



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

CRIMINAL APPEAL NO.497 OF 2022

Vasant s/o. Gunaji Kale,
Age : 58 years, Occ. Nil,
r/o. Kundi, Tq. Dharur,
Dist. Beed.

..Appellant

Vs.

The State of Maharashtra,
Through Police Station:Shirsala,
Tq. Dharur, Dist. Beed

..Respondent

Mrs.Vaishali Shinde, Advocate for appellant (appointed)
Ms.S.J.Salgare, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : SEPTEMBER 23, 2024**

JUDGMENT (Per R.G. Avachat, J.):-

The challenge in this appeal is to the judgment of conviction and order of consequential sentence dated 31.05.2019, passed by learned Addl. Sessions Judge, Majalgaon (trial court), in Sessions Case No.24 of 2017. Vide the impugned order, the appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for life and pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for two months.

2. The case of prosecution before the trial court, in short, was as under:-

The appellant along with his wife Ashabai (deceased) would reside together at village Kundi, Tq.Dharur, Dist. Beed. The appellant has two sons and a married daughter. There used to be quarrels between the appellant and his wife. He would suspect her character. On 15.03.2017, he took his wife to the field for harvesting gram-crop. He, however, returned home alone. His married daughter – Radha (PW 5) had come to his home. She inquired with him about her mother. He told her to have killed Ashabai in the field. The appellant took two *Bhakaris* and ran away.

3. Radha (PW 5), thereupon, raised hue and cry. Bhaurao (PW 2), her father's uncle, was residing in the neighbourhood. He came to her and learnt about the appellant to have killed his wife. He (PW 2 - Bhaurao), therefore, lodged the FIR (Exh.27) with Shirsala Police Station. A crime vide C.R. No. 75 of 2017 was registered and investigated as well. Upon completion of the investigation, the appellant was proceeded against by filing the charge sheet. The trial court framed Charge (Exh.7). The appellant pleaded not guilty. His defence was of false implication. To bring home the Charge, the

prosecution examined twelve witnesses and adduced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted the appellant and consequently, sentenced as stated above.

4. Heard learned counsel for the parties. Learned counsel for the appellant would submit that PW 2 - Bhaurao (informant) gave vital admission in his cross-examination that the police had obtained his signature on blank paper. She meant to say that it was converted into FIR. It was not read over to him. According to her, the evidence of PW 2 - Bhaurao, therefore, was unreliable. She would further submit that there was house-warming ceremony in the neighbourhood of the house of the appellant. It was about little past 3.00 p.m. On hearing the alleged hue and cry of Radha, not a single neighbour had gathered there. Same suggests nothing had happened. Turning to the evidence on record, she took us through the evidence of PW 1- Sambhaji, panch witness to the crime scene panchnama (Exh.23). She brought to our notice his evidence that the labels on the articles, allegedly seized from the crime-scene, did not bear label containing his signature. She would further submit that the Investigating Officer has admitted that an axe seized from the crime scene did not bear blood stains.

5. Learned counsel for the appellants would further submit that the so called extra-judicial confession made by the appellant to his daughter is a very weak piece of evidence. She relied on the judgment of the Apex Court in the case of **Pradeep Kumar Vs. State of Chhattisgarh, (2023)5 SCC 350**. According to her, the statement of Radha (PW 5) was recorded four days after the incident. Delay has not been explained. She would further submit that since the case was based on circumstantial evidence. She relied on the judgment of the Apex Court, in the case of **Anwar Ali and anr. Vs. State of Himachal Pradesh, 2021 AIAR (Criminal) 80**, wherein, it is observed thus :-

B. Circumstantial evidence – Scope and sweep of – In case of a circumstantial evidence – The circumstances, taken cumulatively – should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and – Incapable of explanation of any other hypothesis than that of the guilt of the accused and – Such evidence should only be consistent with the guilt of the accused but should be inconsistent with his innocence

6. Learned counsel for the appellant would further submit that petty quarrels between the husband and the wife could not be

termed to be the motive to do away the wife. According to her, there was no evidence that a month before the alleged incident, there was quarrel between the appellant and his wife. Their son Rangnath did not speak about the same. She would further submit that the deceased had suffered multiple injuries and on arrest of the appellant, his blood stained shirt was seized. It would, therefore, be unnatural on the part of Radha not to notice any blood on the clothes of the appellant, while he, allegedly, made the extra-judicial confession. The evidence of PW 5 - Radha is hearsay. Learned counsel further relied on the judgment of the Apex Court in the case of **Kalinga alias Kushal Vs. State of Karnataka By Police Inspector, Hubli, (2024)4 SCC 735**, to ultimately urge for allowing of the appeal.

7. Learned APP would, on the other hand, submit that the 25-years old married daughter of the appellant had no reason to give evidence against her own father. The extra-judicial confession has been made by the appellant to none else than his daughter. The evidence of PW 2 - Bhaurao and daughter PW 5 - Radha would indicate that on the given day, the appellant along with his wife went to the field for harvesting gram-crop. By little past 3.00 p.m., he returned home and made extra-judicial confession. The appellant

then fled taking *Bhakar* with him. On hearing the hue and cry raised by PW 5 - Radha, uncle of the appellant (PW 5 - Bhaurao) arrived. The persons visited the field of the appellant to find Ashabai to have been lying dead in the injured condition. The extra-judicial confession made by the appellant, thus, proved. The appellant did not offer any explanation, as to why did he leave his wife behind and returned home alone. He has relied on the following authorities to ultimately urge for dismissal of the appeal:-

- (i) Trimukh Maroti Kirkan Vs. State of Maharashtra, 2007 Cri. L.J. 20;
- (ii) Nivrutti Kishan Hire Vs. State of Maharashtra, AIR Online 2023 Bom 1820

8. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein. Also perused the authorities relied on.

9. The case is based on circumstantial evidence. The prosecution proposes to rely on following circumstances:-

- (i) Homicidal death;
- (ii) Motive;
- (iii) Extra-judicial confession and non disclosure of the fact within the exclusive knowledge of the appellant.

Homicidal Death :-

10. PW 9 – Dr.Pramod conducted autopsy on the mortal remains of deceased Ashabai. He noticed following injuries on her person:-

1. *Two were incised injuries over right high partial region of sizes, 3x0.5 cm. and 4x0.5 cm., muscle deep margins infiltrated with blood.*
2. *Incised injury over right occipital region of size 4x5 cm. muscle deep, margins infiltrated with blood.*
3. *Two incised injuries over right partial region of sizes 6x0.5 cm. bone deep and 3x0.5 cm., muscle deep margins infiltrated with blood.*
4. *Chop injury over right lateral upper third region of neck of size 9.5 x2.5 cm. muscle deep. Obliquely placed and beveling present over upper margins, margin infiltrated with blood.*
5. *Chop injury over right lateral lower third region of neck of size 6.5 x 1 cm. muscle deep, horizontally placed with inner angle showing tailing of 2.5 cm in length, margins infiltrated with blood.*
6. *Incised injury over right lateral lower third region of neck of size 5x0.1 cm., skin deep horizontally placed, margins infiltrated with blood.*
7. *Chop injury over left anterior-lateral aspect in upper third region of neck of size 12x2 cm. bone deep, obliquely placed with inner angle showing tailing of 4 cm. length, margins contused and infiltrated with blood,*

underline tissue shows clearcut, external carotid-artery and internal jugular vein shows clean cut with fracture of body of C-3 vertebra with clean cut fractured edges and infiltration of blood.

8. *Chop injury over left lateral aspect in upper third region of neck of size 7x1 cm., muscle deep, obliquely placed with upper margins shows beveling, margins contused and infiltrated with blood.*

9. *Incised injuries over left anterior middle third region of neck of size 4x1 cm., muscle deep, horizontally placed, inner angle shows tailing of length 4.5 cm, margins contused and infiltrated with blood.*

10. *Chop injury over left anterolateral aspect, in middle third region of neck of size 6x2.5 cm underline muscle and tracheal rings shows clean cut injury, horizontally placed, lower margins shows behaving margins contused and infiltrated with blood.*

11. *Incised injury over left forearm, lower third, posterior surface of size 5x1 cm. bone deep with interline fractured of lower third shaft of ulna, margins infiltrated with blood.*

12. *Incised injury over right hand, dorsum of size 3.05 cm. muscle deep proximal to left index and middle finger; margins infiltrated with blood.*

PW 9 - Dr.Pramod opined the deceased to have died of "Hemorrhagic shock due to multiple incised injuries over neck". Inquest panchnama (Exh.56) is consistent with the injuries noticed

by the Medical Officer on the person of the deceased. As such, the fact that Ashabai met with homicidal death is duly proved.

Motive and extra-judicial confession and non disclosure of the fact within the exclusive knowledge of the appellant :-

11. PW 5 – Radha, daughter of the appellant, testified that on 15.03.2017, both appellant and her mother had been to their field for harvesting gram-crop, as there was possibility of raining. Her mother had told her that there was house-warming ceremony in the neighbourhood and she would come to take meal there. It is further in her evidence that the appellant alone returned home by 03.00 p.m. with a gunny bag containing gram. She inquired with him twice about her mother and questioned him, as to why she (Ashabai) did not return. The appellant did not speak for a while. He asked her to pack two *Bhakaris*. She obliged. The appellant then went out of the house and told to have killed her mother in the field. He then ran away. She tried to chase him and raised shouts. It is further in her evidence that her grandfather - Bhaurao (PW 2) and one Baburao also followed her. She related them her father to have killed her mother. Both of them, therefore, went to the field. On their return, they told her about the incident to have taken place.

12. It is further in the evidence of PW 5 – Radha that three months before the incident, she had been to her parental house for delivery. That time, there was quarrel between the appellant and her mother. The appellant had threatened to kill her. He was suspecting her character. Her brother, who used to be at Aurangabad, had just come that day. He, therefore, took Ashabai to her maternal house, at Waghalgaon. Thereafter, the appellant brought Ashabai back from her parental house with the assurance to treat her well. According to her (PW 5), she gave statement before learned Judicial Magistrate, First Class. She referred the same (Exh.35)

13. PW 5 – Radha was subjected to cross-examination. True, she did not speak about having seen blood stains on the clothes of the appellant when he had returned home. She even did not speak about the persons in the neighbourhood to have gathered at her residence on hearing her hue and cry. It is also true that her brother did not speak about his sister (Radha) to have told him the appellant to have made her the extra-judicial confession. It is also true that her statement was recorded four days after the incident.

14. Close reading of the cross-examination of PW 5 – Radha would indicate that nothing has been brought on record to suggest her to have any reason to speak against her own father. She was 25 years old lady (a person of understanding). Her evidence before the court has been reinforced by her statement (Exh.35) recorded under Section 164 of the Code of Criminal Procedure. What has been told to her by the appellant as extra-judicial confession, was found to be correct since PW 2 – Bhaurao immediately went to the field and saw the appellant's wife dead. The crime-scene panchnama (Exh.23) reinforces the same, although the article seized from the crime-scene did not bear labels containing signatures of the panch witnesses .

15. PW 2 – Bhaurao is uncle of the appellant. It is in his evidence that on hearing cries of Radha (PW 5), he went to her house. She related him the appellant to have told her about committed murder of his wife. He, thereafter, went to the field. He saw the dead body of Ashabai. Some persons gathered there. He then lodged the FIR (Exh.27). True, in the cross examination, he testified that the police had obtained his signature on blank paper and contents thereof were not read over to him. To all other questions, he stood the ground. He denied to have not been told by Radha the appellant to have made extra-judicial confession.

16. PW 3 – Nanasaheb and PW 4 – Kishor, panch witnesses to the seizure of clothes of the appellant, did not stand by the prosecution. PW 6 – Kautaji's evidence is only to the effect that on hearing about the news of murder of Ashabai, he went to the field of the appellant along with Bhaurao (PW 2) and one Babarao Kale and noticed the dead body of Ashabai. It is true that PW 2 – Bhaurao did not state to have accompanied by PW 6 – Kautaji. The fact, however, is that the evidence was recorded little over one and half years after the incident. PW 2 – Bhaurao might not have remembered PW 6 – Kautaji to have been with him. Even if we ignore the same, the fact remains that the dead body of Ashabai was found in her own field. She had suffered multiple injuries.

17. PW 7 – Manik is son of the appellant. He was residing at Aurangabad. He came to village Kundi in response to a phone call. His evidence indicates that on his coming to the village, his sister – Radhabao (PW 5) related him about the appellant to have made the extra-judicial confession. The evidence of this witness is not of much importance, since he was not in the village on the given day.

18. PW 8 – Rangnath is another son of the appellant. He would reside along with his mother and the appellant, at village

Kundi. His evidence, however, indicates that he had gone to village Shirsala between 10.00 am. and 11.00 am. on the fateful day. As such, he was not aware that the appellant along with his mother had been to the field by 11.00 in the morning. Although he testified accordingly, his evidence however indicates that pursuant to the call made by his friend Vijay, he rushed to the village. His father was not there. His evidence would be helpful for the prosecution to indicate that the appellant was in the village on the given morning but was not there while the dead body of his wife was found. It reinforces the case of PW 5 – Radha that the appellant fled from the village little past 03.00 pm. PW 10 – Tulshiram is Police Constable, who carried the Muddemal articles to the Regional Forensic Science Laboratory, while PW 11 – Sanjay is witness to the inquest panchnama (Exh.56). It was PW 12 – Harishkumar, who did investigation of the crime.

19. It is true that the extra-judicial confession is generally considered to be a weak piece of evidence. It is, however, not that the same cannot be acted upon. The extra-judicial confession is generally made to a person in confidence. In the case in hand, it was made by the appellant to none other than his grown up daughter – Radha (PW 5). She had no reason to speak against her own father. The extra-judicial confession is proved true, since PW 2 -

Bhaurao, immediately, rushed to the field of the appellant to find Ashabai to have suffered multiple injuries and was dead. The appellant was in the village on the given day. PW 5 – Radha testified that the appellant had taken his wife to the field for harvesting gram crop by 11.00 in the morning. The appellant alone returned home by 03.00 p.m. and on inquiry, he told to have killed her mother. It is also in her evidence that the appellant was suspecting her character. In view of Section 106 of the Evidence Act, it was for the appellant to explain the circumstances, which were exclusively within his knowledge. Those circumstances are relating to what had happened with his wife post he took her to the field. He did not offer any reason as to why he alone returned home from the field. As such, all the circumstances relied on by the prosecution have been proved upto the hilt. It is the appellant and none else, who has committed murder of his wife.

20. In view of the above, the trial court has rightly convicted the appellant for the offence of murder and consequently, sentenced to suffer life imprisonment. We find no reason to interfere with the impugned order. The appeal, thus, fails. The same is dismissed.

21. Fee of learned counsel appointed to represent the appellant is quantified at Rs.12,000/- (Rupees Twelve Thousand).

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP