



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

CRIMINAL APPEAL NO.610 OF 2022

Shankar s/o. Kishor Salve,
Age 21 years, occ. Driver,
r/o. Shriramnagar, Mirajgaon,
Tq. Karjat, Dist.Ahmednagar

..Appellant

Vs.

The State of Maharashtra,
Through Police Inspector,
Karjat Police Station,
Tq. Karjat, Dist. Ahmednagar

..Respondent

Mr.N.R.Thorat, Advocate for appellant
Mr.G.A.Kulkarni, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : SEPTEMBER 10, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

The challenge in this appeal is to the judgment of conviction and order of consequential sentence dated 08.07.2022, passed by learned Addl. Sessions Judge, Shrigonda, in Sessions Case No.82 of 2021, whereby the appellant was convicted for committing murder of his wife and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, with default stipulation.

2. The fact, in brief, giving rise to the present appeal are as follows:-

The appellant was 20 years of age at the material time. He was in love with Ku. Neha (deceased). She was just 16 years of age. Her family members were, therefore, opposed to the proposed love marriage of the appellant. Still, they got married. Smt.Diksha (PW 3) was sister of Neha. She was residing at Navsari, Gujarat. The appellant was residing in the premises taken on rent at village Mirajgaon, Tq. Karjat, Dist.Ahmednagar. He along with his wife Neha (deceased), her brother Dnyaneshwar and sister Diksha (PW 3) returned to Mirajgaon in his tempo. Diksha had her baby with her. It was 17.06.2020. Neha cooked food. The appellant and her brother took meals. He went outside the house for a while. He immediately came back. Quarrel ensued between the appellant and his wife Neha. He beat her up. Diksha along with her kid and her brother Dnyaneshwar, therefore, left the house for her native village Pothare. After about one and half hours thereafter, the appellant made phone call to her brother Dnyaneshwar and informed Neha to have committed suicide. Diksha along with her brother Dnyaneshwar, therefore, came back to the house of the appellant. They saw Neha dead. She had suffered injuries. Diksha, initially, lodged report (Exh.16) about unnatural death. It was registered vide

No.19 of 2021 with Karjat Police Station. On post mortem, it was realised that deceased died of head injury. Diksha, therefore, lodged FIR (Exh.17) with Karjat Police Station, on the following day. A crime vide C.R. No.132 of 2021 was, therefore, registered against the appellant for the offence punishable under Section 302 of Indian Penal Code.

3. On completion of the investigation, he was proceeded against by filing the charge sheet. The trial court framed Charge (Exh.4). The appellant pleaded not guilty. His defence was of false implication.

4. The prosecution examined seven witnesses and produced in evidence certain documents. The trial court, on appreciation thereof, convicted and consequently, sentenced the appellant, as stated above.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellant would submit that the case is based on the testimony of sole witness, namely Diksha (PW 3), sister of deceased. According to him, she gave three different statements. He then adverted our attention to the report (Exh.16) lodged by her on 08.03.2021, pursuant to which unnatural

death case was registered. He then took us through the FIR (Exh.17) and her statement recorded under Section 164 of the Code of Criminal Procedure. According to him, Diksha (PW 3) did not stand by the prosecution. There is no other evidence to indicate the appellant to have committed any crime. He, therefore, in the first instance, prayed for allowing the appeal in toto. In the alternative, he urged for converting the conviction from the offence punishable under Section 302 of Indian Penal Code to Section 304 Part II of Indian Penal Code. According to him, the incident took place at the spur of moment. There is no premeditation. No weapon was used. He, therefore, prayed for sentencing the appellant for the period already undergone by him.

7. Learned APP would, on the other hand, submit that the appellant had mercilessly beaten up his wife. The post mortem report would speak for the same. Although PW 3 - Diksha did not stand by the prosecution, there is some evidence to indicate the appellant to have had quarreled with his wife Neha (deceased) and assaulted her. The deceased died at her matrimonial home, shared by the appellant alone. The appellant, therefore, owe explanation. Learned APP, ultimately, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. Let us advert thereto and appreciate the same.

9. Admittedly, the appellant was 20 years of age at the relevant time. He married deceased Neha. It was a love marriage. Neha had not attained the age of majority while she married the appellant. Her parents, therefore, were opposed to their marriage. It is not in dispute that the appellant along with Neha (deceased) would reside in one room premises at village Mirajgaon. It was taken on rent from PW 5 – Smt. Bai Raut. We do not propose to refer to her evidence, since same speaks about the premises to have been lent to the appellant at a monthly rent of Rs.1,500/-.

10. PW 1 – Ganesh is witness to the inquest panchnama (Exh.10). PW 2 – Sham is witness to the spot panchnama (Exh.13), while PW 4 – Sachin is witness to the disclosure statement made by the appellant, pursuant to which a waist-belt came to be recovered/seized under panchnama. Both memorandum statements and seizure panchnama are Exh.24 and Exh.25, respectively. There is nothing to indicate the appellant to have had assaulted the deceased with the very belt. The disclosure statement, therefore, could not be termed to be relevant under Section 27 of the Evidence Act.

11. PW 6 – Dr.Suvarnamala conducted autopsy on the mortal remains of the deceased. The post mortem report under her signature is at Exh.33. She noticed the following external injuries on the person of deceased Neha :-

- (1) “C” shaped impression marks broader end at the upper part of chin, more on right side, size 7 cm x 1 cm ($\frac{1}{2}$ cm) variable.
- (2) Bruises over both the palms.
- (3) CLW 2 x 3 mm. At aural puncture site.
- (4) Multiple contusions over back, size 10x15 cm., 5x3 c.m., 7x5 cm.
- (5) Contusion over thigh right side size 5 cm x 3 cm (greenish colour), left side, size 6 cm. x 5 cm.
- (6) Tongue was inside the mouth.

She also noticed following injuries :

- (1) Hematoma of size 3 cm x 5 cm beneath the parietooccipital region (scalp) 3 cm. above right ear.
- (2) Extradural hematoma of size 4 cm x 6 cm over occipital region of brain
- (3) Intracranial bleeding of 50 cc present.
- (4) Meninges intact but congested.
- (5) Both the lungs were congested and froth present.
- (6) All the internal organs like liver, gallbladder, pancreas, spleen, both the kidneys were congested.
- (7) Uterus is normal size and empty (No features of pregnancy)

However, viscera was preserved in following manner:

- (A) Bottle A – Stomach and its contents in sodium chloride.
- (B) Bottle B – Heart, lungs, liver, spleen, kidney in pieces kept in sodium chloride

In the opinion of PW 6 – Dr. Suvarnamala, the deceased died of *“Intracranial Hemorrhage due to head injury”*. Viscera was preserved. During her evidence, she testified that if someone bangs head of the victim against a wall, the injury like one suffered by the deceased could occur. According to her, the other injuries noticed on the person of the deceased are possible by hit with a belt.

12. The star-witness in the case is PW 3 – Diksha, sister of deceased. It is in her evidence that the appellant along with his wife Neha (deceased) had come to her place, Navsari, Gujarat, on 07.03.2021. She along with her kid, her brother Dnyaneshwar, the appellant and his wife Neha (deceased) returned to the appellant's house, at Mirajgaon, on 08.03.2021. Neha prepared food. It was little past 12.30 p.m., heated arguments ensued between the appellant and his wife Neha. Neha went outside the house. She was pregnant. She accidentally fallen down. Still, the quarrel continued. PW 3 – Diksha along with her brother Dnyaneshwar left the house for village Pothare. After about one and half hours, the appellant called

his brother-in-law Dnyaneshwar and informed Neha to have committed suicide by hanging. PW 3 - Diksha along with Dnyaneshwar returned to the house of the appellant. They saw nothing like the case of hanging. She, however, noticed some injuries on the person of Neha.

13. Since PW 3 - Diksha did not stand by the prosecution, learned APP cross-examined her at length. She admitted that there was quarrel between the appellant and his wife Neha. She, therefore, left the house. She was then confronted with her statement to the police and her statement recorded under Section 164 of the Code of Criminal Procedure. While in cross-examination undertaken by the defence, she testified that since she had washed the clothes outside the house, the floor had become slippery. Neha accidentally slipped and suffered injury.

14. Admittedly, PW 3 - Diksha is not witness to what she has stated about deceased Neha to have suffered injury by sudden fall. The Medical Officer (PW 6) ruled out the head injury to have been caused by fall on stones. Admittedly, outside the house of the appellant, the floor was plain. There might be some small stones. Since Neha died as a result of the head injury suffered by her while in exclusive company of the appellant, it is the appellant, who owed

explanation how did she suffer the said injury and other injuries noticed on her person. The evidence of PW 3-Diksha indicates that the appellant tried to deflect their attention. He falsely informed them Neha to have committed suicide. Same speaks in volumes.

15. The evidence on record indicates that Neha met with homicidal death while she was in the company of the appellant. There was, admittedly, quarrel between the two. The appellant, allegedly, assaulted her with belt. No weapon like knife, axe, sword or sickle was used. As per the case of prosecution itself, he banged his wife's head against the wall and as a result thereof, Neha suffered Intracranial fracture and thereby, died.

16. Appreciation of the entire evidence on record indicates that there was no premeditation and no use of any weapon. Same rules out the appellant to have intended to kill his wife Neha. The incident was preceded by quarrel. The appellant hit her with belt and might have banged her head against a wall. Since the appellant did not offer any explanation and came with a false defence, we have to presume the prosecution case to be true. From the facts and circumstances of the case, the appellant could not be said to have intended to kill his wife nor could he be presumed to have caused injury sufficient in the ordinary course of nature.

17. Section 300 of Indian Penal Code reads thus:-

300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or —

.....

3rdly. — If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

.....

18. In our view, the appellant could be attributed with the knowledge that if he hit the head of his wife against wall with such force, death would be the result. As such, in our view, it would be an offence punishable under Section 304 Part II of Indian Penal Code. Considering the age of the appellant at the relevant time and nature of the offence, we propose to sentence him for a period of seven years' rigorous imprisonment without alteration in the amount of fine directed to be paid by the trial court and quantum of sentence in default of payment of fine. With this, the appeal partly succeeds.

19. In the result, the following order:-

(i) The appeal is partly allowed.

(ii) The order dated 08.07.2022, passed by learned Addl. Sessions Judge, Shrigonda, in Sessions Case No.82

of 2021, convicting and sentencing the appellant for the offence punishable under Section 302 of Indian Penal Code, is hereby set aside.

Instead, the appellant is convicted for the offence punishable under Section 304 Part II of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/- (Rupees Five Thousand). In default of payment of fine, he shall suffer rigorous imprisonment for six months.

(iii) The appellant is behind the bars since 09.03.2021. Set off under Section 428 of the Code of Criminal Procedure be given.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP