



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

CRIMINAL APPEAL NO.948 OF 2023

Ladalya s/o. Asaram Pawar,
Age : 32 years, Occ. Labour,
r/o. At Shemalkhut, Post Helpadawa,
Taluka : Jhiranya, Dist. Khargaon,
Madhya Pradesh
(Present the appellant is in
Nashik Central Prison, Nashik,
since his arrest, i.e. from 16th March, 2018 ..Appellant

Vs.

The State of Maharashtra,
Through the Police Station, Pahur,
Tq. Pahur, Dist. Jalgaon ..Respondent

Mr.Amol R. Joshi, Advocate for appellant (appointed)
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : FEBRUARY 12, 2025**

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

This appeal takes exception to the judgment and order dated 05.05.2022, passed by learned Extra Jt. District Judge & Addl. Sessions Judge, Jalgaon, in Sessions Case No.44 of 2018, whereby, the appellant has been convicted for the offence punishable under Section 302 of Indian Penal Code and therefore, sentenced to suffer

imprisonment for life and to pay a fine of Rs.5,000/-, with default stipulation.

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

The appellant had married Funabai (deceased) about seven years before March, 2018. The couple was blessed with two children. The appellant hails from District Khargone, in the State of Madhya Pradesh. By the end of February, 2018, Funabai had come to her parental house for Holi festival. The appellant came to the house of his in-laws in the evening of 08.03.2018. He was well received by his in-laws. In the night, all of them went to sleep outside the house. The appellant slept on a specially made bed of Maze straws, little past 08.00 p.m. He assaulted his wife Funabai with knife blows. Funabai screamed. Her parents woke up. They saw the appellant to have assaulted their daughter and then fled. The mother of the deceased approached their master/land owner namely, Ganesh Premraj Naik. He arrived. Funabai was rushed to the hospital at Jalgaon. The Doctor there declared her dead. On autopsy, the dead body was handed over to her father, who performed last rites. He then approached Pahur Police Station on 09.03.2018 and lodged FIR (Exh.37) against the appellant.

3. The crime, vide C.R. no.13 of 2018 was registered. It appears that initially, a case of unnatural death was registered, during inquiry whereof, inquest and autopsy were drawn. The appellant was arrested post registration of the FIR. He made disclosure statement, pursuant to which a knife wielded by him in committing the offence, was seized. The clothes on the person of the deceased and the appellant were seized. All the seized articles were submitted to F.S.L. The C.A. reports were received. The statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, charge sheet was filed against the appellant.

4. The trial court framed Charge (Exh.26). The appellant pleaded not guilty. His defence was of false implication.

5. Heard learned counsel for the parties. Learned counsel appointed through legal aid to represent the appellant, took much pains. We appreciate his endeavor. He would submit that there was delay of little over one day in lodging of the FIR. The delay has not been explained. He took us through the cross-examination of the informant to submit that the informant admitted to have not seen the assailant. According to learned counsel, the incident took place

8-10 days after the full-moon day. He meant to say that it was dark in the night. The eye-witnesses could not have seen the assailant. It was also suggested to the witnesses (PW1 and PW2) that since the appellant was not mentally keeping well, they did not like him to be their son-in-law. According to him, the name of appellant was Mukesh and not Ladalya. He would further submit that no independent witness, such as, a person from the neighbourhood, came forward to depose. Existence of torch/battery with the informant, was an improvement over his contentions in the FIR. According to learned counsel, once the evidence of the eye-witnesses is discarded, then what remains is circumstantial evidence in the nature of recovery of the knife, pursuant to the disclosure statement made by the appellant. He would submit that the Investigating Officer did not depose to what had been disclosed to him by the appellant. The knife was sent to the F.S.L. The authorities returned the same as the name of the accused appearing on the cover thereof did not tally with the name of the present appellant. The same suggests that the Muddemal article in connection with some other criminal case might have been submitted for analysis. On return of the article by the F.S.L., the Investigating Officer took eight days time to resubmit the same. Said delay has not been explained. Possibility of the articles to have been tampered during

said period, could not be ruled out. According to learned counsel, all-in-all, the prosecution could not bring home the charge beyond reasonable doubt. He would further submit that the appellant did not understand Marathi language. He was a Hindi-speaking. The Investigating Officer did not apprise the appellant or translated the so called disclosure statement in his mother tongue. The same caused prejudice to the appellant in his defence. A host of authorities have been relied on by learned counsel on the question of disclosure statement and recovery of the article pursuant thereto. The same indicates learned counsel to have made a lot of home work to represent the appellant in this appeal. We reproduce the authorities relied on by learned counsel as under:-

1	Rahul Vs. State of Delhi Ministry of Home Affairs and anr., [2022]9 S.C.R. 1129	1) Error of exhibiting and reading entire disclosure statement in evidence 2) Incorrect handling of forensic evidence
2	Subramanya Vs. Sate of Karnataka, [2022]14 S.C.R. 828	Disclosure statement to be proved in entirety by witness. Merely recovery at instance of accused can hardly be treated as legal evidence.
3	Manoj Kumar Soni Vs. State of Madhya Pradesh, [2023]11 S.C.R. 246	Disclosure statements per se unaccompanied by any supporting evidence cannot be deemed adequate to secure a conviction
4	Prakash Nishad @ Kewat Zinak Nishad Vs. State of Maharashtra, [2023]8 S.C.R. 152	1) Delay in sending medical evidence for examination, chain of custody

		2) Language barrier in understanding disclosure statement
5	Babu Sahebagouda Rudragoudar and others Vs. State of Karnataka, [2024]5 S.C.R. 174	Proof of disclosure statement and exhibiting memorandum, proof of contents and narration of events
6	Gaurav Maini Vs. The State of Haryana, [2024]7 S.C.R. 333	Suspicious circumstances leading to registration of FIR
7	Ravishankar Tandon Vs. State of Chhatisgarh, [2024]4 S.C.R. 558	Disclosure statement not signed in police station not valid
8	Santosh @ Rajesh @ Gopal Vs. State of Madhya Pradesh, [2024]9 S.C.R. 609	Absence of corroborative evidence
9	Thakore Umedsing Nathusing Vs. State of Gujarat, [2024]2 S.C.R. 1178	Recovery made from open space and accessible to all

We, however, do not propose to refer to those authorities since we ignore the evidence in the nature of the disclosure statement and recovery of the knife pursuant thereto.

6. Learned APP would, on the other hand, submit it to be an open and shut case. The parents of the deceased were eye-witnesses to the incident. They would not spare the real culprit and

falsely implicate their son-in-law. On the ground of delay in lodging the FIR, he would submit that the parties are rustic. They belong to Pawara community. The informant (father of deceased), after demise of their daughter, received custody of the dead body. He took it to the village for funeral. Thereafter, the FIR came to be lodged. The parents of the deceased are so rustic that they could not be attributed with any motive or malafide. Learned APP would, ultimately, urge for dismissal of the appeal.

7. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same. The submissions made by learned counsel for the appellant are very much on our mind for re-appreciation of the evidence.

8. PW 5 – Dr. Milind conducted autopsy on the mortal remains of deceased Funabai on 09.03.2018. The post mortem report (Exh.64) indicates that she died of stab injury. PW 5 – Dr. Milind noticed six ante-mortem injuries on the person of the deceased. He found some semi-digested food particles in the stomach of the deceased.

9. The fact that Funabai met with homicidal death is not in dispute. The question is, whether the appellant is author of the crime. PW 1 – Dagadu, father of deceased, testified that Funabai had married the appellant seven years before the incident. The couple was blessed with two children. The appellant would illtreat her, suspecting her character. Phunabai had come to his place for Holi festival eight days before 08.03.2018. The appellant too came to his place by 5.00 in the evening. The appellant was duly honoured. He was served with tea first. For dinner, *Khichadi* was cooked. After the dinner was over, all of them went to sleep outside the house. A special bed was prepared for the appellant. He slept thereon. Post 8.00 p.m., he (PW1) heard screams of his daughter. He woke up and noticed the appellant to have assaulted his daughter (Funabai) with knife blows. The appellant, thereafter, fled towards Ambadi dam. His wife (PW9 – Jilabai) went towards village to secure help. The villagers came to the place on motorcycle and auto-rickshaw. The villagers took Funabai to the Government Hospital, at Shendurni. She was then shifted to the Civil Hospital, Jalgaon. The Doctor declared her dead. He further testified that on the following day, he approached the police station and lodged the FIR (Exh.37).

10. PW1 – Dagadu was subjected to searching cross-examination. He testified to have been illiterate. He claimed to be Hindi-speaking. He admitted to have put thumb-impression on the police report. He, however, denied that the police did not read over the contents of the report to him in Hindi. He denied that the appellant was not keeping mentally sound. He admitted that it was dark. He further clarified that he was having a torch/battery with him. It was brought on record through his cross-examination that he approached the police station to lodge the report. It appears that PW1 – Dagadu gave a stray admission to the effect that he did not see the person who assaulted his daughter with knife. In the second breathe, he denied that due to darkness, he could not see the assailant. He denied that since someone else had assaulted Funabai and therefore, he did not lodge the report immediately. It was further suggested to him that at the time of the incident, the appellant was suffering from unsoundness of mind. There is, however, no evidence to that effect.

11. PW9 – Jilabai is mother of the deceased. It appears that learned counsel for the appellant skipped to refer to her evidence. She testified that for Holi festival, she had brought Funabai to her place. On the day of the incident, the appellant came to her place

by 5.00 p.m. The appellant was served with *Khichadi* for dinner. A special bed of Maze-straws was prepared for the appellant. He slept on the said bed after dinner. After sometime, she heard cries of her daughter. She had slept by her side on another cot. Her husband (PW1 - Dagadu) too was sleeping on a separate cot in the close-by. She further testified to have seen in the torch-light the appellant to have assaulted her daughter with knife and fled towards Ambadi dam. She went towards village Malkheda to report the matter to their employer and seek some help. Her employer - Ganesh Naik and villagers came to the place. Funabai was rushed to the hospital at Shendurni and then, shifted to the Civil Hospital, Jalgaon; but in vain.

12. We have gone through the cross-examination of PW9-Jilabai to find nothing helpful for the appellant to have been brought on record. The questions which were put to PW1 - Dagadu in his cross-examination, were put to this witness as well.

13. From the tenor of the cross-examination, we did not come across the appellant to have denied to have been to the place of his in-laws on the fateful night. When he was very much there and if his wife was assaulted by someone else, his reaction would have been otherwise. He would have remained there or fled with

fear and would have returned immediately after a while to see what had happened with his wife and take further course of action. Nothing of that sort had happened. His presence at the house of the PW1 – Dagadu on the fateful night, has been proved and even not disputed by the appellant. His parents-in-law namely, PW1 and PW9 had no reason to falsely implicate their son-in-law (appellant), sparing the real culprit. At least, nothing of that sort has been brought on record through the evidence.

14. True, the FIR has been lodged about 20 hours after the incident. Before that, a case of unnatural death was registered. The parents of the deceased belonged to *Pawara* community/tribe. They were rustic and illiterate. Their evidence indicates that the deceased was first rushed to two hospitals and on her demise, her dead body was taken to the house of PW1 – Dagadu, for last rites. Thereafter, he approached to the police station to lodge the report. We find the delay in lodging the FIR to have not been misused for falsely implicating the appellant in the case on hand. Based on the evidence of the parents of the deceased, the prosecution did establish the charge. We find the trial court to have not committed any mistake in convicting the appellant and consequently, sentencing him imprisonment for life.

15. Rest of the evidence is in the nature of testimonies of the panchas relating to various panchnamas, such as, crime-scene panchnama (Exh.44), inquest panchnama (Exh.57), panchnama of seizure of clothes, disclosure statement made by the appellant and recovery pursuant thereto. We do not propose to refer to said evidence since the offence to have been duly proved.

16. For the reasons stated herein above, the appeal fails and the same is dismissed.

17. Fee of learned counsel appointed to represent the appellant through the legal aid, is quantified at Rs.15,000/- (Rupees Fifteen Thousand.)

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP