



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

CRIMINAL APPEAL NO. 239 OF 2019

Convict Prisoner C/11701,
Tukaram Bhagwat Kamble,
Age : 38 years,
R/o. Kakramba (Hutment),
Tq. Tuljapur, Dist. Osmanabad,
Presently through Superintendent
Central Prison, Nashik Road, Nashik.

... Appellant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Tuljapur Police Station, Tuljapur,
Dist. Osmanabad.

2. The Superintendent,
Nashik Road, Nashik.

... Respondents

...

Mr. Nasimoddin Rafiyoddin Shaikh, Advocate for Appellant.
Mr. A. V. Lavte, APP for Respondent Nos.1 and 2/State.

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**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

RESERVED ON : 11th SEPTEMBER 2025

PRONOUNCED ON : 25th SEPTEMBER 2025

JUDGMENT (Per Mehroz K. Pathan, J.) :-

1. The Appellant has filed present appeal thereby challenging the judgment dated 2nd May 2018, passed by the Additional Sessions Judge, Osmanabad in Sessions Case No.7 of 2018, thereby convicting the Appellant under Section 302 of the Indian Penal Code (IPC) and Sections 4 and 25(1-B) of the Arms Act for allegedly committing murder of Rajashree (wife of the present Appellant).

2. The prosecution has examined 9 witnesses in support of its case, whereas the defence has not examined any witness. The statement of the Accused under Section 313 of Code of Criminal Procedure, 1973 (Cr.P.C.) was recorded by the learned Trial Court, wherein the defence taken is that of total denial. In addition, it is stated under Section 313 of the Cr.P.C. statement that his wife- Rajashree, sustained injuries due to an attack by a bullock with its horns.

3. The learned Trial Court, after considering the evidence adduced by the prosecution and the cross-examination conducted on behalf of the defence, was pleased to convict the Appellant for the aforesaid charges.

4. The main thrust of the arguments advanced by Mr. N. R. Shaikh, learned Advocate for the Appellant, is that although a sword was recovered at the instance of the Accused at the time of his arrest, there are no sharp-cutting or incised wounds on the person of the deceased to corroborate the allegation that he was assaulted with the said sword. The post-mortem report reveals that the deceased died due to hemorrhagic shock with injury to vital organs, and Column No. 17 does not disclose the presence of any incised or cutting wounds.

The submission, therefore, is that the weapon allegedly

recovered does not correspond with the nature of the injuries sustained by the deceased.

5. Another submission of the learned Advocate for the Appellant is that the Doctor has opined the age of the injuries to be about 8 to 9 hours prior to the post-mortem examination. The post-mortem was conducted at 8:00 p.m. on 18th October 2017, whereas the death had occurred at 10:00 a.m. on the same day.

6. A further submission advanced by the learned Advocate for the Appellant is that PW1–Zumber Tupsunder (father of the deceased) has specifically deposed about the cordial relationship between the Appellant and the deceased. He has categorically stated that there was no reason or motive for the Appellant to commit the offence. The testimony of the witnesses also indicates that the deceased and the Appellant used to regularly visit their in-laws during festivals. Hence, in the absence of any established motive to kill, the prosecution has failed to complete the chain of circumstances connecting the Appellant with the crime.

7. The next submission made by learned Advocate for the Appellant is that the testimony of PW5–Balis Kamble, who is relative of the Accused, indicates that there was only a normal quarrel between the deceased and the Appellant, and that he had even suggested calling

some more persons to pacify the quarrel. This, according to the defence, shows that the Appellant had attempted to defuse the situation and, therefore, it cannot be said that he acted in a fit of rage before the commission of the alleged offence. Hence, a conviction based merely on suspicion cannot be sustained by this Court.

8. The learned Advocate for the Appellant has further submitted that the extra-judicial confession relied upon by the prosecution is a weak piece of evidence, particularly in the absence of any corroborative material to support the prosecution case so as to base a conviction upon it. The testimony of PW6–Balaji Kolekar, a President of Free Village Litigation Committee and PW7–Parmeshwar Khatal, a village Police Patil, cannot be safely relied upon for accepting the alleged extra-judicial confession of the Accused.

9. Learned Advocate for the Appellant further submitted that the basic element of trust is missing as extra-judicial confession is only given before a person in whom the Accused can confide. The prosecution witness Nos.6 and 7, merely being the villager would not fall into the category of such confidantes and as such, their testimonies are not trust worthy and may not be believed.

10. Learned Advocate for the Appellant has further argued that the alleged weapon, i.e., iron rod was recovered from the spot and as

such, the same is not recovered from the Appellant on a memorandum under Section 27 of the Evidence Act. It is further argued that the clothes of the Accused and the sword were also not recovered in consequence of any such memorandum. Therefore, neither the said clothes nor the alleged weapons can be connected to the Accused, and the recovery thereof deserves to be disbelieved.

11. It is further argued that the son of the Accused, Dinesh, who was projected by the prosecution as an alleged eye-witness to the incident, has not supported the case of the prosecution. The report at Exhibit-52, submitted by Snehalaya Child Care Home through the Child Welfare Committee, reveals that Dinesh had refused to depose against the Accused. Learned Advocate for the Appellant, therefore, submits that in the absence of such crucial testimony, there is hardly any evidence on record to sustain the conviction of the Appellant for the alleged murder of his wife.

12. Mr. N. R. Shaikh, learned Advocate for the Appellant has relied upon various judgments of Hon'ble Supreme Court and this Court, which are as under:-

- (i). ***Ratnu Yadav Vs. State of Chhattisgarh***, reported in AIR Online 2024 SC 449.
- (ii). ***Sovran Singh Prajapati Vs. The State of Uttar Pradesh***, reported in 2025 SCC Online SC 351.

- (iii). *Dauvaram Nirmalkar Vs. State of Chhattisgarh*, reported in AIR Online 2022 SC 1218.
- (iv). *Pramod Baban Sonawale Vs. State of Maharashtra*, reported in MANU/MH/0443/2011.
- (v). *Imranali Babuali Sayyed Vs. State of Maharashtra*, reported in 2023 All MR (Cri) 872.

13. On the point that extra-judicial confession is a weak piece of evidence and Accused must have a trust in the person to whom he gives the extra-judicial confession and that the Court may not rely upon the same in the absence of a chain of cogent circumstances to record the conviction.

14. The other judgment relied upon by Mr. N. R. Shaikh is Shri. *Sovran Singh Prajapati Vs. The State of Uttar Pradesh (supra)*, to buttress his submission that failure to put relevant questions to the Accused under Section 313 of Cr.PC. would vitiate the trial.

15. Another judgment relied upon by Mr. N. R. Shaikh is *Dauvaram Nirmalkar Vs. State of Chhattisgarh (supra)*, wherein the Hon'ble Supreme Court considered the aspect of sudden provocation and held that, in appropriate cases, the offence may be converted to one under Section 304 Part II of the IPC. Reliance is also placed on the decisions in *Pramod Baban Sonawale Vs. State of Maharashtra (supra)* and *Imranali Babuali Sayyed Vs. State of Maharashtra (supra)*.

16. The aforesaid judgments are relied upon to contend that when, due to grave and sudden provocation, the offender, being deprived of the power of self-control, causes the death of the person who gave such provocation, the benefit of Exception 1 to Section 300 of IPC would enure to the Accused. Consequently, the conviction under Section 302 of IPC would require to be altered to one under Section 304 Part II of IPC.

17. The last judgment relied upon by the Appellant is ***Nagendra Sah Vs. State of Bihar***, reported in (2021) 10 SCC 725. The aforesaid judgment is relied upon to submit that the failure of the Accused to discharge the burden under Section 106 of the Evidence Act is not relevant, if the chain of the circumstances is not complete. The prosecution cannot shift his burden to the defence and the prosecution is required to establish each and every circumstance and to make the chain of circumstances complete. The falsity of the defence cannot be a ground to convict the Accused unless the prosecution has excluded all other hypothesis, except the hypothesis that of the guilt of the Accused.

18. Mr. A. V. Lavte, learned APP appearing for the Respondents-State has countered the submissions made by Mr. N. R. Shaikh and has vehemently submitted that the prosecution has successfully proved the guilt of the Accused. It is submitted that the prosecution has not only

examined related witnesses, but has also examined PW6 and PW7, who are independent witnesses from the village, being the President of Free Village Litigation Committee and village Police Patil, respectively. The testimonies of PW6 and PW7 clearly establish that the Appellant was present at the spot armed with a sword. Further, other witnesses have corroborated the fact that after committing the murder of his wife, the Appellant was seen roaming in the village with a sword in his hand and was ultimately apprehended by the Police Patil upon receiving information regarding the said incident.

19. Learned APP has further argued that the Accused made an extra-judicial confession before PW6 and PW7, who are residents of the same village and hold the positions of President of Free Village Litigation Committee and village Police Patil respectively. It is submitted that, by virtue of these positions, PW6 and PW7 are among the most trusted persons in the village, to whom the villagers ordinarily confide. Hence, the argument advanced by the learned Advocate for the Appellant, challenging the reliability of their testimonies, is wholly misconceived and liable to be rejected. Learned APP has further submitted that the prosecution has successfully established each and every circumstance, which unerringly points towards the guilt of the Accused and excludes all other hypothesis. The chain of circumstances is complete inasmuch as the deceased was last seen alive with the Appellant, the deceased died in her matrimonial home, and the CA

reports of the seized weapon are positive. Learned APP has, therefore, prayed for dismissal of the appeal.

20. We have heard Mr. N. R. Shaikh, learned Advocate appearing for the Appellant and Mr. A. V. Lavte, learned APP for the Respondents-State.

21. The incident occurred on 18th January 2017. Upon receiving information at the police station that the Accused was roaming with a sword after committing the murder of his wife, PW11–Police Inspector, Babar rushed to the spot along with his staff. PW11 found the Accused armed with a sword loitering on the outskirts of the village. With the assistance of Mr. Bhandari, PW11 apprehended the Accused, snatched the sword from him, and took him into custody. The sword, along with the short pant and sando banyan worn by the Accused, was seized under Panchanama (Exhibit-22) on the same day. Meanwhile, the complainant (PW1) was informed by his neighbours about the murder of his daughter. He, along with his wife, immediately proceeded to village Kakaramba, where they learned that deceased–Rajashree had been taken to the hospital for post-mortem. Thereafter, PW1 lodged the First Information Report (FIR), which came to be registered as Crime No.351 of 2017.

22. The Investigating Officer thereafter arrived at the

matrimonial home of deceased–Rajashree in village Kakaramba, where her dead body was found. He prepared the spot panchanama in the presence of panch witness, i.e., Mr. Sanjay Sontakke and seized the articles lying at the spot, namely, an iron bar, a piece of glass, seizure and a kadai (pan). The inquest panchanama was also drawn, and the blood-stained clothes of the deceased along with her blood sample were collected from the Medical Officer.

23. The Medical Officer has also conducted the post-mortem examination of deceased–Rajashree and noted multiple brutal injuries on her person. The details of the injuries have been recorded in Column No. 17 of the post-mortem report, which reads as under:

“1-Large oval completely lacerated wound involving whole face area with destruction of whole face, nose, eyes, lips, cheeks adm. 25 X 21 c.m. and 1-2 c.m. deep.

2-There is complete destruction of eyes on both sides.

3-Complete destruction of nose of maxilla upper lip, upper jaw seen.

4-Complete destruction of maxilla upper lip, upper jaw.

5-markings of above injuries are semicircular shaped.

6-On palpation all above mentioned facial bones are seen fractured destructed.

The all injures were ante mortem.”

24. The external injuries noted by PW9-Dr. Bharate in column No.19 of the post-mortem report are as under:-

“1-Scalp over forehead completely lacerated and there is fracture of underlying bone.

2-scale area on right occipital area also lacerated.

3-Fracture of skull vault on forehead area seen. There is fracture of

nasal bone, facial bone, mandibular bones, fracture of cribriform plate and orbital bones seen. Fracture of base of skull bone. All above fractures are severely lacerated and irregular in dimension. Infra cerebral bleeding seen Brain matter is also lacerated.”

25. The aforesaid injuries were found to be dangerous, life-threatening, and sufficient in the ordinary course of nature to cause death. The Doctor has further opined that such injuries could have been caused by the weapons seized from the spot, namely the iron rod, iron pan, seizure, and the sword. Since the prosecution relied on circumstantial evidence, it is necessary to re-examine whether the chain of events was duly established. PW1 and PW5 have deposed that the Appellant was suspicious of the character of the deceased. PW1 has specifically stated that on the occasion of Dussehra, when the Appellant had come along with deceased–Rajashree, he had assaulted her by biting, suspecting her character; however, Rajashree did not lodge any complaint against the Accused. PW5–Balis Kamble has also testified that the Appellant had disclosed to him about his suspicion that his wife was having illicit relations with another person. The testimonies of PW1 and PW5, insofar as they establish motive, have not been shaken in cross-examination on behalf of the Accused. The prosecution can, therefore, be said to have established the motive behind the crime.

26. The recovery of incriminating material from the spot has also been established through the testimonies of PW2 and PW11–Investigating Officer. The incriminating articles, namely the iron rod,

iron pan, and seizure were recovered from the spot, whereas the sword was seized from the person of the Accused at the time of his arrest. PW9–Dr. Barate has opined that the injuries sustained by the deceased could have been caused by the seized articles. Thus, the prosecution has successfully established another vital link by proving the recovery of incriminating articles from the matrimonial home of the deceased.

27. The important circumstance established by the prosecution is the “last seen together” theory, namely, that the deceased was last seen alive in the company of the Appellant, and that the incident occurred in the matrimonial home of the Accused-husband and the deceased-wife. The testimony of PW5–Balis Kamble substantiates this theory. PW5 has categorically stated that while returning from Tuljapur in a Tamtam rickshaw, both the Appellant and the deceased were co-passengers along with him. During the journey, the Appellant and the deceased were quarreling, to the extent that even the driver of the rickshaw asked them not to quarrel. After reaching the village, they parted to their respective homes. PW5 further deposed that shortly thereafter, the son of the Accused called him to the Accused’s house, where the Appellant was insisting that his wife swear before PW5. The Appellant then asked PW5 to call Mahadev Bhise and some other villagers to intervene in the quarrel. However, when PW5 returned after contacting PW6–Balaji Kolekar, the President of Free Village Litigation Committee, he found that the deceased had already been killed and the Accused

was standing ferociously with bloodstains on his clothes. Thus, the testimony of PW5 firmly establishes the “last seen together” circumstance relied upon by the prosecution, which remains unshaken in cross-examination.

28. The extra-judicial confession relied upon by the prosecution is to PW6 and PW7 by the accused who have categorically stated that the Appellant–Accused, while holding a sword in his hand, specifically admitted before them that he had committed the murder of deceased–Rajashree. It is well settled that an extra-judicial confession is a weak piece of evidence and cannot, by itself, be made the sole basis for conviction. However, in the present case, the extra-judicial confession made before PW6 and PW7 assumes significance as it forms an important link in the chain of circumstances established by the prosecution. This confession is duly corroborated by other evidence on record, thereby lending assurance to its reliability. While extra caution is undoubtedly required while placing reliance upon an extra-judicial confession, in the facts of the present case, the prosecution has successfully established a complete chain of circumstances; when considered cumulatively with the confession, it inspires confidence and points unerringly towards the guilt of the Appellant.

29. Another circumstance relied upon by the prosecution is the testimony of PW8–Prashant Sonawane, who has specifically stated that

he had snatched the sword from the hands of the Accused, who was roaming in the village after committing the murder of the deceased. His testimony stands corroborated by other witnesses from the village. The cross-examination of PW8 does not in any manner weaken his version; rather, it reinforces the prosecution case by establishing that the Accused made no attempt to abscond when PSI-Bhandari apprehended him.

30. Thus, another important piece of evidence, which provides an additional link to the chain of circumstances relied upon by the prosecution is the false plea and denial put forth by the Accused in his statement under Section 313 of the Cr.PC. On perusal of his statement, it is seen that the Appellant claimed that the deceased died as a result of injuries caused by bullock horns. The defence, however, has failed to lead any evidence to substantiate this claim. Consequently, this plea is palpably false and serves as an additional link in the chain of circumstances established by the prosecution. Once the chain of circumstances has been established, the burden naturally shifts to the defence to provide a plausible explanation regarding the cause of death of the deceased, who was the wife of the Accused, residing in the same matrimonial home, and last seen in his company. Learned APP for the Respondent-State has rightly relied upon the judgment in ***Trimukh Maroti Kirkan v. State of Maharashtra***, reported in AIR 2006 SCW 5300, wherein the Hon'ble Supreme Court has categorically observed

as follows:-

16. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

31. Another important aspect supporting the prosecution case is the forensic evidence contained in the CA report. As per Exhibit-48, the blood group of the deceased was “B,” and the full pant of the Accused was found to contain blood of the same group. The other incriminating articles, namely the iron pipe, iron kadai (pan), and sword, were also found to contain human blood. Thus, the prosecution has established the guilt of the Accused beyond reasonable doubt. The cumulative effect of the entire evidence-comprising ocular testimony, recovery of incriminating articles, medical evidence, CA report, motive, and extra-judicial confession-unequivocally proves that the homicidal death of deceased-Rajashree was caused by none other than the present Appellant.

32. The prosecution has also established that the Accused was found in possession of the weapon, namely the sword. Consequently, the learned Sessions Judge rightly convicted the Appellant under Section 25 of the Arms Act, with the sentence directed to run concurrently with the substantive sentence of life imprisonment

imposed for the offence under Section 302 IPC. In view of the foregoing, the appeal does not merit any interference and is, accordingly, dismissed.

33. It is pertinent to note that the Appellant had filed an appeal challenging the judgment of the learned Sessions Judge convicting him for the murder of his wife. The Appellant also filed an application for suspension of sentence. The said application was rejected by this Court by an order dated 2nd April 2019, after a detailed consideration of the matter.

34. Thereafter, the Appellant filed an application for grant of temporary bail. The jail authorities allowed the Appellant to go on parole; however, he failed to report back to the prison after his release. When the appeal came up for hearing, this Court issued a non-bailable warrant against the Appellant vide order dated 15th January 2024. It was subsequently reported that the warrant could not be executed as the Appellant was unable to move due to paralysis. Consequently, this Court granted temporary bail to the Appellant on 6th September 2024 for a period of one year. The one-year period expired on 6th September 2025. This appeal was taken up for hearing and concluded for judgment on 11th September 2025. Upon query to the Advocate for the Appellant and the learned APP, it was informed that the Appellant has still failed to report back to prison even after the expiry of the

temporary bail period on 6th September 2025.

35. In view of the dismissal of the appeal by this detailed judgment, the Appellant is hereby directed to surrender before the jail authorities forthwith. The concerned police station shall arrest the Appellant and put him in jail.

36. The fees of the Legal Aid Counsel is quantified as Rs.15000/-. We put on record the appreciation of the efforts put in by the Legal Aid Counsel Mr. N.R. Shaikh appearing for the accused.

[MEHROZ K. PATHAN]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

Najeeb..