



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

CRIMINAL APPEAL NO.276 OF 2019

Manohar s/o Naththu Bawaskar,
Aged about 45 years,
Occupation-Labour,
R/o. Dhanora, Tq. Jalgaon (Jamod),
District-Buldhana. ... Appellant
(In Jail)

.. Versus ..

The State of Maharashtra,
through the officer in charge,
Police Station, Jalgaon (Jamod),
District-Buldhana. .. Respondent

.....
Shri A.D. Tote, Advocate (Appointed) for Appellant,
Shri Anup Badar, A.P.P. for Respondent-State.
.....

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.
DATED : 5th MARCH, 2025.

JUDGMENT [PER : Nitin B. Suryawanshi, J.]

1. By this appeal, appellant challenges the judgment and order passed by the Ad-hoc Additional Sessions Judge, Khamgaon, District-Buldhana in Sessions Trial No.59/2013, thereby convicting appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "IPC")

and sentencing him to suffer imprisonment for life and to pay a fine of Rs.500/-.

2. Prosecution case, in nutshell, can be stated as under :

Informant/victim Sau. Sharda Manohar Bawaskar, resident of Dhanora-Mahasiddha, Tahsil-Jalgaon (Jamod), District-Buldhana, wife of the appellant Manohar, lodged a report (Exh.41) stating that she used to do labour work and reside in that village along with her husband i.e. appellant and two children. On 11.5.2013, in the morning, accused had raised quarrel with her as usual. In the night at around 10.00 p.m, after taking meal, she went to sleep along with her son Pravin (PW-1). Accused came home after consuming liquor and raised quarrel with her and gave blows of *Katyar* (Dagger) on her thighs, chest, back, cheek and arms and injured her. Dnyaneshwar Anokar (PW-6) and one Atmaram Anokar rescued her and took her to hospital in auto-rickshaw of one Samadhan Surwade. The Doctor at Rural Hospital referred her to Akola. While going to Akola, she came to the Police Station at about 00.20 hours, during the night between 11.5.2013 and 12.5.2013 and lodged report (Exh.41). On that basis, First

Information Report (Exh.42) was registered as Crime No.39/2013 at Jalgaon (Jamod) Police Station under Section 326 of IPC. During the course of treatment, Sharda expired on 16.5.2013 and Section 302 of IPC was added in the crime. On completion of investigation, charge-sheet was submitted and the case was committed to the Sessions Court. Appellant was charged under Section 302 of IPC. He denied the charge and claimed to be tried. In support of its case, prosecution examined 14 witnesses. Defence of the appellant was that Sharda attempted to commit suicide and the injuries suffered by her are self inflicted injuries. On appreciation of evidence, Trial Court convicted the appellant as aforesaid, hence the present appeal.

3. Heard learned Advocate for the appellant and learned Additional Public Prosecutor for the respondent-State.

4. Learned Advocate for the appellant assailed the conviction stating that the Trial Court has failed to appreciate the evidence on record in the proper perspective and has erred in convicting the appellant. PW-1 Pravin, son of appellant and deceased, cannot be said to be an eyewitness, as it is clear from

his deposition that he has not witnessed the actual assault. He has stated in his evidence that statement of deceased was recorded in the ambulance, whereas PW-5 Head Constable Chandrakant More says that statement of deceased was recorded at Government Medical College and Hospital at Akola (for short, "GMC Akola). He submits that deceased was on ventilator throughout and hence she was not in a position to give statement. Prosecution has suppressed the statement of the deceased recorded at GMC, Akola and has only brought on record the oral report (Exh.41) and FIR (Exh.42). For such suppression, adverse inference needs to be drawn against the prosecution. He further submits that no reliance can be placed on the evidence of PW-6 Dnyandeo Anokar, who claims to be an eyewitness of the assault, in view of omissions brought on record in his evidence. Panchanama's of seizure of murder weapon and clothes of accused are done by stock panchas and the time gap between them is hardly 5 to 10 minutes. These panchanamas, therefore, are unreliable and may not be believed. According to him, there is no evidence brought on record as to what treatment was given to the deceased during

the period between 12.5.2013 to 16.5.2013. This aspect creates doubt in the prosecution's case. Medical Officers have admitted that the injuries suffered by the deceased could be self inflicted injuries. He, therefore, submits that benefit of doubt needs to be given to the appellant. According to him, investigation was carried out by PW-14 PI Nitin Patil and PW-13 API Ananda Kushangwad. Both of them have not stated that they had authorized PW-5 Chandrakant More to record the statement of deceased by going to GMC Akola. According to him, prosecution has utterly failed to prove the case against appellant beyond reasonable doubt, hence, by relying on the judgment of this Court in case of *Sk. Javed Sk. Gulam Rasul .vs. State of Maharashtra, reported in 2023 SCC Online Bom. 1724*, he submits that appellant deserves to be acquitted.

5. *Per contra*, learned Additional Public Prosecutor for respondent-State supported the judgment and order of conviction passed by the Trial Court. He submits that evidence of eyewitnesses PW-1 Pravin and PW-6 Dnyandeo is cogent and reliable. PW-6 has actually stopped appellant during the assault and rescued the deceased. Blood stained weapon used in the

crime is recovered at the instance of appellant, so also his blood stained clothes. All these articles were found to have been stained with the blood of the blood group 'A' which was of the deceased. This strengthens the prosecution case. The report of the incident is lodged by the deceased Sharda herself and the same can also be treated as her Dying Declaration. She had no reason to falsely implicate the appellant in the present crime. The brutal manner, in which appellant has assaulted the deceased, is clear from the postmortem report. It has come in the evidence of PW-11 Dr. Sayyad Numan Husaini that Sharda had suffered total 20 incised, lacerated wounds and abrasions coupled with internal injuries. From postmortem report, he points out that Sharda was admitted at GMC Akola on 12.5.2013 and on her death, the date of discharge is shown as 16.5.2013. He, therefore, submits that there is ample evidence on record to sustain the conviction of the appellant and the trial court is justified in convicting the appellant. There is no merit in the appeal and the appeal may be dismissed. In support of his submission, he relied on the judgment of the Hon'ble Apex Court in the case of *Molai and another .vs. State of M.P.*

reported in *(1999) 9 SCC 581*.

6. With the assistance of learned Advocate for the appellant and learned Additional Public Prosecutor for the respondent-State, we have perused the record and we have independently scrutinized the evidence of the witnesses.

7. Prosecution has examined PW-1 Pravin Manohar Bawaskar, who is son of the appellant and the deceased. At the time of recording of his evidence, he was 16 years old. He has deposed that at the time of incident he was studying at Dhanora in VII Standard. Incident occurred at 22.00 hours (10.00 p.m.) at his residence at village Dhanora. He was sleeping with his mother. He heard scream of his mother. He woke up. He saw his mother had sustained bleeding injury. He caught hold his mother. His father pushed him and opened the door. He and his mother shouted for help. On hearing their scream, Dnyandeo, Baliram, Onkar and Atmaram rushed for help. His mother was separated as appellant was assaulting his mother. Both lifted her from his house. In the meanwhile, his father fled away by climbing on the roof. His mother and he shouted to catch his father. His mother was assaulted by *Katyar* (Dagger),

causing injuries on her hand, back, leg, cheek and other parts of the body. He had seen the *Katyar* which was possessed by his father at the time of incident. Lateron, Bhagwan, Samadhan, Dnyandeo, Atmaram shifted his mother in auto-rickshaw to Jalgaon Jamod Hospital. He accompanied her. Doctor advised to shift her to Akola. At Akola, his statement was recorded on 14.5.2013. His mother succumbed to her injury on 16.5.2013. He identified the *Katyar* (Article-A) used in the crime and Saree (Article-B) worn by his mother at the time of incident, his blood stained shirt (Article-C) worn by him at the time of incident and the petticoat of his mother (Article-D).

In cross, he stated that on the day of incident in morning, some words were exchanged between appellant and his mother. After exchanging words, he did not know when appellant left the house. He admitted that when he woke up, his saw injuries on the body of his deceased mother. Omissions that “Atmaram and Dnyandeo lifted my mother”, “my father shouted to apprehend my deceased mother” were brought on record in his cross-examination. He further stated that while running away, appellant was carrying *Katyar*. He denied that his mother was unable to speak at Jalgaon Jamod Hospital and

contents of her statement were instructed by his grand-mother and he was accompanying his mother. He volunteered that the statement was recorded in the ambulance. Police visited hospital at Akola. He did not know after incident when police visited the hospital. When the statement of his mother was recorded, he was with his mother. He did not know whether his mother was able to speak at Akola while recording the statement. He admitted that his mother was under treatment and she was on ventilator.

8. PW-6 Dnyandeo Anokar, neighbour of appellant, is another eyewitness. He deposed that accused is his neighbour and he was knowing appellant's son Pravin and daughter Arti. The incident took place on 11.5.2013 at around 10.30 p.m. at the house of the appellant. By that time, he had gone to sleep at his house. He heard the sound of wife of the accused Sharda "घावा घावा मेली मेली". He also heard the sound of son of accused Pravin as "आईव आईव". He immediately rushed to the house of the accused and saw his wife Sharda lying on the ground and the appellant stabbing her with knife. Sharda asked him to take the knife from her husband. He then caught hold the hand of

the appellant and attempted to take him out of the house. The said incident took place in the Varanda/Osari of the house of appellant. As appellant did not come out, he released his hand and he went to the roof of his house. His brother Atmaram, one Solanke and other villagers also came there. Due to that assault, Sharda sustained injuries on her person. They took Sharda to Government Hospital at Jalgaon Jamod in one auto-rickshaw of a villager. Sharda was then taken to hospital at Akola. After 2-3 days, Sharda expired. Police had questioned him in relation to the incident twice.

In cross, he stated that at the time of incident, financial condition of the family of accused was very poor and accused and his wife were doing agricultural labour work. The distance between the house of appellant and his house is around 20 feet and there is a road between his house and the house of appellant. From the door of his house, the inside part of the house of appellant cannot be seen. At the relevant time, electricity was not provided at the house of the accused. He denied that he has not witnessed the incident. Omissions to the effect that “on that day I heard the sound of Sharda as “घावा

घावा मेली मेली”. He also heard the sound of son of accused Pravin as “आईव आईव” were brought on record during his cross. In the hospital at Jalgaon Jamod, Shardabai was able to speak to some extent. Police visited him twice with reference to the incident. There were no talks between him and Shardabai’s mother, father, brother and paternal uncle on the other in respect of the incident during the period of the incident and recording of his statement by police. He was not aware whether due to the poor financial condition of the accused family, there were quarrels between the accused and his wife Sharda. He was unable to state whether due to such poor financial condition, Shardabai became mentally disturbed. He was not aware, whether on two to three occasions, Shardabai attempted to commit suicide. He did not know whether Shardabai stated to him and other villagers gathered there, that she attempted to commit suicide. He denied that he made a false statement to the police and deposed false.

9. Homicidal death of Shardabai is proved by the prosecution by examining PW-11 Dr. Sayyad Husaini, who has proved postmortem report (Exh.77). He deposed that he found

twenty injuries on the body of Shardabai. Out of them, seventeen injuries were incised wounds, three lacerated wounds and one contused abrasion on back. There were also corresponding internal injuries i.e. (i) Subglial contusion in the form of haematoma over right fronto-parietal region of size 6 cm x 5 cm. (ii) In the thorax region on right side rent in fifth intercostal space and difused haematoma internally over third, fourth, fifth, sixth and intcostal space and on left side third, fourth and fifth intercostal space without fracture of rib. In abdominal cavity peritonium surgically sutured and straw coloured fluid along with first pockets seen over peritonium. Abdominal cavity shows about 500 cc of straw colour fluid with first packet with foul smelling in to the cavity. Small intestine adhered to each other and to walls and illium at a distance of 23.5 cm from stomach posteriorly showed sutured stab wound of size 4.3 cm. X 1.5 cm. x cavity deep extending up to messentry with haemotoma around. About uterous-nongravid size 6 cm x 3 cm x 3 cm. He opined that cause of death was “septicaemia due to purforation peritonitis as a result of multiple stab injuries”.

10. PW-2 Ravindra Khapre is the brother of deceased, however, his statement appears to be recorded after seven days of the incident and, therefore, his evidence is of no use for the prosecution. Panchanamas recorded during the investigation are proved by the prosecution by examining PW-4 Afsar Masare, who happens to be neighbour of the appellant, he is panch to the spot panchanama (Exh.38). He deposed that accused is his neighbour. The incident in question took place on 11.5.2013 at about 10.00 p.m. in their village. By that time he was sleeping at his home. All his family members were also at home. They heard the weeping sound of Shardabai, wife of accused. They also heard weeping sound of their son. Thereupon, he and his wife Alishan came out of the house in their courtyard. Their courtyard and the courtyard of the accused are abutting to each other. By that time, they saw Atmaram Anokar, Dnyandeo Anokar, Mahadeo Anokar, Ganesh Dhanokar, Shersing Solanke, Krishna Nhavokar etc. gathered in the courtyard of the accused. Then he entered the courtyard of the accused. He saw Shardabai, wife of accused, lying in the courtyard in front of the door. She had sustained injuries on her hand. By that time,

there was drak. Shardabai did not tell anything. Accused was sitting on the roof of his house. Shardabai was taken to Jalgaon Jamod in auto-rickshaw of Surwade. On 16.5.2013 Shardabai died. Police interrogated him in respect of the occurrence. He was called as a Panch to the spot panchanama on 12.5.2013. One Anokar was another panch. The contents of panchanama (Exh.38) were not read over to him.

In cross, he stated that wall of his house and wall of house of accused are abutting to each other. He denied that due to poor financial condition, there always used to be quarrels between accused and his wife Shardabai. He denied that due to poor financial condition, Shardabai became hot-tampered. Omissions i.e. “at the time of incident, I heard a weeping sound of Shardabai and her son Pravin”, “on the day and time of incident, Ganesh Dhanokar, Shersing Solanke, Mahadeo Anokar, Vishwanath Nhavokar had gathered in the courtyard of the accused” and “Shardabai was lying in Osari of her house” were brought on record in his cross. So also contradictions i.e. question marks ‘A’ and ‘B’ were brought on record in his cross-examination. He proved spot panchanama

(Exh.38).

11. PW-7 Sanjay Bunde is pancha to the panchanama of seizure of clothes of the accused (Exh.50). In his presence, memorandum statement of the accused (Exh.51) is recorded and pursuant to the same, murder weapon i.e. *Katyar* (Dagger), Clothes (Article-A) were seized from the roof of the house of accused, vide seizure panchamama (Exh.52). He is also panch to the taking blood sample of the accused (Exh.53) and panchanama of seizure of viscera (Exh.54).

12. PW-5 Police Head Constable Chandrakant More is examined on the point of recording of oral report (Exh.41) of the deceased and FIR (Exh.42). He has stated that in the night between 11.5.2013 and 12.5.2013, people brought Sharda Manohar Bawaskar to the Police Station in injured condition. Around 10.00 pm, in that night, she lodged a complaint stating that while she was sleeping along with her son in Osari, the accused came in drunken state and assaulted her by means of *Katyar* like knife on her thigh, back, stomach, cheek and hand. As she raised hue and cry, neighbouring persons gathered there.

Due to the assault, she suffered bleeding injuries on her body. People then took her to Rural Hospital at Jalgaon Jamod for treatment. As she was referred to hospital at Akola, while proceeding to Akola, she was brought to Police Station, Jalgaon Jamod to lodge the complaint. He reduced her complaint in writing and read over the same to Sharda. The said complaint bears thumb mark of informant Sharda and also his signature. On the basis of oral report, he registered FIR at Crime No.39/2013 for the offence punishable under Section 326 of IPC against the accused. PI Nitin Patil investigated the said crime. On 14.5.2013, he visited GMC, Akola where complainant Sharda was taking treatment and recorded her statement and statement of her son Pravin.

13. PW-8 Pramod Ambhore, Police Constable, the carrier, who carried the Muddemal/viscera to the Regional Forensic Science Laboratory (RFSL) Amravati. He proved invoice (Exh.57) of receipt of the concerned Muddemal to Regional Forensic Science Laboratory.

14. PW-13 Ananda Kushangwad, API was handed over the investigation on 13.05.2018. He seized blood sample

bottles brought from the concerned Medical officer in the presence of two panchas and conducted seizure panchanama (Exh.53). On 16.05.2013, he seized two sealed viscera bottles and blood samples of deceased Sharda from the Police Head Constable, vide seizure panchanama (Exh.54).

In cross, he denied that panchas were stock panchas of the Police.

15. PW-14, Nitin Patil, API is the Investigating Officer, who on 12.05.2013 seized blood stained clothes from the accused, vide seizure panchanama (Exh.50). He also recorded spot panchanama (Exh.38). He recorded statements of eye-witnesses of the occurrence namely, Atmaram Anokar and Dnyandeo Anokar. He recorded confessional statement of accused (Exh.51), pursuant to which, accused produced one *Katyar* (dagger) from the tin sheet roof of his house, which was seized, vide memorandum panchanama (Exh.52). He sought opinion of the Medical Officer in relation to the said weapon by issuing letter (Exh. 66). Medical Officer gave his opinion that injuries suffered by deceased Sharda were possible by the said weapon. Opinion letter is at Exh. 67. He then obtained sketch

of incident from the Executive Magistrate (Article P/2).

16. He proved the portion marked 'A' and 'B' from the Police statement of witness Afsar Subhan Masare. He deposed that during investigation, it was revealed that accused was doubting the character of his wife Sharda and on that count, he attacked her by means of knife like *Katyar* and ultimately killed her. He stated that he did not know whether it is necessary within the meaning of the provision of Section 27 of the Evidence Act that on showing the weapon or the instrument by the accused, it has to be taken out by wearing hand gloves. *Katyar* article 'A' may be available in the market in scrap shop. He admitted that seized Muddemal is required to be sent for Chemical Analysis immediately. As there were other investigations with him, there was delay in sending Muddemal in the crime in question for Chemical Analysis. He further admitted that concerned RFSL had pointed out a fault in packing the Muddemal (Exh.6), mentioned in Exh.91. He admitted that on 12.05.2013, an offence under Section 302 of the IPC was not registered against accused.

17. On careful evaluation of the evidence of eye-witnesses, we find that their evidence is consistent, cogent and reliable. PW-1 Pravin Bavaskar has woken up on hearing the scream of his mother in the middle of night. He saw his mother has sustained bleeding injury. He caught hold his mother. His father/accused pushed him away. Then he and his mother both shouted for help. On hearing their shouts, PW-6 Dnyandeo Anokar rushed for their help. In his presence, his mother was separated from appellant/accused, who was assaulting her. After separating, appellant fled away and went on the roof. His evidence is not shattered in the cross-examination.

18. Evidence of PW-6 Dnyandeo Anokar corroborates version of PW-1. He has specifically deposed that on hearing sound of Sharda and PW-1 Pravin Bavaskar, he immediately rushed to the house of appellant. On reaching there, he saw Sharda lying on the ground and the appellant was stabbing her with knife. Sharda requested him to take the knife from her husband. He then caught hold the hands of the appellant and tried to take him out of the house. As the appellant did not come out, therefore, he released his hands and appellant went

to the roof of his house. He with the help of his brother and others, took Sharda to the hospital.

In his cross-examination, nothing favourable to the defence is brought on record. Evidence of eye-witnesses PW-1 and PW-6 inspires confidence and we find no reason to disbelieve their testimony which implicates appellant.

19. Weapon i.e. knife (dagger) used in the crime is recovered at the instance of appellant, pursuant to the recording of his memorandum statement, the appellant produced knife (dagger) (Article 'A') from the tin roof of his residential house, blood stained clothes of the appellant were seized, vide panchanama (Exh. 50). All these recovered articles from the accused as well as articles seized from the spot of incident were forwarded to the Forensic Science Laboratory and as per CA Report (Exh.7), human blood was detected on knife, clothes of the accused, clothes of deceased Sharda and half shirt of PW-1 Pravin. Knife, clothes of the accused, clothes of the deceased and half shirt of PW-1 Pravin was found stained with blood of Grope 'A', which is of deceased. This further corroborates the prosecution case. Learned counsel for appellant has failed to

offer any explanation of finding of blood group of deceased on the weapon and seized clothes. Homicidal death is proved by prosecution as is observed earlier. Thus, there is overwhelming evidence on record to show that appellant has committed murder of Sharda with knife (dagger) and the same is witnessed by PW-1 and PW-6. We see no reason to disbelieve version of prosecution witnesses, scientific evidence and medical evidence brought on record by prosecution corroborates the prosecution case.

20. FIR is lodged by deceased Sharda while proceeding to the Government Medical College and Hospital, Akola and she had no reason to falsely implicate the appellant from lodging of FIR, this further strengthens the case of prosecution. In the facts of the present case, FIR can also be treated as dying declaration of Sharda.

21. In *Sk. Javed Sk. Gulam Rasul Vs. State of Maharashtra, 2023 SCC Online Bom 1724*, the Apex Court was considering a case which was based on indirect evidence i.e. two dying declarations. This decision is rendered in different facts and the same is of no help to the appellant's case.

22. In *Laxman vs. State of Maharashtra, (2002) 6 SCC 710*, the Apex Court was considering the effect of absence of Doctor's certificate as to mental fitness of the declarant while recording dying declaration.

23. In the case in hand, there is evidence of two eye witnesses, which is supported by medical and scientific evidence and the FIR is lodged by deceased herself while she was on the way to the hospital. This ruling is rendered in different facts, therefore, it is of no assistance to the case of appellant.

24. In *Balu Shravan Ahire Vs. State of Maharashtra, 2001(2) Mh.L.J. 76*, there was uniform gap of five minutes between the preparation of memorandum and recovery panchanama on the spot. The evidence on record of that case showed that after memorandums were made, in every case, the appellants, panchas and police had travelled some distance in police jeep to go to the spot shown by the appellants, and still the time shown for such travel uniformly was that of five minutes, therefore it was held that recovery of articles under Section 27 of the Evidence Act was not established beyond

reasonable doubt. Such are not facts of the present case.

25. In the present case, memorandum statement (Exh.51) is recorded on 12.05.2013 during the period between 15/00 to 15/20 hrs., whereas the seizure panchanama pursuant to it, is recorded between 15/25 hrs. to 16/30 hrs. In our view, this by itself, does not render the recovery panchanama doubtful.

26. In *State of Maharashtra Vs. Ranjendra s/o Ganji Moon and others, 2006(1) Mh.L.J. 647*, independent witnesses, who acted as panchas for alleged recovery and discovery made by the accused, had not supported the prosecution, therefore, this Court held that acquittal of the accused was justified.

27. In the present case, panchas have supported the prosecution case and merely because they have acted as panchas at earlier point of time, it cannot be said that they were stock panchas of Police.

28. While convicting the appellant, Trial Court has passed a well reasoned judgment and we do not see any reason to interfere in the said judgment of conviction. We find no merit in the appeal, the same is therefore, dismissed.

29. Learned counsel appointed to represent the appellant be paid fees as per Rules within four weeks from the date of uploading of this judgment.

(Pravin S. Patil, J.)

(Nitin B. Suryawanshi, J.)