



CORRECTED JUDGMENT

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

CRIMINAL APPEAL NO.191 OF 2021

Dnyaneshwar s/o Vyankatrao Katekor
Age 42 years, Occ. Labour,
R/o Dnyaneshwar Nagar, L.I.C. Colony,
Latur, Taluka Latur, District Latur ... **APPELLANT**

VERSUS

The State of Maharashtra
through Shivaji Nagar Police Station,
Latur, Taluka Latur, District Latur

(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad) ... **RESPONDENT**

.....
Ms. Madhaveshwari Mhase, Advocate for appellant (amicus-
curiae)
Mrs. S.N. Deshmukh, A.P.P. for respondent

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

**Date of reserving judgment : 1st October, 2024.
Date of pronouncing judgment : 21st October, 2024.**

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

The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.5000/- with default stipulation, vide judgment and

order dated 15/12/2020, passed by Sessions Judge, Latur in Sessions Case, No.50/2019. The appellant is therefore before us in this appeal.

2. Briefly stated, the case of the prosecution before the Trial Court was as follows :-

Usha (deceased) was a real sister of the appellant's wife. There was matrimonial discord between Usha and her husband. She was, therefore, living separately away from her husband. For a few months, she had stayed at the house of her parents. Then she took a premises on rent and started residing therein along with her son. The premises she was residing was in the nearby of the premises the appellant used to reside in. The appellant felt that moral conduct of Usha was not proper. He was, therefore, annoyed with her. On 26 February 2019, he had a quarrel with his wife (P.W.1 Manisha) over behaviour of Usha. Usha was said to have also come to the appellant's house that time. There was heated exchange of words between the appellant and Usha. She then went away to her residence.

3. It was also the case of the prosecution that the appellant had quarrel with his wife. Thereafter he gave threats of eliminating her. She too, therefore, left the appellant's house along with her son for the house of her parents, with an intention not to return. She, however, did not disclose the same to the appellant.

4. The appellant would run a laundry. He left the house for the laundry in the morning on the following day i.e. on 27 February. By little past 2.00 p.m. the appellant allegedly killed Usha (his sister-in-law) by inflicting number of blows with knife. He left the knife then and there. The offence took place at Adarsh Nagar. Then, the appellant went to Shivaji Nagar Police Station, Latur. He confessed to the commission of the crime. The Police Station Officer Sharad Lobhe (P.W.6) was present there. He asked the appellant to remain there. He then informed his higher ups. After a while, P.W.1 Manisha approached the Police Station and lodged the F.I.R. (so called) Exh.21 against the appellant. A crime vide C.R. No.95/2019 was, therefore, registered under Section 302 of the Indian Penal Code r/w Section 4/27 of the Arms Act.

5. The appellant was arrested. Inquest was conducted. Crime scene panchanama was drawn. The knife came to be seized from the crime scene. Autopsy on the mortal remains of Usha was conducted. Clothes on the person of the appellant were taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. C.A. reports were received. The seized articles were also sent for D.N.A. profiling. On completion of the investigation, a charge sheet was filed against the appellant.

6. The Trial Court framed the Charge (Exh.13). The appellant pleaded not guilty. His defence was of false implication. He put on record his side of the story (in writing) in response to the last question put to him in his examination under Section 313 of the Cr.P.C. According to him, he happened to be in Adarsh Nagar Colony. He saw an unknown person assaulting his sister-in-law (deceased). He, therefore, intervened to save her. The assailant too assaulted him with one blow of knife. In view of his intervention, clothes on his person got stained with the blood of the deceased. According to him, he had been to the Police Station to report about the said incident. What he stated to the police was not reduced

into writing. Meanwhile, his wife came to the Police Station and lodged a false report. His relations with his wife were not good. She had lent a sum of Rs.1,30,000/- to a driver of a school Van.

7. To bring home the charge, the prosecution examined 9 witnesses and produced in evidence certain documents. On appreciation of the same, the Trial Court convicted and consequently sentenced the appellant as stated above. The appellant was acquitted of the charge for the offence under the Arms Act.

8. Heard. Learned Advocate appointed to represent the appellant would submit that the case was based on circumstantial evidence. The offence took place in a broad daylight. The investigating officer did not examine any independent witness. The crime scene is at a thickly populated area. Whatever was stated by the appellant to the police was in fact the F.I.R. The same has been suppressed from the Court. She relied on the judgment of the Apex Court in case of **Sevi & anr. Vs. State of T.N. & anr., AIR 1981 SC 1230**. The learned Advocate then submitted that, whatever was allegedly disclosed by the appellant to the Medical Officer

at the time of his medical screening and even allegedly told to his wife at the Police Station was not admissible in evidence. Merely because the blood stains of the deceased were found on his person, would not be sufficient to convict the appellant for a serious offence of murder. She adverted our attention to the written submissions put up by the appellant before the Trial Court. According to her, this is reason why his shirt was stained with the blood of the deceased. She, therefore, urged for allowing the appeal.

9. The learned A.P.P. would, on the other hand, submit that, P.W.1 Manisha, wife of the appellant had no reason to speak against her own husband keeping her marital life at stake. The inconsistent suggestions were put to different witnesses regarding the wife to have lent a sum of Rs.1,30,000/- to a School Bus Driver and Rs.90,000/- to a rickshaw driver. The appellant on his own goes to the Police Station and reports about the commission of the crime is a conduct inconsistent with his innocence. The appellant did not give description of the alleged assailant. Adarsh Colony, where the crime took place is a vicinity whereat the appellant had his laundry. His presence thereat at the relevant time was, therefore, but natural. The appellant admits his presence and

even blood stains of the deceased on his clothes. In the cross-examination of the Police Station Officer, he denied to have visited the Police Station. A false defence goes a long way to reinforce the prosecution case. According to learned A.P.P., the defence raised by the appellant was afterthought. He could have raised the same the moment he was arrested and produced before the Magistrate. Even his bail application was silent in that regard. Police machinery is an independent entity. It cannot be said to have any enmity with the appellant. According to learned A.P.P., the D.N.A. report goes a long way to indicate involvement of the appellant in the crime in question. The weapon and mobile phone were found near the dead body. The learned A.P.P. ultimately urged for dismissal the appeal.

10. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein.

11. The case is based on circumstantial evidence. The the Apex Court in case of Sharad Birdichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116, has observed thus :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against the accused can be said to be fully established.

(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.”

12. In the case in hand, the prosecution appears to have been relying on the following circumstances to bring home the charge :

(1) Homicidal death.

(2) Motive.

(3) Appellant visiting the Police Station on his own.

(4) Clothes on the person of the appellant stained with blood of the deceased, the knife too found to have stained with the blood of the deceased and the appellant.

- (5) Admitted presence of the appellant at the crime scene, his failure to disclose the description of the so called assailant.
- (6) False defence raised by the appellant.

13. Let us advert to the evidence on record and appreciate the same.

Deceased Usha was sister-in-law of the appellant (wife's sister). She had deserted her husband and initially resided at the house of her parents. Later on, she took one room premise on rent and started residing in the neighbourhood of the appellant in L.I.C. Colony at Latur. The appellant would run a laundry. Initially his laundry was at Adarsh Nagar Colony. His parents-in-law would reside at Mantri Nagar.

Homicidal Death :

14. The incident took place little past 2.00 p.m. at Adarsh Nagar Colony on 27 February 2019. The fact that Usha met with homicidal death is not in dispute. The post mortem examination report (Exh.61) indicates she had suffered 29 incised and stab injuries. It was a brutal murder.

We are short of words to condemn the same. As per the opinion of P.W.8 Dr. Dharmaraj who conducted autopsy, the deceased died of “multiple injuries”. We, therefore, do not propose to refer to the inquest panchanama (Exh.28) in detail.

Motive :

15. In a case based on circumstantial evidence, motive plays an important role. However, failure to prove motive is not always fatal to the prosecution to bring home the charge. Motive is a fact which moves the culprit to commit the crime. The same could be said to have been locked in his mind. In the case in hand, immoral conduct/ behaviour of the deceased was said to be a reason for the appellant to commit her murder. Admittedly, the deceased was a sister of appellant's wife. The relation between him and her were not such that would lead him to commit her murder on such ground. P.W.1 Manisha, wife of the appellant deposed that deceased Usha had taken a room on rent in her neighbourhood, at L.I.C. Colony. On the previous day of the incident, a quarrel had taken place between her (P.W.1 Manisha) and the appellant over conduct of Usha. Usha had also come to her residence that time. A quarrel ensued between appellant and her as well. She further testified that the appellant had asked his wife to

leave from that place as he wanted to kill Usha. By that time or therebefore, Usha had left the appellant's house. P.W.1 Manisha further testified that, she, therefore, took her son with him and left the house for her mother's place.

16. The evidence of P.W.1 Manisha further disclosed that, on the following day i.e. on 27, by little past 2.00 p.m., she received phone call from her another sister (Babita), informing her that somebody killed Usha and her dead body was thrown at Adarsh Colony. She, therefore, rushed to Adarsh Colony. She saw Usha was lying in a pool of blood. A knife was also lying nearby. She then went to the Shivaji Nagar Police Station. The appellant was present thereat. At that time, the appellant told her that he in fact wanted to kill her (P.W.1 Manisha), but as he did not find her (P.W.1), therefore, he killed Usha. According to her, the shirt on his person was stained with blood. She lodged the report (Exh.21) against the appellant at Police Station.

17. When P.W.1 Manisha testified in her examination-in-chief itself that the appellant wanted to kill her, but instead he found Usha at the place and therefore, he killed her, suggests that something odd relationship was there between

the appellant and his wife. There is no evidence at all to indicate behaviour of Usha was not good.

18. In her cross-examination, she testified that, the laundry shop of the appellant was initially situated at Adarsh Colony. He shifted his shop to Kanheri Road. At the time of commission of the crime, his shop was not in Adarsh Colony. She admitted that, his most of the customers were residents of Adarsh Colony. The appellant would give home service to his customers i.e. he would collect clothes from the houses of his customers and after ironing them would deliver at the house of his respective customers. **The same suggests he had every reason to be at Adarsh Colony by the time the crime took place.** She further testified that, on the day of the occurrence, her daughter was staying at the house of the appellant. The appellant's mobile phone was with her. When she reached the crime scene, police and her relatives had already been there. She denied that the dead body had already been shifted to the hospital before her reaching the crime scene. According to her, the crime scene was shown by the appellant for drawing of the panchanama. **The crime scene panchanama indicates that it was shown by P.W.1 herself and appellant was not**

at all present at the time of drawing of the crime scene panchanama.

19. The incident took place in a thickly populated area. There was traffic on the road. She denied that the appellant had been to the Police Station to inform about the incident. Rest of her examination-in-chief has been denied by putting her suggestions in that regard in her cross-examination.

20. P.W.2 Vaishnavi is the daughter of the appellant and P.W.1 Manisha. According to her, about 5 to 6 days before the incident, quarrel used to take place between the appellant and her mother over the behaviour of Usha. She (P.W.2 Vaishnavi) was a college student. According to her, she returned to her residence by 1.00 p.m. on 26 February. That time the appellant was keeping silence and her mother (P.W.1 Manisha) asked her to take lunch. Thereafter P.W.1 Manisha went to the house of her sister Usha. Then she took the lunch. She also then went to the house of Usha (deceased). P.W.1 Manisha went on to testify that Usha told her that her mother (P.W.1 Manisha) was going to separate from her husband (appellant) and she (P.W.2) should decide as to with whom she

would prefer to stay/ reside. Thereafter her mother (P.W.1 Manisha) went to her parent's house. She talked to her mother on phone. The mother told her not to relate anything to the appellant (This indicates all was not well between the appellant and his wife).

21. P.W.2 Vaishnavi further testified that, on the following day the appellant left the house by 11.00 in the morning for laundry shop. On her request, the appellant kept his cell phone with her. He asked her to call the adjoining shop owner to his laundry shop in case of urgency. Since the appellant did not return by 1.00 p.m., she made a call to that shop owner. She learnt from him the appellant to have been not in the laundry. He, however, told her that the laundry was open. thereafter her mother called her on cell phone and informed the appellant to have committed murder of Usha. She, therefore, went to the crime scene.

22. During her cross-examination, she was confronted with her police statement to bring on record certain omissions amounting to contradictions. Para 5 of her cross-examination is, therefore, reproduced below as it is :

“I had stated to the police that on account of my maternal aunt there were quarrels between my mother and father. I had stated to the police that my mother had gone to reside with her parents on 26/2/2019. I had stated to the police that my father had not come home at about 1.00 p.m. I cannot assign any reason as to why police did not record all above facts in my statement.”

23. She denied that she and her brother would go to school in a school van. She claimed ignorance about her mother to have paid Rs.1,30,000/- to a driver of School Van. She further claimed ignorance as to quarrel to have been taking place between the appellant and his wife on account of the said fact. She, however, admitted that once her mother had consumed sleeping pills and therefore she was admitted in Sunrise Hospital. According to her, she used to behave as per the directions of her mother. She admitted that after the quarrel, her mother (P.W.1 Manisha) was not ready to stay with the appellant. Her further cross-examination is in the nature of suggestions denying her evidence in examination-in-chief.

24. P.W.3 Shriniwas is a witness to the crime scene panchanama (Exh.46). He was a Peon serving with Panchayat Samiti, Zilla Parishad, Latur. He accompanied the police of Shivaji Nagar Police Station to Adarsh Colony. At the spot a

lady was lying in injured condition. The cell phone and a knife were lying by her side. He referred to the crime scene panchanama (Exh.46). According to him, the police seized the cell phone and the knife. He identified those articles.

25. P.W.3 Shriniwas further testified that, on the same day by 7.30 p.m. police seized clothes on the person of the appellant under the panchanama (Exh.47) drawn in his presence. **(The learned A.P.P. heavily relied on this piece of evidence.)**

26. During his cross-examination, he testified that he signed the panchanama after having read the same. The panchanama is silent to state therein that a lady was lying in a pool of blood. He admitted that the police had not affixed labels bearing signatures of himself and another panch, on the articles seized from the crime scene.

27. He gave a vital admission stating to have signed both, the spot panchanama and the seizure panchanama of clothes at one and the same time. Meaning thereby, he signed both the panchanamas either at the police station or at the crime scene.

His evidence is silent to state that the crime scene panchanama was shown by the appellant. since the panchanama has been admitted in evidence, the reading thereof indicates that the crime scene was shown to the police by P.W.1 Manisha. The panchanama is conspicuously silent to state therein that a lady in injured state was seen lying at the crime scene. The deceased/ injured might have been rushed to the hospital before drawing of the panchanama. But the case of the prosecution is all along the same that the crime scene panchanama was drawn while the deceased was lying at the crime scene itself.

28. Another panchanama (Exh.47) indicates that a white shirt, a banian, a Jean pant and motorbike came to be seized from the appellant during 7.30 to 8.00 p.m. on the same day.

It is true that P.W.1 Manisha was not suggested during her cross-examination that she had lent a sum of Rs.1,30,000/- and Rs.90,000/- to a school bus driver and an autorickshaw driver respectively.

29. P.W.4 Nilawati is a mother-in-law of the appellant. She testified that on 26 February i.e. on the preceding day of the incident, there was a quarrel between the appellant and his wife. The quarrel was over domestic reason. Thereafter she went to the house of the appellant along with Usha. She reasoned with the appellant. The appellant, however, stated her that he would not keep Manisha (P.W.1) alive. (Here the motive changed). Thereafter she and Usha went to their respective places. After a while, she learnt Usha to have been killed.

30. During her cross-examination, she denied P.W.1 Manisha had lent Rs.90,000/- to an auto rickshaw driver and on that count there used to be quarrel between both, appellant and Manisha (P.W.1). She, however, admitted that Manisha (P.W.1) had consumed sleeping pills and was admitted to Sunrise Hospital. When she and Usha had been to the appellant's house on 26th, Vaishnavi (P.W.2) was present there, but Manisha was not.

31. P.W.7 Karan is a son of deceased Usha. He testified that, about 5 days before the incident, a quarrel had taken place between his mother Usha and the appellant. The

rest of his evidence is not material since the case is based on circumstantial evidence. His evidence only indicates that the deceased had telephoned him by 2.00 p.m. that she would be reaching house shortly and thereafter they would take meal together. The mother, however, did not return.

32. P.W.6 Sharad was an Assistant Sub-Inspector, Shivaji Nagar Police station at the relevant time. His evidence disclosed that on 27 February 2019, he was Station Diary Incharge from 2.00 p.m. to 8.00 p.m. According to him, by 2.30 p.m., the appellant came to the Police Station. His right hand was injured and blood was oozing from it. His shirt was also stained with blood. The appellant told him to have killed his sister-in-law with multiple stabs on account of suspecting her character. He further testified that the appellant also informed him the place whereat he did the crime. It was near the house of one Bora at Adarsh Colony. Thereafter he took the appellant to the Police Inspector Shri Nikam. Thereafter Shri Nikam left to the spot of the incident along with the appellant. he took the entry thereof in the station diary as well. He identified the appellant before the Court.

33. During his cross-examination, he deposed that his statement was recorded. He admitted to have not informed the police in his statement that the appellant had told him to have suspected character of his sister-in-law (deceased). He took entry of the incident narrated by the appellant. The rest of his cross-examination is regarding denial of his evidence in examination-in-chief. He was specifically suggested that the appellant had not come to the Police Station for lodging of the report about having committed murder of his sister-in-law, to which he denied.

34. Whatever has been allegedly stated by the appellant to the Police Station Officer amounting to confession is inadmissible in evidence. Section 25 of the Evidence Act reads thus :

“25. Confession to police officer not to be proved :- No confession made to a police officer, shall be proved as against a person accused of any offence.”

The Trial Court has rightly relied on the Apex Court judgment in case of **Aghnoo Nagesia Vs. State of Bihar (AIR 1967 SC 119)**.

35. P.W.5 Dr. Dayanand was a Medical Officer, Civil Hospital, Latur. He had examined the appellant by 9.00 p.m. on 27 February 2019. He noticed following two injuries on the person of the appellant :

- 1) Incised wound over right hand index finger middle 1/3rd part palmer aspect 2.5 x 3 x 0.3 cm.
- 2) Incised wound over right forearm extensor aspect middle 1/3rd part 3 x 0.2 x 0.1 cm.

He issued the medical certificate (Exh.53). The prosecution relies on the remark given in the medical certificate indicating the history given by the appellant as follows :

Patient given alleged history of accidental injury caused while assaulting someone. Surgeon opinion taken. Treated on OPD basis.

36. P.W.9 Vilas did the investigation of the crime. He testified that, after taking over the investigation, he deputed A.P.I. Nikam to the crime scene **A.P.I. Nikam has not been examined**). Evidence of P.W.9 Vilas is silent to state that the appellant had accompanied A.P.I. Nikam to point out the crime scene. He claimed to have conducted the inquest

panchanama (Exh.28), panchanama of seizure of clothes of the appellant (Exh.47). he then took charge of the clothes of the deceased delivered by the Medical Officer. Panchanama to that effect is at Exh.50. Then he seized the cell phone delivered by the appellant's wife, under panchanama (Exh.49). Then he forwarded all the articles to CA's office through Police Constable Kandhare. He referred to the forwarding letter (Exh.64). The Police Constable who carried the seized muddemal to Forensic Science Laboratory has not been examined.

37. The C.A. reports have been admitted in evidence vide Exhibits 23 to 25 and 65.

38. The aforesaid is the evidence in the case. It is true that, normally a wife would not have a reason to falsely implicate her husband in a serious crime like murder, but the evidence on record indicates that all was not well between the appellant and his wife. In the past, the wife (P.W.1 Manisha) had consumed sleeping pills and therefore, she was admitted to Sunrise Hospital. The same suggests that she had attempted to commit suicide. There is further evidence to show that in the morning of the fateful day, she left the

appellant's house along with her son with a view not to return back to her matrimonial house. The evidence of P.W.2 Vaishnavi (daughter of the appellant and P.W.1 Manisha) even testified that Usha (deceased) had informed her on that day that her mother had decided to separately reside from her husband and she asked her to take a decision with whom she would prefer to reside. According to the appellant, his wife P.W.1 Manisha had lent Rs.1,30,000/- to a school bus driver. It was a suggestion given to the daughter (P.W.2 Vaishnavi). She claimed ignorance about it. Then a suggestion was given to the appellant's mother-in-law that P.W.1 Manisha (wife of the appellant) had lent Rs.90,000/- to one autorickshaw driver. The learned A.P.P. meant to submit that the appellant had a laundry business and was financially poor. We do not have evidence on record to indicate that he was financially poor and having no ability to his wife to lend the amount. The suggestions were given as regards lending of two different sums to different persons and not two different sums to one person so as to disbelieve the appellant's suggestions or rely on the submission of the learned A.P.P. The appellant might not have been financially sound. The prosecution, however, has not brought on record any reason as to why did the

appellant's wife had consumed sleeping pills in the past (an attempt to commit suicide). A motive for commission of present crime is said to be immoral/ no good behaviour of Usha (deceased). Usha was a sister-in-law of the appellant. This is somewhat distant relation. No good behaviour of a sister-in-law may not constitute a sufficient motive for a person to commit her murder since there is nothing to indicate him to have so caring relation with his sister-in-law. There is also no evidence to indicate that she was really of not good behaviour, although she was not staying with her husband. On the contrary, the evidence of P.W.1 Manisha indicates that, the appellant had said her that he wanted to kill her (P.W.1). Same was her case when she visited the Police Station to lodge the report and that time the appellant allegedly said that he wanted to kill her, but she was not found. What was the reason therefor is not forthcoming. Whatever P.W.1 Manisha has testified in her examination-in-chief that the appellant told her to have killed her sister would be inadmissible as extra judicial confession made as he was in the custody of police. Section 26 of the Indian Evidence Act reads as under :

“26. Confession by accused while in custody of police not to be proved against him:- No confession made by any person whilst he is in the custody of a

police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

39. The incident took place in a broad daylight by little past 2.00 p.m. at Adarsh Colony. The residence of the appellant was in L.I.C. Colony. His laundry shop was at Kanheri. As per the evidence of P.W. Vaishnavi, the laundry shop was open by 1.00 p.m., but appellant was not there. Admittedly, the appellant would give home service. Since he had his laundry initially at Adarsh Nagar Colony, admittedly his most of the customers were from that area. He being at that area at the relevant time, would, therefore, be not unnatural. There is also nothing to indicate that he was making search for the victim to kill her. On the contrary, admittedly his most of the customers were from Adarsh Nagar Colony. He would collect clothes from his customers from that area and after ironing them at his shop, would deliver the clothes at the residence of his respective customers. The crime scene is right in front of residential house in Adarsh Nagar Colony. Admittedly, Usha (deceased) would reside in L.I.C. Colony. Her parents would reside at Mantri Nagar. At the cost of repetition, it is stated that there is no evidence to indicate the appellant was making search for Usha to eliminate her.

40. Admittedly, the appellant went to the Police Station by 3.00 p.m. P.W.6 Sharad was on duty as a Station Diary Incharge. According to him, the appellant related him to have killed his sister-in-law with multiple stabs. Shirt on the person of the appellant stained with blood was seized. Thus, whatever was said to have been disclosed by the appellant to P.W.6 Sharad was in fact a First Information Report. The Trial Court has rightly held accordingly. The Trial Court, however, relied on the oral evidence of P.W.6 Sharad and P.W.8 Dr. Dharmaraj to observe the appellant's visit to the Police Station as his conduct inconsistent with his innocence. On the basis of what such inference could be drawn is not known. We have to read what was stated by the appellant to the Police Officer at Police Station in toto. Nothing can be picked and choose. Section 154 of the Cr.P.C. pertains to information in cognizable cases. For better appreciation, the same is reproduced below :

154. Information in cognizable cases:-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to

writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”

Reading of the aforesaid provision would indicate that, whatever was stated by the appellant should have been reduced into writing either by P.W.6 Sharad or P.W.9 Vilas. The appellant's signature should have been obtained therebelow. In the case in hand, there is no compliance of Section 154 at all. Even whatever was stated by the appellant was said to have been recorded in the station diary entry. The said station diary entry has also not been placed on record. According to the appellant, he had been to the Police Station to inform about having seen an unknown person assaulting his sister-in-law. He had intervened to save her. In the process, he received two blows on his hand. According to him, his shirt thereby got stained with blood of the deceased. These were suggestions given to P.W.1 Manisha. His case was put up to P.W.1 Manisha in cross-examination. The same has also been placed on record in defence statement. The Trial Court has observed the appellant to have not graced the dock (not examined himself as a witness). We find the Trial Court lost sight of Section 315 of the Cr.P.C., which reads thus :

315. Accused person to be competent witness :-

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that :-

a) he shall not be called as a witness except on his own request in writing ;

b) **his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.”**

41. It is true that, law has now been developed. If any incriminating circumstance is appearing against the appellant, he is expected to explain the same. His keeping silent or coming with a false defence fills in missing link and can be used in support of the prosecution, but in no case the appellant can be called upon to prove his innocence. Needless to mention, the appellant can bring home his defence by preponderance of probabilities.

42. The crime scene panchanama indicates that it was drawn on the pointing of by P.W.1 Manisha and not the appellant. The same would not be a discovery under Section

27 of the Evidence Act. P.W.6 Sharad although stated that the appellant was sent along with Shri Nikam to the crime scene, the same found to be untrue since admittedly the appellant was not present while the crime scene panchanama was drawn. The panch witness testified that he signed both the panchanamas namely crime scene panchanama and the panchanama of seizure of clothes of the appellant at one and the same time.

43. On arrest of the appellant, he was medically examined by P.W.5 Dr. Dayanand. He noticed following two injuries on his person.

- 1) Incised wound over right hand index finger palmer aspect in middle 1/3rd part, measuring 2.5 x 0.3 x 0.3 cm.
- 2) Incised wound over right forearm extensor aspect in middle 1/3rd part, measuring 3 x 0.2 x 0.1 cm.

The matter appearing in the remarks column in injury certificate (Exh.53) is a history given by the appellant would be inadmissible by virtue of Section 26 of the evidence Act since he was produced before the Medical Officer by the Police Station Officer for his medical examination. On the contrary, this injury certificate may help the appellant to

reinforce his defence that he suffered two injuries to his hand when intervened to save his sister-in-law. This might be the reason for the CA report/ DNA report indicating the knife and shirt of the appellant to have borne bloods of both, the appellant and the deceased. While scrutinizing the evidence on record, and the questions put to the appellant in his statement under section 313 of the Cr.P.C., none of the C.A. report was put to him as an incriminating circumstance. Be that as it may. Since his defence is that while he had been to Adarsh Nagar Colony, he had seen unknown person assaulting his sister-in-law, he intervened to save her. In the process he too suffered injuries to his hand. His clothes got stained with the blood of the deceased. Thus, the appellant could be said to have brought home his defence based on preponderance of probabilities, leave apart the prosecution to have failed to unerringly established the circumstances pointing towards the guilt of the accused, excluding possibility of someone else to have committed the offence.

44. So far as regards contention of the learned A.P.P. that the appellant has come up with his defence first time before the Trial Court is concerned, we must state that material in that regard such as his bail application with contents therein

or submissions of his Advocate during remand report were not part of the evidence and if the same was to be treated as incriminating material, the same should have first taken place of an evidence and put to him in his examination under Section 313 of the Cr.P.C. to solicit his explanation.

45. Before parting, we appreciate the assistance rendered by Ms. Madhaveshwari Mhase, learned Advocate appointed for the appellant. In the aforesaid factual matrix, the Trial Court ought not to have convicted the appellant. We are not at one with the findings recorded by the Trial Court. The appellant is entitled to benefit of doubt. In the result, the appeal succeeds. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) Conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code and the consequential sentence, recorded by Sessions Judge, Latur in Sessions Case, No.50/2019 vide judgment and order dated 15/12/2020 is hereby set aside. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal

Code. The appellant be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to him.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-