



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

CRIMINAL APPEAL NO. 780 OF 2022

Mohamad Aslamamin Shaikh
Age: 52 years, Occu.: Nil,
R/o Kailas Nagar, Near Santoshi Mata Temple,
Behind Mahatma Gandhi High School,
Ambarnath, Dist. Thane
At present, Hamalwadi, Phule Nagar,
Sailu, Tq. Sailu, Dist, Parbhani

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector,
Sailu Police Station,
Tq. Sailu, Dist. Parbhani

..RESPONDENT

....
Mr. Shaikh Wajeed Ahmed, Advocate for appellant
Mrs. S.N. Deshmukh, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 10th DECEMBER, 2024**

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

1. The appellant, in this appeal, challenges his conviction for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.') and the consequential sentence of imprisonment for life and fine with default stipulation imposed by the Additional Sessions Judge, Parbhani ('trial Court') vide judgment and order dated 05th April, 2016.

2. The facts in brief giving rise to the prosecution case is as follows :-
The appellant had married Anjum (deceased), daughter of PW 3 –

Mumtaj. The couple was blessed with two children, aged below three and half years. They were residing at Sailu. The house of PW 3 – Mumtaj was nearby the house of the appellant. The appellant would suspect loyalty of his wife – Anjum to him. On the fateful day i.e. on 12th September, 2014, he assaulted Anjum on her neck and chest with a knife and fled. Anjum came to her mother's residence in injured condition. Her sister, PW 4 – Naseem opened the door. Anjum told them to have been assaulted by the appellant. After a while, Anjum breath her last. Her dead body was shifted to the hospital. PW 3 – Mumtaj lodged the First Information Report ('F.I.R.') (Exh.17) at Sailu Police Station alleging the appellant to have killed her daughter.

3. Crime vide C.R. No.166 of 2014 was registered. Crime scene panchanama (Exh.20) was drawn. The appellant was arrested. Inquest (Exh.12) and autopsy (Exh.35) were conducted on the mortal remains of Anjum. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the charge-sheet was filed.

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

5. The prosecution, to bring home the charge, examined eleven witnesses and adduced in evidence certain documents. On appreciation of

the evidence in the case, the trial Court convicted the appellant and consequently sentenced him as stated above.

6. Learned counsel for the appellant relied on the evidence of PW 3 – Mumtaj, PW 4 – Naseem and PW 6 – Deepak. According to him there is variance in the evidence of these three witnesses. He brought to our notice that Anjum was unable to speak. For that, evidence of PW 4 – Naseem was adverted to. According to him, PW 3 – Mumtaj stated that the deceased did not have a cell phone, while PW 6 – Deepak claimed to have been called to her residence by the deceased by making a call on his cell phone. According to him, the evidence of the prosecution witnesses inspire no confidence since there is great variance inter se. He, therefore, urged for acquittal of the appellant.

7. Learned A.P.P. would, on the other hand, took us through the evidence of each and every witness. She then read out the reasons given by the trial Court in support of the impugned order. She adverted our attention to the crime scene panchanama (Exh.20). She pointed out that in the room of the appellant, there were blood stains. The blood stains were also found at the back side of the door of the house of PW 3- Mumtaj whereat Anjum went after assault. Blood spot trail vouch for the same. It was little past 12:00 mid-night. The witnesses have no reason to speak against the appellant, sparing the real culprit. She, therefore, urged for dismissal of the appeal.

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

9. The appellant was forty-two years of age, while the deceased – Anjum was 19/20 years when both got married to each other. As such, the appellant was elder by twenty-two years to his wife. There is no dispute that the house of the mother of the deceased – Anjum was just four houses away from her own residence. Her residence was in the nature of a tin shed room. It was occupied by the appellant, the deceased and their two minor children.

10. The postmortem report (Exh.35) indicates deceased – Anjum died due to cardio-respiratory arrest due to hemorrhagic shock, due to stab injury by sharp weapon. The cause of death was proved by the evidence of PW 10 – Dr. Jadhav.

11. According to PW 3 – Mumtaj, mother of the deceased, the appellant would suspect Anjum's fidelity. Her evidence further indicates that two days before the incident, the appellant had gone out of the village. The appellant would suspect his wife to have extra marital relationship with PW 6 – Deepak.

12. According to PW 6 – Deepak, he would serve with Manjit Cotton Mill, Sailu. Deceased – Anjum would also work with him. Anjum would

relate him ill-treatment given by the appellant. On the given day i.e. on 12th September, 2014 by 10:15 p.m. he received a phone call of Anjum informing the appellant to have been beating her. She asked him to come home and give him understanding. He, therefore, went her home. The appellant was not there. After sometime he returned. The appellant questioned Anjum as to since when she had illicit relationship with Deepak. He also questioned PW 6 – Deepak. The appellant thereafter assaulted Anjum with a knife and Deepak as well. Deepak too suffered injury to his hand.

13. The evidence of PW 6 – Deepak speaks in volumes. Admittedly, the appellant was not home for about two days next before the incident. If really the appellant had assaulted and ill-treated Anjum by 10:00 p.m. on the fateful night, she ought to have approached her mother's house which was at just two minutes walking distance. Instead, she called PW 6 – Deepak her home. The incident admittedly took place by little past 12:00 midnight. Presence of PW 6 – Deepak at the appellant's house in his absence and he suspecting his extra-marital relationship of his wife with Deepak necessarily gave the appellant grave and sudden provocation. In spite of having received injury at the hands of the appellant, Deepak did not lodge the report. The same too speaks in volumes. True, both, the deceased and Deepak might not have been seen in compromising position, the fact however remains the appellant was all along suspecting her wife to have extra marital relationship with PW 6 – Deepak. For two days next before the incident the appellant was not home. In his absence PW 6 – Deepak was found at the appellant's

house at the dead of night i.e. 12:00 midnight. The same gave rise to quarrel between the appellant and the deceased. The appellant is from lower strata of the society. At the cost of repetition it is stated that presence of PW 6 – Deepak at 12:00 midnight at the house of the appellant in his absence lead us to infer that there might have been extra marital relationship between the two.

14. In our considered view, the case falls within Exception 1 to Section 300 of the I.P.C., which reads thus :-

“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.”

15. In view of above, it is an offence punishable under Section 304 Part I of the I.P.C. The appellant has been behind the bars since day one of his arrest i.e. from 13th September, 2014 till date i.e. little over ten years. Considering the nature of offence, we find sentence of eight years rigorous imprisonment would meet the ends of justice.

15. In the result, we pass the following order :-

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Judgment and Order dated 05.04.2016, passed by the learned Additional Sessions Judge, Parbhani, in Sessions

Trial No.118 of 2014, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code and imposing a fine with default sentence, is hereby set aside.

Instead, the Appellant is convicted for the offence punishable under Section 304 Part-I of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for a period of eight (8) years and to pay a fine of Rs.1,000/- (Rupees One Thousand). In default of payment of the fine, he shall suffer rigorous imprisonment for two (2) months. If the fine amount has already been paid, the same be adjusted.

- (iii) It appears that the Appellant has been behind the bars for little over eight (8) years. He be set at liberty forthwith if he has served out the sentence and is not required in any other case.
- (iv) Pending Criminal Application stands disposed of.
- (v) The Registrar (Judicial) of this Court shall ensure compliance of this order forthwith.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)