



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

CRIMINAL APPEAL NO.670 OF 2020

Pundlik s/o. Ratnappa Nabde,
Age : 37 years, Occ. Labour (Hamal),
r/o. Rohidas Nagar, Shirur Anantpal,
Tq. Shirur Anantpal, Dist. Latur

..Appellant

Vs.

The State of Maharashtra,
Through : The Police Station Officer,
Police Station, Shirur Anantpal,
Dist. Latur

..Respondent

Mr.R.G.Hange and Mr.A.R.Hange, Advocates for appellant
Dr.Kalpalata Patil-Bharaswadkar, Addl. Public Prosecutor for respondent
- State

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : JANUARY 29, 2025
PRONOUNCED ON : FEBRUARY 03, 2025

JUDGMENT (Per R.G. Avachat, J.) :-

The challenge in this appeal is to the judgment and order of conviction and consequential sentence passed by learned Addl. Sessions Judge, Nilanga, on 31.10.2020, in Sessions Case No.4 of 2018. Vide the impugned judgment and order, the appellant has been convicted for committing murder of his mother and also causing disappearance of evidence and therefore, sentenced to suffer

imprisonment for life and imprisonment for one year, respectively, and to pay fine of Rs.1,000/-, with default stipulation. Both the sentences were directed to run concurrently.

2. The facts, in brief, giving rise to the present appeal are as follows:-

The appellant is son of Ratnappa (PW1) and Bhagabai (deceased). The appellant was married. He has one brother and sister as well. His brother stays at Mumbai and sister is married. As such, the appellant with his wife and parents would reside in the village. A year before the incident, the appellant along with his wife started residing separately; but in the premises adjoining to the premises of his father (PW1 – Ratnappa).

3. It is the case of prosecution that the appellant was addicted to liquor. He would ask his father for partition of the family land. The appellant wanted to sell out his share in the land. On the given day, i.e. 22.10.2017, Ratnappa, father of the appellant, had been to the field for agricultural operations. Somebody informed him on phone, his wife to have been murdered. He, therefore, rushed home to find his wife lying dead in burnt condition. The dead body was subjected to post-mortem examination. It was found that

deceased Bhagabai was died of strangulation and burn injuries. PW6 - Kantabai was neighbour. She had seen the appellant in the courtyard of his house by 3.30 p.m., on the fateful day. Thereafter, again by little past 6.30 pm., she saw the appellant in the court-yard. The appellant said (confessed) to have killed his mother.

4. PW1 - Ratnappa, after funeral of his wife was over, lodged the FIR (Exh.22) against the appellant. Crime vide C.R. No.155 of 2017 was registered. Crime scene panchnama (Exh.29) was drawn. The appellant was arrested. He made disclosure statement, pursuant to which a wire came to be seized. From the crime-scene, certain articles were seized. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, the appellant was proceeded against.

5. The trial court framed Charge (Exh.9). The appellant pleaded not guilty. His defence was of false implication. To bring home the Charge, the prosecution examined eleven witnesses and adduced in evidence certain documents. On appreciation of the same, the trial court convicted the appellant and sentenced, as stated above.

6. Heard learned counsel for the parties. Learned counsel for the appellant would submit that the case was based on circumstantial evidence. He would further submit that the land stood in the name of the father of appellant. The appellant would have asked his father to give his share in the land. On refusal by the father, the appellant would have targeted him. Learned counsel meant to say, the appellant to have no reason or motive to do away with his mother. He adverted our attention to the inquest panchnama (Exh.24), which indicates that the dead body was lying in the room of the informant and not in the room of the appellant. When the dead body was set ablaze, there ought to have been evidence indicating fire to have taken place. Learned counsel invited our attention to the crime-scene panchnama (Exh.29), indicating nothing of that sort to have been seen in the room. Turning to the evidence of PW6 – Kantabai, learned counsel would submit that her statement was recorded 2-3 days after the incident. The so called extra-judicial confession is a weak piece of evidence. Had it been made by the appellant publicly, his father would have stated the same in his FIR and in his oral evidence as well. PW6 – Kantabai had seen the appellant by 3.30 p.m., that too, in the court-yard. He further submits that there is no evidence that the appellant and the deceased were together in the room at the time or soon before the

deceased met with death. According to learned counsel, recovery of wire, pursuant to the disclosure statement of the appellant, is of no consequence unless it is shown to have any connection with the crime in question. He, therefore, urged for allowing the appeal.

7. Learned APP would, on the other hand, submit that the father and real sister of the appellant, have no reason to speak against the appellant. The father was away in the field. After having returned from the field, he saw his wife dead. The appellant was addicted to liquor. He would ask his share in the family land. The presence of the appellant at his house at the relevant time has been made out by the evidence of PW6 – Kantabai. Learned APP would submit that her evidence would indicate a towel was around the person of the appellant when he was seen by 3.30 p.m. on the fateful day. He then adverted to the crime-scene panchnama (Exh.29), indicating that the burnt pieces of towel too were seen along with the other articles. According to learned APP, the appellant made extra-judicial confession. His presence at his residence by the time of death of his mother is made out by the evidence of PW6 – Kantabai. It was, therefore, for the appellant to explain the circumstances in which his mother died. He relied on Section 106 of the Evidence Act. According to learned APP, the

appellant did not offer any explanation. Same reinforces the prosecution case. Learned APP, ultimately, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the judgment impugned herein. Before advertng to the evidence on record, let us refer to the judgment of the Apex Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** as under :-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) The circumstances should be of a conclusive nature and tendency,

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

9. In the present case, following facts are sought to be relied on to bring home the charge:-

- (i) Homicidal death;
- (ii) Motive;
- (iii) Presence of the appellant;
- (iv) Extra-judicial confession

10. The appellant along his wife on one hand and the parents on the other were residing in a separate premises adjoining to each other. The incident took place in the evening of 22.10.2017. The post-mortem examination report (Exh.43) concludes that the deceased died of strangulation. It was PW 7 - Dr. Balaji, who conducted the post-mortem examination. He found ligature mark on the neck of the deceased. According him, the burns on the person of the deceased were post-mortem. Same indicates the culprit to have set the dead body ablaze with a view to cause disappearance of the evidence of strangulation. The fact that the deceased died of homicidal death is not disputed before us.

Motive:-

11. PW1 - Ratnappa is father of the appellant. He testified that 5 Acres 15 Gunthas land stands in his name. He produced in evidence 7/12 extract of his land (Exh.21). He further testified that

the appellant got addicted to liquor. The appellant wanted partition of the family land as he intended to sell the land of his share to someone else. He (Ratnappa) was opposed to the same. This was said to be the motive for doing away with the mother. There is nothing to indicate that the mother had any role to pursue her husband for non-partition of the family land and separate shares of son (appellant). Admittedly, the land stands in the name of the appellant's father and no share therein was given to the appellant for his exclusive cultivation or for sale. The appellant to have reason to be after his father and not the mother. We, therefore, find that the motive with which the prosecution has come, is scanty. It is, however, not that in each and every case based on circumstantial evidence, the prosecution could be able to make out the motive. Needless to mention, the motive remains locked in the mind of the culprit and some times can be difficult to prove. True, the sister of the appellant, PW9 - Khushalbai, had testified that the appellant would ask for his share in the land by effecting partition. The appellant was addicted to liquor. He would threaten his parents to do away with them. She, however, in the cross-examination, testified that her marriage took place in 1986. She would visit her parents' house occasionally. She had no direct talks with the appellant regarding partition of the land. Her evidence is not

specific, as to when she had visited her parents' house last, before the incident and when the appellant had asked for partition of the family land.

Presence of the appellant and Extra-judicial confession :-

12. The dead body of the mother of the appellant was said to have been found in the room in possession of the appellant. The inquest panchnama (Exh.24), however, records as under:-

*"मयताच्या उत्तर मुखी रुममध्ये डोळे पूर्वस पाय पश्चिमेस
उताणे स्थितीत जळालेल्या अवस्थेत"*

It suggests that the deceased was found in the room, wherein, she was residing along with her husband. True, said statement in the inquest panchnama might be incorrect. The prosecution, however, ought to have cleared the doubt. The crime-scene panchnama (Exh.29) drawn in the presence of PW 3 - Uttam also suggests the same to be the house of PW 1 - Ratnappa (father of appellant). True, PW1 - Ratnappa being father, the house must be standing in his name and so to say the witness might have said it to be the house of father of the appellant. The case of the prosecution is that the deceased was first strangled; she died; and thereafter, the

dead body was set ablaze. PW3 – Uttam was categorical to testify that there were tiles in the room. None of the tiles was broken. There was no evidence or traces on the walls or roof of the room, indicating the incident of fire. It was a tin-shed room. None of the tin-shed was found to have been blacken. As such, it is difficult to conclude that the incident took place in the room of the appellant. The wife (PW8 - Nirmala) of the appellant did not stand by the prosecution.

13. The case solely rests on the evidence of PW6 – Kantabai, neighbour of the appellant. She testified that it was Sunday. By 03.30 p.m., she came out of her house. Her grandson was playing on the road. The appellant came there and pat on the head of her grandson. The appellant inquired with the grandson, as to when he had come. The appellant even took him in his arms and kissed him. The appellant took bite on his cheek. The grandson, therefore, bit the appellant. While reliving the grandson from his arms, the towel around the appellant's person fell down. The appellant lifted the same and went away. Kantabai, further, testified that thereafter, the wife of the appellant came to her house. She raised shouts. She and others gathered. Again by 06.30 pm. or 07.00 pm., the appellant came there and said "he murdered his mother". She referred to her

statement recorded under Section 164 of the Code of Criminal Procedure, in his examination-in-chief. Said exercise was done to corroborate her evidence. Said statement is silent to state the appellant to have made extra-judicial confession.

14. The statement of PW6 – Kantabai was recorded 2-3 days after the incident. When the appellant was alleged to have made extra-judicial confession publicly, his father was there at the house. The father's (PW1 Ratnappa) evidence is silent to record in the FIR or to state in his oral evidence about the appellant to have made the extra-judicial confession. Needless to mention, the extra-judicial confession is a weak piece of evidence. Even if we consider PW6 – Kantabai's evidence as it is, what she had seen is that the appellant had come on the road by 03.30 pm. and thereafter, went away. Her evidence is silent to state that the appellant then went back to his house/room. Her evidence further states that the appellant again came. It was between 06.30 pm. and 07.30 pm. Her evidence is silent to state, as to whether the appellant came from his room or from outside. As such, there is nothing to suggest that the appellant was at his house/room at the relevant time, so as to observe him to have been in the company of his mother (last seen together).

15. Based on the sole testimony of PW6 – Kantabai, that too, which is not concrete, it would be difficult to conclude the appellant to be the author of committing murder of his mother. Thus, the prosecution could be said to have failed to establish the chain of circumstances unerringly, pointing out the guilt of the appellant, excluding possibility of someone else to have been involved in commission of the crime. The evidence in the nature of disclosure statement made by the appellant and recovery of wire pursuant thereto, is of no avail for the prosecution, since there is no evidence to suggest that the deceased was done to death with the very wire. The wire was not sent to F.S.L., to find whether any human tissues were noticed thereon.

16. In the result, interference with the impugned order of conviction and consequential sentence is called for. Hence, the following order :-

(i) The appeal is allowed.

(ii) The impugned order dated 31.10.2020, passed by learned Addl. Sessions Judge, Nilanga, Dist. Latur, in Sessions case No.04 of 2018, convicting and sentencing the appellant for the offences punishable under Sections 302 and 201 of Indian Penal Code, is set aside. He is acquitted of the said offences.

- (iii) The appellant be released forthwith, if not required in any other case.
- (iv) Fine amount paid by the appellant, if any, be refunded to him.
- (v) Learned Registrar (Judicial) of this Court shall ensure compliance of this order today itself.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP