



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

CRIMINAL APPEAL NO.670 OF 2022

Modhesing @ Mangalsing s/o. Rohidas Bhosle,
Age : 41 years, Occ. Nil,
r/o. Navabpura Wadi, Tq. Gangapur,
Dist. Aurangabad,
at present at Nashik Road Central Jail, Nashik

..Appellant

Vs.

The State of Maharashtra,
Through Varangaon Police Station,
Tq. Bhusawal, Dist. Jalgaon

..Respondent

Mr.S.M.Pandit, Advocate for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : DECEMBER 09, 2024**

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

The challenge in this appeal is to the judgment and order of conviction and consequential sentence dated 26.12.2012, passed by learned Addl. Sessions Judge, Jalgaon (trial court), in a case, being Sessions Trial No.156 of 2010. The trial court convicted the appellant for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.3,000/-, with default stipulation. He has, however, been acquitted of the offence punishable under Section 201 of Indian Penal Code.

2. The facts of the prosecution case, in brief, were as follows:-

Sharda (deceased) had married the appellant about thirteen years before the fateful day, i.e. 17.08.2010. Both appellant and deceased Sharda belonged to *Paradhi* community. The couple was blessed with three daughters and three sons. After some years of marriage, the appellant got addicted to alcohol. Even, he wanted to contract second marriage. He had informed his brother-in-law, PW 1 - Bhavarlal (informant) that he would be visiting his house (house of his parents-in-law) along with Sharda, for Rakhi Pournima festival. He, however, did not visit.

3. On 17.08.2010, a police official of Warangaon Police Station informed PW 1 - Bhavarlal that dead body of a lady was found near Siddheshwar Nagar Railway Station. PW 1 - Bhavarlal therefore, rushed to the place and recognised that the deceased was none other than Sharda. Since the appellant was ill-treating Sharda, PW 1 - lodged the FIR (Exh.14), alleging the appellant to have killed Sharda.

4. A crime, vide C.R. No.73 of 2010, was registered at Warangaon Police Station, for the offence punishable under Section 302 of Indian Penal Code. A crime-scene panchnama (Exh.25) was drawn. The knife was seized from the crime-scene itself. Autopsy was conducted on the mortal remains. The appellant was arrested. Pursuant to the disclosure statement made by the appellant, his blood-stained clothes were seized. The statements of the persons acquainted with the facts and circumstances of the case were recorded. One of them were none other than the daughter of the appellant, who had witnessed the incident. Upon completion of the investigation, charge sheet was filed against the appellant.

5. The trial court framed charge (Exh.3). The appellant pleaded not guilty. His defence was of false implication. The prosecution to bring home the charge, examined seven witnesses and produced in evidence certain documents. On appreciation of the same, the trial court convicted and consequently, sentenced the appellant, as stated above.

6. Heard learned counsel for the parties. Learned counsel for the appellant would submit that PW 1 - Bhavarlal has given his mobile number in his FIR; but in the cross-examination, he testified

to have stated cell phone number of Sharad (son of PW 1). Learned counsel adverted our attention to the evidence of PW 2 - Urmila. According to him, she did not identify the knife and the clothes, although she could identify her frock. The portion marked as "A" and "B" appearing in her statement was not stated by her to the police. Since the date of her mother's death, she was staying with her maternal grand-parents. She testified the same on the say of her grand-father (PW 1 - Bhavarlal). Learned counsel then pointed out the discrepancies in the timing of the panchnamas, particularly, Exh.17. PW 3 - Ramchandra is the panch witness. According to the panch, the panchnama was done during 09.00 am. and 09.45 am., while as per the version of police official, it was drawn during 11.10 am. and 11.40 am. Same is the case about panchnamas (Exh.20) and (Exh.24). According to learned counsel, PW 4 - Yusuf did not stand by the prosecution. Learned counsel then turned to the evidence of PW 5 - Pramod, a photographer, who had no training and certificate of photography. According to this witness, his statement was recorded on 18.08.2010, while the actual date of recording his statement is 21.08.2010. Learned counsel then turned to the evidence of the Investigating Officer and submitted that he did not state the time at which he recorded the statement of the concerned witnesses including the photographer. According to learned counsel,

the prosecution evidence fell short to prove the guilt of the appellant beyond reasonable doubt. He, therefore, urged for allowing the appeal.

7. Learned APP would, on the other hand, submit that it is the open and shut case. The minor daughter of the appellant gave the eye-witness account. When she had intervened to save her mother, she too was assaulted. Our attention was adverted to her injury certificate. According to learned APP, the evidence of the injured eye witness carries much weight. She has no reason to falsely implicate her own father. Learned APP, ultimately, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well.

9. Let us advert to the evidence on record. PW 6 - Dr. Devarshi conducted autopsy on the mortal remains of deceased Sharda on 17.08.2010. He noticed following external injuries on her person:-

(i)	Cut throat injury with sharp edge
(ii)	Cutting of bilateral carotid artery (big veins to both sides of the neck) (corresponding to injury no.1)
(iii)	Cutting the trachea and esophagus (cutting of respiratory track and food vain) corresponding to injury no.1)
(iv)	Rupture of thyroid glands (corresponding to injury no.1)
(v)	Multiple abrasion over chest and upper abdomen
Internal injuries	
(i)	Fracture to hyoid bone (bone at anterior aspect of neck)(corresponding to injury no.1 in column no.17)
(ii)	Fracture of carotid cartilage (bones at interior aspect of neck)(corresponding to injury no.1 in column no.17)
(iii)	Fracture of left third and fourth ribs

PW 6 - Dr. Devarshi issued post mortem examination report (Exh.45). According to him, Sharda died of *“cut-throat injury cutting bilateral carotid artery”*.

10. Learned counsel for the appellant does not dispute Sharda to have met with homicidal death. The question is, whether the appellant is the author thereof.

11. PW 1 - Bhavarlal is the brother-in-law of the appellant. He lodged the FIR (Exh.14). He was not an eye-witness to the incident. His evidence, however, indicates that Sharda had visited his house six months before the incident and told him the appellant to have been ill-treating her under influence of alcohol. She had, therefore, stayed at his house for 8-10 days and then, went back to her matrimonial home.

12. The material witness in this case is PW 2 - Urmila. She is daughter of the appellant. She was 8 years of age when the incident took place. The trial court to ascertain her competency to depose, put certain questions. Those are on record. From the answers to those questions, the trial court found her to be a competent witness. PW 2 - Urmila testified that on the given day, she along with her parents, brothers and sisters, had been to Warangaon by railway. They were to go to Pimpalgaon, i.e. to the house of her maternal grand-father. Since the darkness descended, the appellant told them that they would stay nearby the railway station overnight and would proceed further in the morning. They, therefore, went to sleep in the nearby field of the railway station. The appellant woke up her mother to proceed. She (mother) however, woke up and again slept.

Thereupon, the appellant started stabbing her mother at her chest, stomach and even her throat as well. The trial court has recorded the demeanor of the witness. It appears that the witness was bold. She made action in what way the appellant had assaulted her mother. She intervened to save her mother. One blow of the knife fell on her hand. She further testified that the appellant took her and her brothers, leaving behind her two sisters at the dead body of her mother. When they were on the way, the appellant put his younger son Mangesh on the way (abandoned). Thereafter, on the way, the appellant and her another brother - Dharma fell in a well. She raised cries. The passers-by removed them out of well. The police vehicle came and took them all to the police station. She further testified that her grandfather came to the police station. He took her to the hospital. She, however, could not identify the knife by which the appellant had assaulted her mother.

13. PW 2 - Urmila was subjected to searching cross-examination. We did not come across anything to indicate that any helpful material has been elicited therefrom. On the contrary, her cross-examination indicates that when they got down at the railway station, it was evening. She denied that the place whereat they had slept, other persons too had slept nearby. The witness volunteered,

had really other persons been there, her mother would not have died. Same suggests intelligence of the witness. She admitted that there was no light whereat they had slept. She denied that when her mother shouted for help, she rushed towards the railway station for help. She also denied to have woke up on hearing shouts of her mother. She volunteered to state that she was already awake. She denied to have seen any unknown person to have ran away from the place.

14. PW 3 - Ramchandra is a witness to the seizure of the clothes of the deceased (Exh.18). He is also witness to the crime scene panchnama (Exh.25), wherefrom, a fair-price card of the appellant was seized. PW 4 - Yusuf is witness to the inquest panchnama (Exh.24); while, PW 5 - Pramod was a photographer. He snapped photographs of the deceased and the crime-scene. The appellant was said to have had made the disclosure statement, pursuant to which his blood-stained clothes came to seized. Even if we ignore the same, we do not find the reason to disbelieve the evidence of PW 2 - Urmila, daughter of the appellant. As already observed above, her evidence indicates that it was the appellant and none else, who committed murder of her mother. The trial court, on appreciation of the evidence in the case, has rightly convicted the

appellant. We do not find any reason to interfere with the findings recorded by the trial court.

15. In the result, the appeal fails. The same is dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP