



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

**CRIMINAL APPEAL NO. 671 OF 2019
WITH
CRIMINAL APPLICATION NO.1716 OF 2022**

Janabai Ramesh Pawar
Age: 49 years, Occu: Labourer,
R/o: Village Sarkhani, Taluka Kinvat,
District Nanded ... Appellant

Versus

The State of Maharashtra
Through the Police Station,
Sindkhed, Taluka Kinvat,
District Nanded ... Respondent

...

Mr. Bobade Sopan Gynba, Advocate for the Appellant
Ms. U. S. Bhosle, APP for the Respondent - State

...

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

**Reserved on : 24th January, 2024
Pronounced on : 7th February, 2024**

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

1. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 [for short 'Cr.PC'] against the Judgment and Order dated 13/05/2019, passed by the learned Sessions Judge, Nanded, in Sessions Case No.25/2016 convicting the Appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 [for short

‘IPC’] and sentenced to suffer R.I. for life imprisonment and to pay a fine of Rs.5000/-, in default, to suffer R.I. for six months and sentenced to suffer R.I. for two years and to pay a fine of Rs.5000/-, in default, to suffer R.I. for six months, respectively.

2. Prosecution’s case as revealed from the Police Report is as under:

2.1 The deceased – Suresh Shamrao Khekare is the brother of PW – 1 [Ramesh Shamrao Khekare] and the father of PW -3 [Kunal Sureshrao Khekare], respectively. He and his parents were residing together at Village – Sarkhani, Taluka – Kinvat, District Nanded. Deceased was the Head Master in the Ashram School at Ekghari, Taluka Himayatnagar. On 17/05/2016, the deceased – Suresh left his house at about 12:30 p.m. and did not return. Thereafter, PW-3 [Kunal Surehsrao Khekare] went in search of his father. He heard his father’s voice from the house of the Appellant and he noticed the Appellant at the entrance of her house. He got frightened and returned home. In the night at around 1:00 a.m., he received phone call from the Police that his father was lying dead in the house of the Appellant. He went to the house of the Appellant with the Police and saw that the body of his father was lying inside the said house. The crime came to be registered against the Appellant and other accused persons.

2.2 The spot/inquest panchnamas were drawn, the Appellant and other accused persons came to be arrested, the dead body

was sent for postmortem, the statements of witnesses were recorded, one Iron Blow-Pipe was seized at the instance of the Appellant from the house, muddemal articles were seized during the investigation and sent for chemical analysis and on completion of investigation, the Appellant along with three accused persons came to be charge-sheeted.

3. The learned Trial Court framed the Charge against all the accused persons for the offences punishable under Sections 302 and 201 read with Section 34 of IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 [for short 'the Act'] vide Exhibit – 46, to which, all the accused persons pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all thirteen (13) witnesses and brought on record the relevant documents. After prosecution closed its evidence, the statement of the Appellant and the co-accused came to be recorded under Section 313(1)(b) of Cr.PC. They denied the prosecution's case. Thereafter, the learned Trial Court passed the impugned Judgment acquitting the co-accused Nos.2 to 4 and convicted the Appellant for the offences as are referred above in Paragraph No.1.

4. Heard both the sides. Perused the paper-book.

5. It is submitted by the learned Advocate for the Appellant that there is no evidence that the Appellant was lastly seen with the deceased – Suresh. He submitted that there is no

nexus between the seized articles i.e. Iron Blow-Pipe with injuries found on the deceased. He submitted that on the same evidence, the learned Trial Court has acquitted the co-accused and convicted the Appellant. He submitted that the evidence available on record do no prove the Charge and the Appellant is entitled for acquittal.

6. It is submitted by the learned APP that the dead body of the deceased – Suresh was found in the house of the Appellant and an Iron Blow-Pipe [Article–13] was seized during the investigation at the instance of the Appellant. It is submitted that the evidence available on record establishes the Charge against the Appellant and learned Trial Court has rightly convicted the Appellant and passed the impugned Judgment. Hence, the Appeal be dismissed.

7. The evidence of PW – 10 [Dr. Sandeep Vijayrao Jadhav] show that on 18/05/2016, he was attached to Public Health Center [PHC] Daheli Tanda and received the dead body of Suresh Ramrao Khekare for postmortem vide requisition from the concerned Police Station. The postmortem was started at 1:40 p.m. and finished at 2:40 p.m. He found the following external injuries:

- “1. Abrasion below right knee joint, posterior aspect 7 x 1.5 x 0 cm.*
- 2. Abrasion just above right ankle joint, 4 x 2 x 0 m. Blackish in colour.*
- 3. Abrasion over middle aspect of left thigh 3 x 2 x 0 cm.*
- 4. Contusion over right chest, 2 x 1 x 0 cm.*
- 5. Contusion over left chest, 7 x 1 x 0 cm.*

6. Haematoma over right temporal region.”

On internal examination, he found the following injuries:

“1. The swelling over right temporal region.

2. Fracture of right temporal bone 3 x 1 x 1 cm. upward and backward.”

8. His evidence show that the injuries were ante-mortem. He found 20 ML semi digested food material in stomach and preserved the viscera. He deposed that fracture of right temporal bone was sufficient to cause death in ordinary course of nature and opined the probable cause of death as **‘Intracranial Hemorrhage’**. The postmortem report at Exhibit – 97 is brought on record, which corroborates testimony of this witness.

9. His evidence show that on 03/06/2016, he gave opinion that the injuries on the aforementioned deceased were caused by blunt object and those were caused 24 to 30 hours before the death. He deposed that the blunt injuries may be possible by use of Blow-Pipe and except the abrasions, all injuries mentioned in Column Nos.17 and 19 were possible by Blow-Pipe. Cross-examination show that though the cause of injury by Blow-Pipe is disputed, the cause of death is not disputed.

10. The evidence of PW – 1 [Ramesh Shamrao Khedare] show that he was the brother of deceased and received the information on 18/05/2016 from PW – 3 [Kunal Sureshrao Khedare] about the death of his brother and he went to the Public Health Center at Daheli Tanda and saw the dead body

of his brother. His evidence show that on the information given by PW – 3 [Kunal Sureshrao Khekare] regarding the cause of death, he has lodged the report at Exhibit-68 and set the criminal law in motion. His evidence show that the dead body of the deceased was found in the house of the Appellant, was an improvement from his previous statement i.e. report given to Police. His evidence show that neither he had seen the actual incident nor he saw the dead body in the house of the Appellant.

11. The evidence of PW – 3 [Kunal Sureshrao Khekare] show that he was the son of deceased – Suresh. According to him, on 17/05/2016, he had gone to Mahur and since he had some work with his father [deceased], he phoned him around 12:30 noon, however it was found switched-off. He returned to their village – Sarkhani and inquired about his father with his mother, who told him that his father left home at about 12:30 p.m. and since then, he did not return. He went in search of his father on feet. He heard the voice of his father in the house of the Appellant. The said voice was ‘O Mai O, Aaio Melo’. He got frightened for his life and returned back. While returning, he saw the Appellant came out of her house and she was frightened. He went to the Market in the village – Sarkhani and returned home. He made inquiry with the people about his father, but he could not get his whereabouts. It is strange that though he heard the voice of his father from the house of the Appellant, he did not inquire. Admittedly, PW – 3

[Kunal Sureshrao Khekare] was grown-up person aged around 24 years at the relevant time. It is not that the said house from where he heard the voice of his father was at some different village or at isolated place. It was the same village where he was residing i.e. Sarkhani. Even after hearing the voice, he goes back to the Market and makes inquiry with the people about his father. This is really strange and it is not possible for us to accept the said version of PW-3 [Kunal Sureshrao Khekare] and is thus discarded.

12. Further evidence of PW – 3 [Kunal Sureshrao Khekare] show that in the night at 1:00 a.m. of 17/05/2016, he got a phone call from Police Constable informing that his father was lying dead in the house of the Appellant. Accordingly, he reached there and saw the dead body of his father in the second room with injuries on his head, chest was bloated, legs were tied and blood was oozing from his eyes and nose and there was blood on the body. This evidence gets corroboration from the evidence of PW – 6 [Annarao Maroti Wadare], who was a policemen with Sindkhed Police Station. His evidence show that in the night at about 00.30 hours, he received a phone call from P.C. Kulthe about the dead body and he reached the spot, which was the house of Appellant. He saw the dead body of Suresh Khekare. There is evidence of PW – 12 [Manohar Nivruti Kamble], who was a Police Patil of the said village – Sarkhani that at about 1:00 a.m. to 1:30 a.m. of 18/05/2016, PW – 6 [Annarao Maroti Wadare] had come to his

house and he took him to the spot of incident, which was the house of the Appellant and they saw the dead body of deceased – Suresh. The cross-examination of the three witnesses do not show that the version of these witnesses that the dead body was found in the house have been diluted.

13. It is the case of the prosecution that the said house where the dead body of Suresh Khekare was found was that of the Appellant. Though the evidence of PW – 13 [Ramakant Krishnaji Kharat], who investigated the crime show that he collected 8-A extract of the said house where the dead body was found, was in the name of Appellant, the evidence of PW – 12 [Manohar Nivruti Kamble] who was the Police Patil of the said village show that the Appellant had a field at village Vitholi and she was the resident of Aarni and Sarkhani was her parental village and therefore, she used to intermittently come there. His evidence show that when he visited the said house where the dead body was lying along with policemen - Annarao Maroti Wadare, the Appellant along with her family members were sitting by the side. There is no evidence that the said house where the dead body was found was in exclusive possession of the Appellant. The evidence of PW - 13 [Ramakant Krishnaji Kharat] show that the Appellant was having three daughters and two sisters. This show that the Appellant was not all alone in the said house. The reasonable inference flow that, the said house was not occupied only by the Appellant. Also it is neither the case of prosecution nor

there is evidence on record that the Appellant was lastly seen with the deceased – Suresh.

14. The evidence of PW – 3 [Kunal Sureshrao Khekare] show that he had given the report at Exhibit-79 to the Police. The same only states of noticing the dead body of his father in the house of the Appellant. The evidence of PW – 1, who set criminal law in motion, confirms that PW – 3 [Kunal Sureshrao Khekare] had lodged the report. Therefore, it becomes clear the the said report / application by PW – 3 [[Kunal Sureshrao Khekare] was first in point of time then the FIR. PW – 3 [Kunal Sureshrao Khekare] nowhere implicates the Appellant in the said report. The said report does not make any allegations against the Appellant. The evidence of PW – 6 [Annarao Maroti Wadare] who was the Policemen and visited the spot, show that PW – 3 [Kunal Sureshrao Khekare] gave report of accidental death to P.C. Kulthe and he did not ask them to register the case of murder.

15. The evidence of PW – 6 [Annarao Maroti Wadare] show that the relatives of the deceased had come to the Primary Health Center at Daheli Tanda where the dead body of deceased – Suresh was kept and the brother of deceased – Suresh i.e. PW – 1 [Ramesh Shamrao Khekare] started the chaos [the word ‘mess’ is used]. His evidence further show that the chaos lasted for whole day. To calm down the situation, the case of murder was registered. Suggestion is given to PW –

13 [Ramakant Krishnaji Kharat] / Investigating Officer that the offence under Section 302 of IPC was registered under the pressure of the mob. This evidence on record show that the crime was registered under the pressure when the mob of relatives of deceased had gathered.

16. The other piece of evidence against the Appellant is discovery and seizure of Blow-Pipe from the house. The said recovery will not be of any assistance for the reason that the CA report at Exhibit – 122 show that no blood was detected on the said Blow-Pipe [Article–13]. Secondly, the evidence of PW – 10 [Dr. Sandeep Vijayrao Jadhav], who had conducted the post-mortem, has not ruled out the possibility that the injury i.e. fracture to right temporal bone was possible if one falls forcefully on hard surface. The PW Nos.4 - Sachin Dattaraya Petkule, 5 - Mahesh Arun Waghale, 7 - Shankar Shamrao Bhoyar, 9 - Aakashdeep Pralhad Bhalerao did not support the prosecution's case. Though they were cross-examined by the learned APP, nothing material has come in their evidence, which would support the prosecution's case. The CA report at Exhibit – 122 show that no blood was detected on chappal, saree and petticoat of the Appellant, which were seized during the investigation. The blood stains on the garment i.e. nicker of the Appellant is of no assistance for the prosecution to prove the Charge as there may be more than one reason to have blood stains on the nicker.

17. Admittedly, the prosecution had charge-sheeted in all four accused and the learned Trial Court has acquitted the accused Nos.2 to 4. Their acquittal is not challenged by the prosecution. As discussed earlier, the evidence on record do not show that the place where the dead body was found was in exclusive possession of the Appellant. The family members of the Appellant were present when the Police Patil had visited the spot. It is not the case of prosecution that the Appellant was seen lastly with the deceased. There is no evidence to connect the Blow-Pipe with the injury. The possibility of causing the injury by forceful fall on hard surface has been brought on record. The evidence on record do not conclusively establish the Charge against the Appellant and therefore, the Appellant is entitled for acquittal. Hence, we proceed to pass the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The Judgment and Order dated 13/05/2019, passed by the learned Sessions Judge, Nanded, in Sessions Case No.25/2016 convicting and sentencing the Appellant for the offences punishable under Sections 302 and 201 of IPC, is quashed and set aside.
- (iii) The Appellant stands acquitted for the offences punishable under Sections 302 and 201 of IPC.

(iv) The Appellant is already released on bail by order dated 24/01/2024. The bail bond stands cancelled.

(v) The fine amount, if deposited by the Appellant, be refunded to her.

(vii) The Record and Proceedings be sent back to the learned Trial Court.

(viii) The muddemal be dealt with in accordance with law.

18. The Criminal Appeal is disposed of accordingly.

19. In view of disposal of Criminal Appeal, Criminal Application also stands disposed of.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]