

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 757 OF 2018

Anil Sitaram Gosavi

..Appellant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 2542 OF 2025
IN
CRIMINAL APPEAL NO. 757 OF 2018**

Mr. Kamran S. Shaikh a/w. Prathamesh Kamble, Sandip Lokhande
and Sanket Karankot for Appellant.

Mr. K. V. Saste, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
ADVAIT M. SETHNA, JJ.**

DATE : 2 SEPTEMBER 2025

JUDGMENT: (PER SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and order dated 21.07.2016 passed by the learned Additional Sessions Judge, Khed-Rajgurunagar, Dist. Pune, in Sessions Case No.256 of 2014. The Appellant was convicted for commission of the offence punishable U/s.302 of the I.P.C. By the second clause in the operative part, the learned Judge sentenced the Appellant to suffer

imprisonment for life subject to the rider that the Appellant shall not be released unless he has undergone twenty years of imprisonment, including the period undergone by him. The Appellant was also directed to pay a fine of Rs.5000/- and in default of payment of fine, to suffer R.I. for one year. He was granted set off against the sentence of life imprisonment, subject to Section 433-A of the Cr.P.C.

2. Heard Mr. Kamran Shaikh, learned counsel for the Appellant and Mr. Saste, learned APP for the State.

3. The prosecution case is that the Appellant was doubting the character of his wife Pratibha. They had two sons. Pratibha was working in a private company. The Appellant was hardly earning anything. Pratibha's sister who was married to the Appellant's brother was residing in the neighbourhood. The Appellant's parents with their other children were also residing nearby.

4. On 18.06.2013, the Appellant's wife Pratibha was to attend her duty at a private company in the third shift. The

Appellant and Pratibha were at home. Their children returned from the school. Their son Mayur wanted money to go to a hotel. Mayur and Pratibha searched for the wallet. They found it, however, the Appellant wanted that wallet. Mayur did not want to handover that wallet to the Appellant. Pratibha also stopped the Appellant from snatching the wallet. At that time, the Appellant took out a hatchet and gave two blows on Pratibha's head. Mayur went to his grand parents' and other relatives' house. He informed them. All of them rushed there. The villagers also gathered there. The Appellant was threatening everybody. He was overpowered. The police were informed. Pratibha's sister who was at the company was also informed. She rushed back to their house. She saw the scene of the incident. She lodged her F.I.R. vide the C.R.No.177 of 2013 at Narayangaon police station. Pratibha was taken to the hospital, but she succumbed to her injuries. The Appellant was arrested on 18.06.2013 itself. The investigation was carried out. The postmortem examination was conducted. The clothes of the deceased and the Appellant were seized. The spot panchanama was conducted. The statements of various witnesses

were recorded. After completion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During the trial, the prosecution examined eight witnesses including the first informant Jyoti who was the sister of the deceased Pratibha, the eye witness Mayur, one neighbour, a step sister of the Appellant, the panchas, the Medical Officer and the Investigating Officer. The defence of the Appellant was of total denial. According to him, on the date of the incident, he had entered the house and saw that his wife was killed and a hatchet was lying there. He was not at home at the time of the incident. He was falsely implicated by Pratibha's relatives.

6. The learned Judge did not accept his defence. He relied mainly on the evidence of the eye witness Mayur supported by the evidence of Pratibha's sister, other relatives and a neighbour. The learned Judge also took recourse to Section 106 of the Evidence Act and reached a conclusion of guilt of the Appellant.

7. PW-1 Jyoti Gosavi is the first informant in this case. She

was the sister of the deceased Pratibha. She was married to the Appellant's brother Sunil. She deposed that the Appellant and Pratibha had two sons Ajinkya and Mayur. At the time of the incident, the Appellant was residing in front of her house. He was residing with his family. The Appellant's parents, his step brother and step sister were residing in the neighbourhood. PW-1 Jyoti and Pratibha were serving in Jabil Circuit India private company at Ranjangaon. The company operated in three shifts. At the relevant time, PW-1 was working in the second shift between 2:00p.m. to 10:00p.m. Her husband and the Appellant were 'Bhikshekari'.

8. On 18.6.2013, she left the house at 12:00p.m. for her second shift. At that time, the Appellant and Pratibha were at home. In the evening, at about 7:00p.m. one Haribhau Tattu, who was her neighbour came to her company. He told her that, there was a quarrel between the Appellant and Pratibha and that the Appellant had beaten Pratibha. She rushed home. She entered the house and saw that there was a pool of blood in the house; also a hatchet was lying nearby. She was told by her sister in law Manda that the Appellant had assaulted Pratibha with that hatchet on

head. She along with her uncle Sham Gosavi and Manda went to Nimgaon police outpost and lodged her F.I.R. According to her, the Appellant was suspecting Pratibha's character. He used to beat her. Pratibha had lodged the complaint with the police against the Appellant. In the past, PW-1 Jyoti's husband had also lodged a complaint against the Appellant, because of which, the Appellant was put in jail for one month. After being released, he used to give threats to the family members. This was the gist of her F.I.R. It is produced on record at Exhibit-11. The F.I.R. substantially corroborates her deposition. She identified the clothes of the victim in the Court.

In the cross-examination, she stated that, because of their quarrels, she and her family were residing separately from the Appellant. The police had already reached the spot before she had lodged the report and they had already seized the hatchet from the spot of the incident. She admitted that, she had not stated in her F.I.R. that Pratibha had lodged the complaint against the Appellant in the past. The F.I.R. produced at Exhibit-11 shows that it was registered at 9:45p.m. on 18.06.2013.

9. PW-2 Mayur Gosavi is the most important witness in this case. He was the Appellant and Pratibha's son. At the relevant time, he was studying in the 5th standard. He deposed that, his mother Pratibha was working in Jabil Circuit India Private Limited company at Ranjangaon. The Appellant used to fight with his mother Pratibha and used to beat them under the influence of liquor. On 18.06.2013, both, the Appellant and Pratibha were at home. On that day, PW-2's mother Pratibha was to work in the night shift. PW-2 and his brother returned home from the school at about 5:30p.m. Pratibha was sitting in front of their house. She gave them Rs.10/- to eat food from a hotel. After returning home, PW-2 and his brother were watching T.V. in the house of their grand-father. His mother Pratibha came to him and told him to bring wallet from their house. He went to the house and searched for the wallet, but he could not find it. He came back to Pratibha. After that, he and Pratibha went inside the house and they were searching for that wallet. Pratibha found it and gave it to PW-2 Mayur. At that time, the Appellant asked PW-2 to handover that wallet to him. Mayur refused. Therefore, the Appellant beat him.

Pratibha told the Appellant not to beat Mayur. During that time, the wallet fell on the ground. Pratibha bent down to pick up the wallet. At that time, the Appellant took out the hatchet from the roof of the door and assaulted on her head. She fell down. Mayur got scared and ran out of the house. He saw that his father (the Appellant) gave second blow on Pratibha's head. He came out of the house screaming. The neighbours and his relatives rushed to his house. The Appellant came out of the house holding that weapon. He was saying that he had murdered his wife and that he would commit murder of five other persons. PW-2 further deposed that the police came at the spot of the incident. They recorded his statement. His statement was also recorded by the J.M.F.C., Junnar on 27.06.2013. That statement is produced on record at Exhibit-14. He identified the weapon and the clothes of the deceased produced in the Court.

In the cross-examination, he could not explain as to why his statement before the police did not mention the fact that the Appellant came out of the house and had said that he had murdered his wife and that he would commit murder of five

persons. Besides bringing this omission on record, there was hardly any cross-examination assisting the defence.

10. PW-3 Ashruddin Momin was a neighbour. He had his garage near the house of the Appellant. He knew all the family members of the Appellant. On 18.06.2013, at 6:00p.m., he heard shouts of Monika Gosavi. He saw the Appellant coming out of the house holding a weapon in his hand. The Appellant was shouting that he had killed his wife. PW-3 then called the others namely Pandurang Dukre and Deviraj Dherange. Both of them came to the spot. They entered the house and told the others that Pratibha was lying in a pool of blood. PW-3 then brought Dr. Kiran Lamkhade who advised them to shift Pratibha to Narayangaon. His statement was recorded by the police on 19.06.2013.

In the cross-examination, he could not explain as to why his police statement did not mention that he had phoned Pandurang Dukre and Deviraj Dherange. This omission is hardly of any consequence. Apart from this, there is no cross-examination worth mentioning.

11. PW-4 Monika Gosavi was the step sister of the Appellant. She deposed that the Appellant was jobless and he used to fight with the family members. He used to fight with Pratibha. He was suspecting her character. About one year prior to this incident, the Appellant had assaulted his brother Sunil by an iron rod, for which, Sunil had lodged a report against the Appellant at Narayangaon police station. On the date of the incident i.e. on 18.06.2013, the deceased Pratibha was at home because she had to attend the night shift. PW-4 returned home at about 2:00p.m. after attending her computer class. She saw that the Appellant was drying the clothes outside the house and Pratibha was inside the house. At about 3:00p.m. Pratibha met her and complained that the Appellant used to harass her physically and mentally. At about 5:30p.m., Pratibha's son returned home from the school. Pratibha told Mayur to bring the wallet from the house. Mayur returned back and told Pratibha that he could not find the wallet in the house. Therefore, Pratibha and Mayur went to their house. Within two minutes Mayur came out shouting. PW-4 Monika and others rushed to the Appellant's house. They saw that the Appellant was

holding a hatchet in his hand and was standing in front of his house. The hatchet was stained with blood. The Appellant told them that he had committed murder of his wife Pratibha. Many people gathered there. The Appellant was caught by the people and he was tied to a tree in front of his house. PW-1 Jyoti then lodged the F.I.R. This witness Monika's statement was recorded by the J.M.F.C., Junnar. It is produced on record at Exhibit-19.

In her cross-examination, she could not explain as to why her statement before the police did not mention that Pratibha was lying in a pool of blood and had sustained head injury. Apart from this omission, rest of the cross-examination was in the form of suggestions which she had denied.

12. PW-5 Vijay Vite was a pancha. He was declared hostile. But, according to the prosecution he was present at the time of seizure of clothes of the deceased and the Appellant. His evidence does not help the prosecution or the defence.

13. PW-6 Santosh Dukre was a pancha for the spot panchanama. The spot panchanama was produced on record at

Exhibit-24. The spot of the incident is hardly in any dispute.

14. PW-7 Dr. Uday Pawar was the Medical Officer who had conducted the postmortem examination. He found the following injuries on the dead body of Pratibha.

- i) Incised wound on scalp measuring 4x2x5 cm on sagittal sutures going deep till brain tissue.
- ii) Incised wound on scalp measuring 4x1x3 cm going deep till dura matter.

He also found following internal injuries:

- i) Incised wound on skull penetrating till brain tissue and dura matter.
- ii) With multiple sub dura hematoma present on parietal and frontal region.
- iii) Incised wound on brain penetrating about 0.5cm in brain frontal lobe.
- iv) Rest of the brain congested with sub dural hemorrhage.

According to him, the cause of death was 'head injury'.

There were two serious injuries on the head. The postmortem notes are produced on record at Exhibit-29.

15. PW-8 Narayan Sarangkar was the Investigating Officer. He had registered the offence at C.R.No.177 of 2013 at

Narayangaon police station. He had conducted the spot panchanama and had sent the dead body for postmortem examination. He had arrested the Appellant. He had seized the clothes of the Appellant and the deceased. He had recorded the statements of the witnesses and had sent the articles for chemical analysis. After completion of the investigation he had filed the charge-sheet.

Apart from this oral evidence, the prosecution produced C.A. certificate at Exhibit48 which showed the presence of human blood on the clothes of the Appellant, as well as, on the clothes of the deceased. However, the blood group was inconclusive.

This, in short, is the evidence led by the prosecution.

16. Learned counsel for the Appellant submitted that, he was not arguing for complete acquittal, but, according to him, the offence would not be the one punishable U/s.302 of the I.P.C. He submitted that the evidence shows that the offence would fall within *Exception 4* of Section 300 of the I.P.C. and, therefore, at

the highest it would be an offence punishable U/s.304(I) of the I.P.C. The Appellant is in custody since 18.06.2013 and, therefore, he may be released on the sentence undergone. In support of his contention, he relied on three Judgments of the Hon'ble Supreme Court; as follows:

i) K. Ravi Kumar Versus State of Karnataka¹

ii) Pundalik Versus State of Maharashtra²

iii) Kalu Ram Versus State of Rajasthan³

17. In addition, he further submitted that the evidence of child witness is not reliable considering his tender age. The evidence does not show that it was an offence punishable U/s.302 of the I.P.C. There was no premeditation. There was a quarrel between the husband and wife which has resulted in Appellant giving blow on the head of the deceased. Therefore, this is not an offence punishable U/s.302 of the I.P.C.

18. Learned APP, on the other hand, submitted that, there was a history between the husband and the wife. The Appellant

1 (2015) 2 Supreme Court Cases 638

2 Criminal Appeal No.864 of 2010 (Arising out of S.L.P. (Cri.) No.6094 of 2009.

3 (2000) 10 Supreme Court Cases 324

was suspecting her character and, therefore, this offence had taken place. He submitted that the evidence shows that, there was no quarrel between the husband and wife. The Appellant was just finding an excuse to commit her murder. He submitted that the evidence of PW-2 Mayur is absolutely reliable. It is corroborated by evidence of PW-4 Monika and PW-3 Ashruddin. The murder weapon was found at the spot. The appellant was caught at the spot. Therefore, the prosecution has proved its case beyond reasonable doubt.

19. We have considered these submissions. As far as, quality of the evidence is concerned, we are satisfied that PW-2 Mayur is a reliable witness. He is a natural witness. He was the son of the deceased and the Appellant. He had deposed about the frequent quarrels between the husband and wife. PW-1 Jyoti and PW-4 Monika have deposed that the Appellant was suspecting Pratibha's character and that had led to the incident. PW-2 Mayur has described the incident in sufficient details. He had returned home from the school. At that time, both, the Appellant and Pratibha were present in the house. The Appellant beat him. A wallet had

fallen down on the ground. PW-2 Mayur did not want to handover that wallet to the Appellant and, therefore, the Appellant started beating him. Pratibha told the Appellant not to beat him. That can hardly be called as a quarrel between the husband and wife. The evidence shows that the Appellant immediately took a deadly weapon in his hand and gave two blows on the head of the deceased causing grievous injuries leading to her death. We are unable to accept the submission that the incident would fall within the *Exception 4* to Section 300 of the I.P.C.

Exception 4 to Section 300 of the I.P.C. reads thus:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

20. From the background of suspicion entertained by the Appellant, it was quite clear that he was holding grudge against his wife. There was no fight between Pratibha and the Appellant. It cannot be said that the incident had taken place in a sudden fight in the heat of passion or even upon a sudden quarrel. It cannot be

said that the offender had not taken undue advantage or that he had not acted in a cruel or unusual manner. Pratibha was only trying to save her son from beating. That cannot be taken as an excuse to call it as a quarrel between the husband and wife. The conduct of the Appellant is obviously cruel. He gave two blows with deadly weapon on Pratibha's head without any reason. He came out of the house shouting that he had murdered his wife and that he would kill others. Therefore, we do not think that the matter would fall within *Exception 4* of Section 300 of the I.P.C.

21. Similarly, we do not find that the learned counsel's reliance on three judgments of the Hon'ble Supreme Court cited before us, was justified. In the case of **K. Ravi Kumar** the Hon'ble Supreme Court had discussed the facts. In that case, the accused wanted to meet his father living at some other place who was seriously ill. He asked his wife to accompany him immediately. She refused and suggested to go on the next day. This led to heated exchange between them which eventually resulted in the accused losing his mental balance to the extent that he first stabbed his wife with knife, poured kerosene and set her on fire. The facts in

this case are different. There was heated exchange between them which is not the case before us.

22. In the case of **Pundalik**, again there was a quarrel between the accused and his wife, as the wife had consumed liquor which led to a verbal duel between them. The accused got angry, picked up an axe and assaulted her with the handle of the axe. Thus, the background, the facts and the nature of weapon which was handle of the axe played important part in reaching the conclusion that it was an offence punishable U/s.304(I) of the I.P.C.

23. In the case of **Kalu Ram**, after the accused had poured kerosene and set the victim on fire, he got back his senses, he brought water in an effort to rescue her. Thus, even in that case, there was no intention to commit her murder. Again these facts are entirely different from the facts in the case before us. Therefore, we are not inclined to accept the submission that it was an offence punishable U/s.304(I) of the I.P.C. and not the offence punishable U/s.302 of the I.P.C.

24. Thus, we conclude that the prosecution has proved that the Appellant has committed the offence punishable U/s.302 of the I.P.C. To that extent, we agree with the findings recorded by the learned Judge. However, we are unable to agree with the clause 2 of the operative part of the Judgment. To that extent, we are inclined to grant benefit to the Appellant.

Clause 2 of the operative part of the Judgment reads thus:

“The accused is sentenced to suffer imprisonment for life subject to rider that the accused shall not be released unless he has undergone twenty years of imprisonment, including the period undergone by him. The accused is also liable to pay a fine of Rs.5,000/- (Rs. Five thousand only) and in default of payment of fine, he shall suffer rigorous imprisonment for one year for an offence punishable under section 302 of Indian Penal Code.”

25. The learned Judge has discussed in detail as to why he was not imposing death penalty, but was inclined to impose life imprisonment. He had observed that, sentence to life imprisonment normally worked out in term of 14 years, but that would be inadequate and the accused deserved a harsher

punishment. Based on this reasoning mentioned in paragraph-41, he sentenced the Appellant to undergo minimum imprisonment of 20 years. In this context, observations of the Hon'ble Supreme Court in the case of **Vikas Chaudhary Versus State of Delhi**⁴ are important. The relevant paragraph Nos.17 and 18 are as follows:

"17. It is thus clear that Sriharan (supra), approved an alternative third sentencing option in cases where the accused are convicted of serious and grave crimes which carried with it the option of capital sentence. Realising that a life sentence per se can lead to early release of accused upon their undergoing the minimum sentence prescribed under Section 433A, and highlighting that the asymmetry in state rules with respect to minimum incarceration in different kinds of life sentences, this court decided to retain to itself (and the High Courts) the option of imposing what Sriharan termed as "special" or "fixed term sentences". This was seen as serving the following purposes:

- (a) As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:
- (b) That the Court was of the opinion that there were elements in the crime and or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed by the Code of Criminal Procedure.
- (c) Where the court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the state's discretion in releasing the offender, should be curtailed so that the convict is not let out before

undergoing a specified number of years, of incarceration.

18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict's life, as an alternative to death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan (supra) are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, per force provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances – the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformatory element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e., the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused)."

26. The first sentence in paragraph-18 addresses this issue. Thus, the learned Trial Judge could not put the restriction of minimum 20 years of imprisonment to be undergone by the

Appellant. To that extent, this operative part will have to be modified.

27. Hence, the following order:

O R D E R

- i) The Appeal is partly allowed.
- ii) The conviction U/s.302 of the I.P.C. recorded by the learned Additional Sessions Judge, Khed-Rajgurunagar, Dist. Pune, vide his Judgment and order dated 21.07.2016, in Sessions Case No.256 of 2014, is maintained; however, the sentencing part is modified.
- iii) The Appellant is sentenced to suffer imprisonment for life. The specific rider that he has to complete minimum 20 years of imprisonment is removed.
- iv) The Appellant shall be entitled to all the remissions and other benefits available to him as per the Rules.
- v) The Appellant is also directed to pay a fine of Rs.5000/- and in default to suffer R.I. for one year.

vi) He shall be entitled to set off U/s.428 of the Cr.P.C.

vii) With these observations, the Appeal is disposed of.

viii) With disposal of the Appeal, the connected application is also disposed of.

(ADVAIT M. SETHNA, J.)

(SARANG V. KOTWAL, J.)