



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

CRIMINAL APPEAL NO. 189 OF 2018

Ganesh @ Raju Manikrao Panpatte
Age: 29 years, Occu.: Labour,
R/o Dharmapuri, At P. Nandkheda,
Tq. & Dist. Parbhani

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Gramin,
Dist. Parbhani

..RESPONDENT

....

Mr. A.N. Sabnis, Advocate for appellant
Ms. U.S. Bhosale, A.P.P. for respondent - State

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

RESERVED ON : 23rd JANUARY, 2024

PRONOUNCED ON : 25th JANUARY, 2024

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

1. The appellant has been convicted for having committed murder of his own daughter and the related offences. He is, therefore, before us in this appeal. The details of the offences for which he has been convicted and consequential sentences imposed, is as below :-

Section	Act	Sentence and Fine
302 r/w 34	I.P.C.	R.I. for Life, Fine of Rs.10,000/-, I.D. R.I. for three months
201 r/w 34	I.P.C.	R.I. for three years, Fine of Rs.3,000/-, I.D., R.I. for one month

193 r/w 34	I.P.C.	R1.I. for one year, Fine of Rs.1,000/-, I.D., R.I. for one month
203 r/w 34	I.P.C.	R.I. for six months, Fine of Rs.1,000/-, I.D., R.I. for one month

The substantive sentences have been directed to run concurrently.

2. The facts leading to the present appeal are as follows :-

The appellant was resident of village Takli Shivar. His parents-in-law would reside at village Nandkheda. The distance between these two villages is little over three kilometers. The appellant is blessed with three children, two sons and a daughter (deceased). The daughter was six years of age at the relevant time. She was residing at the house of her maternal grand parents for her schooling. The appellant's parents-in-law, brother-in-law (P.W.1), his wife (co-accused) would reside together. His another brother-in-law, P.W.15 - Ramchandra would reside separately, but in the neighborhood of his parents.

3. It is the case of prosecution that the appellant's parents-in-law and brother-in-law used to be away for work all day. The appellant used to visit the house of his in-laws in their absence. He developed illicit relationship with the wife of P.W.1 – Balasaheb. He visited the house of his in-laws by 04:00 p.m. on 11th September, 2015. His daughter (deceased) saw him and the co-accused in a compromising position. Both, the appellant and co-accused thought that she would disclose the same, and therefore, the

appellant first smothered her with a pillow. Since she did not die of smothering, he cut her throat with a shaving blade. The co-accused is a privy to the said crime. Both of them then bundled the dead body first in a polythene bag, then put it in a gunny bag. It is also the case of prosecution that after having realised the deceased to have been missing, the appellant was informed. A search was made for her. The appellant ultimately lodged an First Information Report (Exh.98) about kidnapping of his daughter. After two days i.e. on 13th September the appellant woke up at 05:00 in the morning to answer nature's call. He opened the door to find a gunny bag just outside the house. A hue and cry was made. Somebody informed the police. They arrived. The gunny bag was found to have contained a dead body of the daughter of the appellant. During investigation, it was found that the appellant and the co-accused had illicit relationship and while they were seen in the compromising position by the deceased, they killed her only with a view to see that their affair did not go public.

4. Section 302 of the I.P.C. and related offences came to be additionally invoked. Both, the appellant and the co-accused were arrested. The appellant made a disclosure statement pursuant to which a shaving blade came to be seized besides his trouser. Scene of offence panchanama (Exh.28) was drawn. Mortal remains of the girl was subjected to autopsy. Statements of the persons acquainted with the facts and circumstances of the case were

recorded. Upon completion of investigation, the appellant and the co-accused were proceeded against. It is to be stated hereat that the co-accused was found to be juvenile in conflict with law. She was, therefore, proceeded by filing charge-sheet before the Juvenile Justice Board, while the charge-sheet against the appellant was filed in the Court of Judicial Magistrate First Class, Parbhani. The case was committed to the Court of Session, Parbhani (trial Court). The trial Court framed the charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution examined twenty-two witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced to various terms of imprisonment as stated above.

6. Learned counsel for the appellant took us through the evidence of each and every witness examined on behalf of the prosecution. He also adverted out attention to the certified copies of deposition of certain witnesses, who were examined before the Juvenile Justice Board in prosecution against juvenile in conflict with law. According to learned counsel, it is the case based on circumstantial evidence. The motive has not been clinchingly proved. None of the circumstances relied on has been proved. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the appellant's father-in-law and brother-in-law testified that the appellant was asked not to visit their residence in their absence. Our attention has also been drawn to other witnesses from the village, who claimed to have had seen the appellant in the village on 11th September. When he was enquired by his brother-in-law whether he had been to the village, he denied the same. Pursuant to the disclosure statement made by him, the shaving blade came to be seized. P.W.16–Dr. Kazi, Medical Officer opined that the throat might have been cut with the said blade. The appellant did not have sound sleep. Same suggests his guilty conscious. According to learned A.P.P., an innocent girl lost her life at the hand of her own father and the wife of her maternal uncle. Learned A.P.P. took us through the reasons given by the trial Court in support of the impugned judgment. She ultimately urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. The case is based on circumstantial evidence. In case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, 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 an 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.”

9. Guilt of the appellant is said to have been proved on the basis of following facts :-

- (i) Motive;
- (ii) Appellant's illicit relationship with the wife of his brother-in-law;
- (iii) He visited the village on the fateful day;
- (iv) Appellant denying his visit to the house of his in-laws;
- (v) Recovery of shaving blade at his instance;

10. Admittedly, the deceased died of homicidal death. P.W.16 – Dr. Kazi conducted the postmortem examination. Postmortem report (Exh.52) indicates the deceased died of cut throat injury. The injury was such that the head was at its place only with support of neck's skin.

11. The question is whether the appellant is the author of the offence of murder of his daughter. Admittedly, the deceased would reside at the house of in-laws of the appellant for her schooling. She was just six years of age at the relevant time. A year before the incident, brother-in-law of the appellant got married with the co-accused. The appellant is said to have developed illicit relationship with her. He used to visit her in the absence of his in-laws. It is in the evidence of the appellant's father-in-law P.W.11 - Laxman and another brother-in-law P.W.15 - Ramchandra that they had asked the appellant not to visit their residence in their absence. The same at the most suggests that they were suspecting the appellant to have illicit relationship with the co-accused.

12. Admittedly, the deceased went missing on 11th September. The appellant was informed the same. It is he, who lodged the F.I.R. (Exh.98) alleging an unknown person to have kidnapped his daughter. A crime was, therefore, registered. P.W.5 - Taiwade, PSI visited the house of in-laws of the appellant. He drew panchanama of the house (Exh.28). During the said panchanama nothing incriminating was noticed. As per the prosecution case itself, services of the dog squad were availed. A sniffer dog was brought to the house of the in-laws of the appellant. The appellant was present. The sniffer dog did not bark at him. Be that as it may.

13. P.W.2 – Sushil was the employer of the appellant. It is in his evidence that the appellant had informed him about his daughter to have gone missing. His evidence does not further the prosecution case. Evidence of P.W.1 – Balasaheb suggests that his wife (co-accused) used to be home alone to look after the deceased, since he and his parents used to be away for work entire day.

14. The appellant is said to have visited the house of his in-laws by 04:00 p.m. on 11th September. P.W.7 – Rohidas and P.W.8 – Anant, villagers testified to have had seen the appellant in the village in the evening of 11th September. However, there is no evidence to indicate the appellant to have visited the house of his in-laws. There is some evidence to indicate that the appellant used to visit Nandkheda for purchase of grocery or other articles. His visit to the village of his in-laws may, therefore, not be a clinching evidence to infer him to have had visited the house of his in-laws. Even if we go further and presume that the appellant had visited the house of his in-laws, there is nothing unusual for him to pay such visit since it was the house of his in-laws wherein his daughter (deceased) was staying away from him for her schooling. There is no evidence to indicate the appellant to have extra-marital relationship with the wife of P.W.1 – Balasaheb. There is also nothing to suggest his daughter (deceased) had seen them in compromising position. P.W.1 – Balasaheb has categorically stated that the appellant would

visit his house to meet his daughter during evening time that too after informing his (appellant) wife. True, the other brother, P.W.15 - Ramchandra testified that the appellant was asked not to visit their residence in absence of any male member therein. The same at the most may suggest them to have suspected the intimate relationship between the appellant and the co-accused.

15. It was the appellant, who had lodged the F.I.R. (Exh.98) alleging his daughter to have been kidnapped. Post registration of the said crime, scene of offence panchanama (Exh.28) was drawn. Nothing incriminating was noticed at the house of in-laws of the appellant. After two days again, when Section 302 of the I.P.C. came to be invoked, another scene of offence panchanama was drawn. A blood stained cap (*Gandhi Topi*) was seized. It is surprising as to how when nothing incriminating could be noticed just two days before, a blood stained cap (*Gandhi Topi*) was found in the very house. Needless to mention, according to prosecution the murder was committed on the day i.e. on 11th September, on which the appellant had lodged the F.I.R.

16. The prosecution has built up its case based on what was disclosed during interrogation by the co-accused (juvenile in conflict with law). Same is inadmissible in evidence. The appellant made a disclosure statement (Exh.65) in the presence of P.W.17 - Gulab (panch) and P.W.22 - Chincholkar, Investigating Officer, pursuant to which a shaving blade came to

be seized from the house of in-laws of the appellant. P.W.10 - Tanaji, a grocer in the village testified to have had sold a shaving blade to the appellant. He, however did not recollect when it was in fact sold. If we consider his testimony, it was sold about two days before the daughter went missing. That time the appellant had no reason to purchase the shaving blade for using the same in commission of crime in question. The C.A. report (Exh.57) suggests the blade had no stain of blood. The recovery of shaving blade, therefore, would not be relevant under Section 27 of the Evidence Act.

17. It was nothing unusual for the appellant to stay for next two days in the house of his in-laws. It is on the early morning of the second day of the daughter went missing, he woke up for answering nature's call. He opened up the door to go out. He found a gunny bag outside the house. When there was nothing suspicious noticed during two days preceding the finding of gunny bag containing the dead body, the gunny bag must have been placed at the place where it was found just sometime before the appellant got up in the early morning of 13th September. True, it is in the evidence of P.W.1 – Balasaheb that the appellant did not have a sound sleep. He was awake for long during the night. The same may suggest either his guilty conscious or due to the fact that his own daughter went missing. Although P.W.12 - Digambar testified to have had given a jute bag to the co-accused and he identified the same jute bag wherein the dead body contained, such piece of

evidence may be against co-accused, who is not before us. The very witness testified that when he gave the jute bag, children were playing in front of the house of the co-accused. According to him, an old lady was also sitting outside the said house. It is reiterated that the prosecution has built up the case based on what was disclosed during interrogation of the co-accused. Same is inadmissible in law. The facts/circumstances on the basis of which guilt of the appellant was sought to be proved have not been proved up to the hilt. In short, none of the facts has been conclusively established. Chain of circumstances is not complete to hold the appellant guilty of the offences in question. In our view, based on such quality of evidence, the trial Court ought not to have convicted the appellant. Moreover, the trial Court has convicted the appellant for offence punishable under Section 193 of the I.P.C. The trial Court appears to have ignored provision of Section 195(1)(b)(i) of the Code of Criminal Procedure, where there is interdict for the Court to take cognisance of the offence punishable under this section except on the complaint made in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate.

18. For all the aforesaid reasons, interference with the impugned order of conviction and consequential sentence is warranted. In the result, we pass the following order :-

I) Criminal appeal is allowed.

- II) Order dated 24th April, 2017 passed by Sessions Court, Parbhani in Sessions Trial No. 152 of 2015 thereby convicting the appellant for the offences punishable under Sections 302, 201, 193, 203 r/w 34 of the Indian Penal Code and sentencing therefor is hereby set aside.
- (III) The appellant stands acquitted.
- (IV) The appellant shall be set at liberty forthwith, if not required in any other case.
- (V) Fine amount paid, if any, be repaid to him.
- (VI) Fees of Mr. A.N. Sabnis, learned counsel appointed to represent the appellant, is quantified to Rs.15,000/- (Rupees Fifteen Thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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