



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

**CRIMINAL APPEAL NO.187 OF 2023 WITH
CRIMINAL APPLICATION NO.708 OF 2023**

Pappu Ratan Pawar,
Age 33 years, Occu. Labour Work,
R/o Vivekanand Nagar, Pachora,
Tq. Pachora, Dist. Jalgaon **... APPELLANT**

VERSUS

The State of Maharashtra
through the Pachora Police Station,
Tq. Pachora, Dist. Jalgaon
(Copy to be served on Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) **... RESPONDENT**

.....
Mr. G.V. Wani, Advocate for appellant
Mrs. Uma S. Bhosle, A.P.P. for respondent
.....

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

DATE : 6th JANUARY, 2025

J U D G M E N T (PER : R.G. AVACHAT, J.) :

The appellant has been convicted for the offence of
murder and therefore, sentenced to suffer imprisonment for life

and to pay fine of Rs.5000/-, in default to undergo further simple imprisonment for three months, by learned Session Judge, Jalgaon vide judgment and order dated 19/5/2021, passed in Sessions Case No.319/2019.

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

The appellant along with his wife (deceased Kasturabai) would reside at Pachora, District Jalgaon along with their three minor daughters. The appellant was serving in a hotel. He was addicted to liquor. The appellant would ill-treat his wife under the influence of liquor. The deceased used to relate her woes to her mother (Padmabai) and other relations.

On the intervening night of 9 and 10 June 2019, the appellant informed his brother-in-law on phone that his wife suffered heart attack. She was lying in Rural Hospital, Pachora. He along with his two sons, therefore, rushed to the Rural Hospital. He saw the dead body in Mortuary. His deceased sister had suffered multiple injuries. P.W.1 therefore

lodged First Information Report (F.I.R. Exh.15) with Pachora Police Station.

3. A crime vide C.R. No.237/2019 was, therefore, registered for offence punishable under Sections 302, 504 of the Indian Penal Code. During the investigation, inquest and autopsy were conducted on the mortal remains of Kasturabai. Statements of the children of the appellant and of those who were acquainted with the facts and circumstances of the case were recorded. One of the daughters of the appellant informed the police the appellant to have killed her mother during the night. The appellant was arrested. Clothes on the person of the appellant and the deceased were seized. Crime scene panchanama was drawn. All the seized articles were submitted to the Forensic Science Laboratory, Nashik. Reports thereof were received. On completion of the investigation, the appellant was proceeded against by filing charge sheet.

4. The Trial Court framed the Charge (Exh.7). The appellant pleaded not guilty. To bring home the charge, prosecution examined 10 witnesses and produced in evidence

certain documents. On appreciation of the evidence in the case, the Trial Court convicted and consequently sentenced the appellant as stated above.

5. Heard. Learned Advocate for the appellant would submit that, the conviction was based on the testimony of a minor, Gauri (P.W.7). She was in the custody of her maternal grandparents since the day of the incident to the date of giving evidence. The child witness was prone to tutoring. A wooden rafter might have fallen on the head of the victim resulting into her death. C.A. reports did not further the prosecution case. He would further submit that, it was the appellant who had brought the deceased to the hospital. The same suggests the appellant did not have intention to kill his wife. Three minor daughters of the appellant are there. He urged for considering the case sympathetically and grant appropriate relief at least for converting the conviction from the offence punishable under Section 302 to any other lesser offence.

6. The learned A.P.P. would, on the other hand, submit that, it was a brutal murder. The appellant admitted his presence at his residence during the night. As such, it is the

appellant and none else who has killed his wife. The deceased was rushed to the hospital by her parents and not by the appellant. She, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record. Let us appreciate the same.

Admittedly, the appellant had married Kasturabai. The couple was blessed with three minor children. All of them would reside together at Pachora.

P.W.10 Dr. Nilesh conducted autopsy on the mortal remains of the deceased. He noticed 27 external injuries on the person of Kasturabai. In his opinion, the deceased died of strangulation associated with head injury.

8. Most of the witnesses are in the nature of panchas to various activities in the investigation, such as drawing of crime scene panchanama, seizure of clothes of the deceased and appellant, arrest of the appellant etc. The appellant examined himself as a defence witness, wherein he stated that, he had returned to the house by 6.00 p.m. His elder

daughter was at his matrimonial home for 4 to 5 days. His wife (deceased) complained chest pain. He asked her to accompany him to the doctor. She, however, asked him to bring tablets. He obliged. Then both of them took meals. He went out of the house. By 9.00 p.m. he returned. Both of them went to sleep by 10.30 p.m. Again his wife complained chest pain. He took her to Vighnaharta Hospital. She was suffering from cold-sweating. The doctor there informed him that she suffered heart attack. He, therefore, brought her to Government Hospital where she died.

9. The stand of the appellant on oath is grossly inconsistent with prosecution evidence, namely the post mortem report which indicate the deceased to have suffered 27 injuries. She died of head injury associated with strangulation. Admittedly, the appellant was in her company all along.

10. In the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006)10 SCC 681**, it has been observed thus:-

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be

extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused

does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. ...”

(Emphasis supplied)

11. Moreover, there is evidence of P.W.1 Padmabai, mother-in-law of the appellant, who testified that the appellant would harass and ill-treat her daughter. She would relate the woes to her. This evidence is admissible under Section 32(1) of the Evidence Act although she was not witness to the incident.

12. P.W.7 Gauri testified that, her father (appellant) beat up her mother with sickle on her head. That was the incident took place some days before. It was, however, not reported to the police. She further testified that, on the given night, the appellant inflicted number of blows on the head of her mother with wooden log. He then strangled her. She was in the house. Her both the sisters – Bhagyashree and Khushi were also present in the house.

Although number of questions were put to her during cross-examination, nothing could be elicited to find the child witness was tutored one. It was but natural that on the

death of mother, and father being behind the bars, the children were taken care of by the grandparents. It is reiterated that, the deceased was declared dead before admission to the hospital. As such, there was no question of the appellant taking her to the hospital to save her life. There is also evidence to indicate that it was not the appellant but the relations of the deceased (appellant's in-laws) who took her to the hospital.

13. On appreciation of the aforesaid evidence, we find the Trial Court to have rightly convicted and consequently sentenced the appellant for the offence punishable under Section 302 of the Indian Penal Code. No interference with the impugned order is, therefore, warranted. In the result, the appeal fails. It is dismissed. Consequently, Criminal Application No.708/2023 stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-