



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

CRIMINAL APPEAL NO.959 OF 2019

Mahendra s/o. Ramrao Gavai,
Age : 35 years, Occ. Private Service,
r/o. Shahunagar,
Kamlanagar, Hingoli,
Dist. Hingoli

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.Abhishek Kulkarni, Advocate for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : March 15, 2024**

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

The challenge in this appeal is to the judgment and order dated 25.01.2018, passed by learned Addl. Sessions Judge, Hingoli, in Sessions Trial No.42 of 2015, whereby the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer life imprisonment and to pay fine with default stipulation. The appellant is, therefore, before us in this appeal.

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

The appellant had married Sunita (deceased) about nine years before June, 2015. The couple was blessed with a son. They were residing together at Shahunagar, Hingoli. No one else was residing with them. It so happened that the appellant, suspecting character of Sunita (deceased), assaulted her with knife and stone-grinder. He inflicted on her person many blows thereof. Their son Samyak (PW 9) was home. He saw the incident. Moreover, on hearing uproar from the house, the neighbours gathered. They too saw that the appellant killed his wife. The appellant had bolted the door from inside. After his wife became motionless, he came out of the house, threatened the people gathered, with knife, and fled away.

3. PW 2 – Sudhakar is uncle of deceased Sunita. He was residing in the nearby. He had rushed to the house of the appellant. He witnessed the incident. He, therefore, lodged FIR (Exh.37) with Police Station, Hingoli. Crime vide C.R. no.149 of 2015, came to be registered for the offence punishable under Section 302 of Indian Penal Code. The scene of offence panchanama (Exh.45) was drawn. Inquest was conducted under panchnama (Exh.44). Mortal-remains

of the deceased Sunita was subjected to autopsy. The post mortem report is at Exh.50. The appellant was arrested. The clothes on his person and the knife came to be seized from him. The 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.

4. Learned Judicial Magistrate, First Class (Court No.1), Hingoli, committed the case to the Court of Sessions, Hingoli, for trial in accordance with law. The case was assigned to the Court of Addl. Sessions Judge, Hingoli (trial court). The trial court framed Charge (Exh.19). The appellant pleaded not guilty. His defence was of false implication. His defence was that an unknown person had come to his residence. He was insisting Sunita to accompany her. The appellant intervened. It was that person who killed Sunita.

5. To bring home the charge, the prosecution examined eleven witnesses and produced 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 for the parties.

7. Learned counsel for the appellant took us through the entire evidence on record to submit that the appellant had no reason to commit murder of his wife. A stranger committed murder. The appellant had intervened. The blame has been put on the appellant. Learned counsel, ultimately, urged for allowing the appeal.

8. Learned Addl. Public Prosecutor would, on the other hand, submit it to be an open and shut case. He took us through the evidence of the prosecution witnesses to submit the offence to have been proved beyond reasonable doubt. He, therefore, urged for dismissal of the appeal.

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

10. PW 1 - Dr. Arun was Medical Officer on duty at Civil Hospital, Hingoli on 18.07.2015. He has not been subjected to cross-examination, except one question was put to him suggesting that there were no two injuries at one place. As such, the defence admitted the evidence of PW 1 - Dr. Arun. The post mortem report prepared by him suggests the deceased to have suffered ten external injuries. All of them were ante-mortem. The injuries have been described in Column no.17 of the post mortem report.

According to him, injury nos.1 and 2 were grievous in nature. Each of the injuries was within 24 hours. Some of the injuries namely, injury nos.2, 5, 6 and 8 were possible by a hard and sharp object. In his opinion, the deceased died due to cardio-respiratory arrest due to hemorrhagic shock with perforation of trachea with poly trauma. According to him, the injuries were homicidal.

11. The appellant did not dispute his wife to have met with homicidal death. The question is whether he is author of the crime in question.

12. PW 2 – Sudhakar, cousin uncle of the deceased, was residing in the neighborhood. His evidence indicates that Sunita (deceased) was well educated. She was even about to be appointed as a Class-II Officer with Municipal Council. The appellant was suspecting her character. The appellant did not want her to do a job. There, therefore, used to be quarrels between the two. It is further in his evidence that just two days before the incident, he had settled the dispute between the two. The evidence of PW 2 further indicates that he was home by little past 07.00 p.m. on 17.06.2015. PW 9 – Samyak, son of the appellant and the deceased, came his home to inform the quarrel to have been going on between the appellant and

his wife. PW 2 - Sudhakar, therefore, along with his wife, son (PW 4 - Shubham) and others from the neighborhood, went to the house of the appellant. The entrance door was bolted from the inside. Noise of Sunita was emanating from inside. He broke the glass of window and saw that the appellant was assaulting Sunita with knife and stone-grinder. His evidence further indicates that his efforts to broke open the door went futile. After Sunita became motionless, the appellant came out of the house. He brandished knife to threaten the people gathered outside. The appellant then fled away. It is further in his evidence that he lodged the FIR (Exh.37). He referred thereto. The contents of the FIR are consistent with his evidence before the court. As such, the evidence of PW 2 gets corroborated by the averments in the FIR.

13. In his cross-examination, it was suggested to PW 2 - Sudhakar that a third person had entered the house and asked Sunita to accompany with him. The appellant tried to remove Sunita from the clutches of that person. That person attempted to give blow on the head of the appellant with stone-grinder. Sunita (deceased) intervened. The blow landed on her head. That person then got angry. The, therefore, stabbed Sunita with knife. This witness denied the suggestions.

14. PW 3 – Smt. Gangasagar, PW 4 – Shubham, son of PW 2, and PW 9 – Samyak, son of appellant and deceased, gave their evidence in one voice. The evidence of PW 9 – Samyak indicates that he had returned from Karate class at about 05.00 p.m. on the fateful day. His mother Sunita (deceased) was engaged in cooking. The appellant assaulted her with knife and then even hit her head with stone-grinder. It was he, who went to the house of PW 2, to inform about the incident.

15. The evidence of PW 3 – Gangasagar and PW 4 – Shubham indicate that they rushed to the house of the appellant along with PW 2 – Sudhakar. Their evidence is very much consistent with the evidence of PW 2 – Sudhakar. With a view to avoid repetition, we do not propose to refer to their evidence in extenso. Suffice it to say that PW 2, PW 3, PW 4 and PW 9 are the eye-witnesses to the incident.

16. Post-incident, the appellant fled. He appears to have come with a false defence. He did not name who was that third person, who had entered their house and attempted to take his wife with him. Death of Sunita took place at the matrimonial home. She was living with her husband (appellant) and their minor son PW 9 –

Samyak. Since the case had eye-witness account of not less than four witnesses, we find the appellant to have no defence at all.

17. The evidence of PW 7 - Mangal reinforces the evidence of the aforesaid witnesses. She rushed to the house of appellant on hearing of uproar. She saw that the appellant was armed with knife and then, he ran away. PW 6 - Ramesh is witness to the scene of offence panchnama (Exh.45) at the house of the appellant. He was also witness to the inquest panchnama (Exh.44). The clothes and the knife were seized from the appellant in the presence of PW 10 - Sambhaji under seizure panchnama (Exh.53).

18. From the aforesaid evidence on record, we are at one with the findings recorded by the trial court. In our view, there is no merit in the appeal. The same, therefore, fails. In the result, the appeal stands dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP