



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

CRIMINAL APPEAL NO.72 OF 2020

Sanjay s/o Pandurang Gaikwad
Age 49 years, Occ. Carpenter
R/o Indiranagar, Latur
Tq. & District Latur
At present Convict No.C-8923,
Central Jail, Harsool,
Aurangabad

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
through Police Station Officer
Latur, Tq. & District Latur
(Copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. M.P. Kale, Advocate for appellant (appointed)
Mrs. S.N. Deshmukh, A.P.P. for respondent
.....

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

DATE : 7th August, 2024

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 26/10/2018, passed by learned Sessions Judge, Latur in Sessions Case, No.11/2016. Vide impugned judgment and

order, the appellant was convicted for committing murder of his wife and therefore, sentenced to suffer imprisonment for life till his entire life

2. The prosecution case in short before the Trial Court was that, the appellant along with his wife -Sagarbai (deceased) would reside along with their two grown up children at Indiranagar, Latur. The appellant was carpenter by profession. Sagarbai (deceased) would work as a maid in a hospital at Latur. The appellant did not like his wife to do service. He would suspect her loyalty to him. On the fateful night particularly by 4.15 a.m. on 26/9/2015, both the appellant, his wife Sagarbai and one of the sons were at their residence. Another son had been at his work place in Market Yard. The residence in which they were residing was a two room premises.

The appellant picked up quarrel with Sagarbai and brutally murdered her. He assaulted her with a grinding stone. He even caused her injuries with hacksaw. On hearing her cries, the son Ajay (P.W.4) woke up. He was sleeping in the front room. The incident took place in the kitchen room. The appellant had bolted the door from inside. P.W.1 Babita, wife of brother of the appellant woke up on hearing cries.

Neighbours too gathered. All of them peeped into the room to see the appellant assaulting Sagarbai. Efforts to break open the door went futile. A police van on patrolling duty arrived. Somebody had also informed the police.

Before arrival of the police, the appellant had come out of the room. He was armed with an iron bar and hacksaw. His face was smeared with blood. He was behaving abnormally. He again entered the house and bolted the room from inside. He agreed to come out of the room if a local leader Mr. Chikate (P.W.9) comes to the place. P.W.9 Chikate in turn came. The room was opened. The appellant was overpowered. It appears that, he too was injured.

3. P.W.1 Babita lodged the F.I.R. (Exh.24) at the concerned police station. Inquest (Exh.35) and autopsy (Exh.58) were conducted on the mortal remains of Sagarbai. The weapons used in commission of the offence were seized. Those were sent to the office of Chemical Analyser for analysis and report. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceed against by filing a charge sheet.

4. Learned Additional Sessions Judge-2, Latur framed the charge (Exh.18). The appellant pleaded not guilty. What was his stand in his examination under Section 313 of the Cr.P.C. would be referred to while appreciating the evidence.

5. The case then was tried and decided by learned Sessions Judge, Latur (Trial Court). The prosecution examined 13 witnesses and adduced in evidence certain documents. On appreciation of the same, the Trial Court convicted the appellant and consequently sentenced as stated above.

6. Heard. Learned Advocate for the appellant would submit that, Indiranagar locality, wherein the appellant was residing, is a slum. Various crimes would take place in that area. On the given night, thieves had entered the house of the appellant and they caused injuries to appellant and even committed murder of his wife. According to him, P.W.1 Babita and others gave evidence against the appellant since Babita wanted to deprive the appellant of his property. According to him, a smaller portion had come to the share of her husband in partition of the family property. He ultimately urged for allowing the appeal.

7. The learned A.P.P. would, on the other hand, submit that, it is an open and shut case. She took us through the evidence on record and the reasons given by the Trial Court. She ultimately urged for dismissal of the appeal.

8. Let us advert to the evidence on record and appreciate the same.

9. Admittedly, the appellant was the husband of Smt. Sagarbai (deceased). The couple was blessed with two sons and a daughter. The daughter was married and residing at her matrimonial home. The incident took place by 4.15 a.m. on 26/9/2015 in the kitchen room of the house of the appellant in Indiranagar is also not in dispute.

10. P.W.8 Dr. Indrajeet conducted autopsy on the mortal remains of Sagarbai. He noticed 22 external injuries on her person. Most of them were incised injuries besides stab wounds. He also noticed 10 internal injuries. In his opinion, Sagarbai died due to shock due to multiple injuries. Post mortem examination report is at Exh.58.

11. P.W.2 Shivaji was a witness to the inquest panchanama (Exh.35). The same too indicates number of injuries on the person of Sagarbai.

12. P.W.3 Sahebrao is a witness to the crime scene panchanama (Exh.39). His evidence indicates that, he was a Talathi. On the direction of the Tahsildar, he remained present at the crime scene. It is in his evidence that, it was a premises consisting of two rooms. There was one door intervening the two rooms. The inside room was a kitchen room. The kitchen had a small window. The door was of iron. Household articles like gas stove, water jar etc. were there in the kitchen room. He saw a muller lying on the spot, which was stained with blood. He also noticed one blood stained *Sabba* (iron rod) and one hacksaw in the kitchen room. Both these articles too were stained with blood. The police collected blood with cotton swab. A full sleeve shirt stained with blood was also seized in his presence. In his cross-examination, it has been brought on record that, on the northern side of the house of the appellant, there was house of P.W.1 Babita. From his further cross-examination, nothing helpful to the appellant could be brought on record.

13. P.W.1 Babita was the wife of appellant's brother Vijay. It is in her evidence that the appellant was her elder brother-in-law. The appellant would reside with his wife and two children in her immediate neighbourhood. The wife of the

appellant was serving with the hospital of Dr. Deshmukh at Latur. There used to be frequent quarrels between the couple. The appellant did not like his wife serve to earn living. He would suspect her loyalty with him. For 5-6 days next before the incident, Sagarbai had not attended her duties.

14. It is further in her evidence that, by 4.15 a.m. on 26/9/2015, she heard shouts of Sagarbai. On hearing the cries, she along with her husband and both children came outside the house of the appellant. The appellant was requested to open the door. He did not listen. Both, her husband and son peeped into the room. Her son Ajay (P.W.4) saw the appellant assaulting Sagarbai. It is further in her evidence that, she too peeped in the room through a window. It is further in her evidence that, she saw the appellant to have tied a towel around the neck of Sagarbai and pulling her back. She, therefore, started shouting. Neighbours, namely Khandu Shirsat, Eknath Kamble, Pintu Kakane and others gathered on the spot. All of them tried to open the door of the house. The appellant too was requested to open the door. The appellant came out of the room for a while holding a hacksaw in his hand. He proclaimed to have killed his wife. Then he started behaving abnormally. The appellant started singing a song.

“Kurbani Kurbani Allah Ko Pyari Kurbani”. Then he again behaved disorderly on road and entered his house. The appellant then closed the door from inside, she again heard sound of something being hit on the tile. She peeped into the room. She saw her co-sister Sagarbai to have been lying in a pool of blood. The appellant was sitting by the side of her body. The appellant collected the blood, applied the same to his face. He also sipped some of the blood of his wife. Then he started assaulting himself. When the appellant was asked to open the door, he told that he would open the door only if Chandrakant Chikate (local leader) comes there. It is further in her evidence that, thereafter police arrived. They too tried to open the door. Shri Chandrakant Chikate then came. The appellant then opened the door. The police took him into custody. P.W.1 Babita entered the house. She saw Sagarbai to have suffered multiple injuries and lying motionless. She then went to the police station and lodged the F.I.R. (Exh.24).

15. In her cross-examination, she testified that, Chandrakant Chikate and she were active in local politics. Whenever any dispute occurs in any family residing in the vicinity, they would settle the same. She admitted that the house she was residing in, was allotted to her husband in

partition. She admitted that, there was a window to the front room of the house of the appellant. The appellant's house was not well built. The police arrived at 6.00 a.m. She denied that, thieves had come to commit theft and they assaulted her co-sister. She denied that, with a view to grab property of the appellant she lodged a false report (Exh.24) and given false evidence as well. She admitted that, in the incident the appellant too suffered grievous injuries. Rest of her evidence in examination-in-chief was denied by putting suggestions to her.

16. P.W.4 Ajay is the son of the appellant. It is in his evidence that, he along with his parents went to sleep in their house on the night of 25/9/2015. His brother was away at his work place. By 3.45 a.m., he heard noise of his parents. He woke up. The appellant had taken his mother in the kitchen room and bolted the door from inside. A quarrel was on between the two. Both of them were beating each other. He was asking his father to open the door. Due to his shouts, his uncle Vijay and his wife Babita (P.W.1) arrived. Their son Vikas too was with them. Some neighbours had also gathered. Their efforts to break open the door proved futile. The appellant was assaulting his mother. He saw the same

through the window. After half an hour, the father came out. His mother was lying injured in the kitchen. According to him, his father (appellant) was armed with iron rod and hacksaw. He, therefore, went away with fright. The father roamed in the lane and again went back in the house. He bolted the door from inside. The police then arrived.

The learned A.P.P. put some leading questions to this witness as he was not supporting to some extent to the prosecution. He denied to have seen his father sipping blood of his mother. To some other questions, his answers were positive.

Although he was subjected to a searching cross-examination, nothing could be elicited which would be helpful to the prosecution. He denied each and every suggestion put to him during his cross-examination by the defence lawyer.

17. P.W.5 Vikas is the son of P.W.1 Babita. It is in his evidence that, on hearing shouts of mother of his cousin Ajay, he woke up. He joined his parents to the house of the appellant. Some villagers had gathered there. The door separating the two rooms was closed. His aunt Sagarbai was shouting "*Wachwa – Wachwa*". The door was tried to be broke

open, but in vain. He peeped into the kitchen room through a small opening of a window. He witnessed the appellant assaulted his wife with muller. Then he gave Sagarbai blows with hacksaw. The appellant gave her further blows with iron rod. He sipped Sagarbai's body. Then he opened the door and came out for a while. He told the people gathered that he was a Cub (*Wagacha Baccha*). He then again entered the kitchen room and closed the door from inside.

18. In his cross-examination, he denied to have not seen anything or heard voice of Sagarbai. To none of the questions put to him in cross-examination he gave in.

19. P.W.6 Laxmibai was one of the neighbours of the appellant. It is in her evidence that, she woke up by 4.00 a.m. on hearing noise of her son. P.W.1 Babita was there. She was shouting to save Sagarbai. She therefore went close to the house of the appellant. Some persons were present outside. She peeped into the house of the appellant. She saw the appellant assaulting his wife Sagarbai with pestal (grinding stone) and crow bar. It is further in her evidence that, after a while the appellant came out of the room and confessed to have killed his wife. He again went back to his house and bolted the door from inside.

20. In her cross-examination, she stated that, when she had come out of the house, many persons had gathered. She did not give in to any of the questions put to her during cross-examination.

21. P.W.7 Shirish was a Police Head Constable who carried seized articles to Forensic Science Laboratory, Aurangabad.

22. P.W.9 Chandrakant Chikate testified that he arrived at the house of the appellant by 5.00 a.m. i.e. post incident. He asked the appellant to open the door. The appellant obliged. The police took him into custody. The appellant had suffered injuries to his neck.

23. P.W.10 Dr. Swapnil had examined the appellant and noticed following three injuries on his person :-

- (1) Injury No.1 :- C.L.W. 4 cm. below chin on central neck on anterior side, of size 4 x 3 x 4 cm., age of injury within 24 hours, the weapon used is hard and blunt object and nature of injury was simple.
- (2) Injury No.2 :- Contusion on left foot, of size 2 x 2 cm., age of injury within 24 hours, the weapon used is hard

and blunt and nature of injury was simple.

- (3) Injury No.3 :- Multiple linear abrasions over trunk, over abdomen and on both forearms, of variable sizes, age of injuries 24 hours, the weapon used is hard and blunt and nature of injury was simple.

The appellant's injury certificate is at Exh.65.

24. P.W.11 Dashrath was one of the investigating officers. He drew inquest panchanama (Exh.35). He drew the crime scene panchanama (Exh.39). He sent the seized articles to Forensic Science Laboratory, Aurangabad, the office copy of forwarding letter whereof is at Exh.72. It is further in his evidence that, he arrested the appellant after he was discharged from the hospital. The arrest panchanama is at Exh.76.

During cross-examination, he admitted to have had not referred the appellant to Psychiatrist.

25. P.W.12 Madhuri was another police officer. She was on patrolling duty. She reached house of the appellant pursuant to the message received on wireless. People had gathered there. It is further in her evidence that, one Chikate arrived. On his arrival, the appellant opened the door. The

police took him into custody. The appellant had suffered injuries. She placed on record relevant station diary entries vide Exhs.85 and 86.

26. P.W.13 Navnath was a Police Head Constable on patrolling duty. He too arrived at the crime scene in response to a wireless message. His evidence is consistent with the evidence of P.W.12 Madhuri.

27. Appreciation of the aforesaid evidence would indicate that the crime scene is the kitchen room of the residence of the appellant. The incident took place little past 4.15 a.m. on 26/9/2015. The appellant's son Ajay too testified against his own father. The evidence of Babita (P.W.1) and her son Vikas (P.W.5) undoubtedly indicate that the appellant assaulted and killed his wife, brutally. P.W.1 Babita's evidence indicates that, the appellant would suspect character of his wife. While appreciating the evidence and even while hearing the appeal, a thought came to our mind as to whether the appellant was sane while he committed the gruesome murder. We, therefore, scrutinised each and every paper in the file to find neither defence of insanity was raised nor any paper relating to the appellant taking treatment of a Psychologist was on record. We talked to him online. He gave rational answers

to our queries. True, the question whether he was in a mental frame at the time of commission of crime was very much relevant. The Medical Officer serving in jail informed us the appellant to have no such medical history. His behaviour is normal for the last 7 years. The appellant even did not raise the defence of insanity either before the Trial Court or before us as well. True, if on appreciation of the evidence in the case the same is made out, we cannot ignore the same. The act of the appellant smearing the blood of his wife to his face and even he sipped her blood do not lead us to suspect that he was not sane while the crime was committed. We have a reason to say so, in his examination-in-chief under Section 313 of the Cr.P.C., he gave rational answers. To 4-5 questions he gave positive replies. He admitted that, he refused to open the door until Mr. Chandrakant Chikate (P.W.9) had come there. He admitted to have opened the door on Chikate's arrival. The defence that thieves had come and assaulted the appellant and his wife appears to be taken for the sake of defence and nothing more.

28. The appellant placed on record his side of the story in writing, before the Trial Court (Exh.38). We have perused the same. It has been stated therein that he had married

Sagarbai (deceased) 25 years before. They were blessed with 3 children, 2 sons and a daughter. One of the sons and the daughter have been married. He was working as a Carpenter to earn his living. His elder son was working to earn living. Some times he would not get carpentry work. Sagarbai was, therefore, insisting him to allow her to work. He would say her, "You should not work, we will pull on as it is." According to him, she joined the duty as a Nurse with the hospital of Deshmukh against his wish. She would report on duty by 10.00 in the morning and return by 5.30 in the evening. He would accompany her to reach her to her work place. He then would go to his work. Such things happened 4-6 months, thereafter she started telling him that she would be required to do night shift at the hospital. He was opposed to the same. He asked her to leave the job. She did not listen. She started doing night shift. For some days, he would accompany her to reach her to her work place. Thereafter she started asking him not to accompany her. After some days, he realised a substantial behavioural changed in her. She started picking up quarrel with him. She would not listen to him.

According to the appellant, on the fateful night, she was about to leave the house for night shift. He asked her to

not go. She, therefore, picked up quarrel with him. They went to sleep in the front room. She, however, picked quarrel with him. She threatened the appellant to commit suicide. He asked her to fetch drinking water. She entered the kitchen room. He too followed her. She refused to give him water. She started assaulting him. She then said the appellant that she would die that night. She then removed hacksaw and other articles from his tool bag and assaulted herself therewith. According to the appellant, she then picked up a grinding stone and caused self-inflicted head injury therewith. When he tried to resist her, she assaulted him with hacksaw. He, therefore, suffered a neck injury. He covered his neck injury with a towel. After having seen her to have suffered multiple self-inflicted injuries, he was mentally disturbed. Son started asking them to stop the quarrel. After his wife became silent, the son got up and started shouting that he (appellant) killed his mother. The neighbours thereby gathered. He did not open the door because he thought that he would be killed by the persons gathered outside. Somebody made a hole to the wall of his residence with a crowbar. He started wiping the floor stained with blood. His hands thereby got blood stained. After a while police arrived. He got more frightened. He, therefore, asked outsiders to call Mr. Chandrakant Chikate and then only he

would come out of the house. Chikate thereafter arrived. Then he opened the door. Nobody allowed him to tell his side of the story.

29. True, the injury certificate of the appellant indicates him to have suffered some injuries. It is, however, reiterated that, the appellant's son had no reason to speak against his own father. The neighbours too witnessed the appellant assaulted his wife. Although P.W.1 Babita was the co-sister of the deceased, there is nothing to indicate her to have any reason to grind an axe against the appellant. On appreciation of the evidence of the prosecution witnesses, we are not inclined to buy the defence version put up by the appellant in writing before the Trial Court. In our view, the evidence on record proved the appellant to have committed murder of his wife brutally. We, therefore, find no reason to interfere with the order of conviction passed by the Trial Court.

30. So far as regards sentence part is concerned, we are inclined to withdraw the words "till his entire life" appearing in clause (1) of the operative order. Hence the order :-

ORDER

(i) The Criminal Appeal is disposed of in following terms :-

(ii) The order dated 26/10/2018, passed by learned Sessions Judge, Latur in Sessions Case, No.11/2016, convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment is maintained. However, the words “till his entire life” in clause (1) of the operative order are hereby withdrawn.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-