



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 193 OF 2019

Udhav S/o. Punjaram Nawsagre,
Age : 55 years, Occu. Agri.,
R/o. Belgahvan, Tq. Hadgaon,
Dist. Nanded.

... Appellant.
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent.

...
Mr. V. S. Bedre, Advocate for Appellant (Appointed through Legal Aid)
Mr. S. D. Ghayal, APP for Respondent – State
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 7th DECEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Judgment and order of conviction passed by learned Additional Sessions Judge-I, Nanded dated 16.05.2018 in Sessions Case No.100 of 2015, holding appellant Uddhav guilty for charge under section 302 of Indian Penal Code (IPC) is now taken up by way instant appeal, thereby questioning its legality, maintainability and sustainability.

FACTUAL MATRIX

2. To put it in brief, appellant Uddhav husband of deceased was an agriculturist and in spite of their marriage to be

many years old, he suspected her chastity and harassed her. Her parents, relatives and neighbours were all aware of it.

3. On 17.06.2015, while labouring in the field, in above backdrop appellant assaulted Laxmibai by use of pick-axe, causing her multiple injuries which turned out to be fatal. PW6 Chayabai, who was also working in the adjoining field, heard shouts of deceased and rushed there and found Laxmibai lying with bleeding injuries. Appellant was present there. PW6 Chayabai received oral dying declaration on a query by her to the deceased regarding appellant assaulting her. While undergoing treatment, she succumbed to the injuries.

FIR of the above occurrence was registered and appellant was arrested, interrogated and after completion of investigation, he was duly charge-sheeted.

4. Learned Additional Sessions Judge-I, who was seized with the matter, undertook trial and on appreciating the evidence held appellant guilty for homicidal death of his wife, he was let off from charge under section 498-A of IPC for want of evidence.

Instant appeal arises out of above judgment and order.

**SUM AND SUBSTANCE OF THE ARGUMENTS OF APPELLANT AND
RESPONDENT**

APPELLANT :-

5. Learned counsel for appellant would submit that, implication is in absence of cogent and reliable evidence. According to him, there is no distinct evidence in support of alleged motive. He pointed out that, case of prosecution has been accepted by learned trial Judge without assigning sound reasons. He pointed out that, there is no independent witness or evidence. That, almost all witnesses are related witness and hence interested witnesses. He emphasized that, it is doubtful whether informant, who is so called eye witness had really seen the incident, more particularly, in view of answers given by her in the cross. That, therefore case was based on circumstantial evidence, but none of circumstances are firmly and cogently proved. He further pointed out that, even recovery is at belated stage. There is no corroboration from independent corner to the testimony of PW1 Smita and PW6 Chayabai. Lastly, it is submitted that, case has not been proved beyond reasonable doubt, and therefore findings and the conclusion drawn by the learned trial Judge cannot be allowed to be sustained.

PROSECUTION :-

6. Learned APP while canvassing in favour of the

judgment under challenge would submit that, there is direct eye witness. Motive is clearly established by examining PW1 Smita and PW6 Chayabai. Medical evidence corroborates ocular account. There is recovery at the instance of appellant and therefore cumulative effect of such evidence which has remained intact is rightly made the basis of conviction by learned trial Judge and consequently no fault whatsoever could be found in the judgment and hence he prays to dismiss the appeal.

7. Being first appellate court, we have re-analyzed, re-appreciated and re-examined the entire oral and documentary evidence adduced by the prosecution in trial court. Papers show that, prosecution adduced as many as 9 witnesses and also relied on documentary evidence, like FIR, inquest panchanama, recovery and discovery panchanama, spot panchanama and PM report etc.

8. On hearing both sides and on careful re-examination of available evidence, we have noticed that out of 9 witnesses, evidence of PW6 Chayabai and PW1 Smita unfolds the motive and occurrence and therefore, we deem it fit to first appreciate their testimonies, which are at Exhs. 24 and 51 respectively.

9. PW1 Smita seems to be the sister-in-law of deceased, whereas PW6 Chayabai seems to be the immediate neighbour as

her field is adjoining to that of the appellant and deceased.

10. PW1 Smita disclosed her relations with deceased as deceased to be sister of her husband. That, appellant and deceased had a son and a daughter and even daughter Kavita to be married. According to her, appellant suspected the character of deceased and subjected her to cruelty. He even beat her and had asked her to arrange money for marriage of their daughter Kavita. She testified that, deceased used to telephone her by making use of cellphone of her neighbour and informed about the above conduct of appellant towards her. Further according to her, a month prior to the incident, deceased had come to her house at Basmat and while weeping, she narrated treatment meted out to her by appellant.

Regarding the incident, she narrated that, around 5:00 to 5:30 p.m. when it was dusk, she received phone call from very brother of accused appellant regarding assault by appellant on the head and stomach of deceased by means of pick-axe. Therefore, she and her husband visited rural hospital, Hadgaon and saw deceased in injured condition. Witness deposed that, on asking deceased told that accused assaulted on her head and stomach by pick-axe after suspecting her character. While undergoing

treatment, she died and so this witness lodged report, on the strength of which FIR was registered vide Exh.25 for the above offence.

11. We have visited the cross faced by above witness, she seems to be questioned about her education, length of her married life, her relations with deceased, occupation of son of accused, regarding visit to the rural hospital, Hadgaon, number of days for which deceased was conscious, whether police of Vazirabad police station visited hospital, place where funeral was conducted and the suggestion is put about false deposition, which has been refuted by her. Consequently, it is clearly emerging that, there is absolutely no serious cross on the motive or about the news of actual occurrence.

12. The star witness for prosecution is PW6 Chayabai and her evidence is at Exh.51, wherein she has deposed about land of accused to be adjoining to her land. Regarding the occupation, she testified that, on the day of incident, she herself, her sister-in-law Vandana and her husband had gone to their field for sowing Soyabean. On that day, accused and deceased were also working in their field. That, in the afternoon, they both went to their house and returned back to the field around 3:00 p.m. and again started

working in the field. She further deposed that, at the dusk time, at about 5:00 to 5:15 p.m., she heard shouts of Laxmibai "save save" and so witness claims that she, her husband, her sister-in-law rushed to the field of accused. They noticed accused holding pick-axe and even saw Laxmibai lying in the field with injury to her head. She deposed that, on being asked deceased told about assault by accused with pick-axe, and therefore, they took her to government hospital, Hadgaon in a rickshaw, but Laxmibai succumbed to the injuries.

Witness had identified Article 2 i.e. pick-axe confronted to in the witness box to be the same. She further deposed that, accused is her brother-in-law and she identified him in the court also.

13. In her cross, she admitted that martial life of deceased and accused was good, that in the neighbouring field, the other farmers were present, that accused is a religious person. She admitted that, informant used to visit the house of accused. She denied that there was dispute between herself and accused on account of common bandh. She also flatly denied that, on the day of incident, she herself as well as deceased and appellant accused were in their respective homes. She also denied suggestion that deceased fell from the tin roof and suffered injuries and that

appellant took his wife to the hospital. She volunteered that, they took deceased to hospital. She denied that deceased did not speak with her. Rest all is denied.

14. Learned APP has asserted that, death is proved to be homicidal one and that ocular account tallies with medical account, apart from recovery of weapon.

15. PW5 Dr. Maroti Dake, who had conducted post-mortem is examined at Exh.44 and he testified regarding receipt of requisition letter, inquest panchanama and thereafter conducting post-mortem between 3:20 a.m. to 4:20 a.m. He narrated the injuries noticed by him from paragraphs 1 and 2 describing the nature of injuries, its size and measurement. He also narrated the internal injuries noted by him on autopsy and then opined regarding cause of death as "death due to head injury with perforation peritonitus" and further deposed that injury nos.1 and 3 reflected in column no.17 corresponding to internal injury noted in column nos.19 and 21 and are sufficient to cause death in ordinary course of nature. He also opined regarding potential of article pick-axe to cause above injuries.

There is very little cross of medico legal expert, which he has flatly denied, i.e. injuries to be possible while giving treatment and on account of fall from first floor.

On analyzing above, evidence of PW6 Chayabai and medical evidence, there is no hesitation to hold that Laxmibai suffered only and only homicidal death.

16. We have already discussed evidence of PW6 Chayabai. We have also gone through the cross faced by her. Her testimony having remained unshaken and it inspires confidence and so deserves to be accepted as direct eye witness account for the simple reason that, she was in the close proximity of the scene of occurrence at the time of incident. In fact, she had marked presence of appellant throughout the day working in the field in the company of deceased wife. She is very categorical about hearing shouts and rushing to the field of appellant and finding him armed with pick-axe, which she identified in the witness box also and has also deposed about deceased lying in the field near appellant with bleeding injury. Nothing adverse has been brought in her cross either to disbelieve or doubt her testimony. Therefore, her evidence deserves to be accepted as fruitful one.

17. PW3 Chandrakant, a public servant, who has acted as pancha to memorandum of disclosure at Exh.32. In his evidence at Exh.31, he testified about visiting police station, appellant giving

memorandum of disclosure, it being noted and appellant taking police and panchas to village Belgavhan, he making the vehicle stopped, alighting from it and taking all of them towards his house and from behind the house, he taking out pick-axe from the water outlet and handing it over to police and it to be seized by its panchanama (Exh.33). There is nothing in his cross to disbelieve above version. Consequently, there is recovery discovery of weapon at the instance of appellant himself.

18. We have further scrutinized the evidence i.e. of other witnesses examined by prosecution, who are pancha to spot (PW2 Baban) and pancha to memorandum of disclosure (PW3 Chandrakant). An acquaintance of accused and deceased (PW4 Kashinath) has unfortunately not supported the prosecution. But, that itself would not have any reflection on above discussed direct eye witness. Here, even treating doctor (PW7 Dr. Sabura Shirin Mohd. Yunus) has been examined, who has narrated about receiving history of assault by husband, being given by none other than injured.

19. Investigating Officers i.e. PW8 PSI Waghmare and PW9 Swami respectively, have also successfully carried out investigation. There are no lapses on their part.

20. Therefore, guilt of appellant is cogently proved. In appeal no case being made out on merits, we refrain to interfere in the findings and the conclusion reached at by the learned trial Judge. Sound reasons are assigned for accepting prosecution case. Hence, we proceed to pass following order :-

ORDER

The criminal appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)