

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

CRIMINAL APPEAL NO. 232 OF 2017

Arjun Sandipan Karande
Age: 37 years, Occu.: Agri.,
R/o Dhunakawad-2, Tq. Dharur,
Dist. Beed

..APPELLANT

VERSUS

State of Maharashtra
Through The Police Station Officer,
Police Station Dharur, Tq. Dharur,
Dist. Beed

..RESPONDENT

....

Mr. S.G. Ladda, Advocate for appellant
Mr. S.P. Deshmukh, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.
RESERVED ON : 17th NOVEMBER, 2022
PRONOUNCED ON : 22nd NOVEMBER, 2022**

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This is an appeal from conviction. The appellant alongwith his mother was prosecuted for committing murder of his wife – Satyabhama for reasons of having not been paid dowry in his marriage and suspected her fidelity. Mother of the appellant has been acquitted of the offences punishable under Sections 302 and 498-A read with Section 34 of the Indian Penal Code (“I.P.C.”). The appellant too came to be acquitted of the offence punishable under Section 498-A read with Section 34 of the I.P.C. He has

been convicted for offence punishable under Section 302 of the I.P.C., and therefore, sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- with default stipulation. Hence, the present appeal.

2. Case of the prosecution is as follows :-

Satyabhama (deceased) had married the appellant in 2002. Both, the appellant and the deceased hail from same village - Dhunakawad . The couple was blessed with four children. The appellant and his mother stated ill-treating her one year after the marriage on account of the appellant to have not been paid dowry. The appellant would also suspect the deceased to have not been loyal to him.

3. The appellant has an agricultural field. Both, the appellant and the deceased went to the field by 05:00 p.m. on 12th April, 2015. The appellant assaulted on her neck with a scythe. On hearing hue and cry from the field of the appellant, some of the villagers and even brother of the deceased rushed to the field. The appellant told them that due to hailstorm, the cattle shed got dismantled. The tin sheets thereon were blown up. 2-3 sharp edged tin sheets fell on the person of Satyabhama and the appellant also. Both of them suffered injuries. Satyabhama succumbed thereto.

4. P.W.-3 - Sundarrao Bhosle (informant), brother of the deceased, had rushed to the field. He saw the appellant armed with a scythe.

Satyabhama was seen lying in a pool of blood. The villagers moved her to Government Hospital, Beed. She was, however declared dead before admission. An inquest panchanama (Exh.26) was drawn. The informant lodged the First Information Report ("F.I.R.") at Dharur Police Station, Dist.Beed. Crime, vide C.R. No. 30 of 2015 came to be registered for the offences punishable under Sections 302 and 498-A read with Section 34 of the I.P.C. P.W.8 – Baburao Panpatte was entrusted with the investigation. He paid visit to the scene of offence. A panchanama of the site (Exh.29) was drawn. The appellant came to be arrested. He made a disclosure statement (Exh.37) pursuant whereof a sharp weapon came to be seized. Clothes on the person of the appellant, at the material time, also came to be taken charge of. Blood samples of both, the appellant and the deceased were obtained. Mortal of the deceased was subjected to autopsy. All the seized articles were submitted to Regional Forensic Science Laboratory, Aurangabad for analysis and report. On completion of investigation, the appellant and his mother came to be proceeded against.

5. On committal of case to the Court of Session for trial in accordance with law, the trial Court framed charge (Exh.18). The appellant and his mother pleaded not guilty. Their defence was of false implication. It was their case that due to hailstorm, tin sheets of the cattle shed were blown up. Some of those tin sheets fell on the person of the appellant and

Satyabhama as well. Both of them suffered injuries. Satyabhama died before admission to the hospital. The appellant was admitted to Renu Hospital, Beed. The daughter of the appellant and the deceased was in the field alongwith them. She was examined as a defence witness. On appreciation of evidence in the case, the trial Court convicted the appellant as stated above.

6. Learned counsel appearing for the appellant would submit that there was delay of over twenty-four hours in lodging of the F.I.R. P.W.3 - informant and P.W.5 – Babasaheb Sherkar (cousin of the deceased) claimed to have had rushed to the field on hearing the cries. Learned counsel took us through the evidence of both these witnesses to submit that neither the informant claimed P.W.5 – Babasaheb Sherkar was present in the field or vice versa. According to learned counsel, the scene of offence panchanama (Exh.29) suggests the village had experienced hailstorm. It also records cattle shed was dismantled. Tin sheets thereof were seen strewn all over. 3-4 villagers (independent witnesses) had rushed to the field immediately. None of them has been examined by the prosecution. The appellant and those persons had brought the deceased to Civil Hospital, Beed. The appellant was also required to get admitted in the hospital for treatment. On the point of disclosure statement (Exh.37) and consequential recovery, learned counsel would submit that existence of heap of *bajra* around the scene of offence is not delineated in the scene of offence panchanama. The

informant claim to have had seen the appellant armed with a scythe. The appellant had accompanied the deceased to Beed. He did not have time to conceal the weapon. He would further submit that there is no evidence suggesting seal was applied on the wrapper containing the seized scythe. Learned counsel would further submit that C.A. report, as regards all the seized articles, is inconclusive. He adverted our attention to the evidence of P.W.7 (Medical Officer), who conducted autopsy. The medical officer did not rule out the injuries suffered by the deceased to be the result of fall of tin sheets on her person. Learned counsel also took us through the evidence of defence witness. It is also brought to our notice that post arrest of the appellants till date, the children of the deceased have not been taken care of, either by the informant or parents of the deceased. According to learned counsel, in the facts and circumstances of the case, the impugned order is unsustainable. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that defence raised by the appellant does not appeal to the conscience. He brought to our notice photographs of the deceased to suggest that the injuries suffered by her could not be caused by fall of a tin sheet. According to him, the appellant was in the company of the deceased at the material time. The defence goes a long way to infer that it was the appellant, and none other, who eliminated Satyabhama. He, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the entire evidence in the matter.

9. P.W.7 – Dr. Balkrishna (Medical Officer) conducted autopsy on the dead body of Satyabhama on 13th April, 2015. The postmortem report (Exh.46) indicates that the deceased died due to hemorrhagic shock due to injury to major blood vessels in neck associated with cut tracheal injury. Dr. Balkrishna noticed three cut wounds running crossly from left to right in downward direction. According to him, first large injury was running crossly from left side below the left ear. Length of that wound is 15cm x 4cm. Depth of left side was 4.5cm and towards the right side it was 3cm. Edge of wound is clear, with slightly bleeding, age of injury is within 12 to 24 hours. Second wound, over neck from left to right side, running cross from above downward 6cm in length x 4cm width. Depth was 3.5cm on left side on 2.5cm in right side, gap between 1st and 2nd wound is 2cm. The third laceration wound just 1.5cm below 2nd wound running crossly 6 x 1.5cm Depth 1cm on left side. He further states right shoulder injury present, cut injury exposing underlying bone over fracture of Head of Humurus on right side contusion of size 4x4cm big wound over right shoulder 8cm x 7cm x 4.5cm depth. Small second would (cut) above 2cm Shoulder joint 5x1cm depth, 1.50cm) 2cm above the big wound over right shoulder.

10. He was shown the seized weapon. In his opinion, the injuries suffered by the deceased were possible by the said article. In his opinion, death of Satyabhama would be homicidal. During cross-examination, he testified that the injuries mentioned in Column No.17 of the postmortem report (Exh.46) might be possible if tin sheets with sharp edge falls on the person one after the another. As such, the opinion given by P.W.4 that it would be a homicidal death, got diluted.

11. It is for the prosecution to establish charge beyond reasonable doubt. Admittedly, the incident took place by 06:00 in the evening of 14th April, 2015 in the agricultural field of the appellant. The informant, brother of the deceased, testified to have had seen both, the appellant and the deceased proceeded together towards their field. On hearing cries from the field-side, he rushed thereto to find the appellant armed with a scythe. Satyabhama had suffered neck injury. She had fallen on the ground. It is further in his evidence that villagers viz. Anant Musale and Vishnu Yadav had also rushed to the appellant's field. The appellant told them that a tin sheet hit Satyabhama's neck. The informant suspected something amiss. He had seen scythe there. It is further in his evidence that relations of the appellant brought the deceased to Government Hospital, at Beed. He alongwith his mother and other persons reached the hospital at Beed at 10:30 p.m. He then went to the police station and lodged the F.I.R. (Exh.35). It is further in

his evidence that the appellant would ill-treat the deceased on account of having not been paid dowry in the marriage. The appellant would also suspect her fidelity.

12. P.W.3 – informant in his cross-examination admitted that during little over twelve years of marriage of the appellant, neither the deceased nor any of his family member had an occasion to lodge the report against the appellant or his family members for ill-treatment of the deceased. The trial Court has rightly acquitted the appellant and his mother of the charge punishable under Section 498-A of the I.P.C. It has also come on record that there is a police station in the premises of Government Hospital, Beed. The informant did not accompany the villagers to rush his sister to the hospital.

13. P.W.5 – Babasaheb Sherkar was the cousin of the deceased (daughter of his maternal uncle). It is in his evidence that on 12th April, 2015 he had come to his maternal uncle's house at village Dhunakawad. The distance between his village and Dhunakawad was of four kilometers. He heard some noise emanating from the field of the appellant. It was a quarrel of the appellant and the Satyabhama (deceased). He alongwith Ramkisan and Damodar Bhosle, therefore, rushed to the field of the appellant. They took care to ensure to be invisible to the appellant. He claimed to have seen the appellant assaulted Satyabhama with scythe. When he reached the scene of offence, the appellant ran behind the cattle shed. Satyabhama had fallen

on the ground. There was pool of blood. The appellant's mother was sitting there. Satyabhama had suffered neck cut injury. There was also a deep injury to her right shoulder. The appellant was also standing nearby. Clothes on his person were stained with blood. Anant Musale, Vishnu Yadav and Parmeshwar Karane lifted Satyabhama and placed her in Baburao Bhosle's jeep and brought to Government Hospital, at Beed. He alongwith his maternal uncle – Ramkisan Bhosle, Damodhar Bhosle and the informant stayed in the village. They learnt Satyabhama passed away. It was 09:45 p.m. It was only on the following day he went to Government Hospital, Beed. He was a witness to the inquest panchanama (Exh.26) drawn by the police.

14. The question is whether the evidence of the informant and P.W.5 – Babasaheb is cogent, reliable and convincing one. The informant is none other than the real brother of the deceased. According to him, he went to the appellant's field on hearing hue and cry of his sister. Anant Musale and Vishnu Yadav had also accompanied him to the appellant's field. In his presence the family members of the appellant removed the deceased from the field and took her to the hospital, in Beed. Had the informant really been to the field of the appellant and seen his sister dead, his reaction would have been against the appellant. The informant neither lifts his real sister from the scene of offence nor did he accompany her to the hospital. When according to him his sister was murdered by 06:00 p.m. on 12th April, 2015 and the

same was either seen by him or came to his knowledge within minutes of the incident, it does not stand to reason as to why he lodged the F.I.R. after twenty-seven hours of the incident. The informant's conduct in neither attempting to overpower the appellant nor taking the deceased to the hospital and lodging the F.I.R. long after the incident, speaks in volumes to infer him to have had not witnessed the incident.

15. Same is the case of evidence of P.W.5 – Babasaheb. According to him, he went to the appellant's field alongwith Damodar Bhosle and Ramkisan Bhosle. He saw the appellant assaulted the deceased with a sharp weapon. Admittedly, P.W.5 – Babasaheb made no attempt to nab the appellant nor did he lift the deceased to place her in the vehicle to shift her to the hospital. He also did not accompany the deceased to the hospital. He claimed to have learnt the deceased to have passed away by 09:45 p.m. He is a witness to the inquest. He did not lodge the F.I.R. nor give a statement to police until it was recorded on 14th April, 2015, i.e. two days after the incident. Admittedly, he is from the nearby village. True, the distance between the two villages is of four kilometers. The conduct of this witness goes a long way to infer him to have not witnessed the incident. When both, the informant and P.W.5 – Babasaheb claim to have been to the field at one and the same time, none of them claimed to have meet each other there.

16. The prosecution has not examined Anant Musale and Vishnu Yadav. Then what remains is the evidence in the nature of disclosure statement made by the appellant pursuant to which the weapon allegedly used in the commission of offence came to be seized. Admittedly, the C.A. report (Exh.51), as regards the weapon and even the clothes of the appellants, are inconclusive. As such, the said evidence does not support the prosecution case. Needless to mention, it is for the prosecution to prove its case. Even the defence version is found to be illogical or unappealing. According to the appellant, on the given day the village had experienced a hailstorm. Cattle shed was dismantled. The tin sheets of the cattle shed were blown up. The scene of offence panchanama indicates the tin sheets were seen strewn at the site. A pole had fallen to the ground. The panchanama drawn by *Talathi* of the village was placed on record in defence. We have, therefore, reason to accept the appellant's case that the village on that day experienced hailstorm. According to him, the tin sheets fell on the person of the deceased and him as well. Both of them suffered injuries. The deceased died of the injuries suffered due to fall of tin sheets on her person. The Medical Officer (P.W.7) admitted in his evidence that the injuries suffered by the deceased could also be possible by fall of sharp edged tin sheets on her person. Be that as it may.

17. We are not ready to buy the defence version. Even though the defence made out by the appellant is found to be unacceptable, we are of the

view that the prosecution has failed to establish the charge beyond reasonable doubt. In short, the prosecution evidence could not make out case of the appellant to have murdered his wife. We are, therefore, not in agreement with the findings recorded by the trial Court. Criminal appeal, therefore, deserves to be allowed. Hence, the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned order of conviction and sentence to the appellant dated 25th April, 2017 passed by learned Additional Sessions Judge, Majalgaon in Sessions Case No. 36 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 him.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD