



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

CRIMINAL APPEAL NO.530 OF 2018

Mansing @ Janu s/o. Prabhu Rathod,
Age : 35 years, Occ. Labour,
r/o. Radi Tanda, Tq. Ambajogai,
Dist. Beed.

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.S.G.Ladda and Mr.S.J.Rahate, Advocates for appellant
Mr.G.A.Kulkarni, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : JUNE 11, 2024**

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

The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 10.07.2018, passed by learned Addl. Sessions Judge, Ambajogai, Dist. Beed, in Sessions Case No.5 of 2015. Vide the impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer life imprisonment with fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for six months.

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

The First Information Report (FIR) was lodged by PW 8 – Dnyaneshwar, brother of Lalita (deceased), on 08.09.2014. It was averred in the FIR that Lalita married the appellant about ten years before September, 2014. The couple was blessed with three children; two girls and a son. Lalita was treated well for initial period of five years. The appellant, thereafter, got addicted to alcohol and gambling. He also started suspecting her fidelity. The appellant, therefore, used to harass and illtreat her. Lalita had, therefore, returned to her parental house. The matter was settled. She again resumed cohabitation.

3. It was further averred in the FIR that on 07.09.2014, by 08.30 p.m, PW 8 – Dnyaneshwar (informant) was home along with his parents Putlabai (PW 5) and Raosaheb (PW 13). Dayanand (PW7) came home and informed the appellant to have axed Lalita. PW 8 – Dnyaneshwar along with his parents and others, therefore, immediately, went to the house of the appellant to find Lalita to have suffered multiple injuries. She was lying in a pool of blood. She was, therefore, rushed to the hospital in an auto-rickshaw. She was, however, declared dead before admission. Inquest panchnama (Exh.19/C) and post-mortem (report at Exhs.112 and 113) on the mortal remains of Lalita were held. After her mortal remains were

consigned to flames, PW 8 – Dnyaneshwar lodged the FIR, alleging the appellant to have killed his sister – Lalita.

4. Based on the FIR (Exh.70), crime vide C.R. No.112 of 2014 was registered for the offence punishable under Section 302 of Indian Penal Code. During investigation, scene of offence panchnama (Exh.23/C) was drawn. Various articles, such as, two quilts, pieces of bandage strip, shirt and pant were seized from the crime scene, i.e., the house of the appellant. The appellant was arrested. The clothes on the person of the deceased and the appellant were seized. The appellant made disclosure statement (Exh.27), pursuant to which an axe came to be seized. All the seized articles were submitted to the F.S.L., Aurangabad, for chemical analysis and report. Video-recording of the disclosure statement made by the appellant, was done. The C.D. came to be taken charge of. 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. Learned Judicial Magistrate, First Class committed the case the court of Addl. Sessions Judge, Ambajogai (trial). The trial court framed Charge (Exhs.6, 7/C). The appellant pleaded not guilty. His defence was of dacoity/robbery to have taken place at his residence. He claimed to have been falsely implicated.

5. To bring home Charge, the prosecution examined 17 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.

6. Learned counsel for the appellant would submit that the case is solely based on the evidence of the so called eye-witness, PW 7 - Dayanand. We are taken through the evidence of this witness to indicate that in the cross-examination, he did not stand by the prosecution. Learned counsel for the appellant then submitted that the said witness could be termed to be a chance-witness. The place where he had purchased Gutka was not nearby the house of the appellant. No happenings in the house of the appellant could be seen from the said place. The conduct of this witness was also criticised on the ground that he did neither disclose the incident to the police nor did accompany the family members of the deceased to the crime-scene or to the hospital. He was present at the time of funeral. The police officials were very much there. Still, he did not disclose the incident. According to learned counsel, this witness could be categorised as an unreliable witness. Then, our attention was drawn to the evidence of the minor daughter of the appellant and the deceased. The trial court, after interaction with the child,

certified her to be a competent witness and then, recorded her examination-in-chief in 'question and answer' form. Since said witness could not respond to the further questions put up by learned APP, the trial court was requested to close her evidence. The appellant did not have an opportunity to cross-examine this witness. Whatever has been deposed to by the child-witness was favourable to the appellant. So far as regards the circumstantial evidence in the nature of blood stains on the clothes of the appellant and the axe allegedly seized pursuant to the disclosure statement made by the appellant is concerned, learned counsel would submit that the same does not further the prosecution case. The C.A. report indicates that the blood-group of the blood stains found on these articles could not be determined. As such, said evidence could not be categorised as conclusive in nature pointing towards guilt of the appellant. He would further submit that there was no evidence that the appellant was home at the relevant time so as to call upon him to explain the circumstances in which his wife (Lalita) met with homicidal death. Learned counsel, ultimately, urged for allowing the appeal.

7. Learned APP would, on the other hand, submit that the case is based on direct as well as circumstantial evidence. According to him, PW 7 - Dayanand, in his examination-in-chief,

testified to have seen the appellant assaulted Lalita with axe. According to him, there was long gap between recording of his examination-in-chief and cross-examination. This interregnum period appears to have been utilised by the defence to win him over. According to learned APP, the statement under Section 164 of the Code of Criminal Procedure of PW 7 – Dayanand is consistent with his examination-in-chief. According to him, when the offence took place at the matrimonial home shared by the appellant along with his wife (deceased), it is for him to explain the circumstances in which the incident took place. He relied on the judgment of Apex Court in the case of Anees Vs. State Govt. of NCT, AIR Online 2024 SC 293.

8. Learned APP would further submit that on the given day, by 04.00 p.m., the appellant met his father-in-law (PW 13 - Raosaheb). The same suggests that the appellant was very much there in the village and his residence as well. Turning to the circumstantial evidence, learned APP would submit that pursuant to the disclosure statement made by the appellant, an axe came to be seized. The C.A. report indicates that it was stained with human blood. Since the disclosure statement and seizure took place a few days after the arrest of the appellant, it was but natural that the blood-group of the blood stains thereon, could not be ascertained.

According to him, the clothes on the person of the appellant were found to be blood-stained. This circumstance go a long way to infer the appellant to have committed murder of his wife. He took us through the evidence of the informant and the parents of the deceased, to submit that after five years of marriage, the appellant got addicted. He would suspect fidelity of the deceased. The appellant had every motive to commit murder of his wife Lalita. He has come with a false case of dacoity at home, which gives additional link to infer his involvement in the crime. Learned APP relied on the judgment also in the case of Rameshwar Vs. State of Rajasthan, 1952 AIR 54, to ultimately urge for dismissal of the appeal.

9. Considered the submissions advanced. Perused the entire evidence on record. Let us appreciate the same.

10. Admittedly, the appellant had married Lalita (deceased) ten years before September, 2014. The couple was blessed with three children; two daughters and a son. The couple was said to have happy married life for initial five years. Thereafter, the appellant, allegedly, got addicted to alcohol and gambling as well. He would even said to have been suspecting character of Lalita (deceased). Same is said to be the motive to eliminate Lalita.

11. Admittedly, Lalita (deceased) met with homicidal death. The inquest panchnama (Exh.19) suggests various injuries were noticed on her person. PW 1 - Vilas is the panch to the inquest panchnama. The crime scene is house of the appellant with whom Lalita (deceased) was residing along with their three minor children. The crime scene panchnama (Exh.24) indicates blood to have spilled over the floor. Vary many articles were stained with blood. Those articles were taken charge of in the presence of the panch witness (PW 2 Gopinath). The articles seized from the crime scene were two quilts, pieces of bandage strip, shirt and pant.

12. PW 14 - Dr. Gorakhnath conducted post mortem examination on the dead body of Lalita. He noticed following injuries on her person:-

1. Single incised looking lacerated wound present over the right frontal region 9 c.m. X 1.7 c.m. in size, 7 cm above to glabella Vertical in direction, margins inverted, edges clean cut, reddish in colour, deep to the underlying skull bone showing opened communicated fracture of frontal region of skull.
2. Single incised looking, lacerated wound present over the left side of neck along with left ear showing cut laceration extending deep to the neck muscles 12 cm x 3.4 cm in size oblique upwards in direction 1.5 cm in front of left mastoid process reddish in colour, margins inverted, edges clean cut.
3. Incised looking lacerated wound present over the left forearm 3 cm x 1.2 cm in size 4 cm above to

the left wrist joint horizon in direction, reddish in colour margins inverted, edges clear cut.

4. Swelling present over the right side of the face on opening closed communicated fracture of the nasal bone present.

In his opinion, the deceased died due to *“hemorrhagic shock due to injury to vital organ brain due to assault”*. His evidence indicates that the axe seized during investigation was shown to him during his evidence. In his opinion, the injuries suffered by the deceased were possible by the assault with said axe.

13. The question is whether the appellant is author of the crime. PW 8 – Dnyaneshwar, brother of deceased Lalita, and his parents namely, Putlabai (PW 5) and Raosaheb (PW 13) were examined. Their evidence, undoubtedly, indicates that Lalita married appellant ten years before September, 2014. Admittedly, the couple was blessed with three children. Lalita was treated well for about five years. The appellant, thereafter, got addicted to alcohol and gambling. He would even suspect Lalita’s fidelity. There was even matrimonial discord. The matter had, therefore, reached Mahila Takrar Nivaran Kendra. A settlement was worked out thereat. Lalita had resumed cohabitation. The evidence of these three witnesses, however, indicate that when the incident took place, they

were at their residence, meaning thereby they were not eye-witnesses to the incident. It was PW 7 – Dayanand, who visited their residence by 8.30 p.m. on 07.09.2014 and informed them to have seen the appellant assaulted Lalita with axe. They, therefore, immediately, rushed to the house of the appellant to find Lalita was lying in a pool of blood. They along with some others reached Lalita to Civil Hospital in auto-rickshaw of Ankush (PW 9). She was declared dead before admission. Close evidence of these three witnesses would indicate that PW 7 – Dayanand, who had informed them about the incident, had even not accompanied them to the house of the appellant, hospital or even to the police station to lodge the complaint. The evidence of these three witnesses, therefore, would only be relevant to suggest that there was matrimonial discord between the appellant and Lalita (deceased) and she was being illtreated as her character was suspected. Same could be said to be the motive for the appellant to commit murder of his wife Lalita.

14. PW 7 – Dayanand was said to be an eye-witness to the incident. It is in his evidence that on the night of 07.09.2014, he had come to a Pan-stall to buy Gutka sachet. He saw quarrel between the appellant and Lalita. The appellant was armed with axe. He

claimed to have seen the appellant assaulted Lalita with axe-blows. It is further in his evidence that he was frightened and went to the house of the parents of Lalita, and informed them about the incident. It is further in his evidence that his statement was recorded by the Judicial Magistrate. He referred to said statement (Exh.62/C). True, from the examination-in-chief of this witness, he could be said to be an eye-witness to the incident. He was subjected to searching cross-examination. He could be said to be a chance witness since his residence was not in the nearby the house of the appellant. He had allegedly left his house to buy Gutka sachet from a pan-stall. A topography of the relevant area of the village was put to him, which suggests that the house of PW 7 – Dayanand and the Pan-stall, whereat he had been, were on northern side; whereas, the house of the appellant was towards southern side. It is further in his evidence that to go to his home, he was not required to pass by the house of the appellant. To top of it, he went on to state to have been called to the court by learned APP in-charge of the case. He did not receive a witness summons. The parents of deceased Lalita had also come to the court on the day on which his evidence was to be recorded. The father of the deceased and one Shamrao were with him since morning, until he entered the court-hall. It was further disclosed from his cross-examination that the deceased was his cousin. Her

father was his uncle. It has also been brought on record through his cross-examination that the house of the appellant was not visible from the Pan-stall of Sanjay Ade. The appellant's house was to the southern side of the Pan-stall. The relevant portion of his evidence is as under:-

".....It is correct to say that I was proceeded towards my house upto distance of 200 mtrs from Sanjay Adey's Pan shop. It is correct to say that there are no light in the area of Sanjay Ade's Pan shop, grocery shop of Sukhdeo and on cement road. It is correct to say that I have not visited the house of Mansing on that day. It is correct to say that on the day of alleged incident I did not meet Mansing Adey. It is correct to say that I did not witnessed the killing of wife of Mansing. It is correct to say that I have not seen Mansing while running with axe in his hand. It is correct to say that I was asked by the parents of Lalita to depose before the court that accused assaulted the victim by axe before me.

15. The evidence of PW 7 - Dayanand further indicates that he had not accompanied the parents of the deceased to the house of the appellant soon after he had allegedly seen the appellant to have assaulted Lalita. Admittedly, he even did not accompany to take Lalita to the hospital. Although he attended her funeral and the police were present there, he did not share or inform them about having seen the incident. He even admitted to have not stated to the police in his statement that he saw the appellant gave Lalita an axe blow on her head. He went on to state to have not stated to the

police to have told Raosaheb and Dnyaneshwar about the assault. He further went on to state as under:-

“..... It is correct to say that as Mansing not killed Lalita I did not mention Mansing's name in my statement before the lower Court”

He admitted that there was no quarrel between the appellant and his wife in his presence. He went on to state to have stated in his examination-in-chief only at the instance of the parents of the deceased. He went on to state to have deposed falsely before the court that the appellant assaulted his wife Lalita. The aforesaid evidence of PW 7 -Dayanand indicates him to be a witness wholly unreliable.

16. PW 6 - Ku. Anuja was examined. She was 6 years of age at the time of the incident, while she was 8 years of age when her evidence was recorded. The trial court put her certain questions to find her to have sufficient maturity and understanding to depose. The trial court, therefore, permitted the prosecution to examine her as witness. As such, the trial court found her to be competent witness. Considering her age, she was rightly not administered oath. Her evidence was recorded in 'Question and Answers' form. It is in her evidence that the appellant was treating her mother (deceased

Lalita) in good manner. She further testified that the appellant was not home at the relevant time. Further noting indicate that PW 6 – Anuja could not answer further questions. Learned APP, therefore, requested the trial court to close her evidence. In our view, learned APP appears to have erred. He ought to have asked the court to permit him to put questions which are permitted to be put in cross-examination. As such, what has been brought on record through the evidence of the minor daughter of the appellant and the deceased, is that the appellant would treat the deceased in good manner and he was not home at the relevant time.

17. The evidence of PW 5 – Putlabai and PW 13 – Raosaheb Ade would indicate that while they immediately rushed to the house of the appellant on having learnt their daughter – Lalita to have been assaulted, they met the parents of the appellant there. Same suggests that the other family members of the appellant were there either at the time of the incident or immediately thereafter. There is no shred of evidence to indicate that the appellant was home at the relevant time. True, PW 13 – Raosaheb testified to have had met the appellant in the village by 04.00 p.m. Based on such evidence, we cannot jump to the conclusion that the appellant was home at the relevant time. The burden of proof is on the prosecution. Had

there been some evidence to indicate the appellant's presence at his home, it would have been for him to explain the circumstances in which his wife met with homicidal death. Then, learned APP would have been right in relying on Section 106 of the Evidence Act.

Circumstantial Evidence:-

18. Although the evidence of the brother and the parents of the deceased indicate the appellant to have had motive to eliminate his wife as he would suspect her character, their evidence do not conclusively establish the same in view of the evidence of the daughter (PW 6 - Anuja) of the deceased.

19. On arrest of the appellant, his clothes were seized under panchnama (Exh.24/C), drawn in the presence of PW 2- Gopinath. The appellant made disclosure statement (Exh.27) in the presence of PW 3-Murlidhar, panch witness, pursuant to which the appellant led them to a particular place and took out an axe from the trunk of Babhool tree. The clothes, axe along with the articles seized from the crime scene and the clothes of the victim were carried to the F.S.L., Aurangabad, by PW 15 - Pandharinath. The C.A. reports of all these articles are on record. Those are at Exh.39/C to 41/C. It is but natural that the clothes on the person of the deceased and the quilt

and other articles seized from the crime scene bore blood stains of the blood group of the deceased which is "AB" (CA report). The C.A. report indicates the blood group of the appellant to be "O". The C.A. report of the clothes of the appellant and the axe indicate them to have bore human blood. The blood grouping of the blood found thereon could not be done. The axe seized pursuant to the disclosure statement of the appellant, therefore, could not be said to be the conclusive circumstance inferring the appellant to have axed his wife. As such, the circumstantial evidence in the nature of the C.A. report indicates the clothes on the person of the appellant and the axe seized pursuant to his disclosure statement, to have borne human blood, do not lead us to conclude the appellant to have eliminated his wife. Needless to mention, suspicion however strong cannot taken place of the proof.

20. The evidence on record indicates that the disclosure statement made by the appellant was video-recorded. The C.D. containing the video recording was seized under panchnama drawn in the presence of PW 17-Chandrashekhar. It was PW 12-Ayub, who was examined as a witness, who did video-shooting thereof. This witness, however, did not stand by the prosecution. His evidence indicates that he was not having the facility to prepare cassette. He,

therefore, went to Rahul Photo Studio, Ambajogai. One Rahul Bodke prepared the cassette and gave it to him. Said cassette was delivered by him to the police officer. As such, even the evidence of PW 12-Ayub does not further the prosecution case as regards the disclosure statement and recovery of the axe. Even, we discard his evidence. It is reiterated that since the blood stains found on the blade of the axe could not be conclusively determined to be that of the blood group of the deceased, the same could not be said to be a conclusive evidence to connect the recovery of the axe with the crime.

21. For all the aforesaid reasons, we are not in agreement with the findings recorded by the trial court. Interference with the impugned order is, therefore, warranted.

22. In the result, the appeal succeeds, Hence, the following order:-

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and consequential sentence dated 10.07.2018, passed by learned Addl. Sessions Judge, Ambajogai, Dist. Beed, in Special Case No.05 of 2015, for the offence punishable under Section 302 of Indian Penal Code, is set aside. The appellant is acquitted of the said offence.

(iii) The appellant be released forthwith, if not required in any other case.

(iv) Fine amount deposited by the appellant, if any, be refunded to him.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP