



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

CRIMINAL APPEAL NO. 705 OF 2018

Thakuba Tukaram Bhagwat
Age: 35 years, Occu.: Agri. Labour,
R/o. Purnangar, Pimpalgaon Peth,
Tq.Sillod, Dist.Aurangabad.

....Appellant
(Org. Accused)

Versus

The State Of Maharashtra
(At the instance of Sillod Police,
Dist.Aurangabad)

.....Respondent

.....
Advocate for Appellant : Mr. Abhaysinh K. Bhosale
APP for Respondent : Mrs.Uma S.Bhosale
.....

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

**RESERVED ON : 18 DECEMBER, 2023
PRONOUNCED ON : 21 DECEMBER, 2023**

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

1. Feeling aggrieved by the judgment and order of conviction for offence under Section 302 of the Indian Penal Code (IPC), passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.62 of 2015 on 25-06-2018, by which present appellant is sentenced to suffer imprisonment for life for committing murder of his wife, instant appeal has been preferred.

PROSECUTION CASE IN NUTSHELL

2. Sillod Police Station challaned present appellant for commission of offence under Section 302 of the IPC accusing him for committing murder of his wife Dwarkabai on 14-11-2014. According to prosecution, appellant was addicted to liquor. He not only harassed deceased wife but also harassed his own parents thereby compelling them to reside separately. After getting drunk, he used to pick up quarrels with his wife and beat her.

On 14-11-2014 between 7:30 p.m. to 8:00 p.m., accused quarreled with deceased and then slit her throat with blade. There was profuse bleeding and she succumbed to same on 15-11-2014 and therefore, FIR was lodged at the instance of PW1 Kailas, maternal uncle of deceased.

PW9 Khopade (API) then posted at Sillod Police Station, conducted investigation and on gathering evidence, chargesheeted accused. He was thereby tried by the learned Additional Sessions Judge, who found appellant guilty and sentenced him to suffer imprisonment for life vide judgment dated 25-06-2018, which is impugned herein on various grounds.

SUBMISSIONS

On behalf of appellant :

3. While praying for setting aside the impugned judgment, learned Counsel for appellant submits that there is no direct evidence in support of accusations and allegations. He further submitted that PW1 Kailas has lodged report on

the basis of information received by him and therefore, implication is on hearsay evidence. He pointed out that there is no evidence for namesake about appellant to be addicted to liquor as there is no investigation in this direction and further according to him, there is no evidence regarding appellant picking up quarrel and that day inflicting throat cut injury to deceased.

4. Learned Counsel for appellant also submitted that infact prosecution own evidence suggests that on particular date, there was huge storm resulting into uprooting of tins, which were used as roof and same accidentally falling on deceased thereby causing her injury. But such defence raised has not been considered by learned trial Court. That so called direct witness PW8 Rekhabai has not personally seen occurrence and her evidence suggests that she came at the spot later on, but still she is posed as a direct witness and further her testimony is also relied by the learned trial Judge.

Consequently, it is his submission that case being not proved beyond reasonable doubt, conviction recorded by the learned trial Court is unwarranted and in absence of cogent evidence and hence, he prays to allow the appeal by setting aside the impugned judgment passed by the trial Judge.

On behalf of State :

5. Refuting the above submissions, learned APP would submit that there is overwhelming evidence of all relatives of deceased, who are unequivocal and unanimous about conduct of appellant, his bad vices and mal-treatment meted out not only to his deceased wife but also to his parents. She pointed out that PW8 Rekhabai, neighbour, is a direct witness. That deceased had suffered throat cut injury. That PW4 Dr.Sapkal, Autopsy Doctor has confirmed death due to use of article blade. That the same is recovered at the instance of accused. That accused being custodian of his wife, is solely responsible for her death. That he absconded after the occurrence and therefore, it is submitted that rightly guilt has been fastened. There is no merit in the appeal and so she prays for dismissal of the same.

6. By virtue of exercise of powers under Section 374 of the Code of Criminal Procedure, we re-appreciate, reanalyze, reexamine and reevaluate the entire oral and documentary evidence on record, being first appellate Court.

7. Record shows that in the trial Court, in support of its case, prosecution has adduced evidence of in all 9 witnesses. Their status, role and the substance of their testimony is as under :

PW1 Kailas Sitaram Wagh, maternal uncle of deceased / informant stated about deceased to be daughter of his sister. That marriage of accused with her to be second marriage. That accused was addicted to liquor and used to quarrel, harass and even threaten deceased. He claims to have given him understanding once. According to him, on 14-11-2014 at around 7:30 p.m., he received a phone call from Ganesh Shinde informing about quarrel having taken place between accused and deceased and his niece sustaining injuries and taken to hospital. He claims that, brother of accused appellant i.e. Vishnu Bhagwat informed him about hearing quarrel and about deceased coming out of house and falling down. That Vishnu Bhagwat had seen injury on neck of Dwarkabai and was so taken her to Sillod hospital. This witness stated that Dwarkabai died on 15-11-2014 due to grievous neck injury.

PW2 Bajirao Kaduba Jarare, Pancha to spot panchanama exh.17 and Pancha to memorandum of disclosure and seizure panchanama exh.18, narrated about visiting the spot, its panchanama being drawn and about accused given memorandum of disclosure in his presence in Police Station and also handing over blade to Police.

PW3 Sandeep Deelip Hingmire is Pancha to seizure panchanama of clothes of accused exh.31. He identified both accused as well as panchanama exh.31.

PW4 Dr.Baburao Gopalrao Sapkal, Autopsy Doctor opined that on conducting autopsy, he came across CLW over right side neck ad-measuring 10x5x4 cm., large vessel and trachea to be cut. Margins of injury to be sharp with clean cut. According to him, injuries are possible by use of article sharp blade and injuries noticed by him are sufficient to cause death and in this case, he has opined that probable cause of death is “hemorrhagic shock due to injury to great vessels of neck and trachea”, which led to bleeding and further resulted into cardio-respiratory failure. He identified post mortem report as well as opinion exh.35 authored by him.

PW5 Pandharinath Madhav Wagh, another maternal uncle of deceased has acted as Pancha to seizure of clothes of deceased.

PW6 Avinash Ramrao Tammewar is examining Doctor of accused on production and he noticed incised wound on right palm and abrasion on neck. He identified injury certificate exh.43 issued by him.

PW7 Gangubai Kailas Wagh is Pancha to inquest panchanama exh.46.

PW8 Rekhabai Vitthal Jadhav, neighbour of deceased, deposed that she resided in the neighbourhood of accused. Deceased to be wife of accused. Accused to be addicted to liquor and raising quarrels and abusing wife. Regarding the

occurrence, she stated that on 14-11-2014 at around 7:30 p.m., she heard shouts and therefore, she went alongwith her sister to the spot and saw deceased lying with injury on the neck and blood oozing from it. According to her, she saw accused abusing deceased.

PW9 Milind Pralhadrao Khopade is Investigating Officer, who carried out investigation and chargesheeted accused.

Defence has examined **DW1** Bapurao Bhagaji Badar. He is resident of the same village. His evidence is at Exh.69. But he has hearsay information.

ANALYSIS

8. After having heard learned Counsel for appellant, it is apparent that relation of appellant and deceased as husband and wife is not disputed. While criticizing case of prosecution, it is submitted that there is no evidence about addiction of liquor and quarrel or about accused seen by anybody inflicting throat cut injury to deceased. Defence raised is tin sheet falling due to natural calamity like storm.

9. Evidence of **PW4** Dr.Sapkal, Autopsy Surgeon, clearly shows that he has noticed following injuries, which are reproduced by him in his evidence.

“CLW over right side neck ad-measuring 10x5x4 cm., large vessel cut, trachea cut.”

Autopsy Doctor is very categorical that injury is possible by use of article like sharp blade and that there was cut to large vessel of neck and trachea. He is further categorical that the injury was sufficient in ordinary course to cause death.

Though he is subjected to **cross-examination**, we do not find any effective cross-examination to disbelieve his findings and opinion. Therefore, prosecution, in the trial Court, has established that deceased Dwarkabai met death due to severe throat cut injury.

10. Though learned Counsel for appellant has criticized prosecution evidence by submitting that there is no direct witness or clinching evidence, we disagree and discard such submission in the light of availability of testimony of **PW8** Rekhabai. She seems to be the immediate neighbour. In her testimony, she has deposed about bad vices of appellant and he to be quarreling and abusing her. Therefore, immediate neighbour has brought on record conduct and behaviour of appellant. Regarding the occurrence, she has testified about hearing shouts of deceased to save and therefore, she and her sister came out of house and she further claims to have seen accused abusing deceased Dwarkabai, who was lying down with throat slit injury from which

blood was oozing. Consequently, after cries and shouts of deceased, immediate neighbour has marked presence of appellant.

We have visited the **cross-examination** faced by this witness. Nothing damaging is brought in her cross-examination, which would affect her testimony. Therefore, here there is a witness, who resides in very proximity of the scene of occurrence and has also heard appellant abusing his injured wife. Therefore, there is clinching evidence in the form of independent witness.

11. Though PW1 Kailas, informant has reached at a later point of time, he speaks about hearing from very brother of appellant namely Vishnu Bhagwat regarding quarrel taking place between accused and deceased and thereafter, Dwarkabai coming out of house and collapsing. Therefore, brother of appellant and above referred witness PW8 Rekhabai are both confirming presence of appellant in the house at that time.

It is pertinent to note that there is no other defence like alibi taken up by appellant. Needless to say that appellant being husband and custodian of wife and such plea being not taken, he must be the only person in the company of deceased wife and therefore, responsible for the injury. PW8 Rekhabai has marked his presence.

By examining PW2 Bajirao, prosecution has shown memorandum of disclosure at the instance appellant and further recovery of blade. Such

evidence is also not rendered doubtful. Therefore, there is incriminating material against appellant.

12. Learned Counsel for the appellant has taken up a stand that on that day there was storm resulting into uprooting of tin sheet, which accidentally landed on the deceased and she suffered injury. It is submitted that defence witness DW1 Bapurao, who is resident of the same village, has stated that there was storm in the village at the time of incident. However, there is no corroborative evidence to support such contention. PW9 Khopade (API), Investigating Officer has flatly denied about such instance. Even otherwise, there is no other independent evidence in this regard i.e. storm hitting the house. PW8 Rekhabai has not uttered a word about it. Spot panchanama exh.17 prepared by PW2 Bajirao also does not suggest or indicate fall of any such natural calamity. Therefore, defence so taken has no foundation or material and so deserves to be discarded.

CONCLUSION

13. Consequently, here there is evidence of PW1 Kailas and PW5 Pandharinath, maternal uncles of deceased and PW8 Rekhabai, independent witness and neighbour of deceased regarding conduct and behaviour of deceased. They all are unanimous about appellant picking up quarrels. PW8 Rekhabai, independent witness has marked his presence that too in the very

company of injured wife. PW8 Rekhabai, independent witness and brother of appellant namely Vishnu Bhagwat claim that they heard shouts of quarrel followed by deceased coming out of house and collapsing with throat slit injury, which turned out to be fatal. Therefore, in the light of above discussed material, we find no merit in the appeal.

14. We have gone through the impugned judgment. With such quality of evidence, the only conclusion that could be reached and drawn is that charges are cogently proved. There is no defect in the appreciation of evidence. Hence, we do not find any reason to interfere in the well reasoned judgment and order. Accordingly, we proceed to pass following order :

ORDER

Criminal Appeal No.705 of 2018 stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT