



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

CRIMINAL APPEAL NO. 872 OF 2023

Ramdas Chhotulal Bedve
Age: 43 years, Occu.: Labour,
R/o Vishranti Nagar, Mukundwadi,
Aurangabad

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector,
Mukundwadi Police Station,
Aurangabad

..RESPONDENT

....
Mr. P.B. Kadam, Advocate for appellant
Ms. V.S. Chaudhary, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ**
RESERVED ON : 13th MARCH, 2024
PRONOUNCED ON : 14th MARCH, 2024

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

1. The challenge in this appeal is to the judgment and order of conviction dated 02nd April, 2016 passed by Additional Sessions Judge, Aurangabad in Sessions Case No. 275 of 2014. Vide the impugned judgment and order, the appellant was convicted for the offence of murder punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- with default stipulation. He is, therefore, in appeal before us. He has, however been acquitted of the offence punishable under Section 498-A of the I.P.C.. State did not prefer appeal against acquittal.

2. Facts, as disclosed from the police papers (charge-sheet), are as follows :-

F.I.R. (Exh.14) was lodged by P.W.1 – Nita (informant), sister of Babita (deceased). The appellant married Babita about ten years before May 2014. The couple was blessed with two children, daughter Aruna of eight years and seven years old son Akash. The informant was residing at Mukundwadi, Aurangabad. The appellant, alongwith his wife (deceased) and children was also residing in the neighbourhood of the informant.

3. The appellant was addicted to alcohol. He would suspect fidelity of his wife. It was 22nd May, 2014. The appellant, his wife – Babita (deceased) and children took dinner at the residence of the informant. The appellant, Babita (deceased) and their son – Akash returned to their house (tin shed). Daughter – Aruna stayed with the informant.

It is also the case of prosecution that in the early morning of 23rd May, 2014, P.W.4 - Master Akash came to the house of the informant to relate her the appellant to have killed his mother and fled. The informant alongwith her mother, therefore, rushed to the house of the appellant to find Babita lying dead in the pool of blood. There were two stones and a wooden rod lying nearby the deceased. The informant, therefore, lodged the F.I.R. (Exh.14) against the appellant.

4. Crime vide C.R. No. 173 of 2014 was registered with Mukundwadi Police Station, Dist. Aurangabad for the offence punishable under Sections

302 and 498(A) of the I.P.C. Scene of offence panchanama (Exh.16) was drawn. The appellant was arrested. Mortal remains of the deceased was subjected to autopsy. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellant was proceeded against by filing the charge-sheet before the Court of J.M.F.C., Aurangabad. The case was then committed to the Court of Additional Sessions Judge, Aurangabad ('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.

6. To bring home the charge, prosecution examined ten witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in case, convicted the appellant and consequently sentenced as stated above.

7. Learned counsel for the appellant would submit that the appellant was not at home at the relevant time. Someone else committed the murder of his wife. P.W.4 – Akash was seven years of age at the relevant time. He, being a child, was prone to tutoring. He was in the custody of his maternal grand parents. Learned counsel took us through the entire evidence on record to ultimately urge for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit that it is an open and shut case. She supports the judgment impugned herein.

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

10. Deceased Babita met with homicidal death is undisputed. P.W.8 – Dr. Vijay conducted autopsy of her mortal remained. He noticed following injuries on her person :-

- “1) Stitched wound of size 4 x 0.7cm present over right pareito-temporal region, with 4 stitches intact, no fluid oozing, on opening margins-irregular, contused, suggestive of lacerated wound, reddish.
- 2) Lacerated wound of size 2 x 1.5cm x bone deep present over upper lateral 0.5cm above right supra-orbital ridge of right eyebrow, margins-irregular, reddish.
- 3) Lacerated wound of size 1.8 x 1cm x bone deep present 5cm above right supraorbital ridge of right frontal region, margins-irregular, reddish.
- 4) Lacerated wound of size 1.5 x 1.3 cm x bone deep present 0.2cm above injury no.3 of right frontal region, margins-irregular, reddish.
- 5) Lacerated would of size 1 x 0.5cm x bone deep present 9cm from midline over right temporal region, margins-irregular, reddish.
- 6) Lacerated wound of size 1 x 0.5cm x bone deep present 9.2cm from midline over right temporal region, margins-irregular reddish.

- 7) Abrasion of size 2.5 x 1cm present over right supraclavicular region, obliquely placed, reddish.
- 8) A sutured wound of size 2cm x 0.1cm is present over left medial malleolus with plastic tube in situ, 3 sutures intact. On opening margins are clean cut and well defined suggestive of surgical incised wound of venesection, reddish."

In his opinion, the deceased died of head injury. Postmortem report finds place at Exhibit 39. He was not subjected to cross-examination.

11. Now, the question is whether the appellant is the author of crime in question. The Apex Court in case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681*** observed thus -

"12. In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

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22. *Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”*

12. P.W.1 – Nita (informant) testified that her sister – Babita (deceased) had married the appellant about 10/12 years ago. The couple was blessed with two children, Aruna and Akash. The appellant was serving with a cement dealer. The appellant was addicted to alcohol. He would ill-treat Babita over suspecting her character. He was convinced many a time. An agreement entered between the appellant and the deceased Babita on 09th February, 2010 has been tendered in evidence. The appellant admits the same under Section 313 of Code of Criminal Procedure ('Cr.P.C.'). The said document indicates the appellant to have assured to be kind enough towards the deceased. He, however appears to have not kept his word. There was no change in his behaviour. It is further in her evidence that while the appellant alongwith his family members was staying at village Soyegaon, he had poured kerosene on the person of Babita. The matter was reported to the police. It was, however settled.

13. The appellant has admitted in his examination under Section 313 of the Cr.P.C. that on the fateful evening he, deceased and their two children

took dinner at the house of P.W.1 – Nita. Leaving their daughter – Aruna to stay overnight at the house of P.W.1 – Nita, they returned to their house. Same suggests the appellant, deceased and P.W.4 - Master Akash were admittedly at their residence. The appellant even admits that all of them went to sleep in the very room. Learned counsel for the appellant tried to contend discrepancy in the evidence. According to him, P.W.4 - Master Akash testified that all of them slept on the floor, while the scene of offence panchanama (Exh.16) indicates existence of a cot in the room. In our view, this discrepancy is on account of memory not serving well and the time gap between the incident and Master Akash giving his oral evidence.

14. P.W.4 - Master Akash, at the relevant time, was seven years of age. The trial Court found him to be competent witness. His evidence indicates that on the fateful night, the appellant assaulted his mother with a wooden rod and two stones. All these articles were found during scene of offence panchanama (Exh.16). His evidence further indicates the appellant then fled. He went to his grand-mother's residence and related the same. In response thereto, his maternal aunt, P.W.1 – Nita and P.W.3 - Jankabai, grand-mother rushed to the appellant's residence to find Babita lying in the pool of blood. She was dead. The appellant was nowhere to be seen. On the same lines is the evidence of P.W.6 – Shamkant, neighbour, who testified that he rushed to the house of the appellant to find Babita dead. The appellant was not at his residence.

15. As such, the aforesaid evidence undoubtedly indicate it to be an open and shut case. On the given night, the deceased was in the company of the appellant. Their minor child, Master Akash was with them. History indicates the appellant would suspect her character and even ill-treated her many a time. Babita was found dead at her matrimonial home, shared by her with the appellant and a seven years old minor child. The child is an eye witness. He has no reason to testify against his father. The appellant did not offer any explanation how did Babita met with a homicidal death. On the contrary, after committing murder, he absconded. His conduct is inconsistent with his innocence. We need not refer to rest of the evidence on record, since the one which is referred to hereinabove, undoubtedly make out the offence to have been committed by the appellant. We find the trial Court to have not committed any error in convicting the appellant for the offence of uxoricide and consequently sentencing him to life imprisonment. We are, therefore, not inclined to interfere with the order impugned herein.

16. In the result, appeal fails. Same, therefore, stands dismissed.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)