



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1133 OF 2023

Sunita Devidas Waghmare
Age: 42 years, Occu.: Household,
R/o Udar, Tq. Sudhagad,
Dist. Raigad

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Kasarshirsi,
Tq. Nilanga, Dist. Latur

..RESPONDENT

....
Mr. S.G. Bobade, Advocate for appellant
Ms. U.S. Bhosale, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 18th JANUARY, 2024

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

1. This is an appeal against conviction. The appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.') and therefore, sentenced to suffer life imprisonment and fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for six months. She has further been convicted for the offence punishable under Section 201 of the I.P.C. and sentenced to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default, to suffer rigorous imprisonment for three months. Both the substantive sentences were directed to run concurrently.

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

Devidas (deceased) was the husband of the appellant. They were blessed with four daughters. Both, the appellant and her deceased husband would do labour work to earn their living. Both of them, however were addicted to alcohol. On 29th April, 2019 their employer had given them 10 kg. rice grains and their weekly remuneration. Both of them sold the rice in the market and bought hooch. Both of them consumed the same. Under the influence thereof, the deceased has a quarrel with the appellant. He kicked on her face. She thereby got annoyed. She, therefore, picked up a brick lying by their side and hit on his head therewith. As a result, Devidas died. It was the incident that took place during 30th April, 2019 to 01st May, 2019. The appellant returned home on the following morning. She washed her blood stained *sari*. On having enquired with her by the daughters about whereabouts of Devidas, she informed them to have killed him for the reasons stated above. P.W.3 – Meena, to whom the appellant made an extra-judicial confession, lodged the F.I.R. (Exh.41). Even before registration of the crime, the dead body of Devidas was noticed lying in the field of P.W.2 - Satish.

3. Based on the F.I.R. lodged by P.W.3 – Meena, crime was registered and investigated as well. The appellant was arrested. Mortal remains of Devidas was subjected to postmortem examination. Scene of

offence panchanama (Exh.27) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, charge-sheet was filed against the appellant. Judicial Magistrate First Class, Nilanga committed the case to the Court of Additional Sessions Judge, Nilanga (trial Court).

4. Trial Court framed charge (Exh.6). The appellant pleaded not guilty. She remained behind the bars as an under trial prisoner. She is still in jail. To establish the charge, prosecution has examined thirteen witnesses and produced in evidence number of documents. On appreciation of the evidence in the case, the trial Court convicted the appellant and consequently sentenced as stated above.

5. Learned counsel for the appellant would submit that the case is based on circumstantial evidence. The extra-judicial confession made by the appellant to her two daughters should be discarded in view of admissions given by these witnesses during their cross-examination. According to him, there is no other evidence to connect the appellant with the crime in question. He, therefore, urged for allowing the appeal.

6. Learned A.P.P. would, on the other hand, submit that both, the appellant and her husband, were addicted to alcohol. Both of them were working as labour with P.W. 6 - Shriram. A day before the incident, their

employer had given them 10 kg. of rice grains. The deceased sold the rice in the market and bought liquor. Both, the appellant and deceased consumed the same. A quarrel ensued between them. The appellant hit the deceased with a brick and committed his murder. She then washed her blood stained sari. All these facts were duly proved by the evidence of the witnesses examined by the prosecution. He, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Admittedly, both, the appellant and the deceased were addicted to alcohol. The couple was blessed with four daughters. Two of them were married. They would do labour work to earn their living. P.W.2 – Satish owns an agricultural land, Gut No.41 at Mudgad and Kavtha shivar. The said land stood in the name of his father – Gundurao Ambaji Mohite. On 01st May, 2019, dead body of the deceased was noticed in his field. It was identified to be that of the husband of the appellant. The same was reported to the police. The scene of offence panchanama (Exh.27) was drawn in the presence of P.W.1 – Ranjeet.

8. The postmortem examination report (Exh.52) suggests the deceased died of head injury. The case is solely based on evidence of P.W.3 – Meena (informant) and P.W.4 – Bayadi, daughters of the appellant and deceased – Devidas. P.W.3 – Meena lodged the F.I.R. (Exh.41). Both of them

testified in their examination-in-chief that on 30th April, 2019 the appellant and Devidas did not return home. The appellant alone came home on the following morning. Both of them enquired her about whereabouts of their father. The appellant told them that in the night after consuming liquor a quarrel ensued between them. The deceased kicked on her face and therefore, she hit a brick on his head and thereby he died.

9. Both these witnesses were subjected to a searching cross-examination. Both of them give in to the questions put to them during cross-examination. It is in their evidence that the police pressurised them to give such statement. Needless to mention, extra-judicial confession is a weak piece of evidence. True, the same was made to the persons in confidence. However, the same did not stand the test of cross-examination. The evidence of both these daughters of the appellant, therefore, could not be blanketly relied on to hold the appellant guilty of the offence/s.

10. P.W.5 – Dinkar was a labour contractor. His evidence is only on the point of identifying the deceased. He did not stand by the prosecution. Nothing could be elicited in his cross-examination to support the prosecution case. P.W.6 – Shriram testified that on the say of Police Patil, he took the appellant, Meena and Bayadi to the scene of offence. According to him, having seen their father's dead body, Meena and Bayadi collapsed. During

cross-examination this witness stated that the police had never made any enquiry with him. As such, evidence of this witness too does not further the prosecution case.

11. P.W.8 – Dnyanoba is the Police Head Constable, who had carried the seized articles to the Forensic Science Laboratory, Nanded. P.W.9 – Dhammjayoti was present while the F.I.R. (Exh.41) was lodged. P.W.10 – Praful is a photographer. He snapped the photos and did video shooting of the scene of offence. P.W.11 – Balaji is a Police Head Constable, who ascertained the hash value of three SD cards and taken print thereof. P.W.12 – Mohan is a witness to the inquest panchanama (Exh.79). While P.W.13 – Motiram was the investigating officer.

12. A close scrutiny of evidence of all the aforesaid prosecution witnesses indicates that the case was solely based on extra-judicial confession made by the appellant to both her daughters i.e. P.W.3 – Meena and P.W.4 – Bayadi. Since both these witnesses give in their cross-examination, we find the extra-judicial confession to be not clinching to place reliance for sustaining the conviction for the offence of murder. Chemical analysis report (Exh.112) does not further the prosecution case, since clothes viz. *sari*, blouse and petticoat of the appellant found to have no blood stains of the blood group of the deceased. Needless to mention, serious is the offence, strict

shall be the proof. Since the extra-judicial confession made by the appellant is found to be an unreliable piece of evidence and there is nothing further to connect the appellant with the offence she was charged with, interference with the impugned order of conviction and consequential sentence is warranted.

13. In the result, the appeal succeeds. Hence, the following order :-

- (i) The appeal is allowed.
- (ii) The judgment and order dated 20.06.2023, passed by learned Addl. Sessions Judge, Nilanga, in Sessions Case No.40 of 2019, convicting and sentencing the appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code, is set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 302 and 201 of Indian Penal Code.
- (iv) She be released forthwith, if not required in any other case.
- (v) Fine amount deposited by the appellant, if any, be refunded to her.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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