



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

CRIMINAL APPEAL NO. 426/2021

Hariram s/o Kodu Madavi,
aged 35 yeas, Occ. Cultivation,
r/o Jambahali, Tq. Korchi,
Dist. Gadchiroli, presently in
Judicial Custody, Nagpur Central
Prison/Jail, Convict No. C-10596.

.....APPELLANT

...V E R S U S...

State of Maharashtra, through
Police Station Officer, Police Station,
Korchi, Dist. Gadchiroli.

...RESPONDENT

Mr. Naresh M. Kolhe, Advocate Appointed for appellant.
Mr. S. S. Doifode, A.P.P. for respondent.

CORAM:- ANIL L. PANSARE AND RAJ. D. WAKOKE, JJ.
DATE OF RESERVING THE JUDGMENT :- 17.12.2025
DATE OF PRONOUNCING THE JUDGMENT :- 19.12.2025

JUDGMENT (Per: Anil L. Pansare, J.)

Appellant is aggrieved by judgment and order dated 15.01.2020 passed by learned Sessions Judge, Gadchiroli in Sessions Case No.7/2018 convicting him for the offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC"). He has been sentenced to undergo imprisonment for life and also to pay a fine of Rs.3,000/-.

2. Briefly stated, the allegations against the appellant are that on 23.10.2017 at about 07:30 p.m., he has committed murder of his

father. Appellant's mother i.e. PW1 lodged First Information Report ("FIR") on the next day i.e. on 24.10.2017 stating therein that she and her deceased husband were residing together. Her son i.e. appellant and daughter in law along with their children were residing in another house. Appellant and his wife had a quarrel few days back and, therefore, she had gone to her parental house. On 23.10.2017, since there was Diwali festival, PW1's granddaughter Shilpa had been to her house. PW1, her granddaughter, her husband (deceased) and her son (appellant) were in the house. They performed Gowadhan Pooja at about 07:30 p.m. After having dinner, her husband went towards bathroom to wash hands and while washing hands, he said to appellant that despite Diwali festival, the daughter in law and grandson are not in house. The deceased scolded him saying why he did not bring them home for Diwali and further said that instead he should have left the house and it would have been better had he died. Appellant got annoyed with the scolding. He picked up half burnt stick from the *Chul* (earthen stove) and assaulted him on his head. The deceased fell down and died on the spot. The appellant then left the house. PW1 informed the incident to her brother in law and daughter. They all came to her house. She lodged report on the next day because it was late in the night on 23.10.2017.

3. Accordingly, FIR was registered against appellant vide Crime No.57/2017 for the offence punishable under Section 302 of the

IPC. Investigating Officer reached the spot, collected the evidence, sent body for post mortem, recorded statements of witnesses and filed charge-sheet. Appellant did not plead guilty and claimed to be tried. The prosecution examined 13 witnesses to bring home guilt of the appellant. His defence is of total denial and also of alibi. He, however, did not examine any witness in defence.

4. The Trial Court, after having considered the attending circumstances, held appellant guilty of the offence. The said finding is challenged before us.

5. We have heard Mr. N. M. Kolhe, learned counsel for appellant and Mr. S. S. Doifode, learned A.P.P. for respondent – State. We have gone through the impugned judgment, documents and evidence etc. We will refer to the same to the extent 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
1.	Has the prosecution proved that Kodu Karu Madavi, the deceased, suffered homicidal death on 23.10.2017?	In the negative.
2.	Has the prosecution proved that appellant is responsible for the said homicidal death?	In the negative.
3.	Whether interference is called for in the impugned judgment?	In the affirmative.
4.	What order?	The appeal is allowed.

REASONS:**As to point Nos.1 to 3:**

6. The prosecution was under obligation to prove that Kodu Madavi suffered homicidal death and that the appellant is responsible for the said death. Evidence of PW1 indicates that on the festival night, they all i.e. PW1, her husband, her son (appellant) and granddaughter Shilpa were present in the house. Her husband went to wash his hands in the bathroom. While he was washing hands, her son assaulted Kodu with firewood because Kodu scolded him for not bringing his wife back home. She has also deposed that the appellant assaulted her husband on his head by firewood and thereafter went away. In the cross-examination, she admitted that firewood and stone for washing clothes are kept behind the house. She admitted that when Kodu had gone for washing his hands, she was in the house. She then admitted that since Kodu took long time to come back she went to see him towards bathroom and saw that he was lying on the stone. Thereafter, she stated that since he had fallen on the stone, he sustained injury. She admitted that there was no dispute in the family prior to the incident. She admitted that she has not seen anybody assaulting her husband. Prior thereto, she also admitted that on the date of incident since the appellant's wife was not in the house he had gone to his in-law's house for having food. In the re-examination, however, she reiterated that on the date of incident, the appellant was in the house. She further said that whatsoever she has stated in chief-examination about death of

Kodu is true. She also admitted that there occurred quarrel on account of appellant not bringing back his wife.

7. Thus, PW1 though supported the prosecution case in chief-examination, has upset the story in cross-examination. She has not seen appellant assaulting her husband. She admitted that since her husband took long time to come back, she went to see him, where she saw him lying on the stone. Most importantly, she deposed that since he had fallen on the stone, he sustained injury. She also stated that the appellant had been to his in-law's house for having food. Thus, presence of appellant at the time of incident is rendered doubtful.

8. This doubt has been further clarified in the evidence of PW6, the wife of appellant. She deposed that on the date of incident during Diwali, she was at her mother's house. She and appellant had cordial relationship. In the cross-examination, she stated that the appellant had been to her father's house on the date of incident. She admitted that she received information that her father-in-law fell on stone and died. Significantly, she admits that after receiving such information, she herself and her husband went to see her father-in-law. Thus, the witness has supported the plea of alibi of appellant.

9. PW10 is yet another important witness. She is granddaughter of PW1. She was present in the house. She deposed

that appellant was present in the house at the time of incident. However, she does not remember what had happened. She stated that her grandfather had gone to wash his hands. Thereafter, she proceeded to wash her hands and saw that her grandfather was lying on the ground. He had injury on his forehead. She admitted that on the date of incident, appellant, his wife and children had gone to engagement ceremony of his brother-in-law. She admitted that the deceased was old and was not able to see properly in the night. She admitted that she herself, PW1 and her grandfather had food in the house. She further admitted that when her grandfather had gone out of the house to wash hands, she and PW1 were having food. She further admitted that her grandfather had consumed liquor on that day. She then admits that when she had food and when she came out, she saw her grandfather was lying on stone and sustained injury. Lastly, she admitted that since he fell down and died due to injury, she proceeded to inform the same to her father. Then comes the fatal admission that after death of her grandfather, appellant, his wife and children came to the house. She also stated that she blamed the appellant for the incident at the instance of her father and police. Surprisingly, in re-examination, the prosecution has brought on record that the appellant had gone to the house of his wife and her grandfather fell on the stone.

10. The evidence of this witness indicates that her grandfather was an elderly person and had difficulty seeing at night. He had also

consumed liquor. That being so and since nobody had seen the appellant assaulting the deceased, the possibility of deceased falling on stone and sustaining injury cannot be ruled out. In other words, accidental death cannot be ruled out.

11. As such, learned A.P.P. argued that there was no reason why should PW1, mother of appellant, lodge report against her own son. However, her evidence, coupled with testimony of PW6 and PW10, will make prosecution's version doubtful as regards presence of appellant in the house at the relevant time.

12. Learned A.P.P. then submits that multiple injuries on the person of deceased are not possible if he falls down. Though, the argument is appealing, it would depend upon the facts of each case. In a given case, if a person is under the influence of alcohol, he may fall down repeatedly. In the present case, nobody has seen as to how did the deceased fell and it remained unexplained by the prosecution as to why has he suffered multiple injuries on his person.

13. Learned A.P.P. then invited our attention to the impugned judgment to point out that clothes and firewood used in the crime were recovered at the instance of the appellant. Blood stains found on the appellant's clothes were of blood group 'A', which is the blood group of deceased. So far as the blood stains on the firewood are concerned,

though the blood group is not detected, human blood was found. The Trial Court has relied upon this evidence to connect the appellant with the crime.

14. Counsel for appellant has rightly countered these submissions. According to him, appellant's blood group may also be 'A' but the prosecution has not placed on record blood analysis report of the appellant. In absence thereof, one cannot jump to the conclusion that the blood stains found on the clothes of the appellant were of deceased. Counsel for appellant is further correct in contending that one cannot establish guilt on the basis of corroborative piece of evidence. Once in the substantive evidence it is brought on record that at the relevant time, the appellant was not present in the house, it will be impermissible to connect him with the crime only on the basis of corroborative piece of evidence.

15. The Trial Court has ignored the discrepancies in the testimony of PW1 saying that she is a rustic witness and has, in an attempt to save her son, given a twist to the prosecution's version. Such an inference, without any support from other witness, in our view, is hit by presumptions. As stated earlier, not only PW1 but also PW6 and PW10 have stated that the appellant and his wife and children came to the house after death of the deceased. PW1 and PW10 who were present in the house have in cross-examination clearly admitted that the

deceased fell down on the stone, sustained injuries and died. Such an evidence, coupled with the fact that the deceased was an old aged person, had consumed liquor and had bad visibility in the night, could be the reason why he has fallen down on stone and sustained injuries. These possibilities though highlighted before the Trial Court, were ignored without valid reason. The judgment, therefore, is unsustainable and would require interference.

16. The evidence of other witnesses is not of relevance to prove the appellant's guilt and, therefore, will not require detailed analysis. PW2 is pancha witness to arrest panchanama of appellant, which is not really disputed. PW3 is the son in law of deceased. PW1 and PW10 had been to his house after incident. He stated that these two witnesses came running to his house saying that the appellant had killed the deceased. He deposed that PW10 was crying. All of them then went to the house of deceased where he was found lying dead. He, however, has not seen the incident. Thus, his evidence is hearsay and is inadmissible. PW4 is pancha witness to seizure of clothes of deceased. He did not support the prosecution. PW5 is one in whose presence PW10 appears to have given statement to police.

17. Put all together, the prosecution failed to establish the appellant's involvement in the crime. The prosecution was under obligation to prove that Kodu Karu Madavi, the deceased suffered

homicidal death and that the appellant is responsible for the same, which the prosecution failed to establish. Accordingly, we answer point Nos. 1 and 2 in the Negative and point No.3 in the affirmative.

As to point No.4:

18. Having answered first three points in the manner hereinabove, the appeal succeeds. We, therefore, proceed to pass the following order.

ORDER

- (i) The appeal is allowed.
- (ii) Judgment and order dated 15.01.2020 passed by Sessions Judge, Gadchiroli in Sessions Case No. 7/2018 is quashed and set aside.
- (iii) Appellant – Hariram s/o Kodu Madavi is acquitted of the offence punishable under Section 302 of the Indian Penal Code, 1860.
- (iv) Appellant shall be released forthwith, if not required in any other crime.
- (v) Professional charges of Mr. N. M. Kolhe, learned appointed counsel for the appellant shall be paid as per the rules.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)