



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

CRIMINAL APPEAL NO. 240 OF 2019

Sunil Fulji Tadavi
Age: 28 years, Occu.: Agri.,
R/o Umati, Tq. Akkalkuva,
Dist. Nandurbar

..APPELLANT

VERSUS

1. State of Maharashtra
Through Police Station Molgi,
Tq. Akkalkuva, Dist. Nanudrbar

2. Mrs. Sakharabai Ugranya Tadavi
Age: 40 years, Occu.L Agri.,
R/o Umati, Tq. Akkalkuva,
Dist. Nandurbar

..RESPONDENTS

....
Mr. S.A. Kulkarni, Advocate for appellant (appointed)
Mr. B.B. Bhise, A.P.P. for respondent no.1 - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 22nd MARCH, 2024**

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

1. The challenge in this appeal is to the judgment and order dated 14th January, 2019 passed by Additional Sessions Judge, Shahada ('trial Court'), in Sessions Case No. 68 of 2013. Vide the impugned judgment and order, the appellant has been convicted for committing murder of his wife, and therefore, sentenced him to suffer life imprisonment and to pay fine of Rs.3,000/- with default stipulation. Seven others prosecuted alongwith the appellant were acquitted. Neither State nor any family member of the deceased has preferred appeal against acquittal.

2. Mr. S.A. Kulkarni, learned counsel, was appointed to represent the appellant.

3. Facts, giving rise to the prosecution case, are as under :-

P.W.2 – Sakharabai lodged the F.I.R. (Exh.55) on 22nd May, 2013 with Police Station Molgi. It is her case that she was the resident of village Umti, Tq. Akkalkuva, Dist. Nandurbar. Deceased – Asmabai (wife of the appellant) was residing at a short distance from her own residence. The appellant was addicted to alcohol. It is further her case that she was home by 02:00 p.m. on 22nd May, 2013. She heard an uproar from the back side of the house of deceased - Asmabai. She, therefore, rushed to that place. She saw Sila Boka Valvi and her daughter-in-law Maktibai arrived there. She saw the appellant demanding Asmabai money for consumption of alcohol. Asmabai refused to pay him money. The appellant took it to his heart. A quarrel ensued between him and Asmabai. The appellant was under the influence of alcohol. He assaulted on the head of Asmabai with a pestle (मुसळ). Others (acquitted) also assaulted her with fisticuffs and stick as well.

4. Based on the F.I.R., crime vide C.R. No. 31 of 2013 was registered. Scene of offence panchanama (Exh.67) was drawn. Autopsy was conducted. Mortal remains of Asmabai was subjected to postmortem examination. Clothes on her person were seized. The pestle used for assaulting the deceased was seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion

of investigation, the appellant was proceeded against by filing the charge-sheet before the Court of J.M.F.C., Akkalkuva. The case was then committed to the Court of Additional Sessions Judge, Shahada (trial Court) for trial in accordance with law.

5. Trial Court framed the charge (Exh.35). The appellant pleaded not guilty. It was his defence that Asmabai fell from a mango tree. She suffered head injuries and died thereof. It is further his defence that one Fulji, father of the appellant, was having illicit relationship with the grandmother of Asmabai (deceased). Therefore, with a view to take revenge, the witnesses have deposed against him.

6. To establish the charge, prosecution examined seven witnesses and produced in evidence certain documents. Investigating officer could not be examined as he passed away.

7. Learned counsel for the appellant would submit that P.W.1 – Maltibai did not stand by the prosecution. Same is the case of few other witnesses. According to him, it is only P.W.2 – Sakharabai, who has testified against the appellant. It is a case based on sole eye witness account. She was rustic and illiterate. She admitted that there were fields between the house of the appellant and that of herself. Those land owners viz. Bijala Khalya, Shila Khalya, Torma Vishya and Karma have not been examined. She further admitted that Police Patil of the village had given information to

the police and the same was reduced into writing. She simply put her thumb impression on the written paper. Thereafter she left Police Station Molgi. According to learned counsel, P.W.5 – Dr. Balkrushna, Medical Officer admitted the head injuries suffered by the deceased might have been possible due to fall from a tree. According to learned counsel, when all other accused, who were prosecuted with the appellant have been acquitted based on the evidence of P.W.2 – Sakharabai, same treatment ought to have been given to the appellant. He, therefore, urged for allowing the appeal.

8. Learned A.P.P. supports the impugned judgment and order.

9. P.W.5 – Dr. Balkrushna conducted the postmortem examination on the mortal remains of Asmabai. He noticed following injuries on her person :-

- i) Blunt trauma over head on parietal region contusion x 20 hr.
- ii) Contusion over left side orbit x 20 hr.
- iii) Abrasion over right hand elbow joint x 20 hr
- iv) Abrasion over left hand elbow joint x 20 hr

In his opinion, the deceased died due to cardio-respiratory arrest due to the head injury due to blunt trauma over head. True, he admitted head injury could also be possible due to fall from a tree.

10. It is true, P.W.1 – Maltibai, an eye witness to the incident, did not stand by prosecution. Her cross-examination indicates the appellant is her uncle. She, therefore, appears to have turned hostile.

11. P.W.2 – Sakharabai testified that deceased – Asmabai was her sister's daughter. Asmabai had married the appellant. Both of them were residing together some distance away from her residence. It is further in her evidence that she heard an uproar from the back side of the house of deceased - Asmabai. She, therefore, rushed to that place. She saw the appellant demanding Asmabai money for consumption of alcohol. Asmabai refused to pay him money. The appellant took it to his heart. A quarrel ensued between him and Asmabai. The appellant was under the influence of alcohol. He assaulted on the head of Asmabai with a pestle (गुथळ). Others (acquitted) also assaulted her with fisticuffs and stick as well. It is further in her evidence that one Malati and Sila Boka Valvi had also witnessed the incident. True, Malatibai turned hostile. Sila has not been examined. It is also true that the others who, owned the lands between the house of the appellant and P.W.2 – Sakharabai, have not been examined. It is also true that Sakharabai is a rustic and illiterate woman. She testified that village Police Patil had also been to police station with her. Both of them reported the matter to the police. It was reduced to writing. She simply put her thumb impression thereon. From the said evidence, we may infer that criminal law was set in motion based on the F.I.R.

12. The fact, however remains, we have no reason to disbelieve the testimony of P.W.2 – Sakharabai. She was categorical to state that the appellant was an alcoholic. He was drunk at the relevant time. He made a demand of money from Asmabai for consumption of alcohol. She refused.

The appellant took it to his heart. A quarrel took place between the two. He all of a sudden picked up a pestle and assaulted on the head of Asmabai therewith. Postmortem report (Exh.74) suggests Asmabai to have died of head injury.

13. The aforesaid evidence indicates that if the appellant had really intended to eliminate his wife, he would have inflicted number of blows on her head, face and other vital parts of the body. The incident occurred since the deceased did not pay the appellant money for consumption of alcohol. A quarrel was preceded by the incident. The appellant all of a sudden picked up a pestle and hit on the head of deceased. Description of the article seized indicates it is not more than two and half feet in length. No opinion of the Medical Officer was solicited as to whether the head injury was sufficient in the ordinary course of nature to cause death of the deceased. It is reiterated that the incident took place in a spur of moment. There was quarrel between the couple. The appellant gave a single blow on the head of the deceased, whereby she succumbed. As such, in our view, it is an offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the Indian Penal Code.

14. It is informed that the appellant is behind the bars since the day of his arrest i.e. 23rd May, 2013. We propose to sentence him to imprisonment for the period which he has already undergone till date (i.e. 10 years, 09 months 28 days). With this, appeal stands disposed of in terms of following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Judgment and order dated 14th January, 2019 passed by Additional Sessions Judge, Shahada in Sessions Case No. 68 of 2013 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) The appellant is convicted for offence punishable under Section 304, Part II of the Indian Penal Code and sentenced to suffer imprisonment for the period he has already undergone.
- (IV) The appellant be released forthwith, if not required in any other case.
- (V) Registrar (Judicial) of this Court to ensure release of the appellant forthwith.
- (VI) Fees of Mr. S.A. Kulkarni, learned counsel appointed to represent the appellant, is quantified at Rs.10,000/- (Rupees Ten Thousand) to be paid by Legal Services Sub-Committee, High Court, Aurangabad.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)