

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

CRIMINAL APPEAL NO. 216 OF 2020

**SWATI W/O. MANOHAR PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Appellant : Mr. Bhamre Manish V.
APP for Respondents/State : Mrs. V.S. Choudhary
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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.
DATE : 15th March, 2023**

ORDER :- (Per: Y.G. Khobragade, J.)

1. By the present appeal under Section 372 of the Cr.P.C, the appellant-wife of deceased-Manohar Patil is challenging the judgment and order dated 28.11.2019 passed in Sessions Case No.20 of 2018 by the learned Additional Sessions Judge, Dhule thereby acquitting the respondent no.2-accused for the offence punishable under Section 302, 506 of the I.P.C. in Crime No.113/2017 registered with Police Station Sindhkheda, District Dhule.

2. In nutshell, prosecution's story is that, the appellant-informant lodged a FIR with Sindhkheda Police Station on 18.07.2017 stating that she is legally wedded wife of Manohar Patil. Her husband had undergone gall bladder surgery prior to one year of the incident. She delivered a child on 25.05.201 at her paternal house at village Khedi. However, her father received

a phone call from her family member at about 8.00 p.m. on 10.07.2017, informing that her husband Manohar Patil had gone to terrace of his house to clean water tank and fell down due to which he has been taken for treatment at hospital at Dhule. Her parents, uncle and aunt visited Civil Hospital Dhule at about 10.00 a.m. on 11.07.2017, to see her husband and, all of them returned at about 05.00 p.m. Thereafter, on inquiry she came to know about recovery of physical condition of her husband but on 13.07.2017 at about 08.00 a.m., her mother told her that they are required to go to Chimthaval to attend funeral of her husband-Manohar Patil. After performing of last rites, she came to know from her brother-in-law Mangesh that, after having dinner at about 10.00 p.m. on 09.07.2017, he (Mangesh) with his parents and Manohar Patil (deceased) were sleeping in first room of the house and her brother-in-law Rakesh (PW1) was sleeping with his wife-Puja and son Kunal in middle room of the house. In the said night around 2.00 a.m., Mangesh heard some noise, therefore, he woke up and went to the terrace to see whether water tank was filled or not. He saw that accused-respondent no.2-Samadhan Patil, was following her husband-Manohar Patil to the terrace and after some time he heard voice of falling something. Thereafter, her husband-Manohar Patil slept while keeping his hand on stomach. At the same time, the accused hurriedly came down from the staircase and went inside the house. The appellant informant further alleged that her brother-in-law / Mangesh

disclosed her about extra marital relationship between Puja- the wife of her brother-in-law Rakesh with the accused. Manohar Patil was objecting the said relationship, therefore, to remove obstruction, the respondent no.2-accused assaulted deceased with fist blows on his stomach, though, the accused was knowing about stomach surgery undergone by deceased. Manohar Patil died due to said assault. Thus, accused had committed murder of Manohar Patil. On the basis of said report Crime No.113 of 2017 was registered against the accused for the offence punishable under Section 302, 506 of the I.P.C. The Investigating Officer conducted investigation and visited the spot of incident and drawn panchanama and recorded statement of witnesses.

3. On completion of investigation, charge-sheet came to be filed against the respondent no.2-accused before the learned J.M.F.C., Sindhkheda. On compliance of Section 207 of the Cr.P.C. the learned J.M.F.C. passed an order under Section 209 of Cr.P.C., and committed the case for trial to the Court of Sessions as the offences are triable by the Court of Sessions. The learned trial Court framed charge at Exhibit-6. Accordingly, plea of the accused was recorded, however, accused pleaded not guilty and claimed for trial.

4. In order to bring home guilt of the accused the prosecution examined total six witnesses i.e. PW-1 Rakesh Jadhav, the brother of deceased

Manohar, at Exh. 15. PW-2 Vinayak Sakharam Jadhav, the father of deceased Manohar, at Exh. 18, PW-3 Swati Manohar Patil, the informant and wife of deceased Manohar at Exh. 19, the PW-4 the Investigating Officer Ramesh Maharaju Chavan at Exh. 26, PW-5 Dr. Nilesh Zingu Gorane, who medically treated Manohar at Seva Hospital at Exh. 30 and PW- 6 Dr. Kapileshwar Maganlal Chaudhary, who conducted post mortem on the dead body of Manohar at Exh. 33. The incriminatory evidence was pointed out against the accused under Section 313 of the Cr.P.C.

5. Learned trial Court passed the impugned judgment on 28.07.2017, and acquitted the respondent-accused for the offence punishable under Section 302, 506 of the I.P.C. The present appeal has been filed to challenge the said acquittal.

6. With the able assistance of the learned advocate for the appellant and the learned APP. We have heard the matter at the admission stage and gone through the record, which was before the learned Trial Judge.

7. The prosecution mainly relied upon the testimony of PW1-Rakesh, PW2-Vinayak and PW3-Swati (informant) / appellant. PW3-Swati / appellant deposed that her mother-in-law and brother-in-law-Mangesh were sleeping in the courtyard. Her father-in-law and her husband-Manohar were sleeping in first room, whereas, PW1-Rakesh along with his wife-Puja and son

were sleeping in the third room. At about 01.30 a.m. her brother-in-law PW1-Rakesh was about to visit the field for watering of the crops and while leaving the house, the PW1 pushed the door of his house and informed his brother deceased-Manohar Patil about the door lying open and her brother-in-law PW1 returned at house after watering to crops and slept. On next day morning, her husband disclosed her mother-in-law about visit of respondent no.2-accused at their house in night time and when her husband ran after the accused up to the terrace, the accused assaulted on stomach of her husband, though, having knowledge of deceased-Manohar Patil undergoing stomach surgery. Thereafter, the accused-Samadhan Patil pushed her husband from terrace and while running he fell down on the road due to which her husband sustained injuries and died during the treatment on 13.07.2017 in Seva Hospital, Dhule.

8. PW5-Dr. Nilesh Gorane at Exhibit-30 deposed that, on 10.07.2017 at about 05.16 p.m. the patient Manohar Patil was admitted in Seva Hospital with the history of falling from staircase of his house on 10.07.2017 at about 02.00 a.m. and after examination he found that the patient was suffering from blunt trauma to abdomen, chest with multiple fracture to left ribs with haemothorax with haemoperitoneum, ruptured spleen, hypovolemic and surgery was performed on the patient. He medically treated the patient till 13.07.2017 but the patient was not responding to the

treatment and ultimately the patient died on 13.07.2017 at about 07.30 a.m. Thereafter, he issued a letter (Exhibit-31) and referred his dead body for autopsy. In cross-examination, the PW5 admitted about presence of stitching marks on abdomen of the patient and passing information to Dhule Police Station on 10.07.2017 at about 09.00 p.m., but Police officials had not visited the Hospital to record the statement of the patient. PW5 admitted that he has not mentioned in certificate (Exhibit-31) as to whether the patient was conscious or unconscious during his admission in Hospital and injury described in certificate (Exhibit-31) can be possible due to falling on hard surface from staircase.

9. In order to prove homicidal death of the deceased-Manohar Patil, PW6-Dr.Kapileshwar Chaudhary deposed at Exhibit-33 that, on 13.07.2017, he performed post mortem on dead body of the deceased-Manohar Patil and issued post mortem report Exh.34. While performing post mortem he found following injuries:

- (1) Stitched operative wound of laparotomy present over abdomen in mid line of length 16 cm. cavity deep. all stitches intact.
- (2) One stitched therapeutic wound of drainage present over each lateral aspect of abdomen, each of size 1.8 cm x 01 cm x cavity deep, stitches intact.
- (3) Graze abrasion present over medial aspect of left arm, all over middle two third portion of the arm, size 12 cm x 05 cm, scabs present.
- (4) Multiple contused abrasions present over left lateral aspect of lower chest over the hypochondriac region, size 0.5 cm x 0.5 cm to 05 cm x 01 cm, scabs present.

10. The PW6 opined that all the injuries described in Exh.34 are ante mortem and those injuries are possible due to fall on hard surface or impact of hard and blunt object. The defence counsel conducted cross-examination of the PW6 but nothing was brought on record to discard the testimony of PW6. The PW6 admitted that the deceased had undergone surgery of stomach. The cause of death of the deceased was possible due to fall from the terrace on hard and blunt object.

11. On perusal of evidence of the prosecution witnesses, it appears that in the night of 09.06.2017, the deceased had gone to the terrace of his house in midnight. Though, the PW3-Swati Patil (informant) alleged that, her husband deceased-Manohar Patil had disclosed to her mother-in-law about illicit relations between the accused and Puja, the wife of Rakesh (PW1) and, the accused had visited at their house in the night; how she came to know about it is a mystery. It is her inference that Manohar Patil was hurdle in the said illicit relationship. She states that her husband was chased by the accused up to the terrace on the day of incident. However, evidence of PW1 appears that at the relevant time, PW1 himself was present in his house and he was sleeping with his wife-Puja. So also, Mangesh and Vinayak the brother-in-law of informant as well as her in-laws were present but none of them had lodged a report on next day i.e. 10.06.2017, if, Manohar would

have disclosed the fact of assault by the accused to them. Further the prosecution failed to examine the mother of the deceased to corroborate the fact about disclosure by the deceased in respect of entry of accused in their house in night time. The evidence of PW5-Dr. Nilesh Gorane who medically treated the patient-Manohar Patil from 10.07.2017 to 13.07.2017 does not suggest that, the patient Manohar Patil was not in a position to give his statement and though the police received information in regard to admission of the patient due to injuries, no statement of the injured was recorded. Further the incident allegedly occurred in the intervening night of 09.06.2017 and 10.06.2017 and the injured-Manohar Patil died in hospital on 13.07.2017 i.e. after lapse of more than one month, however, during said intervening period the deceased-Manohar Patil did not disclose anything either to his relatives or the Medical Officer as to how he sustained injuries. Nonetheless, as per post mortem report injuries 1 to 4 appears to be caused due to falling on surface or impact of hard and blunt object. The testimony of appellant is hearsay as she was not in the same village during the period of hospitalization of Manohar. She had not to see her husband, when he was admitted to hospital. Therefore, considering the evidence available on record, the learned trial Court has passed the impugned judgment and order on 28.11.2019 holding that the prosecution failed to produce cogent and substantial evidence to establish that death of deceased-Manohar Patil was caused due to inflicting

repeated fist blows on his stomach by the respondent-accused despite having knowledge that the deceased has undergone stomach surgery. Therefore, findings recorded by the learned trial Court are based on proper scrutiny of the evidence and no substantial grounds are set out to interfere with the said findings, therefore, the present appeal is devoid of any merit and hence it is dismissed.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]