

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 305 OF 2021

Shankar Jairam Dodake,
Aged about 60 years, Occ. - Painter,
R/o Durga Chowk, Ward No.3,
Durgapur, Tah. & Dist. Chandrapur.
C-10616
(Presently in Central Jail, Nagpur)

.... **APPELLANT**

// **VERSUS** //

State of Maharashtra,
through the Police Station Officer,
Durgapur, Tq. & Dist. Chandrapur.

.... **RESPONDENT**

Ms. Deepali V. Sapkal, Advocate(appointed) for Appellant.
Mr. A.S. Fulzele, Additional Public Prosecutor for Respondent.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATED : 23.06.2022

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard Ms. Deepali Sapkal, learned counsel for the Appellant and Mr. A.S. Fulzele, learned Additional Public Prosecutor for Respondent. Paper book is dispensed with.

2. This appeal has been filed for questioning the legality and correctness of the judgment dated 18.02.2020, thereby convicting the accused for an offence punishable under Section 302 of the Indian Penal Code (IPC) with which he was charged and prosecuted before the Court of Additional Sessions Judge, Chandrapur.

3. The learned Additional Sessions Judge has sentenced the Appellant to imprisonment for life together with fine of Rs.10,000/- and in default, with sentence of simple imprisonment for three years for an offence punishable under Section 302 of the Indian Penal Code (IPC).

4. It so happened that on 27.11.2017, the accused and his deceased wife Sugandhabai both were present at their house at Durgapur, Ward No.3, Chandrapur when some quarrel ensued between them. The reason for this quarrel was the suspicion which was being raised by the Appellant over the character of his wife. He used to suspect that his wife was deep in illicit relationship with another man. In the fateful evening of 27.11.2017, the wife of the Appellant was present in the courtyard, when the Appellant picked up a spade and launched a vicious attack by means of spade on his deceased wife. He rained several blows of spade on face and other body parts of deceased Sugandhabai, as a result of which, she sustained 11 external injuries

coupled with corresponding internal injuries bringing her instantaneous death. While the deceased was being brutally assaulted by the Appellant, the shouts of “save me, save me” rent the air and were heard at some distance. Some persons standing at a distance heard those shouts and came rushing to the courtyard of the house of the Appellant. They were aghast to see the Appellant severely hitting his wife with spade. One of the eye witnesses on seeing the ghastly incident got frightened and ran to the house of another witness and pleaded him to accompany him to the spot of incident. Both of them then reached the house of the Appellant. But, by that time it was too late, they could not do anything to save the precious life of deceased wife of the Appellant. Sugandhabai was lying motionless and dead in the pool of blood in the courtyard of the house of the Appellant. On being asked by the witness, the Appellant boasted that he killed his wife and by that time some more persons had gathered at the spot of incident. The Appellant by throwing mud at these persons and pushing them went towards the hand-pump and thereafter he ran away only to be apprehended later on.

5. One of the witnesses lodged the First Information Report against the Appellant and investigation was started. Ultimately, the Appellant was charged with and prosecuted for the offence punishable under Section 302 of the IPC and the trial ended in his conviction and

sentencing as aforesaid by the Court of learned Additional Sessions Judge, Chandrapur.

6. Being aggrieved by the judgment of the learned Additional Sessions Judge, Chandrapur the Appellant is now before this Court.

7. The learned counsel for the Appellant concedes that the Appellant did hit his deceased wife by means of spade which hitting led to the instantaneous death of Sugandhabai. The learned counsel further submits that whatever happened at the hands of the Appellant was because of the extreme state of anger that the Appellant was in and in that anger, the Appellant had only tried to damage the scooter parked in the courtyard by repeatedly hitting the spade on the scooter and it was then that the deceased wife of the Appellant tried to intervene and got accidentally hit by the spade. Therefore, she submits that this would be a case of at the most culpable homicide not amounting to murder either under Part-I and II of Section 304 of the IPC.

8. Mr. A.S. Fulzele, the learned Additional Public Prosecutor submits that there is clinching evidence brought on record by the prosecution which proves beyond reasonable doubt that the killing of his wife by the Appellant was intentional and also with knowledge and,

therefore, this is not a case of culpable homicide not amounting to murder. He also submits that receipt of several injuries, 11 in all, on multiple parts of the body including head of the deceased sufficiently indicate that the assault was launched by the Appellant with an intention to kill the deceased Sugandhabai and, therefore, the learned Additional Sessions Judge has rightly convicted and sentenced the Appellant for the offence of murder punishable under Section 302 of the IPC. He further submits that there is also an extra-judicial confession about which some of the witnesses have not been controverted in any manner. He further submits that there is no merit in the matter and urges that the appeal be dismissed.

9. Upon careful consideration of the evidence available on record, we are of the opinion that learned Additional Public Prosecutor is right in his submissions. There is overwhelming evidence brought on record by the prosecution which goes on to prove beyond reasonable doubt the guilt of the accused for an offence of murder under Section 302 of the IPC with which he was charged and ultimately convicted. The evidence of P.W.3 – Ravindra Ramteke, P.W.5 – Anis Chand Shaikh and P.W.6 - Dr. Shashikant Dobale, in our view, is sufficient to reach this conclusion.

10. P.W.5 – Anis Chand Shaikh is an eye witness to the incident. He has stated that at the relevant time, upon hearing the shouts of “Wachwa, Melo” (save me, I am dying) P.W.5 – Anis Chand Shaikh rushed to the house of the Appellant and entered the courtyard when he found that the Appellant was assaulting his wife by means of spade. He further states that as he got frightened, he went to the house of the P.W.3 – Ravindra Ramteke and then he came back to the courtyard in question along with P.W.3 – Ravindra Ramteke. He further states that at that time P.W.3 – Ravindra Ramteke asked the Appellant as to what he had done and the Appellant had answered saying “Marun Takla Salila, Khatam Kela” (killed her, the evil person, eliminated her). He has also stated that thereafter the Appellant threw mud on the persons who had gathered there and pushing those persons away he fled from the spot.

11. Such evidence of P.W.5 – Anis Chand Shaikh has not been shattered in any manner in his cross examination. Of course, the word “wachwa” has not been stated by this witness in the police statement but, this omission not being material in the context of core evidence of P.W.5 – Anis, could not be considered as something amounting to contradiction of the main story put forward by the P.W.5 - Anis. In fact, if one has a careful look at the cross examination of this witness one would found that words “Marun Takla Salila, Khatam Kela” uttered by

the Appellant immediately after the incident which were in the nature of extra-judicial confession have not been denied in any manner by the Appellant and these words, as rightly submitted by learned Additional Public Prosecutor, only support the core part of the version of P.W.5 – Anis and make his evidence free from any doubt. That would mean that on the basis of sole testimony of P.W.5 – Anis, conviction of the Appellant can be sustained.

12. Even though corroboration to the testimony of P.W.5 - Anis is not required, the corroboration still is there and it is through the testimony of the P.W.3 – Ravindra Ramteke. His evidence shows that he was the person who was well aware of the disturbed *inter se* relation between the Appellant and his deceased wife Sugandhabai. He has deposed that prior to four to five months of incident, there was a dispute between the Appellant and his wife deceased Sugandhabai and in that dispute, the Appellant had suspected character of the deceased Sugandhabai alleging that she was having extra marital affair with another man. His evidence further shows that he also knew of one incident which had taken place prior to 27.11.2017 in which, the Appellant had tried to smother to death deceased Sugandhabai by pressing her mouth and at that time he was the person who had rescued the deceased Sugandhabai. He has further stated that at that time, the appellant had tried to justify his such an attempt to take life

of his wife on the same reason, the reason of her having illicit relationship with another man. He has also stated that he even tried to counsel the Appellant advising him to desist from ill-treatment and misbehaviour with his wife. His evidence further shows that he was present at the spot of incident in the evening of 27.11.2017 and he had seen the dead body of Sugandhabai lying in the courtyard near Aactiva two wheeler, with accumulation of blood around her dead body. His evidence also shows that at that point of time, he saw the Appellant holding spade in his hand and which was stained with blood. His evidence further shows that when he asked the Appellant as to what he had done, the Appellant replied that he had killed his wife, using abusive language. He had also spoken about the Appellant throwing mud at the persons gathered there and he running away from the spot of incident. There is nothing in his entire cross examination which would provide any reason for us to disbelieve his testimony. There is one suggestion given to this witness that the Appellant was hitting the scooter with spade and at that time, one blow of spade landed on the head of the deceased, which was promptly denied by this witness. By this suggestion, the Appellant has tried to lay the foundation for his defence that the death of Sugandhabai was accidental and not intentional and it was a culpable homicide not amounting to murder. But, nothing useful from the view point of defence of the Appellant could be brought on record.

13. The evidence of both these witnesses clearly establish the fact that in the evening 27.11.2017, the Appellant who had savagely assaulted his wife Sugandhabai, by giving several blows of spade on different parts of body of the deceased. These blows caused grievous injuries to deceased Sugandhabai which brought about her death immediately. The injuries that were sustained by the deceased because of her receiving several blows of spade used against her by the Appellant were serious in nature for most of them. She had received lacerated wound of size 7 x 4 cms which was bone deep at right lateral aspect of upper eye and had also received several fractures at different positions of her face such as maxillary bone, arch of mandible bilaterally, facial bone, nasal bone at midline and supraorbital process.

14. P.W.6 Dr. Shashikant Dhobale had found, upon internal examination of the dead body of the Sugandhabai, underscalp hemotoma at frontoparietal region of scalp and multiple comminuted fractures of bilateral frontoparietal bone. P.W.6 Dr. Shashikant Dhobale opined that probably cause of death of Sugandhabai was multiple facial and head injury. This medical evidence supports the version of P.W.3 - Ravindra and P.W.5 - Anis and leaves no manner of doubt that the blows given by means of spade on different body parts of the deceased were indeed responsible for causing her death and considering the fact

that not just one or two blows but, several blows were given would show that the assault was carried out by the Appellant intentionally and with full knowledge that these blows would result in death of his wife.

15. Apart from what is stated above, we find that there is also a motive present in this case which has been proved beyond reasonable doubt by the prosecution. The motive was the suspicion expressed by the Appellant over the character of his deceased wife. He believed that his deceased wife was into extra marital affair with some another man and believing it to be true, the Appellant appears to have decided to teach a lesson to deceased Sugandhabai. As a result, he launched merciless attack upon the deceased Sugandhabai, using spade as a weapon of the attack. The motive has been proved by the prosecution through evidence of P.W.3 - Ravindra and also P.W.5 - Anis. We have already discussed at length their evidence and, therefore, it is not necessary now to once again refer to relevant portions of their depositions on this aspect of the matter.

16. There is also evidence, some of which has already been discussed by us earlier, showing that the Appellant was already nurturing an idea of eliminating his deceased wife and the reason was his suspicion against her. The suspicion part has been deposed about

by P.W.3- Ravindra and we have referred to this part of the evidence earlier. Even son of the Appellant i.e. P.W.4 – Praful Shankar Dodke has to some extent corroborated version of P.W.3 Ravindra on the aspect of the Appellant trying to eliminate the deceased Sugandhabai in an attempt made by him earlier to kill her. P.W.4 – Praful stated that his father had dug out one pit in the courtyard and told that he will kill his mother and him. He has further submitted that upon his informing the neighbours, the pit was filled up by them. He has also stated that about three to four months before the incident, he was told by his mother that the Appellant had attempted to kill her by pressing her mouth by means of pillow. There is nothing in his cross examination so as to enable us to not believe P.W.4 – Praful. Such evidence of P.W.4 – Praful only supports the case of the prosecution.

17. Of course, learned counsel for the Appellant would say that the impugned findings can be interfered with for the reason that the learned Additional Sessions Judge has not taken into consideration the possibility of blow of spade getting accidentally hit to the deceased Sugandhabai.

18. We have already discussed the medical evidence and also the evidence of the eye witness P.W.5 - Anis, which together show that the deceased Sugandhabai was brutally attacked by the Appellant. We

have also seen that the Appellant gave not just one or two blows but several blows of spade to deceased Sugandhabai. This very act of the Appellant, in our opinion, is sufficient to draw an inference that the attack was intentional as well as something accompanied by the requisite knowledge. If the defence of the Appellant is to be accepted, the Appellant would also have to explain as to why so many blows were dealt to his deceased wife by him. It was the case of the Appellant that he was pouring out his anger over the scooty parked in the courtyard and as his wife came in between, the spade got hit to his wife, the Appellant ought to have explained sustaining of so many injuries by his wife. Apart from that, there is an eye witness, P.W.5 - Anis and there is also a witness, who had seen the Applicant hitting Sugandhabai with spade. P.W.3 – Ravindra, had seen the Appellant standing in the courtyard near the dead body of Sugandhabai with a spade in his hand, stained with blood. There is also evidence in the nature of extra-judicial confession given by the Appellant and we may point out here that the evidence of P.W.5 - Anis on the said extra-judicial confession made by the Appellant has not been controverted in any way by the Appellant. This evidence, in our view, would render the defence of the Appellant as highly improbable and, therefore, we reject the contention that the killing of Sugandhabai by the Appellant was not intentional or with knowledge and therefore, it was only a culpable homicide not amounting to murder.

19. The evidence discussed above has been appreciated properly by the learned Additional Sessions Judge and, therefore, the finding of guilt for murder recorded by the learned Additional Sessions Judge cannot be faulted with in any manner. The learned Additional Sessions Judge has handed over a minimum possible punishment to the Appellant for the offence of murder.

20. In the result, we are of the opinion that there is no merit in the Appeal. The Appeal stands dismissed.

21. Remuneration of Rs.15,000/- (Rs. Fifteen Thousand only) shall be paid to the learned appointed counsel from the Legal Aid Service.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

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