



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

CRIMINAL APPEAL NO.846 OF 2023

Bharat Govind Padmere,
Age-53 years, Occu:Service,
R/o-Pendshet, PO-Waranghushi,
Taluka-Akole, District-Ahmednagar.

**APPELLANT
(Ori. Informant)**

VERSUS

1) The State of Maharashtra,
Through the Police Station
Officer, Rajur Police Station,
At & PO-Rajur, Taluka-Akole,
District-Ahmednagar.

RESPONDENT NO.1

2) Sunil Mangala Padmere,
Age-31 years, Occu:Labour,
R/o-Pendshet, PO-Waranghushi,
Taluka-Akole, District-Ahmednagar.

**RESPONDENT NO.2
(Original-accused)**

...
Mr. Vinod Y. Bhide Advocate for Appellant.
Mr. S.D. Ghayal, Additional P.P. for Respondent No.1 – State.
...

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

DATE : 12th DECEMBER, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed under Section 372 of the Code of Criminal Procedure by the original informant to challenge the acquittal of respondent No.2 in Sessions Case No. 80 of 2021 from the offence punishable under Sections 302, 394 of the Indian Penal Code by the learned Additional Sessions Judge, Sangamner on 18th July 2023.

2. Heard learned Advocate for the appellant and learned APP for respondent No.1, at the stage of admission. Perused the material which was placed before the learned trial Judge.

3. Learned Advocate for the appellant has vehemently submitted that the learned trial Judge has not appreciated the evidence properly. Deceased Shantabai was the mother of the informant – appellant. Shantabai was murdered by the accused – respondent No.2 in her residential house. It was found that she was murdered by means of a big stone by smashing her head and her golden ear-tops of 2 grams and golden *Mangalsutra* weighting 5 grams, were robbed by the accused. The evidence that was adduced was in the nature of examining informant,

however he was not eye witness. Then prosecution has also examined PW-4 Suraj, to whom the accused had expressed that he would kill deceased and take her golden ornaments. The extra judicial confession was given by the accused to his sister PW-9 Radhika, but she has turned hostile. However, the further evidence which was against the accused was the discovery panchnama of the gold ornaments by the accused under memorandum panchnama as well as by examining the goldsmith PW-8 Gaurav Malve. Further, extra judicial confession was also given to PW-4 Suraj, after the incident. Injustice has been caused to the appellant as there is no proper appreciation of evidence. The death of Shantabai was homicidal in nature as there was head injury as well as fracture to the skull. Therefore, there are grounds in favour of the appellant, which he would canvass at the time of final hearing of the Appeal. The Appeal deserves admission as re-appreciation and the scrutiny of the evidence led by the prosecution is necessary.

4. At the outset, we would like to say that merely because an Appeal is filed under Section 372 of the Code of Criminal Procedure, it need not be admitted. An accused faces entire trial and then after appreciating the evidence and hearing both sides,

the trial Court comes to a certain conclusion. When that conclusion is challenged, the appellant has to show *prima facie*, that the Appeal deserves re-appreciation of evidence and there is perversity in the impugned Judgment. We are also aware of the cardinal principle that merely because two views are possible, the appellate Court is not required to take the second view. Therefore, bearing these propositions in mind, we have considered the impugned Judgment.

5. Admittedly, the case is based on circumstantial evidence. The learned trial Court has taken note of the decision in ***Ramesh Bhai and another vs. the State of Rajasthan, 2009 Cri. L.J. 2991*** and ***Laxman Prasad @ Laxman vs. State of M.P., Criminal Appeal No.821 of 2012***, decided by the Hon'ble Supreme Court on 14th June 2023. We also want to rely on the celebrated case of ***Sharad Birdhichand Sarda vs. State of Maharashtra*** reported in ***(1984) 4 SCC 116***, wherein the Hon'ble Apex Court has laid down the golden principles on circumstantial evidence. Therefore, it was abundant duty on the part of the prosecution to prove the chain of circumstances and each segment of the chain should unerringly point out towards the accused as the culprit. The learned trial Judge has also taken

note of the decision in ***Nikhilchandra Mondal vs. the State of West Bengal, 2023 Live Law (S.C.) 171***, wherein it has been reiterated that the extra judicial confession is a weak piece of evidence. If extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. Here, it is to be noted that the case of the prosecution was based on extra judicial confession and the recovery of the golden ornaments, which were allegedly on the person of the deceased, discovered by the accused. Here, the alleged murder weapon was the stone which was lying near the house and it was thrown there itself, which had blood stains of the blood group of the deceased. From the testimony of autopsy doctor PW-11 Dr. Trupti and the postmortem notes Exhibit-39, it is certain that death of Shantabai was homicidal in nature, but if it is to be connected to the accused, then there ought to have been cogent and material evidence. As aforesaid, there has to be the chain of circumstances unerringly pointing out the accused to be the culprit. PW-1 Bharat, i.e. the present appellant is the son of deceased Shantabai, but it has come in the evidence that he resides separately and deceased Shantabai alone used to reside in the village. After PW-1 Bharat was informed by his paternal aunt, he went to the spot. After he saw the dead body, he could

realize that ear-tops and *Dorle* i.e. *Mangalsutra* from the ear and neck of his mother were missing. The earlobe was cut. He has not produced any such document to support his contention that the articles which alleged to have been recovered as per the memorandum panchnama, were belonging to his mother. There appears to be no unique mark as well as no receipt in respect of those articles was with him.

6. Star witness as per the prosecution case is PW-4 Suraj Bande, to whom a statement was made by the accused expressing his intention to kill Shantabai. It cannot be presumed as extra judicial confession, as the confession has to be made after the incident only. PW-4 Suraj himself says that as accused had consumed liquor, he did not pay attention to the said statement made by the accused. We are constrained to consider the age of this witness i.e. PW-4 Suraj. He has given his age as 18 years, whereas the accused is aged 30 years. PW-4 Suraj was still taking education whereas the accused was doing labour work. PW-4 Suraj has only stated that he was knowing accused. He has not stated that accused was his friend. Rather, he has stated that around 7.00 p.m. on 14th June 2021, accused had come to his house. Accused has brought country-liquor, which

was consumed by the accused and father of PW-4 Suraj. That means, at the most the accused might be the friend of father of PW-4 Suraj. Then the question arises, as to whether the accused would have frankly told Suraj that he has intention to kill Shantabai, which Suraj did not take seriously. Thereafter PW-4 Suraj says that he himself, accused and one Tukaram were chitchatting and he returned home around 10.45 p.m. Around 11.00 p.m. accused returned to the house of PW-4 Suraj and asked him to give torch as there was dark. Sunil's mother told him to give torch and then accused told that his mobile has been switched off and so Suraj should put it for charging. Accused gave him mobile, took torch and went away. Then after about 20 to 30 minutes electricity went of. Around 12.00 midnight, accused again came to the house of PW-4 Sunil, gave call to him and asked that he should return the mobile. When Suraj went to give him mobile, accused told him that he had gone to D.P. (Distribution Panel of electricity) and broke the fuse and he has killed the old lady. According to Suraj, said old lady was Shantabai. Then accused said that Suraj should see the blood to the hands of accused. At that time mother of Suraj woke up and called him inside the house and therefore, Suraj went inside the house and slept. The conduct of this witness is also not

convincing. When he alleges that somebody was confessing him about the murder, how he can take it so lightly, when his age is 18 years old. It appears that Suraj was inferring that when accused said old lady, he was referring to Shantabai and it appears that Suraj was not sure about the same. If accused had confessed, he would have taken the name of Shantabai and not addressed her as, 'old lady'.

7. Another witness to whom the confessional statement is stated to have been given, is PW-5 Dilip Jadhav. He says that accused gave him telephone call and informed that he has done the matter and then asked Dilip to come with vehicle for taking him. PW-5 Dilip says that he felt that accused was making fun of him and therefore he said so to the accused, but the accused said that if he was thinking so then he can make a video call to the accused and he would show his hands with blood. According to PW-5 Dilip, telephone call was given between 1.00 to 1.30 a.m. on 15th June 2021. In his cross-examination, PW-5 Dilip has given vital admissions. He says that accused Sunil and he himself as well as others were playing mobile game by name 'PUBG' and it is a team game. Many persons play the said game at night time. They also used to play the said game at night

time, in which there used to be target of 30 to 40 skills and it has to be completed and after the completion of the target, they used to receive gift. For that purpose, they used to be in online contact with each other. In the said game they used to use words that, a big matter has taken place and there will be attack on them. He has further admitted the niceties of the said game which they used to play, in detail. Then PW-5 Dilip has categorically stated that he is unable to remember that when there was conversation between he himself and accused, it was in respect of the said game. That means he has not denied it. Further, he has also admitted that on the day of his deposition, he had read his statement under Section 161 of the Code of Criminal Procedure before entering the witness box and then deposed as per the same. We cannot rely upon such person.

8. There cannot be a conviction only on the basis of discovery. The discovery under Section 27 of the Indian Evidence Act is corroborative piece of evidence. After golden articles discovered, those were not shown to PW-1 Bharat i.e. present appellant or any other relative of deceased and there is no identification panchnama of the said articles. Those articles have been directly identified by PW-1 Bharat in the Court. As per the

discovery panchnama, the golden articles have been seized from a plastic bag from the veranda adjacent to the house of one Yuvraj Dulaji Bote, resident of Manik Ozar, Taluka-Akole, District-Ahmednagar. Here, the said person, who is the owner of the said place, has not been examined. But PW-10 Ajay Yuvraj Bote has been examined, who is the cousin of the accused. He says that accused had visited his house on 15th June 2021. At that time he himself had gone to take out mangoes from the tree near his house. A small boy went to him and told that a guest has arrived in his house. Then he came and met accused. The accused told him that he has come about 1 to 2 hours prior to the time when they met. Accused asked PW-10 Ajay to give him clothes, which according to Ajay, had given and the reason for the said demand was that clothes of the accused had become dirty. Accused had then demanded amount of Rs.200/- to go to Mumbai. Accordingly the amount was given. It is to be noted that PW-10 Ajay is not the person who had seen the accused concealing anything in his house or veranda. He had not seen that clothes of the accused were blood stained, but then C.A. report shows that the shirt of the accused was blood stained. Therefore, such scanty evidence cannot take shape of proof beyond reasonable doubt.

9. A well reasoned Judgment has been given by the learned trial Court and therefore, the accused cannot be put to trouble once again by asking him to face the trial. There is no merit in the present Appeal and it deserves to be dismissed as the impugned Judgment is not perverse.

10. Accordingly, the Appeal is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DEC23