



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 828 OF 2019

Vinayak Maroti Dhawale
Age: 35 years, Occu.: Agri.,
R/o Sawargaon, Tq. Jintur,
Dist. Parbhani

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer,
Police Station Charthana,
Dist. Parbhani

..RESPONDENT

....

Mr. A.S. Kulkarni, Advocate for appellant (appointed through Legal Aid)
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 : 29th JANUARY, 2024
PRONOUNCED ON : 05th FEBRUARY, 2024

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

1. The appellant has been convicted for murder of his wife vide order dated 05th May, 2018 passed by Sessions Judge, Parbhani in Sessions Case No. 153 of 2015, and therefore, sentenced to suffer life imprisonment and fine with default stipulation. He is, therefore, before us in this appeal.

2. Facts giving rise to the present appeal are as follows :-

The appellant had married Kavera (deceased) fifteen years before the incident i.e. April 2015. The couple was blessed with two children, son –

Ganesh (P.W.4) and daughter – Shivkanya. All of them were residing at village Sawargaon. It is the case of the prosecution that deceased – Kavera was religious. Programs of *Bhajans* and *Haripath* (religious discourse) used to be held at her residence. The deceased used to go on pilgrimage alongwith her fellows. The appellant did not like the same. He was not religious. On 22nd April, 2015 there was *Bhajan* and *Haripath* at the house of the appellant. After the program was over, the family members took dinner and then went to sleep. It is the case of the prosecution that there was quarrel between the appellant and the deceased. The appellant assaulted the deceased on her head with a grinding stone. The deceased succumbed thereby. The appellant, taking his son Ganesh (P.W.3), went to the house of his brother – Baliram (P.W.5).

3. It is also the case of prosecution that the appellant informed his brother-in-law, P.W.8 - Tulshiram on phone that he had quarrel with Kavera, and therefore, he killed her. Tulshiram, in turn, informed the same to his brother, P.W.1 – Prabhakar and asked him to go to the house of the appellant. P.W.1 – Prabhakar accordingly went to village Sawargaon. He noticed his sister – Kavera had died of head injury. He, therefore, with the assistance of local persons, took the dead body to the hospital. He, thereafter lodged the F.I.R. (Exh.12) against the appellant.

4. A crime, vide C.R. No. 33 of 2015 was registered. The appellant was arrested. Scene of offence panchanama (Exh.29) was drawn. Mortal remains of Kavera were subjected to postmortem. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge-sheet came to be filed. The case was committed to the Court of Session, Parbhani ('trial Court') for trial in accordance with law.

5. The trial Court framed charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication. The prosecution examined ten witnesses and produced in evidence certain documents, to bring home the charge. The trial Court, on appreciation of evidence, convicted the appellant.

6. Learned counsel for the appellant would submit that the F.I.R. has been lodged on the basis of suspicion. The appellant alongwith his son, P.W.4 – Ganesh was not home on the fateful night. The house, wherein the appellant would reside alongwith his family members, was a big one. There was a square open to sky. A stranger could easily have access to the house. The deceased died at the very place. The crime must have been committed by someone else. According to learned counsel, evidence of P.W.4 – Ganesh is unreliable. He was under influence of his maternal uncle (P.W.1 – Prabhakar). According to learned counsel, based on such quality of evidence,

the trial Court ought not to have convicted the appellant. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the case is based on eye witness account. P.W.4 – Ganesh, son of the appellant, had seen him hit his mother with a grinding stone. A twelve year old son has no reason to testify against his own father. There is also evidence to indicate that the deceased was very religious. The programs of *Bhajan* and *Haripath* used to take place at her residence. She even used to go on pilgrimage with her fellows. The appellant disliked the same. This was the motive for the appellant to eliminate his wife. According to learned A.P.P., the deceased was at her matrimonial house. The appellant did not offer any reasonable explanation to make out his innocence. According to learned A.P.P., no interference with the impugned order is warranted. She, therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Let us advert to the evidence relevant for deciding the present appeal.

9. The appellant had married Kavera (deceased) about fifteen years before the fateful day. The couple was blessed with two children, son – Ganesh (P.W.4) and daughter – Shivkanya. The house, wherein they would

reside, was a big one. There is a square open to the sky at the middle of the house. Deceased – Kavera was religious. The appellant was said to be atheist. Admittedly, programs of *Bhajans* and *Haripaths* used to take place at the house of the appellant at the instance of the deceased. The appellant did not like the same.

10. On the intervening night of 22nd and 23rd April, 2015, Kavera met with homicidal death at her residence. Postmortem report (Exh.14) suggests she died of cardio respiratory arrest due to hemorrhagic shock due to head injury. The scene of offence panchanama (Exh.29) indicates that the deceased died at the place which was open to sky in the house of the appellant.

11. The question is whether the appellant is guilty of uxoricide. P.W.1 – Prabhakar, brother-in-law of the appellant (brother of the deceased) lodged the F.I.R. (Exh.12). It is in his evidence that his brother, P.W.8 – Tulshiram informed one Babasaheb Niwalkar that there was a quarrel at the house of the appellant and he asked the informant to visit the appellant's house to see what the matter was. P.W.1 – Prabhakar, therefore, went to the house of the appellant to find his sister dead. She had suffered head injury. A blood stained grinding stone was lying by her side. He thereafter lodged the F.I.R. (Exh.12) against the appellant.

12. P.W.1 – Prabhakar is admittedly not an eye witness. His evidence is only relevant for setting the criminal law in motion by lodging the F.I.R. His response to the questions put to him during his cross-examination runs counter to the prosecution case. It is in his evidence that relationship between the appellant and his wife (deceased) was good i.e. the deceased never made any complaint against the appellant to him or any other relative. Her house was a big one having hall and open space. She was religious in nature and would like to do the religious work. She would like to sing *Bhajans* and read *Haripath* and even on many occasions arranged said programs at her residence. The said program would start at about 06:00 p.m. to 07:00 p.m. Same would last only for two hours, but not till midnight. Several people used to attend those programs. P.W.1 – Prabhakar himself had attended those programs many a time. The deceased used to go on pilgrimage alongwith the other peoples, who used to join *Bhajan* at her residence. He further testified that the appellant never participated in the religious activities of the deceased, though present in the house. The appellant owns an agricultural land adjacent to the village.

It is further in his evidence that on the night of the incident, the appellant and his children were not at their home. They went to the house of P.W.5 – Baliram for sleeping. There was *Bhajan* and *Haripath* at the residence of the deceased on the fateful night. When he reached at the house of the appellant, P.W.5 – Baliram and one Dnyanoba (brother of the

appellant) were present there. They had latched the door of the said house from outside. When he entered the house, he found dead body of the deceased lying in open space of the house. The said house was situated in thickly populated area. There were two doors towards South side and one door towards West side of the the house of the appellant. He had not verified situation of other two doors. He testified that from the adjacent houses anybody can enter in the open space of the said house. Thereafter they went to his village, Mola. There they decided to lodge report against the appellant and also what type of case to be filed.

13. P.W.3 – Amol is a Police Constable, who carried the muddemal articles to the Forensic Science Laboratory, Aurangabad. His evidence is of not much importance. P.W.4 – Ganesh, son of the appellant, testified that he was in sixth standard at the relevant time. On the day of the incident, there was *Bhajan* and *Haripath* at the house by 06:00 p.m. The same was over by 08:00 p.m. His sister – Shivkanya was away at their uncle's house. He alongwith his parents took dinner by little past 08:00 p.m. He then went to sleep in the house. It is further in his evidence that there was quarrel between his parents (appellant and the deceased). He did not know reason behind the quarrel. On the fateful night he heard noise of quarrel. He saw the appellant assaulted his mother. Then the appellant took him to his uncle's house (P.W.5 – Baliram).

14. From examination-in-chief of this witness, it may appear the offence to have been proved. His response to the questions put to him in his cross-examination, however lead us to held him to be not reliable witness. It is in his evidence that after the dinner there was happy atmosphere in the house. He was confronted with his police statement wherein it has been stated that he alongwith the appellant went to sleep outside their house. The same suggests that he was not in the house while the incident took place. It is further in his evidence that his maternal uncle, P.W.1 – Prabhakar took him and his sister to his house at Mola after the incident. He had accompanied his maternal uncle to the Court on the day his evidence was recorded. P.W.1 – Prabhakar narrated him what was deposed to by him in the Court. P.W.4 – Ganesh went on to state that P.W.1 – Prabhakar had asked him to depose consistent with his (P.W.1) evidence. It is further in his evidence that P.W.1 – Prabhakar did not allow him and his sister to meet their father (appellant) for many days post incident. His statement was recorded by police while he was at the house of his maternal uncle, P.W.1 – Prabhakar. Both, the maternal uncle and his wife were present during recording of his statement. He was confronted with his police statement. His statement is silent to record that there was quarrel between the appellant and the deceased for two-three days immediately before the fateful day. It has further been recorded in his statement to the police that when he woke up on the

following day, he found himself to be at the house of his uncle, P.W.5 – Baliram.

15. Close scrutiny of the evidence of P.W.4 – Ganesh indicates that he was under influence of his maternal uncle, P.W.1 – Prabhakar. He was sleeping outside his house alongwith the appellant while the incident took place in the house. His evidence before the Court appears to have been influenced by P.W.1 – Prabhakar. We, therefore, find evidence of P.W.4 – Ganesh to be not fit to act upon.

16. P.W.5 – Baliram, brother of the appellant did not stand by prosecution. Same is the case of P.W.6 – Dhondiba, appellant's neighbour. P.W.7 – Dyaneshwar was a witness to the scene of offence panchanama (Exh.29).

17. P.W.8 – Tulshiram, brother-in-law of the appellant testified that the appellant had informed him on phone to have killed his wife. He, therefore, called one Balaji, resident of Sawargaon to inform the same to his brother, P.W.1 – Prabhakar. His evidence indicates the appellant to have made him extra judicial confession. It needs no mention that the extra judicial confession is a weak piece of evidence. Had the appellant really made the same to P.W.8 – Tulshiram, he (P.W.8) would have immediately

rushed to the house of his sister. P.W.1 – Prabhakar’s evidence indicates that P.W.8 – Tulshiram had only asked one Balaji to inform him that there was quarrel at the house of the appellant and he should go there to find what the matter was. Investigating Officer did not take pain to place on record CDR in relation to the so called phone calls between the appellant and P.W.8 – Tulshiram during which the appellant said to have made extra judicial confession. P.W.8 – Tulshiram has further testified that he was asking the appellant to transfer his property in the name of his (appellant’s) children. The appellant did not listen. P.W.8 – Tulshiram, being brother of deceased – Kavera, is presumed to have every reason to give evidence against the appellant. For want of CDR and the fact that had the appellant related him to have killed his (appellant’s) wife, he would immediately have rushed to the house of the appellant to see what the matter was. Furthermore, he had asked his brother, P.W.1 – Prabhakar to have learnt that there was quarrel between the appellant and his wife (deceased) and he shall go there to see what the matter was.

18. In short, P.W.1 – Prabhakar (informant) was not an eye witness to the incident. His evidence in cross-examination runs counter to the prosecution case. P.W.4 – Ganesh’s evidence found to have been influenced by his maternal uncle, P.W.1 – Prabhakar. Although the deceased met with homicidal death at her matrimonial home, there is nothing to suggest the

appellant to have been in her company sometime before she met with homicidal death. There is evidence to indicate that the appellant alongwith his son, P.W.4 – Ganesh were sleeping outside their house. The place whereat the incident took place was accessible to anyone from outside. All in all, the evidence on record falls short to bring home the charge beyond reasonable doubt. The trial Court ought not to have convicted the appellant relying on such kind of evidence. Interference with the impugned order of conviction is, therefore, warranted. In the result, we pass the following order:-

- I) Criminal appeal is allowed.
- II) Order dated 05th May, 2018 passed by Sessions Judge, Parbhani in Sessions Case No. 153 of 2015 thereby convicting the appellant for the offence punishable under Section 302 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.S. Kulkarni, learned counsel appointed through Legal Aid to represent the appellant, is quantified to Rs.12,000/- (Rupees Twelve Thousand).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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