



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

**CRIMINAL APPEAL NO. 473 OF 2021
AND
CRIMINAL APPLICATION NO. 1984 OF 2021**

Sambhaji Maroti Sakhare
Age: 44 years, Occu.: Nil,
R/o Kamtha, Tq. Ardhapur,
Dist. Nanded
At Present Convict No.C-8926,
Central Jail Harsool, Aurangabad

..APPELLANT

VERSUS

State of Maharashtra
Through Police Station Officer,
Police Station Ardhapur,
Tq. Ardhapur, Dist. Nanded

..RESPONDENT

....
Mr. M.P. Kale, Advocate for appellant
Mrs. K.B. Patil Bharaswadkar, Addl.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 11th FEBRUARY, 2025**

ORAL JUDGMENT :

1. The challenge in this appeal is to the judgment of conviction and order of consequential sentence dated 25th October, 2018 passed by the Court of Additional Sessions Judge, Nanded ('trial Court') in Sessions Case, No. 17 of 2017. Vide the impugned judgment and order, the appellant has been convicted for the offence of murder, and therefore, sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- with default stipulation.

2. In short, the case of the prosecution was as under :-

The appellant was the resident of village Kamtha (Bk.), Tq. Ardhapur, Dist. Nanded. He has five brothers, PW 1 – Shivram, Narayan, Sahebrao, Gyanoba and Sitaram besides two sisters. Their parents were alive. All the brothers, however were residing separately. Fifty gunthas of agricultural land was there in the name of his father (deceased – Maroti). In the month of May, the appellant had asked his father to transfer the land with its possession to his name. He had even assaulted his father over the said reason.

3. The deceased (Maroti) would sale black threads to the persons, who felt to have been affected by the evil luck or haunted by ghost. He would sit on a cot in front of a temple for sell of black threads. The appellant wanted his father not to do the said business, as he wanted to take over the same.

4. On 19th November, 2016 the appellant was selling black threads. He was sitting on a cot in front of the temple. Asmita, a six years old child of PW 1 – Shivram, went to the appellant. He slapped her for no reason. She returned home crying. The appellant's father - Maroti and mother questioned the appellant as to why did he slapped the innocent child. The parents then returned to home. The appellant followed them. He came with a katti and assaulted on the head and neck of his father, Maroti. He then fled. Due to hue and cry, the villagers gathered. The appellant's brother, PW 1 – Shivram too arrived. He went to the Ardhapur Police Station and lodged the First Information Report ('F.I.R.') (Exh.12).

5. A crime vide C.R. No. 218 of 2016 was, therefore, registered. The appellant was arrested. Crime scene panchanama (Exh.17) was drawn. Mortal remains of Maroti was subjected to inquest and autopsy as well. The appellant came to be arrested. Clothes on the person of both, the appellant and the deceased, were taken charge of. All the seized articles were sent to R.F.S.L., Nanded. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellant was proceeded against by filing the charge-sheet.

6. The trial Court framed the charge (Exh.2). The appellant pleaded not guilty. His defence was of false implication. According to him, his mother and wife of his brother, PW 1 – Shivram alongwith Asmita had been to the field at the relevant time. Some unknown persons assaulted his father.

7. To bring home the charge, prosecution examined fifteen witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the trial Court convicted and consequently sentenced the appellant as stated above.

8. Learned counsel for the appellant would submit that the appellant had weak eye sight. The same was admitted fact. At the material time the so called eye witnesses were not home. They had been to the field alongwith Asmita. The mother admitted that two unknown persons had come to buy black thread. Those persons might have committed murder of the deceased. He would further submit that the appellant is behind the bars for

over eight years. He took us through the evidence of the relevant witnesses and their cross-examination to submit that they were not reliable. Learned counsel ultimately urged for allowing the appeal.

9. Learned Addl.P.P. would, on the other hand, submit that it was an open and shut case. The mother of the appellant gave evidence against him. There is evidence of his sister-in-law as well (brother's wife). They did not have any reason to speak against the appellant. The neighbors too (independent witnesses) claimed to have had seen the appellant running away with a bag soon after assaulting his father. She, therefore, urged for dismissal of the appeal.

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

11. PW 13 – Dr. Rajabhau conducted autopsy on the mortal remains of Maroti. The postmortem report is at Exhibit 56. He noticed five sharp injuries on the vital parts of Maroti, besides three more injuries noticed in column no.17 of the said report. In his opinion, Maroti died of hemorrhagic shock due to multiple injuries over neck.

12. As such, the fact that Maroti met with homicidal death has undoubtedly been proved. The question is whether the appellant is the author of the crime.

13. PW 1 – Shivram, brother of the appellant, testified that he has five brothers and two sisters besides their parents. Fifty gunthas of agricultural land was standing in the name of their father. 7/12 extract finds place at Exhibit 13. The appellant would ask his father to give him possession of the said land. The father was reluctant. The appellant, therefore, assaulted the father. Shivram further testified that on the fateful day he was on his duty. He was a driver on a school bus of Potdar International School. He received a phone call of PW 9 - Babarao. He immediately rushed to home to find his father lying in a pool of blood.

14. PW 2 - Santosh is a witness to the crime scene panchanama (Exh.17). The place is the house of the appellant's father. PW 7 - Bajirao is the witness to the house search of the appellant. During the search, a blood stained *katti* was seized under panchanama (Exh.19). PW 4 - Ashok is a witness to the seizure of clothes of the appellant (Exh.23), while PW 5 - Majaj is the witness to the seizure panchanama to the clothes of the deceased (Exh.20).

15. PW 6 – Dhanaji testified that he was residing in the neighbourhood of the appellant. On the given day the appellant had sat in front of the temple selling spin by 09:45 a.m. Asmita went to the appellant and sat on the cot. The appellant slapped her. She returned home crying. The appellant's parents came there. His father questioned him as to why did he beat up the small child. PW 10 – Jamunabai, mother of the appellant,

asked him to not sit there and sell the spin. The appellant got annoyed thereby. His parents then returned home. The appellant followed them. Dhanaji further testified that after a while he heard noise. He came out of the house. He saw the appellant running away with a pink colour bag in his hand. He, therefore, went to the house of Maroti (deceased) and saw Maroti had suffered multiple injuries.

16. Close reading of the cross-examination of this witness indicates nothing fruitful to the appellant could be elicited.

17. PW 5 – Bajirao was the in-charge Police Patil of the village. On receipt of information, he went to the house of the deceased and then went to the police station.

18. PW 8 – Sonali is the wife of the appellant's brother, PW 1 – Shivram. While PW 10 - Janabai is the appellant's mother. Both these witnesses gave evidence in one voice. Both of them reiterated the incident and previous quarrel between the appellant and the deceased over agricultural land. Their evidence indicate that on the given day the appellant slapped Asmita at the temple. She returned home crying. The appellant's parents and Asmita's mother went to him. The parents questioned him as to why did he beat up Asmita. He got annoyed. They returned home. The appellant followed them. The appellant went to his room and returned with a *katti*. He assaulted his father therewith. The father suffered multiple injuries.

From the cross-examination of PW 10 - Jamunabai, it was brought on record that two unknown persons had come to purchase the threads. The suggestion goes a long way to infer that the mother was there and not in the field. She has no reason to speak against her own son. We find the evidence of PW 10 – Janabai, PW 8 – Sonali and PW 6 – Dhanaji to be inspiring confidence. Their evidence brought home the charge against the appellant. Close reading of the impugned judgment lead us to infer that we have no reason to take a different view.

19. In the result, appeal fails. Same is dismissed. In view of the same, nothing survives in the application and same stands disposed of.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)