



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

CRIMINAL APPEAL NO.91 OF 2020

Ashok s/o. Sukram Dabhade,
Age : 36 years, Occ. Labour,
r/o. Navi Hingani,
Tq. Shahada, Dist. Nandurbar

..Appellant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Sarangkheda, Tq. Shahada,
Dist. Nandurbar

..Respondent

Mr.Ram B. Deshpande, Advocate for appellant
Mrs.U.S.Bhosale, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : AUGUST 13, 2024**

JUDGMENT (Per R.G.Avachat, J.) :-

This appeal takes exception to the judgment and order of conviction and consequential sentence dated 18.08.2017, passed by learned Addl. Sessions Judge, Shahada, in Sessions Case No.57 of 2015, whereby, the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer imprisonment for life and pay fine of Rs.2,000/- with default stipulation.

2. The facts, in brief, giving rise to the prosecution case are as follows:-

The appellant was resident of an area known as Pardhi-Wada, at village Hingani, Tq. Shahada, Dist. Nandurbar. He was married with Hirkanbai (deceased). The couple was blessed with a two-year old child. The appellant was addicted to liquor. On the fateful day, i.e. on 12.07.2015, the appellant was drunk. It was about 02.00 p.m. He assaulted Hirkanbai with an axe. Hirkanbai suffered number of injuries and succumbed thereto. Since the appellant had criminal past, none of the villagers dared to come forward to lodge FIR against him. The village Police-Patil (PW 5) was said to have informed the police about the incident. A station-diary entry to that effect was made. The police team reached the village and visited the house of the appellant. It was one-room hut. The police officials noticed a lady lying dead. Her dead body was covered with blanket. It was removed. She had suffered number of injuries. The appellant was present by the side of her dead body. According to the prosecution, the appellant told the police officials, who visited his house, that since he did not like Hirkanbai, he killed her (this matter is not admissible in evidence). Since nobody came forward to lodge the FIR, a police constable attached to Sarangkhedda

Police Station and who visited the house of the appellant, lodged the FIR (Exh.12). The crime, vide C.R. No.39 of 2015, was registered with Sarangkhedda Police Station, Dist. Nandurbar, for the offence punishable under Section 302 of Indian Penal Code. Inquest and autopsy were conducted on the mortal remains of Hirkanbai. Some articles, like axe and spade came to be seized from the crime-scene. The appellant was arrested. The clothes of the deceased were also taken charge of. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge sheet was filed against the appellant.

3. Learned Addl. Sessions Judge, Shahada (trial Court) framed Charge (Exh.5). The appellant pleaded not guilty. His defence was of false implication. To bring home the Charge, the prosecution examined eleven witnesses and produced in evidence certain documents. The trial court, on appreciation of the evidence in the case, convicted and consequentially, sentenced the appellant, as stated above.

4. Heard learned counsel for the parties.

5. Learned counsel for the appellant would submit that the so called eye witnesses did not lodge FIR against the appellant. Same speaks in volumes to infer them to have not witnessed the incident. The Police Patil of the village, who was said to have reported the matter to the police on phone, testified on oath to have not made such phone call. Since the appellant had married a tribal woman (deceased), his relations (some of the prosecution witnesses) were not either on talking and/or visiting terms with him. Learned counsel adverted our attention to the crime-scene panchnama (Exh.18) to point out that there was no otla in front of the house of the appellant. The eye witnesses, who claimed to have witnessed the incident, did not have their residences around. Some of them reached the house of the appellant on arrival of the police. Their claim that they visited the house of the appellant and saw Hirkanbai dead and the appellant by the side of her dead body, thereby, falsified. According to him, since the FIR has been lodged by the police officer, same needs to be seen with suspicion. No so called eye-witnesses came forward to lodge the report. Learned counsel, ultimately, urged for allowing the appeal.

6. Learned APP would, on the other hand, submit that it is an open and shut case. The appellant came with two-three

defences, inconsistent with the evidence on record. A false defence, in the facts and circumstances of the case, gives a missing link and could even be used to reinforce the prosecution case.

7. We do not propose to detain ourselves to the submissions advanced by learned APP. Let us advert to the evidence on record and appreciate the same.

8. PW 9 – Dr.Vijay conducted autopsy on the mortal remains of Hirkanbai. It is in his evidence that he noticed number of injuries on the person of Hirkanbai. Those have been described in paragraph 17 of the post mortem report (Exh.38). In his opinion, Hirkanbai died *“due to cardio-respiratory arrest due to hypovolaemic shock due to hemorrhage due to multiple injuries noted in column nos.17, 18 and 21 about liver”*. The suggestion given on behalf of the appellant to the prosecution witnesses that the deceased died of sudden illness and therefore, he had dug a pit in front of his house to burry her dead body, falsifies his defence in view of the post mortem report.

9. PW 3 – Bansilal is a witness to the inquest panchnama (Exh.17). He too testified to have noticed number of injuries on the person of Hirkanbai. He was a teacher. He is witness to number of

panchnamas. The spot panchnama (Exh.18) was drawn in his presence. It is one-room house of the appellant. The other panchnamas namely, Exhs.19 and 20, pertain to seizure of certain articles, such as trouser, spade and axe.

10. The FIR (Exh.12) was lodged by PW 1 – Govind, Police Head Constable, Sarangkhedda Police Station, Nanduarbar. According to him, the village Police Patil had made a phone call to the police station. The police station officer made entry thereof in the station-diary. True, neither the original nor a copy of the station-diary entry has been placed on record. The Police Patil (PW 5) denied to have made any such call. According to him, someone from the village appears to have made phone call in his name. He might be correct. The appellant has criminal history. The same is evident from the prosecution witnesses.

11. The evidence of PW 1 would indicate that he along with other police staff went to the house of the appellant. He noticed the dead body of Hirkanbai lying on the floor of the house. It was covered with blanket. The blanket was removed. Hirkanbai was lame since her left leg was amputated. There were fresh injuries on her left eyebrow and bleeding as well. Here, tried to contend that

the post mortem report indicates injuries on right eye brow and not left. Same would not be of much assistance to the defence since the witnesses gave evidence about eight months after the incident.

12. It is further in the evidence of PW 1 - Govind that the appellant was present by the side of the dead body. Two-year old son of the appellant was in the house. It is not the case of the appellant that besides himself, Hirkanbai and two-year old child, any one else was residing with them. As such, the fact is that it was the appellant alone, who was elder person residing with his wife. He owed explanation as to how did his wife suffered multiple injuries, noted herein above. True, the evidence of PW 1 - Govind that the appellant told the police party to have killed his wife as he disliked her, is inadmissible in evidence. It is further in his evidence that the appellant was habitual offender, therefore, there was no one from the village to come forward to lodge the report. It was, therefore, he, who lodged the FIR against the appellant.

13. PW 11 - Kantilal was the Police Head Constable on duty as Police Station Officer. It is in his evidence that a phone call was received in the name of the Police-Patil, informing about the incident. He, therefore, along with other police staff, including PW 1 visited the

house of the appellant and witnessed him to have been present and the dead body of his wife was lying on the floor.

14. PW 2 – Kailas was resident of Pardhi Wada. It is in his evidence that the appellant would reside along with his wife Hirkanbai (deceased) and their two year old son Sandip. It is further in his evidence that the appellant was drunk. On 12.07.2015, by 02.00 p.m., he heard shouts and noise emanating from the house of the appellant. He saw the appellant held shoulder of his wife Hirkanbai and dragged her from the courtyard to his house. Her condition was critical. She had suffered head injury. It was a fresh injury. After having seen the appellant dragged Hirkanbai to the house, he again heard Hirkanbai's cries. It is further in his evidence that by 04.00 p.m., he received phone call of Sunil (PW 7), who informed him the appellant to have had come to his home and told that his wife suffered injuries while cutting firewood. He, therefore, asked Sunil to come to him, so that they would visit the appellant's residence. It is further in his evidence that he visited the house of the appellant along with Sunil (PW 7) and Chandrakant (PW 4). He witnessed Hirkanbai lying dead. The appellant was present in the house. He asked the appellant not to leave the place until arrival of the police. According to him, the police reached the place by little

past 08.30 p.m.

15. During the cross-examination of PW 2 - Kailas, he testified that the appellant was from their brotherhood. The appellant has three brothers. One of them is in police service. Deceased - Hirkanbai belonged to a tribal community. She was previously married with one Sanjay Bhil. She had four children from Sanjay. Sanjay passed away. Both appellant and Hirkanbai were residing together as husband and wife. It is further in his evidence that Hirkanbai had suffered injury to her left leg. It developed into gangrene. The appellant had shifted her to a hospital at Mumbai. She was operated upon. Her leg was amputated. The appellant incurred medical expenditure. This evidence was sought to be brought on record with a view to show that the appellant was taking care of his wife (deceased Hirkanbai). In our view, it was a past conduct. He was suggested a topography of the area whereat, the house of the appellant was situated. It was further suggested to him that his residence was also around. Same, thus, suggests this witness to have an occasion to witness the incident, although it was suggested that he was in his field all the day. He also admitted that the happenings in the house of the appellant were not visible from his residence. There was no ota to the appellant's house (hut). He,

however, denied that nothing in his house was visible from the house of the appellant. It was specifically suggested to him that the house of Chandrakant, himself, Yuvraj, Rajendra were around the house of the appellant. He was confronted with his police statement. He admitted to have not stated certain matter in his police statement. We have, therefore, carefully perused his police statement to find that no such omission is appearing therein. It appears to be a mistake on the part of learned APP or the trial court as well. It was suggested to this witness that Hirkanbai died due to illness and therefore, the appellant, with the assistance of one Shantaram Koli, had dug a pit to burry her. True, the statement of this witness was recorded after two days of the incident. The same, however, would not falsify his evidence before the court, since, according to the prosecution itself and the villagers, the appellant was criminal by nature and nobody dared to speak against him.

16. PW 4 – Chandrakant was also resident of the very vicinity. It is in his evidence that he along with Sunil (PW 7) was present in the courtyard of the house of Sunil (PW 7). It was about 04.00 p.m. the appellant had come to them and stated his wife to have suffered injuries while cutting wood and even died thereby. He, therefore, asked the appellant to call his relatives. The appellant stated him

that nobody was coming to his house. He requested him (Chandrakant) to visit his room. It is further in his evidence that he along with Sunil (PW 7), therefore, went to the house of the appellant. He witnessed the appellant's wife was lying dead. Her deadbody was covered with a *Chader (blanket)*. It was removed to find her to have suffered deep injury to her forehead. Blood was oozing from the head injury. It is further in his evidence that he along with Sunil (PW 7) and Kailas (PW 2) then came to the village and related the same to the village-elders. Somebody from the village informed the police station. It is in his cross-examination that the village, at the relevant time, had no Police-Patil. Before 2015, Latabai Jivan Patil was the Police-Patil of the village. Sunil (PW 7) was Sarpanch of the village. He denied to have visited the house of the appellant only on arrival of the police.

17. It has already been stated that PW 5 – Jivan Patel did not stand by the prosecution. He denied to have made a phone call to the police station. According to him, the caller used his name to report the incident to the police. PW 6 – Shantaram did not stand by the prosecution. Nothing useful could be brought on record from his cross-examination taken by learned APP.

18. PW 7 – Sunil testified consistent with the evidence of PW

4 – Chandrakant. It is in his evidence that he was in the company of Chandrakant at the relevant time. It was about 04.00 p.m. the appellant had come to them and stated his wife to have suffered injuries while cutting wood and even died thereby. The appellant requested him (Sunil) to visit his house. It is further in his evidence that he along with Chandrakant (PW 4), therefore, went to the house of the appellant. It is further in his evidence that when he went to the house of the appellant, he noticed that Hirkanbai was lying. She had suffered head injury. He had asked the appellant to inform the police. In the meanwhile, somebody informed the police about the incident. Thereafter, police came to the village. He denied Hirkanbai died due to sudden illness.

19. PW 8 – Bhikubai, a 70-years old lady, residing in the neighbourhood of the appellant, testified that she was present in front of her house on the given day. It was about 01.30 p.m., she heard shouts from her backside. She, therefore, stared towards her backside to see the appellant assaulted Hirkanbai with axe. According to her, the house of the appellant was about 20 ft. away from the place whereat she was. According to her, the appellant was quarrelsome and would give threats to the villagers. During her cross-examination, she testified that the appellant was son of her

brother. It indicates that the appellant was her nephew. Moreover, she was 70 years old lady having no reason to give false evidence against the appellant, at least, nothing of that sort has been brought on record from her cross-examination to observe her to have an axe-to-grind against the appellant. True, she admitted that since the appellant had married a tribal lady, her relations with the appellant was not cordial. Same, however, could not be a reason to give false evidence against the appellant.

20. Learned counsel for the appellant would submit that there was no courtyard to the room of the appellant. One must take the word "courtyard" in the sense to mean a portion in front of the house/hut. According to him, it is nobody's case that the appellant assaulted his wife in the courtyard. So is not the case. The witnesses deposed the appellant to have assaulted Hirkanbai outside his house/hut and then took her into the house and assaulted further. The number of injuries noticed on the person of the deceased would indicate that there is no reason to disbelieve PW 8 – Bhikubai that the appellant assaulted Hirkanbai first outside of his house and then took her inside the house. Same suggests the appellant to have further assaulted his wife after taking her in the house.

21. PW 11 – Kantilal was Police Constable. He was on duty

on 12.07.2015. It is in his evidence that by 07.45 p.m., Police-Patil of the village Navi Hingani, informed the station-diary In-charge - Sanjay Bagale that at village Hingani, one Ashok Sukharam Dabhade (appellant) committed murder of his wife. He, therefore, along with PSI Nikam, Head Constable Govind Jadhav, Head Constable Devidas Hire, Police Naik Vilas Patil and Lady Constable Mirabai went to the village Navi Hingani. His further evidence is very much consistent with the evidence of PW 1 - Govind Jadhav. We do not propose to refer his evidence in extenso.

22. PW 10 - Krushna was Police Sub-Inspector, Police Station, Sarangkhedda. He was entrusted with the investigation of the crime. He arrested the appellant and drawn various panchnamas. We do not propose to refer his evidence in extenso, since what he did has already been referred to, as evidence of the other witness.

23. On appraeciation of the aforesaid evidence, we reached to the conclusion that deceased Hirkanbai met with homicidal death at the house of the appellant. When the police officials visited the house of the appellant, the appellant also was present. He owed explanation about cause of death of his wife. The suggestion that she died of sudden illness has been falsified by the medical

evidence. Moreover, the evidence of the eye-witnesses referred to herein above, lead us to infer the appellant and none else, to have committed murder of his wife. The trial court has rightly convicted him and accordingly, sentenced as well.

24. For the aforesaid reasons, we find that the appeal is without merit. The appeal, therefore, stands dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP