



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

**CRIMINAL APPEAL NO. 131 OF 2022
WITH
CRIMINAL APPLICATION NO. 29 OF 2020**

Nana @ Badrinath Dashrath Barela
Age: 30 years, Occu.: Labourer,
R/o Kanhora, Tq. Bhatiyagad,
Dist. Damu (M.P.)

..APPELLANT

VERSUS

1. State of Maharashtra

2. Ajay Santosh Patil

(Deleted vide order dated 21st August, 2024)

..RESPONDENTS

....
Mr. R.D. Biradar, Advocate for appellant (appointed through Legal Aid)
Mr. S.D. Ghayal, Addl.P.P. for respondent no.1 - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 12th SEPTEMBER, 2024**

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 16th September, 2015 passed by the Additional Sessions Judge, Amalner ('trial Court') in Sessions Case, No. 18 of 2013. Vide the impugned judgment and order, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer life imprisonment and to pay fine of Rs.5,000/-. In default of payment of fine amount, he is directed to undergo rigorous imprisonment for two years.

2. The facts giving rise to the present appeal are as under :-

The appellant had married PW 5 – Ekaribai about 10-12 years before the incident, dated 02nd July, 2012. The couple was blessed with four children, two sons and two daughters. The appellant wanted to have unnatural intercourse with his wife, to which she refused. She, thereafter started residing at the house of her father, PW 11 – Renja at village Ghodegaon. Her uncle – Kisan (deceased) would also reside thereat. The appellant alongwith 10-12 persons had come to the house of his father-in-law. He quarreled with him and returned. After two days he again came. He was alone. It was midnight. He assaulted Kisan with an axe and then fled.

3. PW 5 – Ekaribai, her father and others first approached their landlord, PW 2 - Ajay and informed about the incident, who in turn, lodged the F.I.R. (Exh.18) with Chopda Rural Police Station. Crime, vide C.R. No. 29 of 2012 was registered against the appellant. Crime scene panchanama (Exh. 16) and inquest (Exh.15) were drawn. Mortal remains of Kisan was subjected to autopsy. The appellant was arrested about eight months after the incident. Pursuant to the disclosure statement made by him, an axe came to be seized. All the seized articles were submitted to R.F.S.L., Nashik for analysis and report. On completion of investigation, the appellant was proceeded against by filing the charge-sheet.

4. The trial Court framed the charge (Exh.8). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined thirteen witnesses and produced in evidence certain documents to establish the charge. The trial Court, on appreciation of the evidence in the case, convicted and consequently sentenced the appellant as stated above.

6. Learned counsel for the appellant would submit that there is no independent eye witness to the incident. The incident took place at the dead of night. There was no electricity. It was dark. Had the appellant really been to the house of his father-in-law alongwith 10-12 persons two days before the incident, report to that effect would have been lodged with the concerned police station. The axe seized pursuant to the disclosure statement made by the appellant did not bear blood stains. It would, therefore, not be a disclosure statement relevant under Section 27 of the Evidence Act. According to him, the criminal law was set in motion by the person, who did not witness the incident. The wife of the appellant or her father should have lodged the report. They did not do so. The reason therefor would not inspire confidence. He, therefore, urged for allowing the appeal.

7. Learned Addl.P.P. would, on the other hand, submit that it is an open and shut case. According to him, the wife had no reason to give evidence against her own husband. The parties were tribals. It was, therefore, but natural on their part to first approach the landlord and then to the concerned police station. When the case is based on the eye witness account, the fact that there were no blood stains noticed on the axe, seized

pursuant to the disclosure statement made by the appellant, would be of little consequence. He, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Let us now advert thereto and appreciate the same.

9. The appellant had married PW 5 – Ekaribai about 10-12 years before June 2012. The couple was blessed with four children, two boys and two girls. As the appellant wanted to have unnatural intercourse with his wife, she left the house and started residing at the house of her father at village Ghodegaon. Her uncle – Kisan and other family members would also reside thereat. Their houses were on the land of one Ajay Santosh Patil.

10. PW 8 – Sanjay Jadhav was the Medical Officer on duty at Sub-district Hospital, Chopda. He conducted postmortem examination on the mortal remains of deceased Kisan by 12:00 p.m. The postmortem examination report under his signature is at Exhibit 37. He noticed a deep incised wound on the right side of neck just below mandible measuring 10 x 5 x 3 cm. In his opinion, Kisan died of hypovolumic shock due to haemorrhage due to deep incised wound over neck. Viscera was, however preserved.

11. PW 1 – Rahul is a witness to the inquest panchanama (Exh.15) and crime scene panchanama (Exh.16). The same is not in dispute before

us. PW 2 – Ajay had lodged the F.I.R. (Exh.18). He is not an eye witness to the incident. According to him, Gajmal had come to him at 06:30 a.m. on 02nd June, 2012 and informed his uncle Kisan to have been murdered. He, therefore, went to the spot and saw Kisan dead. Gajmal also told him the appellant to have killed Kisan. He, therefore, informed the Chopda Rural Police Station. The report lodged by him reduced into writing. It finds place at Exhibit 18.

12. PW 2 – Ajay being not an eye witness, his evidence would only be relevant so as to set the criminal law in motion.

13. PW 3 – Narayan was a photographer. He snapped the photos of the dead body. PW 4 – Jaising is a witness to the disclosure statement made by the appellant on 19th February, 2013, pursuant to which an axe came to be seized. The disclosure statement and seizure memo find place at Exhibits 25 and 26 respectively. Since the C.A. report (Exh.51) indicates no blood was noticed on the seized axe, it could not be said that the deceased was done to death with the assault therewith.

14. PW 6 – Rashid did not stand by the prosecution. PW 7 – Itbar was a Maintenance Surveyor, who drew the sketch of the crime scene. The sketch is at Exhibit 34. PW 9 – Pradip and PW 10 – Gulab were the Police Head Constables, who had carried the seized muddemal to R.F.S.L., Nashik. PW 12 – Mushtaq, Assistant Police Inspector, drew the

panchanama (Exh.48) of the clothes of the deceased. While PW 13 – Sunil, Deputy Superintendent of Police, did the investigation of the crime.

15. The fate of the appeal is mainly based on the evidence of the appellant's wife and his father-in-law, PW 5 – Ekaribai and PW 11 – Renja. Postmortem report (Exh.37), undoubtedly goes a long way to indicate the deceased met with homicidal death. The evidence of PW 5 – Ekaribai indicates that her marriage with the appellant took place 10-12 years prior to June 2012. The couple was blessed with four children. The appellant compelled her to submit to his lust for unnatural intercourse, to which she refused and thereafter started residing at the house of her father at village Ghodegaon. Her uncle, Kisan (deceased) and other relations would also reside in the nearby of each other. Their residences were on the land of one Dilip Santosh, the landlord. It is further in his evidence that the appellant had come alongwith 10-12 persons just two days before the incident. He quarreled with PW 11 – Renja, her father and returned. It appears that he had come to get her back to her matrimonial home.

16. The evidence of PW 5 – Ekaribai further indicates that after two days the appellant again came. It was a midnight. The appellant was armed with an axe. He assaulted her uncle – Kisan with the said axe. Her evidence gets reinforced by the evidence of her father, PW 11 – Renja. It is in his evidence that his daughter, PW 5 – Ekaribai was not willing to go back to her matrimonial home. He had, therefore, asked her to stay for two days. He

had persuaded the appellant and even expressed excuse. The appellant went away. It is further in his evidence that the appellant came in the night time. He was armed with an axe. He assaulted Kisan with the said axe. On hearing the shouts of Kisan, he woke up. He saw the appellant running away with the axe.

17. Both, PW 5 and 11 were subjected to a searching cross-examination. Both of them are tribals. It was, therefore, but natural for them and their family members to first approach their landlord. No fault therewith, therefore, could be found. The appellant could be overpowered eight months after the incident. The same indicates he was absconding. This conduct was inconsistent with his innocence. His wife and father-in-law have no reason to implicate him in the crime, sparing the real culprit by speaking against the appellant. PW 5 – Ekaribai put her matrimonial life at stake. She was categorical to deny that due to darkness she could not notice or identify the assailant. Similar suggestion was denied by PW 11 – Renja.

18. In our view, the evidence of PW 5 – Ekaribai (wife of the appellant) and PW 11 – Renja (father-in-law of the appellant) lead us to conclude that it was the appellant and none else, who has committed murder of his cousin father-in-law, Kisan. We, therefore, find no reason to interfere with the order of conviction.

19. The offence took place on the ground that the appellant's in-laws had refused to send his wife back to her matrimonial house (appellant's

residence). The trial Court, while imposing fine of Rs.5,000/-, has directed the appellant to undergo rigorous imprisonment for two years, if he fails to pay the fine. In the facts and circumstances of the case, we reduce the sentence of two years to two months imposed by the trial Court in case of default of payment of fine amount. With this, the appeal stands disposed of in terms of the following order :-

ORDER

- (I) Conviction and sentence of the appellant imposed by the Additional Sessions Judge, Amalner in Sessions Case No. 18 of 2013 vide judgment and order dated 16th September, 2015 is maintained.
- (II) The fine amount imposed also stands maintained only with a modification to the effect that if the appellant fails to deposit the fine amount, he shall undergo rigorous imprisonment for two months, instead of two years.
- (III) In view of disposal of criminal appeal, criminal application also stands disposed of.
- (IV) Fees of Mr. R.D. Biradar, learned counsel appointed through Legal Aid for appellant is quantified to Rs.12,000/- (Rupees Twelve Thousand).

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)