



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

**CRIMINAL APPEAL NO.1175 OF 2019**

Balasaheb s/o Daulatrao Shinde  
Age 60 years, Occu. Nil,  
At present in Jail  
R/o Plot No.81, N-2, CIDCO,  
Mahalaxmi Colony, Aurangabad  
Tq. & Dist. Aurangabad

**... APPELLANT**  
(Orig. Accused)

**VERSUS**

The State of Maharashtra  
Through Police Inspector,  
Mukundwadi Police Station,  
Aurangabad  
(Copy to be served on P.P.,  
High Court of Bombay,  
Bench at Aurangabad)

**... RESPONDENT**

.....  
Mr. S.G. Magre, Advocate for appellant  
Mrs. V.S. Choudhari, A.P.P. for respondent  
.....

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

Date of reserving judgment : 8th March, 2024

Date of pronouncing judgment : 13th March, 2024

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

The appellant was convicted for the offence of uxoricide and, therefore, sentenced to suffer imprisonment for life and pay a fine of Rs.10,000/- with default stipulation by learned Additional Sessions Judge-6, Aurangabad by judgment and order

dated 24/10/2019, passed in Sessions Case No.24/2019. Therefore, he is in this appeal before this Court.

2. The case of the prosecution is as follows :-

The appellant married Jyoti (deceased) about 16 years before the alleged incidence. The couple was blessed with two children, P.W.1 Master Om (informant) and Vaibhav. All of them were residing together at Mahalaxmi Colony, N-2, CIDCO, Aurangabad. P.W.1 Om (informant) was in 10<sup>th</sup> Standard at the relevant time.

It is the case of the prosecution that the appellant was serving with Vighnaharta Hospital. Jyoti (deceased) would serve as a private Nurse for patients at their respective residences. It was 24/9/2018, both the appellant, Jyoti (deceased) and even P.W.1 Master Om were present at their residence. The appellant questioned Jyoti where did she roam on a Scooty covering distance of 20 Kms. The appellant started abusing her. Vaibhav, the elder brother arrived. Both, he and Master Om tried to pacify the appellant. Jyoti asked Vaibhav to leave the house. He left.

It is further the case of the prosecution that at 3.30 midnight, the informant heard noise of shouting of his mother. He

woke up thereby. He saw the appellant armed with a sharp edged knife. The appellant was seen pressing neck of Jyoti. P.W.1 Master Om separated them. Appellant that time inflicted a knife blow on stomach of Jyoti. The appellant then ran away on a Scooty. Master Om (P.W.1) unsuccessfully chased him. He (Master Om) went to the house of his neighbour. The other neighbours also arrived. The appellant, before leaving the house, pushed Jyoti in a gutter outside the residence. A police van on patrolling duty was intercepted. Jyoti was rushed to the hospital. P.W.1 Master Om lodged F.I.R. (Exh.19). His statement under Section 164 of the Code of Criminal Procedure was also recorded.

3. Based on the F.I.R. (Exh.19), a crime vide C.R. No.285/2018 was registered for offence punishable under Sections 302 and 504 of the Indian Penal Code. It appears that, the scene of offence panchanama (Exh.24) and inquest panchanama (Exh.14) were drawn even before registration of the crime. Jyoti succumbed to the injury. Her mortal remains was subjected to autopsy. Clothes on her person were seized. The appellant was arrested. Upon completion of the investigation, charge sheet (Exh.1) was filed in the Court of learned Judicial Magistrate, First Class, Aurangabad. Learned Judicial Magistrate, First Class, 12<sup>th</sup> Court, Aurangabad committed the case to the Court of Sessions, Aurangabad. The trial Court framed the Charge Exh.6/C. The

appellant pleaded not guilty. His defence is of false implication at the behest of his brother-in-law (wife's brother).

4. To bring home the charge, the prosecution examined 9 witnesses and produced in evidence certain documents. The Trial Court, on appreciation of the evidence in the case, convicted the appellant and consequently sentenced as stated above.

5. Heard. Learned counsel for the appellant would submit that, there is delay in lodging of the F.I.R. The informant was a child. Since the day of the incident, he was residing at the house of his maternal grandparents. He was thus under the influence of his maternal uncle and grandparents as well. He came to the Court along with maternal uncle. According to learned counsel, the scene of offence panchanama (Exh.24) and inquest panchanama (Exh.14) were drawn even before registration of the F.I.R. Master Om (informant) was very much present while those panchanamas were drawn. He did not disclose to the police his father to have killed his mother. Even when a police patrolling van was intercepted, he did not disclose the police anything. The same suggests the F.I.R. and Master Om's evidence before the Court was afterthought and even given under the influence of maternal uncle. The learned counsel would further submit that, only a blade of kitchen knife was found at the scene of offence. It was not shown

to the Medical Officer to elicit his opinion as to whether a death could be caused with a single blow thereof. He then adverted our attention to C.A. report (Exh.57), which indicates that cuts on the gown on the person of the deceased could not be caused by the knife with which the appellant allegedly killed his wife. According to learned counsel, it is a case based on sole witness account. The evidence of Master Om does not inspire confidence. According to him, the appellant is over 65 years of age. He is behind the bars for over 3 years. Learned counsel ultimately urged for allowing the appeal.

6. The learned A.P.P. would, on the other hand, submit that, Master Om has given graphic details of the incident. His presence was natural. He is none other than real son of the appellant. He has no reason to falsely implicate his father. Master Om being just 15 – 16 years of age at the relevant time, could not report the matter to the police while inquest or scene of offence panchanama was drawn. Evidence of the neighbour indicate the presence of the appellant at his residence. The appellant failed to make out his defence of alibi. According to learned A.P.P., the knife seized from the scene of offence was sharp and pointed. The injury on the person of the deceased was very much possible with an assault thereof. She ultimately urged for dismissal of the appeal.

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

8. P.W.5 Dr. Manohar was a Medical Officer with Government Medical College Hospital, Aurangabad on the given day. He conducted autopsy on the mortal remains of Jyoti. He noticed following injuries on her person :-

- i) Stab injury present over right side of abdomen, at right iliac fossa, of size 1 cm x 0.5 cm by cavity deep, transverse, situated 5.5 cm lateral to midline and 8 cm above and medial to right anterior superior iliac spine, 9 cm below and lateral to umbilicus and 43 cm below clavicle. Margins clean, cut haemorrhagic, fat protruding out, blood oozing out through injury. On dissection track passes through skin subcutaneous tissues, fat, rectus muscle, piercing peritoneum, mesentery of small intestine, sigmoid column, perforated through and through antero-posteriorly, 1 cm slit like on each side, termination at iliac vessels on right side near sacro-iliac joint. Track haemorrhagic directed posteriorly and medially.
- ii) Abraded contusion present over lower lip, of size 1 cm x 1 cm, situated 1 cm medial to left angle mouth, red.

- iii) Abrasion present over left thumb, dorsal aspect, of size 1 cm x 0.6 cm, red.
- iv) “L” shaped abrasion present on left side of abdomen, situated 8 cm above and lateral to umbilicus horizontal of size 3 cm x 0.2 cm and vertical of size 1 cm x 0.6 cm., red.

According to P.W.5 Dr. Manohar, injury No.(i) was possible with sharp edged pointed weapon. Injury Nos.(ii) to (iv) were possible due to impact of hard, blunt and rough surface/ weapon. In his opinion, the deceased died of shock and haemorrhage due to stab injury (Post mortem report Exh.35).

9. It is true, the knife (Article B and C) seized from the scene of offence was not shown to Dr. Manohar to elicit his opinion as to whether the injury No.(i) was possible with the said weapon. It is also not in his evidence that the Injury No.(i) was sufficient in the ordinary course of nature to cause death of Jyoti.

10. The incident took place at a residential house of the appellant, which was admittedly shared by him, his wife Jyoti (deceased) and two children. It was a night time. Their presence at their house was natural. Admittedly, the appellant was serving in a Circus. There is nothing in his evidence to indicate that he was

not at his residence at the relevant time, although it was so suggested to his son, Master Om (P.W.1).

11. The evidence of informant Master Om (P.W.1) indicate that, on the given day, there was quarrel between his parents. The appellant questioned his mother where did she roam 20 Kms. on Scooty. He and his brother tried to pacify the quarrel. On the say of deceased Jyoti, elder brother Vaibhav went away. It is further in his evidence, by 3.30 a.m., he woke up to the shouts of his mother. He saw his father (appellant) armed with a knife. The appellant pressed neck of his mother. He (Master Om) tried to separate them. The appellant inflicted a knife blow, on the stomach of his wife. It is further in his evidence that the appellant pushed mother in a gutter outside the house.

12. The evidence of Master Om is very much consistent with his F.I.R. (Exh.19) and statement under Section 164 of Cr.P.C. (Exh.20). True, he was confronted with his statement under Section 164 of the Cr.P.C., wherein the mother was stated to have been fallen in a gutter due to giddiness as a result of the injury. This much omission amounting to contradiction will not make the evidence of Master Om (P.W.1) unreliable.

13. It is true, it was Master Om (P.W.1) who identified the body of his mother while the inquest was drawn. He was also present at the time of scene of offence panchanama. It was on his interception of a police patrolling van, the deceased was rushed to a hospital. During all these occasions, Master Om (P.W.1) did not relate anything about the incident. He was just 16 years of age at the relevant time. It is reiterated that, the appellant did not make out a case of him to have been somewhere else and not at his residence at the relevant time. It is reiterated that, it was a night time. Presence of the appellant, deceased and their son Master Om (P.W.1) at their residence was natural. On the demise of the mother and father being behind the bars, it was but natural for Master Om (P.W.1) to take shelter at the house of his maternal grandparents. It, therefore, cannot be said that he gave his evidence at the behest of his maternal uncle and grandparents, although he had come to the Court in the company of his maternal uncle.

14. The evidence of other witnesses is not of much importance. They are the witnesses to inquest, scene of offence and seizure of clothes panchanamas. It is true that, C.A. report indicates that tear on the gown on person of the deceased was not possible by the knife blade seized from the scene of offence. We have also inspected the said article. Admittedly, the appellant gave

a single blow therewith. The prosecution did not elicit opinion of the Medical Officer as to whether the injury caused was sufficient in the ordinary course of nature to cause death.

15. The fact, however, remains that, the appellant assaulted the deceased with a sharp and pointed weapon. The assault was on the vital part of the body of the deceased. The same indicates the appellant's intention to commit her murder. There is, however, evidence to indicate that there was quarrel between the appellant and the deceased. He suspected something amiss since he questioned her as to where did she roam riding Scooty for about 20 Kms. The quarrel was pacified by Master Om. Again in the midnight, the quarrel ensued between the two. The weapon with which the assault was made, was a kitchen knife, easily available at home. As such, it is not that the appellant had brought it with an intention to eliminate his wife. The evidence of P.W.2 Sham @ Vithal indicate that he was residing in the neighbourhood of the deceased. It is further in his evidence that, Master Om knocked on the door of his house by little past 3.30 a.m. In response thereto, he opened the door and accompanied him to the appellant's residence. His evidence further indicates that, by 10.00 p.m. on the fateful day, he heard quarrel between the appellant and his wife. The same suggests the appellant was at his residence at the relevant time. There is nothing to indicate that he

left the house thereafter and then someone else committed the crime.

16. The Apex Court in case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681** observed thus -

*“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.”*

17. The fact, however, remains, the incident was preceded by a heated quarrel between the appellant and the deceased. The appellant gave the deceased a single blow with a kitchen knife which was available at the residence. The facts bring out the appellant's case within the Exception (4) of Section 300 of the Indian Penal Code. As such, it is an offence punishable under Section 304 Part I of the Indian Penal Code.

18. In view of the above, the appeal partly succeeds. Hence the order :-

**ORDER**

- (i) The Criminal Appeal is partly allowed.
- (ii) The conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code vide order dated 24/10/2019, passed by learned Additional Sessions Judge-6, Aurangabad in Sessions Case No.24/2019 is hereby set aside. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code.
- (iii) Instead, the appellant is hereby convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten (10) years and to pay fine of Rs.3000/- (Rupees three thousand), in default to suffer rigorous imprisonment for three months.
- (iv) The amount of fine, if paid by the appellant, be adjusted accordingly.
- (v) The Criminal Appeal stands disposed of.

**(NEERAJ P. DHOTE, J.)**

**(R.G. AVACHAT, J.)**