



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

CRIMINAL APPEAL NO.165 OF 2018

Sachin s/o. Pralhad Kamble,
Age : 31 years, Occ. Nil,
r/o. Chikalthana,
Tq. and Dist. Latur

..Appellant

Vs.

1. The State of Maharashtra,
Through Latur Rural Police Station,
Tq. And Dist. Latur
2. Ashwini w/o. Arun Deshmukh,
Age : 33 years, Occ. HH
r/o. Chikalthana,
Tq. and Dist. Latur

..Respondents

Mr.S.V.Gundre and Mr.D.K.Bhalke, Advocates for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent no.1

**AND
CRIMINAL APPEAL NO.45 OF 2018**

Ashvini w/o. Arun Deshmukh,
Age : 30 years, Occ. Household,
r/o. Chikalthana,
Tq. and Dist. Latur

..Appellant

Vs.

The State of Maharashtra

..Respondent

Ms.Ashwini A. Lomte, Advocate for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : FEBRUARY 16, 2024**

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

The challenge in both these appeals is to the judgment and order of conviction and consequential sentence, dated 26.12.2017 passed by learned Addl. Sessions Judge, Latur, in Sessions Case No.56 of 2015. Vide the impugned judgment and order, the appellant - Sachin was convicted for the offence punishable under Section 302 of Indian Penal Code and appellant - Ashwini was convicted for the offence punishable under Section 302 read with Section 109 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- with default stipulation.

For the sake of convenience, appellant - Sachin and appellant - Ashwini are herein after referred to as 'A1' and 'A2', respectively.

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

Arun (deceased) was residing at village Chikalthana, Tq. and Dist. Latur. He was agriculturist by profession. He was also

cattle trader. A2 is his widow. He had two brothers. Partition of the agricultural lands did take place among the brothers a few years before March, 2015. It is further case of the prosecution that A1 was serving with deceased Arun on yearly remuneration. Most of the work done by A1 was agriculture related. He would take care of cattle as well. Illicit relationship developed between A1 and A2. The deceased realised the same. Frequent quarrels started ensuing between the two on that count. About five days before 15.03.2015, A1 had charged milk-kettle with electric current with a view to eliminate Arun by electrocution. He, however, failed in the said attempt.

3. It is further case of the prosecution that on 15.03.2015, there was "*Dhawara*" function at the field of PW 6 - Ankush. Said function was in the nature of sacrificing goat for god. Villagers were invited for lunch. Some of the villagers consume liquor before taking non-veg meal. Deceased Arun had attended the said function. He consumed liquor at the function. A1 was also said to have participated in the function. By little past 06.00 p.m., A1 left the place of function for village. Deceased Arun left for the field. A1 under the pretext of serving water to the cattle, went to the field by 07.00 in the evening. He assaulted Arun with an axe and committed

his murder. A1 burnt clothes on his own person, concealed the axe-blade and cellphone of the deceased at his residence. Handle of the axe was concealed in the heap of soyabean chaff. On the following morning, PW 1 - Narayan and A1 visited field of Arun to find him lying dead on the heap of soyabean chaff. PW 1 - Narayan suspected A1 to have murdered his brother. He also suspected A2 to have abetted commission of murder of her husband (Arun). PW 1- Narayan, brother of deceased, therefore, lodged the FIR (Exh.44) against A1 and A2. Crime vide C.R. No.75 of 2015 was registered for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and investigated. Both appellants were arrested. Scene of offence panchnama (Exh.46) was drawn. Statements of persons acquainted with the facts and circumstances of the case were recorded. Mortal remains of the deceased Arun was subjected to post-mortem examination. A1 made disclosure statement pursuant to which axe-blade and cellphone came to be seized. Clothes of the deceased were also taken charge of. All the seized articles were sent to F.S.L. Upon completion of investigation, the appellants were proceeded against by filing charge sheet before learned Judicial Magistrate First Class, who, in turn, committed the case to the Court of Session for trial in accordance with law. The

trial court framed Charge (Exh.34). The appellants pleaded not guilty. Their defence was of false implication.

4. To establish the charge, the prosecution examined fourteen witnesses and produced in evidence certain documents. The trial court, on appreciation of evidence in the case, convicted the appellants and consequently, sentenced as stated above.

5. Learned counsel for the appellants would submit that the case is based on circumstantial evidence. The circumstances relied on have not been proved. Suspicion, however strong cannot take place of proof. Both learned counsel took us through the evidence on record, to ultimately urge for allowing the appeals.

6. Learned APP would, on the other hand, submit that there is voluminous evidence to indicate the appellants to have illicit relationship *inter se*. Same was motive to eliminate Arun. Pursuant to the disclosure statement, the axe used in commission of the crime was seized. C.A. Report thereof indicates the blade to have stained with human blood. A1 had suffered injury to his palm. It was necessarily occurred while committing murder of Arun. A1 ought to

have explained injuries on his person. Learned APP reiterated the reasons given by the trial court and ultimately, urged for dismissal of the appeals.

7. Considered the submissions advanced. Perused the evidence on record. The case is based on circumstantial evidence. In case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, the Apex Court has observed thus :-

“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.”

8. Post mortem report (Exh.78) indicates that the deceased died of multiple injuries to head and neck. PW 10 - Dr.Chandramohan conducted post-mortem examination. Deceased met with homicidal death, is undisputed. The question is whether A1 is the author of the crime.

9. Guilt of the appellants was sought to be established on the basis of the following facts:-

- (i) Motive;
- (ii) Illicit relationship between the appellants;
- (iii) Failed attempt to commit murder of Arun by electrocution;
- (iv) A1 going to the field of the deceased by 07.00 p.m. on the fateful day;
- (v) Non-returning of the deceased back home in the very evening;
- (vi) Recovery of axe pursuant to the disclosure statement made by A1;
- (vii) C.A. Report indicates blade of axe to have stained with human blood;

Let us advert to the evidence on record and appreciate the same.

10. PW 1 – Narayan was real brother of the deceased Arun. He lodged the FIR (Exh.44). It is in his evidence that by 06.00 in the morning of 16.03.2015, he went towards their agricultural field. A1 had also come to the field. They saw Arun (deceased) lying motionless. He had suffered injuries to his head, back and neck. Family members of the deceased were informed. It is further in his evidence that a few days before 16.03.2015, A1 had charged milk-kettle with electric current with a view to commit murder of Arun by electrocution. He had failed in the said attempt. Arun was informed about the same by his another farm-labour (PW 4 - Tukaram). According to him, illicit relationship had been developed between the appellants. Arun realised the same. There, therefore, used to be frequent quarrels between the couple.

11. During cross-examination of PW 1-Narayan, it has come on record that he had never personally witnessed the appellants to have been in such a position as to infer illicit relationship between them. Deceased Arun had also never made complaint in that regard. No report to the police in relation to the incident of milk-kettle to have been charged with electric current, was lodged. According to him, there used to be quarrels between A2 and the deceased over the illicit relationship.

12. PW 2 and PW 3 are the witnesses to the panchnamas to the scene of offence and inquest (Exh.46 and Exh.49), respectively.

13. PW 4 – Tukaram, 75 years old, was another employee of the deceased. It is in his evidence that a few days before Arun died, A1 had charged the milk-kettle with electric current with a view to commit murder of Arun by electrocution. According to him, A1 had asked him not to touch the milk-kettle. In the same breathe, PW 4 testified that, A1, on return to the field, disconnected the electric supply. According to him, A1 told him that the widow of deceased (A2) had asked to charge the milk-kettle with electric supply.

14. PW 5 – Ramesh testified that A1 was employed by the deceased for agricultural work. It is in his evidence that A1 would do all the work at the house of the deceased. He would bath the children of the deceased and A2. He (PW 5) was suspecting about illicit relationship between the two. His evidence as regards happenings on the fateful day of “Dhawara” function, is consistent with the evidence of PW 1 – Narayan, that Arun had consumed liquor on that day. After taking meal, Arun left by 07.00 p.m. It is further in his evidence that he saw A1 proceeding towards the field of deceased after a while. He gave a call to A1. He, in turn, told him

that he was proceeding to water the bullocks. According to him, he informed A1 that Arun had already gone to the field for the same purpose. A1, thereupon, told him that since Arun had consumed liquor, he may sit anywhere and therefore, he was proceeding to the field to water the bullocks. PW 5 – Ramesh was confronted with his police statement. It has been brought on record that he did not tell the police that while Sachin was seen proceeding towards the field, he told him that Arun had already gone to the field to water the bullock.

15. Evidence of PW 6 – Ankush is again on the point of “*Dhawara*” function at his place. His evidence indicates that the deceased Arun had attended the same. He had consumed alcohol. A1 also participated in the function.

16. PW 7 - Sonerao is a witness who reached the scene of offence after having learnt about the murder of Arun. According to him, two days before the incident, A1 met him. They had talks *inter se*. A1 told him that there were frequent quarrels between the deceased and A2. The reason therefor is behaviour of A2. According him, A1 told him that quarrels would end only on the death of one of the two.

17. PW 8 - Shivaji is witness to the disclosure statement made by A1, pursuant to which the axe-handle, blade of axe and cellphone of deceased came to be recovered besides a plastic bag containing ash of burnt clothes. PW 9 - Ashok is a witness to another panchnama of seizure of cellphone. PW 10 - Dr.Chandramohan was examined in proof of A1's injury to left palm. According to him, the injury was within 24 hour. PW 11 - Bhausahab is the Police Constable who carried the seized articles to F.S.L. PW 13 and PW 14 are police officials, who did investigation. The evidence of PW 14 indicates A1 to have made the disclosure statement pursuant to which the axe-blade and cellphone came to be seized from his house and handle of axe was taken charge of from beneath the heap of soyabean chaff. C.A. Report (Exh.93) indicates the axe blade to have been stained with human blood.

18. The question is whether based on the aforesaid evidence, the chain of circumstances relied on by the prosecution has been proved. Close reading of the entire evidence of the prosecution lead us to infer that there is no shred of material to indicate A2 to have had instigated A1 to eliminate her husband. Necessarily, the reasons given by the trial court for convicting A2 are unfounded.

19. So far as regards A1 is concerned, there is nothing to indicate that both the appellants had illicit relationship *inter se*. True, there can hardly be any evidence in proof of the said relationship. The informant (brother of the deceased) even testified that he raised such inference since he heard quarrels between the couple over the relationship. We do not find any reliable and convincing evidence to infer illicit relationship between the appellants. So far as regards earlier incident of charging milk-kettle with electric supply is concerned, it just does not stand to reason that A1 would relate to his co-employee (PW 4) that he did the same only with a view to see Arun would die of electrocution. The very witness in the second breathe testified that A1, on return from the field, discontinued the electric supply. According to the prosecution, said fact had become known to the deceased – Arun. The matter was not reported to the police. There is no evidence to indicate the deceased to have scolded A1 over the same. Logical and natural reaction on the part of the deceased would have been to remove A1 from employment. Nothing of that sort happened.

20. The evidence suggesting A1 to have been seen proceeding towards the field for watering bullocks, is noway inconsistent with his innocence. He was, in fact, employed for the

same. In spite of he having learnt that the deceased had already proceeded towards the field, he stated the concerned witness (PW 5) that he was proceeding since the deceased had consumed alcohol and he would sit anywhere. On the following morning, as usual, A1 went to the field for agricultural operations when he saw Arun to have been murdered. His visiting the land is not inconsistent with his innocence. What is normally seen is that a culprit goes absconding after committing a crime. So far as regards the evidence relating to recovery of axe-blade stained with human blood is concerned, the same is not conclusive proof of the fact relied on. Had the axe-blade been stained with the blood group of the deceased, the same would have been somewhat relevant. It would be anybody's guess as to with whose blood, the blade of axe was stained. According to the prosecution, A1 had suffered bleeding injury to his palm. It is not for A1 to offer explanation as to how did he suffer such injury. Submissions made in this regard by learned APP, cannot be accepted. As such, in our view, none of the facts relied on to establish the charge against the appellant - A1, has been conclusively proved.

21. For all the aforesaid reasons, we are not at one with the findings recorded by the trial court. Interference with the impugned

order of conviction and consequential sentence is, therefore, warranted.

22. In the result, the appeal succeeds. Hence, the following order:-

- (i) Both the Criminal Appeals are allowed.
- (ii) The judgment and order of conviction and sentence dated 26.12.2017, passed by learned Addl. Sessions Judge, Latur, in Sessions Case No.56 of 2015, is hereby set aside. The appellant - Sachin Pralhad Kamble is acquitted of the offence punishable under Section 302 of Indian Penal Code. The appellant - Ashvini Arun Deshmukh is acquitted of the offence punishable under Section 302 read with Section 109 of Indian Penal Code.
- (iii) The appellant - Sachin Pralhad Kamble is in jail. He be set at liberty forthwith, if not required in any other case.
- (iv) Bail bonds of appellant - Ashvini Arun Deshmukh stand cancelled.
- (v) Fine amount, if paid, be refunded to the appellants.
- (vi) The appeals stand disposed of accordingly.

[NEERAJ P. DHOTE, J.]
KBP

[R.G. AVACHAT, J.]