



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

CRIMINAL APPEAL NO.365 OF 2022

Netaji s/o Gyanoba Gode
Age 33 years, Occ. Shepherd
R/o Hali, Tq. Udgir, Dist. Latur

... APPELLANT

VERSUS

The State of Maharashtra
through Police Inspector,
Wadhwana Police Station,
Tq. Udgir, Dist. Latur

... RESPONDENT

.....
Mr. P.P. More, Advocate for appellant
Mr. S.J. Salgare, A.P.P. for respondent
.....

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

DATE : 5th February, 2025.

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

The challenge in this appeal is to a judgment and order of conviction and consequential sentence, passed on 24/3/2022, by the Court of Additional Sessions Judge-2, Udgir, District Latur (Trial Court) in Sessions Case, No.07/2021. The

appellant was accused in the said case. He has been convicted for committing murder of his wife by multiple stab injuries and, therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.15,000/-. He is, therefore, before us in this appeal.

2. The case of the prosecution in short was that the appellant had married Ashabai about 20 years before August 2020. With the passage of time, the appellant started suspecting her fidelity. The appellant was a shepherd by profession. He, therefore, used to be away from home for 2-3 days. The deceased developed extra-marital relationship with a person residing in the nearby. The appellant came to know about the same. The said relationship haunted him. On the given day, i.e. on 1/8/2020 by little past 2.30 p.m., the appellant along with his wife were proceeding from in front of Vitthal Rukhmini Temple in their village – Hali. The appellant fished out a knife and rained blows thereof on the person of Ashabai, causing her death on the spot.

3. Based on the First Information Report (F.I.R. Exh.24) lodged by P.W.3 Maruti, maternal uncle of the deceased, a crime vide C.R. No.106/2020 was registered with Wadhwana (Bk.) Police Station. A crime scene panchanama was drawn. Inquest and autopsy were conducted on the mortal remains of Ashabai. Her blood stained clothes were taken charge of. The appellant was arrested. Pursuant to the disclosure statement made by him, a knife came to be recovered. Clothes on his person were also seized. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against by filing a charge sheet.

4. The Trial Court framed the Charge. The appellant pleaded not guilty. His defence was of false implication. According to him, some unknown person committed murder of his wife.

5. To bring home the charge, the prosecution examined 6 witnesses and adduced in evidence certain

documents, on appreciation whereof, the appellant was convicted and consequently sentenced as well by the Trial Court.

6. Heard. Learned Advocate for the appellant would submit that, the case was based on sole eye witness account. The so called eye witness is a relation of the deceased. His cross-examination would indicate he lied on the fact of having residing in the neighbourhood of the appellant. Had he really witnessed the incident, it was he who would have lodged the F.I.R. immediately. His cross-examination would further indicate the appellant ran away and he could not even had glimpse of the face of the appellant. According to the learned Advocate, the evidence of rest of the witnesses is hear-say. He also brought on record inconsistency inter-se the prosecution witnesses. He would further submit that, when the incident took place at broad day-light in a public place, no independent witness has been examined. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that, it is an open and shut case. The cross-examination of the witnesses indicate that the appellant admitted the deceased to have had extra-marital relationship with a person in the village. As such, the appellant himself brought on record his motive to do away with his wife. The suggestion to P.W.1 would indicate the appellant to have admitted his presence at the crime scene. Pursuant to his disclosure statement, a knife, stained with blood was recovered. C.A. report indicate the knife to have been stained with human blood. The learned A.P.P., therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence on record. The wife of the appellant met with homicidal death is undisputed. The post mortem examination report (Exh.27) indicates her to have suffered following external injuries :-

- (1) Stab wound admeasuring 3 x 2 x 3 cm. just above suprasternal notch (just below throat).
- (2) Stab wound admeasuring 3 x 2 x 2 cm. just below the xiphosternum (just above the abdomen).

- (3) Incised wound admeasuring 3 x 1 cm. over left forearm on antero-lateral aspect.
- (4) Stab wound admeasuring 2.5 x 2 x 3 cm. over right lateral rib cage.
- (5) Stab wound admeasuring 5 x 3 x 4 cm. over left side of back para spinally.
- (6) There were left T-11 and T-12 cartilage fracture.

In the opinion of the Medical Officer Dr. Kiran Patil (P.W.4), Ashabai died of hypovolumic shock due to multiple stab injuries.

9. The question is, whether the appellant is the author of the crime. P.W.1 Dnyanoba is said to be an eye witness to the incident. He testified that the appellant is the son of his parental aunt. He was residing in his neighbourhood. Deceased Ashabai was the daughter of his maternal aunt. He further testified that, there used to be frequent quarrels between appellant and his wife. The appellant would suspect his wife's character. According to the witness, the incident took place in the afternoon. It was by 3.00 p.m. He was sitting in front of house of one Panchal. He saw the appellant and the deceased passing along the road towards Vitthal Temple. In a

while, he heard screams of Ashabai. He, therefore, rushed towards her. He saw the appellant inflicted number of blows on Ashabai with knife. He shouted at the appellant. Thereupon, the appellant fled away with the knife in his hand. He further testified that, one Maroti Gode, Laxmibai Gode and himself took Ashabai to Government Hospital, at village Hali in one auto. This witness was subjected to searching cross-examination. He admitted that, his house was not located in the lane in which deceased was residing. The appellant, his wife and their two children were only persons residing in the Wada. Persons of various community were residing in the lane. One Tanaji Mane would reside in front of the house of the appellant. The appellant was shepherd by profession. He, therefore, used to be away from home for 2-2 3-3 days. His wife Ashabai used to be alone home. She was beautiful. It was further suggested that Ashabai developed illicit relationship with Tanaji Mane, next door neighbour. It was further suggested that, the family name was thereby defamed. It was suggested that some unknown person committed the murder. He denied that he could not see the appellant while he was proceeding towards temple. He, however, admitted

that, when he heard the screams of Ashabai and ran towards her, he could not see face of the person who was running away from the spot. The rest of the questions were in the nature of denying his evidence in the examination-in-chief.

10. P.W.2 Rukminbai was the mother of the deceased. She too testified that appellant would suspect Ashabai's character. She had, therefore, returned to her parental house. On the intervention of one Maroti Gode, Ashabai had resumed cohabitation. The appellant had beaten her up on account of Ashabai to have been talking with male persons residing in the lane. Ashabai had related her the same on phone. She further testified that, Mahadev Mane received a call from Dnyanoba (P.W.1) informing Ashabai to have been murdered.

11. During her cross-examination, she admitted to have never lodged any report with police against the appellant. She denied that, Ashabai had developed illicit relationship with Tanaji Mane since the appellant used to be away from home 2-3 days a week. She further denied that because of the same, the relatives were annoyed. It was further suggested that the

appellant had purchased agricultural land in the name of Ashabai. The same is admitted by her. It has also been brought on record that the appellant had admitted his son in English medium school.

12. P.W.3 Maroti was the uncle of deceased Ashabai. He testified that, Ganesh Gode informed him about the incident. He, therefore, rushed to the village and saw Ashabai lying in a pool of blood. He along with others rushed her to hospital in an auto of Yousuf Shaikh. She was, however, declared dead. He lodged the F.I.R. (Exh.24).

13. P.W.3 Maroti is not an eye witness to the incident. He admitted that, Dnyanoba (P.W.1) was not residing in the lane in which he was residing. The appellant would alone reside in a Wada along with his wife and children. The house of Kalyan Mane was adjacent to it. There is another house of one carpenter. He denied that the appellant used to be away from home for 4 days in a week on account of he being shepherd. He further denied that, illicit relationship developed

between deceased and next door neighbour Tanaji Mane. He denied to have lodged the false F.I.R.

14. P.W.5 Pranay is a witness to the crime scene panchanama and even disclosure statement made by the appellant, pursuant to which a knife came to be seized (Exhs.34 & 35). In his cross-examination, he testified that the contents of spot panchanama were not written on the spot. It was prepared at the police station. He, however, denied that the appellant did not make any disclosure statement.

15. P.W.6 Sandeep did the investigation of the crime.

16. Section 134 of the Evidence Act states that no particular number of witnesses are required in proof of a fact. Meaning thereby, a conviction can be based on a testimony of a sole eye witness. It is true that P.W.1 Dnyanoba did not lodge the F.I.R. The motive to commit murder of the wife, however, was brought on record during cross-examination of the prosecution witnesses itself. It was suggested to the material witnesses that the deceased had extra-marital

relationship with her next door neighbour since the appellant used to be away from home for 3-4 days in a week. It has also been brought on record that, P.W.1 Dnyanoba was not residing in the lane in which the appellant would reside. Close reading of the evidence of P.W.1 Dnyanoba would, however, indicate that he claimed to have been present (sitting) in front of house of one Panchal and not of himself. He had seen the appellant and the deceased going together towards Vitthal Temple. It was suggested to him that he could not see the appellant while he (appellant) was proceeding towards temple. The same suggests the appellant to have impliedly admitted that he was proceeding towards the temple in the village. P.W.1 Dnyanoba claimed to have seen the deceased in the company of the appellant. He heard screams of Ashabai and rushed towards her to see the appellant assaulted her with knife blows. He even testified to have given the appellant calls, "Netya, Netya". It is true that he admitted in cross-examination that the person who went running from the crime scene could not be seen with his face as his back was towards behind.

17. It is true that the appellant had purchased some land in the name of his wife. His son was admitted in English medium school. the appellant meant to say that he was a loving husband and caring father as well. P.W.1 Dnyanoba was the cousin of the appellant (son of paternal aunt of appellant). While the deceased was the daughter of his maternal aunt. As such, both the appellant and deceased were closely related to P.W.1 Dnyanoba. There is nothing to indicate him to have any reason to grind an axe against the appellant. It is true that P.W.3 Maroti claimed to have learnt about the incident from Ganesh while P.W.2 Rukminbai (mother of the deceased) testified that P.W.1 Dnyanoba had informed Mahadev Mane about the incident. Learned Advocate meant to say that the case of the prosecution that P.W.1 Dnyanoba informed Maroti has thus been falsified. Needless to mention, a stray inconsistency inter-se the evidence of prosecution witnesses which do not go to the root of the case, is of little consequence.

18. The appreciation of the evidence referred to hereinabove would indicate P.W.1 Dnyanoba to have

witnessed the incident. He is in close relationship with the appellant and deceased as well. The appellant had every motive to eliminate his wife. He was seen in the company of wife, proceeding towards a temple in the village (admitted in view of suggestion to P.W.1 Dnyanoba). Within seconds P.W.1 Dnyanoba heard screams of the deceased. The appellant was not then around. This lead us to infer that it was the appellant and none else who assaulted his wife with number of knife blows and immediately fled away when P.W.1 Dnyanoba gave him calls.

19. In view of the above, we find the Trial Court to have rightly convicted the appellant and consequently sentenced for the offence punishable under Section 302 of the Indian Penal Code. No interference therewith is, therefore, warranted. In the result, the appeal fails. It is dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-