some period thereafter he behaved properly after being admonished but continued to quarrel with his father intermittently.

9. On the day of the incident, P.W.10 was informed by the Police Patil that there was an untoward incident in the house of Gopal Jadhav and therefore, he accompanied the Police Patil and other

villagers to the house of the accused. His evidence is corroborated by the testimony of PW.1 and PW.5 which shows that PW.5 had led all of them to the room where the deceased was lying in a pool of blood. All that is elicited in the cross-examination is that Gopal had not filed any written complaint to him.

10. PW.12 – Anil Kadam happens to be the investigating officer. He has deposed before the Court the steps taken by him in the course of investigation. According to him, the accused was arrested at 4.35 pm on 11th September 2013. At the time of arrest he was barely clad i.e. he was only wearing an underwear. He has proved the omissions and contradictions in the evidence of witnesses. More particularly, the evidence of PW.5 – Shantabai to the extent that she had not stated in her previous statement that she was assaulted by the accused on her hand for which she had taken treatment from Dr. Joshi.

11. This is a case of direct evidence. The unfortunate mother was an eyewitness to the incident in which her own son had caused homicidal death of her old aged husband. The cause of the assault is shown as deletion of the name of the accused from the ration card but upon perusal of papers of investigation it appears that in order to avail

the benefits of 'Shravan Bal Scheme', the names of all three sons of the deceased were deleted from the ration card. P.W.10 has proved that the deceased had intermittently complained to him that the accused is alcoholic and raises quarrels under the influence of alcohol when he ventilates his grievance against his father.

12. In the State of Maharashtra, 'Shravan Bal Scheme' is initiated by the Government for the benefit of the old aged citizens under which they are entitled to a pension in the form of financial help. The beneficiaries are those who are included in the BPL list (Below Poverty Line). The people falling in the 'B' category receive Rs.400/- per month from the State Government and Rs.200/- from the Central Government under the 'Indira Gandhi Old Age Pension Scheme'.

13. The travesty of the case is that 'Shravan Bal' is a character in the Hindu mythology of 'Ramayan' where a child called Shravan had immense love for his parents and was taking his old aged parents in a sling-pole to the pilgrimage. He is known in the Hindu text for his filial piety towards his parents. In the present case, the parents, in order to receive the benefits under the 'Shravan Bal Scheme', had deleted the

names of their sons from the ration card and the father who was weak, suffering from osteoporosis was killed by his son. The accused had deterred all his filial bonds with his father under the influence of alcohol. There is no reason for the Court to disbelieve the eyewitness i.e. the mother of the accused. She was not shattered in the cross-examination. In fact, she was dumbfounded with the shock and therefore, could not disclose any words. The incident had occurred because of the trauma which she suffered and had only led the witnesses to the scene of offence. The accused and his parents were the only people residing in the said house. P.W.5 was about 65 years old with a weak eye sight and the 3rd person was the accused himself.

14. We have arrived at a conclusion that the prosecution has proved its guilt beyond reasonable doubt. The appeal is filed through jail. It is filed in the year 2015 and was admitted in 2016.

15. We had requested the learned counsel Mr. Kartik Garg to espouse the cause of the appellant. He has assisted the Court to the best of his capacity. He is, therefore, entitled for the professional fees as per Rules. Hence, we pass the following order :-

ORDER

- (i) The appeal is dismissed;
- (ii) The conviction and sentence of the accused- appellant passed by the learned Additional Sessions Judge, Gadhinglaj in Sessions Case No.34 of 2013 vide judgment and order dated 15th June 2015 in Crime No.179 of 2013 is upheld;
- (iii) The appellant shall undergo rest of the sentence;
- (iv) The appeal is disposed of on above terms.

(SARANG V. KOTWAL, J)

(SMT. SADHANA S. JADHAV, J)