



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

CRIMINAL APPEAL NO. 146 OF 2024

Lahanu Raghunath More
Age: 48 years, Occu.: Labour,
R/o Talwada, Tq. Vaijapur,
Dist. Aurangabad

..APPELLANT

VERSUS

State of Maharashtra
Through Shivoor Police Station,
Tq. & Dist. Aurangabad

..RESPONDENT

....
Mr. A.M. Gaikwad, Advocate for appellant (appointed through Legal Aid)
Ms. U.S. Bhosale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 20th MARCH, 2024
PRONOUNCED ON : 21st MARCH, 2024

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

1. The challenge in this appeal is to the judgment and order of conviction dated 14th October, 2016 passed by Additional Sessions Judge, Vaijapur in Sessions Case No. 96 of 2014. Vide the impugned 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 imprisonment for life and to pay fine of Rs.2,000/- with default stipulation. He has further been convicted for the offence punishable under Section 452 of the I.P.C., and therefore, sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- with default stipulation. The substantive sentences are directed to run concurrently. The appellant is in this appeal before us.

Facts, as are disclosed from the police papers (charge-sheet), are as follows :-

3. The appellant committed murder of his father-in-law, Subhash by 05:00 p.m. on 21st April, 2014 in his (Subhash) house at village Talwada. The motive behind commission of the said offence is stated to be the appellant's wife to have not been cohabitting with him for two-three years next before the incident. She was residing with her parents at their house at village Talwada. It was deceased – Subhash, who was refusing to send wife of the appellant back to her matrimonial home. The appellant got annoyed thereby. He, therefore, went to the house of Subhash (deceased) while he was alone at home and committed murder by assaulting him with stones, bricks and bamboo stick as well.

4. Two of the neighbours seen the appellant leaving the house of the deceased with a stone in his hand. The appellant's wife and her mother were away in the field for agricultural operations, while appellant's brother-in-law was at his work place. One of the villagers informed P.W.1 – Raju (brother-in-law of the appellant) about the incident. He rushed back to his house to find his father to have been lying on the bed with severe injuries on his person. The injured was rushed to Ghati Hospital, Aurangabad. He, however succumbed to the injuries.

5. P.W.1 – Raju, therefore, lodged the F.I.R. (Exh.15). Crime, vide C.R. No. 33 of 2014 came to be registered with Shivoor Police Station, Dist.

Aurangabad for the offences punishable under Sections 302 and 452 of the I.P.C. Scene of offence panchanama (Exh.19) was drawn. Blood stained stones, brick and bamboo stick were seized during scene of offence panchanama. Postmortem was conducted on mortal remains of Subhash. The appellant was arrested. Clothes on his person were seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellant was proceeded against by filing the charge-sheet before the Court of J.M.F.C., Vaijapur. The case was then committed to the Court of Additional Sessions Judge, Vaijapur ('trial Court') for trial in accordance with law.

6. The trial Court framed charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication.

7. To establish the charge, prosecution has examined ten witnesses and produced in evidence certain documents. On appreciation of the evidence in case, the trial Court convicted the appellant and consequently sentenced as stated above.

8. Learned counsel, appointed to represent the appellant, would submit that the case is based on circumstantial evidence. Many witnesses examined by prosecution did not support the prosecution case. P.W.5 and P.W.6, claimed to be the neighbours of deceased, testified to have seen the appellant leaving the house of the deceased at the relevant time. It appears

that relying on the evidence of their testimony, the trial Court convicted the appellant. Learned counsel would submit that evidence of these two witnesses (P.W.5 and 6) is very vague. They even could not state day, date and time of the incident. Learned counsel reiterated the principles required to be borne in mind while dealing with the case of circumstantial evidence. He, ultimately urged for allowing the appeal.

9. Learned A.P.P. would, on the other hand, submit that P.W.5 – Shakeela is nothing short of an eye witness. She had seen the appellant leaving the house of deceased. The deceased was at his house alone. Admittedly, wife of the appellant was not residing with him. There was matrimonial discord between them. The appellant, therefore, went to the house of his father-in-law to ensure his wife resume cohabitation. Since his father-in-law was an obstacle, the appellant eliminated him. Learned A.P.P. then adverted our attention to the evidence of P.W.6 - Amjad, who saw the appellant armed with a stone just outside the house of deceased. Since none else than the deceased was in the house, it's none other than the appellant, who has committed the murder of his father-in-law, Subhash. Learned A.P.P. then took us through the evidence of mother-in-law of the appellant to ultimately urge for sustaining conviction of the appellant.

10. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

11. Before undertaking the said exercise, let us have a glance at the principles adumbrated in the judgment of Apex Court in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, as follows :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

12. Admittedly, Subhash (deceased) was found in injured condition at his house. He was alone at his residence. On having learnt him to have been assaulted, his son, P.W.1 – Raju rushed to the house. Widow of the deceased, P.W.8 – Babanbai and wife of the appellant, P.W.9 – Gangubai also rushed back to the house. Subhash was rushed to Ghati Hospital, Aurangabad. Unfortunately, he succumbed to the injuries. P.W.7 – Dr.

Manoj conducted postmortem on mortal remains of Sharad. He noticed following injuries on the person of the deceased :-

- “1. Abraded contusion of size 6.5 x 6cm present 16cm below right acromian process on anterior aspect of middle 1/3 of right arm, reddish.
2. Multiple abrasions (7 in number) of size ranging from 4 x 2cm to 2 x 1cm, present over right side of zygomatic and cheek area of face, reddish.
3. Abrasion of size 3 x 0.5cm present over tragus part of right ear, reddish.
4. Lacerated wound of size 2 x 1.7cm x bone deep present over right temporal region, 4.5cm from midline, obliquely placed, reddish.
5. Sutured wound of size 3cm with 2 sutures intact present over posterior aspect of right elbow joint. On opening of sutures margins of wound are ragged, contused and irregular of lacerated wound, reddish.
6. Abrasion of size 5.5 x 0.5cm present 5cm below posterior aspect of right elbow joint, reddish.
7. A contusion of size 6.5 x 3cm present over right buttock, 5cm below ischial tuberosity, reddish.
8. Contusion of size 12 x 10cm present over left buttock, reddish.
9. Contusion of size 4 x 3.5cm present over posterior aspect of middle 1/3 of right thigh, reddish.”

In his opinion, the deceased died of head injury with multiple traumatic fractures.

13. The appellant before us did not dispute his father-in-law to have met with homicidal death. The question is whether he is the author thereof. The case being based on circumstantial evidence, following circumstances are sought to be proved to bring home the charge :-

- I) Motive – matrimonial bickering, since wife of the appellant was not cohabiting with him;
- II) Deceased – Subhash was not allowing his daughter to resume cohabitation;

The appellant, therefore, went to the house of his in-laws on the given day. None was present at the house except deceased – Subhash. It was 05:00 p.m. The appellant was seen leaving the house of deceased by P.W.5 and P.W.6.

Motive :-

14. It is the case of prosecution that the appellant married P.W.9 – Gangubai fifteen years before April 2014. The couple was blessed with four children. The appellant got addicted to alcohol. He started harassing and ill-treating his wife, Gangubai. She, therefore, left the matrimonial home and started residing at her father's residence. On these lines is the evidence of P.W.1 – Raju, P.W.8 – Babanbai and even P.W.5 – Shakeela, their neighbour.

15. P.W.9 – Gangubai, wife of the appellant, however did not support the prosecution case. It is in her evidence that she was blessed with four children by the appellant. She has been residing with the appellant at her matrimonial house since marriage. It is further in her evidence that sometimes she used to reside at the house of her parents. She denied the appellant to have been assaulting her under the influence of alcohol. Learned

A.P.P., therefore, subjected her to cross-examination. She denied to have made a statement to the police attributing the appellant to have not been kind with her, and therefore, she was staying at her parent's house.

16. In view of the evidence of P.W.9 – Gangubai, wife of the appellant, motive that the appellant's wife was not cohabiting with him and her father was an obstacle for resumption of cohabitation, does not get fully established.

17. True, the deceased was found at his residence in injured condition. He was alone at his residence at the material time. The appellant is the resident of very village. All other family members of the deceased were away at their respective work place/s. P.W.5 – Shakeela claimed to be the next door neighbour of the deceased. According to her, the incident took place one year back. Since some relatives had come to her residence, she left her house to fetch a milk bag. It was about 05:30 p.m. She saw the appellant exiting the house of deceased. A stone was in his hand. She, therefore, went to the house of the deceased to find him injured. She sprinkled water on his face but there was not response. It is further in her evidence that stick, stone and some pieces of bricks were lying in the house. She told the villagers and then left the spot.

18. During her cross-examination she could not state day and date of the incident. According to her, it might have been Monday or Tuesday. Being

a neighbour, she had good relations with the deceased. It is further in her evidence that the deceased was chronic alcoholic. Her evidence further indicates that all was not well between the appellant and his wife. Appellant's wife, therefore, would stay at her parent's house.

19. The prosecution heavily relied on evidence of P.W.6 – Amjad. He was neighbour of the deceased. He could not tell the date of incident. According to him, on the given day he had gone for attending a marriage. He returned to the village by 05:30 p.m. Crowd had gathered outside the house of the deceased – Subhash. He went close by to see the appellant present there. The appellant was armed with a brick. He (Amjad) entered the house to find Subhash to have suffered multiple injuries. During cross-examination he admitted that the deceased was his friend.

20. If one proposes to rely on the evidence of P.W.6 – Amjad, it is not known as to why either Amjad himself or the villagers, who had gathered outside the house of the deceased, did not overpower the appellant. Both, P.W.5 and P.W.6 happened to be the chance witnesses. If we accept their evidence as it is, what can be said to have been proved is that the appellant was seen at the entrance door of the house of his father-in-law (deceased – Subhash). When the wife of appellant deposed to have no matrimonial bickering and living with the appellant happily, it is just difficult to come to the conclusion that it is the appellant and none else, who has committed murder of Subhash.

21. It has also been stated that P.W.1 – Raju's (informant) evidence is hit by hearsay. P.W.2 – Kacharu is a witness to the scene of offence panchanama (Exh.19). He did not support the prosecution. P.W.3 – Baban and P.W.4 – Babasaheb, witnesses to seizure of clothes and inquest panchanama (Exh.24) respectively, also do not support the prosecution. Although P.W.8 – Babanbai, widow of the deceased, supports the prosecution case testifying that all was not well between the appellant and his wife, and therefore, her daughter (appellant's wife) was residing with them. There is nothing further to indicate the appellant to have had entered her residence at the relevant time and committed murder of Subhash. She even could not recollect the date, day and time of the incident. She was away in the field for agricultural operations. She returned home on having learnt about the incident.

22. Appreciation of the aforesaid evidence would at the most lead us to infer that P.W.5 and P.W.6 had seen the appellant outside the house of the deceased at the relevant time. Both these witnesses were the chance witnesses. It is not known that while they learnt that Subhash to have suffered extensive injuries at his residence, the appellant was not overpowered. In our view, the evidence of both these witnesses is not cogent, clinching and fit to rely upon to sustain sentence of life imprisonment for the offence of murder. The appellant is behind the bars for near about ten years. Be that as it may.

23. For all the aforesaid reasons, we are not at one with the findings recorded by the trial Court. In the result, appeal succeeds. Hence, the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Judgment and order of conviction and sentence dated 14th October, 2016 passed by Additional Sessions Judge, Vaijapur in Sessions Case No. 96 of 2014 is hereby set aside.
- (III) The appellant is acquitted of the offences punishable under Sections 302 and 452 of the Indian Penal Code.
- (IV) Since the appellant has been released on bail, his bail bonds stand cancelled.
- (V) Fine amount paid, if any, be refunded to the appellant.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)