



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

CRIMINAL APPEAL NO.456 OF 2019

Gulab Gangaram Salunke
age 51 years, Occu. Labour,
R/o Salgara (D), Taluka Tuljapur,
At present Ganesh Nagar,
Osmanabad

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
Through Police Station Officer,
(City), Osmanabad
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. R.N. Chavan, Advocate holding for
Mr. S.S. Mhaske, Advocate for appellant
Mrs. U.S. Bhosle, A.P.P. for respondent
.....

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

Date of reserving judgment : 14th March, 2024

Date of pronouncing judgment : 15th March, 2024

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

The appellant has been convicted for the offence of committing murder of his wife and therefore sentenced to suffer imprisonment for life and pay a fine of Rs.1000/-, with default stipulation.

2. The facts as are disclosed from the police papers (charge sheet) are as follows :-

P.W.2 Shaikh Nizam lodged First Information Report (F.I.R. - Exh. 22) on 22/10/2016. It has been averred in the F.I.R. that he was in transport business. The office of his business was at Market yard. It was about 9.00 a.m. of 22/10/2016. He was proceeding to his transport office on motorbike. He noticed a crowd at a road side, near Ganesh Nagar. He, therefore, went close to the crowd. He noticed makeshift tents of Blacksmith (Ghisari) community, He noticed at one of the makeshift tents a woman was lying dead. There were injuries on her person. One person was sitting by her side. He told the informant (P.W.2) Shaikh Nizam his name as Gulab Salunke (appellant). The appellant also told him that the deceased was his wife and he committed her murder.

3. The informant, therefore, made a phone call to Police Station, Osmanabad City. The police arrived. The informant lodged the First Information Report (F.I.R. - Exh.22) against the appellant. A crime vide C.R. No.267/2016 was registered at Ganeshnagar Police Station, Osmanabad for the offence punishable under Section 302 of the Indian Penal Code. The appellant was arrested. The scene of offence panchanama (Exh.28) was drawn. Mortal remains of the deceased was

subjected to autopsy. Clothes on the person of the deceased were seized. The appellant was medically examined. His nail clippings were obtained. Seized articles were sent to F.S.L. for analysis and report. Upon completion of the investigation, the appellant was proceeded against by filing Charge Sheet.

4. The case was assigned to the Court of Additional Sessions Judge, Osmanabad (Trial Court) for trial in accordance with law. The Trial Court framed the Charge (Exh.4) against the appellant. He (appellant) pleaded not guilty. His defence was of false implication.

5. To establish the charge, the prosecution examined 5 witnesses and tendered in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment and pay fine of Rs.1000/- (Rupees one thousand), in default to undergo R.I. for one year.

6. Heard. Learned counsel for the appellant would submit that, the case is based on circumstantial evidence. The prosecution has not proved motive. None of the circumstances relied on have been established. He adverted our attention to C.A.

report to indicate nail clippings of the appellant borne no stains of the blood of the blood group of the deceased. According to him, it was just illogical to imagine the appellant to make an extra-judicial confession to an unknown person. He would further submit that, extra-judicial confession is a very weak piece of evidence. There is no evidence corroborating the alleged extra-judicial confession. He, therefore, urged for allowing the appeal.

7. The learned A.P.P. would, on the other hand, submit that, it is an open and shut case. The appellant and his wife were together. The appellant was sitting by the side of the dead body of his wife. If someone else had committed murder of his wife, the natural reaction on the part of the appellant would have been to report the matter to the police and the persons residing in neighbourhood. The appellant made extra-judicial confession. The learned A.P.P. supports the impugned judgment and order.

8. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

9. Dr. Mohan (P.W.1) conducted autopsy on the deceased on 22/10/2016. He noticed following external injuries on her person:-

- 1) Contusion over left side of the face 3 x 2 cm.
- 2) Left ear contusion 1 x 2 cm.
- 3) Contusion over right forearm 2 x 2 cm.
- 4) Contusion over right arm 2 x 2 cm.
- 5) Contusion over left thigh 2 x 2 cm.
- 6) Contusion over right thigh 2 x 2 cm.
- 7) Semi lunar abrasion over neck 4 to 5 in number of size 0.5 x 1.5 cm. blackening path over upper part of the neck.

Dr. Mohan (P.W.1) also noticed following internal injuries on her person :-

1. Subcavenous tissues around laryngo trachea scattered haemorrhagic patches around laryngo trachea region.
- 2) On cut section of lung, it is congested frontly bloody discharge.

In the opinion of Dr. Mohan (P.W.1), the deceased died of asphyxia due to throttling and injuries.

10. Although Dr. Mohan (P.W.1) was extensively cross-examined, there is nothing to indicate the deceased to have not met with homicidal death.

11. The question is, whether the appellant is the author of the crime in question. According to the prosecution itself the deceased was wife of the appellant. They were staying in a makeshift tent. P.W.2 Shaikh Nizam testified that that he was in transport business. The office of his business was at Market yard. It was about 9.00 a.m. of 22/10/2016. He was proceeding to his transport office on motorbike. He noticed a crowd at a road side, near Ganesh Nagar. He, therefore, went close to the crowd. He noticed makeshift tents of Blacksmith (Ghisari) community, He noticed at one of the makeshift tents a woman was lying dead. There were injuries on her person. One person was sitting by her side. He told the informant (P.W.2) Shaikh Nizam his name as Gulab Salunke (appellant). The appellant also told him that the deceased was his wife and he has committed her murder. P.W.2 Shaikh Nizam, therefore, made a phone call to Police Station, Osmanabad City. The police arrived. The informant lodged the First Information Report (F.I.R. - Exh.22) against the appellant.

12. Although P.W.2 Shaikh Nizam was subjected to a searching cross-examination, nothing could be elicited that would help the appellant in his defence.

13. P.W.3 Datta was another witness. His evidence indicates that, his shop was in the vicinity whereat the appellant

would reside along with his wife (deceased) in a tent. The evidence of this witness further indicates the appellant would beat his wife up frequently. It is further in his evidence that, he saw the appellant beating his wife (deceased) on 21/10/2016. It was about 1.30 p.m. It is further in his evidence that he went to the appellant's tent. The appellant took him aside and told to have had seen his wife resting her head on the lap of some other person. He, therefore, beat her up.

14. True, the C.A. report did not support the prosecution i.e. the nail clippings of the appellant do not bear blood of the blood group of the deceased so as to infer the appellant to have throttled the deceased. The fact, however, remains that the deceased died while in the custody of the appellant. The appellant was present by the side of her dead body. His conduct was inconsistent with his innocence. Had someone else killed his wife, the appellant would have made hue and cry. Moreover, he made an extra-judicial confession to P.W.2 Shaikh Nizam. True, the extra-judicial confession is a weak piece of evidence. There is, however, corroborative evidence in the nature of the wife of the appellant having been met with homicidal death while she was with him. The appellant did not offer any explanation.

15. It may, therefore, appear that, the appellant has

committed murder of his wife. There is, however, another aspect of the matter. The investigating officer, in the charge sheet (report under Section 173 Cr.P.C.) itself has observed :

"एकंदरीत झाले तपासावरून आरोपी नामे गुलाब गंगाराम साळुंके, वय- ५० वर्षे, व्यवसाय- घिसाडी काम, रा. सलगरा दिवटी, ता. तुळजापूर, ह.मु. गणेशनगर उस्मानाबाद याने संतोषी साळुंके हीस दारू पिवून इसम नाव सय्यद असिफ सय्यद महेबुब याचे मांडीवर डोके ठेवून झोपली असल्याचा राग मनात ठेवून तीस काठी व हाताने मारहाण करून व तिचा गळा दाबून खून केल्याचे निष्पन्न होत आहे. करिता आरोपी नामे गुलाब गंगाराम साळुंके, वय- ५० वर्षे, व्यवसाय- घिसाडी काम, रा. सलगरा दिवटी, ता. तुळजापूर, ह.मु. गणेशनगर उस्मानाबाद याचे विरुद्ध भा.द.वि. कलम ३०२ प्रमाणे दोषारोप आहे."

16. P.W.3 Datta was categorical to depose that the appellant had confided in him to state that he assaulted his wife since he saw her resting her head on the lap of another man. The same suggests the appellant had every reason to suspect his wife (deceased) to have not been loyal to him. The said incident i.e. the appellant witnessing his wife resting her head on the lap of a third person was dated 21st October. Within hours thereof the appellant beat her up. She died thereof. The record indicates the investigating officer to have examined one Sayyed Asif Sayyed Maheboob who was seen in the company of the deceased, by the appellant.

17. In our view, the incident of the appellant committing murder of his wife as a result of having seen her resting her head on the lap of a third person falls within Exception (1) of Section 300 of the Indian Penal Code, which reads thus :

“Exception 1 :- When culpable homicide is not murder :- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First:- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly :- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly:- That the provocation is not given by anything done in the lawful exercise of the right of private defence.”

18. In view of the above, in our view, the appellant is guilty of offence punishable under Section 304 Part I of the Indian Penal Code. We are, therefore, inclined to allow the appeal partly, in terms of the following order :-

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The order of conviction and consequential sentence dated 14/6/2017, passed by learned Additional Sessions Judge, Osmanabad in Sessions Case No.12/2017, convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, is hereby set aside. The appellant stands acquitted thereof.
- (iii) Instead, the appellant is convicted for the offence punishable under Section 304 (Part I) of the Indian Penal Code and, therefore, sentenced to suffer rigorous imprisonment for eight (8) years and to pay fine of Rs.1000/- (Rupees one thousand), in default to undergo R.I. for 15 days.
- (vii) The Criminal Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-