

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

CRIMINAL APPEAL NO.230 OF 2018

Sangitabai Ramdas Lokhande,
Age : 35 years, Occ. Agri.,
r/o. Sakharvel, Tq. Kannad,
Dist. Aurangabad

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.N.S.Ghanekar, Advocate for appellant
Mr.A.A.Jagatkar, APP for respondent

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.
DATE : OCTOBER 12, 2022**

JUDGMENT :-

The challenge in this appeal is to the order dated 14.02.2018 passed by learned Addl. Sessions Judge, Aurangabad, in Sessions Case No.226 of 2015, convicting the appellant for the offence punishable under Section 302 of Indian Penal Code and consequential sentence of imprisonment of life and directing her to pay a fine of Rs.10,000/-. In default of

payment of fine, the appellant has been directed to undergo simple imprisonment for two months.

2. The appellant was prosecuted for the offence of viricide. The trial Court convicted the appellant with the following reasons:-

“20. In the present case, the prosecution by medical evidence has proved that the death is homicidal. It has also come on record that the accused was along with the deceased, at the time of his death. Therefore, the burden of explaining injuries and cause of death was on the accused, as the same was within her knowledge. The accused has on the contrary, taken false defence that the deceased has sustained electric shock and has fell down on hard and blunt object and has sustained injuries.”

3. It is the case of the prosecution that the appellant was third wife of deceased – Ramdas. The deceased was alcoholic. His first two wives, PW 1 – Laxmibai and PW 4 – Rekhabai, deserted him for no return on account of having been fed up of illtreatment to them by the deceased. The Police Patil of the village informed the Police Inspector, Pishor

Police Station, on 21.08.2012, that the Police Sub-Inspector (P.S.I.) had visited his village Sakharwel, Tq. Kannad, Dist. Aurangabad, by 4.30 p.m. of the same day. He accompanied the P.S.I. to the house of the appellant. The appellant informed them that her husband – Ramdas, died of electrocution, while he (deceased) switched on the water heater. Based on the report lodged by the Police Patil, a case of unnatural death was registered. During enquiry thereof, both PW 1 – Laxmibai and PW 4 – Rekhabai (widows of the deceased) made a written complaint (F.I.R.), alleging therein the appellant to have murdered the deceased – Ramdas, as she wanted to have the land of the deceased transferred in her name.

4. Based on the FIR, the crime, vide C.R. No.88 of 2012, came to be registered. The appellant was arrested. The statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, the appellant was proceeded against by filing charge sheet.

5. The trial Court framed Charge (Exh.11). The appellant pleaded not guilty. The prosecution examined eight witnesses and produced in evidence certain documents to establish the Charge. On appreciation of the evidence in the case, the trial Court convicted the appellant and consequentially sentenced, as stated above.

6. Heard learned counsel for the parties.

7. Mr.N.S.Ghanekar, learned counsel for the appellant, would submit that the case was based on circumstantial evidence. The scene of offence is in the field of the deceased. The Medical Officer, who conducted the post mortem examination (p.m.), admitted that one of the causes of the head injury suffered by the deceased, could be fall on a hard surface. Learned counsel meant to say that the prosecution has even failed to prove it to be a case of homicide. According to him, both the widows of the deceased had a reason to

falsely implicate the appellant, since one of them was to inherit the land of the deceased on his demise, excluding the appellant herein. He, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that the deceased died of head injury. Both the appellant and the deceased were only persons residing together. The scene of offence panchnama is the house of the deceased. It was, therefore, for the appellant to come clean. She was expected of furnishing probable reason that would suggest her to be not the author of the homicidal death of the appellant. The answers given by the appellant to the questions put to her during the examination under Section 313 of the Code of Criminal Procedure (Cr.P.C.), were relied on. According to learned APP, there was no reason to interfere with the impugned order of conviction and resultant sentence.

9. Considered the submissions advanced. Perused the evidence relied on. It is the case based on circumstantial

evidence. We need not make restatement of the parameters for conviction in a case based on circumstantial evidence.

10. Admittedly, the FIR was lodged on the basis of suspicion. The evidence on record indicates that the deceased was alcoholic. He would reside along with the appellant in a marriage-like relationship. His first two wives, PW 1 – Laxmibai and PW 4 – Rekhabai, admittedly, deserted him for no return, since the illtreatment given to them by the deceased became unbearable. The evidence of both these witnesses would, therefore, be of little consequence to bring the appellant even closure to the Charge of murder.

11. PW 2 – Dilip was a witness to the scene of offence panchnama (Exh.23). His evidence suggests that the scene of offence was an open place on the agricultural land of the deceased. This witness was not cross-examined by the prosecution. True, his evidence appears to be inconsistent with the scene of offence panchnama (Exh.23), since the

panchnama delineate a place in the house of the deceased to be the scene of offence. Said panchnama was drawn by the Police Sub-Inspector during enquiry of unnatural death. He was not examined as witness in the case. The appellant was said to have misled the police authorities, since she, allegedly, communicated that the deceased – Ramdas died of electrocution. The Police Patil of the village and the concern Police Officer, to whom the appellant had made such statement, have not been examined. As such, the report (Exh.34/C) given by the Police Patil could not be read in evidence in proof of the contents therein. There is also no evidence to indicate that both the deceased and the appellant were only the persons residing together. The scene of offence was accessible to one and all. The post mortem report (Exh.29) suggests that the deceased died “due to cardiac arrest due to intracranial hemorrhage due to head injury”. There is no evidence to attribute the appellant with the head injury suffered by deceased - Ramdas. Admittedly, the deceased was a boozier. He would consume alcohol daily. PW 5 – Dr.Kamble and

PW 6 – Dr.Shinde, Medical Officers, who conducted the post mortem, testified that the head injury suffered by the deceased might have been caused due to fall on a hard surface.

12. Appreciation of the evidence in the case, thus, lead us to conclude that the prosecution evidence fell short even to prove that the deceased met with homicidal death and if, at all, he met with such death, the appellant is the author thereof. Question No.4 and the affirmative answer of the appellant thereto, in her examination under Section 313 of Cr.P.C., cannot be relied on for the reason that there was no evidence to formulate such question.

13. For all the aforesaid reasons, we are not at one with the findings recorded by learned trial Judge. Interference therewith is, therefore, warranted. In the result, the appeal succeeds. Hence, the following order:-

- (i) Criminal Appeal is allowed.
- (ii) Impugned order of conviction and sentence dated 14th February, 2018 passed by the learned Additional

Sessions Judge, Aurangabad in Sessions Case No. 226 of 2015 is hereby set aside.

- (iii) The appellant stands acquitted of offence punishable under Section 302 of the Indian Penal Code.
- (iv) The appellant be set at liberty forthwith, if not required in any other crime.
- (v) Fine amount, if paid, be refunded to her.

[R.M. JOSHI, J.]

[R.G. AVACHAT, J.]

KBP