

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

**CRIMINAL APPEAL NO. 378 OF 2015**

Ashok Ratan Sonawne,  
Age : 51 years, Occu. Labourer,  
R/o. Awdhan, Tq. & Dist. Dhule.

...Appellant

**Versus**

The State of Maharashtra

...Respondent

.....  
Mr. A. R. Borulkar, Advocate for the Appellant  
Mr. S. J. Salgare, APP for respondent/State  
.....

**CORAM : SMT. VIBHA KANKANWADI  
AND  
RAJESH S. PATIL, JJ.**

CLOSED FOR JUDGMENT : 04<sup>th</sup> AUGUST, 2022  
JUDGMENT PRONOUNCED ON : 24<sup>th</sup> AUGUST, 2022

**JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] : -**

1. Present appellant/accused stood convicted in Sessions Case No. 16/2014 by learned Additional Sessions Judge, Dhule on 16.02.2015 for the offence punishable under Section 302 of the Indian Penal Code for committing murder of his wife. He has been sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/-, in default of payment of fine, to suffer further simple imprisonment for six months.

2. Learned advocate for the appellant has vehemently submitted that the prosecution had examined in all 11 witnesses to bring home the guilt of the accused and since the accused has taken plea of *alibi*, he has examined one person as the defence witness. PW3 - Rohini, who is the daughter-in-law of the accused and deceased, is eye-witness to the incident and PW4 - Vilas is the son of the deceased and accused who lodged the FIR, however, he had not seen the incident but relied upon the story that was told to him by his wife. No doubt, taking into consideration the testimony of PW1 - Dr. Kapileshwar Maganlal Chaudhary - Medical Officer, who had conducted autopsy and had found in all 12 external injuries on the person of deceased and two internal injuries, it can be said that the opinion given by him regarding cause of death as "head injury - due to multiple injuries over head" would amount to homicidal death. However, while appreciating the evidence of PW2 - Tarabai, the panch to the inquest panchanama, it can be seen that the inquest panchanama has been carried out at Civil Hospital and not at the spot. It is not the case of the prosecution that after the deceased was taken to the Civil Hospital she was declared dead. The police had come to the spot and taking into consideration the photographs and the cross-examination of the other witnesses, it can be seen that the deceased had expired on the spot. Section 174 of the Code of Criminal Procedure mandates that the inquest panchanama should be carried out at the spot. PW5 - Walmik is the panch to the seizure panchanama of murder weapon i.e. sickle, which has been referred to as 'कोयता'. He has turned hostile and, therefore, it

cannot be said that the said weapon was seized from the spot though the eye-witness is saying that it was at the spot. PW6 - Rajendra is the panch to the seizure of two chits which were allegedly produced by accused, however, it can be seen that the specimen signature and the handwriting of the accused along with the chits though referred for the handwriting expert's opinion, that opinion was never produced till the end of the trial. The said panchanama is also doubtful. It is said that the said panchanama has been carried out between 20:40 to 21:40 hrs on 15.10.2013. The incident has taken place around 01:30 to 02:00 pm on 15.10.2013. Therefore, it is hard to believe that accused would have fled away along with the chits and then he would have produced it. It appears that the reason behind the said seizure of the chits was to show the motive. PW7 – Yuvraj is the neighbour, however, he turned hostile. PW8 - Bharat is the photographer who had taken the photographs of the dead body at the spot, but he says that he had taken those photographs at about 01:30 pm on 15.10.2013; when the incident itself had taken place at 01:30 pm to 02:00 pm at village Awdhan and the photographer is resident of Mohadi. Therefore, it is hard to believe that he would have taken those photographs at the time he is disclosing. PW9 – Jitendra and PW10 – Eknath are the panch witnesses, however, they both have turned hostile. PW11 – Hemant Patil is the Investigating Officer.

3. It has been further submitted on behalf of the appellant that the testimony of PW3 – Rohini is absolutely not  
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reliable. She has deposed that in the past the accused was convicted by Sessions Court, Nashik, when it was alleged that the appellant had assaulted deceased – wife with knife. In her cross-examination, PW3 - Rohini has stated that she was not knowing about that incident personally, but had heard about it. PW4 - Vilas though stated in the FIR as well as testimony that his father was convicted by Nashik Court when he had allegedly assaulted his mother by knife by raising suspicion over her character, but, then he says that after undergoing that sentence he had joined the company of the deceased and the son about 4 to 5 years prior to the present incident. In his cross-examination, he has admitted that he has not given any document to police to support his statement that his father was convicted. Even PW11 - Hemant Patil (Investigating Officer) has admitted in his cross-examination that he had not collected papers regarding previous conviction of the appellant. Under such circumstance, why the eye-witness wanted to say about the past of the father-in-law which was not within her personal knowledge? It can be seen that she was interested in suppressing the real fact. According to her, she did not pay attention to the quarrel that had taken place between the appellant and the deceased initially as, she thought that it was the routine affair but then, according to her, father-in-law had taken the sickle and after saying to her mother-in-law that he would kill her, had inflicted blow of the sickle over the head of deceased as well as on the neck. When blood started oozing from the head of her mother-in-law, she herself had fallen on the ground and became unconscious. After regaining the consciousness after

sometime, she saw that her father-in-law had left the spot leaving the sickle near the neck of her mother-in-law. In her cross-examination, she has stated that she had regained consciousness within 10-15 minutes and by that time her husband and neighbors had come. Therefore, there is discrepancy between her examination-in-chief and cross. She has admitted in her cross-examination that one Yashwant Bhavre is her cousin brother and though she has denied, he was insisting the deceased to sell out the old house and also to take house from Kalpana – daughter of appellant and deceased, which was allotted to the appellant under Indira Awas Yojana. However, she admits that her husband was of the opinion that the house in which they were residing is dilapidated and, therefore, requires to be sold. Her husband was desirous of occupying the new house but the accused was opposing the said fact. Similar situations were given to PW4 - Vilas in his cross-examination but he has denied that.

4. Learned advocate appearing for the appellant has further submitted that the evidence of DW1 - Aba Wagh has not been properly appreciated by the learned trial Judge. He has deposed that accused was working with him and this fact is admitted by PW3 – Rohini. DW1 says that accused was working under him from 09:00 am to 05:00 pm on 15.10.2013 and he was with him throughout the day. It has been wrongly concluded that since the house of the accused is situated at a distance of 1000 ft. from his house, the plea of *alibi* cannot be completely accepted and the testimony of DW1 Aba is not inspiring confidence. Thus,

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it can be seen that in fact the murder appears to have been committed by PW4 - Vilas but PW3 - Rohini in order to save her husband has implicated father-in-law. All these facts were not taken into consideration by the learned trial Judge. Many important witnesses like Ravindra Sonawane who had given phone call to PW4 Vilas first, have not been examined by prosecution. The conviction against the appellant cannot be allowed to be sustained. The appeal deserves to be allowed.

5. Per contra, the learned APP strongly supported the reasons given by the learned trial Judge and submitted that the evidence of all the prosecution witnesses has been properly appreciated by the trial Court. It is not in dispute that the death of deceased – Anjanabai was homicidal in nature. PW3 – Rohini, who is a daughter-in-law, had seen the appellant committing murder by means of sickle. Even if the panch to the spot panchanama is not supporting, we can see that the weapon was lying on the spot and the said fact has been told by the Investigating Officer. There is absolutely no suggestion to the eye-witness that actually the murder has been caused by PW4 – Vilas or said Yashwant Bhavre. When such suggestion has not been given, inference cannot be drawn that there was motive for the son to commit murder of mother. Though there is simple denial of the fact that the appellant was previously convicted by Nashik Court, the son has not specifically denied the said fact. Why would the son tell about the previous conviction of his father? Further the appellant has already undergone the sentence  
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that was imposed upon him. Still, it appears that he was accepted by the family after he had returned after serving the sentence about 4 to 5 years prior to the incident. It appears that thereafter also his act of raising suspicion over the character of deceased did not stop and PW3 – Rohini says that it was regular for the appellant and the deceased to raise quarrel on that point. When about 12 external injuries have been noted on the dead body, it can be certainly said that the appellant had intention to commit murder and it was not the act of spur of moment. The testimony of eye-witness is certainly reliable. As regards the defence witness, it is to be noted that said DW1 – Aba has admitted in his cross-examination that a labour can complete work assigned to him within half an hour and the distance between the house of the accused and his house is only 1000 ft. According to him, his land is *jirayat* land and he can take crop only during rainy season. He used to look after his cattle himself and according to him, he has also engaged other persons. He used to sell the milk of the cattle from his house itself. He is having eight she-buffaloes. Therefore, what kind of work he used to give to accused is not clarified by him. Which work he had assigned the accused on that day is also not clarified by him and, therefore, mere utterance of single sentence will not be sufficient to prove the *alibi*. There is no merit in the present appeal, it deserves to be dismissed.

6. The first and foremost fact that is required to be considered is as to whether the death is homicidal or not. In order to prove that the death is homicidal, the prosecution is relying  
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upon the oral evidence as well as documentary evidence in the form of inquest panchanama and PM report. The inquest panchanama (Exh. 14) comes first and even as per the prosecution story, the inquest panchanama was carried out in Civil Hospital, Dhule. Now objection is raised that it is not as per the requirement of Section 174 of Code of Criminal Procedure. The answer to the question could have been very well given by PW11-Investigating Officer. He could have told the reason as to why it was executed in the *post mortem* room and not at the spot. When there was an opportunity available to the accused to extract this reason, no question has been put to him. Under such circumstance, at the appellate stage, for the first time, such point cannot be allowed to be raised. If the defence has serious objection about the procedure that was adopted for executing a panchanama, then necessary questions should be asked to the concerned person. This fact can also be taken from another angle. Merely because the inquest panchanama has been carried out in the *post motem* room, what prejudice has been caused to the accused has not been shown by the accused and, therefore, it cannot be taken as such *lacunae* which goes to the root of the case raising doubt over the prosecution story.

7. Testimony of PW1 - Dr. Chaudhary would clearly indicate that the injuries those were noted by him were mainly on the head and neck or around area. Those injuries are stated to be possible by sharp edged weapon like sickle/कोयता and, therefore, it will have to be held that the death is homicidal in nature. There is  
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no serious cross-examination to the Medical Officer on behalf of the accused.

8. PW3 – Rohini is the daughter-in-law of deceased as well as appellant. Though she has stated about the previous conviction of father-in-law, definitely she had no personal knowledge about the same but since she was the member of family, would have come to know about it from the other family members. On the basis of that information if she is deposing to that effect, then it cannot be taken as a basic objection creating doubt over her veracity. She has deposed that at about 09:00 am on 15.10.2013, her husband and grand mother-in-law left the house for work. She was in the house along with accused and deceased. Around 01:30 and 02:00 pm, she was cleaning the utensils, when she heard quarrel between the accused and the deceased. She did not pay attention considering that there used to be quarrels frequently over raising suspicion over the character of mother-in-law but then the father-in-law told that he would kill the mother-in-law and then took sickle. The blow was given on the head and below neck. She says that after she saw blood coming out of the head injury of the mother-in-law, she fell down on the ground and became unconscious. This problem is with many persons and we cannot take it as an adverse circumstance. We must also consider that on the day of deposition, she has stated her age to be 20 years. Therefore, when after she saw blood had started oozing out and she became unconscious, she states that she regained consciousness after sometime and at that time she had

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seen the father-in-law leaving the spot by leaving the sickle near the neck of mother-in-law. In her cross-examination, she has stated that she had regained consciousness within 15-20 minutes. We cannot take it meticulously as after a person loses his/her consciousness and regains it, he/she might not predict as to for how much time he/she had lost the consciousness. It would have been an approximate period that was given by her. She says that after she regained the consciousness, she had seen her husband and neighbors present there. She also states that her father-in-law was not present there. That does not mean that by these sentences it can be inferred that she had not seen her father-in-law leaving the place by leaving the sickle on the spot. No specific denial of the same has been put to her. Thus, it can be taken that the sickle was at the spot left by the accused while leaving the place.

9. Though PW5 - Walmik has turned hostile, it cannot be taken as a major point in favour of the accused. Further, it appears that the accused had the intention to take defence that Anjanabai was murdered by his son Vilas and Yashwant Bhavre, however, no direct suggestion has been given to any of the witnesses. Only on the basis of some suggestions to show that certain things were not approved by the accused or the son was insisting upon shifting in the new house, we cannot infer that it would be the motive for him to commit murder of mother. The house allotted to the accused under Indira Awas Yojana is occupied by his own daughter Kalpana and why the mother would take objection for the same. PW4 – Vilas might be having desire  
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to shift in the new house but the question is whether deceased Anjanabai was objecting Vilas on that point. That suggestion is not given either to PW3 - Rohini or to PW4 - Vilas. If the proposal by PW4 - Vilas to shift in the new house was opposed by accused, then there could be some action that would have been taken against the accused and not against the deceased mother. Further, so far as Yashwant Bhavre is concerned, there is no direct suggestion that there were illicit relations between Anjanabai and him, given to PW3 – Rohini. It appears that the suspicious mind of the accused was always thinking in that direction and he would have raised suspicion in respect of everything that would have been done by deceased Anjanabai. Though he had joined the company of wife and son about 4 to 5 years prior to the present incident after undergoing the sentence, it appears that he had not given up raising of suspicion over the character of his wife and it is evident from the testimony of PW3 – Rohini that there used to be quarrels between them. That was the motive for the accused to commit murder of his wife.

10. As regards the seizure of chits is concerned, testimony of PW6-Rajendra would show that it was produced in his presence by the accused. Even if the opinion of handwriting expert had not reached the trial stage, yet Section 47 of Indian Evidence Act provides that 'when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not  
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written or signed by that person, is a relevant fact'. Here in this case PW3 – Rohini as well as PW4 – Vilas have deposed that those chits which were shown to them are in the handwriting of accused. In his statement under Section 313 of Code of Criminal Procedure, the accused had denied it. So also except denial in the cross, there is nothing. However, it is to be further noted that in his testimony, PW6 - Rajendra has deposed that at the time of arrest of the accused he told certain fact and produced chits as well as his clothes. In his cross-examination, he has stated that Article nos. 2 to 5 were seized in his presence. A chit of paper bearing his signature was affixed on it. He has stated that the chit is not appearing on the day of his deposition. Only on the point that chit is not now appearing, whether we cannot consider the said chit is a question. However, it is to be noted that the trial Court has not proceeded further with the chits on the ground that the opinion of the handwriting expert had not arrived. Therefore, that also cannot be the point here in appeal. The contents of those chits, at the most, could have shown the motive which has otherwise been proved by the prosecution through PW3 – Rohini and PW4 – Vilas.

11. Even if we brush aside the testimony of PW7 - Yuvraj, PW8 - Phtographer, PW9 - Jitendra and PW10 – Eknath, it can be said that the prosecution was able to prove, in view of direct evidence, that the appellant is the author of crime.

12. Now again turning towards the testimony of DW1 – Aba, the defence witness, he has stated only four sentences in his examination-in-chief. He has stated that on the day of incident, the accused was working with him throughout the day on 15.10.2013. Such vague statement cannot be accepted for want of many details. He has not ruled out the possibility of accused going to his house for lunch taking into consideration the fact that was discovered in his cross-examination that the distance between his house and the house of accused was only 1000 ft. Though PW3 Rohini has admitted in her cross-examination that the appellant used to work with DW1 Aba and that work was in the field from 09:00 am to 06:00 pm., it was not specifically put to her that on the day when the incident had occurred the accused had gone for his work. DW1 – Aba has not stated that where the accused was working throughout the day and what work he had assigned to him. He has also not stated what is the distance between his house and field. In his cross-examination when he is admitting that his land is *jirayat* one and depends on rains, then what kind of work was in the field in the month of October, ought to have been explained by him. When in the cross-examination he stated that he has engaged only one person for his cattle then whether he intended to indicate only accused is a question in absence of the details. When he himself as well as his wife were looking after the cattle, whether there used to be any work left for the accused to keep him engaged throughout the day is a question and, therefore, his admission that a labour can complete his work assigned to him

within half an hour carries importance. Under such circumstance, the testimony of DW1 Aba does not prove the plea of *alibi* taken by the accused.

13. When the prosecution had proved that the death of Anajanaba is homicidal in nature and there is direct evidence in the form of PW3 – Rohini, it is also proved that there was motive for the accused to commit murder and the plea of *alibi* taken by the accused cannot be accepted; then the conclusion drawn by the trial Court that the accused is the author of the crime and offence punishable under Section 302 of the IPC is proved beyond the reasonable doubt, is justified.

14. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is **dismissed**.

[RAJESH S. PATIL]  
JUDGE

[SMT. VIBHA KANKANWADI]  
JUDGE