



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

**CRIMINAL APPEAL NO. 1014 OF 2024
AND CRIMINAL APPLICATION NO. 2629 OF 2024**

Sakharam Yadaji Shinde
Age: 33 years, Occu.: Labour,
R/o Loni, Tq. Partur, Dist. Jalna

..APPELLANT

VERSUS

State of Maharashtra
Through the Police Station Ashti,
Tq. Partur, Dist. Jalna

..RESPONDENT

....
Mr. A.R. Joshi, Advocate for appellant (appointed through Legal Aid)
Mr. N.S. Tekale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 03rd MARCH, 2025
PRONOUNCED ON : 11th MARCH, 2025

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

1. The appellant was prosecuted and convicted for matricide. He is, therefore, sentenced to imprisonment for life and to pay fine of Rs. 5,000/- with default stipulation vide judgment and order dated 11th October, 2022 passed in Sessions Case No. 272 of 2021 by the Court of Sessions Judge, Jalna ('trial Court'). He is, therefore, before us in this appeal.

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

The appellant alongwith his parents and two brothers would reside at village Loni, Tq. Partur, Dist. Jalna. The appellant was heavily addicted to liquor. On the given day i.e. on 05th August, 2021 in early hours, the appellant was drunk. By 06:30 a.m., he started leaving the home with food

grains for sale. He wanted to sell the food grain for purchase of booze. His mother intervened. The appellant got annoyed. He thrashed her with stick. She suffered multiple fractures. She was rushed to the hospital. She unfortunately breathed her last.

3. PW 1 – Yada, father of the appellant lodged the First Information Report ('F.I.R.') (Exh.22). A crime vide C.R. No. 123 of 2021 was registered with Ashti Police Station. The mortal remains of the deceased was subjected to inquest and autopsy. The appellant was arrested. The crime scene panchanama (Exh.31) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellant was charge-sheeted.

4. The trial Court framed the charge (Exh.12). The appellant pleaded not guilty. His defence was of false implication.

5. The prosecution, to bring home the charge, examined seven witnesses and adduced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted the appellant for the offence punishable under Section 302 of the I.P.C.

6. Learned counsel, appointed through legal aid to represent the applicant, would submit that the appellant was afflicted of HIV. The villagers, therefore, did not want him to be in the village. The appellant's mother (deceased) was frail and old aged. She was not keeping well. She fell in the

house and suffered contusion. With a view to drive the appellant out of the village, the villagers prevailed upon the appellant's father to lodge a false report. Learned counsel would further submit that the explanation offered by the appellant in his examination under Section 313 of the Code of Criminal Procedure ('Cr.P.C.') has been overlooked by the trial Court. Same causes great prejudice to the appellant in his defence. The trial, therefore, vitiates. Learned counsel ultimately submitted that there was no premeditation. The appellant assaulted his mother with a stick. It was not a sharp weapon. The appellant was not in his senses due to consumption of liquor. He, therefore, cannot be attributed with the intention of committing murder. He, therefore, urged for converting the conviction to the offence punishable under Section 304 Part II of the I.P.C.

7. Learned A.P.P. would, on the other hand, submit that it is an open and shut case. The father of the appellant testified against his own son. There is evidence of other witnesses as well that reinforces the evidence of the appellant's father. The explanation offered by the appellant in his statement recorded under Section 313 of the Cr.P.C., if closely perused, would suggest the appellant's figment of imagination. Learned A.P.P., therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the judgment impugned herein. Let us advert to the evidence on record and appreciate the same.

9. Admittedly, the appellant alongwith his parents and two brothers would reside at Loni, Tq. Partur, Dist. Jalna. The incident took place in the early morning of 05th August, 2021. The appellant's mother was rushed to the hospital. She was declared dead. The postmortem report (Exh.28) indicates Randavani, mother of the appellant died due to multiple fractures. PW 4 – Dr. Shaikh had conducted autopsy. He noticed following injuries on the person of deceased – Randavani :-

- “1. Contusion of size 4 x 3 cm., present over left mastoid region, reddish;*
- 2. Lacerated wound of size 2 x 1/2 cm. x tissue deep present over Pinna of left ear with irregular reddish margins;*
- 3. Contusion of size 6 x 4 cm., present over left scapular region of back, reddish;*
- 4. Contusion of size 4 x 3 cm., present over middle 1/3rd of left forearm on postero medial aspect, with displaced fracture of both forearm bones with hematoma formation, reddish in colour;*
- 5. Contusion of size 4.5 x 3.5 cm., present over lower 1/3rd of posterior aspect of right forearm, with displaced fracture of both forearm bones with hematoma formation, reddish in colour;*
- 6. Abraded contusion of size 3.5 cm x 2 cm., over upper 1/3rd of right leg with displaced fracture of tibia with hematoma, reddish;*
- 7. Abraded contusion of size 3.5 cm x 2 cm., over middle 1/3rd of left leg, reddish in colour;*
- 8. Lacerated wound of size 2.5 x 1 cm., over posterior aspect of left wrist with irregular reddish margins;”*

10. Now, the question is whether the appellant is the author of those injuries and consequential death of his mother. We have evidence of PW 1 – Yada, sixty-five years old father of the appellant. He testified that in the early morning on the fateful day, he was taking tea. His other two sons were home. The appellant came home. He was in inebriated condition. The

appellant started taking rice and wheat from the house to sell it, as the appellant wanted money for consumption of liquor. His mother, therefore, objected him. The appellant got angry thereby and started beating her with a stick. He assaulted on her legs and hands. An assault was also made on her head. Yada, with the assistance of neighbours, took his wife to the hospital at Ashti. She was then shifted to Government Hospital, Jalna, where she breath her last.

During his cross-examination, he testified that his wife was suffering of stomach ache. She was fifty-three years of age. He admitted that the villagers had asked him to lodge a report against the appellant so that he will be de-addicted. He further admitted that his wife had fallen in the house on the day of the incident and therefore, had suffered contusion. He, however was quick enough to state that grievous injuries were caused to her by the appellant with the assault with stick.

11. PW 1 – Yada is none other than the appellant's real father. In the cross-examination he testified that he lodged the report at the behest of the villagers. He further testified that his wife (deceased) had fallen in the house and suffered contusion. Meaning thereby, one or two injuries noticed by the doctor on the person of the deceased may be said to have been caused due to fall. The father was, however quick enough to state that it was the appellant, who assaulted his wife with a stick causing grievous injuries.

12. PW 2 – Mirabai was a neighbour of the appellant. She too testified to have witnessed the incident and talked with the injured to know

that it was the appellant, who assaulted her.

During her cross-examination, she admitted that the deceased was sick for 7-8 days. She was bed ridden. She was not taking food. She would say that she wish to die. There is, however no cross-examination of this witness disputing her evidence in examination-in-chief.

13. PW 3 – Kailash is another witness. He too claimed to have seen the appellant assaulting his mother with a bamboo stick. He denied in his cross-examination to have deposed imaginary version.

14. PW 5 – Pratap is a witness to various panchanamas, such as seizure of clothes of the appellant (Exh.30). He is also a witness to the crime scene panchanama (Exh.31). A bamboo stick was seized from the crime scene. PW 6 – Vishalsing, Medical Officer at Primary Health Center, Ashti, gave his opinion that the injuries on the person of the deceased were possible by the seized bamboo stick. PW 7 – Shivaji, Asst. Police Inspector did investigation of the crime.

15. On appreciation of the aforesaid evidence, we find PW 1 – Yada, father of the appellant, to have no reason to speak against his own son. Although, he gave some admissions in his cross-examination, the same may be due to father-son relationship. His evidence gets reinforced by the evidence of PW 2 – Mirabai. Although her name does not figure in the F.I.R. as an eye witness, the F.I.R. is not an encyclopedia. Moreover, PW 3 – Kailash had also claimed to have witnessed the incident. His name figures in

the F.I.R. as a person, who rushed to the crime scene on hearing commotion. It was he, who helped PW 1 – Yada to rush the injured to the hospital.

16. Based on the evidence of these three witnesses, the incident that the appellant was objected by his mother to take the food grains to sell it for satisfying his thrust of elicit liquor, is amply proved. The appellant got enraged thereby and assaulted his mother with stick indiscriminately. The appellant was under the influence of alcohol that time.

17. We have perused the explanation offered by the appellant in his examination under Section 313 of Cr.P.C. It runs into number of pages. According to him, his mother (deceased) was ill for long. She was bed ridden. It was he, who used to attend to his mother. He used to bath her. When there was quarrel in the house, his father (PW 1 – Yada) was away in temple. His father was a priest. His brothers were also out of the house. He then left for consumption of liquor. He urged for re-examination of his father and brothers. According to him, the villagers prevailed upon them to lodge the report against him so that a person like him, who was affected by HIV, will have to leave the village. A funny allegation has also been made by the appellant that learned A.P.P., in-charge of the case, provided breakfast, tea and coffee to his father and obtained his father's evidence in the case. According to him, PW 2 – Mirabai's name doesn't figure in the F.I.R., then how she can termed to be an eye witness. PW 3 – Kailash arrived after his mother was taken to the hospital. He too, therefore, cannot be termed to be

an eye witness. It was further submitted by the appellant that all the witnesses examined were interested and they gave evidence against him after taking breakfast, tea and coffee from A.P.P. According to him, so many facts have been suppressed from the Court. The Investigating Officer did very many mistakes. The prosecution witnesses themselves stated that the deceased was not keeping well. She was not taking food. She had even expressed her desire to die. We have also perused his further explanation.

18. We can understand the appellant's mother was fifty-three years of age and might not have been keeping well. We even assume that she suffered one or two contusions due to fall, however the evidence of his own father cannot be brushed aside. We have no reason to disbelieve the same. He was even categorical to state in his cross-examination that it was the appellant, who caused grievous injuries by assaulting his wife (mother of the appellant) with a bamboo stick. The said evidence is reinforced by the medical officer.

19. Learned counsel has relied on paragraph no.15 of the judgment of the Apex Court in case of ***Premchand Vs. State of Maharashtra, (2023) 2 SCR 119***, which reads as under :-

- “a. Section 313, Code of Criminal Procedure [Clause (b) of Sub-section 1] is a valuable safeguard in the trial process for the Accused to establish his innocence;*
- b. Section 313, which is intended to ensure a direct dialogue between the court and the Accused, casts a mandatory duty on the court to question the Accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;*

- c. *when questioned, the Accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;*
- d. *the Accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;*
- e. *an Accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;*
- f. *the explanations that an Accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s);*
- g. *statements of the Accused in course of examination Under Section 313, since not on oath, do not constitute evidence Under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;*
- h. *statement(s) of the Accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and*
- i. *if the Accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;*
- j. *any failure to consider the Accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction."*

There can be no dispute over the aforesaid legal proposition. Therefore, we have considered the appellant's submissions offered by him in his examination under Section 313 of Cr.P.C. Based on the evidence on record, we conclude that the explanation offered by him will be of little assistance in his defence.

20. Now the question is what is the offence committed by the appellant, is it under Section 302 of the I.P.C. or lesser one. Admittedly, the

appellant was an addict of booze. It was early morning (06:00 a.m.). He came home drunk. He wanted money for consumption of liquor and for that he started taking away food grains in the house for sale. His mother (deceased), therefore, objected. The appellant was enraged thereby. He took up a stick lying nearby and assaulted her indiscriminately. One blow fell on her head. The cause of death is stated to be multiple injuries. Since there was no previous quarrel and in view of the deceased being his mother, the appellant had no intention to kill her. Moreover, he was admittedly under the influence of alcohol. As per the case of the prosecution, he was heavily addict of alcohol. To satisfy his further thirst, he was about to sell food grains kept in the house. The same suggests to what extent he was addicted. He had in fact become slave of alcohol. In the case of **Sandesh alias Sainath Kailash Abhang Vs. State of Maharashtra, (2012) 13 SCR 1049**, the Apex Court has observed as under :-

“20. However, the trial Court as well as the High Court has not considered, in its correct perspective, the state of mind of the accused at the relevant time, his capacity to realize the consequences of the crime he was committing and the lack of intent on his part to commit the murder. The accused had not entered the house of PW2 with the intention to kill either of them. In fact, and indisputably, he entered the house of the deceased with the mind of committing robbery which he committed by taking away the gold ornaments, cell phone and money etc. However, in this process, he not only repeatedly injured the deceased and PW2, but also committed rape on PW2.

21. One very vital factor which has not been given any significance by the Courts in the impugned judgments is that the accused was smelling of alcohol. According to PW2, he smelled of alcohol and his eyes were red. Both these factors show that the accused may have been drunk and he may not exactly be aware of the consequences of his acts. This view finds support from the fact that if the accused had intended to kill

deceased and PW2, it was not expected of him to inflict 21 and 19 injuries on their bodies respectively. He could have simply given an injury on the vital parts of their body and put them to death. His conduct in inflicting large number of injuries and even amputating the fingers of the deceased clearly reflects the conduct of an abnormal person. Absence of normal behaviour even during the commission of the crime is a relevant consideration. It is evident from the evidence on record that the accused was not in a balanced state of mind and in fact had no control over his mind. He was unable to decipher the consequences of his crime and the result that is likely to flow from such commission. In the facts and circumstances of the case, the Court cannot ignore such an abnormal behaviour of the accused. As already noticed, it is not only the crime and its various facets which are the foundation for formation of special reasons as contemplated under Section 354(3) of Cr.P.C. for imposing death penalty but it is also the criminal, his background, the manner in which the crime was committed and his mental condition at the relevant time, the motive of the offence and brutality with which the crime was committed are also to be examined. The doctrine of rehabilitation and doctrine of prudence are the other two guiding principles for proper exercise of judicial discretion.”

21. In view of above and in the background of the facts and circumstances of the present case, we find the appellant had no intention to commit murder of his mother. There was no premeditation. The weapon of assault was a bamboo stick. Most of the blows were given on the legs and hands. The appellant, however could be attributed with the knowledge of consequences of his acts. Moreover, the deceased was frail (weak). She was even not keeping well. There is evidence to indicate that she had not taken food for 6-7 days. The same also might have been added for resulting in her death. Be that as it may. The facts and circumstances of the case lead us to infer that it was not an offence of murder, but culpable homicide not amounting to murder, punishable under Part II of Section 304 of the

I.P.C. Although the offence is punishable with even lesser punishment, in the facts and circumstances of the case, we propose to sentence the appellant to rigorous imprisonment for eight years.

22. In the result, appeal succeeds. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned judgment and order dated 11th October, 2022 passed by the Court of Sessions, Jalna in Sessions Case No. 272 of 2021 thereby sentencing the appellant to undergo life imprisonment and to pay fine of Rs.5,000/- with default stipulation for the offence punishable under Section 302 of the Indian Penal Code and, is set aside.
Instead, the appellant is sentenced to undergo rigorous imprisonment for eight years and to pay fine of Rs.500/- (Rupees Five Hundred), in default, to suffer rigorous imprisonment for ten days.
- (III) In view of disposal of appeal, nothing survives in the application. Same stands disposed of accordingly.
- (IV) Fees of Mr. A.R. Joshi, learned counsel, appointed to represent the appellant through Legal Aid, is quantified to Rs.9,000/- (Rupees Nine Thousand).

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)