



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

CRIMINAL APPEAL NO.1092 OF 2019

Gyandeo s/o Vishnu Ghuge
Age 31 years, Occu. Education,
R/o At Kaudgaon, Tq. Jintur,
District Parbhani
(At present Surana Nagar,
Hingoli)

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on the
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. S.J. Salunke, Advocate for appellant
Mrs. U.S. Bhosle, A.P.P. for respondent
.....

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

Date of reserving judgment : 5th March, 2024

Date of pronouncing judgment : 8th March, 2024

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 17/10/2019, passed by learned Additional Sessions Judge, Hingoli in Sessions Case No.24/2016. Vide impugned judgment and order, the appellant was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment

for life and to pay fine of Rs.10,000/-, in default to suffer R.I. for 3 months. The appellant is further convicted for the offence punishable under Section 498-A of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs.5000/-, in default to suffer R.I. for 2 months.

FACTS :-

2. The appellant married Swati (P.W.3) in February 2013. The couple is blessed with a son, Arnav. All of them would reside in a premises taken on rent at Surana Nagar, Hingoli. The appellant was unemployed. He was preparing for competitive examination. The appellant's parental house was at village Malegaon. P.W.3 Swati was the only child to her parents. Her father, Janardhan (deceased) was serving as Driver in Ground Water Survey Department.

3. It is the case of the prosecution that, there were Municipal elections on 10/1/2016. The appellant had, therefore, sent Swati (P.W.3) to Malegaon on 9th January for voting. After the elections were over, Swati (P.W.3) returned her matrimonial home, at Hingoli along with her mother (P.W.1 Babita). The mother stayed at the house of the appellant for a day. The appellant asked P.W.1 Babita i.e. mother-in-law to ask her husband to pay him Rs.5 Lakhs for construction of a house. The appellant and his wife accompanied P.W.1 Babita to see her off at the bus stand on 14th

January. That time also he asked her to pay him Rs.5 Lakhs.

4. The appellant and his wife Swati (P.W.3) returned to their house. He asked her to ensure her parents pay him Rs.5 Lakhs, lest he will eliminate their son. It was 16/1/2016, the appellant started threatening Swati (P.W.3) so as to coerce her to meet his demand. Swati (P.W.3), therefore, contacted her mother (P.W.1 Babita) on phone and asked her either to pay appellant Rs.5 lakhs or get her back to her residence. P.W.1 Babita therefore came to the house of the appellant along with her husband (deceased Janardhan) in their auto. The appellant asked his parents-in-law to meet his demand. The father-in-law (deceased Janardhan) told the appellant that his mother was not keeping well and requested him to allow to take Swati (P.W.3) with him back to his house. The appellant again made a demand of Rs.5 Lakhs. Janardhan expressed his inability to meet the demand immediately. He assured to pay the money afterwards. The parents-in-law of the appellant expressed their desire to go back to their house. The appellant got annoyed. He threatened them to ensure they would not return back to their house without paying him money. The appellant then picked up a wooden log of irregular shape and assaulted on the head of his father-in-law (deceased Janardhan) therewith. He thereby fell down. P.W.1 Babita and P.W.3 Swati gave him support and started climbing down the staircase. The appellant kicked on the back of his father-in-law, who, as a result

thereof, came rolling down the staircase. The appellant thereafter assaulted P.W.1 Babita and P.W.3 Swati with fisticuffs. He even did not allow to take his father-in-law to the hospital. Somebody had, in the meanwhile, informed the police. Police arrived. Deceased Janardhan was rushed to hospital. He was then shifted to Civil Hospital, at Nanded. Unfortunately he passed away.

5. The body was first taken to the Police Station and then to hospital. That caused delay in taking treatment.

6. P.W.1 Babita lodged the First Information Report (F.I.R.). A crime vide C.R.No.4/2016 was, therefore, registered against the appellant for the offences punishable under Sections 302 and 498-A of the Indian Penal Code. The scene of offence panchanama (Exh.55) was drawn. Autopsy was conducted on the mortal remains of Janardhan. The appellant made a disclosure statement, pursuant to which a piece of fire wood was seized along with his clothes under the panchanama (Exh.57/1). The clothes of the deceased were also taken charge of. All the seized articles were sent to Forensic Science Laboratory for analysis and report. Statements of witnesses acquainted with facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing charge sheet. Learned Judicial Magistrate, First Class, Hingoli committed the case to the Court of Sessions at Hingoli. Learned Additional

Sessions Judge, Hingoli (Trial Court) framed Charge (Exh.6). The appellant pleaded not guilty. It is his defence that, character of his wife and her mother was not good. Both had extra-marital relationship. To cover up the same, both of them brought the deceased Janardhan to his house. According to him, in one stone the informant killed two birds. He meant to say that, she ensured to send the appellant behind the bars and killed her own husband.

7. To bring home the charge, the prosecution examined 13 witnesses and produced in evidence certain documents.

8. Learned Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced him as stated above.

9. Head. Learned counsel for the appellant first took us through the entire evidence to submit that P.W.1 Babita and P.W.3 Swati are not the witnesses of truth. There was no independent witness. All was not well between the appellant on one hand and his wife and her mother on the other. According to him, the evidence of the interested witnesses would not inspire confidence. The appellant deserves to be granted the benefit of doubt. In the alternative, the learned counsel would submit that the appellant allegedly gave a single blow. A piece of fire-wood was not a deadly weapon. The appellant at the most may be convicted for offence punishable under Section 304 Part II of the Indian Penal Code. The

learned counsel ultimately urged for allowing the appeal in toto or at least partly.

10. The learned A.P.P. would, on the other hand, submit that, the incident took place indoors. Therefore, there is no independent witness. The mother-in-law and the wife of the appellant have no reason to speak against him spoiling her daughter's marital life. The Medical Officer first ruled out the fatal injury to have occurred due to fall from a stair. The learned A.P.P. relied on the Apex Court judgment in case of **Virsa Singh Vs. State of Punjab (AIR 1958 SC 465)** to submit that, clause 'Thirdly' of Section 300 of the Indian Penal Code does get attracted. According to her, the Trial Court has rightly convicted the appellant. No interference with the impugned judgment and order is, therefore, warranted.

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

12. P.W.2 Dr. Mohan conducted the autopsy on the mortal remains of Janardhan. He noticed following injuries on the person of the deceased :

- 1) Contusion on left side frontal bone admeasuring 3 x 1 cm. 6 cm. above left supra orbital ridge red colour.
- 2) Incised looking lacerated wound present on left frontal region

admeasuring 5 x 1 cm. x bone deep, margins abraded and contused.

- 3) Cresentric abrasion on left mallar region admeasuring 1 x 1 cm. Red in colour
- 4) Contused abrasion on posterior aspect of left elbow joint admeasuring 2 x 1 cm.

13. In his view, the deceased died of "Head Injury". However, viscera preserved for chemical analysis and blood kept for blood grouping and cross-matching. In the opinion of Dr. Mohan, (P.W.2), injury Nos.1 and 2 were possible by one blow of a piece of fire-wood (Article 5) shown to him. In his opinion, the injuries on the person of the deceased were sufficient to cause his death in the ordinary course of nature. He was categorical to deny that, Injury Nos.1 and 2 were possible by fall from a staircase.

14. Now the question is, whether the appellant is the author of the injuries which are the cause of death of Janardhan.

The appellant married P.W.3 Swati in February 2013. The couple is blessed with a baby boy. The trio would reside at Surana Nagar, Hingoli. The house of parents of the deceased was at Malegaon. The appellant was said to be unemployed. He was preparing for competitive examination.

15. On the question of assault, we have evidence of P.W.1 Babita (informant) and P.W.3 Swati. It is in the evidence of P.W.3 Swati that, since there was Municipal election in Malegaon on

10/1/2016, the appellant sent her to Malegaon on 9/1/2016. After elections were over, on 13/1/2016, she came back to Hingoli along with her mother. At that time, her mother stayed at her home for a day. Her husband told her mother that since construction of house is to be done, she should tell father of P.W.3 Swati to give Rs.5 Lakhs. Her mother told him that after returning home, she will tell her husband. On 14/1/2016, when she and the appellant went to bus stand to see her mother off, the appellant told her mother to tell her husband to pay Rs.5 Lakhs. After seeing off her mother, they came back home, the appellant told his wife to tell her parents to pay Rs.5 Lakhs otherwise he will make her son to disappear. The appellant continuously started asking her for money. From the morning of 16/1/2016, the appellant started asking her to tell her parents to pay Rs.5 lakhs, otherwise he will make herself and her son disappear. On 16/1/2016, the appellant started threatening Swati (P.W.3) so as to coerce her to meet his demand. Swati (P.W.3), therefore, contacted her mother (P.W.1 Babita) on phone and asked her either to pay appellant Rs.5 lakhs or get her back to her residence. P.W.1 Babita therefore came to the house of the appellant along with her husband (deceased Janardhan) in their auto. The appellant asked his parents-in-law to meet his demand. The father-in-law (deceased Janardhan) told the appellant that his mother was not keeping well and requested him to allow to take Swati (P.W.3) with him back to his house. The appellant again

made a demand of Rs.5 Lakhs. Janardhan expressed his inability to meet the demand immediately. He assured to pay the money afterwards. The parents-in-law of the appellant expressed their desire to go back to their house. The appellant got annoyed. He threatened them to ensure they would not return back to their house without paying him money. The appellant then picked up a wooden log of irregular shape and assaulted on the head of his father-in-law (deceased Janardhan) therewith. He thereby fell down. P.W.1 Babita and P.W.3 Swati gave him support and started climbing down the staircase. The appellant kicked on the back of his father-in-law, who, as a result thereof, came rolling down the staircase. The appellant thereafter assaulted P.W.1 Babita and P.W.3 Swati with fisticuffs.

16. On the same lines is the evidence of P.W.1 Babita (informant). Her evidence is consistent with her F.I.R. (Exh.22). Both, P.W.1 Babita and P.W.3 Swati were subjected to a searching cross-examination. It was suggested to both of them that they did not bear good moral character. Both the witnesses denied the same. It was even suggested to P.W.1 Babita that she has extra-marital relations with the husband of her sister. She denied the same. P.W.1 Babita (informant) has categorically admitted that P.W.3 Swati was previously married with one Bhaskar. Swati's evidence indicates that, their marriage did not last for more than a year. There was breakup. The marriage was dissolved by a

decree of divorce. P.W.3 Swati, however, conveniently avoided to state as to who had approached the Court of law for obtaining the decree of divorce. P.W.3 Swati thereafter married the appellant. It was suggested to her (P.W.3) that she has extra-marital relations with one Amol (her cousin). She denied. Both P.W.1 Babita and P.W.3 Swati were confronted with the photographs (Articles A, B, D-1 to D-6). P.W.1 Babita admitted that the persons in the photographs are P.W.3 Swati and Amol. The photographs indicate intimate relationship between the two. Swati (P.W.3) was, however, economical with truth. According to her, the lady appearing in the photographs looks alike her. She, however, admitted that the person in the photograph is Amol. Swati's evidence further indicates that, within a month of passing away of her father, she went to Mumbai alone. (leaving her son behind). She stayed in Mumbai for 3 – 4 days. She even visited Amol's house when Amol's wife was not there. It is further in her evidence that there was quarrel between her and her mother.

17. P.W.1 Babita (informant) was categorical to admit that, while Swati (P.W.3) was living with appellant as his wife, she had gone missing for 2 – 3 days (eloped). She had, therefore, lodged a missing person's report with the police. We do have on record a report (Exh.83/2), lodged by the appellant on 31/3/2014 with Hingoli Police Station. It was missing person's report relating to his wife Swati (P.W.3). It has been reported therein that, she (Swati) left her

matrimonial home without informing him on 3/3/2014. She had left the house under the pretext of going to flour mill. She took with her Rs.2000/-. He took search for her. He enquired at the house of his parents-in-law. He also enquired with the relations. He, therefore, requested the concerned Police Station Officer to make search for his wife.

18. We have also on record a document (Exh.83/3, produced by the appellant in his defence). The same indicates that, on the fateful day i.e. on 16/6/2016, he was going to appear for a competitive examination held by Maharashtra State Council of Examinations, Pune.

19. We reiterate that, P.W.1 Babita and P.W.3 Swati were found to be economical with truth. While P.W.1 Babita and her husband (deceased Janardhan) came to the appellant's house, P.W.3 Swati (appellant's wife) was seen engaged in sewing work. The photographs of P.W.3 Swati along with one Amol and the fact that she had gone missing for 2 – 3 days while she was cohabiting with the appellant, undoubtedly indicate that the reasons behind the quarrel between the appellant and his wife P.W.3 Swati might be different than one which is sought to be made out by the prosecution i.e. his demand for Rs.5 Lakhs for construction of a house. We are, therefore, not in agreement with the Trial Court's finding, convicting the appellant for the offence punishable under

Section 498-A of the Indian Penal Code.

20. So far as regards offence punishable under Section 302 of the Indian Penal code is concerned, there is evidence to indicate the appellant on one hand and his wife and her parents on the other to have quarreled preceding the appellant assaulted on the head of deceased Janardhan with a piece of fire-wood. It was even suggested to P.W.6 Parbatrao by the learned A.P.P., Incharge of the case that he had heard loud uproar of quarrel at the house of the appellant. P.W.7 Rajesh, Police Head Constable testified that he had received a phone call from other police official, informing that there was a quarrel between the son-in-law and his father-in-law (appellant and the deceased Janardhan). Police statement of this witness is silent to make mention therein that the appellant was not allowing to move the injured (his father-in-law) to hospital. Evidence of P.W.1 Babita and P.W.3 Swati on this aspect is not being relied on by us for the reason that they had an axe to grind against the appellant.

21. The Medical Officer (P.W.2 Mohan) testified that, injury Nos.1 and 2 on the person of the deceased were possible by single blow. Admittedly, the appellant did not inflict second blow on the head of the deceased with the piece of fire-wood. The seizure panchanama (Exh.39/A) indicates it is a piece of fire-wood, 25 inch in length. It had a rough surface. Admittedly, the quarrel had

preceded the assault. The appellant inflicted single blow. Had the appellant really intended to eliminate the deceased, he would have given number of blows on the vital part of the deceased with the very article. In our view, the incident took place as a result of a sudden quarrel and in a spur of moment. No deadly weapon has been used. It is a case of a single blow. The appellant, therefore, could not be attributed with an intention to kill his father-in-law or with an intention to cause such a bodily injury which he knew in all probabilities likely to cause death. In our view, the appellant, however, could be attributed with a knowledge that as a result of assault with a piece of fire-wood death would be caused. As such, the evidence on record lead us to infer the appellant to have committed an offence of culpable homicide not amounting to murder, punishable under Section 304 (Part II) of the Indian Penal Code. The appellant is in jail since 17/1/2016. For the aforesaid reasons, the appeal partly succeeds. Hence, the order :

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) The judgment and order passed by learned Additional Sessions Judge, Hingoli in Sessions Case No.24/2016, convicting the appellant for the offence punishable under Sections 302 and 498-A of the Indian Penal Code is hereby set aside. The appellant is acquitted of the offences punishable under Sections 302 and

498-A of the Indian Penal Code.

(iii) The appellant is, however, convicted for the offence punishable under Section 304 (Part II) of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for seven and half years and to pay fine of Rs.5,000/- (Rupees five thousand), in default of payment of fine, to suffer rigorous imprisonment for three months.

(iv) The appellant is in jail since 17/1/2016. He be set at liberty forthwith, if not required in any other case.

(v) The Criminal Appeal stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-