



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

CRIMINAL APPEAL NO. 331 OF 2020

Sharad @ Dattu Namdeo Lagad
Age: 34 years, Occupation: Serving in Military
R/o: Hivra, Tq: Ashti, District: Beed ... Appellant

VERSUS

The State of Maharashtra ... Respondent

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Appearance :-

Mr. Joydeep Chatterji, Advocate for the Appellant
Mr. V. K. Kotecha, APP for the Respondent / State

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

**Reserved On : 20/08/2024
Pronounced On : 12/09/2024**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. This Criminal Appeal under Section 374 [2] of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'Cr.PC'] is directed against the Judgment and Order dated 03/03/2020, passed by the learned Additional Sessions Judge, Beed, in Sessions Case No.43/2018, convicting the Appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentencing to suffer Rigorous Imprisonment for life and fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for six [6] months and to suffer Rigorous Imprisonment for seven [7] years and fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for six [6] months, respectively.

2. The Prosecution's case as revealed from the Police Report is as under :-

[I] Deceased - Lahanabai @ Gitanjali [hereinafter referred to as 'Deceased - Gitanjali'] was the daughter of Informant / PW - 1 [Sampat Vitthal Nimse]. She was married in the year 2007 to the Appellant. She was treated well at her matrimonial house for a period of one [1] year. Out of their wedlock, she gave birth to daughter - Shalan. As daughter was born, the Appellant started harassing Deceased - Gitanjali. From time to time, the Informant and his relatives gave understanding to the Appellant. The Appellant was in the services of Armed Forces. The Appellant used to suspect the chastity of Deceased - Gitanjali and used to beat her by consuming liquor. Ten [10] days prior to the incident, the Appellant beat Deceased - Gitanjali, which resulted in injury to her upper-arm.

[II] On 29/12/2017, at about 22.30 hours, the Appellant came to the house of Informant / PW - 1 along with his one of the friends and enquired about Deceased - Gitanjali. When the Informant / PW - 1 told him that, Deceased - Gitanjali did not come to his place, the Appellant told him that there was quarrel between him and Deceased - Gitanjali on the point of working in the agricultural field and he hit her with a small stone and she went somewhere. Thereafter, the Appellant left. Informant / PW - 1 got suspicious, therefore on 30/12/2017, at about 9.00 am, he went to the matrimonial house of Deceased - Gitanjali with his sons and relatives. After reaching village Hivra, they came to know that, Deceased - Gitanjali was lying in half burnt condition at the *bund* of agricultural field and accordingly, they reached the said spot where they saw Deceased - Gitanjali in dead condition. Her ornaments, chappels and two [2] empty

bottles of liquor were found near the body. The Informant / PW - 1 lodged the report with the Police that the Appellant killed his daughter and Crime No.316/2017 came to be registered with the Ambhora Police Station.

[III] The Spot Panchnama, Inquest were done. The body was referred for Postmortem. The Appellant came to be arrested. The statements of witnesses were recorded. One stone and memory card came to be seized at the instance of the Appellant pursuant to his voluntary statement. Seized articles came to be sent for Chemical Analysis. The cause of death was revealed as '*due to burns*'. The Postmortem Report and the Reports of Chemical Analyser came to be collected. After completion of investigation, the Appellant came to be Charge-sheeted.

3. On committal, the learned Sessions Court framed the Charge against the Appellant for the offence punishable under Sections 302 and 201 of IPC vide Exhibit - 6. The Appellant denied the Charge and claimed to be tried. To prove the Charge, the Prosecution examined in all eleven [11] witnesses and brought on record the relevant documentary evidence. On completion of Prosecution evidence, the learned Trial Court recorded the statement of Appellant under Section 313[1][b] of Cr.PC. The Appellant denied the case and evidence of the Prosecution. After hearing both the sides and appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

4. It is submitted by the learned Advocate for the Appellant that the case is based on circumstantial evidence. The Medical Officer could not show whether the death of Deceased - Gitanjali was Homicidal, Suicidal or Accidental. There is no evidence to

show that the Appellant was in the company of Deceased – Gitanjali soon before her death. The evidence on record do not prove the chain of circumstances pointing unerringly towards the involvement of the Appellant in the Crime. Some of the witnesses did not support the case of Prosecution. As the evidence on record do not establish the Charge, the Appeal be allowed and the impugned Judgment and Order be quashed and set aside.

5. It is submitted by the learned APP that the Spot Panchnama has been admitted by the defence. The burnt plastic was found on the handle of axe, which was used in the Homicidal Death of Deceased – Gitanjali. The evidence on record rules out the possibility of Suicidal Death. The Spot Panchnama explains the incident. The Postmortem Report show that it was conducted on the spot. There is evidence in the nature of *extra-judicial* confession made to the Informant / PW – 1. The stone used in the assault was seized at the instance of the Appellant. All the circumstances, which are brought on record, unerringly show that the Appellant was the perpetrator of Crime and the learned Trial Court has rightly passed the impugned Judgment and Order. Hence, the Appeal be dismissed.

6. Undisputedly, the Prosecutions case is based on circumstantial evidence. The law in respect of circumstantial evidence is well settled from the Judgment in **Sharad Birdhichand Sarda Vs. State of Maharashtra; [1984] 4 SCC 116**, wherein, following principles are laid down :-

(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.”

7. There is no dispute on the following aspects :-

- [i] Deceased – Gitanjali was the wife of Appellant ;
- [ii] The criminal law was set in motion by the father of Deceased – Gitanjali ;
- [iii] The spot where dead body was found i.e. spot of incident, was *bund* / boundary of the agricultural field of the Appellant ;
- [iv] The body was found in a burnt condition ;

8. To prove the Homicidal Death of Gitanjali, the relevant evidence is that of PW – 7 [Dr. Vitthal Santram Karad], who was posted as the Medical Officer at Primary Health Center Sulemna Deole from 2013 to May – 2018. On 30/12/2017, he received the communication at Exhibit – 46 for conducting autopsy on the dead body of Gitanjali. On Postmortem, he observed the following :-

- “[i] Totally burned body. Thorax, neck, abdomen, charred body.
- [ii] No major injury found on thorax, abdomen other than burns.
- [iii] As the skin burnt of skull seen externally.
- [iv] Crack noted over right parietal region, crack noted over occipital region on left side. Obliquely.”

Internal examination :-		
1]	Head :-	
i]	Injuries under the skull, their nature :-	1] crack noted over right parietal region, running anterior, posteriorly. 2] Crack noted over occipital region on left side running obliquely.
2]	Thorax :-	
a]	Wallas, ribs, cartilages :	Intact, rim cartilages walls deep burns.
b]	Pleura	No pleura fluid noted.
c]	Larynx, Trachea and Bronchi:	Charred partially noted in bronchi.
d]	Left lung & right lung :	Both lungs found blackish coloured.
	Heart :	Normal size
	Large vessels :-	Blood clotted
	Pericardium :-	Blackish coloured. g

Abdomen :		
1]	Walls, peritoneum and cavity :	Right side complete
2]	Bucal cavity, teeth, tongue and pharynx	Tongue deep burn.
3]	Stomach and its contents :-	Semi-solid food material present in stomach
4]	Stomach and its contents:-	No foecal material found.
5]	Small intestine and its contents :-	Right burned, left robe brownish.
6]	Pancreas Spleen, kidneys, bladder and organ of generations :-	Bluish coloured normal size. Urine present in bladder. Uterus present normal size and shape.
	Additional Remark:	Death occurred within 1 ½ hour after last meal. Sample of Viscera was taken and sent for chemical analysis.

9. PW - 7 [Dr. Vitthal Santram Karad] opined that it cannot be said that the surface wounds and injuries were either antemortem or postmortem and no time reaction was noted as the body was totally charred. He opined that the probable cause of death as due to 'burns'. The final cause of death was reserved and viscera was preserved. He could not definitely say whether the burn injuries were Suicidal, Accidental or Homicidal. The postmortem report is brought on record in his evidence at Exhibit - 46. From this evidence, the Prosecution could not conclusively prove that Gitanjali died Homicidal Death. Though PW - 7 [Dr. Vitthal Santram Karad] gave the cause of death due to burns, he was not sure whether death was Homicidal or otherwise.

10. The evidence of PW - 1 [Sampat Vitthal Nimse], who was the Informant and father of Deceased - Gitanjali, show that on 29/12/2017, the Appellant along with one of his friends had come to his residence and enquired about Deceased - Gitanjali. When he told the Appellant that Deceased - Gitanjali did not come to his home, the Appellant and his friend left. Before leaving, when he inquired with the Appellant about Deceased - Gitanjali, the Appellant gave *extra-judicial* confession that he beat Deceased - Gitanjali with a small stone and hence, she left home and therefore, he had come in her search.

11. His further evidence show that on the next day at 9:00 am, he along with his family members and relatives went to the village of Appellant i.e. Hivra, where he learnt that dead body of one lady was lying in the field. Accordingly, he reached the spot, where he noticed that, the dead body was that of his daughter [Deceased - Gitanjali]. His further evidence show that the Appellant was working in the Armed Forces i.e.

Military and he was posted at various places. After Deceased – Gitanjali gave birth to a girl child from the Appellant, Deceased – Gitanjali along with daughter started residing at Hivra Pipalkhed for education of her daughter. The Appellant was residing alone i.e. place of posting and used to occasionally come at his village on leave. Though he denied that his son – Ambadas Sampat Nimse was present with him at the time of lodging the report at Exhibit – 20, at the Police Station, in the evidence of PW – 9 [Sudam Dharmraj Sirsath], who was the Police Sub-Inspector posted at Ambhora Police Station on 30/12/2017, he deposed that, one Ambadas Sampat Nimse was also present with the Informant and he also signed on the report. Undisputedly, the report bears the signature of Ambadas Sampat Nimse. In his cross-examination, he deposed that he knew the relatives of the Appellant, who were residing in the house of Appellant. Further cross-examination show that he lodged the report against the Appellant on doubt.

12. The evidence of PW – 1 [Sampat Vitthal Nimse] in respect of ill-treatment to his daughter [Deceased – Gitanjali] at the hands of Appellant on account of her character, is hearsay in nature. What is seen from the evidence of this witness is that after noticing the burnt dead body of his daughter [Deceased – Gitanjali], he lodged the report against the Appellant on suspicion. It is needless to state that suspicion however strong, cannot take the place of proof. The *extra-judicial* confession is not in respect of the death of Deceased – Gitanjali. It is only in respect of hitting Deceased – Gitanjali with stone. The *extra-judicial* confession, is a weak piece of evidence and solely cannot form the basis to hold that it was the Appellant who caused the death of his wife [Deceased – Gitanjali]. Through the evidence of

PW - 1 [Sampat Vitthal Nimse], it is only established that the criminal law was set in motion against the Appellant.

13. The other evidence is in the nature of discovery and seizure at the instance of the Appellant. The evidence of PW - 4 [Bapu Pandurang Gavane] show that on 02/01/2018, he was working as the Talathi at Ambhora. On that day, he was called by the Police at Ambhora Police Station to act as the panch. When he reached the Police Station, the Appellant was brought before the panchas. The Appellant made statement to show the place and stone [excluding inadmissible part]. The memorandum to that effect was prepared at Exhibit - 33. Thereafter, accused led them to one place in agricultural field where they saw the ash of cotton sticks, burn trees, one small and one big stone. The said articles were seized under the seizure panchnama at Exhibit - 33-A.

14. The evidence of PW - 10 [Mirza Wahab Mansab Baig], who was the Police Inspector at Ambhora Police Station at the relevant time, show that he arrested the Appellant on 30/12/2017. He deposed that, on 02/01/2018, the Appellant agreed to show the place and stone and Memorandum at Exhibit - 33 was prepared in that regard [excluding inadmissible part]. The Appellant, thereafter, led the Police and panchas to the spot, where he pointed the stone, which came to be seized under the seizure panchnama.

15. The above evidence in respect of discovery under Section 27 of the Indian Evidence Act, 1872 [hereinafter referred to as 'the Evidence Act] brought on record in the evidence of PW - 4 [Bapu Pandurang Gavane] and PW - 10 [Mirza Wahab Mansab Baig] do not stand the scrutiny of law laid down by the Hon'ble

Supreme Court of India in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka; AIR 2024 SC 2252**, wherein, it is observed as follows :

*“when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the Accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the Accused which has been taken down into writing leading to the discovery of incriminating fact(s). It is further observed that, ‘Similar view was taken by the Hon’ble Apex Court in the case of **Ramanand @ Nandlal Bharti Vs. State of Pradesh**, wherein this Court held that mere exhibiting of Memorandum prepared by the Investigating Officer during investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which transpired leading to the recording of the disclosure statement.”*

16. The evidence of PW – 10 [Mirza Wahab Mansab Baig] is completely silent as to what disclosure statement the Appellant made before him in presence of panchas. His evidence show that the Appellant agreed to show the place and stone. However, his evidence nowhere show as to what the Appellant voluntarily stated.

17. Further, PW – 10 [Mirza Wahab Mansab Baig] admits that the place mentioned in the Spot Panchnama, which was at Exhibit -37 and the place mentioned in the Memorandum of statement at Exhibit -33 was one and the same. He admits that he had gone to the said spot on 30/12/2017 i.e. before the evidence in respect of disclosure and seizure. Thus, there was no discovery of spot at the instance of the Appellant as the spot was already in the knowledge of Police. Further, there is no evidence to connect the stones seized from the spot with the death of Deceased – Gitanjali. PW – 4 [Bapu Pandurang Gavane] and PW – 10 [Mirza Wahab Mansab Baig] nowhere in their evidence deposed that the stones which were seized from

the spot were having blood stains. There is no reference of stone in the CA reports at Exhibits – 50 to 52. Thus, evidence of discovery and seizure at the instance of the Appellant will not be relevant and of no assistance to the Prosecution.

18. PW – 2 [Nana Dada Lagad], who was having his agricultural field near the field of the Appellant, PW – 3 [Murlidhar Anandrao Lagad], who was the resident of village Hivra and PW – 5 [Ganesh Dilip Ghodeswar], who was the resident of village Hivra did not support the case of Prosecution. Though they were cross-examined by the learned APP, nothing surfaced in their evidence to further the case of Prosecution or establish the Charge.

19. The evidence of PW – 6 [Santosh Chhaganrao Sonwane] show that he was the Police Constable attached to Ambhora Police Station at the relevant time and he deposited the muddemal articles to the Forensic Science Laboratory, Aurangabad for examination. PW – 8 [Yeshwant Vitthal Baravkar] was the Police Officer, who forwarded the muddemal articles for Chemical Analysis and submitted the Charge-sheet against the Appellant. PW – 9 [Sudam Dharmraj Sirsath] was the Police Officer, who scribed the report of PW – 1 [Sampat Vitthal Nimse]. PW – 10 [Mirza Wahab Mansab Baig] and PW – 11 [Ashok Dhondiba Pawar] were the Police Officers, who investigated the Crime.

20. Scrutiny of the evidence available on record, as discussed above, show that the circumstances do not unerringly point towards the Appellant. Firstly, the Prosecution failed to prove that Gitanjali died Homicidal Death. Secondly, there is absence of evidence to prove the motive. Thirdly, the conduct of the

Appellant to reach the house of PW - 1 [Sampat Vitthal Nimse], who was the resident of different village, to enquire about his wife - Gitanjali, is consistent with his innocence. Fourthly, *extra-judicial* confession to PW - 1 that he hit Gitanjali with stone is a weak piece of evidence. On re-appreciation of the evidence available on record, we are of the considered view that, the conviction of the Appellant recorded by the learned Trial Court is unsustainable and the same requires interference. The Appeal therefore, deserves to be allowed. Hence, the following order:

ORDER

- [a] Criminal Appeal is allowed.
 - [b] The Judgment and Order dated 03/03/2020 passed by the learned Additional Sessions Judge, Beed, in Sessions Case No.43/2018, convicting the Appellant for the offences punishable under Sections 302 and 201 of IPC and sentencing him to suffer Rigorous Imprisonment for life and fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for six [6] months and to suffer Rigorous Imprisonment for seven [7] years and fine of Rs.10,000/-, in default, to suffer Rigorous Imprisonment for six [6] months, is quashed and set aside.
 - [c] The Appellant stands acquitted for the offence punishable under Sections 302 and 201 of IPC.
 - [d] The fine amount, if deposited by the Appellant, be refunded to him.
 - [e] The Appellant be released, if not required in any other case.
 - [f] The Record and Proceedings be sent back to the learned Trial Court.
21. Criminal Appeal is disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]