



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

CRIMINAL APPEAL NO. 220 OF 2023

Motiram Karnu Todsam
Age: 53 years, Occu.: Convict No.C/9695,
Through, the Superintendent,
Nanded Prison, Nanded

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer,
Police Station Kinwat,
Nanded, Dist. Nanded

..RESPONDENT

....
Mr. N.K. Tungar, Advocate for appellant
Ms. U.S. Bhosle, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 20th SEPTEMBER, 2024**

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

1. The appellant has been convicted for committing murder of his wife, and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- with default stipulation, vide judgment and order dated 24th August, 2022 passed by Sessions Judge, Nanded in Sessions Case, No. 207 of 2019. He is, therefore, before us in this appeal.

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

The appellant alongwith his wife, Laximbai (deceased) and their five children would reside together at village Jaroda Tanda, Tq. Kinwat, Dist.

Nanded. The appellant was addicted to liquor. He would suspect fidelity of his wife. On the night of 11th October, 2013 at 01:00 a.m. the appellant committed murder of his wife by strangulating her and fled away. He could only be arrested on 18th January, 2019. Before his arrest, the charge-sheet was filed against him.

3. The trial Court framed charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication. According to him, he would go out of the house for 8-10 days for work to earn his living. On the fateful night, he was not at his residence.

4. To bring home the charge, prosecution examined nine witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court convicted and consequently sentenced the appellant as stated above.

5. Learned counsel for the appellant would submit that brother of the appellant, PW 1 – Sheshrao, who lodged the F.I.R. (Exh.18), did not stand by the prosecution. His so called thumb impression appearing therein has neither been attested nor it discloses whether it is left or right thumb impression. He relied on the judgment of the Apex Court in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 AIR (SC) 1622***, to submit that since the case is based on circumstantial evidence, each and every circumstance relied on by the prosecution has to be proved up to the

hilt. According to him, there was no motive for commission of the offence. PW 8 – Ashwini, daughter of the appellant, testified that the appellant had been to her matrimonial village to meet her and PW 7 – Suhasini in November, 2018. The same indicates that he was not absconding. He then relied on the judgment of the Apex Court in case of ***Digamber Vaishnav and Another Vs. State of Chhattisgarh, 2019 AIR (SC) 1367*** to submit that as PW 7 – Suhasini was fourteen years of age at the relevant time, and therefore, being a child witness, her testimony needs to be tested with a pinch of salt. According to him, there is no corroboration to her evidence. Her evidence was recorded eight years after the incident. She was admittedly residing at the house of her maternal grandparents after the said incident, and therefore, was likely to have been tutored by her maternal uncle to depose against the appellant. According to learned counsel, the prosecution has failed to bring home the charge beyond reasonable doubt. He ultimately urged for allowing the appeal.

6. Learned A.P.P. would, on the other hand, submit that it was an open and shut case. PW 7 – Suhasini, daughter of the appellant, was of the age of understanding. She had no reason to give false evidence against her own father. The appellant went absconding for years together. He and his wife (deceased) were in the company of each other soon before she breath her last. She, therefore, relied on Section 106 of the Evidence Act. She urged for dismissal of the appeal.

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

8. Since the case is based on circumstantial evidence, reference to the principles laid down by the Apex Court in the case of Sharad Sarda (supra) first need to be adverted to where it has been observed thus :-

- “(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.”*

9. Admittedly, the appellant alongwith his wife, Laxmibai (deceased) and their five children would reside at village Jaroda Tanda, Tq. Kinwat. The postmortem examination report (Exh.34) indicates Laxmibai died of strangulation of neck due to asphyxia due to cardio respiratory arrest. PW 4 – Dr. Dhole had conducted autopsy on the mortal remains of Laxmibai. He noticed contused lacerated wound admeasuring 2 x ½” on upper left eye and swelling of lower part of eyelids. He also noticed abrasion over right hand at the sight elbow joint over about 4 inch area. The injuries were ante-mortem.

10. As such, deceased – Laxmibai met with homicidal death is a fact duly proved. It being a case based on circumstantial evidence, motive plays an important role. True, PW 1 – Sheshrao (informant), real brother of the appellant, did not stand by the prosecution. According to him, the appellant used to be away from home. He went on to state that for 5-6 days including the day of the incident the appellant had gone out of the village for labour work. According to him, Laxmibai might have been murdered by the thieves.

11. Then there is evidence of PW 2 – Pravin, who was the Police Sub-Inspector with Kinwat Police Station during the relevant time. His evidence indicates that a person by name – Sheshrao Karnu Todsam had come to the police station and lodged the report (Exh.18). He recorded the same as narrated by him. He referred to the said report and thumb impression appearing thereon as that of PW 1 – Sheshrao. True, the thumb impression has not been attested, nor does it indicate whether it was of right or left thumb. By the side of the thumb impression there is signature of PW 2 – Pravin, indicating the same to have been obtained in his presence. We have no reason to disbelieve him. His evidence goes a long way to infer PW 1 – Sheshrao to have lodged the F.I.R. against his own brother.

12. PW 3 – Nagorao, brother of the deceased, testified that the appellant was addicted to liquor. He would beat up his sister on account of suspecting her character. PW 5 – Anandrao, neighbour of the appellant, too

testified that the appellant was addicted to liquor. He used to demand money from his wife for consumption thereof. His evidence further indicates that the appellant would suspect her loyalty with him. The evidence of both these witnesses lead us to infer the appellant to have motive in the nature of suspecting the character of his wife, so as to do her away.

13. PW 7 – Suhasini, daughter of the appellant and the deceased, was of fourteen years of age at the relevant time (a grown up child of the age of understanding). Her evidence indicates that her father (appellant) was addicted to liquor. Her mother used to work in the field to earn their living. The father was unemployed. He would quarrel with her (Laxmibai). The appellant would demand her money for consumption of liquor.

It is further in her evidence that on 10th October, 2013, the appellant returned to his residence. All of them took dinner and went to sleep. He woke up his wife (Laxmibai) to take her to sleep in the basement. After they left the room, she bolted the house from inside. In the morning, she got up to find both, the appellant and her mother to have not been in the basement or nearby. She, therefore, made search for her mother. She found her mother lying in the nearby field. She had suffered injury to her eye. Bangles in her hand were broken. She noticed a voter identity card of her mother in the basement. It was stained with blood.

14. Learned counsel for the appellant would submit that no voter identity card was found nor any such card was sent for R.F.S.L. to find the

same to have been stained with blood. He meant to say that PW 7 – Suhasini was not speaking truth. Admittedly, the evidence was recorded about nine years after the incident. PW 7 – Suhasini's memory might not have served her well. The incident was such that it must have been impressed on her mind. At the cost of repetition, it is observed that she did not have any reason to give evidence against her own father. Learned counsel took us through paragraph nos. 21, 22 and 24 of the judgment in case of Digamber Vaishnav (*supra*) to submit that PW 7 being a child witness was prone to tutoring. There was no corroborative evidence. Her evidence, therefore, shall not be believed.

15. We are not in agreement with learned counsel for the appellant. The fact is that PW 7 – Suhasini was fourteen years of age at the relevant time. Her evidence indicates that the appellant was in the house on the fateful night. He took his wife, Laxmibai (deceased) out of the house for sleeping in the basement. The prosecution evidence indicates that construction of the house of the appellant was in progress. It was nearing completion. The motive had already been proved as stated above. After the appellant came out of his house alongwith his wife to sleep in the basement, he disappeared for five years, while within hours of their going out of the house his wife was found strangled. The appellant being the last person in the company of the deceased, owed explanation as to the circumstances in which Laxmibai met with death. He did not offer any explanation. On the contrary, his abscondence for years together point out his conduct being

inconsistent with innocence. Although one of his daughters testified that he had been to her residence in November 2018, being a father of five children and had he been out of the house to some other village to earn his living, it would have been natural on his part to return to his house within a few days. He did not return until arrested after five years.

16. The upshot of the aforesaid evidence indicates that the appellant would suspect fidelity of his wife. With a view to kill her, he took her out of the house under the pretext of sleeping in the basement. It is he and none else, who strangled his wife on the fateful night and went absconding for about five years until he was arrested on 18th January, 2019. As such, we find the trial Court to have rightly convicted and consequently sentenced the appellant. We are at one with the findings recorded by the trial Court.

17. In the result, criminal appeal fails. Same stands dismissed.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)