



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

CRIMINAL APPEAL NO.669 OF 2024

Ganesh Kisan Pare,
Age 33 years, Occu. Nil,
R/o Barwar Galli, Old Jalna,
At present Mammadevi Nagar,
Near Tulja Bhavani Mandir,
Nutan Vasahat, Old Jalna,
Tq. & Dist. Jalna

... **APPELLANT**

VERSUS

The State of Maharashtra,
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... **RESPONDENT**

.....
Mr. Rajesh Mewara, Advocates for appellant
(appointed through Legal Aid)
Mrs. Uma S. Bhosle, A.P.P. for respondent – State
.....

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

DATE : 14th November, 2024

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence, dated 29/9/2018, for offence punishable under Section 302 of the

Indian Penal Code, passed by the Court of Additional Sessions Judge-3, Jalna in Sessions Case, No.214/2016. The appellant thus came to be convicted for committing murder of his mother and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.10,000/-, with default stipulation.

2. The case is based on circumstantial evidence. The facts of the prosecution case, in brief, are as follows :-

There was somewhat dilapidated Wada/ premises belonging to the father of the appellant. The appellant along with his wife and parents would reside therein. Thereafter he started residing along with his wife at Nutan Vasahat, Jalna. His parents continued to reside in the Old Wada. The appellant's father passed away 2-3 months before the incident. He along with his wife, therefore, shifted to his old house to take care of his mother. The appellant allegedly suspected character of his wife. Therefore, there used to be frequent quarrels between them. The mother (deceased) would reason with him. The mother would take side of her daughter-in-law.

3. It was early morning of 23/9/2016. P.W.2 Malanbai, wife of uncle of appellant, residing in the neighbourhood, was sweeping in the courtyard. She had an occasion to look into the house of the appellant. To her surprise, she found her co-sister lying in a pool of blood. She raised an alarm. Some neighbours gathered. The appellant too was in the house. He came out. He made extra-judicial confession to P.W.2 Malanbai about having killed his mother. She, therefore, shared the incident with her relatives and neighbours. The maternal uncle of the appellant P.W.5 Prabhulal lodged the First Information Report (F.I.R. - Exh.27), alleging the appellant to have killed his sister (mother of the appellant). A crime vide C.R. No.297/2016 was registered at Kadim Jalna Police Station for offences punishable under Sections 302, 504, 506 of the Indian Penal Code. Crime scene panchanama (Exh.34) was drawn. A stone stained with blood was seized from the crime scene. Statements of persons acquainted with the facts and circumstances of the case were recorded. Inquest panchanama (Exh.11) and autopsy (Exh.45) on the mortal remains of deceased Tarabai were conducted. The appellant was arrested. All the seized articles were submitted to

Forensic Science Laboratory for analysis and report. On completion of the investigation, charge sheet was filed against the appellant. The Trial Court framed the Charge (Exh.6). The appellant pleaded not guilty. He put on record his side of the story. According to him, he would daily go for a morning walk. On the given day, he had gone for morning walk as usual. His younger sister and mother were home. He had asked them to bolt the door from inside. The sister went to fetch water from a public water tap. Somebody entered the house and committed murder of his mother. Gold ornaments on the person of his mother were missing, besides 1 tin box containing gold ornaments, preserved for the marriage of his younger sister, was found missing. When he returned from the morning walk, he saw the door of the house open and his mother lying in a pool of blood. According to him, his wife was from his relations. She did not want to stay in a joint family i.e. along with his parents-in-law. She insisted him to stay away. A quarrel, therefore, started ensuing between him and his wife. He has three kids. At the instance of his wife, he started residing separately from his parents. But on the demise of his father, he started residing with his mother. The mother was not

keeping well. She was confined to bed. It was he who would provide for her maintenance etc.

4. The prosecution, in order to bring home the charge, examined 16 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced as stated above.

5. Learned Advocate appointed to represent the appellant would submit that, the case was based on circumstantial evidence. The witnesses who have deposed against the appellant were relations of the deceased. They have an interest in the property i.e. the Old Wada. The learned Advocate has placed on record written notes/ points of arguments. According to him, the evidence of P.W.2 Malanbai is contradictory. She was the relative of the deceased. Then he would submit that, the evidence of P.W.2 Malanbai was hear-say. There was no evidence to indicate that any criminal case was filed by the wife of the appellant Asha (P.W.4) against the appellant.

P.W.4 Aasha turned hostile.

6. The evidence of P.W.5 Prabhulal is based on hear-say. His evidence is full with contradictions and omissions. The evidence of other witnesses, namely P.W.8 Ganesh and P.W.9 Ram is also inadmissible being hear-say. P.W.10 Dadarao and P.W.11 Dipak did not stand by the prosecution. According to him, the investigating officer made no efforts to make investigation on the lines on what was stated by the appellant to him i.e. the robbery with murder took place at the house. According to him, the defence of the appellant was more probable. The charge framed against the appellant was not properly worded. The incriminating circumstances/evidence have not been put to the appellant in his examination under Section 313 of the Cr.P.C. The same caused prejudice to the appellant. He would further submit that, since the case is based on circumstantial evidence, circumstances relied on did not clinchingly and unerringly show the accused being author of the crime. The motive behind the crime has not been proved. The learned Advocate has relied on the judgment of

the Apex Court in case of **Pritinder Singh Alias Lovely Vs. State of Punjab (2023) 7 SCC 727.**

7. The learned A.P.P. would, on the other hand, submit that the appellant and the deceased were the only persons residing in the house. Whatever statement has been put on record by the appellant in his examination under Section 313 of the Cr.P.C. cannot partake character as an evidence since the prosecution did not have an opportunity to cross-examine him. It was, therefore, for him to make out the case of his alibi. When the offence took place in a premises wherein the appellant and his mother were the only persons residing together, it is for the appellant to explain the circumstances in which his mother met with homicidal death. He did not offer plausible or reasonable explanation. The contention of the appellant that the witnesses are relatives cannot be accepted because those are also the relatives of the appellant as well. According to her, the Trial Court has rightly convicted the appellant. She ultimately urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. Also perused the judgment impugned herein and the authorities cited by the learned Advocate for the appellant. It needs no mention that criminal case has to be decided on the facts and circumstances appearing therein. A variance of a fact here and there makes all the difference.

9. Let us advert to the evidence on record and appreciate the same. P.W.13 Dr. Surjit conducted autopsy on the mortal remains of Tarabai. He noticed following external injuries on her person with corresponding internal injuries :-

- (i) Crush injury to right side of head, involving right frontal, right temporal and right parietal region of head with multiple fracture of right frontal, right temporal and right parietal bone of head, evidence of blood clot was noticed.
- (ii) Contusion over right occipital region of head, fracture to right occipital bone of head 3 x 3 cm.

In his view, both the injuries were ante mortem and

grievous in nature. According to him, those were caused within 24 hours next before the post mortem examination. The post mortem report finds place at Exh.45. The cause of death is stated to be head injury with intracerebral bleeding. In view of the deceased to have admittedly died with homicidal death, we do not propose to refer to the evidence of P.W.1 Sk. Khalid, a witness to the inquest panchanama.

10. The appellant did not dispute his mother to have met with homicidal death. The question is, whether the appellant is the author of the crime in question. Since the case is being based on circumstantial evidence, we propose to refer to the judgment of the Apex Court in case of **Sharad Birdichand Sarda Vs. State of Maharashtra (1984 CJ (SC) 262)**, in which the Apex Court 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.”

11. In the case in hand, the prosecution proposes to bring home the charge on the following circumstances :

- (1) Homicidal death – admitted/ proved by evidence of P.W.13 Dr. Surjit.
- (2) Motive i.e. quarrel between the appellant and his wife.
- (3) The appellant and the deceased were the only persons residing in the house.
- (4) The appellant was seen in the house at the material time.
- (5) Extra-judicial confession.

MOTIVE :-

12. The appellant married P.W.4 Aasha. The couple

was blessed with three children. Her evidence discloses that on marriage, she along with her husband started residing at the house of her parents. Her parents-in-law would reside in their old house at Barwar Galli, Jalna. Due to demise of her father-in-law, the appellant had been to his own house i.e. Old Wada to take care of his mother (deceased). She too joined him. The appellant started suspecting her character. She, therefore, left her matrimonial house and started residing at the house of her father. About 4 days before passing of her father, the appellant had quarreled with her. It was her mother-in-law (deceased) who had intervened and separated the same. She further testified that, her mother-in-law (deceased) had accompanied her to Kadim Jalna Police Station to lodge the report against the appellant.

13. It is true that the report lodged by P.W.4 Aasha against her husband (appellant) is not on record. There is, however, no reason to disbelieve her evidence. No wife would like to give evidence against her own husband unless there is a reason or falsity is made out by the defence. Her evidence further disclose that, while the incident took place, she was

staying at her parental house. She received the phone call about her mother-in-law to have been killed by the appellant. She, therefore, rushed to the house. According to her, the appellant committed murder of his mother since she (mother) would take the side of her daughter-in-law (P.W.4 Aasha).

14. True, during her cross-examination P.W.4 Aasha admitted that her husband was having good character. The appellant's ancestral house was 50 to 60 years old. She, however, denied that it was not fit for residence. She denied to have cordial relations with the appellant, although she admitted the appellant to have good relations with her parents.

15. P.W.2 Malanbai is the wife of appellant's real uncle. She deposed that, Tarabai (deceased) would reside along with her husband. The appellant would reside at Nutan Vasahat, Jalna. After death of his father, the appellant started residing with his mother. Aashabai is the wife of appellant. She was residing at Nutan Vasahat, because of quarrel between the two. According to her, it was 7.00 a.m. of the fateful day, she entered the Wada for sweeping/ brooming. She saw the

appellant went in the bathroom. She peeped in the appellant's house and noticed blood. She, therefore, shouted. She saw the head of her co-sister to have been crushed. On hearing her shouts, Gopinath Chaudhari, Ganesh Chaudhari, Manoj Pare and Shyam Pare gathered. The appellant told them to have killed his mother. He questioned them what they want to do.

16. During her cross-examination, her relationship with the appellant has been brought on record. The house wherein the incident took place was ancestral one. It was 60 year old premises, built up in stone and clay. She claimed ignorance about the reasons behind the quarrel between the appellant and his wife. She claimed ignorance about the dispute between appellant and his maternal uncle. The house being old one, was in the dilapidated condition and the entire structure was likely to come down any time. There was only one entrance to the Wada. The accused would do job during day time. Her 164 statement has also been brought on record through her examination-in-chief (Exh.23).

17. P.W.3 Manoj testified that, on hearing shouts of his mother, he came out of his house by 7.00 in the morning. He entered the Wada of his grandfather. The appellant's mother was lying. He denied to have seen the appellant sitting by the side of his mother's dead body. The evidence of this witness appears to have favour the appellant.

18. P.W.5 Prabhulal is the brother of deceased Tarabai. He testified that, he was residing in front of the house of the house of his sister Tarabai. The appellant would reside with her. There used to be quarrels between the appellant and his wife. The appellant's wife had, therefore, started residing at the house of her parents. It was the appellant and his mother who were the only persons residing in their house. On the fateful day, he had left the house with his auto. His son informed him on phone. He, therefore, returned to the house. He claimed to have seen Tarabai was dead. A stone was lying by her side. Malanbai (P.W.2) was present at the spot. She narrated her the incident. He, therefore, went to the Police Station and lodged the F.I.R. (Exh.27).

19. He was subjected to a searching cross-examination. He is the real brother of the deceased and maternal uncle of the appellant. He is not an eye witness to the incident. What quarrel appellant had with his maternal uncle Prabhulal (P.W.5) has not been brought on record. Although the F.I.R. (Exh.27) is based on hear-say, the law could be said to have been set in motion on the basis thereof. The evidence of P.W.5 Prabhulal indicates that it was the appellant alone who was residing along with his mother.

20. P.W.6 Bhalchandra is the witness to the panchanama (Exh.29) relating to the seizure of the clothes of the deceased. P.W.7 Ranba is the panch witness to the crime scene panchanama (Exh.34). His evidence disclose that the blood stained stone was seized from the crime scene.

21. P.W.8 Ganesh is another brother of the deceased. According to him, his cousin sister Aashabai was given in marriage to the appellant. She was residing at Nutan Vasahat. While Tarabai was residing in her own house at Barwar Galli. Relations between the appellant and his wife were not cordial.

According to him, the appellant would feel that his mother was responsible for quarrels between him and his wife. His evidence further disclosed that, on having learnt about the incident, he went to the crime scene. He noticed Tarabai dead and appellant was sitting by her side.

22. P.W.9 Ram was nephew of Tarabai. His evidence is consistent with the evidence of other witnesses in relation to quarrels between the appellant and his wife, and Tarabai (deceased) would convince the appellant. His evidence further disclosed that, on the demise of the father of the appellant, the appellant along with his wife started residing with his mother. Due to quarrels between the couple, the appellant's wife left him and started residing at the house of her parents. On having learnt about the incident, he went to the Wada. He saw Tarabai lying in a pool of blood. The appellant was sitting by his side. He questioned him what he had done. Thereupon the appellant said to him, "She was his mother and he has committed her murder." He then telephoned to the Police Station.

During his cross-examination, it was brought on record that, appellant's wife was his cousin. No sufficient accommodation was available in the Wada for residing all the four due to its dilapidated condition.

23. P.W.10 Dadarao did not stand by the prosecution.

24. P.W.11 Dipak is the brother-in-law (wife's brother) of the appellant. His evidence is consistent with the evidence of rest of the witnesses referred to hereinabove. During his cross-examination, nothing fruitful could be elicited.

25. P.W.12 Manik is a Police Officer who carried the muddemal articles to FSL, Aurangabad. P.W.14 Rajkumar is a witness to the seizure of the clothes of the appellant. He did not support the prosecution. While P.W.15 Sukhdeo is the Police Officer who recorded the F.I.R. (Exh.27). P.W.16 Sayyed Sattar did the investigation of the crime. His examination-in-chief details about drawing of crime scene panchanama (Exh.34), seizure of blood stained stone, conducting autopsy. In short, his evidence indicates that, he

took all the steps which were expected to be taken during investigation of such crime.

26. In the cross-examination, he admitted that the statements of the witnesses he had recorded were all the relatives of the deceased or his wife. According to him, no independent witness came forward. In our view, the same would not be fatal since all of them were also relatives of the appellant. It was only for the first time the appellant put his side of the story in writing in his examination under Section 313 of the Cr.P.C. He did not examine himself as a witness. The prosecution, therefore, lost its opportunity to cross-examine him. His case is that, he was away on morning walk and on return, found his mother to have been killed and on having seen the same, he became numb and even fainted, cannot partake the character of an evidence for want of opportunity for subjecting him to the cross-examination. Merely putting his side of the story without making out the same even on the basis of preponderance of probabilities could not be said the appellant to have made out his defence. When according to him his sister was residing with him, he did

not examine her. None of the prosecution witnesses was suggested that his sister was also one of the person residing along with the appellant and his mother. On the contrary, all the material witnesses testified it was the appellant and his mother who were the only persons residing in the Old Wada. The incident took place by 7.00 in the morning or therebefore. It was a time by which the appellant was expected to be home. It is, therefore, for him to explain in what circumstances his mother met with homicidal death (Section 106 of the Indian Penal Code). On the contrary, he made extra-judicial confession to P.W.2 Malanbai and P.W.9 Ram Chaudhary. In this view of the matter, we do not find the Trial Court to have erred in convicting the appellant. We are at one with the findings recorded by the Trial Court. The learned Advocate for the appellant did not bring to our notice that the appellant was away on morning walk was stated by him to the investigating officer on the day one. On the contrary, perusal of his bail application is silent to make a whisper thereof. As such, what has been placed on record by the appellant is his side of the story remained as it is. It is reiterated that, it cannot be taken as an evidence since he did not reiterate the same on oath and

allowed himself to be subjected to the cross-examination.

27. In the result, the appeal fails. It is dismissed. Fees of learned Advocate Mr. Mewara, appointed for the appellant, is quantified at Rs.10,000/- (Rupees ten thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-