



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

CRIMINAL APPEAL NO.706 OF 2019

Shivaji Sahebrao Madke,
Age : 40 years, Occ. Nil,
r/o. Moha, Tq. Kallam,
Dist. Osmanabad

..Appellant

Vs.

The State of Maharashtra,
Through Police Station, Dhoki,
Tq. and Dist. Osmanabad

..Respondent

Mr.Anand V. Indrale-Patil, Advocate for appellant
Ms.V.S.Choudhary, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : MARCH 04, 2024**

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

The appellant was convicted for the offence of committing murder of his wife and father-in-law and therefore, sentenced to suffer life imprisonment which shall mean imprisonment for the remainder of his natural life and directed to pay fine of Rs.5,000/- with default stipulation, vide judgment and order dated 14.09.2018, passed by learned Addl. Sessions Judge, Osmanabad, in Sessions Case No.26 of 2014.

2. The facts, giving rise to the present appeal, are as follows:-

The appellant had married Surekha. The couple was blessed with three children; Renuka, Amruta (PW 3 and PW 4 respectively) and a son - Sushil. Initially, the couple was staying in Pune. Something went wrong between the two. Surekha along with his son started residing at her parental house, at village Dhoki. As per the case of prosecution, the appellant had transferred 12 acres of land in the name of his wife Surekha (deceased). On the given day, i.e. on 22.01.2013, he went to the house of his in-laws. Surekha (deceased), her parents and both the daughters namely, Renuka and Amruta were in the house. The appellant bolted main-door from inside. He asked his wife - Surekha (deceased) to re-transfer the land in his name. He also asked her to pay him money. He first assaulted his father-in-law Limbraj with a spade. He then fished out a knife from his bag and rained its blows on Surekha and Limbraj. The appellant then opened the door of the house and fled. On hearing commotion at the house, the nearby persons gathered. Some of them tried to catch the appellant. He pelted stones at them and made his escape good. Both Surekha and her father - Limbraj were rushed to the hospital. Both of them, however, succumbed to the injuries.

3. PW 1 - Rajendra, residing in the neighborhood of the deceased - Limbraj, lodged First Information Report (Exh.17) with Police Station, Dhoki. The crime, vide C.R. No.9 of 2013, for the offence punishable under Section 302 of Indian Penal Code was registered. The scene of offence panchnama (Exh.64) was drawn. Both the dead bodies were subjected to autopsy. The appellant was arrested. The statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing charge sheet. The case was committed to the court of learned Addl. Sessions Judge, Osmanabad, for trial. The trial Court framed Charge (Exh.3). The appellant pleaded not guilty. His defence was of false implication. According to him, deceased Limbraj had reared cattle. At the relevant time, the cattle were let loose. Both Surekha and her father Limbraj were mauled by the cattle and thereby, both of them died.

4. The prosecution examined thirteen witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial court convicted the appellant and consequently, sentenced as stated above.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellant took us through the evidence on record. According to him, the deceased died as a result of the injuries suffered on account of the cattle to have mauled them. He would further submit that PW 3 and PW 4 were child witnesses. They are prone to tutoring. The trial court did not put them questions to ascertain, whether they were competent to testify, in view of Section 118 of the Evidence Act. According to him, the evidence of PW 1 - informant is got up. The house of the deceased Limbraj was behind the shop of PW 1. He might have reached the house of the deceased after the incident was over. According to learned counsel, the evidence of PW 1, therefore, cannot be acted upon. He, ultimately, urged for allowing the appeal.

7. Learned APP would, on the other hand, reiterate the reasons given by the trial court in support of the impugned judgment and order.

8. Considered the submissions advanced. Perused the evidence relied on. The case is based on circumstantial evidence.

9. The post mortem reports of both the deceased - Surekha and Limbraj, Exhs.21 and 22, respectively, indicate both of them

died of “*hemorrhagic shock due to stab injury*”. PW 2 - Dr.Sujit had conducted autopsy on the mortal remains of both the deceased. He noticed following injuries on the person of deceased Limbraj:-

- (1) *Stab injury on chest in third left intercostal, anterior 6x2x9 cm.*
- (2) *Contused laceration on frontal bone on skull, 1 cm on left side from mid- line, 5x3 bone deep.*
- (3) *Contused lacerated wound, 5x2xbone deep, on frontal bone of skull, 6 cm. on left side from mid-line.*
- (4) *Abrasion on left eye-lid, 3x2x1 cm.*

There was palpable fracture, corresponding to injury no.2. The injuries were ante-mortem

He noticed following injuries on the person of deceased Surekha :-

- (1) *Stab injury in left pelvic quadrant of abdomen, 6 cm left from umbilicus and 1 cm from 2 supra-iliac spine, intestines, came outside from body through the injury, size of injury was 5x3 cm. inflamed intestine.*
- (2) *Laceration on left upper arm posterior aspect, 20x5x4 cm.*
- (3) *Laceration on left fore-arm, lateral aspect, 5x1x0.5 cm.*
- (4) *Laceration on posterior border of left axila, 3x3x0.5 cm.*

- (5) *Laceration on left breast, 3 cm. from left areola, 4x2x0.5 cm., on upper and lower lateral quadrant,*
- (6) *Laceration on right thigh, 2 cm. from right knee, on lateral aspect, 6x1x0.5 cm.,*
- (7) *Contused laceration on head, 3x2x1 cm.,*

The injuries were ante-mortem

Following internal injuries were found:-

- 1. *Haematoma on both temporal bone, 10x6x0.3 cm.*
- 2. *Stab injury on abdomen corresponding to external injury No.1.*
- 3. *Peritoneal breach corresponding to external injury No.1.*
- 4. *Cavity found filled with 100 ml.,*

Small intestines were outside body having inflamed and multiple perforations on small intestinal walls, corresponding to injury no.1.

10. The defence of the appellant is that there was cattle-shed close by the house of Limbraj. The deceased had reared cattle. At the relevant time, the cattle were let loose. Those cattle had mauled both the deceased - Surekha and Limbraj.

11. PW 2 – Dr.Sujit ruled out the injuries on the person of both of them to have been caused on account of the cattle to have mauled both of them. It needs no mention that even a wrong defence may fill-in the missing link.

12. It is an open-and-shut case. PW 1 – Rajendra, neighbor of deceased Limbraj, lodged the FIR (Exh.17). His evidence is consistent therewith. It is in his evidence that the house of deceased Limbraj was nearby his shop. It was 06.00 p.m. of 22.01.2013. He was present in his shop. He heard hue and cries from the house of Limbraj. He, therefore, rushed to Limbraj's house. He saw the appellant coming out of the house. People, gathered outside, tried to catch the appellant. The appellant, however, pelted stones at them. As such, the appellant made his escape good. It is further in his evidence that he, thereafter, entered the house of Limbraj to see both Limbraj and Surekha suffered multiple injuries. He and other persons shifted both of them to the Government Hospital, Dhoki. The Medical Officer there declared them dead. He, thereafter, went to the police station and lodged the FIR (Exh.17).

During the cross-examination of PW 1, although it has come on record that the house of deceased Limbraj was behind his shop, his evidence indicates that he rushed to Limbraj's house on

hearing hue and cry. All other suggestions in the nature of the appellant's defence have been replied in negative.

13. PW 3 - Renuka and PW 4 - Amruta are daughters of the appellant. Both of them were of the age 14 and 13, respectively, at the relevant time. Same indicates that both of them were of the age of understanding. Learned counsel for the appellant, therefore, could not be heard to say that the trial court did not put both these witnesses certain questions to ascertain, whether they were competent to depose. The evidence of both the daughters of the appellant is to the effect that they along with their mother (deceased) were residing with their maternal grand-parents at village Moha. The appellant came their residence on 22.01.2013 by 06.00 p.m. Both of them were present. Their mother and grandparents were also there. Their younger brother Sushil had gone out of house for playing. The appellant asked her mother (deceased Surekha) to transfer 12 acres of land back to his name. It is further in their evidence that the appellant picked up a spade and assaulted on the head of Limbraj. The appellant then took out a knife from his bag and rained blows on the person of both Limbraj and Surekha. Their evidence further indicates that the appellant, after having entered the house, bolted the main-door from inside. Their evidence further

indicates that after assaulting both Surekha and Limbraj, the appellant fled.

14. We have closely perused the cross-examination of both these witnesses to find nothing useful could be elicited in defence. It is true that PW 3, admitted, in her cross-examination, that the appellant used to visit her school to meet her. It may appear that the appellant might have affection towards his daughters. The fact remains that he committed murder of his wife and the father-in-law in the presence of his both the daughters. The daughters (PW 3 and PW 4) had no reason to falsely implicate their father.

15. There is evidence of one more witness namely, Usha (PW 5). She was residing in the neighborhood of the house of the deceased Limbraj. She saw the appellant armed with knife.

16. The appellant, pursuant to the disclosure statement (Exh.60), took out a knife and clothes on his person. Those came to be seized under panchnama (Exh.61).

17. The other prosecution witnesses are photographers, panchas and the police officers who played some role in the investigation of the crime. We do not propose to advert to their evidence since the evidence of the eye witnesses namely, PW 1, PW

3 and PW 4 brought home the charge of murder. We find no reason to interfere with the impugned order of conviction.

18. There is, however, another aspect of the matter. The trial court, in the operative order of conviction and consequential sentence, directed the appellant to suffer rigorous imprisonment for life which shall mean imprisonment for the remainder of his natural life.

19. Section 302 of Indian Penal Code prescribed punishment for the offence of 'murder'. Section 302 reads thus:-

302. Punishment for murder — Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

20. According to learned counsel for the appellant, the direction of the trial court that the appellant shall suffer imprisonment till end of his natural life, would come in the way of the appellant for grant of remission. According to learned counsel, the trial court did not have jurisdiction to pass such an order, which will curtail the State/Central Government's administrative/executive powers under Section 433-A of the Code of Criminal Procedure.

We are in agreement with the submissions made by learned counsel for the appellant.

21. The Apex Court, in the case of **Ravinder Singh Vs. State Government of NCT of Delhi, (2024)2 SCC 323**, observed thus:-

Penal Code, 1860 – S.53 r/w S.43 – Sentence – Imposition of life imprisonment for a specified minimum non-remittable term – Reiterated, can be imposed only by High Courts and Supreme Court – Imposition of life imprisonment for a specified minimum non-remittable term, held, not prohibited under IPC or CrPC, but the power to impose such a modified punishment, held, can only be exercised by High Court and in the event of further appeal, by Supreme Court, and not by any other court in the country.

22. For the aforesaid reasons, the appeal is dismissed. However, the sentence “which shall mean imprisonment for the remainder of his natural life”, appearing in clause 2 of the operative order of conviction and consequential sentence, stands hereby withdrawn.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP