



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

CRIMINAL APPEAL NO.230 OF 2022

Balasaheb @ Balu Vasant Kalbhor
Age 49 years, Occ. Nil,
R/o Loni-Kalbhor, Tq. Haveli,
District Pune

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Station, Tuljapur,
Tq.Tuljapur, Dist. Osmanabad

... RESPONDENT

.....
Mr. A.V. Indrale Patil, Advocate for appellant
Mr. A.R. Kale, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 10th JULY, 2024.

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence, dated 24/1/2017, passed by learned Special Judge, Osmanabad in Special (Atro.) Case, No.21/2013. Vide impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and

sentenced to suffer imprisonment for life and to pay fine of Rs.3000/-, with default stipulation. He was acquitted of the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The State has not preferred appeal against acquittal.

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

The appellant committed murder of one Shobha on 30/6/2012 in a room taken on rent at Tuljapur and left the room for no return, after locking the room from outside.

3. Heard. Learned Advocate appointed to represent the appellant would submit that, the appellant's name was not Balasaheb @ Balu Vasant Kalbhor. He is Ashok Kadam, resident of Satara. He had no occasion to be at Tuljapur on the given day or therebefore. The witnesses examined on behalf of the prosecution did not know the appellant. On his arrest, he was shown to the witnesses by the police. He could, therefore, be identified in the test identification parade, which was held in breach of mandatory directions issued in respect of holding a valid test identification parade. According to learned Advocate, the case is based on circumstantial evidence.

Motive has not been proved. No chain of circumstances has been conclusively established so as to indicate the appellant and none else to have committed the murder. He, therefore, urged for allowing the appeal.

4. The learned A.P.P. would, on the other hand, submit that, there is voluminous evidence to indicate the appellant to have committed murder of Shobha. According to him, it is an open and shut case. He took us through the evidence of the prosecution and the reasons given by the Trial Court in support of the impugned judgment and order. The learned A.P.P. ultimately urged for dismissal of the appeal.

5. Perused the evidence on record. Also gone through the judgment impugned herein. Let us appreciate the same.

6. The prosecution, in order to bring home the charge (Exh.7), examined 13 witnesses and produced in evidence certain documents for deciding the present appeal. We would be referring to relevant evidence on record.

7. P.W.9 Dr. Rahul conducted post mortem examination on the mortal remains of deceased Shobha

Harishchandra Shinde. The post mortem report is at Exh.35. The evidence of P.W.9 Dr. Rahul indicates the deceased had suffered following injuries :-

- (1) Bruise with violet blue colour of size 10x5 cm. present on left side back at the angle of scapula.
- (2) Depressed skull fracture over occipital bone of head of size 4x5 cm. present – depth 0.5 cm.

In the opinion of P.W.9 Dr. Rahul, Shobha died of cardio respiratory arrest due to asphyxia and head injury.

8. The inquest (Exh.16) and crime scene panchanama (Exh.15) have been admitted by the defence before the trial Court. The crime scene panchanama indicates it to be a two room premises with tin roof. Dead body of Shobha was found lying in injured condition. It was in decomposed state. Death might appear to have occurred 4-5 days before the crime scene panchanama was drawn on 30/6/2012.

9. P.W.1 Jankabai (informant) was the mother of deceased Shobha. Her evidence indicates that, Shobha was married with one Harishchandra Shinde. The couple was

blessed with two daughters and two sons. All was not well between the couple. Shobha had, therefore, returned back to her parental house. She had filed criminal case against her husband Harishchandra. A compromise was worked out. She had resumed marital relationship. She, however, used to occasionally visit Osmanabad.

10. It is further in her evidence that, while she was staying at Osmanabad, she got acquainted with one Ashok (appellant herein). Ashok claimed to be from Satara. An acquaintance developed between Shobha and Ashok. Ashok was serving as a Waiter with a hotel of one Gabbar. With the very hotel, Shobha had joined to serve as a maid. It is further in her evidence that, both the appellant and Shobha took a room on rent and resided together. She learnt about the death of Shobha. She, therefore, went to the room to find the appellant was nowhere. She, therefore, lodged F.I.R. (Exh.13) at Osmanabad Police Station. Crime vide C.R. No.94/2012 was registered for offences punishable under Sections 302 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11. It is in her cross-examination that, Shobha was married about 20 years before. Shobha worked in the hotel of Gabbar for about 8 days only. That time she was residing in a room behind the hotel. The room was provided by hotel owner. It is further in her evidence that, initially it was Shobha and Ashok were residing together. There were household articles of Shobha in the room in which she was found dead. She claimed ignorance about many persons to have been visiting the house of Shobha. It is further in her evidence that, three months before Shobha breathed her last, she had come to reside at Tuljapur.

12. The case is based on circumstantial evidence. The evidence of P.W.1 Jankabai (informant) was only in respect of setting the criminal law in motion. Her evidence, however, indicates that, she had seen the appellant in the company of her deceased daughter and appellant had impersonated to be Ashok Kadam.

13. P.W.2 Satish is a panch witness to a disclosure statement made by the appellant, pursuant to which a hammer came to be recovered. The same is at Exh.22 and 23. Since the C.A. report did not indicate the hammer to have had blood

stains, the said recovery is of little consequence.

14. P.W.3 Shital and P.W.4 Shashikala testified that they hailed from Tuljapur. They would sell bangles, outside Goddess Tuljabhavani Temple at Tuljapur. Their evidence further indicate that, they had constructed 5 rooms to let on rent. It is in the evidence of P.W.3 Shital that, appellant had come to him on 15/6/2012. He gave his name as Ashok. He informed to have been serving in the hotel of one Gabbar. On the appellant's request, he rented out him a 2 room premises. The appellant had assured that he would be residing therein with his family. It is further in his evidence that, on 25/6/2012 he saw the appellant and one lady together. In the evening of the very day, his wife Shashikala (P.W.4) told him that Ashok left the room for his native and locked the room from outside.

15. The evidence of P.W.4 Shashikala is on the same lines. She testified that on 25/6/2012, while she returned from her shop by 7.00 p.m., the appellant met her and informed that, he was leaving for his native place. The appellant locked the room from outside. The evidence of both these witnesses indicate that, 4-5 days thereafter a foul smell/ stink started emanating from the room. The matter was, therefore, reported

to the police. The police arrived. The entrance door was broken open. A dead body of a woman was found in one of the two rooms. It was in highly decomposed condition. A crime scene panchanama (Exh.15) was drawn. The dead body was removed for inquest and autopsy.

16. P.W.5 Prakash was another resident of village Tuljapur. It is in his evidence that, he had given a room on rent to Ashok and deceased Shobha. Since he learnt Shobha to have belonged to Pardhi community, he asked them to vacate the room. Since they did not vacate, he took their household articles out of the room and kept the same in a dilapidated room. He denied that Shobha and her daughter Priyanka were residing in his room taken on rent.

17. P.W.6 Priyanka was the daughter of deceased Shobha. She was 24 years of age at the relevant time. It is in her evidence that, she too was residing at Tuljapur with her mother for some days. Her mother Shobha was serving with the hotel of Gabbar. It is further in her evidence that, she got acquainted with one Ashok. On one night, she saw her mother Shobha and Ashok to have shared a bed. After having realised conduct of her mother, Gabbar removed her from the

job. Thereafter both, Shobha and Ashok were in search of room for their residence.

18. P.W.7 Sanjay @ Gabbar testified that he was running a hotel, "Jai Bhavani Hotel" at Tuljapur. He had employed Ashok and Shobha as Waiter and Maid respectively in his hotel. Since he noticed conduct of both of them to be not good, he removed them from the job. P.W.8 Ankush was Manager of the hotel run by P.W.7 Sanjay @ Gabbar. It is in his evidence that, Ashok left the hotel with a leave for 2 days. Then he telephoned P.W.8 Ankush and made a demand of his outstanding salary. He told him to have committed murder of a lady.

19. The evidence on record indicates that, based on a telephone number, appeared on the cell phone of P.W.8 Ankush, the police located the caller. P.W.8 Ankush accompanied police to village Loni Kalbhor, whereat the appellant was overpowered. It was turned out that the applicant was not Ashok but Balasaheb @ Balu Vasant Kalbhor.

20. P.W.10 Gajendra was serving with Yerwada Central Prison as a Senior Clerk. He placed on record certain

documents, wherefrom it could be gathered that, the appellant was convicted in Sessions Case, No.33/2007. He was undergoing life imprisonment for offence punishable under Section 302 of the Indian Penal Code. The appellant was granted furlough on 27/4/2011. he did not return after expiry of the furlough. Those documents find place at Exhs.39 to 44. All are public documents. We find no reason to disbelieve the same.

21. As such, it was revealed that the name of appellant was not Ashok but Balasaheb @ Balu. He was a convict of offence punishable under Section 302 of the Indian Penal Code. He was undergoing life imprisonment. He was released on furlough. He jumped the same. He came to Osmanabad. Secured a job as a Waiter in the hotel of P.W.7 Sanjay @ Gabbar by impersonating to be Ashok. There he got acquainted with Shobha. The acquaintance developed into emotional relationship. He took a room belonging to P.W.3 Shital on rent. On his arrest, P.W.13 Bharat, Tahsildar conducted test identification parade. In the said parade, the prosecution witnesses namely P.W.1 Jankabai, P.W.3 Shital, P.W.4 Shashikala, P.W.5 Prakash, P.W.6 Priyanka and P.W.7 Sanjay @ Gabbar identified the appellant as the one who used

to be in the company of Shobha (deceased).

22. Although learned Advocate for the appellant made frantic efforts and submissions as well to indicate the offence to have not been proved beyond reasonable doubt, we find no reason to disbelieve the evidence of any of the prosecution witnesses, who recognised the appellant, but only with a name Ashok. It was the appellant who impersonated to be Ashok. He ultimately turned out to be Balasaheb @ Balu Vasant Kalbhor. Even in the test identification parade, the mother, daughter of deceased Shobha, landlord and landlady of the premises wherein the appellant and Shobha resided, the hotelier with whom the appellant and Shobha served, and the Manager thereof thereof have all identified the appellant as one who was in relationship with Shobha. The landlady P.W.4 Shashikala was categorical to state that it was the appellant and none else who left the room after locking it from outside. When stink started emanating from the room, an intimation was given to the police authorities. Police arrived. The entrance of the room was broken open to find dead body of Shobha inside. All these facts and circumstances unerringly indicate it was the appellant and none else who committed murder of Shobha and left the room for no return.

23. P.W.14 Bharat, P.W.15 Sunil, P.W.16 Sharmistha and P.W.17 Punjabrao are the police officials who took part in the investigation of the crime. We do not propose to refer to their evidence since the offence has been duly proved based on the evidence of the witnesses referred to hereinabove. The Trial Court has rightly convicted and consequently sentenced the appellant for the offence of murder. We find no reason to interfere with the impugned order of conviction and consequential sentence.

24. In the result, the appeal fails. It is dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-