



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

CRIMINAL APPEAL NO. 280 OF 2025

Surekha Ajay Munde,
Age 24 years, Occu. Household,
R/o Songiri, Tq. Bhoom,
District Dharashiv

.. Appellant
(Original Complainant)

Versus

1. The State of Maharashtra,
Through PSI Bhoom Police Station,
Taluka Bhoom, District Osmanabad
(Dharashiv)

2. Ajay Shahaji Munde,
Age 42 years, Occu. Driver,
R/o. Hiwarda, Taluka Bhoom,
District Osmanabad

.. Respondents
(R/2-original Accused)

Mr. M. S. Karad, Advocate holding for Mr. S. S. Thombre, Advocate
for Appellant;
Mr. S. D. Ghayal, Additional Public Prosecutor for Respondent No.1

**CORAM : NITIN B. SURYAWANSHI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 06-05-2025

PER COURT:-

1. By this appeal under Section 378 of the Code of Criminal Procedure, informant who happens to be wife of accused has challenged the judgment and order passed by the learned Additional Sessions Judge, Bhoom, in Sessions Case No.3 of 2023, dated 02.05.2025, thereby acquitting respondent No.2/accused.

2. It is the prosecution case that the appellant/informant married with accused on 19.05.2020. Accused owns Tempo of Eicher company bearing registration No. MH-22-AA-3454. By running a tempo, he ekes out livelihood. After marriage for one year, informant was treated properly. Thereafter, ill-treatment was given to her. Therefore, she started residing with her parents at Songiri. She lodged complaint against the in-laws at Bhoom Police Station. On the basis of the same, C.R.No.6 of 2022 under Section 498A, 323, 504 read with Section 34 of the Indian Penal Code ("IPC", for short) came to be registered. She also lodged proceeding against in-laws under the Provisions of Protection of Women from Domestic Violence Act in Bhoom Court.

3. On 13.05.2022, when informant along with her father Babasaheb Kute and brother Rushikesh Kute were returning home from Bhoom Court after attending the date, accused and his father Shahaji Munde accosted them and beat them with fist and kick blows. Abuses were hurled by them and threats were extended to them. Informant lodged N.C. bearing No.170 of 2022 against the accused and his father at Bhoom Police Station under Section 323, 504, 506 read with Section 34 of the IPC. The father-in-law of the informant also lodged complaint against the informant, her father and brother at Bhoom Police Station, which is registered C.R.No.104 of 2022.

4. On 02.10.2022, when the informant was present in the house, her brother Rushikesh Kute and one Shahaji Markad went to Rameshwar via village Chincholi at about 8.30 a.m. on motorcycle bearing registration No. MH-13-CD-3539. Approximately, at about 9.15 a.m. Balaji Kute, son of paternal aunt of informant came to Songiri and informed the informant that one Tempo bearing registration No. MH-22-AA-3548 had given dash to the motorcycle whereon Rushikesh Kute and Shahaji Markad were proceeding, near Chincholi Pati situated on Bhoom to leet road. He had witnessed the said incident and in the said incident Rushikesh and Shahaji were severely injured. He also told that accused was driving the said Eicher Tempo and after the incident he left the Tempo on the spot and fled away. He further informed that the people who gathered at the spot of incident took both the injured to Government Hospital, Bhoom in ambulance for treatment. Informant and her father rushed to the Government Hospital, Bhoom and injured were taken to Jagdale Mama Hospital at Barshi. During the course of treatment, injured Shahaji Markad expired. After his funeral, informant and her relatives approached Bhoom Police Station to lodge complaint, stating that accused, with intent to kill her brother Rushikesh, gave forcible dash of his Eicher tempo to the motorcycle on which Rushikesh and Shahaji Markad were riding. Due to the said dash, Rushikesh was severely injured and pillion rider Shahaji Markad was killed. On the basis of said

complaint, offence vide C.R.No.237 of 2022 was registered under Sections 302 and 307 of the IPC.

5. On completion of investigation, chargesheet was filed. Accused was charged under Sections 302 and 307 of the IPC. Accused has abjured the guilt.

6. In support of the charge, the prosecution examined seven witnesses. On considering the evidence on record, the trial Court has acquitted the accused. Hence, the appeal.

7. Heard learned Advocate for the appellant and learned Additional Public Prosecutor for the State.

8. Perused the record.

9. Prosecution has relied upon the testimony of eyewitnesses Rushkesh Babasaheb Kute (PW-2), Balaji Sampatrao Kute (PW-3), Bhagwant Chokha Lokhande (PW-5) and Santosh Vikram Shirke (PW-6). Perusal of evidence of Rushikesh (PW-2) shows that he was not in a position to give description of the Eicher Tempo which gave dash to him. His family members told him who is the accused and also gave him a number of tempo of the accused. Till then he was unaware about the accused, the incident and the case lodged against the accused. He has admitted that till he regained his consciousness, he was not knowing who was driving the tempo. His statement was recorded when he was admitted in the

hospital, but he has not given description of the accused in the said statement.

10. Balaji (PW-3) has admitted in his cross-examination that he is not in a position to tell the name of owner of Eicher Tempo and give the details of model of Eicher tempo. He has further admitted that after the incident he did not inform Bhoom Police Station or at the Police Chouki situated in Bhoom Hospital and at the Police Chouki situated at Barshi that accused was instrumental behind the incident.

11. Bhagwant (PW-5) cannot be said to be an eyewitness as he has admitted that after the incident, on hearing the noise, he went at the spot of the incident. He admitted that he had not seen the face of tempo driver.

12. Santosh (PW-6) was not knowing the accused and he did not witness the incident.

13. It is clear from the evidence of informant Surekha (PW-1) that immediately after the incident in question she was informed by Balaji (PW-3) that her husband i.e. accused had given dash of his Eicher Tempo to the motorcycle of her brother. It is pertinent to note that she did not lodge the complaint when the police were present in hospital at Bhoom, in the hospital at Barshi and at the time of funeral of deceased Shahaji.

14. Babasaheb (PW-4) had admitted that accused has given his Tempos on rent at Latur and Murud and his tempos were running on Latur-Murud road.

15. The trial Court has observed that on minute scrutiny of evidence of prosecution it appears that the prosecution has utterly failed to establish that accused was driving the Eicher Tempo at the time of the incident in question and in order to commit their murder, he gave dash of said Eicher Tempo to the motorcycle whereon Rushikesh and deceased Shahaji were proceeding. It is evident from the evidence available on record that deceased Shahaji had died in the accident and likewise Rushikesh (PW2) sustained injuries in the said accident. The evidence available on record shows that defense by accused appears to be possible.

16. The trial Court has properly appreciated the evidence and has passed a well reasoned judgment while acquitting the accused. No case is made out by the appellant to interfere with the impugned judgment. The criminal appeal being devoid of merits, stands dismissed.

[MANJUSHA DESHPANDE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE

rrd