



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

CRIMINAL APPEAL NO. 884 OF 2023

Roshan @ Roshya Narsing Pawara
Age: 34 years, Occu.: Labour,
R/o Dhadne, Tq. Sakri,
Dist. Dhule

..APPELLANT

VERSUS

State of Maharashtra
Through Police Inspector
Police Station Sakri,
Dist. Dhule

..RESPONDENT

....
Mr. M.A. Tandale, Advocate for appellant (appointed through Legal Aid)
Ms. U.S. Bhosle, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 10th FEBRUARY, 2025**

ORAL JUDGMENT :

1. The challenge in this appeal is to a judgment of conviction and order of consequential sentence dated 18th May, 2017 passed by the Court of Session, Dhule ('trial Court') in Sessions Case No. 38 of 2016. Vide the impugned judgment and order, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- with default stipulation.

2. The facts in brief giving rise to the present appeal are as follows :-
Chhagan Pawara (deceased) was in emotional relationship with PW 8 – Lalita. Both of them eloped on 02nd January, 2016. While they were

proceeding towards Sakri, two persons, including the appellant, met them. Since it was late in the evening, those two took them to their field and then to the house of the appellant. Wife of the appellant was at house. She prepared food for all of them. After dinner, Chhagan and Lalita went to sleep in the house, while the appellant and his wife slept outside the house. At 12:00 midnight, the appellant woke up Lalita and made enquiry about the deceased. Before that the appellant had taken Chhagan (deceased) to the field under the pretext of repairing the electric motor. The appellant then took Lalita outside his house and told her to have killed Chhagan. She, therefore, asked the appellant to reach her to her home. The appellant asked her to join him to go to Gujarat. She refused. The appellant dropped her at Shahada and went away for no return. Lalita alone came her home.

3. The dead body of Chhagan was noticed in an agricultural field. The Police Patil of the village Dhadne reported the matter to police. Autopsy and inquest were conducted on the mortal remains. It was found that the deceased had suffered various injuries. The cause of his death was 'head injury'.

4. PW 13 – Sapkal, PSI, lodged the First Information Report ('F.I.R.') (Exh.44) against an unknown person. During investigation identity of the deceased was disclosed. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, the appellant was proceeded against by filing the charge-sheet.

5. The trial Court framed charge (Exh.8). The appellant pleaded not guilty. His defence was of false implication. To bring home the charge, the prosecution examined fourteen witnesses and produced in evidence certain documents. On appreciation of the same, the trial Court convicted the appellant.

6. Learned counsel for the appellant would submit that the case was based on circumstantial evidence. No test identification parade was held. The appellant allegedly made extra-judicial confession to PW 8 - Lalita. Same is very weak piece of evidence. PW 8 - Lalita did not disclose the same at the earliest. Learned counsel would further submit that the extra-judicial confession is made to a person in confidence. Here, the appellant and Lalita were unknown to each other. Only with a view to implicate the appellant, case of extra judicial confession has been propounded. On the question of recovery of the iron rod, learned counsel would submit that on first visit, pursuant to the alleged disclosure statement, the iron rod was not found in the well. It is surprising how come the iron rod was found in the same well on the following day. The C.A. report (Exh.50) thereof does not further the prosecution case. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the appellant made extra-judicial confession to an innocent lady. Pursuant to the disclosure statement made by him, an iron rod came to be recovered. The same speaks about the appellant's conduct. Learned A.P.P. reiterated the

reasons given by the trial Court. She ultimately urged for dismissal of the appeal.

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

9. Chhagan met with homicidal death is not in dispute before us. The postmortem report (Exh.34) proved by the evidence of PW 10 – Dr.Mohammad indicates he (Chhagan) died of head injury. There were eight injuries on the person of the deceased.

10. The question is whether the appellant is the author of the crime. The motive is that the appellant wanted to have illicit relationship with PW 8 – Lalita. He, therefore, took the deceased to the field and killed him.

11. PW 6 – Bhimrao was the Police Patil of village Dhadne, Tq. Sakri, Dist. Dhule. He reported police about finding of a dead body in the field of PW 5 - Subhash Ahirrao. The evidence of this witness is not of much importance except to make out a case of dead body to have been found in the field of PW 5 – Subhash. The evidence of PW 5 - Subhash is on the lines of PW 6 - Bhimrao. Based on the report, case of unnatural death was registered and enquired into. A police officer paid visit to the spot whereat the dead body was found. PW 1 – Subhash Bahiram is a witness to the crime scene panchanama (Exh.14), inquest panchanama (Exh.15) and

seizure of clothes on the person of the deceased (Exh.16). PW 2 – Nandkumar is also a witness to these panchanamas. PW 3 – Laxman was the Police Station Officer on the given day, who registered the crime pursuant to the F.I.R. lodged by PW 13 – Sapkal, PSI.

12. PW 7 – Rahul is the interpreter. He interpreted the evidence of Lalita since she did not understand Marathi. She was conversant with Pawara language only. Fate of the appeal is based on the sole testimony of PW 8 – Lalita. She was seventeen years of age. She testified that she had accompanied deceased – Chhagan on 02nd January, 2016. They first went to the house of his brother – Sarpa at village Fagne. They stayed there overnight. Then they came to Dhule and further went to Sakri. When they were proceeding ahead of Sakri, two unknown persons, including the present appellant met them. Since it was late in the evening, those two took them to their field and then to the house of the appellant. Wife of the appellant was at house. She prepared food for all of them. After dinner, she and Chhagan slept in the house, while the appellant and his wife slept outside the house. At 12:00 midnight the appellant woke her up and made enquiry about the deceased. Before that the appellant had taken Chhagan (deceased) to the field under the pretext of repairing the electric motor. The appellant then took her outside his house and told to have killed Chhagan. She, therefore, asked the appellant to reach her to her home. The appellant asked her to join him to go to Gujarat. She refused. The appellant dropped her to Shahada and went away for no return. She alone came her home.

13. She was subjected to a searching cross-examination. She admitted to have had love affair with Chhagan. She denied the appellant to have made her extra-judicial confession. To rest of the questions, she did not give in.

14. PW 9 – Gulabsingh was a Police Constable. He testified that Lalita gave statement in Pawara language and the same was interpreted by him in Marathi language. PW 11 – Sarpa was the brother of the deceased. On receipt of phone call from police station, he went to the hospital and identified the body of his brother (deceased). PW 12 – Vijay was the police officer, who filed the charge-sheet after the investigation was completed by PW 14 – Wasave, Police Inspector.

15. The charge was sought to be brought home on the basis of extra-judicial confession made by the appellant. So far as regards recovery of an iron rod pursuant to the disclosure statement made in the presence of panch witness (PW 4 - Deepak) and the investigating officer, same came to be seized from a well. The evidence of these witnesses indicate that pursuant to the disclosure statement on the previous day, a search was made in the well. That time the iron rod was not found. On the following day again they visited the very well and found the iron rod. Learned counsel for the appellant, therefore, right in submitting that it was surprising as to how come the iron rod was found in the well when it was not found in spite of a search

that was made in the same well on the earlier day. He had every reason to contend that the iron rod might have been thrown in the well and then it is shown as discovered. Be that as it may. Since the iron rod was in the well water, the C.A. report thereof does not indicate blood stains thereon of the blood group of the deceased.

16. The extra-judicial confession is said to be a very weak piece of evidence. Such a confession is made to a person in confidence. Here is the case, where the appellant and PW 18 – Lalita were not acquainted with each other. It would, therefore, be not believable that the appellant would confess her to have killed her lover. PW 14 – Sapkal, Investigating Officer admitted that PW 18 – Lalita did not understand Marathi, whereas her police statement is shown to have been recorded in Marathi language. The one, whose assistance was taken to translate Lalita's statement from Pawara to Marathi, has not been examined. On arrest of the appellant, no test identification parade was held. Lalita saw him before the Court first time after she was allegedly at the appellant's house on the fateful night.

17. Appreciation of the aforesaid evidence lead us to infer the prosecution to have failed to bring home the charge beyond reasonable doubt. The trial Court ought not to have convicted the appellant based on such quality of evidence. In the result, we are inclined to allow the appeal in terms of following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) Impugned judgment and order dated 18th May, 2017 passed by the Court of Session, Dhule in Sessions Case No. 38 of 2016 thereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code is set aside. He stands acquitted thereof.
- (III) Since the appellant is on bail, his bail bonds stand suspended.
- (IV) Fine amount, if paid, be refunded to him.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)