



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

**CRIMINAL APPEAL NO.501 OF 2022 WITH
CRIMINAL APPLICATION NO.2461 OF 2021**

Vilas Sarjerao Ghodake,
Age 38 years, Occu. Agriculturist,
R/o Ektuni, Tq. Paithan,
District Aurangabad

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station, Pachod
Tq. Paithan, Dist. Ahmednagar
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mrs. Ranjana D. Reddy, Advocate for appellant
Mr. B.B. Bhise, A.P.P. for respondent – State
.....

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

DATE : 25th April, 2024.

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

The challenge in this appeal is to a judgment and order dated 7/2/2019, passed by learned Additional Sessions Judge-8, Aurangabad (Trial Court) in Sessions Case, No.189/2015. Vide impugned judgment and order, the

appellant has been convicted for offence punishable under Sections 302 and 323 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life and simple imprisonment for 6 months respectively, with a fine of Rs.50,000/- with default stipulation.

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

P.W.1 Subhadrabai (mother of appellant) has lodged the First Information Report (F.I.R.) dated 27/3/2015 against the appellant. The informant has two sons, Dnyaneshwar and Vilas (appellant herein). In short the case of the prosecution is that, Dnyaneshwar along with his wife and children would reside separately at village Ektuni, Taluka Paithan, District Aurangabad. The informant would reside with Dnyaneshwar. Adjoining the house of Dnyaneshwar, the appellant would reside along with his wife Renuka (deceased) and their two minor children – Satyawati and Ketan. Appellant along with his wife and children had shifted his residence at Sailana Baba for curing his some ailments. Renuka along with her two children returned to her parent's house since Ketan was not feeling well 15 days before the incident. During that period, the appellant

had once visited village Ektuni. For Gudi Padva festival, Renuka (deceased) along with her both the children had come to Ektuni. The informant was in the company of Renuka at Renuka's residence since Vilas was not at home. In the midnight of 27th March, the appellant knocked on the door of the house. Renuka opened it. The appellant strangled Renuka with a rope, to death. The informant had intervened to rescue Renuka. The appellant bitten at the chin of the informant. The children woke up on hearing commotion. The informant rushed to the house of Village Sarpanch and thereafter at the house of Sarpanch Rewannath Bhanuse. His son Pravin was home. Pravin joined the informant to his residence to find Renuka dead. He, therefore, contacted the concerned Police Station. The police arrived.

3. Mortal remains of Renuka was shifted to Civil Hospital and inquest was conducted. Her dead body was also subjected to autopsy. Scene of offence panchanama was drawn. Appellant was arrested. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet before the learned Judicial Magistrate, First Class, Paithan. The learned

Magistrate committed the case to the Court of Sessions at Aurangabad. The case, in turn, came to be assigned to the Trial Court for trial in accordance with law.

4. The Trial Court framed the Charge (Exh.5) for offence under Sections 302 and 324 of the Indian Penal Code. The appellant pleaded not guilty. His defence is of false implication.

5. To establish the charge, the prosecution examined 12 witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the Trial Court convicted the appellant and consequently sentenced as stated above.

6. Heard. Learned counsel appointed to represent the appellant would submit that, the appellant was not home. It was dead of night. The informant did not stand by the prosecution. Satyawati was a child of about 6 years at the relevant time. The child witness was prone to tutoring. She was residing with her maternal grand-parents. She appeared to have been influenced by the in-laws of the appellant to give evidence against the appellant. Learned counsel relied on the

judgment of the Apex Court in case of **Pradeep Vs. State of Haryana (Laws (SC) 2023 7 19)** to submit that the Trial Court appears to have not taken precaution to put certain questions to child witness to ascertain whether the child was a competent witness. Our attention was specifically drawn to paragraph No.8 of the judgment, where it has been observed :-

“8. It is a well settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of a tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.”

7. The learned counsel would further submit that, there is inconsistency between the evidence of the child witness and medical evidence. According to her, there was a ligature mark upward the neck portion. The same belies the evidence of the child witness that the appellant sat on the person of the deceased and strangled her with a rope after the rope to have been encircled around her neck with four rounds. She would further submit that, the child witness was examined three years

after the incident. The informant in fact was residing along with her another son Dnyaneshwar. She even did not support the prosecution. According to the learned counsel, relying on the sole testimony of a child witness, the Trial Court ought not to have convicted the appellant. She, therefore, urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that, the informant, being mother of the appellant, did not stand by the prosecution only in respect of certain matters. Her evidence in examination-in-chief has been corroborated by the evidence of Pravin (P.W.10) and the child witness. The appellant did not dispute his wife to have met with homicidal death on the night of 17th March. It was only suggested that someone else had entered the house and strangled his wife. The learned A.P.P. reiterated the reasons given by the Trial Court and ultimately submitted for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well. Let us advert to the evidence relied on and necessary for deciding this appeal.

10. Deceased Renuka was the third wife of the appellant. The appellant's first wife died mysteriously. He was even arrested in connection therewith. What has happened thereafter is not known. His second wife committed suicide at her parent's house. The reasons are unknown. The appellant thereafter married Renuka. The couple was blessed with two children, Satyawati (minor witness) and Ketan.

11. It is not in dispute that, the appellant has a brother by name Dnyaneshwar. Both, the appellant and Dnyaneshwar would reside in the neighbourhood of each other along with their respective family members. The informant, mother of appellant, would reside at the house of Dnyaneshwar.

12. The informant was P.W.1. It is in her evidence that, the appellant was adamant and of dominating nature. About two months before the incident, the appellant along with his wife and two children had shifted to Sailani Baba. Renuka (deceased) along with her son Ketan had returned to her parent's house as Ketan was not feeling well. Thereafter the appellant had once visited village Ektuni whereat his residence was. The evidence of the informant further indicates that, Renuka (deceased) along with her both the children returned to

the house at Ektuni a day before Gudi Padva festival. Her evidence further indicates that, since the appellant was not home, she went to the house of appellant to sleep overnight as a support for Renuka and her two children. It is further in her evidence that, the incident took place prior to two to 2 – 2 ¼ years. It was the month of Chaitra and Thursday. She along with Renuka and her two children were asleep in the house of Vilas. Somebody knocked the door in the midnight. Renuka woke up and enquired as to who was there. The said person told he was Vilas. Renuka opened the door. Vilas caught hold Renuka and fell on their person. Children also woke up. P.W.1 Sbhadrabai tried to interfere and separate Renuka, but Vilas bitten on her left chin. P.W.1 Subhadrabai then ran to the house of Sarpanch Rewannath Bhanuse and narrated the incident to his son Pravin and returned to her house with Pravin on his vehicle. Pravin told her to see whether Renuka was alive. P.W.1 Subhadrabai had seen a white colour rope around her neck. Vilas was not there at that time. Children were crying. Renuka was dead. Police Patil Narayan Bankar and Bhagwan Gore reached on the spot as they were informed by Pravin. Police Patil then informed the police. Police reached on the spot. P.W.1 Subhadrabai then went to Police Station, Pachod and lodged report.

13. Since the informant did not support the prosecution, only on certain aspects of the matter the learned A.P.P. cross-examined her. She denied the appellant to have had come to the house on the night with a white rope and strangled Renuka therewith. Her attention was, therefore, drawn to her such statement appearing in the F.I.R. (Exh.21). Then she was confronted with the matter portion marked "B" appearing in the F.I.R. (Exh.21). She claimed ignorance about Renuka to have been inimical with some persons in the village. She denied to have not been supporting the prosecution since the appellant was her son.

14. The informant was also subjected to a searching cross-examination by defence Advocate. It has been brought on record that, Renuka had given hand loans to various persons in the village. On account of repayment of such amounts, many of the villagers had strained relations with her. it is further in her evidence that Vilas had left the village about 4 days before the incident. He was informed of the incident by the relations. She was categorical to state that appellant Vilas was out of village on the night on which the incident took place. She went on to state that there was no electricity on the given

night. She, therefore, could not identify the person who entered the house and committed the act. According to her, the culprit was stout (fat) while the appellant is slim. It is further in her evidence that the police did not enquire with her. Police simply obtained her thumb impression on a written report.

15. From the suggestions given to the informant that some unknown person had entered her house on the given night and killed Renuka, goes a long way to suggest the defence to have admitted Renuka to have met with homicidal death.

16. P.W.5 Dr. Sachin conducted autopsy on the mortal remains of Renuka. He noticed 6 surface injuries on her person.

- 1) Four continuous rounds of pressure abrasion bands, placed one above the other over the neck present with an imprint of the rope design. At the level of thyroid cartilage and above and below it of total breadth 4 cm., running horizontally on both sides towards the nape of neck. Completely encircling the neck and corresponding to the ligature material parchmented reddish brown.
- 2) Horizontal rows of multiple pinhead sized Clear fluid filled blisters present in between adjacent rounds of abrasions. Measurement of neck and abrasions marks on the neck as follows:-

Neck circumference is 32 cm., length of ligature mark is 32 cm., and is placed at the distance of 5 cm., from chin distance from supra sternal notch is 6 cm., distance from right mastoid is 4.5 cm., Distance from left mastoid is 4.5 cm., and maximum width of ligature is 4cm. The width correspondence to combine breadth of the ligature material is striations imprint of ligature material correspondence with the striation of the ligature material.

- 3) Abrasion of size 1 cm. x 1 cm., over midline of submental region reddish.
- 4) Abrasion of size 0.5 cm. x 0.5 cm., over right sub Mandibular region placed 2.5 cm., from the midline, reddish.
- 5) Abrasion of size 2.5 cm. x 1 cm., over inferior side of right side of mandible, reddish.
- 6) Abrasion of size 1 cm. x 0.5 cm., over left popliteal reddish.

All the injuries were ante mortem.

On internal examination in head, there were two injuries under scalp contusion of size 11 cm. x 9cm. Over right high parietal extending to right parietal eminence, blackish brown.

Numerous pinhead size petechiae present over the under scalp reddish in colour.

The brain matter was congested. There were

numerous petechiae present in white manner.

In thorax there was no injury to chest wall. On neck dissection, a horizontal band of dry white glistening subcutaneous tissue present under the ligature mark. There was evidence of tissue conjunction present above and below ligature mark. Multiple contusion of sizes varying from 2 cm. x 2 cm. to 1 cm. x 1 cm. seen in strap muscles of both sides of neck, reddish in colour. On cut section blood infiltrations present. Congestion of epiglottis present with sub-mucosal haemorrhage present in lumen of pharynx and larynx and trachea reddish. Hyoid bone was intact lymph nodes about ligature mark are congested. Both lungs were congested and edematous, petechial haemorrhages present were pleural surface, on cut section oozing of reddish fluid was present.

In his opinion, the cause of death of Renuka was ligature strangulation.

17. Since Renuka met with homicidal death is undisputed fact before us, the question is whether the appellant is the author of the crime. The informant (P.W.1) in her examination-in-chief had narrated the incident as it took place.

According to her, the appellant came home at midnight. He strangled his wife Renuka. When she intervened to save Renuka, the appellant bitten at her chin. True, the informant in her cross-examination gave in to all the questions put in the defence of the appellant. She too did not support to certain questions put to her in her examination-in-chief. Her evidence, however, does not become altogether unreliable.

18. P.W.9 Sampat was a Police Sub-Inspector attached to Pachod Police Station. His evidence indicates that the informant had come to the Police Station and lodged the report (Exh.21). his evidence indicates that, he recorded the contents of the F.I.R. as narrated by the informant (P.W.1).

19. The informant's evidence indicates that, while the appellant was engaged in strangulating his wife Renuka, his children had woken up. To save Renuka, she rushed to the house of the Village Sarpanch. She met P.W.10 Pravin, son of the Sarpanch. Pravin's evidence indicates that he had accompanied the informant to the appellant's house to find Renuka to have breathed her last. She was strangled with a rope.

20. True, this witness admitted to have had not seen the appellant at the given time, or even during three months next before the incident.

21. The evidence of P.W.9 Sampat indicates that, the informant had been to the Police Station to lodge the report against her own son, appellant. He recorded the F.I.R. as narrated by her. Some of the evidence of the informant in her examination-in-chief gets reinforced by the evidence of P.W.10 Pravin, who had accompanied her on her request to the appellant's house. He found Renuka to have been strangled and was no more. The informant's evidence in her examination-in-chief that while she had intervened to save Renuka, the appellant bitten her chin gets reinforced by the evidence of P.W.6 Dr. Santosh. His evidence indicates that he was Medical Officer at Rural Hospital, Pachod. The informant was referred for medical treatment. He examined her to find contusion on her chin left side, of the size 2 x 2 cm. oval in shape. According to her, the injury was caused within 24 hours. He accordingly issued MLC (Exh.67).

22. Then we have evidence of P.W.4 Satyawati, who was 9 years of age while her evidence was recorded. The Trial

Court before examining her as a witness, made the following endorsement.

“The witness is minor. To verify whether she understand and knows the meaning of oath, I put some questions to her. She is oriented to time and place. After satisfying myself that witness is able to understand the meaning of oath, I am going to record her evidence. However, as she is below 12 years, oath is not administered to her.”

23. True, P.W.4 Satyawati was a child witness. She was examined about 3 years after the incident. The same suggests that she was around 6 years of age while the incident took place. It is also true that, what question the Trial Court did put to the child witness to ascertain her competency as a witness is not before us. What has been observed in the judgment of the Apex Court in case of Pradeep (supra), relied on by the learned counsel for the appellant is as follows :

“7. We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (P.W.10. Under Sec. 118 of the Evidence Act, 1872 (for short, “the Evidence Act”), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, Sec. 4 of the Oaths Act, 1969 (for short “Oaths Act”) is relevant.

Sec. 4 reads thus :

“4. Oaths or affirmations to be made by witnesses, interpreters and jurors. - (1) Oaths or affirmations shall be made by the following persons, namely :-

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors :

Provided that where the witness is a child under twelve years of age and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this sec. and the provisions of Sec. 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2)”

Under the proviso to sub-Sec. (1) of Sec. 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of P.W.1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore the proviso to Sec. 4 of the Oaths Act will not apply in this case. However, in view of the requirement of

Sec. 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.”

24. On the facts of the case before the Apex Court indicates the child witness therein hid himself for 6 hours next after the incident. Then he related the incident to a milkman. The milkman was, however, not examined. In the facts and circumstances of the case therein, the evidence of a child witness was not relied on.

25. True, the principle stands that the evidence of child witness needs close scrutiny, child witness is always prone to tutoring, some corroboration needs to be there to reinforce the evidence of a child witness. In our view, in the case in hand, although the Trial Court has not made record as to how it could come to the conclusion that the child was a competent witness, we find the evidence of child witness P.W.4 Satyawati to have been consistent with the prosecution case. Her evidence is also found to be clinching and reliable one. The evidence of the informant indicates that, when the appellant entered the house,

some commotion took place and both the children (including the child witness) woke up. The evidence of P.W.4 Satyawati indicates that, two months before the incident, she along with her parents and younger brother had gone to Pahad (Sailani Baba). They stayed in a room taken on rent and thereafter she along with her mother and younger son returned to Ektuni for Gudi Padva. It is further in her evidence that, at 12.00 midnight, the appellant came home. He asked her mother to open the door. The mother (deceased) opened it. It is further in her evidence that the appellant was armed with a Charahat (rope). Her evidence further indicates that, the informant tried to catch hold of the appellant, the appellant bitten at her grandmother's chin. She (appellant's mother), therefore, ran out of the house. It is further in her evidence that, she had woken up due to the shouts of her mother. She saw her father to have strangled her mother and then left. It is further in her evidence that she had accompanied her grandmother to the house of the Sarpanch. This piece of evidence is inconsistent with the evidence of P.W.1. The reason therefor is that the evidence in the case was recorded after about 3½ years of the incident. Since witness is not expected to have a photographic memory, some inconsistency between the evidence of the witnesses bound to occur.

26. P.W.4 Satyawati @ Saloni was subjected to a searching cross-examination. She stood the ground.

27. Then we have evidence of P.W.11 Damodar. His evidence indicates that, he was staying at Sailani Baba for 2 months. People visit the said place to get relief from their afflictions. According to him, the appellant was residing in his neighbourhood with his wife. His evidence would further indicate that, there used to be frequent quarrels between the appellant and the deceased. P.W.11 Damodar used to intervene to work out the truce. His evidence further indicates that, on 10/3/2015, the appellant had assaulted his wife. He had worked out truce.

28. Rest of the witnesses examined on behalf of the prosecution are Panchas to the scene of offence panchanama, inquest panchanama and panchanama to the seizure of articles. P.W.12 Bhagwan is the investigating officer. We do not propose to refer to the evidence of these witnesses in detail.

29. The appreciation of the evidence referred to hereinabove indicates that the appellant's mother herself had lodged the F.I.R. against her son (appellant). Only with a view to save her son, she did not support the prosecution to some

extent. In her examination-in-chief, she has given the details as to how the incident took place. Her evidence gets reinforced by the evidence of P.W.10 Pravin, who had accompanied her to her residence to find Renuka to have met with homicidal death by strangulation.

30. The Medical Officer who conducted the post mortem, and the photographs on record indicate that, there were 4 rounds of rope around the neck of the deceased, one was upward the neck. The learned counsel for the appellant wanted to suggest it to be a case of suicide or at least not to believe the evidence of the child witness. When a person is strangled with rope with 4 rounds thereof, one of the rounds is bound to be upward the neck. We do not find inconsistency between the evidence of the Medical Officer and the child witness to disbelieve the prosecution case and particularly the evidence of the child witness.

31. The evidence of P.W.5 Dr. Sachin further reinforces the case of the informant that she was bitten at her chin. Admittedly, both the minor children of the appellant and the deceased were home at the relevant time. P.W.4 Satyawati was 6 years of age at the relevant time. She had no reason to speak against her own father although she was residing with

her maternal grand-parents post demise of her mother. Her evidence indicates that, it was the appellant who had come home at midnight and strangled his wife.

32. On reappreciation of the aforesaid evidence, we find the Trial Court to have rightly convicted the appellant and sentenced accordingly. We have no reason to take a different view. The appeal, therefore, fails. The appeal thus stands dismissed.

In view of dismissal of the Criminal Appeal, Criminal Application No.2461/2021 stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-