

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1250 OF 2022**

Laxman Madhukar Sarnaik	)	
Age : 30 yrs, Gandhinagar,	)	
Jhopati S. T. Mahamandal,	)	
Thane.	)	
(Nashik Road Central Prison).	)	... Appellant
	)	(Original Accused)
V/s.		

The State of Maharashtra	)	
(at the instance of Palghar Police Station)	)	... Respondent

Ms. Dhanalakshmi Iyer for Appellant.
Mr. S. S. Hulke, APP for Respondent-State.

CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.

DATE OF RESERVING : 11th JULY, 2023.

DATE OF PRONOUNCEMENT : 31st AUGUST, 2023.

Judgment (Per Shivkumar Dige, J.) :

1. The challenge in the present Appeal is to the Judgment and Order dated 22nd December 2008 passed in Sessions Case No.117 of 2007 by the Additional Sessions Judge, Palghar, whereby Appellant is convicted for an offence punishable under Section 302 of the Indian Penal Code (for short "IPC") and is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.3000/-, in default of payment of fine, to suffer further rigorous imprisonment for a period of one year.

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2. Brief facts of the case are as under :

2.1. The first informant - Asha Gholapkar's daughter Chitra had love marriage with Appellant. She was residing with Appellant in Gandhinagar locality where the first informant was residing. After few days of marriage, Appellant would beat Chitra after consuming liquor. He was not doing any job and used to remain idle. Two months prior to the incident, he had eloped with another girl viz. Husna and he stated that, he would marry with Husna. The said proposal was opposed by Chitra, therefore there used to be quarrel between Chitra and Appellant and Appellant would beat Chitra.

2.2. On 9th April 2007 at about 12.30 pm. PW-1 Asha got information that, Appellant had severally beaten Chitra. She was unconscious and was taken to hospital. Asha went to Dhavale Hospital, Palghar. There she found that, Chitra had died. She had injuries on her head, mouth and on her whole body. Asha lodged report against Appellant and his mother Manda, grandmother Sushila and aunt Puspha stating that, all of them have assaulted Chitra with iron rod and kicks and caused her death. On her report, police registered First Information Report (FIR). After completion of investigation, police filed charge-sheet against Appellant only. The case was committed to Additional Sessions Court, Palghar. Charge was framed against Appellant. He pleaded not guilty and claimed to be tried.

2.3. To prove its case, prosecution has examined 10 witnesses. Statement of Appellant under Section 313 of Code of Criminal Procedure,

1973 (for short "Cr.PC.") was recorded. The defense of Appellant was of total denial. Appellant examined Husna as defense witness.

2.4. Considering the evidence on record and submissions of both the learned counsel, Trial Court has convicted Appellant as referred above.

3. It is the contention of learned counsel for Appellant that, the Trial Court has not considered the evidence produced on record properly and has erroneously come to the conclusion that, Appellant has committed the crime. The prosecution has not proved its case beyond reasonable doubt. There are material contradictions in the evidence of prosecution witnesses. There are ambiguities in the statements of witnesses but it was not considered by the Trial Court. PW-2 Babita Joshi, eye-witness, has stated that, she had already witnessed Chitra being beaten up, then why did she leave her alone for further torture. After some time, she returned back and found Chitra unconscious. It shows ambiguity in her evidence. Her house was 10 to 15 feet away from the house of Appellant. It was impossible that, this witness could have heard screams of Chitra. Learned counsel further submitted that, it has come in the evidence of PW-3 Tulsi Joshi that, she had gone to Appellant's house when he was beating Chitra but this witness has not referred the presence of PW-2 Babita being there. It creates doubt about the evidence of this witness.

3.1. Learned counsel further submitted that, the weapons seized under the disclosure statement of Appellant does not prove that, the injuries caused to Chitra were due to these weapons but this fact is not

considered by the Trial Court. Learned counsel further submitted that, prosecution failed to prove the motive behind the crime. Hence, requested to allow the Appeal.

4. It is the contention of learned APP that, prosecution case is based upon direct evidence. There are four eye-witnesses who had seen Appellant beating Chitra by making her naked. Appellant beat Chitra for 2-3 hours with wooden stump and iron rod. Due to the said assault, 24 injuries were caused to Chitra. Appellant had love affair with another woman Husna and he wanted to marry her, which was opposed by Chitra. On that ground, Appellant beat Chitra to death. The Judgment and Order passed by the Trial Court is legal and valid, no interference is required in it. Hence requested to dismiss the Appeal.

5. We have heard Ms. Dhanalakshmi Iyer, learned Advocate for Appellant and Mr. S. S. Hulke, learned APP for the State. Perused record, and impugned Judgment and Order of the Trial Court.

6. There is no dispute about homicidal death of the deceased. PW-10 Dr. Parag Talele who treated the deceased has stated that, on 9th April 2007, deceased Chitra was brought to the hospital by her husband and relatives. She was unconscious and her pulse and blood pressure were not recordable. She was having bleeding injuries on occipital region. Mandible was fractured and dislocated. There was bleeding from left ear and also from mouth. Left arm was swollen. On the stomach, there were marks of injury in circular shape, however, those injuries were not bleeding. There

were 3 to 4 such circular injuries. Upper vagina was bleeding and swollen. This witness provided primary treatment but there was no improvement in her health, it was deteriorating. As his hospital was not having facility for advance treatment, this witness suggested to admit Chitra in K.E.M. Hospital, Mumbai.. Ambulance was arranged to transport her to K.E.M. Hospital. This witness accompanied Chitra to K.E.M. Hospital. However, she died on the way.

6.1. In cross-examination, this witness admitted that, Appellant was with deceased till she was brought to the hospital. Post-mortem report is at 'Exhibit-24'. This report is admitted by Appellant. Hence, the doctor who conducted post-mortem was not called for evidence. Appellant had not filed any application to call this doctor for cross-examination to bring any circumstance on record to favour him. The post-mortem report shows that, deceased was having total 24 injuries on her person, which are mentioned hereinbelow:

- 1] C.L.W. on scalp on right fontoparietal region
Size : 8 cm X 1 cm X bone deep
Direction – oblique
Margin – Irregular
Object – Hard and Blunt
- 2] Hematoma on Temporal region right side just above the right ear
Size : 8 cm X 6 cm.
Colour – Reddish-blue
Object – Hard and blunt
- 3] Contusion around both eyes (Black eyes)
2 Cm. Diameter around eye
Colour – Blackish
Object – Hard and blunt

- 4] Abrasion on face left side on maxillary area below eye
Size : 4 cm X 4 cm.
Margin – Irregular
Object - Hard and blunt
- 5] Contusion on face on left side in front of the ear
Size : 3 cm X 4 cm.
Colour – Blue
Margin – Irregular
Object – Hard and blunt
- 6] Contusion on left side mandible
Size : 3 cm X 4 cm.
Margin – Irregular
Colour – Blue
Object – Hard and blunt
- 7] Abrasion with contusion on right side mandible area with fracture right side mandible near midline causing disfigurement of shape of jaw and face.
Size : 9 cm X 6 cm.
Colour – Blue
Margin – Irregular
Object – Hard and blunt
- 8] Abrasion on chin
Size : 2 cm X 1 cm.
Margin – Irregular
Object – Hard and blunt
- 9] Abrasion on neck below right ear
Size : 3 cm X 2 cm.
Margin – Irregular
Object – Hard and blunt
- 10] Abrasion on chest on right side in infraclavicular area
Size : 4 cm X 3 cm
Margin – Irregular
Object – Hard and blunt
- 11] Contusion on right side in Mammary region
Size : 4 cm X 6 cm
Margin – Irregular
Object – Hard and blunt

- 12] Contusion on tip of shoulder right
Size : 2 cm X 2 cm
Colour – Blue
Margin – Irregular
Object – Hard and blunt
- 13] Contusion on right upper area middle 1/3 area on Lat aspect
Size : 3 cm X 6 cm
Colour – Blue
Margin – Irregular
Object – Hard and blunt
- 14] Contusion on left upper area middle 1/3 area on lateral aspect
Size : 4 cm X 4 cm
Margin – Irregular
Colour – Blue
Object – Hard and blunt
- 15] Abrasion on left tip of shoulder
Size : 1 cm X 1 cm
Margin – Irregular
Object – Hard and blunt
- 16] Abrasion on left hand dorsally near wrist joint
Size : 2 cm X 2 cm
Margin – Irregular
Object – Hard and blunt
- 17] Contusion with abrasion on abdomen in Umbilical region on left side
just above the umblicus
Size : 1.5 cm. In diameter, circular shape
Margin – Irregular
Colour – Blue
Object – Hard and blunt
- 18] Contusion on right side unblical region below the unblicus right side
Size : 1.5 cm. Diameter circular shape
Object – Hard and blunt
- 19] Contusion on left leg thigh middle and lower 1/3 area
Size : 10 cm X 6 cm
Colour – blue
Object – Hard and blunt

- 20] Contusion on left lower leg below the knee joint
Size : 5 cm X 3 cm
Colour – Blue
Margin – Irregular
Object – Hard and blunt
- 21] Contusion with abrasion near ankle jt. left lateral aspect
Size : 6 cm X 4 cm
Colour - Blue
Object – Hard and blunt
- 22] Contusion with abrasion on right leg middle 1/3 area lateral aspect
Size : 4 cm X 3 cm
Margin – Irregular
Object – Hard and blunt
- 23] Contusion on both buttock
Size : 10 cm X 8 cm
Colour – Blue
Object – Hard and blunt
- 24] C.L.W. at anus at 11 O' clock position
size : 3 cm X 1 cm X 1 cm. deep bleeding
Margin – Irregular
Object – Hard and blunt

6.2. The cause of death is mentioned as, fracture of skull bone causing extradural hemorrhage and multiple injuries over entire body. Admittedly, the said injuries were caused by blows of hard and blunt weapon.

6.3 Appellant has not taken any specific defense to explain these injuries. At the time of incident, Appellant was present in the house. Appellant has not disputed homicidal death of deceased. It proves that, death of the deceased was homicidal.

7. It is the prosecution case that, Appellant beat Chitra to death as he wanted to perform marriage with Husna which was opposed by Chitra.

7.1. PW-1 Asha Gholapkar at 'Exhibit-14' has stated that, Chitra was married to Appellant. They were residing in the locality behind her house. Appellant was not earning anything. He used to stay at home without doing any labour work. 15 days prior to the incident, Appellant had abducted another girl viz. Husna. After 8 days, he promised to Chitra that, he would behave properly. PW-1 persuaded Appellant to treat Chitra properly and not to beat her. On 9th April 2007, Appellant beat Chitra severally. She came to know about it through Bhavna. Then she called her husband and informed him about incident. Thereafter, Appellant came to PW-1 holding a weapon in his hand and told her that, he murdered Chitra. Thereafter Appellant carried Chitra to Dhavale Hospital. This witness went to the said hospital. Doctor told her that, her daughter was serious and was shifted to Mumbai. But on the way to Mumbai, she died. This witness had seen the dead body of Chitra. She was having injuries and marks of assault on her head and neck. She lodged a complaint. It is at 'Exhibit-15'. In cross-examination, this witness admitted that, she could not tell full name of Husna and whether Appellant had gone with Husna. This witness stated that, during the period of cohabitation up to the abduction of Husna, Appellant used to beat Chitra and this witness had seen it. Appellant had come to her house around 10.00 to 10.30 am with weapon. From evidence

of this witness, it reveals that, Appellant was unemployed, he was not doing any work. Appellant had eloped with a girl named Husna, and he used to beat Chitra.

8. The incident of beating Chitra by Appellant was witnessed by four eye-witnesses i.e. PW-2 Babita Joshi at 'Exhibit-16', PW-3 Tulsi Joshi at 'Exhibit-17', PW-4 Santosh Joshi at 'Exhibit-18' and PW-5 Bhavna Nalavde at 'Exhibit-19'.

9. PW-2 Babita Joshi has deposed that, Appellant was her neighbour. Chitra and Appellant used to quarrel with each other. On 9th April 2007, in the morning between 9.30 to 10.00 am, she heard shouts of Chitra, therefore, she went to the house of Appellant. She found that, there were no clothes on the person of Chitra and Appellant was beating her. She asked Appellant to refrain from assault but Appellant abused her and told her that, she had no concern with their dispute. In the presence of this witness, Appellant slapped Chitra and also kicked on her lower abdomen. She returned to fetch water. After some time, Tulsi (PW-3), sister-in-law of PW-1 called her. She asked this witness to accompany with her as Chitra was to be admitted in the hospital and it was necessary to wear clothes to her. Therefore, this witness again went to Chitra's house. There were no clothes on her person. PW-2 wore clothes to Chitra. Appellant lifted Chitra for admitting her in the hospital. Tulsi went along with Appellant and Chitra. This witness came to know at 2.30 to 3.00 pm that, Chitra died. In cross-examination, this witness admitted that, she did not call any other

person for rescuing Chitra from the clutches of Appellant. From the evidence of this witness, it reveals that, this witness had seen Appellant beating Chitra. There were no clothes on her person. This witness tried to intervene but Appellant abused this witness.

10. It has come in the evidence of PW-3 Tulsi Joshi at 'Exhibit-17' that, on the day of incident at about 9.00 am, she was standing in front of her house as it was time for water-supply in their locality. She heard shouts of Chitra from her house. Therefore, she rushed to Chitra's house. She found that, there were no clothes on the person of Chitra and Appellant was beating her. She asked him to stop beating but Appellant lifted a stone and threatened this witness to assault her with the said stone, therefore she came out of his house. Thereafter again this witness went to the house of Appellant at about 12.30 pm. Appellant asked this witness to wear clothes to Chitra. At that time, Babita, Mangal and aunt of Pushpa were with this witness. After wearing clothes, Appellant took Chitra to the hospital by rikhshaw. This witness, her husband and relatives of Appellant went to the hospital where Chitra was admitted. This witness came to know that, Chitra was dead. There is no cross-examination of this witness, on the point of beating by Appellant. There is simple suggestion that, at the instance of police, this witness deposed falsely which she denied.

11. PW-4 Santosh Joshi deposed that, on 9th April 2007, he was playing carom. Manisha and Bhavna came to him and stated that, Chitra was being beaten by Appellant. Therefore, this witness went to the house

of Appellant. He saw that, there were no clothes on the person of Chitra. Appellant abused this witness and pushed him out of the house by stating that, it was his domestic matter. He left the house. After about half an hour, rickshaw arrived at the house of Appellant. Appellant carried Chitra in the said rickshaw to the hospital. This witness and his wife accompanied Chitra and Appellant for carrying Chitra to the hospital at Mumbai. On the way to the hospital, Chitra died. Nothing elicited in cross-examination of this witness. Suggestion was given to this witness that, he deposed falsely at the instance of police, which he denied.

12. PW-5 Bhavna Nalavade is a child witness of 12 years old. She is the niece of Appellant. Her statement was recorded by police and in presence of a Magistrate. She has stated that, on 9th August 2007 at about 10.30 am, she had gone to the house of Appellant for arranging her hair with the help of Chitra. She saw there was quarrel going on between Appellant and Chitra, therefore, she came out from their house. Chitra was sitting on the cot and Appellant had caught her by neck. Chitra pushed Appellant. Thereafter, this witness went to her school. As she did not support the prosecution case, learned APP cross-examined her.

12.1. In cross-examination she admitted that, Appellant had consumed toddy and thereafter he dragged Chitra and beat her. Chitra was shouting. She further stated that, she had informed about the quarrel between Appellant and Chitra to mother of Chitra and she stated that, the quarrel was as usual. This witness admitted that, there was bleeding

through the mouth of Chitra and Appellant was drove out all persons who tried to separate Chitra from him.

12.2. In cross-examination by learned counsel for Appellant, this witness admitted that, she does not know the words used by Appellant while quarrelling with Chitra and the statement before the magistrate was given at the instance of her sister Manisha. Manisha and Appellant were not keeping good terms.

13. From the evidence of these witnesses, it reveals that, they have seen Appellant beating Chitra. When these witnesses (except PW-5) tried to intervene, Appellant threatened these witnesses not to interfere in their quarrel. At that time, there were no clothes on the body of Chitra. It appears from record that, Appellant was beating Chitra from 9.00 am to 12.30 pm. It has come in evidence of PW-3 Tulsi that, at about 9.00 am. she had heard shouts of Chitra from her house and again she went to the house of Appellant at 12.30 pm, at that time Appellant had asked her to wear clothes to Chitra. For three hours, Appellant was continuously beating Chitra. The injuries caused to Chitra corroborates this fact. It has come in the evidence of PW-6 Janardhan Raut, panch witness to spot panchanama. 'Exhibit-21' shows that, bloodstains were there on floor of the house of Appellant, articles and clothes were lying in the room. Inquest panchanama at 'Exhibit -22' shows that, the injuries were appearing on whole body of Chitra. The inquest panchanama is admitted by Appellant when notice under Section 294 of Cr.P.C. was given by prosecution. This inquest

panchanama shows that, the teeth in lower jaw of Chitra were broken, there was bleeding from her nose and mouth. The entire face had injuries and it had blackened. There were round marks on her stomach. There was bleeding from her upper vagina and anus. The evidence of Dr. Parag Talele PW-10 who examined deceased Chitra after she was admitted in the hospital strengthens the prosecution case that, she was beaten mercilessly and injuries appeared on her whole body.

14. It is case of prosecution that, Appellant had beaten Chitra with wooden stump and iron pipe. To prove the discovery of these weapons at the instance of Appellant, prosecution examined panch witness. It has come in the evidence of PW- 7 Vijay Nigade that, on 10th April 2007, he was called by the police in police station. He went to the police station. Vinod Joshi, another pancha was present there. Appellant was also present there. Appellant made disclosure statement to produce the weapon used in the crime in the presence of these witnesses. According to Appellant, weapon was kept underneath a wooden cot at his home. The police recorded the statement of Appellant. PW-7, Appellant and another panch signed on it. The panchanama it at 'Exhibit-26'. Thereafter, he, another panch, Appellant and police went to the house of Appellant. Appellant went in his house. This witness, police and other panch followed him. Appellant took out wooden stump and one iron pipe and give it to police. Police seized it. Panchanama was prepared, it was read over to them. PW-7 and other panch put their signatures on it. It is at 'Exhibit-27'. Then they all returned to

Police Station. In Police Station , police inspector asked Appellant where the clothes on the person of deceased Chitra were kept. Appellant stated that, those were concealed behind one cupboard. The said statement was written by police, panchanama was prepared, it was read over to them. This witness, other panch and Appellant put signatures on it. It is at 'Exhibit-28'. On the basis of another disclosure statement of Appellant, police seized clothes of deceased Chitra. Panchanama is at 'Exhibit-29'. This witness identified the wooden stump, iron pipe and clothes. These articles are "Articles 1 to 4".

14.1. In cross-examination, PW-7 admitted that, he knows Appellant since childhood as he resides in the same locality. This witness was unable to tell the exact time when Appellant started making disclosure statement and when it was completed. This witness further admitted that, there were slight bloodstains on the wooden stump, it was on the middle portion. A suggestion was given to this witness that one cannot remain present at the same time at two places.

15. It has come in the evidence of PW-9 Shailesh Sannas, Investigating Officer that, on 9th April 2007, investigation of present case was given to him. He visited the incident spot, collected samples of bloodstained 'coba'(Flooring) and ordinary 'coba'(Flooring) from the said spot. In the presence of panch witnesses, he seized articles, prepared spot panchanama, it is at 'Exhibit-21' and prepared inquest panchanama. He seized weapons and clothes of deceased as per disclosure statement of

Appellant. The panchanamas are at 'Exhibits-26, 27, 28 and 29' respectively. As per Section 169 of Cr.PC., the relatives of Appellant were released.

15.1. In cross-examination, this witness stated that, he reached the incident spot on 9th April 2007 about 5.45 p.m. to 5.50 p.m., he was there up to 8.15 p.m.. He admitted on that day he did not investigate regarding weapon or the clothes or he did not search it. These are seized later on. This witness denied the suggestion that, no panchanama of seizure of weapon and clothes of deceased were prepared on the incident spot and he had obtained signatures of Appellant on blank paper and panchanamas were prepared in police station. It is the contention of learned counsel for Appellant that, as per disclosure statement of Appellant, panchanama in respect of showing place of weapons commenced at about 5.30 to 5.45 pm and was completed at about 6.30 pm and the timing of panchanama in respect of disclosure statement of showing place of clothes of deceased and seizure of clothes of deceased prepared in the house of Appellant are from 5.45 pm to 7.30 pm. It is not possible for a person to remain present at two places at the same time. Learned counsel further submitted that, eye-witness saw that, Appellant was beating Chitra with wooden stump and iron pipe.

15.2. It appears from record that, 'Exhibit-26' is a disclosure statement of Appellant regarding showing place where he had hidden the weapons used for beating Chitra. The timing of this Panchanama (Exhibit-26) shows time 4.15 p.m. to 4.30 p.m.. The timing of memorandum

panchanama (Exhibit-27) in respect of seizure of weapon shows 4.15 pm. to 6.00 pm. The panchanama of disclosure statement of Appellant at 'Exhibit-28' in respect of showing the place of clothes of deceased shows timing from 5.45 pm to 6.00 p.m. The timing of memorandum panchanama(Exhibit-29) is in respect of seizure of clothes of deceased. The timing of this panchanama shows 5.45 to 7.30 p.m.

15.3. In our view though the timing mentioned in these panchanamas overlaps but it cannot wipe out prosecution case in respect of seizure of weapons and seizure of clothes of deceased at the instance of Appellant as these are produced by Appellant from his house. Appellant was aware that, the place where these articles were hidden. Moreover, it has been proved that injuries caused to deceased were because of forceful blows of hard and blunt object. Blood stains were present on wooden stump and iron pipe. There were round sized injury marks appearing on stomach of Chitra. It proves that these injuries were caused by iron pipe. The blood stains on clothes of deceased show same blood group i.e. 'B' which were present on seized weapons. The forensic lab report is at 'Exhibit-47' which shows, human blood of 'B' group was found on seized weapons and clothes of deceased which strengthens prosecution case.

16. PW-7 has categorically stated about disclosure statement of Appellant and seizure of weapons used in crime and clothes at the instance of Appellant. From these panchanamas, it does not appear that, the signatures of Appellant were taken on blank paper. Hence, we do not see

merit in the contention that, those were prepared at police station and seized weapons were not used by Appellant.

17. It is the defense of Appellant that, he has been falsely implicated in this case. To prove his defense, Appellant has examined DW-1 Ms.Husna Ansari at 'Exhibit-45'. She has stated that, she was not keeping any relation with Appellant. Nothing has come on record from her evidence, to prove innocence of Appellant.

18. In view of above discussion, we find that, there are no merits in the Appeal. Appeal is accordingly dismissed.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)