



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

CRIMINAL APPEAL NO. 555 OF 2020

Isaq Bashir Shaikh,
Age : 33 Years, Occ. Nil,
Prisoner No. C-9189,
Aurangbad Central Jail,
Aurangabad.
R/o. Dabirpura, Tq. Udgir,
Dist. Latur

.. Appellant
(Accused)

VERSUS

The State of Maharashtra,
Through Police Inspector,
Udgir City Police Station,
Tq. Udgir, Dist. Latur.

.. Respondent

....
Advocate for the appellant : Mr. Avinash R. Borulkar
(Appointed)
A.P.P. for Respondent-State : Mr. A. V. Lavte

...

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**
DATE : 12th SEPTEMBER, 2025.

JUDGMENT (PER SANDIPKUMAR C. MORE, J):-

1. The appellant/ accused, is challenging his conviction for the offence punishable under Sections 302 and 323 of the Indian Penal Code, recorded by the learned Additional Sessions Judge-1, Udgir i.e. the learned trial Judge in Sessions Case No. 4 of 2015, vide judgment and order dated 17.02.2020. The appellant was initially charged for the offence

punishable under Sections 302, 498-A, 323 and 504 of the Indian Penal Code. However, the learned trial Judge has acquitted him from the offence punishable under sections 498-A and 504 of the Indian Penal Code. The learned trial Judge has sentenced the appellant/ accused to suffer life imprisonment till his entire life for the offence punishable under Section 302 of the Indian Penal Code, and also sentenced him to suffer simple imprisonment for six months and to pay fine of Rs. 1,000/-, in default of payment of fine, to suffer simple imprisonment for two months in respect of offence punishable under Section 323 of the Indian Penal Code.

2. As per the case of prosecution, brother of deceased Ishrat @ Baby Isaq Shaikh i.e. wife of the appellant, lodged report with Udgir City Police, who had registered A.D. No. 17 of 2014 as per Section 174 of the Code of Criminal Procedure, in respect of death of Ishrat. As per the F.I.R. lodged by informant Shaikh Akram, it is alleged that marriage between appellant and Ishrat took place on 3.8.2007 as per Muslim rites and rituals. After the marriage, they started living with his parents, brother Arif, Ejaj and sister-in-law Shabana and Badrun. Out of said wedlock, appellant and Ishrat were having

two children namely daughter Yasmin and son Mohammad Rehan. It is further contended by the informant Shaikh Akram (P.W.1) that after the marriage appellant and his family members started harassing Ishrat on flimsy household reasons. They used to keep her starved. They were demanding amount of Rs. 1,00,000/- from Ishrat for purchasing Auto-rikshaw. Prior to one year of the incident, the informant had even gone to the house of appellant and gave amount of Rs. 20,000/- to appellant/accused in presence of his family members. However, thereafter also on 02.01.2014, appellant and his family members beat Ishrat and had driven her out, for bringing the aforesaid demanded amount. Then the informant by convincing them sent her back for cohabitation.

3. On 02.07.2014, appellant was even arrested by Udgir Rural Police, in connection with theft of motorcycle in C.R. No. 135 of 2014. However, he was released on bail due to the efforts taken by the informant. Just two to three days thereafter from 30.07.2014, the appellant again started harassing Ishrat and at the relevant time the informant and his relatives also convinced him. On 5.8.2014, in the morning, at about 6.30 a.m., mother-in-law of Ishrat i.e. Salimabee had come to his house and told him that Ishrat was unconscious

and was not able to speak and therefore, admitted in the hospital. The informant and his brothers Feroz and Mujahed immediately went to the Government Hospital, Udgir, and saw the dead body of Ishratbee. On making further enquiry, the informant learnt that the appellant and his relatives killed Ishratbee. Thus, he lodged the aforesaid F.I.R with Udgir Police Station.

4. On the basis of said F.I.R., Udgir City Police registered Crime No. 93 of 2014 against the appellant for the offence punishable under Sections 302, 498-A, 323, 504 read with Section 34 of the Indian Penal Code, but during the investigation, it was found that only appellant had committed the crime. The appellant was even got examined by the Psychiatrist, to ascertain his medical fitness. After completion of the investigation, the appellant was charge sheeted for the aforesaid offence. The learned trial Judge conducted the trial, recorded the evidence of nine witnesses and convicted the appellant as mentioned above.

5. The learned counsel Mr. Borulkar, appointed to represent the appellant submits that, there is no supportive evidence on record to corroborate the independent witness i.e. daughter of

deceased Yasmin. According to him, daughter Yasmin, at the time of deposition, was residing with her maternal uncle and therefore, possibility of tutoring her to depose against the appellant cannot be ruled out. He pointed out that though the human blood was found on the Banian of the appellant and also on the scarf, which was seized at the instance of appellant, but the blood group could not be determined. He pointed out that no blood sample of the deceased had, in fact, taken during the course of the investigation and therefore, it was not conclusively determined that blood found on the clothes of the accused and the scarf, was of the deceased only. He further pointed out that no statements of the neighbours were recorded, which could have thrown light on the aspect of ill-treatment and behaviour of appellant with the deceased Ishrat. As such, he prayed for giving benefit of doubt to the appellant.

6. On the contrary, the learned A.P.P. strongly supported the impugned judgment and pointed out that the daughter of accused had in fact deposed against her own father i.e. the appellant, and her testimony remained unshattered even in the searching cross-examination. According to him, it has already come on record that when deceased was seen by the informant

in the hospital, blood was oozing from her mouth. The learned A.P.P. submits that the aforesaid fact is well corroborated by the evidence of doctor, who conducted *post mortem* on the dead body of Ishrat, since as per the column No. 17 of the *post mortem* report Exh,33 there was injury found on her mouth. He further pointed out that as per chemical analysis report on record, human blood was found on the Banian of appellant and also on the scarf, indicating his proximity with the deceased at the time of incident. Further, according to him, death of deceased was unnatural and there is direct evidence of eye witness, in what circumstances Ishrat died. He pointed out that the defense of alibi taken by the appellant that he was not present in the house and was at Hyderabad at the relevant time, is not proved by the appellant by examining any witness to that effect. P.W. 3 Dr. Ranidevi Kadam has also specifically stated that Ishrat died of asphyxia due to smothering. The Panch Nazimoddin i.e. P.W. 2 has also deposed that there was blood on the banian of appellant/ accused. Thus, he submitted that the prosecution has clearly established the guilt of the accused, that he committed murder of his own wife, beyond all reasonable doubts. In support of his submissions, he also placed reliance on the following judgments :-

- (I) ***Kartik Mallhar Vs. State of Bihar [1996 CRI. L. J.889]***
- (II) ***Dattu Ramrao Sakhare and Others Vs. State of Maharashtra [AIR Online 1997 SC 182]***
- (III) ***Hon'ble Apex Court in the case of Chandan Vs. The State (Delhi Admn.) [Criminal Appeal No. 788 of 2012 decided on 5.4.2024.***
- (IV) ***Suryanaryana Vs. State of Karnataka (2001) 9 Supreme Court Cases 129***
- (V) ***Bapu @ Gujraj Singh Vs. State of Rajasthan (2007) 8 Supreme Court Cases 66***

7. Heard rival submissions and with the able assistance of learned A.P.P. and learned counsel for the appellant, we have also gone through the impugned judgment and record and proceedings of Sessions Case No. 4 of 2015.

8. Admittedly, the learned trial Judge has acquitted the appellant/ accused from the offence under Sections 498-A and 504 of the Indian Penal Code, regarding the ill-treatment and insult of the deceased. Therefore, the evidence of the informant i.e. Shaikh Akram P.W.1 to that effect need not to be discussed. So far as evidence of this witness in respect of offence under Section 302 of the Indian Penal Code is

concerned, he is not having first hand knowledge of the incident and whatever he has deposed before the Court, is gathered by him by daughter of the appellant and the deceased i.e. P.W. 4 Yasmin Isaq Shaikh.

9. It to be noted that the inquest *panchnama* Exh.38 indicates that mouth of deceased was half open, and slight blood was there on her lips. There were no other external injury found on the other part of her body. Further, as per the evidence of P.W.3 Dr. Ranidevi Apparao Kadam, who conducted *postmortm* on the dead body, “*the face of the deceased was cynosed and puffed, lips, both ears and nails of both upper limbs were deeply cynosed. Neck veins appear prominently. Fine froth oozing from both nostrils and mouth with slightly blood tinged.*” Doctor has specifically opined that cause of death was due to asphyxia due to smothering. Though it was suggested to this witness that asphyxia might have caused due to fear and stress, but it has been specifically denied. She also stated that she did not find symptoms of *Asthama* to the deceased. This witness has further stated that death of Ishrat was not natural. Thus, from the *postmortem* report at Exh. 33 coupled with the evidence of P.W. No. 3 it is clearly established that death of Ishrat was homicidal.

10. Further, as per the evidence of P.W. 6 Police Constable Pandurang Pitale, it is evident that he has carried viscera of the deceased to Chemical Analyzer Office, Aurangabad and as per the Chemical Analysis report at Exhibits 39 to 42, no poison was detected in the viscera. Thus, this fact has established that Ishrat Bee died because of asphyxia due to smothering.

11. Now we would like to discuss the direct evidence in respect of death of Ishratbee. The prosecution has examined daughter of deceased by name Yasmin, who was present at the time of actual incident and she had witnessed the incident. Therefore, P.W. No.4 Yasmin appears to be a star witness in the instant case. She was aged about six years at the time of incident, and it has come on record that her statement was immediately recorded by the investigating machinery i.e. on the next day of the incident. As per her evidence, she was residing with her parents and brother Rehan, though in the same house where other family members were also residing, but in a separate room. She has deposed that there were quarrels between her father i.e. appellant and mother Ishrat since her childhood. She has categorically deposed that the appellant killed her mother. According to her, the appellant on the day of

incident came home in the late night. She had told her mother to sleep and she would wait till arrival of appellant. However, it further appears that she had gone to sleep when the appellant arrived. Further, she has specifically deposed that she heard shouts of her mother and then saw the appellant twisting hand of her mother. She further deposed that the appellant put pillow on the face of her mother and at that time Ishrat was struggling on the bed. Thereafter, appellant pressed throat of her mother. It is further deposed by Yasmin that her grandmother also entered in the room when the appellant opened the door and caught legs of Ishrat- Bee. She specifically stated further that Ishrat became breathless and stopped moving her legs, and at that time water was oozing from her eyes. She further deposed that appellant gave 2, 3 blows on cheeks of Ishratbee and then told her grandmother that Ishrat Bee was dead and he would abscond. She has also stated that appellant told her to go to sleep. Yasmin further deposed that when she went near her mother, she found her eyes open, and when she tried to ask her mother, as to what happened, Ishrat did not speak. According to this witness, face of her mother was green and blueish and then other family members of the appellant came there and sprinkled water on the face of Ishrat

and then shifted her to the hospital.

12. Though Yasmin was cross-examined at length, but nothing adverse has come on record, specially in respect of the criminal act of the appellant. On the contrary, she stated that as soon as her father i.e. the appellant started consuming liquor, he was harassing her mother. She also denied the suggestion of deposing falsely at the instance of her maternal uncle. As such, the tutoring aspect is not at all involved in the instant case. The learned counsel for the appellant vehemently argued that this witness has stated entire different story than the story narrated by her in the statement recorded under Section 161 of the Code of Criminal Procedure. However, surprisingly this witness was not confronted with the alleged different story by referring her statement recorded during the investigation. Further, though P.W. 1 Akram Shaikh i.e. the informant who is also the brother of the deceased, has stated in his evidence about the facts which were narrated by Yasmin to him, but the said narration is not admissible in the evidence, being hearsay evidence. What is material is that the defense counsel of the appellant before the learned trial Court should have confronted the statement recorded during the investigation of Yasmin to her for bringing on record the alleged

different story. In absence of such confrontation, the fact stated by P.W. 4 Yasmin in her statement under Section 161 of the Code of Criminal Procedure, which the learned counsel for the appellant states as different story, cannot be considered at all. What is apparent from the evidence P.W. 4 Yasmin is that she has given direct account of the criminal act of the appellant of committing murder of Ishrat. The learned trial Judge has treated the evidence of P.W. 4 as a foundation for conviction of the appellant, since her testimony was found credible and natural.

13. The learned counsel for the appellant also tried to argue that Yasmin was merely six years of age at the time of incident and after the incident, she started residing with her maternal uncle till deposition and therefore, there was every possibility that she was tutored as to what was to be deposed before the Court. Admittedly, at the time of deposition, the age of Yasmin was of 11 years and she was residing with her maternal uncle after the incident till that date. However, merely because she was residing with her maternal uncle, her testimony cannot be doubted, as she has specifically denied the suggestion that she was deposing at the instance of her maternal uncle. Besides the said suggestion, there is no other

material placed on record, which could indicate that Yasmin was deposing at the instance of his maternal uncle. On the contrary, her evidence even remained unshattered in her cross examination also. Therefore, her evidence has been found cogent, trustworthy and reliable.

14. It appears from the record that appellant/ accused had also taken a plea of mental illness and thereby alleged that he was incapable of knowing the nature of his own act due to unsoundness of mind. However, it appears that the appellant was referred to Civil Hospital, Latur for physical and mental examination and P.W. 8 Dr. Chandramohan Harne had examined him and issued Medical Certificate as per Exh. 17 mentioning that he was physically and mentally fit. Thus, it appears that though the appellant has taken plea of mental illness, but he could not discharge the burden of proving the same, which could have benefited him, in view of the general exceptions, in the Indian Penal Code.

15. The learned counsel for the appellant also submitted that the conduct of P.W.-4 Yasmin was so unnatural since she did not make any hue and cry at the time of the incident even after noticing that the appellant was trying to kill

her mother. However, this cannot be treated as unnatural behaviour, since she was merely of six years at the relevant time and she must have remained silent due to fear of her father, who used to remain under influence of liquor during those days. Moreover, just after the incident, this witness stated that other family members had also entered their room and then her mother was shifted to hospital. In view of the same, we find no force in the submission of the learned counsel for the appellant in this respect. The learned counsel for the appellant further tried to argue that appellant was not in the house and in fact was at Hyderabad. However, the appellant, in support of his aforesaid defense, has not led any evidence to prove the defense of alibi. In view of the same, such defense is also without any supporting material.

16. Thus, considering all these aspects and evidence led by the prosecution, it is evident that the prosecution has succeeded in proving the homicidal death of Ishrat on the basis of evidence of P.W. 3 Dr. Kadam. Moreover, the evidence of P.W. 4 Yasmin i.e. the daughter of appellant and the deceased is found natural, credible and trustworthy in respect of the criminal act of committing murder of the deceased.

Further, the appellant could not establish the fact that he was mentally ill or otherwise he was not present at the spot of incident at the relevant time. Further, he could not establish with the cogent evidence that the deceased was suffering from Asthma and died due to attack of Asthma. Under such circumstance, it certainly appears that the prosecution has established the guilt of the accused beyond all reasonable doubts, at least in committing murder of the deceased. Under such circumstances, we find no reason to interfere with the impugned judgment, and therefore, the appeal stands dismissed.

17. We quantify the fees of learned Advocate appointed to represent the appellant/accused to Rs. 15,000/- (Rs. Fifteen Thousand). High Court Legal Services, Sub Committee, Aurangabad shall pay the fees as quantified, to the learned counsel for the appellant.

18. The appeal is accordingly disposed of.

(MEHROZ K. PATHAN)
JUDGE

Ysk/

(SANDIPKUMAR C. MORE)
JUDGE