



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 140 OF 2021

APPELLANT : Nagorao S/o. Mahadevrao Borwar,
(In Central Jail Nagpur) (C-10623) Convicted Offender,
Age : 48 Years, Occu: Labourer,
R/o. Nara, Tah. Karanja (G.),
District – Wardha.

//VERSUS//

RESPONDENT : The State of Maharashtra, through
Police Station Officer, Police Station,
Karanja (G.), Tah. Karanja (Ghadge),
District : Wardha.

Mr. Rahul D. Hajare, Advocate (appointed) for the Appellant.
Mr. K.R. Lule, APP for the Respondent/State.

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.

RESERVED ON : 4th DECEMBER, 2025.

PRONOUNCED ON : 8th DECEMBER, 2025.

JUDGMENT (PER : RAJ D. WAKODE, J.)

The present appellant has approached this Court being aggrieved by the judgment and order dated 5th March, 2020 passed by the learned Additional Sessions Judge, Wardha, in Sessions Case No.47/2016, whereby the present appellant is convicted for the offence

punishable under Section 302 of the Indian Penal Code, 1860 (IPC) and is sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for six months.

02] The brief facts of the prosecution case leading to the conviction of the present appellant are as follows:

On 29th February, 2016, informant Manisha Nagorao Borwar lodged a report at Police Station Karanja (Gh.). She stated that she lives with her mother, elder brother, and younger sister, while her father (accused) has been living separately outside the village for the past three years due to strained marital relations. According to the informant, on 27th February, 2016, the accused had come to the village and was staying at his mother's house. For the preceding two days, he had been visiting their house and arguing with her mother, making allegations against her character. According to the informant, on 29th February, 2016, around 8:00 hrs., her mother went to the village to buy some goods. At about 8:30 hrs, she returned home in injured condition and informed them that the accused had confronted her in the *gothan*, picked a quarrel, and assaulted her with a knife, inflicting 2-3 blows on her abdomen. As she was bleeding, the informant and her brother immediately took her to the Rural Hospital, Karanja. Subsequently, the informant lodged the present report at the police station.

03] After the criminal law was set in motion by the aforesaid FIR, the investigation was entrusted to PSI Pradipkumar Rathod. During the course of investigation, the appellant was arrested by the Investigating Officer, and at his instance, the knife used in the commission of the offence was recovered from an auto-rickshaw under Section 27 of the Indian Evidence Act. The Investigating Officer conducted the memorandum panchanama as well as the seizure panchanama. An inquest panchanama was prepared, the post-mortem was conducted, and the post-mortem report was collected by the Investigating Officer. Statements of the witnesses were recorded, and the muddemal was sent to the F.S.L., Nagpur. The Chemical Analyzer's reports were thereafter received, and upon completion of the investigation, charge-sheet came to be filed against the appellant.

04] Cognizance of the aforesaid offence was taken by the learned Judicial Magistrate First Class, Karanja (Ghadge), who, in turn, committed the case to the Sessions Court, as the offence under Section 302 of the IPC is exclusively triable by the Sessions Court.

05] The learned Sessions Court framed the charge, read it over and explained it to the appellant in vernacular, to which he pleaded not guilty and claimed to be tried.

06] The prosecution examined, in all, 16 witnesses in support of its case, and the details of these witnesses are explained in paragraph 7 of the impugned judgment.

07] After the recording of evidence, the learned Trial Court recorded the statement of the accused/appellant under Section 313 of the Cr.P.C., thereby explaining to him the incriminating circumstances appearing against him. The defence of the appellant before the Trial Court was of total denial and false implication. However, he did not lead any evidence in defence.

08] After considering the entire oral and documentary evidence, as well as the arguments advanced by the counsel for both parties, the learned Trial Court convicted the present appellant by its judgment dated 5th March, 2020. Being aggrieved by the said judgment, the appellant has approached this Court.

09] We have heard Mr. Rahul D. Hajare, learned counsel appointed to represent the appellant, and Mr. K.R. Lule, learned APP for the respondent/State. We have gone through the evidence, documents, and the impugned judgment. We will refer the same to the extent if necessary to decide the following points that arise for our consideration. We have recorded our findings thereon for the reasons to follow:

Sr. No.	Points	Findings
(i)	Whether the death of Sushila Nagorao Borwar is homicidal?	Yes.
(ii)	Whether prosecution proves that on 29 th February, 2016 at Nara, Tq. Karanja (Ghadge), District - Wardha accused did commit murder of his wife Sushila Nagorao Borwar stabbing her by means of knife intentionally or knowingly causing her death and thereby an offence punishable under Section 302 of IPC?	No.
(iii)	Whether interference is called for in the impugned judgment?	Yes
(iv)	What order?	Appeal is allowed. Impugned judgment is quashed and set aside.

REASONS

As to point Nos.(i) to (iv)

10. The appellant, during the course of the trial, did not dispute that the death of Sushila Nagorao Borwar was homicidal. He has not placed any evidence on record to prove that the death of Sushila was either suicidal or accidental, and hence we need not dwell much on the aforesaid issue of homicidal death. Suffice it to say that PW-2 Manisha Nagorao Borwar deposed in her examination-in-chief that her mother had been murdered. PW-14 Dr. Nitin Shamrao Barmate, who conducted the post-mortem, found nine external injuries as mentioned in Column No.17, along with internal injuries as mentioned in Column

No.19. According to PW-14, these injuries, individually as well as collectively, were sufficient in the ordinary course of nature to cause death. He opined that the cause of death was due to stab injury over the abdomen and that the injuries mentioned in Column Nos.17, 20A, and 21 could have been caused by a knife. In view of the aforesaid evidence, we are of the opinion that the prosecution has successfully proved that the death of Sushila was homicidal. Accordingly, Point No.(i) is answered in the affirmative.

11] Now, the question arises as to whether the appellant/original accused committed the murder of the deceased Sushila. The prosecution made every effort to prove the guilt of the accused and examined as many as 16 witnesses to establish his culpability. However, in our considered opinion, for the reasons discussed below, the learned Trial Court was not justified in convicting the present appellant solely on the basis of circumstantial evidence, which was neither conclusive nor fully established.

12] It is worth to mention here that, in this case, PW-2 Manisha Nagorao Borwar, the daughter of the deceased and the informant, has not supported the case of the prosecution. The evidence of PW-2 indicates that she admitted in her cross-examination by the learned DGP for the State that her mother was engaged in the business of

selling liquor, and therefore, her mother used to have quarrel with several persons on the count of money towards the liquor business. PW-2 further denied the suggestion that her mother told her that in the village quarrel took place with her father, who caused injury to her mother by means of knife. The aforesaid statement of PW-2, who was residing with the deceased, draws an inference that there were several persons in the village with whom the deceased had quarrel on the count of money. Finally, PW-2 closed her evidence by saying that in this case the police had implicated her father falsely on the basis of suspicion.

13] The prosecution heavily relied upon PW-4 Kailas Ramkrushna Amzire, who was their star witness, as it was alleged that he had witnessed the incident and thus was an eyewitness. However, PW-4 did not support the prosecution case and deposed before the learned Trial Court that the incident did not occur in his presence and that he had not seen the appellant/accused inflicting the knife blows on the abdomen of the deceased Sushila. Thus, the case of prosecution, which was initially based on direct evidence, was rendered to the case based on circumstantial evidence.

14] The prosecution tried to connect the present appellant with the offence solely on the basis of the recovery under Section 27 of the Indian Evidence Act. The prosecution placed on record the confession of the appellant under Section 27 of the Indian Evidence Act, which is

at Exh. 34 (page No.36). After the aforesaid confession, PW-16 Pradipkumar Navalchand Rathod conducted the memorandum panchanama in the presence of PW-3 Harishchandra Tukaram Sontakke, and also conducted the seizure of the aforesaid knife vide seizure panchanama at Exh.36. The prosecution examined PW-3 and PW-16 on the aforesaid point. The prosecution also examined PW-12 NPC Kailas Mahadeorao Mahure, the carrier of the muddemal. However, the fact remains that the learned trial Court, after considering the entire evidence of the aforesaid witnesses, has observed thus:

“During the course of arguments, one of the relevant submission made by Ld. defence advocate is that the manner in which knife was seized by the I.O., itself is doubtful. In this context, no doubt, some significant variances are found on record regarding the seizure of knife. PW12 N.P.C. Mahure, carrier of muddemal in his cross-examination deposed that it did not happen that knife was handed over to him by PSI Rathod. On the contrary,, he has not disputed portion marked-A in his statement that said knife was obtained by him from P.S.I. Rathod while he was carrying it to F.S.L. On the other hand, PW16 Rathod in his cross-examination deposed that on 22.03.2016 knife was handed over by him to N.P.C. Mahure for C.A. Moreover, PW16 in his cross-examination also admitted that when the knife was sent to F.S.L., his seal was put on it. Thus, to the extent of manner in which the said knife was seized and sealed appears to be doubtful.”

The learned Trial Court itself observed that the only connecting evidence, i.e., the knife, was seized and sealed in a manner which is doubtful. In the circumstances, the learned Trial Court was not justified in convicting the present appellant on the basis of a theory, which was

neither fully established nor conclusive.

15] The Hon'ble Apex Court, while laying down the five golden principles constituting the 'panchsheel' for proving a case based on circumstantial evidence in ***Sharad Biridhichand Sarda Vs. State of Maharashtra (AIR 1984 SC 1622)***, has observed thus:

"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.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.”

In our view, the present case does not fall within the aforesaid parameters, which must be fulfilled before a case against an accused can be said to be fully established, and the accused can be convicted for a serious offence like murder.

16] The learned Sessions Court has observed in paragraph 31 of the impugned judgment that even if the evidence pertaining to the knife is discarded in view of the manner in which the knife was sealed, CA reports at Exh.115 to Exh.118 support the case of prosecution and thus this is one more circumstance on the basis of which the conviction is based by the learned Trial Court. The perusal of the aforesaid CA reports from Exh.115 to Exh.118 reveal that Exh.115 is the blood group report of deceased Sushila Nagorao Borwar, which shows that her blood group was 'B'. Exh.116 is the blood group report of the present appellant Nagorao Mahadevrao Borwar. The perusal of the aforesaid report shows that though his blood was collected in a phial, his blood group cannot be determined by the F.S.L. as the result was shown as 'inconclusive'. Exh.117 is the report pertaining to various samples, wherein the sample at Serial No.7 is the full shirt alleged to have been wore by the present appellant at the time of the commission of the offence. The report shows that the sample at Serial No.7 is stained with blood on the front

middle portion and appears to have been washed and still the F.S.L. was able to detect the blood group on the shirt as 'B'. Thus, the aforesaid CA reports are doubtful, as the report at Exh.116, pertaining to the blood group of the appellant, was inconclusive even though the sample was of the blood in a phial collected from the present appellant. His blood group can be also 'B'. Hence, in our considered opinion, the learned trial Court has committed a grave error in relying upon such doubtful CA reports for convicting the present appellant.

17] One more additional circumstance relied upon by the learned Trial Court was the CA report at Exh.118, wherein chilly powder was detected in the earth collected from the spot. The allegation is that the appellant had purchased the said chilly powder from a grocery shop and had thrown it into the eyes of the deceased before stabbing her. The prosecution examined PW-8 Kishore Madhavrao Dhole, the owner of the grocery shop, to prove that the appellant had purchased chilly powder from PW-8 and thus the appellant could be connected to the spot of the incident and, accordingly, to the crime. However, PW-8 did not support the prosecution case and was declared hostile during his evidence. Hence, the learned Sessions Court was not justified in considering the aforesaid circumstance for completing the alleged chain of circumstances from which the conclusion of the appellant's guilt was drawn by the learned Trial Court.

18] It is worth to mention here that the prosecution examined PW-5 Narendra Suryabhan Nandne, who deposed to prove the alleged motive for murder attributed to the present appellant. He deposed that the appellant used to suspect that the deceased Sushila had an illicit relationship with him, and therefore the appellant committed her murder. However, the evidentiary value of this witness is lost on the very first question put to him in cross-examination by the learned counsel for the accused/original appellant, wherein PW-5 specifically admitted that, prior to this incident, a case had been registered against him under Section 324 of the IPC for beating the appellant, and that since then he had strained relations with the accused/present appellant.

19] Despite this, the learned Sessions Court relied upon the testimony of PW-5 to conclude that the prosecution had proved the motive for the commission of the murder, and accordingly convicted the present appellant. In our view, the present case is a classic example of the violation of the guidelines given by the Hon'ble Apex Court called as 'panchsheel' for proving a case based on circumstantial evidence in *Sharad Biridhichand Sarda* (supra), and hence, in our considered opinion, the impugned judgment and order deserves to be quashed and set aside by this Court.

20] Accordingly, Issue No.(i) is answered in the affirmative, Issue No.(ii) in the negative, and Issue No.(iii) in the affirmative. Having

considered Point Nos.(i) to (iii) in the manner stated above, the present appeal deserves to be allowed and the impugned judgment and order is liable to be quashed and set aside in response to Issue No.(iv). We, therefore, proceed to pass the following order:

ORDER

- (i) The appeal is allowed.
 - (ii) The impugned judgment and order dated 5th March, 2020, passed by the learned Additional Sessions Judge, Wardha, in Sessions Case No.47/2016, is hereby quashed and set aside.
 - (iii) The appellant – Nagorao S/o. Mahadevrao Borwar is hereby acquitted of the offence punishable under Section 302 of IPC. He shall be released forthwith, if not required in any other case.
 - (iv) The fees of the appointed counsel be quantified and paid as per Rules.
- 21] The appeal stands disposed of in above terms.

(RAJ D. WAKODE, J.)

(ANIL L. PANSARE, J.)